

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

MEEMIC INSURANCE COMPANY,

Plaintiff-Appellant,

vs.

ANGELA JONES,

Defendant-Appellee.

Docket No. 161856

Court of Appeals Docket No. 346361

Lower Court Case No. 18-005480-CK

Hon. John H. Gillis, Jr.

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APPELLANT'S APPENDIX

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APPENDIX

1

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

MEEMIC INSURANCE COMPANY,

Plaintiff-Appellee,

v

ANGELA JONES,

Defendant-Appellant.

UNPUBLISHED

May 21, 2020

No. 346361

Wayne Circuit Court

LC No. 18-005480-CK

Before: MURRAY, C.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Defendant, Angela Jones, appeals the trial court’s order denying her motion for summary disposition and granting plaintiff Meemic Insurance Company’s countermotion for summary disposition. We reverse and remand for proceedings consistent with this opinion.¹

I. FACTS

Jones owned residential property in Detroit, Michigan. In June 2014, Jones applied to purchase a home owner’s insurance policy from Meemic. On the insurance application, Jones represented that she resided at the property even though she did not reside there at that time. Based on the information contained in the application, Meemic issued Jones an insurance policy. The

¹ We disagree with Meemic’s argument that we lack jurisdiction over this appeal. Jones’s motion for reconsideration from the trial court’s final order was filed in the trial court within the 21-day period prescribed in MCR 7.204(A)(1)(b), and the instant claim of appeal was filed within 21 days after the trial court denied Jones’s motion for reconsideration. Contrary to Meemic’s argument on appeal, Jones was not required to identify the order denying reconsideration in the claim of appeal in order for MCR 7.204(A)(1)(b) to apply.

insurance policy provided, in relevant part, the following:

If **we** pay the mortgagee for any loss and deny payment to **you**²:

A. **we** will be subrogated to the extent of **our** payment to all the rights that the mortgagee has under the mortgage on the property; or

B. at our option, **we** may pay to the mortgagee the whole principal on the mortgage and any interest due. In this event, **we** may receive a full assignment and transfer of the mortgage and all securities held as collateral for the mortgage debt.

The insurance policy was effective from July 28, 2014 through July 28, 2015, and the parties later renewed the insurance policy for an additional year.

On September 28, 2015, the property was damaged by a fire. At the time of the fire, Jones resided in the home. On September 28, 2015, Meemic paid Jones an advance payment of \$2,500 in partial payment of the claim for insurance benefits. The advance payment receipt and reservation of rights document, which was signed by Jones, stated, “I further understand that if the policy or the claim is not valid and additional payment is not required by [Meemic], I will repay this partial payment to [Meemic].” During Meemic’s investigation following the fire, it discovered that Jones had misrepresented that she was living at the property at the time she submitted the insurance application. On February 19, 2016, Meemic sent a letter to Jones, rescinding and voiding the insurance policy from its inception on the basis of the material misrepresentation. After rescinding the policy Meemic paid \$53,356.49 to Jones’s mortgagee, CitiMortgage, Inc., under the policy’s standard mortgage clause.

On March 4, 2016, Jones filed suit against Meemic, alleging breach of contract and seeking to recover under the insurance policy. Meemic answered the complaint and later moved for summary disposition, arguing that the insurance policy was appropriately rescinded on the basis of the misrepresentation made by Jones in the application. Jones opposed the motion. On December 28, 2016, the trial court entered an order denying Meemic’s motion for summary disposition “because there was no fraud because [Jones] renewed the policy and the answers were correct at the time of the renewal and [Jones] was a resident [of the home] at the time of the fire.”

Meemic filed an application for leave to appeal the trial court’s decision concerning its motion for summary disposition. On April 19, 2017, this Court reversed the trial court’s December 28, 2016 order denying Meemic’s motion for summary disposition and remanded the matter to the trial court. See *Jones v Meemic Ins Co*, unpublished order of the Court of Appeals, entered April 19, 2017 (Docket No. 337041). Jones filed an application for leave to appeal with our Supreme Court, which was denied. *Jones v Meemic Ins Co*, 501 Mich 951; 904 NW2d 852 (2018). On remand, the trial court entered an order (1) reversing its December 28, 2016 order denying

² The policy defines “**you**” to include “the person or persons shown as **Named Insured**” Jones was the named insured. “**We**” and “**our**” are both defined as “the Company named in the Declarations.” Meemic was named in the declarations.

Meemic's motion for summary disposition, (2) granting Meemic's motion for summary disposition, and (3) dismissing Jones's complaint with prejudice.

On May 15, 2018, Meemic filed suit against Jones, seeking recovery of the \$2,500 advance payment and the \$53,356.49 paid to CitiMortgage. Under Count I, Meemic alleged that it was entitled to recovery of the \$2,500 because the insurance policy was void *ab initio*. Under Count II, Meemic alleged that it was entitled to subrogation for the \$53,356.49 paid to CitiMortgage because it properly denied coverage to Jones and rescinded the policy on the basis of the misrepresentations made in the application. Jones answered the complaint and generally denied the allegations contained therein.

On June 22, 2018, Jones filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that the standard mortgage clause was negated by the rescission of the insurance policy and that the trial court should dismiss the claim for the repayment of the \$2,500 for lack of the circuit court jurisdictional threshold. Meemic filed a response to Jones's motion for summary disposition and filed a countermotion for summary disposition, arguing that it was entitled to the return of the \$2,500 advance payment because it was unaware of Jones's misrepresentation at the time it made the payment and that Jones owed Meemic \$53,356.49 because the standard mortgage clause created a separate contract that required Meemic to pay CitiMortgage.

On October 5, 2018, the trial court issued an opinion and entered an order, granting summary disposition in favor of Meemic. Jones's motion for summary disposition was denied. Jones filed a motion for reconsideration from the trial court's decision, which also was denied. This appeal followed.³

II. STANDARD OF REVIEW

We review de novo a trial court's decision regarding a motion for summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Although the trial court did not identify the subrule under which it granted summary disposition, it is apparent that the motion was granted under MCR 2.116(C)(10) because the trial court's consideration went beyond the parties' pleadings. *Kosmalski ex rel Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 59; 680 NW2d 50 (2004). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers "affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the party opposing the motion." *Smith*, 460 Mich at 454 (citation omitted). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.* at 454-455.

This Court also reviews de novo questions of the proper interpretation of a contract. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). This Court reviews the

³ Jones does not challenge the trial court's holding that Meemic was entitled to summary disposition on its claim that it was entitled to recovery of the \$2,500 that it paid to Jones.

interpretation of an insurance contract just like any other contract. *McGrath v Allstate Ins Co*, 290 Mich App 434, 439; 802 NW2d 619 (2010).

III. ANALYSIS

Jones argues that the trial court erred by granting summary disposition in favor of Meemic on its claim that it was entitled to reimbursement of the \$53,536.49 that it paid to CitiMortgage. We agree.

There are two types of mortgage clauses in insurance policies that protect lienholders—ordinary and standard mortgage clauses. *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 383-384; 486 NW2d 600 (1992). Under a standard mortgage clause,

a lienholder is not subject to the exclusions available to the insurer against the insured because an independent or separate contract of insurance exists between the lienholder and the insurer. In other words, there are two contracts of insurance within the policy—one with the lienholder and the insurer and the other with the insured and the insurer. [*Id.* at 384 (citations omitted).]

Thus, a standard mortgage clause “effects a new and independent insurance which protects the mortgagee as stipulated, and which cannot be destroyed or impaired by the mortgagor’s acts or by those of any person other than the mortgagee or someone authorized to act for him and in his behalf.” *Id.* at 389-390 (quotation marks and citation omitted). Consequently, when an insurance policy contains a standard mortgage clause, misrepresentations in a mortgagor’s application for insurance do not necessarily void the contract between the insurer and mortgagee even when the misrepresentations render the policy void *ab initio* as to the mortgagor. See e.g., *Wells Fargo Bank, NA v Null*, 304 Mich App 508, 529-530; 847 NW2d 657 (2014). See also Couch, Insurance, 3d § 65:65 (recognizing that a standard mortgage clause “makes a new contract between the insurer and mortgagee, which is unaffected by the misrepresentations or false statements of the mortgagor . . . , of which the mortgagee is ignorant, whereby the insurance never became valid as to the mortgagor”).

With respect to whether the insurance policy at issue in this case contained a standard mortgage clause, the language of insurance contracts should be read as a whole and must be construed to give effect to every word, clause, and phrase. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). When the policy language is clear, a court must enforce the specific language of the contract. *Hensier v Frankenmuth Mut Ins Co*, 449 Mich 155, 160; 534 NW2d 502 (1995). Standard mortgage clauses “are generally identifiable within an insurance policy on the basis of their language.” *Wells Fargo Bank*, 304 Mich App at 524. A standard mortgage clause contains

language that serves to afford coverage to the mortgagee even where it is not afforded to the insured. The result of such language is that “the lienholder’s interest in the insured’s property will not be avoided by any acts, representations, or omissions of the insured.” A standard loss payable clause thus may contain language indicating, for example, that the mortgagee will be covered

notwithstanding “any act or neglect by the insured” that may result in the denial of coverage to the insured. [*Id.* at 524-525 (citations omitted).]

In relevant part, the insurance policy at issue in this case contains the following clause:

Rights and Duties of Mortgagee. The term “mortgagee” includes a trustee or a land contract holder, if applicable.

If a mortgagee is named in the Declarations, any payment for loss under Coverage A or B will be made to the mortgagee and **you**, as interests appear⁴

The interest of the mortgagee under this policy will not be affected by any action or neglect by **you**. The interest of the mortgagee under this policy will terminate unless it notifies **us** of any change of ownership, occupancy or substantial change in risk of which the mortgagee has knowledge and pays upon demand any premium due if **you** fail to do so.

Thus, the plain language of the policy provides that “any action or neglect” by Jones (the named insured) would not prohibit recovery by CitiMortgage (the mortgagee). We conclude that this is a standard mortgage clause that created a separate, independent contract between Meemic and CitiMortgage. Consequently, Meemic’s rescission of Jones’s policy based on the acts of Jones at the time she procured the policy did not affect Meemic’s independent contract with CitiMortgage.

With respect to whether Meemic has subrogation rights even though the insurance policy between Meemic and Jones was rescinded, the insurance policy included conditions regarding the rights and duties of Meemic:

If **we** pay the mortgagee for any loss and deny payment to **you**:

A. **we** will be subrogated to the extent of **our** payment to all the rights that the mortgagee has under the mortgage on the property; or

B. at our option, **we** may pay to the mortgagee the whole principal on the mortgage and any interest due. In this event, **we** may receive a full assignment and transfer of the mortgage and all securities held as collateral for the mortgage debt.

Thus, in relevant part, the plain language of the contract provides that, if Meemic paid CitiMortgage “for any loss” *and* denied payment to Jones, Meemic would have rights of subrogation. Jones argues that, because Meemic rescinded the policy—as opposed to simply denying her claim—Meemic is not entitled to subrogation.

Because the policy does not define the term “deny,” we must turn to dictionary definitions to decipher its meaning. See *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 84; 730

⁴ CitiMortgage was listed as the mortgagee on the policy declaration.

NW2d 682 (2007). *Random House Webster's College Dictionary* (1997) defines “deny” as “to refuse to agree or accede to”; “to withhold something from, or refuse to grant a request.” In contrast, *Random House Webster's College Dictionary* (1997) defines “rescind” as “to revoke, annul, or repeal.” Thus, the contract only granted Meemic the right of subrogation if it paid CitiMortgage and refused to pay Jones’s claim under the policy—as opposed to entirely annulling Jones’s rights under the policy.

It is undisputed that Meemic paid \$53,356.49 to CitiMortgage. However, Meemic decided to do more than refuse to pay Jones’s claim under the policy. Meemic voided the policy *ab initio* due to Jones’s material misrepresentation.⁵ Thus, because the contract only contemplates rights of subrogation when a claim is denied, Jones is not contractually obligated to pay \$53,356.49 to Meemic under the terms of the policy. Consequently, we conclude that the trial court erred by granting summary disposition in favor of Meemic as to the recoupment of the payment to CitiMortgage.

In so holding, we note that Meemic argues that *Citizens State Bank of Clare v State Mut Rodded Fire Ins Co of Mich*, 276 Mich 62; 267 NW 785 (1936), establishes that it is entitled to subrogation despite the fact that Meemic rescinded the insurance policy. We disagree. In *Citizens State Bank*, after property was destroyed by fire, the insurance company argued that the insurance policy was void *ab initio* because of material misrepresentations that were made by the mortgagor in the insurance application. *Id.* at 65. After the mortgagee filed suit against the insurance company to enforce the standard mortgage clause contained in the policy, the trial court entered a judgment in favor of the mortgagee but held that the insurance company was not entitled to subrogation from the mortgagor. *Id.* at 65, 69-70. The insurance company appealed. *Id.* at 65.

