
No. 131710

In the
Supreme Court of Illinois

GRIFFITH FOODS INTERNATIONAL INC., *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,

Defendant-Appellant.

On Certified Question from the United States Court of Appeals for the Seventh Circuit,
Nos. 24-1217 and 24-1223. There Heard on Appeal from the United States District Court
for the Northern District of Illinois, Nos. 1:21-cv-06403 and 1:21-cv-04581,
the Honorable Mary M. Rowland, Judge Presiding.

**BRIEF OF AMICUS CURIAE SWISS RE CORPORATE SOLUTIONS
ELITE INSURANCE CORPORATION IN SUPPORT
OF DEFENDANT-APPELLANT**

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IDENTITY OF *AMICUS CURIAE*

The *amicus* is Swiss Re Corporate Solutions Elite Insurance Corporation (“SRCS Elite”), a member of Swiss Re Corporate Solutions, the commercial insurance arm of Swiss Re Group. Corporate Solutions: Swiss Re Corporate Solutions, <https://www.swissre.com/corporate-solutions> (last visited June 19, 2025). Swiss Re Group is one of the world’s largest and leading providers of reinsurance, insurance, and other forms of insurance-based risk transfer. Swiss Re Group: Swiss Re, <https://www.swissre.com> (last visited June 19, 2025). SRCS Elite, a New Hampshire corporation with its principal place of business in New York, is an admitted insurance carrier authorized to transact insurance business in Illinois and throughout the United States. SRCS Elite is the successor to North American Elite Insurance Company (“NAE Elite”), which issued three annual commercial umbrella policies to Plaintiff-Appellee, Griffith Foods International Inc. (“Griffith”), from October 1, 2014 to October 1, 2017, each providing limits of \$25 million (“SRCS Elite Policies”). Griffith has alleged that these policies provide coverage for the exact same underlying tort claims before this Court in the case-in-chief.

INTEREST OF *AMICUS CURIAE*

Griffith is pursuing \$75 million in policy limits from SRCS Elite under the SRCS Elite Policies, which contain very similar pollution exclusion language as the National Union policy before this Court. Griffith has pursued coverage under the SRCS Elite Policies for the same underlying ethylene oxide (“EtO”) pollution claims at issue in this case arising from its operation of a medical equipment sterilization facility in Willowbrook, Illinois (“Pollution Lawsuits”). Both the SRCS Elite Policies and the policy before this Court clearly express that they exclude coverage for claims arising out of the discharge or

emission of pollutants. As such, the underlying Pollution Lawsuits and the policy language at issue before this Court give SRCS Elite a substantial and immediate interest in the issues before this Court.

SRCS Elite further submits that it has a strong interest in the outcome of the certified question before this Court because it routinely enters into, and will in the future enter into, insurance contracts in Illinois and throughout the nation containing provisions similar to those at issue before this Court. Whether an insurer's intent to exclude any and all claims for the discharge or emission of traditional, industrial pollutants can be judicially rewritten to only exclude emissions outside a regulatory permit is a matter of great importance to policyholders and their insurers, including SRCS Elite. Griffith's attempt to alter the meaning of "pollutant" within the pollution exclusion is contrary to numerous canons of insurance contract construction and threatens to affect the interpretation of other exclusions down the road. As a result, the United States Court of Appeals for the Seventh Circuit indicated the significance the interpretation of the pollution exclusion will have on Illinois insurance law and the insurance industry as a whole in its certification to this Court. *Griffith Foods Int'l Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 134 F.4th 483, 492 (7th Cir. 2025).

Pollution exclusions in insurance contracts focus on the type of risk or emission, and not the extent to which those risks or emissions are, or are not, regulatorily permitted, and a ruling that ignores its plain language and fails to extend an exclusion to pollution regulatorily permitted, yet otherwise within its scope, threatens to improperly modify insurance coverage and limit the scope of unambiguous exclusions far beyond pollution. There is no logic to creating a blanket exception to all insurance exclusions for categories

of excluded claims any time a policyholder believes its conduct was within the scope of a regulatory permit. In a world of ever-increasing risk and complexity, SRCS Elite has a keen interest in maintaining the transparency, uniformity, and predictability of Illinois insurance contracts – particularly with respect to the kinds of disputes at issue here pertaining to the interpretation of the pollution exclusion. SRCS Elite, therefore, is vitally interested in the judicial interpretation of the pollution exclusion because of its immediate connection to the underlying pollution claims and policy language at issue, as well as its extensive involvement and experience in the insurance industry.

INTRODUCTION

This case concerns the United States Court of Appeals for the Seventh Circuit’s certified question to this Court requesting a determination of the meaning and scope of the pollution exclusion in the context of legally authorized traditional pollution emissions. No other questions were certified to this Court.

STATEMENT OF ISSUE PRESENTED

Whether commercial industrial emissions of EtO pollutants into the atmosphere over decades, even pursuant to a regulatory permit, is that type of release which constitutes “traditional environmental pollution” excluded by the pollution exclusion under Illinois Supreme Court precedent in *American States Ins. Co. v. Koloms*, 177 Ill.2d 473, 494 (1997).

STATEMENT OF FACTS

I. THE SRCS ELITE COVERAGE ISSUED TO GRIFFITH

SRCS Elite issued three umbrella policies to Griffith effective from October 1, 2014 to October 1, 2017, attaching above \$2.5 million (\$2 million primary insurance and \$500,000 self-insured retention), and providing annual limits of \$25 million. Each of the

SRCS Elite Policies include the “Pollution Endorsement – Blended Cover Combination Of Named Perils And Time Based Causes.” Under this endorsement, the SRCS Elite Policies exclude:

Any liability or alleged liability of the “insured” for “bodily injury,” “property damage,” or “personal and advertising injury” arising out of or alleged to arise out of the actual or threatened “discharge” of “pollutants” into or upon land or other real estate, the atmosphere, any watercourse or body of water whether above or below ground or otherwise into the environment.

(SR App. at 44).¹ The SRCS Elite Policies define “pollutants” to mean “any solid, liquid, gaseous or thermal irritant, contaminant or toxic hazardous substance which may, does or is alleged to affect adversely the environment, property, persons, or animals, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, oil and petroleum and their derivatives, and waste.” (*Id.* at 25). Also, “discharge” means “discharge, dispersal, migration, release, or escape of ‘pollutants’.” (*Id.* at 46).

The SRCS Elite Policies’ “Pollution Endorsement – Blended Cover Combination Of Named Perils And Time Based Causes” parallels the National Union pollution exclusion before this Court, which bars coverage for:

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

¹ References to “SR App” are to the Appendix attached hereto. The Appendix includes a copy of the SRCS Elite policy effective from October 1, 2014 to October 1, 2015. The other SRCS Elite Policies are identical as to all provisions relevant to the issues before the Court.

Griffith Foods, 134 F.4th at 489. This language includes the “sudden and accidental” exception. However, that exception is irrelevant here because the Seventh Circuit determined that the exception did not apply to the allegedly intentional EtO pollutant emissions by Griffith, and it was not part of the question certified to this Court. *Id.* at 490-491. The Seventh Circuit also noted that the pollution exclusion in *Koloms* lacked such an exception, but that difference was not significant to its analysis of how the Illinois Supreme Court has interpreted the “core” pollution exclusion. *Id.* at 491. As such, the pollution exclusion language in the SRCS Elite Policies is very similar in all relevant parts to the exclusionary language in the National Union policy before this Court. SRCS Elite has a direct interest in, and will undeniably be impacted by, the Court’s interpretation of this “core” pollution exclusion language, particularly given that these same issues are primed to be litigated against SRCS Elite in litigation pending in Cook County, Illinois, as explained below.

II. IN THE COOK COUNTY COVERAGE ACTION, GRIFFITH IS PURSUING SRCS ELITE FOR THE EXACT SAME UNDERLYING POLLUTION CLAIMS NOW BEFORE THIS COURT

In addition to the federal court litigation brought by Griffith and Sterigenics against National Union from which the certified question to this Court is presented, there is also parallel coverage litigation pending in Cook County, Illinois, regarding the Pollution Lawsuits. Specifically, on January 25, 2023, Griffith filed a complaint in Cook County, Illinois, against twelve of its insurers for breach of contract and declaratory relief relative to coverage for the Pollution Lawsuits. *Griffith Foods Int’l, Inc. v. Zurich American Insur. Co.*, No. 2023-CH-00782 (Cook County, Illinois) (“Cook County Coverage Action”); *See also*, SR App. at 74. Subsequently, Sterigenics, which acquired the EtO facility in Willowbrook, Illinois, from Griffith in 1999, intervened into the Cook County Coverage

Action. SR App at 75-76, ¶¶ 8 and 17. The lawsuit Griffith filed was consolidated with a prior coverage lawsuit regarding the Pollution Lawsuits filed by Employers Insurance of Wausau (*Employers Ins. of Wausau v. Griffith Foods Int'l.*, No. 2022-CH-10811 (Cook County, Illinois)). SR App. at 76, ¶¶ 11-13.

On two occasions, Griffith has sought to add SRCS Elite to the Cook County Coverage Action relative to its pursuit of coverage from SRCS Elite for the Pollution Lawsuits. On November 8, 2024, Griffith sought to amend its complaint to add several insurers, including SRCS Elite. SR App. at 78, ¶ 25 (listing new insurers, including SRCS Elite, to be added through amended complaint), and 80, ¶ 31 (filing of first motion to file Consolidated Amended Complaint). On January 16, 2025, the court denied Griffith's motion without prejudice based on procedural objections asserted by the insurer defendants. SR App. at 81, ¶ 32.

More recently, on May 2, 2025, Griffith and Sterigenics sought leave to file a Joint Consolidated Second Amended Complaint. Among other things, this amended pleading sought to add twenty new insurers, including SRCS Elite. SR App. at 80, ¶ 30. The motion to amend remains pending. While SRCS Elite is not currently a party to any Illinois coverage litigation arising out of the Pollution Lawsuits, Griffith is seeking to pursue coverage litigation against SRCS Elite pertaining to those lawsuits.

III. THE GRIFFITH AND STERIGENICS UNDERLYING LIABILITIES INVOLVE COMMERCIAL, INDUSTRIAL, AND ROUTINE EMISSIONS OF ETO POLLUTANTS INTO THE ATMOSPHERE

Griffith's and Sterigenics' claims for coverage arise out of various underlying lawsuits asserting injuries allegedly caused by Griffith's and Sterigenics' emissions of EtO over a 35-year period in Willowbrook, Illinois. *Griffith Foods*, 134 F.4th at 484. The Seventh Circuit opinion described those underlying Pollution Lawsuits as follows:

The Master Complaint [in the underlying lawsuits] alleged that Griffith proceeded to emit substantial and dangerous amounts of EtO while operating the plant from 1984 to 1999. When Sterigenics purchased the facility in 1999, it continued to emit EtO until shutting down in 2019, after the IEPA imposed a specific limit on the plant's EtO emissions.

The gravamen of the Master Complaint is clear: for the 35 years the sterilization plant operated in Willowbrook, local residents unknowingly inhaled EtO on a regular and continuing basis, with many individuals coming to experience a range of illnesses, including cancer and other serious diseases...

[O]ver 800 people filed individual lawsuits against Griffith and Sterigenics in Illinois state court asserting various claims under Illinois law. The complaints commonly allege that Griffith intentionally located and operated its facility in a residential area despite knowing that its dangerously high EtO emissions would migrate to areas near the facilities, including homes and neighboring schools, and eventually cause bodily injuries.

Id. at 485-86. SRCS Elite further adopts the Statement of Facts set forth in the brief of Defendant-Appellant, National Union Fire Insurance Company of Pittsburgh, PA.

ARGUMENT

The crux of the issue before this Court can be framed simply. EtO is a pollutant, and the routine, repeated, commercial, and industrial discharge of EtO into the atmosphere is and always will be viewed by this Court as conventional, traditional, environmental pollution, the type of which was intended to be excluded under the pollution exclusion. The fact that sometimes such EtO emission is allowed by permit, and sometimes not, will never change the nature of it as still being conventional, traditional, environmental pollution, the type of which was intended to be excluded under the pollution exclusion. Accordingly, the intentional, industrial emissions of large quantities of EtO from Griffith's and Sterigenics' operation of a medical equipment sterilization facility in Willowbrook, Illinois, are conventional, traditional environmental pollution and exactly the type of

emissions this Court ruled were intended to be excluded from insurance coverage under the pollution exclusion, irrespective of any regulatory permit.

This Court was clear in its analysis and conclusion of which mechanisms of pollution are intended to be excluded by the pollution exclusion, and which are not, when it addressed the scope of an absolute pollution exclusion within a commercial general liability (CGL) policy in *Koloms*. This Court ruled that, even though the absolute pollution exclusion had deleted the earlier requirement of a “[discharge] into or upon land, the atmosphere, or any watercourse or body of water,” the exclusion would still be interpreted in Illinois to preclude coverage for traditional environmental pathways of pollutants such as regular, industrial, commercial, and large scale discharges of pollutants into the air or environment, and would not preclude discharges of pollutants through non-environmental pathways such as a malfunctioning furnace emitting carbon monoxide, a commonly occurring chemical compound, in a two-story commercial building. *Koloms*, 177 Ill.2d at 477, 483, 485, 488-489, 492-494.

Despite this Court’s examination and clearly established scope of the absolute pollution exclusion, the Illinois appellate court in *Erie Insurance Exchange v. Imperial Marble*, 354 Ill. Dec. 421, 428 (3rd Dist. 2011), created the conundrum that is now before this Court. As explained by this Court in *Koloms*, the application of the pollution exclusion in Illinois focuses on the traditional versus non-traditional environmental pathway or manner of the emission (*e.g.*, smokestack emitting fumes into the air versus furnace emitting fumes into a building.) *Koloms*, 177 Ill.2d at 489, 494. However, instead of analyzing the application of the pollution exclusion on this basis, *Imperial Marble* introduced a different concept not based on policy language. *Imperial Marble* ruled that,

even when there is a traditional, industrial, environmental emission of pollution into the atmosphere as described in *Koloms*, the emission can be stripped of its status as traditional environmental pollution if the policyholder alleges it had a permit for the repeated, industrial, and commercial emissions of pollutants. *Imperial Marble*, 354 Ill. Dec. at 428. Such a new and additional test was nowhere in this Court's *Koloms* decision, and is contrary to the ordinary, understood meaning of pollution as simply an emission of hazardous, harmful substance into the atmosphere, without regard to whether the emission of the pollution is subject to a regulatory permit or not.

This Court's primary objective in construing the language of an insurance policy is to ascertain and enforce the intentions of the parties as expressed in their agreement. *Koloms*, 177 Ill.2d at 479 (citing *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill.2d 384, 391 (1993)). If the words in the insurance policy are plain and unambiguous, the court must give them their plain, ordinary meaning, and must apply them as written. *Resolution Trust*, 156 Ill.2d at 391. The court shall not search for ambiguity where none exists. *Id.* Despite these well-established principles of insurance contract construction and interpretation, *Imperial Marble* ignored the clear, plain, and ordinary language of an insurance contract and created ambiguity by reconstructing and rewriting the absolute pollution exclusion to contain a limitation for traditional environmental pollution emitted pursuant to a regulatory permit. The invention of a judicially created retrospective change to insurance policy intent is inconsistent with this Court's analysis and explanation of the very function of the pollution exclusion in *Koloms*, and was an entirely incorrect and unjustified interpretation of Illinois rules of insurance contract construction and interpretation.

I. UNDER *KOLOMS*, THE MECHANISM OF POLLUTION IS THE DETERMINATIVE FACTOR OF WHETHER AN ALLEGED POLLUTING EMISSION IS PRECLUDED BY THE POLLUTION EXCLUSION

Koloms set forth a clear, workable framework to determine whether an emission into the environment or atmosphere constitutes traditional environmental pollution intended to be excluded under the pollution exclusion. *Koloms* concerned whether injuries caused by carbon monoxide emissions from a defective furnace in a commercial building fell within the absolute pollution exclusion. *Koloms*, 177 Ill.2d at 467-477. In examining the scope of the absolute pollution exclusion, this Court analyzed whether the absolute pollution exclusion was limited to incidents of traditional environmental pollution such as “industrial, commercial or large scale pollution.” *Id.* at 477, 483. The core of this Court’s analysis focused on whether the nature of the pathway or manner of the emission of the pollution was intended to be considered traditional environmental pollution to which the pollution exclusion would apply. *Id.* at 480, 485. Concerned with an overbreadth in the language of the pollution exclusion, and attempting to avoid applying the pollution exclusion in situations that have “nothing to do with pollution in the conventional or ordinary sense,” this Court found that the exclusion should be limited to “hazards traditionally associated with environmental pollution.” *Id.* at 488-489.

As support for its finding, this Court examined the language and history of the absolute pollution exclusion. *Id.* In so doing, this Court determined that the exclusion’s purpose was to preclude coverage for exposure resulting from environmental pollution. *Id.* at 492. This Court stated that the “conventional sense” of what is intended to be excluded was the “potential liability arising from the gradual or repeated discharge of hazardous substances into the environment.” *Id.* at 493-94. Ultimately, this Court held that the absolute pollution exclusion applied “only to those injuries caused by traditional

environmental pollution” and “should continue to be ... the appropriate means of avoiding the yawning extent of potential liability arising from the gradual or repeated discharge of hazardous substances into the environment.” *Id.* at 493. Whether such gradual, repeated, large-scale, industrial pollution was within a permit or not had nothing to do with this Court’s analysis and application of the scope of the pollution exclusion.

Given this Court’s holding in *Koloms*, the releases of EtO pollutants at issue in this case easily qualify as “traditional environmental pollution.” The Seventh Circuit described Griffith’s EtO emissions in this case as involving an “industrial pollutant,” occurring over a 35-year period, and that the sterilization process produced significant EtO emissions “discharged into the air surrounding the plant.” *Griffith Foods*, 134 F.4th at 484-85. The Court concluded that such “gradual” and “repeated discharge of hazardous substances into the environment” was reminiscent of “well publicized, environmental disasters,” such as Times Beach and Love Canal. *Id.* at 491. As such, the pathway or manner of the releases of the pollutant into the atmosphere by Griffith is exactly the type of industrial, commercial, and regular release into the atmosphere that *Koloms* dictates qualifies as traditional environmental pollution. This traditional environmental pollution is the exact type of release this Court found was intended to be excluded by the pollution exclusion at issue in this case.

II. THE DECISION IN *IMPERIAL MARBLE* MISTAKENLY CREATED A TEST FOR “TRADITIONAL ENVIRONMENTAL POLLUTION” THAT TURNS ON REGULATORY PERMITTING, WHICH IS NOT A TEST SUPPORTED BY *KOLOMS* OR THE ILLINOIS CANONS OF CONTRACT CONSTRUCTION

A. *Imperial Marble* Mistakenly Created A Test For “Traditional Environmental Pollution” That Is Not Found In Illinois Legal Precedent.

Imperial Marble misconstrued and disregarded this Court’s interpretation and application of the pollution exclusion to traditional environmental pollution. That court did not follow this Court’s precedent established in *Koloms* and focus on the nature of the pathway of the emission to determine whether the emission constituted traditional environmental pollution precluded under the pollution exclusion. Instead, *Imperial Marble* focused on the regulatory permissibility of the emission to determine whether the emission was precluded under the pollution exclusion, without ever addressing the nature of the pathway of the emission or whether the emission constituted traditional environmental pollution. *Imperial Marble*, 354 Ill.Dec. 427- 428. By focusing on the regulatory permissibility of the emission, and not the nature of the pathway of the emission to determine whether the emission was precluded by the absolute pollution exclusion, *Imperial Marble* departed from this Court’s established legal framework and destroyed any workable parameters as to how Illinois courts are to interpret and apply the pollution exclusion. By disregarding this Court’s precedent on how to interpret and apply the pollution exclusion, *Imperial Marble* created a scenario where routine, commercial, and industrial emissions of pollutants into the environment subject to a regulatory permit suddenly became a type of risk not intended to be excluded under the pollution exclusion, despite these emissions falling within the exact parameters and nature of the pathway of pollution that this Court intended to be excluded under the pollution exclusion. In light of

Imperial Marble, Illinois courts are now unable to interpret the pollution exclusion with any consistency, stability, and predictability.

For example, in *Bible Pork*, a case Griffith relied on in its briefing in the Seventh Circuit, the Illinois appellate court was faced with determining whether noises, odors, and smells emitted into the environment from a hog factory constituted traditional environmental pollution excluded under the pollution exclusion. *Country Mut. Ins. Co. v. Bible Pork, Inc.*, 397 Ill. Dec. 712, 724 (5th Dist. 2015). *Bible Pork* looked to the allegations within the operative complaint, including the underlying plaintiffs' alleged inability to use and enjoy their property, and determined these claims were not pollution claims in the traditional sense of the word. *Id.* at 724. As such, *Bible Pork* stands for the conclusion that, under *Koloms*, noises, odors, and smells from a hog factory did not allege "traditional environmental pollution." *Id.* at 723-724. That is not surprising since the framework established in *Koloms* required Illinois courts to examine the nature of the pathway or manner of an emission to determine whether it constituted "traditional environmental pollution." *Bible Pork*, therefore, could demonstrate the application of *Koloms*, if only the decision stopped there.

However, presented with the *Imperial Marble* decision, the *Bible Pork* court moved on from the framework established in *Koloms* and turned to the regulatory permissibility of the emission to determine whether the emission fell within the pollution exclusion. *Bible Pork*, 397 Ill. Dec. at 724. In doing so, *Bible Pork* remarked that it agreed with *Imperial Marble* that the pollution exclusion is ambiguous when the pollutants emitted were allowed by a regulatory permit. *Id.* Although such reference was *obiter dictum* and not binding authority, *Bible Pork's* reference to *Imperial Marble's* decision shows the temptation of

courts to apply a framework inconsistent with this Court’s precedent in *Koloms*. See, *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 277 (2009) (recognizing that dictum is a remark, an aside, concerning some rule of law or legal proposition that is not necessarily essential to the decision, and is generally not binding authority).

In the underlying operative complaint, plaintiffs assert they sustained severe injuries stemming from Griffith’s and Sterigenics’ emissions of EtO pollutants. *Griffith*, 134 F.4th at 484. The only appropriate analysis is whether the underlying operative complaint is premised on a claim that the emitted EtO caused injuries for which the plaintiffs are seeking damages, and whether the nature of the pathway (the manner) of the EtO emissions constitute “traditional environmental pollution,” not whether the EtO emissions were authorized by a permit. After all, even legally authorized pollution can cause serious injuries if “the relevant regulations are too lax.” *Scottsdale Indem. Co. v. Vill. of Crestwood*, 673 F.3d 715, 721 (7th Cir. 2012). Since there can be no dispute that, under *Koloms*, the emission of EtO into the air for a 35-year period qualifies as “traditional environmental pollution,” the emissions must fall within the pollution exclusion. Whether the emissions were authorized by permit is irrelevant to whether it is traditional environmental pollution because the focus of the inquiry set by *Koloms* is the nature of the pathway of the emissions, not its regulatory status. *Koloms*, 177 Ill.2d at 493-494.

B. *Imperial Marble*, In Creating A New Test For “Traditional Environmental Pollution,” Interpreted The Word “Pollutant” Far Outside Its Ordinary And Lay Meaning.

The pollution exclusion precludes coverage for emissions of “pollutants” into the atmosphere. See, e.g., SR App at 44; *Griffith Foods*, 134 F.4th at 489 (quoting pollution exclusion language). The dictionary defines “pollutant” to mean “something that makes an environment unsuitable or unsafe for use.” *Merriam-Webster.com*. 2025.

<https://www.merriam-webster.com/dictionary/pollutant> (10 June 2025). Whether something is within an environmental regulation or performed pursuant to a government-issued permit is entirely irrelevant to the commonly understood definition of “pollutant.”

Under well-settled Illinois law, courts must enforce the terms of contracts in accordance with their plain language in order to effectuate the parties’ intent. This Court has repeatedly instructed that “if the words in the policy are unambiguous, a court must afford them their plain, ordinary, and popular meaning.” *Outboard Marine v. Liberty Mut. Ins. Co.*, 154 Ill.2d 90, 108 (1992). Furthermore, courts should avoid a forced construction that distorts provisions to give them a meaning other than that intended by the parties, or creating ambiguities where none exist in the contract language. *See, e.g., United States Fire Ins. Co. v. Schnackenberg*, 88 Ill.2d 1, 5 (1981) (Illinois courts “should not search for an ambiguity when there is none”); *International Minerals & Chem. Corp. v. Liberty Mut. Ins. Co.*, 168 Ill.App.3d 361, 370-71 (1st Dist. 1988) (courts should not distort the meaning of contractual terms to create a desired result nor search for or invent ambiguities where none exist). The Court has also made clear that “a policy term is not ambiguous because a term is not defined within a policy, or because the parties can suggest creative possibilities for its meaning.” *Lapham-Hickey Steel Corp. v. Protection Mut. Ins. Co.*, 166 Ill.2d 520, 529 (1995).

Imperial Marble violated these fundamental principles of contract interpretation and ignored the clear language of the pollution exclusion by distorting the commonly understood, plain meaning of “pollutant” as “something that makes the environment unsafe,” and changed it to mean “something that makes the environment unsafe, *unless the unsafe emission was within a regulatory government permit.*” No person of ordinary

intelligence reading this language would understand “pollutant” to be defined in such manner. That the discharge of a pollutant was made in compliance with a permit or not does not change the fact that the discharge allegedly resulted in bodily injury arising from an actual discharge of pollutants into the environment – the type of liability expressly within the plain language of the pollution exclusion. By failing to adhere to the normal rules of contract interpretation, and distorting the meaning of “pollutant” in this manner, *Imperial Marble* in essence *rewrote* the pollution exclusion within the parties’ insurance contract and placed a limitation that the parties never intended. After all, when insurers and policyholders historically wanted to make an exception to the pollution exclusion, such as an exception for damage resulting from sudden and accidental releases, that exception was easily added to the exclusion to limit its scope. This is not the case here, and the limitation *Imperial Marble* placed on the pollution exclusion was not intended by the parties. Given the weight and importance this Court placed on the purpose and intent of the pollution exclusion in *Koloms*, it makes no sense to limit the pollution exclusion to only those instances where the insured discharged pollution in the absence of a permit.

C. *Imperial Marble’s* New Test For “Traditional Environmental Pollution” Creates Ambiguity And Uncertainty In Every Future Application Of The Pollution Exclusion.

Imperial Marble created great uncertainty by disregarding the express, unambiguous provisions in the pollution exclusion. As discussed above, *supra* at II.B., this Court’s well-settled contract interpretation principles require enforcement of the policy’s terms and conditions in accordance with their plain language in order to effectuate the parties’ intent. Illinois courts “should not search for an ambiguity when there is none.” *Supra* at II.B. However, despite these longstanding rules of contract construction and interpretation, *Imperial Marble* threw into disarray the stability brought by *Koloms* as to

what constitutes a “conventional” environmental emission, such as commercial, industrial, routine, and repeated emissions. Instead, *Imperial Marble* suggests that an entire regulatory analysis needs to first take place pertaining to whether certain emissions were or were not within a regulatory permit before a court can determine whether the pollution exclusion applies to the emissions.

By proposing this additional requirement that insurers conduct an analysis of the applicable government regulations or the insured’s regulatory compliance, *Imperial Marble* created ambiguity where none existed, and turned liability insurance on its head. Any questions relating to the validity and scope of regulatory permitted emissions is a question that should be limited to whether or not the insured is liable (*i.e.*, they are simply defenses to the liability of the insured) and play no role in the applicability of the absolute pollution exclusion. *Imperial Marble* mistakenly conflated an issue tethered to an insured’s liability with whether there may be insurance coverage. Simply stated, *Imperial Marble*’s unfounded and unworkable analysis created an immediate point of ambiguity: it would require an insurer to determine which regulations or permits were applicable or adhered to in order to determine whether it is obligated to provide a defense to its insured. It makes no sense to require insurers to conduct a regulatory analysis of the insured’s conduct before determining if an exclusion applies. This ambiguity makes *Imperial Marble*’s entire analysis unworkable, and goes against this Court’s framework established in *Koloms*.

Koloms unequivocally answered any ambiguity question pertaining to the interpretation and application of the absolute pollution exclusion by conclusively interpreting the pollution exclusion to apply to any instance of “traditional environmental pollution,” including “hazards traditionally associated with environmental pollution.” See

Koloms, 177 Ill.2d at 489, 492. In so doing, *Koloms* created a clear standard by which traditional, industrial, commercial, regular, and repeated emissions are traditional environmental pollution intended to be excluded under the pollution exclusion. *Id.* *Koloms* focused on the nature of the pathway (i.e., the manner of the emission), not the permissibility of the emission, to determine if the emission constituted traditional environmental pollution excluded under the pollution exclusion.

Application of *Imperial Marble*'s analysis now means that an industrial emission of EtO from one smokestack could be deemed a traditional environmental release within the meaning of the pollution exclusion if the emission was not pursuant to an environmental permit, but the same exact emission of EtO from a smokestack down the block could be deemed a non-traditional release and, therefore, not within the meaning of the pollution exclusion, if that emission was pursuant to an environmental permit. In either scenario, however, the insurance risk is a risk of liability resulting from the alleged polluting emissions. The intent of the pollution exclusion, as found by this Court in *Koloms*, was to preclude coverage for such allegations and risks. *Koloms*, 177 Ill.2d at 493. It makes no sense for the law to dictate that the exact same release from two different smokestacks was intended to be treated as different insurance risks. Such a test, as applied in *Imperial Marble*, introduces ambiguity rather than resolving it, and guarantees that the application of the pollution exclusion would essentially require a review of the unique underlying facts in each case before the parties would know if the pollution exclusion in fact applied.

Contrary to the ambiguity created in *Imperial Marble*, the scope of the pollution exclusion was not confined by this Court in *Koloms* to traditional environmental pollution emitted outside a regulatory permit. The policy's language, and this Court's interpretation,

make clear that the pollution exclusion excludes traditional environmental pollution. Nowhere within the policy or the pollution exclusion will one find an exception for regulatorily permitted emissions. By limiting the pollution exclusion in this way, *Imperial Marble* imposed a restriction that does not exist within the language of the pollution exclusion and runs counter to its duty to interpret contracts according to their plain, ordinary meaning to avoid creating ambiguities. There is no fair or legitimate basis under Illinois law for the distortion of the pollution exclusion in this manner.

It is clear that *Imperial Marble* departed from the longstanding principles of contract interpretation by creating ambiguity where none existed. Griffith contracted for commercial general liability insurance subject to an exclusion for traditional environmental pollution. To preserve the established expectations of insurers, policyholders, and all Illinoisians, this Court should avoid the harm that would result from interpreting the language of the pollution exclusion as ambiguous and in turn failing to extend the exclusion to regulatory permitted traditional environmental pollution. Rather, this Court should give the pollution exclusion its plain, ordinary meaning of applying to traditional environmental pollution, as set forth by this Court in *Koloms*, irrespective of an emissions' regulatory status.

D. *Imperial Marble's* New Test For "Traditional Environmental Pollution" Is Inconsistent And Unworkable With The Policy As A Whole.

As discussed herein, a court must construe the policy as a whole and take into account the type of insurance for which the parties have contracted, the nature of the risks involved and purchased, the subject matter that is insured, and the overall purpose of the entire contract. *Koloms*, 177 Ill.2d at 479 (citing *Crum & Forster*, 156 Ill.2d 384, 391). The application of the pollution exclusion depends primarily on the language of the insurance

contract and exclusion. *Id.* at 479-480. All provisions within an insurance contract are to be interpreted from an examination of the entire contract, rather than an isolated part. *U. S. Fire Ins. Co. v. Schnackenberg*, 88 Ill.2d 1, 5 (1981) (citing *Weiss v. Bituminous Casualty Corp.*, 59 Ill.2d 165, 171 (1974); *Cobbins v. General Accident Fire & Life Assurance Corp.*, 53 Ill.2d 285, 290 (1972)). Courts construe an insurance contract as a whole, giving effect to every provision. *Central Illinois Light Co. v. Home Ins. Co.*, 213 Ill.2d 141, 153 (2004) (citing *Martindell v. Lake Shore Nat. Bank*, 15 Ill.2d 272, 283 (1958)). When construing a contract, “the intention of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself,” but each provision should be viewed and interpreted in light of the other provisions, to determine the meaning of any particular provision and the whole contract itself. *Martindell v. Lake Shore Nat. Bank*, 15 Ill.2d 272, 283 (1958) (citing *Chicago Home for Girls v. Carr*, 300 Ill. 478, 483 (1921)).

When read as a whole, none of the exclusions in a standard CGL contract turn on an analysis of whether the excluded conduct at issue was or was not regulatorily or statutorily permissible in some way. Instead, the exclusions simply exclude types of liability, without the necessity of an administrative regulatory analysis as a prerequisite. When there is a claim that arises from excluded liability, and the exclusion says it is excluded, then it is so excluded. *Imperial Marble* changed this analysis for pollution, however, and found that a certain type of liability will be excluded or not excluded depending on whether it was within some type of regulatory permit at the time the conduct took place. As a result of *Imperial Marble*, the pollution exclusion is now inconsistent with other types of exclusions, which are not subject to this additional test for regulatorily permitted conduct. The clear problem with creating an interpretive, unfounded test for

regulatorily permitted conduct not contained in insurance contract exclusions, such as that done in *Imperial Marble*, is that it would afford coverage for liability intended to be excluded under the ordinary and plain meaning of such exclusions.

For example, a standard CGL policy precludes coverage of “personal and advertising injury” arising out of the infringement of copyright, patent, trademark, or other intellectual property rights. SR App. at 14, ¶ L. If there were changes to the Copyright Act of 1976 that resulted in certain previously permissible conduct now being considered infringement, it would not render the exclusion ambiguous or inapplicable because it is the liability that is excluded, not the permissibility of the act. The canons of contract construction and interpretation require that this exclusion and the pollution exclusion be consistently interpreted to preclude coverage for the types of claims specified, and not for one exclusion to contain an additional requirement that affords applicability of the exclusion only if the conduct at issue was not within a statutorily allowed or permitted range.

By way of another example, CGL policies typically exclude from coverage any liability arising out of “employment practices,” such as the “failure to hire any prospective ‘employee’” or the “dismissal, discharge or termination of any ‘employee’.” SR App. at 13, ¶ J. While certain hiring practices may have previously been desirable, changes to the interpretation of the law may result in those practices being found to be discriminatory. The fact that those same employment practices were previously accepted and legal would not render the exclusion ambiguous or inapplicable because, again, it is the risk that is excluded, not the permissibility of the act. Whether the act or practice constitutes discrimination is of no importance to the risk that is excluded under the insurance contract.

The principles of contract construction and interpretation require exclusions to be interpreted to bar coverage for the types of claims and conduct stated therein. This Court should not adopt an interpretive tool that randomly changes some exclusions based on the regulatory or statutory approval or permissibility of the excluded conduct.

Finally, another standard insurance policy exclusion precludes coverage for “any liability arising out of lead or the lead content of products.” SR App. at 40. Changes to a law permitting a certain amount of lead in a product would not result in the exclusion being ambiguous or inapplicable because it is the risk of liability from the types of claims and conduct listed in the exclusion that is precluded from coverage, not the risk of whether such claims were or were not within a regulatory standard. Rewriting insurance contracts to afford coverage for acts excluded under the ordinary and plain meaning of such exclusions simply because the acts are permissible goes against all principles of contract construction, and will provide coverage for acts never intended by insurers and policyholders to be covered under the insurance contract.

As shown through the above examples, the consequences of failing to interpret the contract as a whole and enforce the plain, ordinary meaning of the terms of insurance contract exclusions are severe and far-reaching. Insurance contracts contain exclusions, such as the pollution exclusion before this Court, to ensure clarity in the scope of coverage provided by an insurer. The failure to enforce the plain language of the terms of exclusions contained in an insurance contract will undoubtedly harm the transparency, uniformity, and predictability of Illinois insurance law and the Illinois insurance industry. In the same sense that these other exclusions require application in a straightforward, plain, and ordinary fashion, without regard to permissibility, regulation, or changes in laws, so too does the

pollution exclusion need to be interpreted by its plain and ordinary meaning. Accordingly, this Court should construe the policy as a whole, taking into account the overall purpose of the entire policy, including the pollution exclusion, and consistently interpret the policy to preclude coverage for specified claims without the addition of limitations not found in the language of the policy.

CONCLUSION

WHEREFORE, *amicus curiae*, Swiss Re Corporate Solutions Elite Insurance Corporation, respectfully requests that this Court answer the certified question in a way that applies the pollution exclusion to traditional pollution emissions irrespective of permissibly regulated emissions.

Dated: June 23, 2025

Respectfully submitted,

SWISS RE CORPORATE SOLUTIONS ELITE INSURANCE CORPORATION

By: /s/ Adam H. Fleischer

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8678800

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 23 pages or 6584 words.

Dated: June 23, 2025

/s/ Adam H. Fleischer

APPENDIX

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May 2, 2025 Policyholders' Motion To File A Second Amended ComplaintSR App 0070



Swiss Re
Corporate Solutions



SP 53690514

Insurance Products underwritten by Westport Insurance Corporation, First Specialty Insurance Corporation, North American Capacity Insurance Company, North American Specialty Insurance Company, North American Elite Insurance Company, Washington International Insurance Company, or Swiss Re International S.E.

Swiss Re Corporate Solutions offers innovative, high-quality insurance capacity for single and multi-line programmes worldwide, either on a standalone basis or as part of structured and tailor-made solutions. In addition, it provides customised risk transfer solutions to mid-sized and large, multinational corporations across the globe to assist in mitigating their risk exposure. Swiss Re Corporate Solutions serves more than 50 000 customers across nearly 40 offices worldwide and is backed by the financial strength of the Swiss Re Group. For more information about Swiss Re Corporate Solutions, please visit: www.swissre.com/corporatesolutions

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CLAIMS NOTICE

Welcome as a policyholder of North American Elite Insurance Company. We would like to take this opportunity to review our loss reporting procedures with you.