When considering whether the insurance company was entitled to subrogation, our Supreme Court analyzed the contract’s plain language. *Id.* at 70. In doing so, the *Citizens State Bank* Court noted that the insurance policy provided that, when the insurance company “shall pay the mortgage (or trustee) any sum for loss or damage under [the] policy” and the insurance company “shall claim that as to the mortgagor or owner, no liability therefor existed,” the insurance company would thereafter be “legally subrogated [to the extent of such payment] to all the rights of the party to whom such payments [were] made” *Id.* The *Citizens State Bank* Court agreed that the mortgagor’s misrepresentations concerning the total dollar amount of the encumbrances on the property appeared to be material misrepresentations that would void the policy as to the mortgagor. *Id.* at 70-71. Nonetheless, because the record was incomplete and certain “facts” were not before the Court, our Supreme Court reversed the trial court’s judgment and granted a new trial. *Id.* at 71.

Thus, contrary to Meemic’s arguments, the Court in *Citizens State Bank* did not hold that an insurance company is entitled to subrogation even after it elects to rescind an insurance policy due to the insured’s misrepresentations at the time the policy is procured. Moreover, the Court in *Citizens State Bank* began its analysis by interpreting the plain language of the insurance policy,

⁵ When a policy is void *ab initio*, it is as though the policy never existed. *Epps v 4 Quarters Restoration, LLC*, 498 Mich 518, 536-539; 872 NW2d 412 (2015) (observing that a contract that is void *ab initio* is a nullity at the outset).

which provided that subrogation was permitted when the insurance company determined that “no liability therefor existed” “as to the mortgagor or owner[.]” *Id.* at 70. This language is different from the language of the insurance policy at issue in this case. As already discussed, the insurance policy in this case is narrower in that it permits subrogation only when the insurance company *denies* coverage. Consequently, we conclude that Meemic’s reliance on *Citizens State Bank* is misplaced.

Meemic also relies on *Marketos v American Employers Ins Co*, 240 Mich App 684; 612 NW2d 848 (2000), rev’d in part on other grounds by 465 Mich 407 (2001). However, Meemic’s reliance on *Marketos* is misplaced because that case concerned whether an insurance company was entitled to a setoff of the proceeds that it paid to the insured’s mortgagee under a standard mortgage clause. *Id.* at 690-696.⁶

Finally, Jones argues in her reply brief that this Court should dismiss Meemic’s action because it was filed after the statute of limitations expired. However, “[r]epley briefs must be confined to rebuttal, and a party may not raise new or additional arguments in [her] reply brief.” *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159, 174; 744 NW2d 184 (2007). Because the statute of limitations argument was improperly raised for the first time in Jones’s reply brief, we decline to consider it.

Reversed and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron

⁶ Meemic also relies on *Nationwide Mut Fire Ins Co v McDermott*, 603 Fed Appx 374 (CA 6, 2015), to support that it is entitled to subrogation even though it rescinded the policy. However, Meemic’s reliance on *McDermott* is misplaced because, unlike in this case, the insurance company in *McDermott* did not void the policy *ab initio*; rather, the insurance company contended that the insured’s claim “was not covered under the policy” because the insured failed to comply with the terms of the policy after it was issued. *Id.* at 375-377. Meemic’s reliance on *Wyckoff v Standard Fire Ins Co*, 936 F2d 1474 (CA 6, 1991), is also misplaced because the policy language in that case is distinguishable from the policy language herein. Specifically, like the contractual language in *Citizens State Bank*, the contractual language in *Wyckoff* provided that the insurance company was entitled to subrogation if it paid “the mortgagee any sum for loss under th[e] policy” and “claim[ed] that, as to the mortgagor or owner, no liability therefor existed . . .” *Id.* at 1491. As already stated, the policy language at issue in this case is narrower in that it only grants Meemic the right of subrogation if it denies a claim. Meemic also relies on numerous opinions from other jurisdictions to support that it is entitled to contractual subrogation in this case. However, those opinions are not binding on this Court. See *Auto Owners Ins Co v Seils*, 310 Mich App 132, 147; 871 NW2d 530 (2015).

APPENDIX

2

Court of Appeals, State of Michigan

ORDER

Meemic Insurance Company v Angela Jones

Docket No. 346361

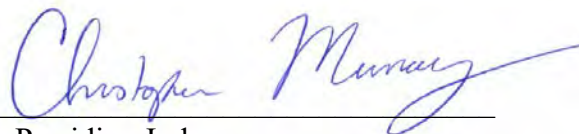
LC No. 18-005480-CK

Christopher M. Murray
Presiding Judge

Brock A. Swartzle

Thomas C. Cameron
Judges

The motion for reconsideration is DENIED.

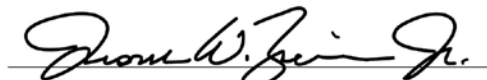

Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

July 7, 2020

Date


Chief Clerk

Appellant's Appendix_010a

APPENDIX

3

Court of Appeals, State of Michigan
ORDER

Angela Jones v Meemic Insurance Company

Docket No. 337041

LC No. 16-002960-CK

Cynthia Diane Stephens
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration, styled as a motion to expedite, is GRANTED.

Pursuant to MCR 7.205(E)(2), the Court orders that the trial court's December 28, 2016 order denying defendant's motion for summary disposition is REVERSED. It is undisputed that but for plaintiff's initial misrepresentation about her residence, defendant would not have issued the policy. Accordingly, plaintiff's misrepresentation was material and it entitled defendant to rescind her policy regardless of intent. *Titan Ins Co v Hyten*, 491 Mich 547, 556; 817 NW2d 562 (2012); *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995); see also *Keys v Pace*, 358 Mich 74, 81; 99 NW2d 547 (1959). That plaintiff's misrepresentation was no longer false at the time her policy renewed and on the date of loss is of no moment since plaintiff's eligibility for the renewal hinged on the representations made in her initial application. *21st Century Premier Ins Co v Zufelt*, 315 Mich App 437, 446-447; 889 NW2d 759 (2016). Defendant's motion for summary disposition should have been granted.

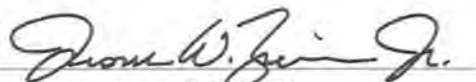
This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 19, 2017
Date


Chief Clerk

APPENDIX

4

Order

January 3, 2018

155851

ANGELA JONES,
Plaintiff/Counterdefendant-Appellant,

v

MEEMIC INSURANCE COMPANY,
Defendant/Counterplaintiff-Appellee.

Michigan Supreme Court
Lansing, Michigan

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

SC: 155851
COA: 337041
Wayne CC: 16-002960-CK

On order of the Court, the application for leave to appeal the April 19, 2017 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



s1220

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 3, 2018

Clerk

Appellant's Appendix_014a

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APPENDIX

5

February 19th, 2016

Ms. Angela Jones
4244 LAKE POINTE
DETROIT, MI, 48224

RE: Policy Number: HOP0268181

Claim Number: 20033355

Location address: 4244 LAKE POINTE, DETROIT, MI, 48224

RECISSION OF POLICY FROM INCEPTION

Dear Mrs. Jones,

We have recently reviewed your insurance policy, along with the qualification and rating information you provided, including, but not limited to, the information on the **Michigan Homeowners Insurance Application** for policy number HOP0268181 (“Policy”) issued effective July 28th, 2014, which was renewed annually thereafter. When we issued the Policy and calculated the premium, we relied upon the information you provided. Specifically, we relied upon the following information:

1. The home on 4244 Lake Pointe, Detroit, MI, 48224 was your primary residence.
2. There were no additional residences occupied by you disclosed on the application.
3. The application further indicated the property owner resides and expects to continue to reside at the premises throughout the policy period.
4. The premise was not vacant and would not be vacant or unoccupied for more than 60 days.

Our review of this information reveals that the information provided was false and misleading and included misrepresentations which all concerned material facts and circumstances which materially affected risks which Meemic assumed by issuing the policy. The false or misleading facts included, but is not limited to, the following:

1. At the time of application, your primary residence was **not** 4244 Lake Pointe, Detroit, MI, 48224.
2. At the time of application, you rented the residence at 4244 Lake Pointe, Detroit, MI, 48224, which was insured under the Policy, to Gwendolyn Sommers and the premises was **not** your primary residence.

In reviewing the **Michigan Homeowners Insurance Application** you executed to request Meemic Insurance Company insure the premises located at 4244 Lake Pointe, Detroit, MI, 48224, the following paragraph is above your signature:

NOTICE TO APPLICANTS

APPLICANT'S CERTIFICATION: PLEASE READ CAREFULLY-

I certify that I have answered every question on this application and provided all of the information on this application, and that all of the answers to all of the questions on the application and all of the information provided on the application is true and correct, and I understand, recognize and agree that these answers and information are given and made for the purpose of inducing Meemic to issue the policy of insurance for which I am applying. I understand that Meemic may declare this policy null and void, not only as to the applicant(s), but as to any insured's, claimants, or anyone with an interest in the insured property, if any answers or any information on this application are false, misleading, or materially affect the risk that Meemic assumes by issuing the policy. I understand that I have a continuing duty to notify Meemic of any changes to any of the answers to the questions and the information requested in this application, such as additions, renovations, or occupancy changes. I further understand that Meemic may declare this policy null and void not only as to the applicant(s), but as to any insured's, claimants, or anyone with an interest in the insured property, if I do not comply with my continued duty to advise Meemic of any changes as stated herein.

Further, the Policy in question at page 2 reads as follows:

OUR AGREEMENT WITH YOU

In exchange for the premium payment when due, we agree with you to provide insurance for the Coverages and Limits of Liability stated on the Declarations made a part of this Policy. This agreement is subject to all terms of this Policy which is issued in reliance upon the declarations made in the Application and contained in the Declarations. This policy form together with the Declarations and any endorsements named on it completes the Policy. If this policy form is revised, it will be amended or replaced at the beginning of the next Policy Term.

Furthermore, the Policy reads as follows on page 23:

2. Concealment or Fraud. This policy is void as to all persons within the meaning of Paragraph 1 of the definition of **you** if any person so defined intentionally conceals or misrepresents any material fact or circumstance or makes false statements or engages in fraudulent conduct relating to this insurance, either before or after a loss.

Meemic would not have issued the policy if the true facts were disclosed in the application. We must conclude that material facts or circumstances relating to this insurance, and the declarations or applications for, or renewal of the policy, were concealed or misrepresented.

As a result, Meemic Insurance Company has decided to **RESCIND AND VOID** the Policy issued to you (Policy Number **HOP0268181**) effective July 28th, 2014. Therefore, your claim on September 28th, 2015 is denied.

Enclosed with this letter of **RESCISSION OF POLICY RENEWAL** is a draft representing a full refund of all premiums paid on this policy, policy number **HOP0268181**, from July 28th, 2014 to present, by you to Meemic Insurance Company. Enclosed is Check No. 3062970 in the amount of \$1,723.48, representing the premiums paid of \$1,665 and interest in the amount of \$58.48.

Sincerely,

Patrick Kline
Underwriting Manager
Meemic Insurance Company

Enclosure
cc: Garnder Insurance Agency

APPENDIX

6

Underlying Complaint

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STATE OF MICHIGAN
IN THE WAYNE COUNTY CIRCUIT COURT

ANGELA JONES,

Plaintiff,

Case No. 16-
Hon.

CK

v

MEEMIC INSURANCE COMPANY,

Defendant.

JO ROBIN DAVIS (P31263)
JO ROBIN DAVIS, PLLC
30300 Northwestern Highway, Ste. 104
Farmington Hills, MI 48334
(248) 932-0100 ext. 254

16-002960-CK
FILED IN MY OFFICE
WAYNE COUNTY CLERK
3/4/2016 11:47:04 AM
CATHY M. GARRETT

There is no other action arising out of the same transaction or occurrence as alleged in this Complaint, pending in this Court, nor has any such action been previously filed and dismissed after having been assigned to a Judge.

/s/ Jo Robin Davis
Jo Robin Davis, Attorney for Plaintiff

COMPLAINT

NOW COMES Plaintiff ANGELA JONES, by and through her attorney, Jo Robin Davis, PLLC, and complaining against the above-named Defendant, states as follows:

COMMON ALLEGATIONS

1. At all times relevant hereto Plaintiff was a resident of the City of Detroit, County of Wayne, State of Michigan.
2. Defendant Meemic Insurance Company is a Michigan insurance company which conducts business in the County of Wayne, State of Michigan.
3. The amount in controversy exceeds Twenty-Five Thousand Dollars (\$25,000.00).

4. Defendant issued to Plaintiff policy #HOPO268181, a copy of which is in the Defendant's possession, which covered the aforementioned property at all times relevant hereto.

5. All premiums were paid and current and the above-mentioned policy was in full force and effect on or about September 28, 2015.

6. On or about September 28, 2015, a fire occurred at the premises located at 4244 Lakepointe, Detroit.

7. As a result of the aforesaid occurrence, the building and contents owned by Plaintiff located at 4244 Lakepointe in Detroit were severely damaged.

8. Plaintiff timely notified Defendant that he had suffered the losses above set forth.

9. Plaintiff testified at an examination under oath and complied with all policy requirements.

10. Defendant attempted to rescind Plaintiff's policy and refused to accept liability for Plaintiff's losses.

COUNT I - BREACH OF CONTRACT

11. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 11 of Plaintiff's Common Allegations as though fully set forth herein.