Please report your losses via e-mail using the following address:
NY_Casualty@swissre.com

If email services are not available, please send by regular or overnight mail to:

North American Elite Insurance Company
Attention: Claims Department
55 East 52nd Street
New York, NY 10055

Customer Service Inquiries:
North American Elite Insurance Company 1-800-542-9200
NY_Casualty@swissre.com

ILLINOIS IMPORTANT NOTICE

This notice is to advise you that should any complaints arise regarding this insurance, you may contact the following:

**North American Elite Insurance Company
650 Elm Street
Manchester, NH 03101-2524
Telephone: 1-800-542-9200
Fax: 603-644-6613**

If you (a) need the assistance of the governmental agency that regulates insurance; or (b) have a complaint you have been unable to resolve with your insurer you may contact the Department of Insurance by mail:

**Illinois Department of Insurance
Consumer Division or Public Services Section
Springfield, Illinois 62767**

**U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN
ASSETS CONTROL ("OFAC")
NOTICE TO POLICYHOLDERS**

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

North American Elite Insurance Company

650 Elm Street
Manchester, NH 03101-2524
(800) 542-9200
A Stock Insurance Company

Producer's Name and Address

ARTHUR J. GALLAGHER RISK MANAGEMENT
SERVICES INC
300 S. RIVERSIDE PLAZA
SUITE 1900
CHICAGO, IL 60606

Policy Number:

UMB 2000305 00

COMMERCIAL UMBRELLA LIABILITY INSURANCE POLICY DECLARATIONS

Item 1 Named Insured and Mailing Address:

GRIFFITH LABORATORIES INC.
1 GRIFFITH CENTER
ALSIP, IL 60803

Item 2 Insurer:

North American Elite Insurance Company
650 Elm Street
Manchester, NH 03101

Item 3 Policy Period:

Inception Date*: October 1, 2014

Expiration Date*: October 1, 2015

*12:01 A.M. Standard Time at the mailing address of the **Named Insured** shown in Item 1 above.

Item 4

Limits of Insurance:

Subject to the terms of this policy, the Limits of Insurance are as shown below:

A. **USD** 25,000,000

B. **USD** 25,000,000

C. **USD** 25,000,000

Each Occurrence

General Aggregate (as provided by Section IV of this Policy)

Products-Completed Operations Aggregate

(as provided by Section IV of this Policy)

Item 5

Scheduled Underlying Insurance:

See Schedule of Underlying Insurance (attached hereto)

Item 6

Self-Insured Retention:

USD 25,000

Item 7

Premium:

USD [REDACTED]

The Premium is a flat premium and not subject to audit or adjustment except as specifically provided herein.

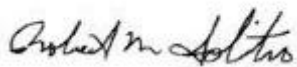
Item 8

Endorsements:

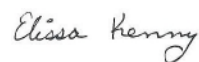
This Policy includes these Endorsements at Inception Date:
See attached Schedule of Endorsements

Issued Date: December 8, 2014

In Witness Whereof, the issuing Company has caused this policy to be signed officially below.



President



Secretary

North American Elite Insurance Company

North American Elite Insurance Company

COMMERCIAL UMBRELLA LIABILITY POLICY

Various provisions in this policy restrict coverage. Please 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.

Other words and phrases that appear in quotation marks have the special meanings provided in Section VII. Definitions.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations, we agree to provide coverage as follows:

I. INSURING AGREEMENT

- A. We will pay on behalf of the "insured" those sums in excess of the "retained limit" that the "insured" becomes legally obligated to pay as damages by reason of liability imposed by law because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies or because of "bodily injury" or "property damage" to which this insurance applies assumed by the "insured" under an "insured contract."

The amount we will pay for damages is limited as described in Section IV. Limits of Insurance.

- B. This insurance applies to "bodily injury," "property damage" or "personal and advertising injury," but only if:
1. the "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory," and the "bodily injury" or "property damage" occurs during the "policy period"; and
 2. the "personal and advertising injury" is caused by an "occurrence" that takes place in the "coverage territory" arising out of your business, but only if the "occurrence" was committed during the "policy period."
- C. This insurance applies to "bodily injury" or "property damage" only if, prior to the "policy period," no "insured" listed in Section II. A. below and no "employee" authorized by you to give or receive notice of an "occurrence," claim, or "suit" knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If any such "insured" or any 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."
- D. "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 in Section II. A. below or any "employee" authorized by you to give or receive notice of an "occurrence," claim, or "suit" includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "policy period."
- E. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed in Section II. A. below or any "employee" authorized by you to give or receive notice of an "occurrence," claim, or "suit":
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.

- F. 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."
- G. If we are prevented by law or statute from paying damages covered by this policy on behalf of the "insured," then we will indemnify the "insured" for those sums in excess of the "retained limit."

II. INSUREDS

- A. The following are "insureds":
 - 1. The Named Insured named in **Item 1** of the Declarations of this policy is an "insured."
 - 2. Any subsidiary of the Named Insured named in Item 1 of the Declarations of this policy, and any other organization under your control and active management at the inception date of this policy is an "insured," provided that such subsidiary or organization is an "insured" in the "scheduled underlying insurance."
 - 3. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are "insureds," but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an "insured." Your members, your partners, and their spouses are also "insureds," but only with respect to the conduct of your business.
 - c. A limited liability company, you are an "insured." Your members are also "insureds," but only with respect to the conduct of your business. Your managers are "insureds," but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an "insured." Your "executive officers" and directors are "insureds," but only with respect to their duties as your officers or directors. Your stockholders are also "insureds," but only with respect to their liability as stockholders.
 - e. A trust, you are an "insured." Your trustees are also "insureds," but only with respect to their duties as trustees.
- B. Each of the following is also an "insured":
 - 1. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are "insureds" for:
 - a. "Bodily injury" or "personal and advertising injury":
 - (1) to you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (2) to the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph a.(1) above;
 - (3) for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs a. (1) or (2) above; or
 - (4) arising out of his or her providing or failing to provide professional health care services.
 - b. "Property damage" to property:

- (1) owned, occupied or used by you,
 - (2) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees," "volunteer workers," any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 2. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 3. Any person or organization having proper temporary custody of your property if you die, but only:
 - a. with respect to liability arising out of the maintenance or use of that property; and
 - b. until your legal representative has been appointed.
 4. Your legal representative if you die, but only with respect to duties as such. Your legal representative will have all your rights and duties under this policy.
 5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, over which you maintain ownership or majority interest, will qualify as an "insured" if it also qualifies as an insured in "scheduled underlying insurance" and there is no other similar insurance available to that organization. However:
 - a. coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the "policy period," whichever is earlier;
 - b. this insurance does not apply to "bodily injury" or "property damage" that occurred or began to occur before you acquired or formed the organization;
 - c. this insurance does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization; and
 - d. we reserve the right to charge an additional premium if such organization qualifies as an "insured."
 6. Any person or organization not a Named Insured under this policy but covered as an additional insured under the "scheduled underlying insurance," but coverage hereunder for such person or organization shall not be broader than that afforded by such "scheduled underlying insurance."
 7. Solely as respects automobile liability, any person or organization insured under "scheduled underlying insurance," but coverage hereunder for such person or organization shall not be broader than that afforded by such "scheduled underlying insurance."
- C. Notwithstanding anything above, no person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

III. DUTY TO DEFEND, DEFENSE EXPENSE AND SUPPLEMENTARY PAYMENTS

- A. We will have the right and duty to defend the "insured" against any "suit" claiming damages for "bodily injury," "property damage" or "personal and advertising injury," even if meritless, false or fraudulent, to which this insurance applies when:
1. the applicable limits of "scheduled underlying insurance" have been exhausted by payment of "loss" to which this policy applies and the total applicable limits of "other insurance" have been exhausted; or
 2. damages claimed for "bodily injury," "property damage" or "personal and advertising injury" are
 - a. not covered by "scheduled underlying insurance" or any "other insurance," and
 - b. the applicable Self-Insured Retention has been exhausted by payment of "loss" covered by this policy.

If we are prevented by law from assuming the obligations specified under this provision, we will pay any expenses incurred with our consent.

- B. We will have no duty to defend the "insured" against any "suit" claiming damages for "bodily injury," "property damage" or "personal and advertising injury" to which this insurance does not apply.
- C. Except as provided in Paragraph A. above, we will have no duty to defend any "suit" against the "insured." We will, however, have the right, but not the duty, to participate in the defense of any "suit" and the investigation of any claim to which this policy may apply. If we exercise this right, we will do so at our own expense.
- D. If we assume the defense of any "suit" against the "insured," we will:
 - 1. investigate, negotiate and settle the "suit" as we deem expedient; and
 - 2. pay the following supplementary payments to the extent that such payments are not covered by "scheduled underlying insurance" or any applicable "other insurance":
 - a. Premiums on bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to apply for or furnish these bonds.
 - b. Premiums on appeal bonds required by law to appeal any "suit" we defend but only for bond amounts within the applicable Limit of Insurance. We are not obligated to apply for or furnish any such bond.
 - c. The "insured's" expenses incurred at our request or with our consent.
 - d. All costs taxed against the "insured" in the "suit."
 - e. Pre-judgment interest awarded against the "insured" on that part of the judgment, within the applicable Limit of Insurance, that we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest accruing after the offer.
 - f. Post judgment interest on that part of any judgment that we become obligated to pay, which accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that we have become obligated to pay, which is within the applicable Limit of Insurance.
- E. We will not defend any "suit," or pay any attorney fees or litigation expenses including, without limitation, the expenses described in Paragraph D. above that accrue after the applicable Limits of Insurance of this policy have been exhausted by the payment of "loss" and we will have the right to withdraw from the further defense of such "suit" by tendering control of said defense to the "insured."

IV. LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations and the provisions below state the most we will pay for all damages regardless of the number of:
 - 1. "insureds";
 - 2. claims made or "suits" brought; or
 - 3. persons or organizations making claims or bringing "suits"; or
 - 4. coverages provided under this policy.
- B. The General Aggregate Limit stated in the Declarations is the most we will pay for all damages, except:
 - 1. damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - 2. damages because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a covered "auto."

- C. The Products-Completed Operations Aggregate Limit stated in the Declarations is the most we will pay for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard."
- D. Subject to Paragraphs B. and C. above, the Each Occurrence Limit stated in the Declarations is the most we will pay for the sum of all damages because of "bodily injury," "property damage," and "personal and advertising injury" arising out of any one "occurrence."
- E. If the applicable limits of "scheduled underlying insurance" have been:
 - 1. Reduced by the payment of "loss" covered by this policy, then this policy will be excess of the reduced limit of "scheduled underlying insurance" or "other insurance."
 - 2. Exhausted by the payment of "loss" covered by this policy, then this policy will continue in force as underlying insurance.
- F. This policy applies only in excess of the "retained limit." If, however, a policy shown in the Schedule of Underlying Insurance forming a part of this policy has a limit of insurance
 - 1. greater than the amount shown in such schedule, then this policy will apply in excess of the greater amount of valid and collectible insurance; or
 - 2. less than the amount shown in such schedule, then this policy will apply in excess of the amount shown in the Schedule of Underlying Insurance forming a part of this policy.
- G. Expenses incurred to defend any "suit" or to investigate any claim will be in addition to the applicable Limits of Insurance of this policy. However, if such expenses reduce the applicable limits of "scheduled underlying insurance," then such expenses will reduce the applicable Limits of Insurance of this policy.
- H. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Declarations, unless the "policy period" is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.
- I. We will not make any payment under this policy unless and until:
 - 1. the total applicable limits of "scheduled underlying insurance" have been exhausted by the payment of "loss" to which this policy applies and any applicable "other insurance" have been exhausted by the payment of "loss"; or
 - 2. the total amount shown in the Declarations as the applicable Self-Insured Retention has been satisfied by the payment of "loss" to which this policy applies.
- J. When the amount of "loss" has been determined by an agreed settlement or a final judgment, we will promptly pay on behalf of the "insured" the amount of such "loss" falling within the terms of this policy. An agreed settlement means a settlement and release of liability signed by the "insured" and the claimant or the claimant's legal representative.

V. EXCLUSIONS

A. Aircraft

This policy excludes from coverage "bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft owned or operated by or rented or loaned to any "insured." Use includes operation and "loading or unloading."

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured," if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is owned or operated by or rented or loaned to any "insured."

B. Asbestos

This policy excludes from coverage any actual or alleged liability whatsoever for any claim or claims in respect of "loss" or "losses" directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

C. Contractual Liability

This policy excludes from coverage any liability 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 or, if applicable, the offense giving rise to the "personal and advertising injury" takes place subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract," reasonable attorney 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" or "personal and advertising injury," provided that:
 - 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 attorney 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.

D. Damage to Impaired Property or Property Not Physically Injured

This policy excludes from coverage "property damage" to "impaired property" or property that has not been physically injured, arising out of:

1. a defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
2. a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

E. Damage to Property

This policy excludes from coverage "property damage" to:

1. property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
3. property loaned to you;
4. personal property in the care, custody or control of the "insured";
5. that particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
6. that particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 2. of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs 3., 4., 5. and 6. of this exclusion do not apply to liability assumed under a sidetrack agreement. Paragraph 6. of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

F. Damage to Your Product

This policy excludes from coverage "property damage" to "your product" arising out of it or any part of it.

G. Damage to Your Work

This policy excludes from coverage "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

H. Electronic Data; Electronic Chat Rooms or Bulletin Boards

This policy excludes from coverage "personal and advertising injury" arising out of an electronic chat room or bulletin board the "insured" hosts, owns, or over which the "insured" exercises control.

Additionally, this insurance does not apply to damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

I. Employer's Liability

This policy excludes from coverage "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:

1. whether or not the "insured" is liable in its capacity as employer or in any other capacity; and
2. to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply:

1. To liability assumed by the "insured" under an "insured contract."
2. To the extent that such coverage is provided by "scheduled underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "scheduled underlying insurance" by the payment of "loss" covered by this policy. However, the coverage provided by this policy shall be no broader than coverage provided by such "scheduled underlying insurance."

J. Employment Practices

This policy excludes from coverage any liability arising out of:

1. failure to hire any prospective "employee" or any applicant for employment;
2. dismissal, discharge or termination of any "employee";
3. failure to promote or advance any "employee";

4. employment-related practices, policies, acts, omissions or misrepresentations directed at a past, prospective, present or future "employee," including, but not limited to:
 - a. coercion, harassment, humiliation or discrimination;
 - b. demotion, evaluation, reassignment, discipline, or retaliation;
 - c. libel, slander, humiliation, defamation, or invasion of privacy; or
 - d. violation of civil rights; and
5. any acts or omissions for which liability for consequential damages, "loss," cost or expense as a result of 1., 2., 3. or 4. above actually or allegedly arises.

This exclusion applies:

1. whether or not the "insured" is liable in its capacity as employer or in any other capacity; and
2. to any obligation to share damages with or repay someone else who must pay damages because of the injury.

K. Expected or Intended Injury

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

L. Infringement of Copyright, Patent, Trademark or Trade Secret

This policy excludes from coverage "personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement," of copyright, trade dress or slogan.

M. "Insureds" in Media and Internet-Type Businesses

This policy excludes from coverage "personal and advertising injury" committed by an "insured" whose business is:

1. advertising, broadcasting, publishing or telecasting;
2. designing or determining content of web-sites for others; or
3. an Internet search, access, content or service provider.

However, this exclusion does not apply to Section **VII. Definitions**, R. "personal and advertising injury," paragraphs 1., 2. and 3.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

N. Liquor Liability

This policy excludes from coverage "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 does not apply to the extent that such coverage is provided by "scheduled underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "scheduled underlying insurance" by the payment of "loss" covered by this policy. However, the coverage provided by this policy shall be no broader than coverage provided by such "scheduled underlying insurance."

O. Nuclear

This policy excludes from coverage:

1. any injury or damage:
 - a. with respect to which an "insured" under the policy is also an "insured" under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an "insured" under any such policy but for its termination upon exhaustion of its limit of insurance; or
 - b. resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. any injury or damage resulting from the "hazardous properties" of "nuclear material," if
 - a. The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (2) has been discharged or dispersed therefrom;
 - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
 - c. The injury or damage arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any "nuclear facility."

As used in this exclusion:

- a. "Hazardous properties" include radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material," "special nuclear material" or "by-product material";
- c. "Source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy act of 1954 or in any law amendatory thereof;
- d. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
- e. "Waste" means any waste material (a) containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility."
- f. "Nuclear facility" means:
 - (1) Any "nuclear reactor";
 - (2) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel," or (3) handling, processing or packaging "waste";

(3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

h. Injury or damage includes all forms of radioactive contamination of property.

P. Pollution

This policy excludes from coverage:

1. "bodily injury," "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - a. at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any "insured";
 - b. at or from any premises, site or location which is or was at any time used by or for any "insured" or others for the handling, storage, disposal, processing or treatment of waste;
 - c. which are or were at anytime transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (1) any "insured"; or
 - (2) any person or organization for whom you may be legally responsible;
 - d. at or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured," contractor or subcontractor;
 - e. at or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants";
 - f. that are, or that are contained in any property that is:
 - (1) being transported or towed by, handled, or handled for movement into, onto or from, a covered "auto";
 - (2) otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) being stored, disposed of, treated or processed in or upon a covered "auto";
 - g. before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
 - h. after the "pollutants" or any property in which the "pollutants" are contained are moved from a covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured."

However, the following exceptions to this exclusion apply to the extent that such coverage is provided by "scheduled underlying insurance" or would have been provided but for the exhaustion of the applicable limits of such "scheduled underlying insurance" by the payment of "loss" covered by this policy; provided, however, that coverage provided by this policy will be no broader than coverage provided by such "scheduled underlying insurance":

1. Paragraph 1. a. of this exclusion does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat, cool or dehumidify that building.
2. Paragraph 1. a. of this exclusion does not apply to "bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any "insured," other than that additional insured.
3. Paragraph 1. d. of this exclusion does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such "insured," contractor or subcontractor.
4. Paragraph 1. d. of this exclusion does not apply to "bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.
5. Paragraph 1. d. of this exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire."
6. Paragraph 1. f. of this exclusion does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of a covered "auto" or its parts, if:
 - a. the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
 - b. the "bodily injury," "property damage" or any covered pollution cost or expense does not arise out of the operation of any equipment listed in Paragraphs 6. b. and 6. c. of the definition of "mobile equipment'.
7. Paragraphs 1. g. and 1. h. of this exclusion do not apply to "occurrences" that take place away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:
 - a. the "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
 - b. the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

2. any "loss," cost or expense arising out of any:
 - a. request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - b. claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants."

However, this Paragraph 2. does not apply to liability for damages because of "property damage" that the "insured" would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

Q. Recall of Products, Work or Impaired Property

This policy excludes from coverage "bodily injury," "property damage" or "personal and advertising injury" or any other "loss," cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. "your product";
2. "your work"; or
3. "impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

R. Trade or Economic Sanctions

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

S. Unauthorized Use of Another's Name or Product

This policy excludes from coverage "personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or meta-tag, or any other similar tactics to mislead another's potential customers.

T. Various Laws

This policy excludes from coverage any "loss," demand, claim, or "suit" under:

1. The Employee Retirement Income Security Act of 1974 including any amendment thereto or any similar law.
2. Any workers' compensation, disability benefits or unemployment compensation laws or any similar laws.
3. Any "auto" no-fault law, any uninsured or underinsured motorist law, any personal injury protection law or similar law.