12. Defendant Meemic Insurance Company owed Plaintiff the duty to act fairly and reasonably in investigating and paying Plaintiff's claims, to act in good faith, and to timely pay Plaintiff's claims.

13. Meemic, through its agents, representatives, employees and investigators, failed to act fairly and reasonably in investigating and paying Plaintiff's claims, failed to act in good faith, and failed to timely pay Plaintiff's claims. Defendant's wrongful and dilatory conduct includes;

- a. Failing to make full or partial payment of Plaintiff's claims pursuant to the terms of the policy;
- b. Pursuing false defenses to Plaintiff's claims;
- c. Conducting an investigation for the purposes of creating potential defenses to paying Plaintiff's claims rather than to fairly and honestly determine its liability to Plaintiff;
- d. Asserting defenses to Plaintiff's claims when it knew, or reasonably should have known, that said defenses were false.
- e. Abusing its contractual relationship which put Defendant in a position of actual or apparent authority over the Plaintiff and gave Defendant the power to affect Plaintiff's interest and the insurance proceeds and Plaintiff's damaged property;

14. Defendant breached Plaintiff's insurance contract with Defendant.

15. As a direct and proximate result of said breach of contract, Defendant remains indebted to Plaintiff for the insured losses, and Plaintiff is entitled to recover consequential damages sustained that were in the contemplation of the parties from the time the contract was made or which are the natural and usual consequences of a breach of a property insurance contract.

WHEREFORE, Plaintiff ANGELA JONES prays for Judgment against Defendant MEEMIC INSURANCE COMPANY for whatever amount this Honorable Court deems fair and just, including consequential damages, as well as interest, costs and actual attorney fees.

**COUNT II - VIOLATION OF MICHIGAN
COMPILED LAWS CHAPTER 20**

16. Plaintiff hereby realleges and incorporates herein by reference paragraphs 1 through 16 of Plaintiff's Complaint as though fully set forth herein.

17. MCLA §500.2833 provides that losses shall be paid under the terms of a fire insurance policy within thirty (30) days after receipt of proof of amount of loss.

18. Defendant received proof of the amount of loss.

19. Section 2006 of the Insurance Code of 1956, as amended, same being MCLA §500.2006, provides for the addition of twelve (12%) percent interest on claims when claims are not timely paid.

20. Defendant has been dilatory in making payment.

21. As a result of the aforesaid failure of Defendant to timely pay Plaintiff's claims, Plaintiff is entitled to twelve (12%) percent interest.

WHEREFORE, Plaintiff ANGELA JONES prays for Judgment against Defendant MEEMIC INSURANCE COMPANY, granting Plaintiff an additional twelve (12%) percent penalty interest against Defendant, as well as statutory interest, costs and attorney fees.

Dated: March 4, 2016

Respectfully submitted,

/s/ Jo Robin Davis
Jo Robin Davis, (P31263)
Attorney for Plaintiff
30300 Northwestern Highway, Suite 104
Farmington Hills, MI 48334
(248) 932-0100

APPENDIX

7

Advance Payment and Reservation of Rights

OCT 01 2015

2033355

Advance Payment Receipt and Reservation of Rights

- 749

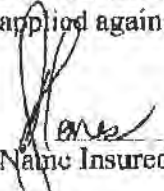
I, the undersigned, hereby acknowledge the receipt of Two thousand five hundred Dollars (\$ 2500.00) in partial payment of the claim for insurance benefits Which I have submitted to MEEMIC insurance company (herein the Company), under policy number H0P0268181. The claim I have made pertains to a fire loss which I have reported as having occurred on or about the 28th day of September, 2015.

I understand that the Company is continuing to investigate, in good faith, the claim I have Made, that my claim has neither been accepted nor denied, that the advance payment is not an admission of liability on the part of the Company, and that this advance should not be considered payment under the policy.

I further understand that the Company reserves its rights under the policy and will require my compliance with all the conditions of the policy including my submission of receipts, invoices, books and records, and that the Company may exercise its right to require me to take an examination under oath, if deemed necessary.

I further understand that if the policy or the claim is not valid and additional payment is not required by the Company, I will repay this partial payment to the Company.

I further understand that if the policy and claim and deemed valid, the advance will be applied against any benefit due under the policy.

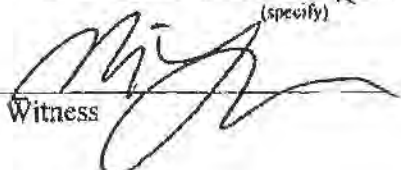

Name Insured

Additional Insured

9-28-2015
Date

Paid under coverage

C-Contents
(specify)


Witness

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APPENDIX

8

Q: Okay. Miss Jones, I'm Sandy Hubbard with Meemic Insurance. Today's date is um Tuesday, October 6th, 2015. The time of day is um is probably just about—

A: (Inaudible)

Q: 5:30 PM. Speaking with you regarding our claim number 20033355. I just want to make sure you know I'm recording and confirm I'm doing that with your permission, okay?

A: Okay.

Q: Thank you. Can you state your full name for me, please?

A: Angela Jones.

Q: Okay. And um this concerns a um a fire at a property on Lakepointe. Um eh can you tell me where you were residing at the time of that fire?

A: I was actually at work.

Q: Okay. Um can you tell me where you were living at that time?

A: Oh at 4244 Lakepointe. I'm sorry.

Q: That's okay. All right. And how long had you lived there?

A: Eight years.

Q: Okay. But can you tell me what year you moved in —

A: (Inaudible)

Q: Was that '08?

A: Yeah.

Q: (Inaudible)

A: 8 (inaudible) yeah.

Q: All right. Thanks for doing the math for me. (Inaudible) all right, uh you moved in in 2008.

A: 2008.

Q: All right. Where had you lived before that?

A: Um I was staying in a house um on the west side.

Q: Okay. Do you remember the address or street name?

A: Um (inaudible) it was on the west side. Um ooh Hartwell? It's right off (inaudible) and Schaefer (unknown spelling).

Q: Okay. How long (inaudible) had you been living there?

A: Uh only for a year.

Q: About one year?

A: Yes.

Q: Okay. And where at before uh before Hartwell?

A: Um (inaudible) before Hartwell. I was staying in an apartment.

Q: Okay.

A: (Inaudible) was I staying in an apartment? Let me see. 2000-, no I was staying (inaudible) I was actually taking care of my grandmother.

Q: Oh okay.

A: I was taking care of my grandma.

Q: Were you living at a different address?

A: Um yes, I was staying uh with her.

Q: Okay.

A: She (Inaudible)

Q: Not that you need it, but you're welcome.

A: (Inaudible)

Q: Uh you were staying with your grandmother then?

A: Yes.

Q: And what addr- what street name or address?

A: On Willis. I don't know the um...

Q: Okay. You mentioned um, again, I'm trying to be respectful. I don't want to ask you –

A: Okay.

Q: Anything too private. Your mortgage, um who's it with?

A: CitiMortgage.

Q: Okay. And what's the monthly payment?

A: Um 398.

Q: Okay. Have you ever been over 30 days late? I mean we talked a little bit about –

A: Yes, I have.

Q: Okay.

A: I have.

Q: On what occasion and or occasions?

A: Um actually (sigh) my father, he's um sick.

Q: Oh (inaudible)

A: He-he's just um he had got diagnosed with um cancer, prostate.

Q: (Inaudible)

A: So he's in a process of doing um chemo and radiation now.

Q: Okay.

A: I have a brother that's in hospice now.

Q: Oh my gosh.

A: So like I say I'm just going through a lot way before this even took place.

Q: (Inaudible)

A: And um just I got behind because I was, my father (inaudible) needed stuff.

Q: Mm hmm.

A: You know what I'm saying? But I wound up paying everything up, but I had to do a lot because of my father's situation and my brother's situation so.

Q: Okay.

A: It was just more of basically just trying to help them and get them what they need far as...

Q: Mm hmm.

A: (Inaudible)

Q: (Inaudible)

A: Just stuff that they needed.

Q: Okay.

A: So.

Q: I'm very sorry.

A: It's okay.

Q: (Inaudible) this is, that's very, that's very hard. Um so uh how many times would you say you may have been 30 days late?

A: Um probably about three-three months.

Q: Okay. About three times.

A: Uh yeah, three times and –

Q: Okay.

A: Like I say I...

Q: Okay.

A: Wind up catching up and just paying everything off but...

Q: (Inaudible)

A: It was uh it was –

Q: Recently or?

A: No, it was like, yeah, it was this year.

Q: This year? Okay.

A: But um like I said it was, I had to do what I had to do for my father and them, so of course I had to put my, uh I mean I didn't want to put my mortgage stuff on hold, but it was stuff that my father (inaudible) really needed as far as his medication and stuff that he was just going through, and I knew that I had the money to actually catch up on my mortgage so.

Q: Yeah, okay.

A: I mean, sorry. I mean I just...

Q: Yeah, it's okay.

A: That's why I was (inaudible) house. I was like, yeah, I just don't know what I was going through before all this took place so.

Q: Mm hmm, yeah. Very, very difficult. I'm very sorry. I'm going to give you a minute. I'm going to cross off some of the things on here and then we'll...

A: Okay.

Q: Continue and we'll finish up so you can eat dinner. When you had that claim with AAA, was it paid?

A: Um yeah.

Q: Did they pay, they paid you? Okay. Can you tell me who Gwendolyn Summers is, if you know?

A: Yeah, she was a um person that actually stays in my home.

Q: Uh when was that?

A: Um she stayed in there last year.

Q: As a friend or family member?

A: No. It was just somebody that, actually I had rented my house out.

Q: Okay.

A: (Inaudible)

Q: Um and Mary Berry (unknown spelling), do you know who Mary Berry (unknown spelling) is? I know that...

A: Mary (unknown spelling), no, I don't know no Mary Berry (unknown spelling).

Q: Okay, all right.

A: Just-just her, so I don't know.

Q: Okay.

A: You know. I know her kids and her was in the house, but like I said, I don't know nobody else.

Q: Okay. Gwendolyn Summers and her children –

A: Right.

Q: Rented your home?

A: Mm hmm.

Q: Okay. From when to when?

A: Um last year, wait, 2013.

Q: Um...

A: To May 2012, 2000-, wait, this is 2015. Yeah. 2000-... um 2000- my son graduated in 2012. 2012 to 2013, or 2011 to 2012.

Q: Go ahead and take, think about it and let me know.

A: Okay. Yeah, it was 2012 to, wait. 2013 to 2014. A year.

Q: Okay. Can you tell me what season in 2013?

A: Um it was in November.

Q: Okay. And so she moved in November 2013 and then left when?

A: 2014.

Q: And do you remember what season?

A: Um...

Q: Or month?

A: April, May, May.

Q: Okay. All right. And during that time where did you stay?

A: I was staying in an apartment.

Q: Okay. Where at?

A: Um let me see. What's the name of them apartments? Um Metro Woods in Clinton Township.

Q: What was the name of the street?

A: Metro Woods Apartments.

Q: Um...

A: Metro Woods.

Q: Metr- just Metro Woods?

A: Mm hmm.

Q: Okay. So you leased an apartment?

A: Yes.

Q: Okay.

A: I did.

Q: What prompted you to lease, to move out or rent the home?

A: What did I do what?

Q: What prompted you to make that change?

A: Um I just wanted to move because my son, he had um went to school and then he had to come back home because I had like I said the school that I was working for had closed down.

Q: Mm hmm.

A: So I couldn't really afford to pay for him to go to school so (inaudible)

Q: (Inaudible) for you mean going away after —

A: Yeah, he went to Saginaw.

Q: Saginaw Valley?

A: And then um he had to come back and he wanted to go into Macomb County.

Q: Okay.

A: So yeah.

Q: Um just so I understand, I'm not trying to be um you know incredibly personal, but I'm trying to understand what, is there a reason you had to rent the home out as opposed to just having your son come home and go to community college? It sounded like you had a, you know that you had a comfortable mortgage payment, so I'm trying to understand why you —

A: I mean I did, I mean but I didn't want to be in the house by myself, so I mean it's a big three-bedroom house and when my son left...

Q: Okay.

A: I did not want to stay there by myself so —

Q: Okay.

A: I just wanted to downsize.

Q: So, okay. So you wanted to um move out whi-while your son was at Saginaw Valley?

A: (Inaudible)

Q: Okay. So was your son at Saginaw Valley in 2013, 2014?

A: Yeah, he left in 2013 —

Q: Okay.

A: In August.

Q: Okay, all right. Um and then...

A: I rented my house out in November of 2013.

Q: Okay. Did you ever rent it out to anybody besides Gwendolyn Summers?

A: No, that was it.

Q: Okay, okay. And then did you move back in at some point?

A: Yeah, I moved in. When she moved out, I moved back in because I didn't have nobody to rent it out and then I had you know just a lot of stuff that was going on and I just moved back to the house.

Q: Okay.