U. Various Personal Injury and Advertising Injury

This policy excludes from coverage:

1. "personal and advertising injury" caused by or at the direction of the "insured" with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."
2. "personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the "insured" with knowledge of its falsity.

3. "personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the "policy period."
4. "personal and advertising injury" arising out of a criminal act committed by or at the direction of the "insured."
5. "personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement."
6. "personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement."
7. "personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement."

V. Violation of Communication or Information Law

This policy excludes from coverage any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state or local government, including any amendment of or addition to such laws, that prohibits or limits the sending, transmitting or communicating of material or information.

W. War

This policy excludes from coverage "bodily injury," "property damage" or "personal and advertising injury," however caused, arising, directly or indirectly, as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

X. Watercraft

This policy excludes from coverage "bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any watercraft owned or operated by or rented or loaned to any "insured." Use includes operation and "loading or unloading."

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured," if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any "insured."

This exclusion does not apply to the extent that such coverage is provided by "scheduled underlying insurance" or would have been provided but for the exhaustion of the applicable limits of such "scheduled underlying insurance" by the payment of "loss" covered by this policy. However, the coverage provided by this policy shall be no broader than coverage provided by such "scheduled underlying insurance."

VI. CONDITIONS

A. Appeals

If the "insured" or the "insured's" underlying insurers do not appeal a judgment in excess of the total applicable limits of "scheduled underlying insurance," we may elect to do so. If we appeal, we will be liable for, in addition to the applicable Limits of Insurance of this policy, all court costs, expenses incurred and interest on that amount of any judgment which does not exceed the applicable Limits of Insurance of this policy incidental to such an appeal.

B. Audit and Inspection

We may audit and examine your books and records as they relate to this policy at any time.

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give you reports on the conditions that we find. We may also recommend changes. We do not, however, undertake to perform the duty of any person or organization to provide for the health or safety of your "employees" or the public. We do not warrant the health and safety conditions of your premises or operations or represent that your premises or operations comply with laws, regulations, codes or standards.

C. Bankruptcy

Your bankruptcy, insolvency, refusal or inability to pay will neither relieve us of nor increase our obligations under this policy. In the event of bankruptcy, insolvency, refusal or inability to pay of any underlying insurer, the insurance afforded by this policy will not drop down or replace "scheduled underlying insurance," but will apply as if the limits of such "scheduled underlying insurance" are fully available and collectible and we will not assume any obligation under "scheduled underlying insurance."

D. Cancellation

1. You may cancel this policy. You must mail or deliver to us advance written notice stating when cancellation is to take effect.
2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than ten (10) days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than sixty (60) days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice.
3. The "policy period" will end on the day and hour stated in the cancellation notice.
4. If we cancel, final premium will be calculated pro rata based upon the time this policy was in force. Final premium will not be less than the pro rata share of the Policy Premium as shown in the Declarations.
5. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium will not be less than the short rate share of the Policy Premium as shown in the Declarations.
6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund due you. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due you.
7. The first Named Insured shown in the Declarations will act on behalf of all other "insureds" with respect to the giving and receiving of notice of cancellation and the receipt of any refund that may become payable under this policy.

E. Changes; Assignment of Your Rights and Duties

This policy may be changed or amended only by a written endorsement signed and issued by us.

Your rights and duties under this policy are non-transferable and may not be assigned or transferred to any third party except by an endorsement to this policy issued by us.

F. Duties in the Event of an Occurrence, Claim or Suit

1. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim for damages under this policy. To the extent possible, notice should include:
 - a. how, when and where the "occurrence" took place;
 - b. the names and addresses of any injured persons and witnesses; and
 - c. the nature and location of any injury or damage arising out of the "occurrence."

2. If a claim is made or "suit" is brought against any "insured" that is reasonably likely to involve this policy, you must:
 - a. immediately record the specifics of the claim or "suit" and the date received; and
 - b. notify us in writing as soon as practicable.
3. You and any other involved "insured" must:
 - a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. authorize us to obtain records and other information;
 - c. cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - d. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of injury or damage to which this insurance may also apply.
4. No "insured" will, except at that "insured's" own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our written consent.

G. Legal Action Against Us

1. No person or organization has a right under this policy to join us as a party or otherwise bring us into a "suit" asking for damages from an "insured."
2. You will have no right of action against us under this policy unless all of its terms have been fully complied with; and the amount that you seek to recover has been determined by settlement with our consent or by final judgment against an "insured."

H. Maintenance of Underlying Insurance

During the "policy period," you agree:

1. To keep "scheduled underlying insurance" and renewals or replacements thereof in full force and effect.
2. That the limits of "scheduled underlying insurance" will be maintained except for any reduction or exhaustion of such limits by the payment of "loss" that would be covered by this policy.
3. That the terms and conditions of "scheduled underlying insurance" will not materially change during the "policy period."
4. That any renewal or replacement of "scheduled underlying insurance" will not be more restrictive in coverage.
5. That "scheduled underlying insurance" may not be canceled or non-renewed by you without notifying us, and you agree to notify us in the event an insurance company cancels or declines to renew any "scheduled underlying insurance."

Failure to maintain the "scheduled underlying insurance" as provided by this condition will not invalidate this policy. This policy will apply as if the "scheduled underlying insurance" were maintained as required by this policy.

I. Other Insurance

If valid and collectible "other insurance" applies to damages that are also covered by this policy, this policy will apply excess of the "other insurance" and will not contribute with such "other insurance." This provision will not apply if the "other insurance" is written to be excess of this policy.

J. Premium

The first Named Insured shown in the Declarations will be responsible for payment of all premiums when due.

The premium stated in the Declarations is a flat premium. It is not subject to adjustment except as provided herein or as changed by an endorsement to this policy issued by us.

K. Separation of Insureds

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

1. as if each Named Insured were the only Named Insured; and
2. separately to each "insured" against whom claim is made or "suit" is brought.

M. Titles

The titles to the various parts, sections, subsections and endorsements of this policy are intended solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections and endorsements.

N. Transfer of Rights of Recovery Against Others to Us

1. If the "insured" has rights to recover all or part of any payment we have made under this policy, 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.
2. Any amount recovered will be apportioned in the inverse order of payment of "loss" to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.
3. If you and the insurer of "scheduled underlying insurance" waive any right of recovery against a specific person or organization for damages as required under an "insured contract," we will also waive any such rights we may have against such person or organization provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract."

O. Unintentional Failure to Disclose

Your failure to disclose all hazards existing as of the inception date of the policy will not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

P. When Loss is Payable

Coverage under this policy will not apply until the "insured," or the "insured's" underlying insurer, has paid or is obligated to pay the full amount of the "retained limit."

When amount of damages is determined by an agreed settlement or on a final judgment against an "insured" obtained after an actual trial, we will promptly pay on behalf of the "insured" the amount of damages covered under the terms of this policy.

VII. DEFINITIONS

A. "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:

1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. 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."

B. "Auto" means

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

2. any other land vehicle that is subject to a compulsory or financial responsibility law in the state where it is licensed or principally garaged.

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

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or mental injury resulting from "bodily injury."
- D. "Coverage territory" means anywhere in the world, except to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including but not limited to the payment of claims.
- E. "Employee" means an individual working for you in return for remuneration. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker" or independent contractor.
- F. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- G. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- H. "Impaired property" means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:
 1. it incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 2. you have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
 1. the repair, replacement, adjustment or removal of "your product" or "your work"; or
 2. your fulfilling the terms of the contract or agreement.
- I. "Insured" means a person or organization coming within the description set forth in Section **II.** of this policy.
- J. "Insured contract" means that part of any contract or agreement pertaining to your business under which any "insured" assumes the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

"Insured contract" does not include that part of any contract or agreement:

1. that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel underpass or crossing;
2. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - a. preparing, approving or failing to approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
3. under which the "insured," if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the "insured's" rendering or failure to render professional services, including those shown in subparagraph 2. above and supervisory, inspection, architectural or engineering activities.

- K. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
- L. "Loading or unloading" means the handling of property:
1. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 2. while it is in or on an aircraft, watercraft or "auto"; or
 3. while it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto."
- M. "Loss" means those sums paid in the settlement of a claim or "suit" or satisfaction of a judgment which the "insured" is legally liable to pay as damages because of "bodily injury," "property damage," or "personal and advertising injury," after making proper deduction for all recoveries and salvages, provided, however, that if expenses incurred to defend a "suit" or to investigate a claim reduce the applicable limits of "scheduled underlying insurance," then "loss" shall include such expenses.
- N. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 2. vehicles maintained for use solely on or next to premises you own or rent;
 3. vehicles that travel on crawler treads;
 4. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. power cranes, shovels, loaders, diggers or drills; or
 - b. road construction or resurfacing equipment such as graders, scrapers or rollers;
 5. Vehicles not described in 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. cherry pickers and similar devices used to raise or lower workers;
 6. vehicles not described in 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- a. equipment designed primarily for:
 - (1) snow removal;
 - (2) road maintenance, but not construction or resurfacing; or
 - (3) street cleaning;
 - b. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - c. 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 vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law are considered "autos."

O. "Occurrence" means:

1. With respect to "bodily injury" or "property damage," an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general conditions shall be considered as arising out of the same "occurrence," regardless of the frequency or repetition thereof, or the number of claimants.
2. With respect to "personal and advertising injury," a covered offense. All damages that arise from the same act, publication or general conditions are considered to arise out of the same "occurrence," regardless of the frequency or repetition thereof, the number or kind of media used or the number of claimants.

P. "Other insurance" means a policy of insurance providing coverage for damages covered in whole or in part by this policy. "Other insurance" does not include "scheduled underlying insurance," the amount shown in the Declarations as the Self-Insured Retention or any policy of insurance specifically purchased to be excess of this policy and providing coverage that this policy also provides.

Q. "Policy period" means the period of time from the inception date shown in the Declarations to the earlier of the expiration date shown in the Declarations or the effective termination date of this policy.

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

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. 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;
4. 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;
5. oral or written publication, in any manner, of material that violates a person's right of privacy;
6. the use of another's advertising idea in your "advertisement"; or
7. infringing upon another's copyright, trade dress or slogan in your "advertisement".

S. "Pollutants" shall mean any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance which may, does or is alleged to affect adversely the environment, property, persons or animals, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, oil and petroleum and their derivatives, and waste. 'Waste' includes, without limitation, materials to be recycled, reconditioned, reclaimed, discarded or stored pending final disposal.

T. "Products-completed operations hazard":

1. 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:
 - a. products that are still in your physical possession; or
 - b. work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in your contract has been completed.

- (2) 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.
- (3) 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.

- 2. Does not include "bodily injury" or "property damage" arising out of:
 - a. 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"; or
 - b. the existence of tools, uninstalled equipment or abandoned or unused materials.

U. "Property damage" means:

- 1. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical injury that caused it; or
- 2. loss of use of tangible property that is not physically injured. All such loss of use will 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..

V. "Retained limit" means either of the following:

- 1. The total applicable limits of "scheduled underlying insurance" and any applicable limit of "other insurance" providing coverage to the "insured"; or
- 2. The amount shown in the Declarations as the Self-Insured Retention applicable to each "occurrence" that results in damages not covered by "scheduled underlying insurance" or "other insurance."

W. "Scheduled underlying insurance" means:

- 1. the policy or policies of insurance and limits of insurance shown in the Schedule of Underlying Insurance forming a part of this policy; and
- 2. automatically any renewal or replacement of any policy in Paragraph 1. above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.

"Scheduled underlying insurance" does not include a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

X. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- 1. An arbitration proceeding in which such damages are claimed and to which the "insured" must submit or does submit with our consent; or
- 2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the "insured" submits with our consent.

Y. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

Z. "Volunteer worker" means a person who is not your "employee," and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

AA. "Your product":

1. Means:
 - a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
 - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
2. Includes:
 - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - b. The providing of or failure to provide warnings or instructions.
3. Does not include vending machines or other property rented to or located for the use of others but not sold.

AB. "Your work":

1. Means:
 - a. Work or operations performed by you or on your behalf; and
 - b. Materials, parts or equipment furnished in connection with such work or operations.
2. Includes:
 - a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work," and
 - b. The providing of or failure to provide warnings or instructions.

North American Elite Insurance Company

Policy Number: UMB 2000305 00

Effective Date of Endorsement: 10/01/2014

SCHEDULE OF ENDORSEMENTS

Form Number	Edition Date	Title
CU00161	08 12	Commercial Umbrella Liability Insurance Policy Declarations
SP 3 881	03 07	Signature Page
CU00001	08 12	Commercial Umbrella Liability Policy
CU00162	08 12	Schedule of Endorsements
CU00169	08 12	Schedule of Underlying Coverage
CU00035IL	08 12	Illinois Changes - Cancellation and Nonrenewal
CU00071	08 12	Automobile Liability Limitation Endorsement
CU00077	08 12	Employee Benefits Liability Limitation (Occurrence Version)
CU00078	08 12	Foreign Liability Limitation Endorsement
CU00081	08 12	Knowledge Of Occurrence Endorsement
CU00082	08 12	Lot Or Batch Limitation Endorsement
CU00099	08 12	Cross Suits Exclusion (with Limited Exclusion)
CU00115	08 12	Lead Exclusion
CU00123	08 12	Silica Exclusion
CU00132A	08 12	Exclusion of Certified and Other Acts of Terrorism
CU00138	08 12	Pollution Endt-Blended Cover NPTE Based Clauses
CU00139IL	08 12	Law Of Venue Most Favorable To Insurability of Punitive Damages
CU00140	08 12	Fungus and Bacteria Exclusion with Edible Good or Product Consumption Exception
CU00142	08 12	Professional Liability Exclusion Endorsement
CU00159	08 12	Uninsured/Underinsured Motorists Coverage Endorsement
CU00184	09 12	Broad Form Named Insured Endorsement
CU00185	09 12	Broadened Definition of Bodily Injury Endorsement
CU00196	09 12	Incidental Medical Malpractice Limitation Endorsement
CU00202	11 12	Business Crisis Management Cost Coverage Endorsement
CU00206IL	08 13	Illinois Changes - Civil Union
DR 9 122	08 14	Tie-In Limits Endorsement
DR 9 248	09 14	Amendment Of Cancellation Condition Endorsement

Effective Date: 10/01/2014

Coverage: Automobile Liability
Insurer/Carrier: Zurich American Insurance Company
Policy Number: BAP 9138313 08
Policy Period: October 1, 2014 to October 1, 2015
Limits of Insurance: USD 2,000,000 CSL

Coverage: Employee Benefits Liability
Insurer/Carrier: Zurich American Insurance Company
Policy Number: GLO 9138314 08
Policy Period: October 1, 2014 to October 1, 2015
Limits of Insurance/Aggregate: USD 1,000,000 Each Employee
USD 1,000,000 General Aggregate

Coverage: Employers' Liability
Insurer/Carrier: American Zurich Insurance Company
Policy Number: WC 9138311 08
Policy Period: October 1, 2014 to October 1, 2015
Limits of Insurance/Aggregate: USD 1,000,000 BI by Accident Each Accident
USD 1,000,000 BI by Disease Policy Aggregate
USD 1,000,000 BI by Disease Each Employee

Coverage: Employers' Liability - Stop Gap
Insurer/Carrier: American Zurich Insurance Company
Policy Number: WC 9138311 08
Policy Period: October 1, 2014 to October 1, 2015
Limits of Insurance/Aggregate: USD 1,000,000 BI by Accident Each Accident
USD 1,000,000 BI by Disease Policy Aggregate
USD 1,000,000 BI by Disease Each Employee

Coverage: Automobile Liability - Foreign
Insurer/Carrier: Zurich American Insurance Company
Policy Number: UIC 3995487-03
Policy Period: October 1, 2014 to October 1, 2015
Limits of Insurance/Aggregate: USD 2,000,000 CSL

North American Elite Insurance Company

Policy Number: UMB 2000305 00

Effective Date: 10/01/2014

SCHEDULE OF UNDERLYING COVERAGE

Coverage: Employers' Liability - Foreign

Insurer/Carrier: Zurich American Insurance Company

Policy Number: UIC 3995487-03

Policy Period: October 1, 2014 to October 1, 2015

Limits of Insurance/Aggregate: USD 2,000,000 BI by Accident Each Accident

USD 2,000,000 BI by Disease Policy Limit

USD 2,000,000 BI by Disease Each Employee

Defense is in addition to the limits above.

Coverage: General Liability - Foreign

Insurer/Carrier: Zurich American Insurance Company

Policy Number: UIC 3995487-03

Policy Period: October 1, 2014 to October 1, 2015

Limits of Insurance/Aggregate: USD 4,000,000 Each Occurrence

USD 4,000,000 General Aggregate

USD 4,000,000 Products Completed Operations Aggregate

USD 2,000,000 Personal & Advertising Injury Limit

Defense is in addition to the limits above.

Coverage: General Liability

Insurer/Carrier: Zurich American Insurance Company

Policy Number: GLO 9138314 08

Policy Period: October 1, 2014 to October 1, 2015

Limits of Insurance/Aggregate: USD 2,000,000 Each Occurrence

USD 4,000,000 General Aggregate

USD 4,000,000 Products Completed Operations Aggregate

USD 2,000,000 Personal & Advertising Injury Limit

Defense is in addition to the limits above.

Excess of: USD 500,000 SIR (defense inside limit of SIR)

Coverage: Non Owned Aircraft Liability

Insurer/Carrier: Catlin Insurance Company

Policy Number: NAN4030453

Policy Period: March 30, 2014 to March 30, 2015

Limits of Insurance/Aggregate: USD 20,000,000 Each Occurrence

USD 20,000,000 Aggregate Limit

Defense is in addition to the limits above.

North American Elite Insurance Company

Endorsement No.

ILLINOIS CHANGES – CANCELLATION AND NONRENEWAL

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

The provisions of the Policy Form apply unless modified by this endorsement.

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing to us advance written notice of cancellation.
2. We may cancel this policy by mailing to you written notice stating the reason for cancellation. If we cancel:
 - a. For nonpayment of premium, we will mail the notice at least 10 days prior to the effective date of cancellation.
 - b. For a reason other than nonpayment of premium, we will mail the notice at least:
 - (1) 30 days prior to the effective date of cancellation if the policy has been in effect for 60 days or less.
 - (2) 60 days prior to the effective date of cancellation if the policy has been in effect for more than 60 days.
3. If this policy has been in effect for more than 60 days or is a renewal or continuation policy, we may cancel only for one or more of the following reasons:
 - a. Nonpayment of premium;
 - b. The policy was obtained through a material misrepresentation;
 - c. Any "insured" has violated any of the terms and conditions of the policy;
 - d. The risk originally accepted has measurably increased;
 - e. Certification of the Director of Insurance of the loss of reinsurance by the insurer that provided coverage to us for all or a substantial part of the underlying risk insured; or
 - f. A determination by the Director of Insurance that the continuation of the policy could place us in violation of the insurance laws of this State.
4. Notice of cancellation will state the effective date of cancellation. The "policy period" will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be less than pro rata. The cancellation will be effective even if we have not offered a refund.

B. WHEN WE DO NOT RENEW

If we decide not to renew or continue this policy, we will mail you and your agent or broker written notice, stating the reason for nonrenewal, at least 60 days before the end of the "policy period." If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current "policy period." Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If we fail to mail proper written notice of nonrenewal and you obtain other insurance, this policy will end on the effective date of that insurance.

C. MAILING OF NOTICES

We will mail cancellation and nonrenewal notices to you, and the agent or broker, at the last addresses known to us. Proof of mailing will be sufficient proof of notice.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

AUTOMOBILE LIABILITY LIMITATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Automobile Liability

This insurance excludes from coverage any liability arising out of the ownership, maintenance, operation, use, or entrustment to others of any "auto" owned, operated by, rented to, or loaned to any "insured." Use includes operation and loading or unloading of any "auto."

However, this exclusion will not apply if coverage is provided for "bodily injury" or "property damage" by "scheduled underlying insurance."

Coverage under this policy for such "bodily injury" or "property damage" will follow the terms, definitions, conditions and exclusions of "scheduled underlying insurance," subject to the "policy period," Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. However, coverage provided by this policy will be no broader than the coverage provided by "scheduled underlying insurance."

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

EMPLOYEE BENEFITS LIABILITY LIMITATION ENDORSEMENT (OCCURENCE VERSION)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Employee Benefits Liability Exclusion

This policy excludes from coverage any liability arising out of:

1. any violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by "ERISA" or any similar law regarding workers' compensation, unemployment insurance, Social Security or any government-mandated disability benefits; or
2. any act, error or omission committed by or on behalf of the "insured" solely in the performance of one or more of the following administrative duties or activities:
 - a. giving counsel to "employees" with respect to a "plan";
 - b. interpreting a "plan";
 - c. handling of records in connection with a "plan";
 - d. effecting enrollment, termination or cancellation of "employees" under a "plan"; or
 - e. any "claim" against an "insured" solely by reason of his, her or its status as an administrator, the Plan, or you as sponsor of the "plan".

However, this paragraph 2 will not apply only if and to the extent that coverage for such liability is provided by "scheduled underlying insurance".

Coverage under this policy for such liability will follow the terms, definitions, conditions and exclusions of "scheduled underlying insurance", subject to the "policy period", Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. However, coverage provided by this policy will be no broader than the coverage provided by "scheduled underlying insurance".

Section **VII. DEFINITIONS** is amended to include the following additional definitions:

"ERISA" means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), and including any amendment or revisions thereto, or any similar common or statutory law of the United States, Canada or any state or jurisdiction anywhere in the world to which a Plan is subject.

"Plan" means any plan, fund or program established anywhere in the world, regardless of whether it is subject to regulation under Title 1 of "ERISA" or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended and which is:

1. a welfare plan, as defined in "ERISA" or any similar law regarding workers' compensation, unemployment insurance, Social Security or any government-mandated disability benefits;
2. a pension plan as defined in "ERISA" or any similar law regarding workers' compensation, unemployment insurance, Social Security or any government-mandated disability benefits; or
3. a combination of 1. and 2. above.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

FOREIGN LIABILITY LIMITATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Foreign Liability

This policy excludes from coverage any liability for "bodily injury" or "property damage" or "personal and advertising injury" caused by an "occurrence" that takes place outside the United States of America, its territories or possessions, Puerto Rico or Canada.

However, this exclusion will not apply if coverage is provided for "bodily injury" or "property damage" or "personal and advertising injury" by "scheduled underlying insurance". Coverage under this policy for such "bodily injury" or "property damage" will follow the terms, definitions, conditions and exclusions of "scheduled underlying insurance", subject to the "policy period", Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. However, coverage provided by this policy will be no broader than the coverage provided by "scheduled underlying insurance".

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

KNOWLEDGE OF OCCURRENCE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **VI. CONDITIONS**, Paragraph **F. Duties in the Event of an Occurrence, Claim or Suit** is amended to include the following additional provision:

Notwithstanding any provision(s) in this policy to the contrary, and solely as respects any loss reporting requirements under this policy, it is understood that knowledge of "occurrence" by the agent, servant, or employee of the "insured" or any other person shall not in itself constitute knowledge by the "insured" unless the Risk Manager or Risk Management Department received notice from said agent, servant, employee or any other person.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

LOT OR BATCH LIMITATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **IV. LIMITS OF INSURANCE** is amended to include the following additional paragraph:

With respect to the "products-completed operations hazard", all "bodily injury" or "property damage" arising out of one "lot or batch" of products prepared or acquired by you shall be considered as arising out of one "occurrence". Such "occurrence" shall be subject to the Each Occurrence and Products-Completed Operations Hazard Aggregate Limits of this policy shown in **Item 4** of the **DECLARATIONS**.

Notwithstanding the foregoing, it is understood and agreed that nothing in this endorsement shall be interpreted to:

1. provide coverage for "bodily injury" or "property damage" which occurs outside of the "policy period" of this policy;
2. recognize erosion of the limits of "scheduled underlying insurance" as a result of any underlying "lot or batch" provision which provides coverage for "bodily injury" or "property damage" which occurs outside of the "policy period" of this policy;
3. provide a "lot or batch" coverage which is broader than that provided under "scheduled underlying insurance".

Section **VII. DEFINITIONS** is amended to include the following additional definition:

If applicable "scheduled underlying insurance" defines the term "lot or batch", the term shall have the meaning given to it under applicable "scheduled underlying insurance".

If "scheduled underlying insurance" does not define "lot or batch", the term will have the following meaning:

"Lot or batch" means that quantity of a product produced at a single production facility within a single manufacturing cycle and specifically marked with a date, distinctive combination of letters, numbers or symbols, or any combination of any of the foregoing, from which it can be determined that an individual item of the product was produced during that cycle. "Lot or batch" includes:

- a. the handling, selling, distribution, sharing, or disposing of such quantity of products; and
- b. the providing of or failure to provide warnings or instructions for such quantity of products.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

CROSS SUITS EXCLUSION (WITH LIMITED EXCEPTION)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Cross Suits (with limited exception)

This insurance excludes from coverage any "bodily injury" or "property damage" or "personal and advertising injury" to an "insured" that is caused, in whole or in part, by any other "insured".

However, this exclusion does not apply where the "insured" is a Named Insured and is contractually required to provide such coverage.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

LEAD EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Lead

This policy excludes from coverage any liability arising out of lead or the lead content of products.

It is understood that to the extent any coverage may otherwise be provided under this policy or any of its endorsements, the provisions of this exclusion will supersede.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

SILICA EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

This policy excludes from coverage:

Any liability arising out of "silica," "silica" fiber(s), or "silica dust" or any product(s) containing "silica," "silica" fiber(s), or "silica dust".

Section **VII. DEFINITIONS** is amended to include the following additional definitions:

"Silica" means:

1. The substance commonly known as silica; and
2. Any substance or product which has the same or substantially similar chemical formulation, structure or function as silica, by whatever name manufactured, formulated, structured, sold or distributed.

"Silica dust" means:

1. Dust comprising of "silica" only; and
2. Dust comprising of "silica" mixed with other dust or fiber(s) including, but not limited to, asbestos fibers.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

EXCLUSION OF CERTIFIED AND OTHER ACTS OF TERRORISM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism." However, as respects an "other act of terrorism" this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000 (valued in US dollars). In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs **1.** and **2.** describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under this policy or "scheduled underlying insurance," and includes but is not limited to "bodily injury," "property damage," "personal and advertising injury," "injury" or "environmental damage" as may be defined in any applicable policy or "scheduled underlying insurance."

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
 3. "Other act of terrorism" means an actual or threatened violent act, or an actual or threatened act that is dangerous to human life, property or infrastructure; that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism." Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this policy.
- D. In the event that the "scheduled underlying insurance" does not provide coverage for a "certified act of terrorism" or an "other act of terrorism," to which this exclusion does not apply, the insurance provided by this policy shall not replace the "scheduled underlying insurance," but shall apply in the same manner as though such "scheduled underlying insurance" was available and collectible.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

POLLUTION ENDORSEMENT – BLENDED COVER COMBINATION OF NAMED PERILS AND TIME BASED CLAUSES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS**, Paragraph **P.** is hereby deleted in its entirety and replaced by the following:

P. Pollution – Blended Cover

1. a. This policy excludes (except as provided in subsection 2. below) the following from coverage:
 - (1) any liability or alleged liability of the "insured" for "bodily injury," "property damage" or "personal and advertising injury" arising out of or alleged to arise out of the actual or threatened "discharge" of "pollutants" into or upon land or other real estate, the atmosphere, any watercourse or body of water whether above or below ground or otherwise into the environment; or
 - (2) any liability or alleged liability, loss, cost or expense of the "insured" or other persons or entities, of whatsoever nature, arising out of any direction, request, demand or order, whether governmental or other, that the "insured" test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effects of "pollutants," or any claim that the "insured" reimburse any party for the costs thereof.
- b. The exclusions contained in subsection 1. a. above shall apply whether or not:
 - (1) the "discharge" results from the "insured's" activities or the activities of any other person or entity, whether incidental to those activities or not;
 - (2) the "discharge" is sudden, gradual, accidental, foreseeable, expected or fortuitous (except as provided in subsection 2. below); or
 - (3) liability is imposed by law, statute, rule, regulation, contract, indemnity, contribution, or otherwise.
- c. The exclusions contained in subsection 1. a. above shall not apply as respects any intentional "discharge" of any substance for the purpose of mitigating or avoiding "bodily injury," "property damage" or "personal and advertising injury" which, subject to satisfaction of any retained amounts and/or exhaustion of the underlying limits, would be covered under this Policy.
2. a. Subject to all other terms, conditions and limitations of this policy, the exclusions set forth in subsection 1. a. above do not apply to any liability of the "insured" that arises out of:
 - (1) damage to any plant or building, including equipment or other contents, owned by or in the lawful possession or control of the "insured," which results from "hostile fire," lightning, explosion, implosion or windstorm; or

- (2) the overturning, upset or collision of any automobile or railroad vehicle; or
 - (3) the bursting, rupture or explosion of pipes or tubes, unless due to corrosion, on premises owned by or in the lawful possession or control of the "insured"; or
 - (4) the "products completed operations hazard."
- b. Subject to all other terms, conditions and limitations of this policy, the exclusions set forth in subsection 1.a. above do not apply to any liability of the "insured" that arises out of "bodily injury," "property damage" or "personal and advertising injury" caused by, from the standpoint of the "insured," an unexpected and unintended "discharge" of "pollutants" not falling under 2a. above and which the "insured" shall have become aware of the "commencement" of the "discharge" within 20 days of such "commencement" and shall have complied with the special notice provisions included in section 4. of this endorsement.
3. The coverage provided by subsections 1.c. and 2. above shall not apply to:
- (1) loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the "insured," and/or removal of, loss of or damage to sub-surface soil, oil or gas;
 - (2) any premises, site or location which is or was at any time used in whole or in part for the processing, treatment, storage, disposal, or dumping of any waste;
 - (3) the cost of investigating, evaluating, monitoring or inspecting any actual or threatened "discharge" of "pollutants" or any pollution actually caused by the "discharge";
 - (4) the cost of removing, nullifying or cleaning-up "pollutants" on, in or under property which is or was at any time owned or in the lawful possession or control of the "insured"; or
 - (5) any liability of the "insured" which is attributable in whole or in part to a lack of proper maintenance, inspection or supervision on the part of the "insured" or its employees, servants or agents.
4. Notwithstanding anything in this policy to the contrary, it is a condition precedent to liability under subsections 1.c. and 2.b. above that the "insured" shall provide us with notice in writing of the "commencement" of such "discharge" within 80 days thereafter, specifying:
- (1) where such "discharge" took place;
 - (2) when such "discharge" "commenced";
 - (3) the nature and approximate quantity of the "pollutants" concerned in such "discharge";
 - (4) when and the circumstances under which the "insured" became aware of such "discharge"; and
 - (5) all other information required under any other notification provision of this policy.
5. Notwithstanding anything in this policy to the contrary, it is a condition precedent to coverage under subsections 1.c. and 2. above that the "insured" shall establish all of the following:
- (1) that the "discharge" "commenced" during the period of this policy;
 - (2) that the "discharge" was not part of a continuous state of affairs which was in existence prior to the inception of this policy;

- (3) that the "discharge" did not result from the "insured's" intentional or reckless breach of any local or national government statute, rule or regulation; and
 - (4) that, as soon as practicable following the "insured's" awareness of a "discharge" for which it would likely bear responsibility, the "insured" took all reasonable steps to contain, control, terminate and clean up such "discharge."
- 6. It is further a condition precedent to coverage under subsection 2. a. above that the "insured" shall establish that its liability arose out of one of the perils or hazards named in subsection 2. a. (1) to (4).
 - 7. Except as specifically provided in this endorsement, all other terms and conditions, and limitations in this policy, including those relating to the coverage afforded, limit of liability, and notification or reporting of claims, remain in full force and effect.
 - 8. For the purposes of this endorsement:

The term "hostile fire" shall mean a fire which becomes uncontrollable or breaks out from where it was intended to be.

The term "discharge" shall mean discharge, dispersal, migration, release, or escape of "pollutants." (A series of related "discharges" shall be deemed to constitute a single "discharge" "commencing" with the first "discharge" in the series).

The terms "commence," "commencing," "commenced" and "commencement" shall refer to that specific, identified point in time at which the "discharge" of "pollutants" in question shall have first begun.

The term "defense expenses" means any payment allocated to a specific loss, claim or "suit" for its investigation, settlement or defense, including but not limited to:

- (1) attorney's fees and all other investigation, loss adjustment, and litigation expenses;
 - (2) premiums on bonds to release attachments;
 - (3) premiums on appeal bonds required by law to appeal any claim or "suit";
 - (4) costs taxed against the "insured" in any claim or "suit";
 - (5) pre-judgment interest awarded against the "insured"; and
 - (6) interest that accrues after entry of judgment.
- 9. For the purpose of this endorsement, the **Self-Insured Retention** in **Item 6.** of the **DECLARATIONS** is amended to include the following additional provision:
- USD 2,000,000 Each Occurrence (As respects all damages arising out of any "discharge" of "pollutants" covered under this endorsement). This Self-Insured Retention will not be reduced by "defense expenses."

The above Self-Insured Retention applies whether or not there is any available "scheduled underlying insurance" or "other insurance." If there is "scheduled underlying insurance" or "other insurance" applicable to a "loss," amounts received through such "scheduled underlying insurance" or "other insurance" for payment of the "loss" may be applied to reduce or exhaust the above Self-insured Retention if such policies were purchased by the "insured" to specifically apply as underlying insurance to this policy. However, in no event will amounts received through such "scheduled underlying insurance" or "other insurance" for the payment of "defense expenses" reduce the above Self-Insured Retention.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

LAW OF VENUE MOST FAVORABLE TO INSURABILITY OF PUNITIVE DAMAGES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **I. INSURING AGREEMENT** is amended to include the following additional paragraph:

Law of Venue Most Favorable to Insurability of Punitive Damages

It is agreed that the law of the venue most favorable to the insurability of punitive or exemplary damages, or of the multiplied portion of multiplied damages (hereinafter referred to collectively as "punitive damages"), shall govern this policy as respects the insurability of an award of such damages, provided that such venue is the jurisdiction:

- (a) where the punitive, exemplary or multiplied damages were awarded or imposed; or
- (b) where the "occurrence" causing the "bodily injury" or "property damage", or the offense giving rise to the "personal and advertising injury" took place; or
- (c) where we are incorporated, reside, or have our principal place of business, or where any "insured" penalized by such damages is incorporated, resides, or has its principal place of business; or
- (d) where this policy was issued or delivered to the "insured".

Notwithstanding anything to the contrary herein, where Illinois law is applicable, coverage for "punitive damages" hereunder is limited to vicarious liability only.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

FUNGUS AND BACTERIA EXCLUSION WITH EDIBLE GOOD OR PRODUCT CONSUMPTION EXCEPTION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

This policy excludes from coverage any liability for:

1. "bodily injury," "property damage," "personal and advertising injury" arising out of, resulting from, caused by, contributed to, or in any way related to the existence, inhalation or exposure to any "fungus/fungi" or "spore(s)" or any bacteria of any kind; or
2. any cost or expenses associated in any way, or arising out of the abatement, mitigation, remediation, containment, detoxification, neutralization, monitoring, removal, disposal, or any obligation to investigate or assess the presence or effects of any "fungus/fungi" or "spore(s)" or any bacteria of any kind; or
3. any obligation to share with or repay any person, organization or entity, related in any way to items 1. and 2. above, regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to the injury or damage.

Paragraphs 1., 2., and 3. above shall apply regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense.

Notwithstanding the foregoing, this exclusion shall not apply to "bodily injury" or "property damage" caused by any "fungus/fungi" that are, are on, or contained in, an edible good or edible product intended for human or animal consumption.

Section **VII. DEFINITIONS** is amended to include the following additional definition:

"Fungus/fungi" includes, but is not limited to, any form or type of mold, mildew, mushroom, yeast, or biocontaminant.

"Spore(s)" includes, but is not limited to, any substance produced by, emanating from, or arising out of any "fungus/fungi".

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

PROFESSIONAL LIABILITY EXCLUSION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Professional Liability

This policy excludes from coverage "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured".

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

UNINSURED/UNDERINSURED MOTORISTS COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

THIS ENDORSEMENT APPLIES TO A COVERED AUTO REGISTERED OR PRINCIPALLY GARAGED IN THE FOLLOWING STATE(S) (where indicated by an "X")

The Declarations ITEM 4. LIMITS OF INSURANCE is amended to include the following additional provisions:

Applicable Uninsured/Underinsured Each Occurrence Limit(s)

	VERMONT	\$ 100,000	"bodily injury" Combined Single Limit
	FLORIDA	\$ No Coverage	"bodily injury" Limit
	WEST VIRGINIA	\$ No Coverage	"bodily injury" and "property damage" Combined Single Limit
	LOUISIANA	\$ No Coverage	"bodily injury" Limit
X	NEW HAMPSHIRE	\$ No Coverage	"bodily injury" Limit

Uninsured/Underinsured Motorists Retained Limit: \$2,000,000 Each Occurrence

INSURING AGREEMENT

Section I. INSURING AGREEMENT is amended to include the following additional provision:

- H. We will pay all sums in excess of the "Uninsured/Underinsured Motorists Retained Limit" the "insured" is legally entitled to recover as compensatory damages from the owner or operator of:
1. An "uninsured motor vehicle" as defined in Definition AE.1., AE.2., and AE.3 of this endorsement because of "bodily injury" sustained by the "nsured", or "property damage" and caused by an "occurrence", and
 2. An "uninsured motor vehicle" as defined in Definition AE.4. of this endorsement because of "bodily injury" sustained by any "insured", or "property damage".

The owner's or operator's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".