A: Because I didn't have time to put it back on Section 8 or do all that because even when I rented it out to her, it still took, I was out for that summer and she winded up calling me, like you know I was doing applications, whatever, and she winded up calling me or whatever, and I had met with like different people, whatever.

Q: Okay.

A: Far as my home or whatever, and it was just with her, she just reminded me of me far as a young parent...

Q: Mm hmm.

A: Single parent or whatever, but she had three kids. Of course I only have one, but I just wanted to be a, you know I felt like Habitat was a blessing to me, so I wanted to be able to assist somebody else that was in need –

Q: Mm hmm.

A: And she was just going through a lot of things and when she was telling me her story, I just was like you know "I'm going to just give it to you," you know. Out of all the people that I actually picked I felt comfortable with her, and um when she had came to my house because she had wanted to see the house, she had came by herself.

Q: Mm hmm.

A: And I had told her, I said, "Well as a mother," you know what I'm saying, because she was just of course she's younger than me, way younger than me. I

said, "As a mother or a sister," I said, "Don't you ever come to nobody house to see a house by yourself."

Q: Mm hmm.

A: I say, "You don't know who I am. You don't even know if this actually my home," you know and I was just giving her advice, you know as a young parent. And she was like, "Yeah, you're right, you're right." She was like, "This would be the perfect place because..." her family was in that area you know.

Q: (Inaudible)

A: And then in school, I guess she was still, where she was at she was downtown on Jefferson.

Q: Okay.

A: So her son's school was over there where (inaudible) actually where my house was at.

Q: Okay.

A: So she was like, "This will really be a help to me. My son's school is over here, everything. My grandparents," and so on and so on (inaudible). Her grandmother was sick as well.

Q: Okay.

A: So you know of course like I said the heart that I have...

Q: (Inaudible)

A: You know I was just like you know what I'm going to give it to you. And I let her move into my house without security deposit. All I had, all I ask her to do was pay me first month rent, and she was like, "Are you for real?" and I was like, "Yes." I said, "I'm not (inaudible) in need of no money. I just want to be a blessing."

Q: Okay.

A: And she was like, "Okay."

Q: (Inaudible)

A: And that was it.

Q: Uh and that worked out okay?

A: Yep, it worked out okay.

Q: Okay. And is it just that she left after... I mean did she, was she supposed to stay there longer than six months?

A: No, it was only a year so I mean she um...

Q: Okay, but you said –

A: She said –

Q: It looks like only six months here from –

A: Oh no. She stayed from, okay, wait, wait, wait. She stayed from November to November uh because her lease was only a year.

Q: Okay. So November of '13 to November of '14?

A: Yes.

Q: All right. And you signed a lease with Metro Woods?

A: Yes.

Q: And you lived at Metro Woods from when to when?

A: The time that she moved into my house.

Q: From November to November?

A: To, yes.

Q: Okay. Have you lived anywhere else in the past six years besides um...

A: The other place.

Q: Lakepointe and Metro Woods?

A: No.

Q: Okay. What about on Santa is it Maria?

A: That's my mother.

Q: That's, okay.

A: I just use, I still use her address far as just you know mail this, you know how your mail still goes to your parents' house or whatever so.

Q: Okay. I wondered (inaudible)

A: I just, yeah.

Q: Address said seemed to be associated with you.

A: I (inaudible) far as like my school and stuff far as when I was in school, use her address for everything.

Q: Okay.

A: (Inaudible) I know she ain't going nowhere.

Q: Okay. Um okay. We're almost done here. Um we talked about, uh are there any other, do you have any other monthly obligations that you're more than 30 days behind on?

A: Oh no. That's really, my mortgage was the only thing. My car and all that stuff was, everything else was (inaudible) my major bills especially on time.

Q: Okay. Were you were you interested in-in staying here at this address longer or were you thinking about moving in the near future?

A: (Inaudible) at, what (inaudible) um on Lakepointe?

Q: Yeah.

A: No. I was just going to sit there because I didn't want to constantly moving.

Q: Oh.

A: So when I came back to my house, I just was like painting again, you know started fixing my house up far as getting you know furniture and bedroom set, you know just...

Q: Have you ever had any water damage to the home?

A: No.

Q: Any flooding?

Q: Okay. The fire department ever been out to your house before?

A: Nope, never been out.

Q: Okay.

A: That was they first time.

Q: You made a police report for the attempted break-in?

A: Yeah, I made a police report for that too.

Q: The police ever been out to your house at all?

A: Nope.

Q: Okay.

A: They've never been out to my house.

Q: All right.

A: Except for when I had my break-in from, prior to the first time I came and then

—

Q: Okay.

A: You know, now they say you gotta go inside to make a police report.

Q: Okay. Miss Jackson, there might be a few other things. I know it's impossible to bel- you know to really believe that since we've talked for over an hour now.

A: Okay.

Q: I'm gonna go ahead because it's late and I know you're, you need to eat, I'm gonna go ahead and wrap up. If there's anything else I will, you know we'll go back —

A: Okay.

Q: On the record. We can even do it by phone.

A: Okay.

Q: I just want to make sure you know I recorded and confirm I did that with your permission, okay?

20033355

Angela Jones

10/22/2015

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A: Okay, that's fine.

Q: All right? Thank you so much.

A: And I'm gonna send the um—I'm trying to find –

(End of recording)

APPENDIX

9

Insurance Application



Meemic Insurance Company
 1685 N Opdyke Rd
 Auburn Hills, MI 48326-2656
 1-888-4 MEEMIC ■ FAX: (248) 377-8535

MICHIGAN HOMEOWNERS INSURANCE APPLICATION

PAYMENT PLAN ☒ Full Pay 40/30/30 ☐ APP Monthly		AGENCY CODE 21241	EFFECTIVE DATE (12 MONTH PERIOD) 07/28/2014	EXPIRATION DATE 07/28/2015	PURCHASE DATE 07/01/2013	POLICY NUMBER HOPQ272073
Cash Received \$ 0 Total Premium \$ 447.00		SUB PRODUCER CODE 00002	DATA ENTRY DATE	INITIALS	APPROVAL DATE	INITIALS MSB ESTIMATE # 476360 MSB AMOUNT \$ 162000
HOUSEHOLD INFORMATION						
APPLICANT'S NAME ANGELA JONES			SPOUSE'S NAME		AREA CODE & HOME PHONE	
PREMISES ADDRESS (STREET) 4244 LAKE POINTE			CITY DETROIT		STATE MI	ZIP CODE 48224
IF DIFFERENT MAILING ADDRESS			CITY		STATE	ZIP CODE
APPLICANT'S OCCUPATION TEACHER		APPLICANT'S EMPLOYER DPS		MARITAL STATUS S	DATE OF BIRTH /1972	SOCIAL SECURITY NUMBER
SPOUSE'S OCCUPATION		SPOUSE'S EMPLOYER		MARITAL STATUS	DATE OF BIRTH	SOCIAL SECURITY NUMBER
RELATED POLICY(IES) 00/OVERRIDE		FIRE EXTINGUISHER, SMOKE DETECTORS AND DEADBOLT LOCKS ☒ CHECK BOX IF APPLICABLE		BURGLAR ALARM ☐ LOCAL ☐ CENTRAL*		FIRE OR SMOKE ALARM ☐ LOCAL ☐ CENTRAL*
* Central protective device requires a copy of the central station contract						
FRANCHISE GROUPS						
☐ ADMINISTRATORS & POST SECONDARY EDUCATIONAL PROFESSIONALS				☐ EDUCATIONAL ADMINISTRATIVE ASSISTANTS		
☒ PRIMARY & SECONDARY EDUCATIONAL PROFESSIONALS				☐ EDUCATIONAL SERVICE EMPLOYEES		
☐ NEW TEACHER DISCOUNT		☐ RENOVATED HOME DISCOUNT		☒ NEW HOME DISCOUNT		☐ MATURE DISCOUNT
☐ NEW HOME BUYER DISCOUNT						
RATING COVERAGE INFORMATION						
HO FORM 03	ELITE/DELUXE/BASIC DELUXE		PRIMARY/SEASONAL/SECONDARY PRIMARY		CONSTRUCTION TYPE FRAME	YEAR BUILT 2008
RATING CITY/TOWNSHIP DETROIT						
DIST. FROM FIRE HYDRANT 0	MILES FROM FIRE DEPT 1	PROTECTION CLASS 03	NO. OF FAMILIES 1	# OF FIRE UNITS	TERRITORY 206	DEDUCTIBLE \$ 500
DWELLING (A) \$ 146000	OTHER STRUCTURES (B) \$ 14600	PERSONAL PROPERTY (C) \$ 87600	ADD'L LIVING EXPENSE (D) ACTUAL LOSS SUSTAINED		PERSONAL LIABILITY (E) \$ 300000	MEDICAL PAYMENTS (F) \$ 1000
PRIOR CARRIER (LAST 3 YEARS) STATE FARM			PRIOR POLICY NUMBER		PRIOR POLICY EXPIRATION DATE 08/01/2014	
MAINTENANCE UPDATES						
WIRING (MINIMUM 100 AMP REQUIRED) ☐ COMPLETE ☐ PARTIAL		MONTH/YEAR UPDATED		REMARKS		
PLUMBING ☐ COMPLETE ☐ PARTIAL		MONTH/YEAR UPDATED		REMARKS		
HEATING ☐ COMPLETE ☐ PARTIAL		MONTH/YEAR UPDATED		REMARKS		
ROOFING ☐ COMPLETE ☐ PARTIAL		MONTH/YEAR UPDATED		REMARKS		
ENDORSEMENTS						
1. Increased Coverage on Jewelry, Watches & Furs		☒ NO ☐ YES	11. Additional Residences Occupied by You		☒ NO ☐ YES	
2. Increased Coverage on Silverware & Goldware		☒ NO ☐ YES	12. Glass Breakage (HO-3 & HO-6 only)		☒ NO ☐ YES	
3. Increased Coverage on Business Property		☒ NO ☐ YES	13. Ordinance or Law Coverage (HO-3 & HO-6 only) 10% INCLUDED - ELITE PROGRAM (H03 & H06)		☒ NO ☐ YES	
4. Extended Computer Coverage		☒ NO ☐ YES	14. Sump Pump & Sewer Back-Up Coverage (5 day waiting period) 0005000		☒ NO ☐ YES	
5. Increased Coverage on Credit Card, Fund Transfer Card, Forgery and Counterfeit Money		☒ NO ☐ YES	15. Increased Fire Department Service Charge Coverage		☒ NO ☐ YES	
6. Private Structures Rented to Others (Photos required)		☒ NO ☐ YES	16. Coverage for Specific Structures Off the Residence Premises (HO-3 only) (Photos required)		☒ NO ☐ YES	
7. Earthquake		☒ NO ☐ YES	17. Advantage Endorsement (5 Day Waiting Period for Sump Pump & Sewer Coverage) INCLUDED - ELITE PROGRAM (H03 & H06)		☒ NO ☐ YES	
8. Increased Loss Assessment Coverage (HO-3 & HO-6 only)		☒ NO ☐ YES	18. Dwelling under Construction Coverage (Requires Form MH-1A)		☒ NO ☐ YES	
9. Incidental Office Occupancy by You (Describe in remarks)		☒ NO ☐ YES	19. Snowmobile Coverage (Requires Form A-H100)		☒ NO ☐ YES	
10. Additional Residences Rented to Others (Photos required)		☒ NO ☐ YES	20. Condo only - Increased Coverage A 20% INCLUDED - ELITE PROGRAM - 10% INCLUDED DELUXE PROGRAM		☒ NO ☐ YES	

Insurance Application

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SCHEDULED PERSONAL PROPERTY			
TYPE/CLASS	DESCRIPTION	AMOUNT OF INSURANCE	APPRAISAL DATE*
N/A	N/A	N/A	N/A

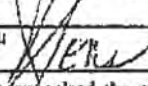
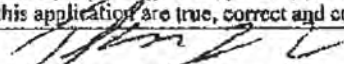
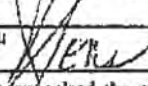
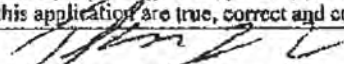
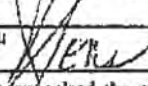
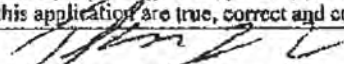
CLAIM HISTORY		
DATE	LOSS TYPE/DESCRIPTION	AMOUNT
N/A	N/A	N/A

LIENHOLDER INFORMATION			
POLICY WILL BE FILED TO THE APPLICANT UNLESS NOTED OTHERWISE BELOW			
☒ MORTGAGEE/LAND CONTRACT	NAME: CITIBANK, NA	BILL MORTGAGEE	☒
☐ ADDITIONAL INSURED	ADDRESS: ISAOA, PO BOX 7706		
	CITY: SPRINGFIELD	STATE: OH	ZIP: 45501-1706

UNDERWRITING QUESTIONNAIRE			
1. Is the applicant the owner of the premises, including the land (except H04 & H06)?		☐ NO	☒ YES
2. Does the property owner reside, and expect to continue to reside, at the premises throughout the policy period (except Form 4)?		☐ NO	☒ YES
3. Will the premises be vacant or unoccupied for more than 60 days?		☒ NO	☐ YES
4. Does any member of the household have delinquent property taxes on the insured premises for two or more years?		☒ NO	☐ YES
5. Within the last 5 years has any household member been convicted of fraud or intent to defraud involving an insurance claim or application for insurance?		☒ NO	☐ YES
6. Within the last 5 years has any household member been denied a claim payment based on evidence of arson or fraud or conspiracy to commit arson, fraud or misrepresentation by or on behalf of the person?		☒ NO	☐ YES
7. During the past 3 years, has any application of any type of insurance for, or covering the owner, applicant, spouse, or any member of the applicant's household been declined, cancelled or non-renewed?		☒ NO	☐ YES
8. Does the owner or applicant have any paid losses at this or any location during the last 5 years?		☒ NO	☐ YES
9. Is the dwelling a mobile home or trailer?		☒ NO	☐ YES
10. Is the dwelling a factory built home? (Modular)		☒ NO	☐ YES
11. Any business conducted on premises?		☒ NO	☐ YES
Select Type of Business:			
Farming:			
Is farming conducted "INCIDENTAL" to the occupancy of the premises?		☐ NO	☐ YES
Is farming your primary occupation?		☐ NO	☐ YES
Do you ever "LEASE" out your land for farming purposes?		☐ NO	☐ YES
Day Care:		Other:	
Is the applicant licensed for day care?		☐ NO	☐ YES
12. Is there a swimming pool on premises?		☒ NO	☐ YES
Is the pool fenced?		☐ NO	☐ YES
Is the pool above ground or in ground?		☐ ABOVE GROUND	☐ IN GROUND
Is the above ground pool protected by a ladder that can be locked?		☐ NO	☐ YES
Does the pool have a diving board?		☐ NO	☐ YES
13. Is there a trampoline on the premises?		☒ NO	☐ YES
Is the trampoline within a fenced area?		☐ NO	☐ YES
Does the trampoline in an unfenced area have approved safety netting in place around the trampoline?		☐ NO	☐ YES
14. Does any member of the household have any exotic animal(s)? Please explain:		☒ NO	☐ YES
15. Are any animals, which have ever bitten anyone or committed any violent acts currently or expected to be owned, kept, housed, cared for, visiting or staying at the premises during the policy period?		☒ NO	☐ YES
16. Does any member of the household have any Chows, Dobermans, German Shepherds, Mastiffs, Presa Canario, Rottweilers, Staffordshire Terriers, Pit Bulls, or any mix of these breeds? How many Total?		☒ NO	☐ YES
17. Does any member of the household have any Akita, Bouvierons, Cane Corso, Malamute, Ovcharka, Wolves or Wolf hybrids or any mix of these breeds? How Many Total?		☒ NO	☐ YES
18. Does any member of the household have or plan to have any horse(s) visiting or staying at the premises?		☒ NO	☐ YES
Indicate number of horses kept on premises:		☐ 0-1	☐ 2-4
		☐ 5 or More	
19. Is the dwelling or any building or structure on the premises undergoing renovation, reconstruction or currently under construction?		☒ NO	☐ YES
20. Does any member of the household own any recreational vehicles?		☒ NO	☐ YES
Is the recreational vehicle a snowmobile to be insured with Meemic?		☐ NO	☐ YES
Is the snowmobile over 800 cc's?		☐ NO	☐ YES
Have you completed the supplemental application required for snowmobile coverage?		☐ NO	☐ YES
Does any member of the household own any other recreational vehicles?		☐ NO	☐ YES
21. Are any detached structures on the premises?		☐ NO	☒ YES
22. What is the primary heat type? Gas (forced air/direct)			
23. Is there a solid fuel or wood-burning stove/insert ANYWHERE in the dwelling or on the premises?		☒ NO	☐ YES

Insurance Application

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REMARKS							
<p align="center">NOTICE TO APPLICANTS</p> <p>FRAUD STATEMENT: A person who commits or conspires to commit a fraudulent insurance act is guilty of a felony, punishable by imprisonment for not more than 4 years (10 years for conspiracy) or a fine of not more than \$50,000, or both, and shall be ordered to pay restitution as provided by section 4511 of the Insurance Code of 1956.</p> <p>APPLICANT'S CERTIFICATION: PLEASE READ CAREFULLY. - I certify that I have answered every question on this application and provided all of the information on this application, and that all of the answers to all of the questions on the application and all of the information provided on the application is true and correct, and I understand, recognize and agree that these answers and information are given and made for the purpose of inducing Meemic to issue the policy of insurance for which I am applying. I understand that Meemic may declare this policy null and void, not only as to the applicant(s), but as to any insureds, claimants, or anyone with an interest in the insured property, if any answers or any information on this application are false, misleading, or materially affect the risk that Meemic assumes by issuing the policy. I understand that I have a continuing duty to notify Meemic of any changes to any of the answers to the questions and the information requested in this application, such as additions, renovations, or occupancy changes. I further understand that Meemic may declare this policy null and void not only as to the applicant(s), but as to any insureds, claimants, or anyone with an interest in the insured property, if I do not comply with my continued duty to advise Meemic of any changes as stated herein.</p> <p>NOTICE OF INSURANCE INFORMATION PRACTICES: Personal information about you, including your driving and credit history, may be collected from persons other than you, in connection with this application for insurance and subsequent renewals. Such information as well as other personal and privileged information collected by us or our agents may in certain circumstances be disclosed to third parties without your authorization. You have the right to review your personal information in our files and can request correction of any inaccuracies. A more detailed description of your rights and our practices regarding such information is available upon request. Contact your agent for instructions on how to submit a request to us.</p> <table border="1"> <tr> <td>Signature of Named Insured: </td> <td>DATE: 6-26-14 TIME: ☐ AM ☐ PM</td> </tr> <tr> <td colspan="2"> <p>AGENT: I Certify that I have asked the applicant(s) for all of the information and all of the questions on this application and that the responses on this application are those provided by the applicant(s). I further certify to the best of my knowledge that all of the information and the answers to all of the questions on this application are true, correct and complete.</p> </td> </tr> <tr> <td>Signature of Agent: </td> <td>DATE: 6-26-14 TIME: ☐ AM ☐ PM</td> </tr> </table>		Signature of Named Insured: 	DATE: 6-26-14 TIME: ☐ AM ☐ PM	<p>AGENT: I Certify that I have asked the applicant(s) for all of the information and all of the questions on this application and that the responses on this application are those provided by the applicant(s). I further certify to the best of my knowledge that all of the information and the answers to all of the questions on this application are true, correct and complete.</p>		Signature of Agent: 	DATE: 6-26-14 TIME: ☐ AM ☐ PM
Signature of Named Insured: 	DATE: 6-26-14 TIME: ☐ AM ☐ PM						
<p>AGENT: I Certify that I have asked the applicant(s) for all of the information and all of the questions on this application and that the responses on this application are those provided by the applicant(s). I further certify to the best of my knowledge that all of the information and the answers to all of the questions on this application are true, correct and complete.</p>							
Signature of Agent: 	DATE: 6-26-14 TIME: ☐ AM ☐ PM						



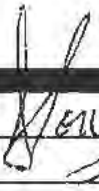
Meemic Insurance Company
1685 N Opdyke Rd
Auburn Hills, MI 48326-2656

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HOME PROGRAM OPTIONS

- ☐ **Elite Program - Guaranteed Replacement Cost:** This coverage will provide full cost of repair or replacement of the dwelling without depreciation even if that cost exceeds the amount shown on the declarations.
- Home must be insured at 100% Replacement Cost as calculated by the replacement cost estimator.
 - Content limits at minimum 75% of Coverage A.
 - \$300,000 minimum limits of liability included.
 - Advantage Endorsement included.
 - 10% Ordinance or Law included.
- ☒ **Deluxe Program - Replacement Cost with 125% cap:** This coverage provides full cost of repair or replacement of the dwelling up to a cap of 125% of coverage A as shown on the declarations.
- Home must be insured between 80-100% of the Replacement Cost as calculated by the replacement cost estimator.
 - 10% Ordinance or Law included.
 - Content limits at minimum 60% of Coverage A.
 - \$100,000 minimum limits of liability included.
- ☐ **Basic Program - Functional Replacement Cost:** This coverage provides for replacement or repair of the dwelling with common construction materials and methods which are functionally equivalent to obsolete, antique or custom construction materials and methods used in the original construction of the dwelling up to the limit of liability shown for coverage A on the declarations.
- Home must be insured between 80-100% of the Replacement Cost as calculated by the replacement cost estimator using the standard construction type.
 - Content limits at minimum 50% of Coverage A.
 - \$100,000 minimum limits of liability included.

The above shows the basic policy limits for each program and may not reflect the liability or coverage limits you have chosen. Please refer to your application for a detailed review of your policy.

SIGNATURE	
Signature of Applicant: 	Date: 10.26.14
Signature of Agent: 	Date: 10.26.14

APPENDIX

10

Meemic Affidavit

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANGELA JONES,

Plaintiff,

vs.

Case No. 16-002960-CK
Hon. John H. Gillis, Jr.

MEEMIC INSURANCE COMPANY,

Defendant.

Jo Robin Davis P31263
Attorney for Plaintiff
30300 Northwestern Hwy., Suite 104
Farmington Hills, MI 48334
(248)932-0100 ext 254
jdavis@jorobindavis.com

Michael F. Schmidt P25213
Nathan Peplinski P66596
Attorneys for Defendant
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800
(248)6492316 (fax)
mschmidt@harveykruse.com
npeplinski@harveykruse.com

AFFIDAVIT OF PATRICK J. KLINE

STATE OF MICHIGAN

)

) SS:

COUNTY OF OAKLAND

)

PATRICK J. KLINE, a citizen of the United States and the State of Michigan, over the age of twenty-one (21) years, being duly sworn, deposes and says that, if called as a witness in the above entitled matter, I can testify competently as follows:

1. I have personal knowledge of the facts stated herein.
2. I am employed as the Underwriting Manager for Meemic Insurance Company.
3. I oversee the Underwriting Department and the individual underwriters within the organization.

Meemic Affidavit

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4. The Underwriting Department is responsible for working with Meemic's agents and reviewing and evaluating new and renewal lines of business to determine a potential insured's eligibility, proper insurance rating, and appropriate coverage limits.

5. The Underwriting Department is also responsible for conducting an overall risk analysis on new and renewal business referred in accordance with Meemic's filings and the laws and statutes of the State of Michigan.

6. I am familiar with the Meemic Michigan Homesteaders Insurance Application completed by plaintiff Angela Jones to insure the property at 4244 Lakepointe.

7. Jones listed 4244 Lakepointe as her primary residence.

8. Jones stated that it was not "Private Structures Rented to Others."

9. Jones stated that it was not "Additional Residences rented to Others."

10. Jones answered "yes" to the question "Does the property owner reside, and expect to continue to reside, at the premises throughout the policy period".

11. Jones certified that she had read all of the questions in the application, that she supplied all of the answers in the application, that all of the answers in her application were true, that she had a duty to notify of any changes in her answer, and that Meemic could void the policy if any answers were not true.

12. Jones never provided Meemic with any changes to her answers in her application.

13. Meemic relied on Jones' answers in the insurance application to calculate the premium and issue the policy.

14. Meemic was not aware that, contrary to Jones' answer in the application, 4244 Lakepointe was not Jones' primary residence at the time of the application.

15. Meemic was not aware that, contrary to Jones' answer in the application, there was an additional residence occupied by Jones besides 4244 Lakepointe at the time of the application.

Meemic Affidavit

16. Meemic was not aware that, contrary to Jones' answer in the application, the property owner did not reside at 4244 Lakepointe at the time of the application.

17. Meemic was not aware that, contrary to Jones' answer in the application, 4244 Lakepointe was a "Private Structures Rented to Others" at the time of the application.

18. Meemic was not aware that, contrary to Jones' answer in the application, 4244 Lakepointe was an "Additional Residences rented to Others" at the time of the application.

19. Jones never updated or changed her answers to the application questions.

20. Had Meemic known the true facts at the time of the application, Meemic would not have issued the policy to Jones.

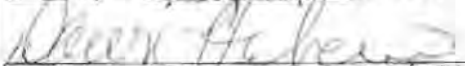
21. Meemic rescinded the policy from its inception on February 19, 2016.

22. Meemic returned Jones' premium payments with interest with the rescission letter.

Further, deponent saith not.


PATRICK J. KLINE

Subscribed and sworn to before me this
30 day of August, 2016.


My Commission Expires: 3/28/22

DAWN HREBEN
NOTARY PUBLIC, STATE OF MICHIGAN
COUNTY OF OAKLAND
MY COMMISSION EXPIRES 03-28-2022
ACTING IN THE COUNTY OF Oakland

APPENDIX

11



Meemic

Certified Copy
 Name: Patrick Kline
 Title: OW Manager
 Date: 2/11/2016

Michigan Homeowners Insurance Policy

Meemic Insurance Company

1685 North Opdyke Road • P. O. Box 217019 • Auburn Hills, MI 48321-7019 • 1-888-4MEEMIC

Notice: This policy does not provide coverage against loss due to flood. If you are interested in one of our Flood Insurance Policies, contact an authorized representative.