We will pay under this Uninsured/Underinsured Motorist Coverage only if 1., 2., or 3. below applies:

1. The limits of any applicable liability bonds or policies of the "uninsured motor vehicle" have been exhausted by judgments or payments (**Not applicable where the Uninsured/Underinsured Motorist laws of Louisiana apply**);

2. The submission of claims exceeds the limits of liability under any applicable "bodily injury" bonds or policies (**Applicable only where the Uninsured/Underinsured Motorists laws of Louisiana apply**); or
3. A tentative settlement has been made between an "insured" and the insurer of the vehicle described in paragraph 2. of the definition of "uninsured motor vehicle" of this endorsement and we:
 - a) Have been given prompt written notice of such settlement; and
 - b) Advance payment to the "insured" in an amount equal to the tentative settlement within the number of days required by applicable state statute after receipt of notification.

Any judgment for damages arising out of a "suit" brought without our written consent is not binding upon us (**Not applicable where the Uninsured/Underinsured Motorist laws of Louisiana apply**).

DEFENSE

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section III. DUTY TO DEFEND, DEFENSE EXPENSE AND SUPPLEMENTARY PAYMENTS** is hereby deleted in its entirety and replaced by the following:

- A. We will have the right and duty to defend any "suit" against the "insured" that seeks damages for "bodily injury" or "property damage" covered by this policy, even if the "suit" is groundless, false or fraudulent when the "Uninsured/Underinsured Motorists Retained Limit" has been exhausted by payment of "loss" to which this policy applies.

If we are prevented by law or statute from assuming the obligations specified under this provision, we will pay any expenses incurred with our consent.

- B. 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.
- C. When we assume the defense of any "suit" against the "insured" that seeks damages covered by this policy, we will:
 1. Investigate, negotiate and settle the "suit" as we deem expedient; and
 2. Pay the following supplementary payments:
 - a) premiums on bonds to release attachments for amounts not exceeding our Limits of Insurance, but we are not obligated to apply or furnish any such bond;
 - b) premiums on appeal bonds required by law to appeal a judgment in a "suit" for amounts not exceeding the applicable Limits of Insurance of this policy, but we are not obligated to apply for or furnish any such bond;
 - c) all court costs taxed against the "insured" in the "suit";
 - d) pre-judgment interest awarded against the "insured" on that part of the judgment within the applicable Limits of Insurance of this policy we pay. If we make a settlement offer, we will not pay any pre-judgment interest accruing after we make such offer;

- e) post-judgment interest that accrues after entry of judgment on that part of the judgment within the applicable Limits of Insurance of this policy we pay and before we have paid, offered to pay or deposited in court that part of the judgment that is within the applicable Limits of Insurance of this policy; and
 - f) the "insured's" expenses incurred at our request or with our consent.
- D. Except as provided in Paragraph A. above, we will have no duty to defend any "suit" against the "insured". We will, however, have the right, but not the duty, to participate in the defense of any "suit" and the investigation of any claim to which this policy may apply. If we exercise this right, we will do so at our own expense.
- E. We will not defend any "suit", or pay any attorney fees or litigation expenses including, without limitation, the expenses described in Paragraph C. above that accrue after the applicable Limits of Insurance of this policy have been exhausted by the payment of "loss" and we will have the right to withdraw from the further defense of such "suit" by tendering control of said defense to the "insured".

LIMITS OF INSURANCE

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section IV. LIMITS OF INSURANCE** is amended to include the following additional provisions:

- K. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "occurrence", the most we will pay for all damages resulting from any one "occurrence" are the Limits of Insurance shown in Item 4. of the Declarations (as amended in this endorsement).
- L. With respect to coverage provided under Paragraph A.E.2 of the definition of "uninsured motor vehicle", the Limit of Insurance shall be reduced by all sums paid for "bodily injury" or "property damage" by or on behalf of anyone who is legally responsible.
- M. **Uninsured/Underinsured Motorists Retained Limit**

This policy applies only in excess of an "Uninsured/Underinsured Motorists Retained Limit" and then up to an amount not exceeding the Uninsured/Underinsured Motorists Each Occurrence Limit as stated in the Declarations (as amended in this endorsement), subject to the provisions stated in K. and L. above.

The "Uninsured/Underinsured Motorists Retained Limit" shall not be reduced or exhausted by "defense expenses".

As respects the states identified in this endorsement, the "Uninsured/Underinsured Motorists Retained Limit" applies irrespective of whether any Uninsured/Underinsured Motorists Coverage is afforded by this endorsement.

EXCLUSIONS

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section V. EXCLUSIONS**, item 3. of **Exclusion T. Various Laws** is hereby deleted in its entirety and replaced by the following:

- 3. This insurance does not apply to any obligation of the "insured" under any personal injury protection law or no-fault law.

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section V. EXCLUSIONS** is amended to include the following additional exclusions:

- Y. This insurance does not apply to any claim settled without our consent. However, this exclusion does not apply to a settlement made with the insurer of a vehicle which is an "uninsured motor vehicle".
- Z. This insurance does not apply to the direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
- AA. This insurance does not apply to any "insured" using a vehicle without the expressed or implied permission of the owner or lessee.
- AB. This insurance does not apply to "bodily injury" or "property damage" sustained by:
 - 1. An individual Named Insured while "occupying" or when struck by any vehicle owned by that Named Insured that is not a covered "auto" for Uninsured Motorists Coverage under this endorsement;
 - 2. Any "family member" while "occupying" or when struck by any vehicle owned by that "family member" that is not a covered "auto" for Uninsured Motorists Coverage under this endorsement; or
 - 3. Any "family member" while "occupying" or when struck by any vehicle owned by the Named Insured that is insured for Uninsured Motorists Coverage under any other policy.
- AC. This insurance does not apply to punitive or exemplary damages.
- AD. This insurance does not apply to "property damage" to an "auto" or to property contained in an "auto" owned by the Named Insured which is not a covered "auto".
- AE. This insurance does not apply to "property damage" for which the "insured" has been or is entitled to be compensated by other property or physical damage insurance.

CONDITIONS

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, Condition I. **Other Insurance** under **Section VI. CONDITIONS** is deleted in its entirety and replaced by the following:

I. Other Insurance

Any insurance we provide under this endorsement will be excess to the total limits of any "other insurance" paid or available for payment to an "insured", except other applicable Uninsured/Underinsured Motorist Coverage written to be excess of this policy.

If there is other applicable Uninsured/Underinsured Motorist Coverage under any other policy issued to the Named Insured by us, the maximum recovery for damages may equal but not exceed the highest applicable limit of insurance under any one policy.

If there is other applicable excess Uninsured/Underinsured Motorist Coverage available under more than one policy, then the following priorities of coverage apply:

- 1. A policy covering as excess, umbrella, or similar insurance, a motor vehicle "occupied" by the injured person or a policy covering, as excess, umbrella, or similar insurance, a pedestrian as a Named Insured.

2. A policy covering as excess, umbrella, or similar insurance, a motor vehicle "occupied" by the injured person or a policy covering, as excess, umbrella, or similar insurance, a pedestrian as an "insured" other than as a Named Insured.
3. A policy not covering a motor vehicle "occupied" by the injured person but covering, as excess, umbrella, or similar insurance, the injured person as a Named Insured.
4. A policy not covering a motor vehicle "occupied" by the injured person but covering, as excess, umbrella, or similar insurance, the injured person as an "insured" other than as a Named Insured.

We will pay only our share of the "loss" that must be paid under insurance providing umbrella or excess coverage. Our share is the proportion that our limit of liability bears to the total of all applicable limits of all the policies applicable on the same level of priority.

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, Condition F. **Duties In the Event of an Occurrence, Claim Or Suit** under **Section VI. CONDITIONS** is amended to include the following additional provisions:

5. Specifically as respects to any "occurrence" which may result in a Uninsured/Underinsured Motorist claim for coverage under this policy:
 - a. You must promptly notify the police if a hit-and-run driver is involved, and
 - b. You must promptly send us copies of the legal papers if a "suit" is brought.
 - c. A person seeking Uninsured/Underinsured Motorists Coverage must also promptly notify us in writing of a tentative settlement between the "insured" and the insurer of the vehicle described in Paragraph A.E.2. of the definition of "uninsured motor vehicle" and allow us the number of days required by applicable state statute to advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such vehicle described in Paragraph AE.2. of the definition of "uninsured motor vehicle".

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, Condition N. **Transfer of Rights of Recovery Against Others to Us** under **Section VI. CONDITIONS** is amended to include the following additional provisions:

4. If we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid.

However, where the Uninsured/Underinsured laws of the state of Louisiana apply, if we make any payment under this policy and the person to or for whom payment is made has a right to recover damages from another, we shall be subrogated to that right. However, our right to recover is subordinate to the right of the "insured" to be fully compensated.

Our rights do not apply under this provision with respect to Uninsured/Underinsured Motorists Coverage if we:

- a. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of a vehicle described in Paragraph 4.b. of the definition of "uninsured motor vehicle"; and
- b. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within the number of days required by applicable state statute after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within the number of days required by applicable state statute after receipt of notification:

- a. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Uninsured/Underinsured Motorists Coverage; and
- b. We also have a right to recover the advanced payment.

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section VI. CONDITIONS** is amended to include the following additional conditions:

Q. Arbitration (Not applicable where the Uninsured/Underinsured laws of West Virginia or Louisiana apply)

1. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured", then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. Both parties must agree to the arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.
2. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to arbitration procedures and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

R. Conformance to "Uninsured Motorist" and/or "Underinsured Motorist" Law

Solely to the extent any term of this policy conflicts with any applicable Uninsured/Underinsured law, the term shall be deemed amended so as to conform to minimum requirements of that law. However, under no such circumstance shall any term be amended to be broader than the minimum requirements of that law. This provision does not apply to the "Uninsured/Underinsured Motorists Retained Limit".

DEFINITIONS

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, Definition I. "Insured" under **Section VII. DEFINITIONS** is deleted in its entirety and replaced by the following:

I. "Insured" means:

If the Named Insured is designated in the Declarations as:

1. An individual, then only the following are "insureds":
 - a) The Named Insured and any "family members".
 - b) Anyone else occupying a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - c) Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
 - a) Anyone occupying a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction;
 - b) Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, Definition U. "Property damage" under **Section VII. DEFINITIONS** is deleted in its entirety and replaced by the following:

U. "Property damage" means:

Physical injury or destruction of:

1. A covered "auto"; or
2. Property contained in the covered "auto".

Solely for the purpose of Uninsured/Underinsured Motorist Coverage provided by this endorsement, **Section VII. DEFINITIONS** is amended to include the following additional definitions:

AC. "Defense expenses" means a payment allocated to a specific "loss", claim or "suit" for its investigation, settlement or defense, including but not limited to:

1. Attorneys' fees and all other investigation, "loss" adjustment and litigation expenses;
2. Premiums on bonds to release attachments;
3. Premiums on appeal bonds required by law to appeal any claim or "suit";
4. Costs taxed against the "insured" in any claim or "suit";
5. Pre-judgment interest awarded against the "insured"; and
6. Interest that accrues after entry of judgment.

AD. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.

AE. "Occupying" and/or "occupied" means in, upon, getting in, on, out or off.

AF. "Uninsured motor vehicle" means a land motor vehicle or trailer:

1. For which no liability bond or policy at the time of an "occurrence" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged;

2. Which is an "underinsured motor vehicle". An "underinsured motor vehicle" means a land motor vehicle or trailer for which the sum of all liability bonds or policies applicable at the time of an "occurrence" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged but their limits are less than the Limit of Insurance of this coverage **(Not Applicable where the Uninsured/Underinsured laws of West Virginia apply)**;
3. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
4. That is a hit-and-run vehicle and neither the operator nor owner can be identified. The vehicle must either:
 - a) Hit an "insured", a covered "auto" or a vehicle an "insured" is "occupying"; or
 - b) Cause "bodily injury" to an "insured" without hitting an "insured", a covered "auto" or a vehicle an "insured" is "occupying".

The facts of the "occurrence" or intentional act must be proved by independent corroborative evidence, other than the testimony of the "insured" making a claim under this or similar coverage, unless such testimony is supported by additional evidence.

However, "uninsured motor vehicle" does not include any vehicle:

1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law. However, where the Uninsured/Underinsured laws of the state of Florida apply, "uninsured motor vehicle" includes any vehicle owned or operated by a self-insurer under any applicable motor vehicle law;
2. Designed for use mainly off public roads while not on public roads;
3. Owned by or furnished or available for the Named Insured's regular use or that of any "family member", if the Named Insured is an individual; or
4. Owned by any governmental unit or agency, unless the owner or operator of the "uninsured motor vehicle" has:
 - a) An immunity under applicable tort liability law; or
 - b) A diplomatic immunity.

AG. "Underinsured motor vehicle" means a land motor vehicle or trailer to which a liability bond or policy applies at the time of the "occurrence" but the amount paid for "bodily injury" or "property damage" to an "insured" under that bond or policy is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However "underinsured motor vehicle" does not include any vehicle or trailer:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law;
- b. Owned by a governmental unit or agency; or

- c. Designed for use mainly off public roads while not on public roads.

(Definition AG. above only applicable where the Uninsured/Underinsured Motorist laws of West Virginia apply)

- AH. "Uninsured/Underinsured Motorists Retained Limit", as specified in the Declarations above, means the greater of either:
- a. the "auto" liability limit as provided by a policy listed in Scheduled Underlying Insurance; or
 - b. the "auto" liability Retained Limit as listed in the Schedule of Retained Limits.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

BROAD FORM NAMED INSURED ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

1. Section **II. INSUREDS** A. is deleted in its entirety and replaced with the following:
 - A. The following are "insureds":
 1. The Named Insured named in Item 1. of the Declarations of this policy is an "insured."
 2. Any direct or indirect subsidiary, limited liability company, division, joint venture or partnership, in respect of which the Named Insured named in Item 1. of the Declarations of this policy at the inception date of this policy:
 - a. has an ownership interest of fifty percent (50%) or more;
 - b. exercises management control; or
 - c. has agreed in writing to assume the obligation to provide insurance of the type afforded by this policy for the entire direct or indirect subsidiary, limited liability company, division, joint venture or partnership,
 is an "insured," provided that such subsidiary or organization is an insured in the "scheduled underlying insurance."
 3. If you are an "insured" in accordance with A.1. and A.2. above and you are:
 - a. An individual, you and your spouse are "insureds," but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an "insured." Your members, your partners, and their spouses are also "insureds," but only with respect to the conduct of your business.
 - c. A limited liability company, you are an "insured." Your members are also "insureds," but only with respect to the conduct of your business. Your managers are "insureds," but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an "insured." Your "executive officers" and directors are "insureds," but only with respect to their duties as your officers or directors. Your stockholders are also "insureds," but only with respect to their liability as stockholders.
 - e. A trust, you are an "insured." Your trustees are also "insureds," but only with respect to their duties as trustees.
2. Section **II. INSUREDS** C. is deleted in its entirety and replaced with the following:

Notwithstanding anything above, no person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not an "insured" pursuant to Section **II. INSUREDS** A. above.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

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North American Elite Insurance Company

Endorsement No.

BROADENED DEFINITION OF BODILY INJURY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **VII. DEFINITIONS**, Letter C is deleted in its entirety and replaced with the following:

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

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

INCIDENTAL MEDICAL MALPRACTICE LIMITATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

This policy is amended as follows:

A. Section **V. EXCLUSIONS** is amended to include the following additional exclusion:

Incidental Medical Malpractice Limitation Endorsement

1. This insurance excludes from coverage any actual or alleged liability arising out of, based upon or attributable to, any act, error, omission, malpractice or mistake committed by any "insured" or any person for whom the "insured" is legally responsible in the provision or failure to provide, healthcare or medical services, including the furnishing of food or beverage in connection with such service. Such healthcare or medical services include but are not limited to medical, surgical, dental, x-ray or nursing services or treatment and/or the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This exclusion shall apply to any claim against any "insured" arising out of any actual or alleged act, error or omission, malpractice or mistake committed in the provision, or failure to provide, healthcare or medical services (as described above) which is based on or attributable to, wholly or in part, actual or alleged negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by such "insured."

2. Notwithstanding item 1. above:
 - a. if any "scheduled underlying insurance" provides insurance coverage for liability arising out of "incidental medical malpractice," this exclusion shall not apply to liability arising out of "incidental medical malpractice" and coverage for such "incidental medical malpractice" liability under this policy will follow the terms, definitions, conditions and exclusions of "scheduled underlying insurance," subject to the "policy period," Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. However, coverage provided by this policy will be no broader than the coverage provided by "scheduled underlying insurance."
 - b. if coverage for "bodily injury" or "personal and advertising injury" is provided under this policy over a retained limit listed in the Schedule of Retained Limits, this exclusion shall not apply to liability arising out of "incidental medical malpractice" and this policy shall provide coverage for such "incidental medical malpractice" liability subject to the same Limits of Insurance, Conditions and other terms and conditions, and exclusions of this policy.

B. Section **II. INSUREDS**, B.1.a. (4) shall be deemed deleted in its entirety and replaced with:

- (4) arising out of his or her providing or failing to provide professional health care services, except for "bodily injury" or "personal and advertising injury" arising out of "incidental medical malpractice" by any licensed physician, dentist, nurse or other licensed medical practitioner employed by "you" and acting within the scope of his or her license. The insurance provided hereunder to such persons shall not apply to liability arising out of services performed outside the scope of their duties as your "employees." Any series of continuous, repeated or related acts or omissions by such "employees" will be treated as a single "occurrence."

C. Section **VII. DEFINITIONS** is amended to include the following additional definition:

"Incidental medical malpractice" means "bodily injury" or "personal and advertising injury" arising out of the rendering of or failure to render the following services:

1. medical, surgical, dental, x-ray or nursing services or treatment or the furnishing of food or beverages in connection therewith; or
2. the furnishing or dispensing of drugs or medical or surgical supplies or appliances;

so long as the Named Insured is not engaged in the business or occupation of providing any of the services described in items 1. or 2. above.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

BUSINESS CRISIS MANAGEMENT COST COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

SECTION I., INSURING AGREEMENT, is amended to include the following:

Business Crisis Management Cost Limit of Insurance: \$ 250,000 Annual Limit

Business Crisis Management Cost Coverage

- A. Subject to the terms and conditions of this endorsement, we will pay "business crisis management costs" to third parties at the request of and on behalf of the "insured," arising from a "business crisis management event" first commencing during the "policy period," up to the amount of the "business crisis management costs" Limit of Insurance shown in the schedule above.
- B. A "business crisis management event" will be deemed to first commence at the time during the "policy period" when a "key executive" first becomes aware of an "occurrence" that gives rise to the "business crisis management event" and will end when we determine that any one of the necessary elements listed in the definition of a "business crisis management event" no longer exists or when the "business crisis management cost" Limit of Insurance shown in the schedule above has been exhausted, whichever occurs first.
- C. There is no "retained limit" applicable to "business crisis management costs," except as a "retained limit" applies to a determination of whether the definition of "business crisis management event" applies.
- D. Payment of "business crisis management costs" will not be applied to or erode any aggregate limits of the policy.
- E. Any payment of "business crisis management costs" that we make under the coverage provided by this endorsement will not:
 - 1. be a determination of any other rights or obligations under this policy;
 - 2. create any duty to defend any "suit" under any other part of this policy; or
 - 3. operate as a waiver of any right or defense we have with respect to the coverage under the policy, including Condition F. (Duties in the event of an "Occurrence," Claim or "Suit.")
- F. Solely as respects coverage provided by this endorsement, the **SECTION VI. CONDITIONS** paragraph **F. Duties in the Event of an Occurrence, Claim or Suit** is amended by the addition of the following conditions:

You must see to it that we are notified of any "business crisis management event" within twenty-four (24) hours of the time that a "key executive" first becomes aware of an "occurrence" that gives rise to a "business crisis management event" or as soon as reasonably practicable, to be eligible for the advancement of "business crisis management costs."