CONTENTS OF POLICY

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GUIDE TO YOUR HOMEOWNERS POLICY.....	2	Rights and Duties of Mortgagee.....	15
OUR AGREEMENT WITH YOU.....	2	Loss To A Pair Or Set.....	15
DEFINITIONS.....	2	Benefit To Bailee.....	15
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GUIDE TO YOUR HOMEOWNERS POLICY

DECLARATIONS PAGE

This page tells **you** **your** policy number, the policy effective date and the agency name and address. It also includes information regarding **you** and **your** property. All of the coverages and limits of liability, as well as the deductible and any optional coverages **you** have selected are listed, as well as the amount **you** pay **us** for **your** policy.

OUR AGREEMENT WITH YOU

Because every insurance policy is a contract and both parties are responsible to each other, this section explains what must be done to keep **your** contract in effect.

DEFINITIONS

Important words and phrases in **your** policy are printed in **bold letters** and are defined in the Definitions section.

SECTION I - COVERAGE FOR YOUR RESIDENCE, OTHER STRUCTURES, AND PERSONAL PROPERTY

We explain the coverage provided on **your** home, other structures on **your** property, and **your** personal

possessions. **We** tell **you** the types of losses **we** will and will not pay for. Special limitations on certain types of property are listed in this section. **We** also explain any additional coverages relating to **your** property that are provided.

SECTION II - YOUR LIABILITY COVERAGE

We explain the coverage provided for various types of liability losses **we** will defend **you** against and pay for. **We** also explain the coverage provided if someone is injured on **your** property.

CONDITIONS

Our Agreement With You states that certain provisions must be complied with. These provisions apply to **you** and **us** and are described in the Conditions section of **your** policy. These conditions are the terms of the contract and are important for **you** to understand.

KEEP YOUR POLICY IN A SAFE PLACE

Now that **you** have taken the proper care to insure **your** possessions, place **your** policy in a safe place. The most secure place would be a safe deposit box at **your** bank or savings & loan.

OUR AGREEMENT WITH YOU

In exchange for the premium payment when due, **we** agree with **you** to provide insurance for the Coverages and Limits of Liability stated on the Declarations made a part of this Policy. **This agreement is subject to all terms of this Policy which is issued in reliance upon the declarations made in the Application and**

contained in the Declarations. This policy form together with the Declarations and any endorsements named on it completes the Policy. If this policy form is revised, it will be amended or replaced at the beginning of the next Policy Term.

DEFINITIONS

The following words and phrases appear repeatedly throughout this policy. They have a special meaning and are to be given that meaning whenever used in this policy or any endorsement which is part of this policy:

"ACTUAL CASH VALUE"

1. When the damage to property is economically repairable, **actual cash value** means the cost of repairing the damage, less reasonable deduction for wear and tear, deterioration and obsolescence.
2. When the loss or damage to property creates a total loss, **actual cash value** means the market value of property in a used condition equal to that of the destroyed property, if reasonably available on the used market.
3. Otherwise, **actual cash value** means the market value of new, identical or nearly identical property, less reasonable deduction for wear and tear, deterioration and obsolescence.

"**BODILY INJURY**" means bodily harm, sickness or disease, including required care, loss of services and death that results; all except in connection with any

business.

Bodily injury does not include:

1. any venereal disease, Herpes, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC), Human Immunodeficiency Virus (HIV), any other communicable disease, or any related or resulting symptom, effect, condition, disease or illness related to any of the above conditions.
2. the actual, alleged or threatened sexual molestation of a person.

"BUSINESS" or "BUSINESS PURPOSES" means:

1. any full or part time activity of any kind engaged in for economic gain, including the use of any part of any premises for such purposes; or
2. **your** property rented or held for rental by **you**. Rental of **your residence premises** is not considered **business purposes** when it is rented occasionally for use as a residence, a portion is rented to no more than two roomers or boarders, or

a portion is rented as a private garage.

"COLLAPSE" means an abrupt falling down or caving in of a dwelling or any part of a dwelling with the result that the dwelling or part of the dwelling cannot be occupied for its current intended purpose. A dwelling or any part of a dwelling that is in danger of falling down or caving in is not considered to be in a state of **collapse**. A part of a dwelling that is standing is not considered to be in a state of **collapse** even if it has separated from another part of the dwelling. A dwelling or any part of a dwelling that is standing is not considered to be in a state of **collapse** even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

"COMPUTER" means a programmable electronic device that can store, retrieve and process data.

"FUNGI" means any type or form of fungus, including yeast, mold or mildew, blight or mushroom and any mycotoxins, spore, scents or other substances, products or byproducts produces, released by or arising out of **fungi**, including growth, proliferation or spread of **fungi** or the current or past presence of **fungi**. However, this definition does not include any **fungi** intended by **you** for consumption.

"INSURED PREMISES" means:

1. the **residence premises**;
2. that part of any other premises, other structures and grounds used by **you** as a residence and which is specifically named in the Declarations or acquired by **you** during the policy period for **your** use as a residence, but only for a period of 90 days from the date **you** acquire the property;
3. any premises used by **you** in connection with a premises included in 1. and 2. above;
4. any part of a premises not owned by **you** but where **you** are temporarily residing;
5. any part of a premises occasionally rented to **you** for other than **business purposes**;
6. vacant land, other than farm land, owned by or rented to **you**;
7. land owned by or rented to **you** on which a one or two family dwelling is being built for **your** use as a residence; or
8. individual or family cemetery plots or burial vaults owned by **you**.

"MEDIA" means the storage device upon which software is stored. This includes blank cassette tapes or disks used solely with the **computer** or **peripheral device**.

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

"NAMED INSURED" means the person or persons

shown on the Declarations.

"OCCURRENCE" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, resulting in **bodily injury** or **property damage** during the term of the policy.

"PERIPHERAL DEVICE" means any unit used to operate with the **computer** system. This includes tape or disk drives or printers.

"PERMANENTLY ATTACHED" means installed in such a way as to require the use of hand tools to remove.

"PLUMBING" means the pipes, fixtures and other apparatus concerned in the distribution and use of water in a dwelling. It does not include a sump, sump pump, related equipment, gutters, downspouts or weep tiles.

"PROPERTY DAMAGE" means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.

"PURCHASED SOFTWARE" means information or a program that is stored on a storage device such as a magnetic tape or disk for use on a **computer**, and has been purchased from another party.

"REPLACEMENT COST" means the cost, at the time of loss, of a new article identical to the one damaged, destroyed or stolen. When the identical article is no longer manufactured or is not available, **replacement cost** shall mean the cost of a new article similar to the one damaged or destroyed and which is of comparable quality and usefulness.

"RESIDENCE EMPLOYEE" means **your** employee whose duties are related to the maintenance or use of the **residence premises**, including household or domestic services. This includes similar duties performed elsewhere for **you**, not in connection with **your business**.

"RESIDENCE PREMISES" means the one or two family dwelling used as a private residence by **you**, other structures and land located at the address named on the Declarations. **Residence Premises** does not include any portion of the premises used for **business purposes**.

"WE", "US", and "OUR" mean the Company named in the Declarations.

"YOU" and "YOUR" mean:

1. the person or persons shown as **Named Insured** and if a resident of the same household:
 - A. the spouse of such person or persons;
 - B. the relatives of either; or
 - C. any other person under the age of 21 in the care of any person named above.
2. under Section II only:
 - A. any other person or organization legally

responsible for loss caused by animals or watercraft owned by any person included in 1. above. **We** will not cover any such person or organization using or having custody of animals or watercraft in any **business** or without **your** permission; or

B. with respect to any vehicle to which this policy applies, persons while engaged in employment by any person included in 1. above or other persons using the vehicle on the **insured premises** with consent of any person included in 1. above.

SECTION I — DEDUCTIBLE

LOSS DEDUCTIBLE CLAUSE

We will pay only when a loss exceeds the deductible amount shown in the Declarations. **We** will pay only that part of the loss over such stated deductible. The deductible will not apply to Section I - Coverage D

and Section I - Additional Coverages, except where specified in the Additional Coverage. If loss to property covered by this Part occurs together with loss to property covered by another policy issued by **us** to **you** or a resident relative, only the highest applicable deductible from one policy will apply.

SECTION I - COVERAGES

COVERAGE A - DWELLING

PROPERTY WE COVER UNDER COVERAGE A

1. **your** dwelling on the **residence premises** including attached structures. Structures connected to the dwelling by only a fence, utility line or similar connection are not considered attached structures; and
2. materials and supplies located on or adjacent to the **residence premises** used to construct, alter or repair the dwelling on the **residence premises**.

PROPERTY WE DO NOT COVER UNDER COVERAGE A

1. land, no matter where located, or any costs required to replace, rebuild, stabilize or otherwise restore the land; or
2. any structures or other property covered under Coverage B.

COVERAGE B - OTHER STRUCTURES

PROPERTY WE COVER UNDER COVERAGE B

1. structures on the **residence premises** separated from the dwelling by clear space;
2. structures connected to the dwelling on the **residence premises** by only a fence, utility line, or similar connection; and
3. materials and supplies located on or adjacent to the **residence premises** used to construct, alter or repair the structures other than the dwelling on the **residence premises**.

PROPERTY WE DO NOT COVER UNDER COVERAGE B

1. structures used in whole or in part for any **business**;
2. structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; or
3. land, no matter where located, or any costs required to replace, rebuild, stabilize or otherwise restore the land.

LOSSES WE COVER UNDER COVERAGES A - DWELLING AND B - OTHER STRUCTURES

We will pay for sudden and accidental direct physical loss to the property described in Coverage A - Dwelling and Coverage B - Other Structures, except as limited or excluded in this policy.

LOSSES WE DO NOT COVER UNDER COVERAGES A - DWELLING AND B - OTHER STRUCTURES

We do not cover loss caused directly or indirectly by any of the following excluded perils. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss:

1. **Water Damage**, meaning:

- A. flood, including, but not limited to surface water, waves, tidal water, overflow of any body of water, or spray from any of these, whether or not driven by wind;
- B. water or water-borne material that backs up through sewers or drains;
- C. water or water-borne material that overflows from a sump pump, sump pump well or other system designed to remove subsurface water which is drained from a foundation area of a structure; or
- D. water or water-borne material below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or leaks, flows or seeps through any part of a dwelling or another structure, sidewalk, driveway, foundation or swimming pool which causes earth movement.

We do cover direct loss caused by fire, explosion, or theft resulting from items A through D above.

2. **Earth Movement** of any type, meaning any loss caused or aggravated by, contributed to or resulting from events that include, but are not limited to:

- A. earthquake and earthquake aftershocks;
- B. volcanic eruption, including land shock waves or tremors before, during or after the volcanic eruption;
- C. mudslide including landslide, mudflow, debris flow, avalanche or sediment;
- D. sinkhole, erosion, mine subsidence or excavation **collapse**; or
- E. the bulging, cracking, contracting, expanding, rising, creeping, settling, sinking or shifting of the earth, soil or land.

We do cover direct loss resulting from earth movement caused by fire, explosion, breakage of glass or safety glazing materials which are part of a dwelling, storm door or storm window, or theft.

- 3. **Collapse**, except as specifically provided in Section I -Additional Coverages for **Collapse**.
- 4. **Ordinance or Law**, meaning an ordinance or law:
 - A. requiring or regulating the construction, remodeling, renovation, repair, or demolition of dwelling property, including removal of resulting debris;
 - B. the requirements of which result in loss in value to property; or
 - C. requiring any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

This exclusion applies whether or not the dwelling property has been physically damaged.

- 5. **Power Failure**, meaning the interruption of power or other utility service if the interruption takes place off the **residence premises**, except as specifically provided in Section I - Additional Coverages. If a direct loss **we** cover ensues on the **residence premises**, **we** will pay only for that ensuing loss.
- 6. **Neglect**, meaning failure by **you** to use all reasonable means to save and preserve property at and after the time of a loss, or when the property is endangered by a cause of loss **we** cover.
- 7. **Nuclear Action**, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke.

We do cover direct loss by fire resulting from nuclear action.

- 8. **Governmental Action**, including:
 - A. war, undeclared war, civil war, rebellion, insurrection or revolution;
 - B. warlike act by a military force or military

personnel;

- C. destruction, seizure or use for a military purpose;
 - D. loss arising out of risks of contraband or illegal transportation or trade;
 - E. loss due to order of any civil authority except conditions **we** insure under Coverage D - Loss of Use; or
 - F. acts of destruction during a fire to prevent it from spreading. This exclusion does not apply to such acts ordered by any governmental or public authority that are taken at the time of a fire to prevent its spread, if the loss caused by fire would be covered under this policy.
- 9. **Intentional Loss**, meaning any loss arising out of any intentional act by **you** or at **your** direction if the loss that occurs:
 - A. may be reasonably expected to result from such acts; or
 - B. is in fact the intended result of such acts.

10. Any of the following:

- A. wear and tear; aging; marring; scratching; deterioration;
- B. inherent vice; latent defect; mechanical breakdown;
- C. rust or other corrosion, or electrolysis;
- D. release, discharge, dispersal, seepage, migration or escape of pollutants or contaminants unless caused by a peril listed under Losses We Cover Under Coverage C - Personal Property.

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

- E. smog; smoke from agricultural smudging or industrial operations;
- F. bulging, expansion, settling or shrinking, including resulting cracking, of ceilings, floors, foundations, patios, pavements, roofs, supports and walls; or
- G. birds, insects, rodents, vermin, or domestic animals, except **we** do cover breakage of glass or safety glazing material.

If any of these cause fire or the sudden and accidental escape of water or steam from a **plumbing**, heating or air conditioning system, fire protective sprinkler system or household appliance, **we** cover the direct physical damage caused by the fire, water or steam.

We also will pay for the cost of tearing out and replacing any part of a dwelling necessary to

repair the system or appliance, but **we** do not cover loss to the system or appliance from which the water escaped.

11. **Theft** in or from a dwelling under construction, or of materials and supplies for use on the construction until the dwelling is completed and occupied.

12. **Vandalism or Malicious Mischief** if the **residence premises** was vacant for more than 30 consecutive days immediately prior to the loss. A **residence premises** being constructed is not considered vacant.

13. **Freezing** of a **plumbing**, heating or air conditioning system, fire protective sprinkler system, or household appliance, or discharge, leakage or overflow from within the systems or appliances caused by freezing, while the dwelling is vacant, unoccupied or being constructed.

We do cover direct loss caused by such freezing if **you** have used reasonable care to maintain heat in the dwelling or if **you** shut off the water supply and drained the system and appliance of water.

14. **Freezing**, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies only to fences, patios, pavements, swimming pools, hot tubs or spas, landscape sprinkler systems, foundations, retaining walls, bulkheads, piers, wharves or docks.

15. **Acts or Decisions**, including the failure to act or decide, of any person, group, organization or governmental body. **We** do cover any ensuing loss not excluded in this policy.

16. **Weather** that contributes in any way with a cause or event excluded in this section to produce a loss. **We** do cover any ensuing loss not excluded in this policy.

17. **Planning, Construction or Maintenance**, meaning faulty, inadequate or defective:

- A. planning, zoning, development, surveying, siting;
- B. design, specifications, workmanship, repair, construction, grading, compaction, renovation, remodeling;
- C. materials used in construction, repair, renovation or remodeling; or
- D. maintenance;

of any property whether on or off the **residence premises** by any person or organization. **We** do cover any ensuing loss not excluded in this policy.

18. **Fungi**, wet or dry rot, or bacteria meaning the presence, growth, proliferation or spread of **fungi**, wet or dry rot, or bacteria. This exclusion does not apply to the extent coverage is specifically provided in Section I - Additional Coverages.

19. Continuous or repeated seepage or leakage of water or steam from within a **plumbing**, heating, air conditioning or automatic fire protection sprinkler system or from within a domestic appliance which occurs over a period of weeks, months or years.

COVERAGE C - PERSONAL PROPERTY PROPERTY WE COVER UNDER COVERAGE C

1. Personal property owned or used by **you** anywhere in the world.

When personal property is usually located at a residence other than the **residence premises**, coverage is limited to 10% of the limit of liability for Coverage C. This limitation does not apply to personal property in a newly acquired principal residence for the 30 days immediately after **you** begin to move **your** property there or to personal property in student dormitory, fraternity or sorority housing.

During the time the **residence premises** is under construction by or for **you**, **our** limit of liability for personal property other than on the **residence premises** shall be equal to the amount specified for Coverage C. **Our** total limit shall not exceed the policy limit for Coverage C in any one loss.

2. At **your** option, personal property owned by:

- A. a guest or **residence employee**, while the property is in any residence **you** are occupying;
- B. others while the property is on that part of the **residence premises** occupied by **you**.

SPECIAL LIMITATIONS ON CERTAIN PROPERTY UNDER COVERAGE C

Limitations apply to the following groups of personal property. These limitations do not increase the Coverage C limit of liability. If personal property can reasonably be considered a part of two or more of the categories listed below, the lowest limit will apply. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. \$200 on money, bullion, bank notes, pre-paid cards or passes, monetary value carried on electronic chip or magnetic cards, gold other than goldware, silver other than silverware, platinum, coins and medals.
2. \$1000 on rare coins, tickets and stamps, and other numismatic property, trading cards and comic books, including any of these that are part of a collection.
3. \$1000 on securities, accounts, deeds, evidences of debt, letters of credit, manuscripts, notes other than bank notes, personal records, passports, including philatelic property. This dollar limit applies to these categories regardless of the

medium (such as paper or software) on which the material exists.

This limit includes the cost to research, replace or restore the material from the lost or damaged medium.

4. \$1000 for loss by theft of jewelry, watches, precious and semi-precious stones and furs, including any article containing fur which represents its principal value.
5. \$1500 for watercraft, including their attached or unattached trailers, furnishings, equipment, parts and motors.
6. \$1000 for trailers not used with watercraft.
7. \$2000 for loss by theft of firearms, related equipment and their accessories.
8. \$2500 on grave markers.
9. \$5000 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware.
10. \$2500 for any property, while on the **residence premises**, used at any time or in any manner in a **business**.
11. \$500 for any property, while away from the **residence premises**, used at any time or in any manner in a **business**.
12. \$1000 on electronic apparatus, while in or upon, but not **permanently attached** to a motor vehicle or other motorized land conveyance, if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle or conveyance while retaining its capacity of being operated by other sources of power.

Electronic apparatus includes cassettes, tapes, wires, records or discs for use with any electronic apparatus described in 12. above.
13. \$5000 for disassembled parts of a motor vehicle while located on the **residence premises**.

PROPERTY WE DO NOT COVER UNDER COVERAGE C

1. Personal property specifically described and insured by this or any other insurance;
2. Animals, birds or fish;
3. Motor vehicles or other motorized land conveyances. This includes **permanently attached** equipment and accessories while in or upon the motor vehicle or motorized land conveyance except as provided under Special Limitations on Certain Property Under Coverage C.

We do cover:

- A. motor vehicles or motorized land conveyances not subject to motor vehicle registration which are used solely to service the **residence**

premises;

- B. disassembled parts of a motor vehicle while located on the **residence premises**;
- C. golf carts owned by **you** while used for golfing;
or
- D. vehicles designed for assisting the handicapped and not licensed for road use.
4. any device or instrument, including any accessories or antennas, for the transmitting, recording, receiving or reproduction of sound or pictures which are **permanently attached** in a motor vehicle.
5. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
6. hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes but is not limited to, flarecraft and air cushion vehicles;
7. property of roomers, boarders and other tenants, not related to **you**;
8. property in an apartment regularly rented or held for rental to others by **you**;
9. property rented or held for rental to others when not on the **residence premises**;
10. data, including such data stored in:
 - A. books of account, abstracts, drawings or other paper records; or
 - B. electronic data processing tapes, wires, records, discs or other software **media**.

We do cover the cost of blank recording or storage **media and of pre-recorded **computer** programs available on the retail market;**
11. credit cards or fund transfer cards except as provided in Section I - Additional Coverages.

LOSSES WE COVER UNDER COVERAGE C - PERSONAL PROPERTY

We will pay for sudden and accidental direct physical loss or damage to the property described in Coverage C - Personal Property, except as limited or excluded in this policy, caused by:

1. **Fires or Lightning.**
2. **Windstorm or Hail.** **We do not cover loss to:**
 - A. personal property inside a dwelling, caused by rain, snow, frost, ice, sleet, sand or dust, unless the wind or hail first damages the roof or walls and the wind forces rain, snow, sleet, sand or dust through the damaged roof or wall; or
 - B. watercraft and their trailers, furnishings,

equipment and motors unless inside a fully enclosed dwelling. **We** do cover canoes and rowboats on the **residence premises**.

3. **Explosion.**
4. **Riot or Civil Commotion** including direct loss from pillage and looting during and at the site of the riot or civil commotion.
5. **Aircraft**, including self-propelled missiles and spacecraft.
6. **Vehicles.**
7. **Smoke.** **We** do not cover loss caused by smoke from agricultural smudging or industrial operations.
8. **Vandalism or Malicious Mischief** if the **residence premises** was vacant for more than 30 consecutive days immediately prior to the loss. A **residence premises** being constructed is not considered vacant.
9. **Theft**, including attempted theft and disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

We do not cover theft:

- A. or attempted theft committed by **you** or by any person renting the **residence premises**;
 - B. in or from the **residence premises** while under construction, or materials and supplies for use in construction, until the dwelling on the **residence premises** is completed and occupied;
 - C. from any part of the **residence premises** rented by **you** to others;
 - D. of property away from the **residence premises** while in any other residence owned by, rented to, or occupied by **you** except while **you** are temporarily residing there. **Your** property while a student is covered at a residence away from the **residence premises** if the student has been at that residence at any time during the 45 days immediately preceding the loss;
 - E. of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the **residence premises**.
10. **Falling Objects.** **We** do not cover loss to personal property inside a dwelling unless a falling object first damages the exterior walls or roof of the dwelling. Damage to the falling object itself is not covered as personal property.
 11. **Weight of Ice, Snow or Sleet** which causes damage to personal property in a dwelling. The weight of ice, snow or sleet must first physically damage the dwelling structure.
 12. **Water or Steam** that escapes from a **plumbing**,

heating or air conditioning system, a fire protective sprinkler system or from within a household appliance due to an accidental discharge or overflow.

A. **We** do not cover loss:

- B. to the system or appliance from which the water or steam escapes;
 - C. on the **residence premises** caused by accidental discharge or overflow off the **residence premises**;
 - D. caused by water which backs up from sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure; or
 - E. caused by or resulting from freezing under this cause of loss.
13. **Bulging, Burning, Cracking or Rupture** of a steam or hot water heating system, an air conditioning system, a fire protective sprinkler system, or an appliance for heating water. **We** do not cover loss caused by or resulting from freezing under this peril.
 14. **Freezing** of a **plumbing**, heating or air conditioning system, a fire protective sprinkler system or a household appliance.
We do not cover loss at the **residence premises** while the dwelling is vacant or unoccupied unless **you** have used reasonable care to maintain heat in the dwelling or shut off the water supply and drain the system and appliance of water.
 15. **Increase or Decrease of Artificially Generated Electrical Currents.** **We** do not cover loss to a tube, transistor or similar electronic component.
 16. **Volcanic Eruption**, other than loss caused by earthquake, land shock waves or tremors.
 17. **Glass or Safety Glazing Material** which is part of a dwelling, storm door or storm window.
We do not cover loss at the **residence premises** if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.

LOSSES WE DO NOT COVER UNDER COVERAGE C - PERSONAL PROPERTY

We do not cover loss to covered property described in Coverage C - Personal Property caused directly or indirectly by any of the following, whether or not any other cause or event contributes concurrently or in any sequence to the loss:

1. **Water Damage**, meaning:
 - A. flood, including, but not limited to surface water, waves, tidal water, overflow of any

body of water, or spray from any of these, whether or not driven by wind;

- B. water or water-borne material that backs up through sewers or drains;
- C. water or water-borne material that overflows from a sump pump, sump pump well or other system designed to remove subsurface water which is drained from a foundation area of a structure; or
- D. water or water-borne material below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or leaks, flows or seeps through any part of the **residence premises** or water which causes earth movement.

We do cover direct loss caused by fire, explosion, or theft resulting from items A through D above.

2. **Earth Movement** of any type, meaning any loss caused or aggravated by, contributed to or resulting from events that include, but are not limited to:
 - A. earthquake and earthquake aftershocks;
 - B. volcanic eruption, including land shock waves or tremors before, during or after the volcanic eruption;
 - C. mudslide including landslide, mudflow, debris flow, avalanche or sediment;
 - D. sinkhole, erosion, mine subsidence or excavation **collapse**; or
 - E. the bulging, cracking, contracting, expanding, rising, creeping, settling, sinking or shifting of the earth, soil or land.

We do cover direct loss resulting from earth movement caused by fire, explosion, breakage of glass or safety glazing materials which are part of a dwelling, storm door or storm window, or theft.

3. **Collapse**, except as specifically provided in Section I -Additional Coverages for **Collapse**.
4. **Ordinance or Law**, meaning an ordinance or law:
 - A. requiring or regulating the construction, remodeling, renovation, repair, or demolition of dwelling property, including removal of resulting debris;
 - B. the requirements of which result in loss in value to property; or
 - C. requiring any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

This exclusion applies whether or not the dwelling property has been physically damaged.

5. **Power Failure**, meaning the interruption of power

or other utility service if the interruption takes place off the **residence premises**, except as specifically provided in Section I - Additional Coverages. If a loss **we** cover ensues on the **residence premises**, **we** will pay only for that ensuing loss.