Notice of a "business crisis management event" shall be given by written notice to the address detailed below. Written notice should include:

- 1. Name of Insured;
- 2. Policy Number;

3. A description of the incident;
4. Any witnesses;
5. Property, Product or Vehicle Information;
6. Incident Location;
7. Contact Person;
8. Number and nature of bodily injuries (including any fatalities and the number of people injured);
9. Current status of the situation

Written notice should be mailed, e-mailed, or delivered to:

Email Address: NY_Casualty@swissre.com

If email services are not available, please send by regular or overnight mail to:

North American Elite Insurance Company

Attention: Claims Department

650 Elm Street

Manchester, NH 03101

- G. For purposes of this endorsement, **SECTION VII. DEFINITIONS** is amended by the addition of the following definitions:

"Adverse media coverage" means national or regional news exposure in television, radio, print or internet media that is reasonably likely to have a negative impact on the "insured" with respect to its income, reputation, community relations, public confidence or good will.

"Business crisis management event" means an "occurrence" that, in the good faith opinion of a "key executive" of the Named Insured, has resulted in or is reasonably likely to result in: (1) "bodily injury," "property damage" or "personal and advertising injury" covered by this policy; (2) damages that are in excess of the "retained limit"; and (3) a need for "business crisis management services" due to "adverse media coverage." "Business crisis management event" will include "occurrences" resulting from: explosions and other man-made disasters; serious accidents resulting in multiple deaths, burns, dismemberment injuries; traumatic brain injuries; permanent paralysis injuries; or injuries from contamination of food, drink or pharmaceuticals.

"Business crisis management firm" means any firm that is approved by us and hired by you or us to perform "business crisis management services" in connection with a "business crisis management event." Any "business crisis management firm" which has been retained by you on a continuous and uninterrupted basis from a date preceding the "business crisis management event" for which coverage is sought under this endorsement up until the date of such event, shall be deemed approved by us.

"Business crisis management services" means those services performed by a "business crisis management firm" in advising the "insured" on minimizing potential harm to the "insured" from a covered "business crisis management event" by managing "adverse media coverage" and maintaining and restoring public confidence in the "insured."

"Business crisis management costs" means the following reasonable and necessary fees and expenses incurred during a "business crisis management event" and directly caused by the "business crisis management event," but only to the extent that the "insured," the "business crisis management firm" or a third party authorized by us or the "business crisis management firm," arranges for such services resulting in these fees and expenses and the fees and expenses are pre-approved by us:

1. fees charged by a "business crisis management firm" for the performance of "business crisis management services" for the "insured";
2. expenses incurred by a "business crisis management firm" in the performance of "business crisis management services" for the "insured";
3. fees and expenses for printing, advertising, mailing of materials or travel by directors, officers, employees or agents of the "insured" or the "business crisis management firm" incurred at the direction of a "business crisis management firm";

4. fees and expenses to secure the scene of a "business crisis management event";
5. medical expenses; funeral expenses; expenses for psychological counseling; travel expenses; temporary living expenses or other necessary response costs approved by us, incurred by or advanced to third parties directly harmed by the "business crisis management event."

"Business crisis management costs" do not include any defense costs.

"Key executive" means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, General Counsel or general partner (if the "insured" is a partnership) or sole proprietor (if the "insured" is a sole proprietorship) of the "insured." A "key executive" also means any other person holding a title designated by you, approved by us, and shown by endorsement to this policy.

NOTICE

IF YOU REQUIRE ADVICE AS TO AN APPROVED BUSINESS CRISIS MANAGEMENT FIRM PLEASE CONTACT ONE OF THE ATTACHED FIRMS LISTED BELOW. NO BUSINESS CRISIS MANAGEMENT SERVICES WILL BE PROVIDED BY ANY SUCH FIRM UNLESS PRE-APPROVED BY US:

The Torrenzano Group, LLC ; 60 East 42nd Street, Suite 2112; New York, NY 10165

(a) Richard Torrenzano, 917-226-1000, Email: Richard@torrenzano.com or

(b) Edward Orgon; 917-539-4000; E-mail: Ed@torrenzano.com

PLEASE BE PREPARED TO PROVIDE THE FOLLOWING INFORMATION:

- Caller's name, title and contact telephone number;
- Name of Insured;
- Policy Number;
- A description of the incident
- Any witnesses
- Property, Product or Vehicle Information
- Incident Location
- Contact Person
- Number and nature of bodily injuries (including any fatalities and the number of people injured)
- Current status of the situation

THE CONTENTS OF THIS NOTICE ARE NOT PART OF THE POLICY FORM AND NO COVERAGE IS PROVIDED AND/OR MODIFIED BY THE CONTENTS OF THIS NOTICE.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

ILLINOIS CHANGES - CIVIL UNION**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

The following is added to this Policy:

The term "spouse" is replaced by the following:

Spouse or party to a civil union recognized under Illinois law.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

TIE-IN OF LIMITS ENDORSEMENT**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

If the insurance provided by this policy and the insurance provided by the policy(ies) listed in the schedule below (the "scheduled policy(ies)") apply to the same claim, "suit," or "occurrence," the maximum combined limits of insurance under both this policy and the "scheduled policy(ies)" shall be:

\$25,000,000 **Each Occurrence**

\$25,000,000 **General Aggregate** (as provided by Section IV. of this policy).

\$25,000,000 **Products-Completed Operations Aggregate** (as provided by Section IV. of this policy).

The above stated limits of insurance is the most the Insurer of this policy and the insurer(s) of the "scheduled policy(ies)" will pay under this policy and the "scheduled policy(ies)," combined, for all damages, claims, "losses," or "suits," regardless of any aggregate or per "occurrence" limit of insurance, or any other limit of insurance in this policy or the "scheduled policy(ies)."

Any "loss" paid under the "scheduled policy(ies)" shall reduce by such amount the applicable limit of insurance under this policy.

Nothing in this provision shall serve to increase any applicable limit of insurance of this policy or the "scheduled policy(ies)."

SCHEDULE

Country of Issuance	Insurer	Policy Number
Canada	Westport Insurance Corp.	UMB 200031200 - Canadian Policy
	[]	

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

North American Elite Insurance Company

Endorsement No.

AMENDMENT OF CANCELLATION CONDITION ENDORSEMENT**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Section **VI. CONDITIONS D. Cancellation** is deleted in its entirety and replaced with the following:

D. Cancellation

1. You may cancel this policy. You must mail or deliver to us advance written notice stating when cancellation is to take effect.
2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than ten (10) days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than ninety (90) days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice. If we cancel for any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation as amended by a state cancellation endorsement applicable to this insurance, is increased to ninety (90) days.
3. The "policy period" will end on the day and hour stated in the cancellation notice.
4. If we cancel, final premium will be calculated pro rata based upon the time this policy was in force. Final premium will not be less than the pro rata share of the Policy Premium as shown in the Declarations.
5. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium will not be less than the short rate share of the Policy Premium as shown in the Declarations.
6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund due you. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due you.

All other terms and conditions of this policy shall remain unchanged.

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

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

Policy Number:

Endorsement Effective Date:

Named Insured:

FILED DATE: 5/2/2025 5:25 PM 2022CH10811

EMPLOYERS INSURANCE OF WAUSAU,

Plaintiff,

v.

GRIFFITH FOODS INTERNATIONAL INC.;
SUSAN KAMUDA,

Defendants.

GRIFFITH FOODS INTERNATIONAL INC.,

Counter-Plaintiff,

v.

EMPLOYERS INSURANCE OF WAUSAU,

Counter-Defendant.

GRIFFITH FOODS INTERNATIONAL INC.
F/K/A GRIFFITH LABORATORIES U.S.A.,
INC., and GRIFFITH FOODS GROUP INC.
F/K/A GRIFFITH LABORATORIES, INC.,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE
COMPANY, on behalf of itself and as
successor-in-interest of ZURICH
INSURANCE COMPANY; GREENWICH
INSURANCE COMPANY; AMERICAN
GUARANTEE AND LIABILITY
INSURANCE COMPANY; FIRST STATE
INSURANCE COMPANY; FEDERAL
INSURANCE COMPANY; CHUBB
CUSTOM INSURANCE COMPANY;
COLUMBIA CASUALTY COMPANY;
LEXINGTON INSURANCE COMPANY;
THE INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA; OAKWOOD
INSURANCE COMPANY, as successor by
merger to CENTRAL NATIONAL
INSURANCE COMPANY OF OMAHA;

Case No.: 2022CH10811 (Merged
with Case No. 2023CH00782)

Calendar 9

The Honorable Cecilia A. Horan

NEW ENGLAND REINSURANCE
CORPORATION; and DOE INSURANCE
COMPANIES 1-10,

Defendants.

ZURICH AMERICAN INSURANCE
COMPANY, on behalf of itself and as
successor-in-interest of ZURICH INSURANCE
COMPANY; AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY;
FIRST STATE INSURANCE COMPANY; and
NEW ENGLAND REINSURANCE
CORPORATION,

Counter-Plaintiffs,

v.

GRIFFITH FOODS INTERNATIONAL INC.
F/K/A GRIFFITH LABORATORIES U.S.A.,
INC., and GRIFFITH FOODS GROUP INC.
F/K/A GRIFFITH LABORATORIES, INC.,

Counter-Defendants.

ZURICH AMERICAN INSURANCE
COMPANY, on behalf of itself and as
successor-in-interest of ZURICH INSURANCE
COMPANY; AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY,

Crossclaim Plaintiffs,

v.

GREENWICH INSURANCE COMPANY;
FIRST STATE INSURANCE COMPANY;
NEW ENGLAND REINSURANCE
CORPORATION; FEDERAL INSURANCE
COMPANY; CHUBB CUSTOM INSURANCE
COMPANY; COLUMBIA CASUALTY
COMPANY; LEXINGTON INSURANCE
COMPANY; THE INSURANCE COMPANY
OF THE STATE OF PENNSYLVANIA;
OAKWOOD INSURANCE COMPANY, as
successor by merger to CENTRAL NATIONAL
INSURANCE COMPANY OF OMAHA,

Crossclaim Defendants,

ZURICH AMERICAN INSURANCE
COMPANY, on behalf of itself and as
successor-in-interest of ZURICH INSURANCE
COMPANY; AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY,

Third Party Plaintiffs,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA;
EMPLOYERS INSURANCE OF WAUSAU,

Third Party Defendants.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Intervenor-Plaintiff,

v.

GRIFFITH FOODS GROUP, INC.; GRIFFITH
FOODS INTERNATIONAL INC.; ZURICH
AMERICAN INSURANCE COMPANY;
AMERICAN GUARANTEE AND LIABILITY
INSURANCE COMPANY; GREENWICH
INSURANCE COMPANY; FIRST STATE
INSURANCE COMPANY; NEW ENGLAND
REINSURANCE CORPORATION; FEDERAL
INSURANCE COMPANY; CHUBB CUSTOM
INSURANCE COMPANY; COLUMBIA
CASUALTY COMPANY; LEXINGTON
INSURANCE COMPANY; THE INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA.; OAKWOOD INSURANCE COMPANY, as
successor by merger to CENTRAL NATIONAL
INSURANCE COMPANY; EMPLOYERS
INSURANCE OF WAUSAU,

Intervenor-Defendants.

**POLICYHOLDERS' RENEWED JOINT MOTION FOR LEAVE TO FILE A
CONSOLIDATED SECOND AMENDED COMPLAINT**

Following Presiding Judge Hall's April 23, 2025 Order clarifying that Case Nos. 2022CH10811 and 2023CH00782 were merged into a single case, the Policyholders¹ respectfully file this renewed motion and move this Court, pursuant to 735 ILCS 5/2-616 and Illinois Supreme Court Rule 233, for leave to file a Joint Consolidated Second Amended Complaint, a copy of which is attached hereto as Exhibit 1.² Through this Motion, the Policyholders also request that the Court realign the parties in this consolidated case such that the Policyholders, the natural Plaintiffs in this case, are listed as such against their respective insurers, the natural Defendants. In support of this motion, the Policyholders state as follows:

BACKGROUND

I. Wausau initiated *Griffith 1*

1. On November 2, 2022, Plaintiff Employers Insurance of Wausau ("Wausau") filed its complaint against GFI, establishing Case No. 2022CH10811 ("*Griffith 1*"). In its complaint, Wausau sought a declaration of non-coverage under a series of primary general liability insurance policies in connection with hundreds of Illinois Underlying Suits³ for which Griffith had sought

¹ As used herein, the "**Policyholders**" refers to the following parties collectively: Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. ("GFI"); Griffith Foods Group Inc. f/k/a Griffith Laboratories, Inc. ("GFG") (together, "Griffith"); Intervenor Sterigenics U.S., LLC ("Sterigenics"); and Sotera Health LLC ("Sotera").

² A redline of the Consolidated Second Amended Complaint against Griffith's First Amended Complaint is attached hereto as **Exhibit 2**. Should Griffith's Motion be granted, Griffith will file the voluminous exhibits identified in the proposed Consolidated Second Amended Complaint. Griffith can make the exhibits available to the Court before then upon request.

³ As used herein, "Illinois Underlying Suits" refers to the more than eight hundred (800) lawsuits brought by Illinois residents against Griffith. The initial set of Underlying Suits were consolidated for discovery-related matters and for convenience of reference captioned *In re: Willowbrook Ethylene Oxide Litigation*, Circuit Court of Cook County, Illinois Case No. 18-L-010475. Two such suits went to trial resulting in verdicts. Griffith and Sterigenics have settled certain of the Illinois Underlying Suits, with others remaining pending. Dozens of additional Illinois Underlying Suits have since been filed for which the Policyholders have sought and largely been denied coverage.

defense and indemnity from Wausau. The Illinois Underlying Suits allege, among other things, that the plaintiffs—who live or work in and around Willowbrook, Illinois—were exposed to ethylene oxide (“EtO”) from a commercial sterilization facility in Willowbrook that purportedly caused the plaintiffs’ injuries and interfered with their use and enjoyment of their property.

2. On January 10, 2023, GFI filed its answer, affirmative defenses, and counterclaims against Wausau. GFI’s counterclaims alleged affirmative claims for coverage under Wausau’s policies with respect to the Illinois Underlying Suits—including that the Illinois Underlying Suits seek to hold GFI liable for alleged bodily and personal injuries that occurred during the periods of Wausau’s policies—and disputed Wausau’s asserted reasons for not providing coverage. The parties exchanged answers and replies related to GFI’s counterclaims and engaged in written and document discovery.

II. Griffith initiated *Griffith 2*

3. On January 25, 2023, Griffith filed a complaint against ten of the above-named insurers for breach of contract and declaratory relief under certain insurance policies from 1984 through 2019. Griffith’s Complaint established Case No. 2023CH00782 (“*Griffith 2*”).

4. In the *Griffith 2* complaint, Griffith alleged that the insurer-defendants failed and refused to defend and indemnify Griffith for the Illinois Underlying Suits, which seek to hold Griffith liable for alleged bodily and personal injuries that occurred during the periods of the insurers’ policies.

5. After filing the Complaint, Griffith received coverage-related correspondence from various insurer-defendants and productions of substantial additional policy-related documentation, including copies of, and/or secondary evidence of, additional policies not previously known to Griffith.

6. As such, on March 10, 2023, Griffith moved for leave to file its First Amended Complaint *instantly* to: (1) update its exhibits to include additional insurance policies and policy-related evidence; (2) update the coverage positions taken by the insurer-defendants; (3) add New England Reinsurance Corporation as an insurer-defendant; and (4) dismiss Defendant Enstar (US), Inc.

7. On March 14, 2023, the Court granted Griffith's motion and accepted the First Amended Complaint as filed.

8. On May 18, 2023, as co-policyholders under a number of Griffith's policies, Sterigenics and Sotera filed a Petition to Intervene as of Right or Alternatively by Permission, accompanied by a proposed Complaint in Intervention. The existing parties to *Griffith 2* then agreed to extend the deadline to answer the Complaint in Intervention in anticipation of another amendment to the First Amended Complaint to add additional insurers as defendants and additional policies.

9. On May 19, 2023, the insurer-defendants filed their respective answers and affirmative defenses to the First Amended Complaint. Certain insurer-defendants asserted counterclaims and third-party complaints as noted in the caption above. Griffith has responded to all counterclaims, and all Third-Party Defendants have been served and appeared.

10. On June 9, 2023, Griffith filed Section 2-615 Motions to Strike certain of insurer-defendant's affirmative defenses to the First Amended Complaint. In anticipation of further amendments to the First Amended Complaint, the parties agreed to stay briefing on Griffith's Motions to Strike.

III. *Griffith 1* and *Griffith 2* Were Merged By The Court Into a Single Case

11. On July 20, 2023, following several changes of judge in *Griffith 2*, Defendant First State Insurance Company filed a motion to designate *Griffith 2* as “related” to *Griffith 1*.

12. After review, Griffith determined that *Griffith 1* and *Griffith 2* were more properly “consolidated” (merged) than “related” under Illinois law and, accordingly, filed a Motion to Consolidate these cases on July 28, 2023.

13. On August 10, 2023, Presiding Judge Hall issued an Order of Consolidation, creating the instant consolidated (merged) single case under the case number of *Griffith 1*.

IV. The Court Granted Sterigenics and Sotera’s Petition to Intervene

14. After the August 10, 2023 Order, this case underwent additional substitutions of judge as of right.

15. On January 19, 2024, Griffith filed a Motion for Leave to File a Consolidated Second Amended Complaint, seeking to (1) add additional insurer-defendants and policies that had come to Griffith’s attention as part of its ongoing investigation and discovery; and (2) realign the pleadings with Griffith as natural plaintiffs and their insurers, including *Griffith 1* Plaintiff Wausau and Third-Party Defendant National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) as Defendants.

16. Judge Neil Cohen continued Griffith’s Motion until Sterigenics and Sotera’s Petition to Intervene as of Right or Alternatively by Permission was resolved.

17. After briefing and oral argument, Judge Cohen granted Sterigenics and Sotera’s Petition and accepted their Complaint in Intervention as filed on May 6, 2024. The Order granting the Petition to Intervene as of Right is attached hereto as **Exhibit 3**.

V. Substantial Developments Warrant Further Amendments to the First Amended Complaint

18. Since the Court granted Sterigenics and Sotera's Petition to Intervene as of Right, there have been substantial developments in both the Policyholders' underlying defense and the ongoing coverage disputes.

19. *First*, since Sterigenics and Sotera's intervention, over 80 new Illinois Underlying Suits have been filed against the Policyholders in the Circuit Court of Cook County, Illinois.⁴

20. Six underlying suits were also filed in the Superior Court of California⁵ (hereafter "California Underlying Suits"). The California Underlying Suits seek damages from the Policyholders on the grounds that, among other things, that the plaintiffs—who live or work in and around Vernon, California—were exposed to EtO from commercial sterilization facilities in Vernon that purportedly caused the plaintiffs' injuries and interfered with (and continue to interfere with) their use and enjoyment of their property. As with the Illinois Underlying Suits, the California Underlying Suits seek to hold the Policyholders liable for injuries occurring starting in 1983 regardless of when they occurred.

21. The Policyholders immediately brought the California Underlying Suits to their insurers' attention, with Griffith specifically advising that any coverage denials for the California Underlying Suits would result in Griffith seeking to add such suits to this action.

⁴ The new Illinois Underlying Suits are being consolidated for pre-trial purposes. A list of all Illinois Underlying Suits filed to date is attached hereto as **Exhibit 4**.

⁵ *Palma et al. v. Sterigenics U.S., LLC et al.*, Case No. 24STCV06677 (filed on March 18, 2024); *Ayon et al. v. Sterigenics U.S., LLC et al.*, Case No. 24STCV29327 (filed on November 7, 2024); and *Menendez et al. v. Sterigenics U.S., LLC et al.*, Case No. 24STCV29577 (filed on November 12, 2024); *Perez et al. v. Sterigenics U.S., LLC et al.*, Case No. 25STCV09346 (filed on April 1, 2025); *Flores et al. v. Sterigenics U.S., LLC et al.*, Case No. 25STCV09380 (filed on April 1, 2025); *Arreola et al. v. Sterigenics U.S., LLC et al.*, Case No. 25STCV10581 (filed on April 9, 2025).

22. Since then, a number of insurer-defendants have already denied coverage for the new Illinois Underlying Suits and the California Underlying Suits. As such, the Policyholders wish to update their existing claims to include these additional underlying suits for which the Policyholders are seeking wrongfully denied coverage.

23. On December 19, 2024, the underlying plaintiffs in one of the California Underlying Suits, *Palma*, filed a First Amended Complaint to include new plaintiffs alleging bodily injury, property damage, and personal injuries prior to 1983. Griffith has since notified a number of insurer-defendants that their pre-1983 policies are triggered by such proposed amendment. Two other California Underlying Suits, *Ayon* and *Menendez*, were also recently amended to include additional underlying plaintiffs.

24. Second, the Policyholders have since uncovered additional insurance policies that may provide coverage for both the Illinois and California Underlying Suits through their continued search, on-going evaluation of new and existing evidence, and communications with their insurers.

25. The Policyholders have determined that twenty new insurers should be added to this action: American Zurich Insurance Company (“AZIC”), Illinois National Insurance Company (“INIC”), American Home Assurance Company (“AHAC”), Continental Insurance Company (“Continental”), Executive Risk Indemnity, Inc., formerly known as American Excess Insurance Company (“Executive Risk”), XL Specialty Insurance Company (“XL Specialty”), XL Insurance America, Inc. (“XL America”), Navigators Insurance Company (“Navigators”), ACE American Insurance Company (“ACE”), Swiss Re Corporate Solutions Elite Insurance Corporation (“Swiss Re”), Great American Assurance Company (“GAAC”), Great American Insurance Company (“GAIC”), Great American Insurance Company of New York (“GAICNY”), RSUI Indemnity Company (“RSUI”), Allied World National Assurance Company (“Allied World”), Berkshire

Hathaway Specialty Insurance Company (“Berkshire”), National Fire & Marine Insurance Company (“National Fire”), Aspen American Insurance Company (“Aspen”), Sentry Insurance Company (“Sentry”), and Steadfast Insurance Company (“Steadfast”). Griffith previously identified AZIC, INIC, and AHAC as parties it sought to add in the prior version of its proposed Consolidated Second Amended Complaint.

26. Third, Sterigenics and Sotera, in March 2023, settled the majority of the Illinois Underlying Suits at the time for an amount not to exceed \$408 million, and Griffith, in May 2023, similarly settled the same suits for \$48 million. To date, none of the insurer-defendants has agreed to indemnify the Policyholders for their settlements. With respect to a still-pending Illinois Underlying Suit that opted out of the global settlements, and with respect to the new Illinois Underlying Suits that were filed after the settlements, the insurer-defendants’ duties to defend continue.

27. Griffith has provided notice to the insurer-defendants of the new Illinois Underlying Suits on a rolling basis. To date, except for National Union,⁶ none of the Insurers has acknowledged even potential coverage for such Suits under their respective policies and/or provided a defense to the Policyholders.

28. On November 7, 2024, Travelers, one of the insurer-defendants Griffith previously sought to add to this suit, filed a Petition to Intervene as of Right in this Action. Travelers’ Petition

⁶ On September 20, 2024, National Union agreed to participate in the defense of the pending Illinois Underlying Suits, subject to reservation pending the outcome of an ongoing appeal in the U.S. Court of Appeals for the Seventh Circuit of rulings related to National Union’s duty to defend under its Policies. The Policyholders’ claims against National Union in this case, however, remain pending with respect to issues not part of the scope of National Union’s recent agreement to defend. The Policyholders’ remaining claims against National Union are included in the proposed Second Amended Complaint.

to Intervene was granted on November 14, 2024, and its Complaint in Intervention was deemed filed *instanter*.

29. In late March and early April 2025, the Policyholders reached settlements in principle with respect to a subset of the Illinois Underlying Suits and claims filed or made after the 2023 settlements. Again, none of the insurer-defendants has agreed to indemnify the Policyholders for these settlements.

30. As such, the Policyholders now seek to amend Griffith's First Amended Complaint and merge it with both Sterigenics and Travelers' Complaints in Intervention to: (a) create a single operative pleading that consolidates Griffith's claims with Sterigenics and Sotera's claims against their joint and respective insurer-defendants into one consolidated complaint; (b) realign the pleadings with the Policyholders as the natural plaintiffs against all insurers, the natural defendants; (c) update the exhibits to include additional evidence and applicable policies; (d) add AZIC, INIC, AHAC, Continental, Executive Risk, XL Specialty, XL America, Navigators, ACE, Swiss Re, GAAC, GAIC, GAICNY, RSUI, Allied World, Berkshire, National Fire, Aspen, Sentry, and Steadfast as insurer-defendants; and; (e) update the Policyholders' claims to seek indemnification under their insurance policies for those Illinois Underlying Suits that have settled and continue seeking a ruling that certain insurer-defendants are obligated to defend both the Illinois and California Underlying Suits that remain pending.

VI. Judge Hall Clarified that *Griffith 1* and *Griffith 2* Were Merged

31. On November 8, 2024, the Policyholders filed their first Joint Motion for Leave to File a Consolidated Second Amended Complaint. Wausau opposed the Joint Motion for Leave, arguing that the August 10, 2023 Order of Consolidation did not "merge" *Griffith 1* and *Griffith 2*. Greenwich filed a Joinder to Wausau's opposition.

32. Following oral argument, the Court denied the Policyholders' Joint Motion for Leave without prejudice and instructed the parties to seek clarification from Presiding Judge Hall as to whether the August 10, 2023 Order of Consolidation merged the two cases.

33. On April 23, 2025, following further briefing and oral argument, Judge Hall issued an Order clarifying that the August 10, 2023 Order of Consolidation did merge *Griffith 1* and *Griffith 2* into a single case. Accordingly, the Policyholders hereby renew their Joint Motion for Leave to File a Consolidated Second Amended Complaint.

ARGUMENT

I. Illinois Courts Freely and Liberally Grant Leave to Amend—The Court Should Do So Here

34. Under 735 ILCS 5/2-616(a), “[a]t any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.”

35. Similarly, under 735 ILCS 5/2-616(c), “[a] pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just.”

36. “Courts are encouraged to freely and liberally allow the amendment of pleadings.” *Lee v. Chicago Transit Auth.*, 152 Ill. 2d 432, 467 (1992) (affirming amendment of complaint just before closing argument at trial). Courts reviewing a motion for leave to amend a pleading generally consider the following factors: “whether the amendment would cure a defect in the pleadings; whether the other party would be prejudiced or surprised by the proposed amendment;

timeliness of the proposed amendment; and whether there were previous opportunities to amend the pleadings.” *Id.* at 467–68. Generally, the most significant factor is the potential for prejudice. *Id.* at 469.

37. There is no potential for prejudice here. Cases finding prejudice “most often involve amendments made during or immediately before trial or where it is too late for the opposing party to adequately respond to the amendment.” *Ocasek v. City of Chicago*, 275 Ill. App. 3d 628, 637 (1st Dist. 1995). In this case, the Policyholders are seeking to amend Griffith’s First Amended Complaint and Sterigenics’ Complaint in Intervention to reflect the consolidated nature of this case, account for new evidence, and update the framework of the case to match the developments in the underlying matters.

38. Further, the insurer-defendants agreed to stay further briefing on Griffith’s pending Motions to Strike their affirmative defenses to the First Amended Complaint and/or repleading their defenses in anticipation of amendments to the First Amended Complaint. This choice reflects the parties’ understanding that such defenses may change given the arguments in Griffith’s Motions to Strike and evolution in the underlying facts. Moreover, no party has filed a dispositive motion, the Court has not heard or granted any substantive motions, the Court has not set a case management order, and there have not been any depositions in this case. Accordingly, no party would be prejudiced by Griffith adding additional defendants and requiring them to respond to the Consolidated Second Amended Complaint.

39. If anything, the Consolidated Second Amended Complaint puts this case on a more natural footing by realigning the pleadings (as discussed below) with the Policyholders Griffith, Sterigenics, and Sotera as Plaintiffs and their insurers as defendants. From there, as defendants,

these insurer-defendants can assert any counterclaims, crossclaims, and third party claims they feel are necessary.

40. Moreover, the Policyholders merely seek leave to include additional insurance policies not dissimilar to the ones already included in the First Amended Complaint and add additional parties, including adding claims against parties already in this consolidated case. The proposed amendment also seeks to include claims with respect to the insurer-defendants' denials of coverage for the California Underlying Suits, which were filed after the last amendment and involve substantially similar legal issues as those in the existing Illinois Underlying Suits. The amendment will not prejudice Insurers as it does not add new legal theories that would fundamentally change the nature of the First Amended Complaint. *See Lee*, 152 Ill.2d at 469 ("Because plaintiff's amendment did not alter the nature and quality of the proof required for the [defendant] to defend, we fail to see how the [defendant] was thereby prejudiced.").

41. The proposed amendment is also timely based on newly discovered evidence. Certain additional evidence was unknown to the Policyholders prior to the filing of the First Amended Complaint, despite the Policyholders' diligent search of their records to locate potentially applicable insurance policies and policy-related evidence. Because the Policyholders exercised due diligence in locating applicable policies, the proposed amendment to include previously unknown policies is justified. *Cf. People ex rel. Foreman v. Vill. Of Round Lake Park*, 171 Ill. App. 3d 443, 447 (2d Dist. 1988) ("[C]ourts often disapprove of late amendments regarding matters of which the pleader knew at the time of the original pleading and for which the pleader offers no good reason for omitting in the original pleading.").

42. Finally, the proposed amendment is justified because the additional documentation will enable Griffith to sustain its existing claims in the First Amended Complaint. *See, e.g., People*

v. Washington, 256 Ill. App. 3d 445, 450 (1st Dist. 1993), *aff'd*, 171 Ill. 2d 475 (1996) (affirming leave to amend based on newly discovered evidence after the close of evidence); *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 104 (affirming leave to amend to conform the complaint to evidence obtained after the complaint was filed).

II. As Part of Consolidating These Complaints the Court Should Realign the Parties

43. The Policyholders’ proposed Consolidated Second Amended Complaint treats Wausau moving forward as a defendant—rather than Wausau as the Plaintiff/Counter-Defendant in *Griffith 1* and Third-Party Defendant in *Griffith 2*. The Consolidated Second Amended Complaint also makes direct claims against National Union (currently a Third-Party Defendant), thereby treating it as a defendant.⁷ For reasons discussed below, the Court should allow this consolidated case to move forward in this posture.

44. Trial courts may grant leave to amend of pleadings “in any matter” and “in any process” that may allow the parties to sustain their claims or defenses. 735 ILCS 5/2-616(a). Trial courts may also at any time allow for the amendment of the pleadings to conform to the proofs. 735 ILCS 5/2-616(c).

45. Here, the Policyholders’ proposed amendment will set this case on its most natural footing: the Policyholders against *all* of their respective insurers—including Wausau, National

⁷ An Illinois federal court has held that National Union has a duty to defend Griffith in the Illinois Underlying Suits. *Sterigenics, U.S., LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A.*, 619 F. Supp. 3d 852 (N.D. Ill. 2022). The court also found that National Union owes Griffith \$16,017,702.62 in past defense costs in the Illinois Underlying Suits. *Sterigenics, U.S., LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A.*, No. 21-CV-4581, 2023 WL 4744914, at *9 (N.D. Ill. July 25, 2023). On January 11, 2024, the court entered an Amended Judgment against National Union awarding Griffith \$22,241,820.35 in defense costs plus \$1,086,943 in prejudgment interest. The Amended Judgment in that case is currently being appealed, but National Union’s duty to defend continues in newly-filed Illinois Underlying Suits and the California Underlying Suit. That federal case did not resolve National Union’s duty to indemnify.

Union, and Travelers—regarding the Policyholders’ entitlement to coverage for the Illinois and California Underlying Suits under the insurers’ policies.

46. Under Illinois law, courts may realign a party in litigation to “reflect[] its true position in the lawsuit.” *J. L. Simmons Co. ex rel. Hartford Ins. Group v. Firestone Tire & Rubber Co.*, 108 Ill. 2d 106, 114 (1985). The Policyholders’ “true position” is as plaintiffs, as they hold the burden to establish coverage in the first instance. *Gibson v. State Farm Mut. Auto. Ins. Co.*, 125 Ill. App. 3d 142, 148 (1st Dist. 1984) (“Our courts have consistently held that the claimant under an insurance policy has the burden of proving that he comes within the terms of coverage”).

47. The Supreme Court in *J.L. Simmons* affirmed realigning the parties in part based on Illinois Supreme Court Rule 233, which “allows a trial judge discretion in selecting the order of appearance” at trial. 108 Ill. 2d at 114. As is relevant here, Rule 233 provides that “[i]n consolidated cases . . . the court shall designate the order” in which the parties in this consolidated action undertake “the selection of prospective jurors as specified in Rule 234, opening and closing statements, the offering of evidence, and the examination of witnesses.” Ill. Sup. Ct. R. 233.

48. Rule 233 is consistent with the Illinois Rules of Evidence, which empower the Court to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.” Ill. R. Evid. 233(a).

49. Treating Wausau, National Union, Travelers, and all other insurers as defendants—and, accordingly, treating the Policyholders as the true plaintiffs with respect to *all* insurers—is appropriate here under Ill. Sup. Ct. R. 233 and Ill. R. Evid. 233(a) because realignment is consistent

with the Court's duty to ensure evidence is presented at trial as clearly as possible to avoid juror confusion.

50. Indeed, courts routinely realign the pleadings in coverage disputes filed by insurers to treat the policyholder as the plaintiff. *See, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Reichhold, Inc.*, No. 1:06CV939, 2009 WL 3125483, at *9 (M.D.N.C. Sept. 30, 2009) (reasoning that "realignment would assist in presentation of evidence and would remove unnecessary confusion given the present alignment of the parties"); *Lloyd's of London Syndicate 2987 v. Bison Drilling & Field Servs., LLC*, No. CV H-18-2677, 2019 WL 1060892, at *3 (S.D. Tex. Feb. 1, 2019), *report and recommendation adopted*, No. CV H-18-2677, 2019 WL 1059979 (S.D. Tex. Mar. 6, 2019) (granting realignment "for convenience and to avoid confusion" because insurer "essentially seeks a declaration that [the policyholder] loses on all of its counterclaims" against the insurer on which the policyholder "will have the burden of proof"). The logic of these cases is equally applicable here.

51. In the same vein, Illinois courts have found realignment to be appropriate where, as here, multiple cases have been consolidated and one party (or, here, one set of parties) holds the initial burden of proof. *See In BP Amoco Chemical Co. v. Flint Hills Resources, LLC*, 697 F. Supp. 2d 1001, 1014 (N.D. Ill. 2010).

52. The foregoing arguments apply equally to Travelers, who filed a Complaint in Intervention. Travelers' Complaint, which was filed shortly before Griffith sought to add Travelers as an insurer-defendant, highlights the need for the Court to allow the Consolidated Second Amended Complaint to go forward as-proposed, which will allow insurers in this case and those about to be joined to sit on their natural footing as defendants against their Policyholders seeking coverage.

CONCLUSION

53. In short, based on newly discovered evidence, the consolidation and merger of this matter, and developments in the underlying defense, the proposed amendment will not prejudice the insurer-defendants and will conform the Policyholders' pleadings to their proof. Additionally, realigning this matter under the Consolidated Second Amended Complaint with the Policyholders as the plaintiffs and all of the Policyholders' insurers (including Wausau, National Union, and Travelers) as insurer-defendants, will reflect the true positions of the parties.

WHEREFORE, the Policyholders respectfully request the following relief:

- A. Granting this Motion, whereafter Griffith will file on behalf of the Policyholders the proposed Consolidated Second Amended Complaint and all accompanying exhibits;
- B. Granting issuance of summons to Defendants AZIC, INIC, AHAC, Continental, Executive Risk, XL Specialty, XL America, Navigators, ACE, Swiss Re, GAAC, GAIC, GAICNY, RSUI, Allied World, Berkshire, National Fire, Aspen, Sentry, and Steadfast;
- C. Granting all existing defendant-insurers (including Wausau, National Union, and Travelers) thirty days from the date Griffith files the Consolidated Second Amended Complaint to answer or otherwise plead;
- D. Denying as moot Griffith's pending Section 2-615 Motions to Strike affirmative defenses to the First Amended Complaint; and
- E. For such other and further relief the Court deems appropriate.

Dated: May 2, 2025

Respectfully and jointly submitted,

/s/ K. James Sullivan

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Firm ID# 13739

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 2, 2025, I electronically filed the foregoing *Policyholders' Renewed Joint Motion for Leave to File A Consolidated Second Amended Complaint* with the Clerk of the Circuit Court of Cook County using the Odyssey File & Serve Illinois E-Filing System, which will send notification of such filing to all parties of record in this action by operation of the Court's electronic filing system.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ James M. Davis
James M. Davis

*One of the Attorneys for Griffith Foods
International Inc. f/k/a Griffith Laboratories U.S.A.,
Inc. and Griffith Foods Group Inc. f/k/a Griffith
Laboratories, Inc.*

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

GRIFFITH FOODS INTERNATIONAL
INC., *et al.*

Plaintiffs-Appellees,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Defendant-Appellant.

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No. 131710

The undersigned, being first duly sworn, deposes and states that on June 23, 2025, there was electronically filed and served upon the Clerk of the above court the Brief of *Amicus Curiae* Swiss Re Corporate Solutions Elite Insurance Corporation in Support of Defendants-Appellants. On June 23, 2025, service of the Brief will be accomplished through the filing manager, Odyssey EfileIL, to the following counsel of record:

SEE ATTACHED SERVICE LIST

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Mark A. Deptula

Mark A. Deptula

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Mark A. Deptula

Mark A. Deptula

SERVICE LIST

Griffith Foods International, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA
 Illinois Supreme Court No. 131710

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