6. **Neglect**, meaning failure by **you** to use all reasonable means to save and preserve property at and after the time of a loss, or when the property is endangered by a cause of loss **we** cover.
7. **Nuclear Action**, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. **We** do cover direct loss by fire resulting from nuclear action.
8. **Governmental Action**, including:
 - A. war, undeclared war, civil war, rebellion, insurrection or revolution;
 - B. warlike act by a military force or military personnel;
 - C. destruction, seizure or use for a military purpose;
 - D. loss arising out of risks of contraband or illegal transportation or trade;
 - E. loss due to order of any civil authority except conditions **we** insure under Coverage D - Loss of Use; or
 - F. acts of destruction during a fire to prevent it from spreading, if the fire was caused by a peril excluded by this policy.
9. **Intentional Loss**, meaning any loss arising out of any intentional act by **you** or at **your** direction if the loss that occurs:
 - A. may be reasonably expected to result from such acts; or
 - B. is in fact the intended result of such acts.
10. **Acts or Decisions**, including the failure to act or decide, of any person, group, organization or governmental body. **We** do cover any ensuing loss not excluded in this policy.
11. **Weather** that contributes in any way with a cause or event excluded in this section to produce a loss. **We** do cover any ensuing loss not excluded in this policy.
12. **Planning, Construction or Maintenance**, meaning faulty, inadequate or defective:
 - A. planning, zoning, development, surveying, siting;
 - B. design, specifications, workmanship, repair, construction, grading, compaction, renovation, remodeling;

C. materials used in construction, repair, renovation or remodeling; or

D. maintenance;

of any property whether on or off the **residence premises** by any person or organization. **We** do cover any ensuing loss not excluded in this policy.

13. **Fungi**, wet or dry rot, or bacteria meaning the presence, growth, proliferation or spread of **fungi**, wet or dry rot, or bacteria. This exclusion does not apply to the extent coverage is specifically provided in Section I - Additional Coverages.

COVERAGE D - LOSS OF USE

The limit of liability for Coverage D is the total limit for all of the following coverages:

1. If a property loss **we** cover under Section I makes that part of the **residence premises** where **you** reside not fit to live in, **we** will pay, at **your** choice, either of the following. **We** will not provide the option under paragraph (B.) below, however, if the **residence premises** is not **your** principal place of residence:
 - A. **Additional Living Expense**, meaning the reasonable increase in living expenses incurred by **you** necessary to maintain **your** normal standard of living; or
 - B. **Fair Rental Value**, meaning the fair rental value of that part of the **residence premises** where **you** reside less any expenses that do not continue while the premises are not fit to

live in.

Payment under A. or B. will be for the shortest time, not to exceed 12 months, required to repair or replace the property **we** cover, using due diligence and dispatch or, if **you** permanently relocate, for **your** household to settle elsewhere.

2. If a property loss **we** cover under Section I makes that part of the **residence premises** **you** rent to others or **you** hold for rental not fit to live in, **we** will pay the:

Fair Rental Value, meaning the fair rental value of that part of the **residence premises** **you** rent to others or **you** hold for rental, less any charges and expenses which do not continue while the premises is not fit to live in.

Payment will be for the shortest time, not to exceed 12 months, required to repair or replace that part of the **residence premises** rented or held for rental.

3. If a civil authority prohibits **you** from use of the **residence premises** due to a loss at a neighboring premises caused by a peril **we** insure against, **we** will pay the Additional Living Expense and Fair Rental Value as provided under 1. and 2. above for a period of time not to exceed two weeks.

The periods of time under 1., 2. and 3. above are not limited by expiration of this policy. **We** do not cover the loss or expense due to cancellation of a lease or agreement.

SECTION I - ADDITIONAL COVERAGES

1. **Debris Removal.** **We** will pay reasonable expenses **you** incur to remove debris of covered property damaged by a loss **we** cover. If the amount payable for the actual **property damage** plus the debris removal expense is more than **our** limit of liability for the damaged property, **we** will pay up to an additional 5% of that limit for debris removal.
2. **Reasonable Repairs To Protect Property.** **We** will reimburse **you** up to \$5,000 for the reasonable expenses **you** incur for necessary repairs made solely to protect covered property from further damage, following a loss **we** cover. This coverage does not increase the limit of liability applying to the property being repaired.
3. **Fire Department Service Charges.** **We** will pay up to \$500 for service charges made by fire departments called to save or protect **your** covered property from a loss **we** cover at the **residence premises**. No deductible will apply.
4. **Emergency Removal of Property.** **We** will pay for direct loss to covered property from any cause while being removed from a premises because of

danger from a loss **we** cover. This coverage also applies to the property for up to 30 days from the date of removal. **We** will also pay for reasonable expenses **you** incur for the removal and return of the covered property. This coverage does not increase the limit of liability applying to the property being removed.

5. **Refrigerated Contents.** **We** will pay up to \$250 for the contents of all freezer or refrigerated food storage units on the **residence premises** for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to **you**, all reasonable means must be used to protect the property from further damage or this coverage is void. No deductible will apply.
6. **Credit Card, Fund Transfer Card, Forgery and Counterfeit Money.** **We** will pay up to an aggregate of \$1000 for:
 - A. **your** legal obligation to pay because of the unauthorized use of any credit card issued to or registered in **your** name; and
 - B. loss resulting from the unauthorized use of a fund transfer card issued to or registered in **your** name which is used for deposit,

withdrawal or transfer of funds; and

- C. loss to **you** caused by forgery or alteration of any check or negotiable instrument;
- D. and loss to **you** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover:

- A. more than the limit of liability stated above. All loss due to forgery or unauthorized use by any one person or in which that person is concerned is considered one loss;
- B. any loss caused by **your** dishonesty;
- C. any loss resulting from **your business** activities;
- D. use of a credit card or fund transfer card by a resident of **your** household or by a person who has been entrusted with either type of card; or
- E. any loss if **you** have not complied with all terms and conditions under which the cards are issued.

Defense:

- A. **We** may make any investigation and settle any claim or suit that **we** decide is appropriate. **Our** obligation to defend any claim or suit ends when the amount **we** pay for the loss equals **our** limit of liability.
- B. If a suit is brought against **you** for liability under the Credit Card or Fund Transfer Card coverage, **we** will provide a defense at **our** expense and by counsel of **our** choice.
- C. **We** have the option to defend **you** or **your** bank, at **our** expense, against any suit for the enforcement of payment under the Forgery coverage.

- 7. **Trees, Shrubs, Plants and Lawns.** **We** will pay up to an additional 5% of the limit of liability shown on the Policy Declarations under Coverage A - Dwelling for loss to trees, shrubs, plants and lawns at the **residence premises**. **We** will not pay more than \$1000 for any one tree, shrub or plant, including any debris removal expense. Coverage applies only to direct physical loss caused by fire, lightning, explosion, theft, aircraft, riot or civil commotion, vandalism or malicious mischief, vehicles not owned or operated by an occupant of the **residence premises**, or **collapse** of a dwelling structure or any part of a dwelling structure.

We will pay up to \$1000 for any one loss for the reasonable expenses **you** incur for the removal from **your residence premises** of:

- A. **your** tree felled by windstorm, hail or the weight of ice, snow or sleet; or
- B. **your** neighbor's tree felled by a peril listed under Losses We Cover Under Coverage C -

Personal Property.

provided the tree caused damage to property covered under Coverage A - Dwelling or Coverage B - Other Structures. The \$1000 limit is the most **we** will pay in any one loss regardless of the number of fallen trees.

We do not cover trees, shrubs, plants and lawns grown for **business purposes**. The policy deductible does not apply to this coverage.

- 8. **Loss Assessment.** **We** will pay up to \$1000 for **your** share of any loss assessment charged against **you** during the policy period by a corporation or association of property owners. This only applies when the assessment is made as a result of direct physical loss to the property, owned by all members collectively, caused by a peril **we** insure against under Coverage A - Dwelling, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

We do not cover loss assessments charged against **you** or a corporation or association of property owners by any governmental body.

The limit of \$1000 is the most **we** will pay with respect to any one loss, regardless of the number of assessments.

- 9. **Collapse.** **We** will pay for sudden and accidental direct physical loss to covered property involving **collapse** of a dwelling or any part of a dwelling caused only by one or more of the following:
 - A. a peril listed under Losses We Cover Under Coverage C - Personal Property. These perils apply to the **residence premises** and personal property for loss insured by this coverage;
 - B. hidden decay of the structure;
 - C. hidden insect or hidden vermin damage;
 - D. weight of contents, equipment, animals or people;
 - E. weight of ice, snow, sleet or rain which collects on a roof; or
 - F. use of defective material or methods in construction, remodeling or renovation if the **collapse** occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, hot tub, spa, landscape sprinkler system, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items B. through F. unless the loss is a direct result of the **collapse** of a dwelling.

This coverage does not increase the limit of liability applying to the damaged covered property. The policy deductible does apply to this coverage.

10. **Employer-Owned Computer Equipment.** We will pay up to \$2500 for sudden and accidental physical loss to a **computer, peripheral device** and **media** actually owned by **your** employer but loaned to **you** for **your** use. This coverage is excess over any valid and collectible insurance written in the name of the actual owner of the property. The policy deductible does apply to this coverage.

We do not cover under this coverage:

- A. Wear and tear, gradual deterioration, depreciation, insects, vermin, corrosion, rust, mold, dampness, dryness, cold or heat;
- B. Mechanical breakdown, faulty construction, an original defect in the property, error, omission or deficiency in design, specifications, workmanship or materials;
- C. Neglect, meaning **your** neglect to use all reasonable means to save and preserve the property at and after the time of a loss, or when property is endangered by Section I - Losses **We** Cover;
- D. Intentional Loss, meaning any of **your** intentional or criminal acts if the loss that occurs:
 - (1.) may be reasonably expected to result from such acts; or
 - (2.) is in fact the intended result of such acts.

This exclusion applies regardless of whether or not **you** are actually charged with or convicted of a crime;

- E. Dishonest acts by **you**, anyone else with an interest in the property or **your** or their employees or agents, whether or not occurring during the hours of employment. Nor do **we** insure against dishonest acts by anyone entrusted with the property;
- F. Indirect or consequential loss to the property;
- G. Water Damage, Nuclear Action and Governmental Action as set forth in Losses We Do Not Cover Under Coverage C - Personal Property.

11. **Inflation Protection.** The limits of liability specified in the Declarations of this policy, or any amendments thereto, for Coverages A, B and C are continuously adjusted in accordance with the following:

Policies that contain the Guaranteed Replacement Cost Endorsement for Coverage A.

- A. Any policy where the Coverage A limit of liability equals or exceeds the updated dwelling replacement cost value, will maintain

the Coverage A, B and C amounts from the prior policy period unless a reduction in coverage is requested in writing by the **named insured**.

- B. All other policies which have Coverage A limit of liability less than the updated dwelling replacement cost estimate, will have the Coverage A limit of liability increased to the updated dwelling replacement cost estimate. The appropriate Coverage B and C limits of liability will be adjusted accordingly.

Policies that contain the Replacement Cost Endorsement or the Functional Replacement Cost Endorsement for Coverage A.

- A. Any policy where the updated dwelling replacement cost value is less than the prior policy period dwelling replacement cost value, will maintain the Coverage A, B and C amounts from the prior policy period unless a reduction in coverage is requested in writing by the **named insured**.
- B. All other policies will have the percentage change applied to the Coverage A limit of liability, calculated from the updated dwelling replacement cost value as compared to the prior policy period dwelling replacement cost value. The appropriate Coverage B and C limits of liability will be adjusted accordingly.

12. **Fungi or Bacteria.** We will pay up to \$5,000, in the aggregate for:

- A. the direct physical loss to covered property caused by **fungi** or bacteria;
- B. the cost to remove **fungi** or bacteria from covered property;
- C. the cost to tear out and replace any part of the dwelling or other covered property as needed to gain access to the **fungi** or bacteria;
- D. the cost of any testing of air or property to confirm the absence, presence or level of **fungi** or bacteria, whether performed prior to, during or after removal, repair, restoration or replacement. The cost of such testing will be provided only to the extent that there is a reason to believe there is the presence of **fungi** or bacteria; and
- E. Additional Living Expense or Fair Rental Value loss covered under Coverage D - Loss of Use.

This coverage only applies when such loss or costs:

- A. are a result of a loss **we** cover that occurs during the policy period;
- B. are not excluded under Losses We Do Not Cover Under Coverages A - Dwelling & Other Structure; and
- C. only if all reasonable means are used to save and preserve the property from further

damage.

This coverage does not apply to loss to trees, shrubs, or other plants.

The \$5,000 limit of liability is the most **we** will pay for the total of all loss or costs for Coverages A, B, C and D and does not increase the limit of liability for these

coverages, regardless of the number of locations or number of claims made for each consecutive annual period and for any remaining period of less than 12 months beginning with the effective date of this policy as shown on the Declarations.

SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability.** We will not pay any person or organization an amount greater than its insurable interest in the property covered at the time of the loss.

Regardless of the number of persons or organizations who qualify for coverage, **we** will not pay more than the applicable limit of liability.

2. **What You Must Do After A Loss.** If **you** have a loss to which this policy may apply, **you** must do the following:

A. Give immediate notice to **us** or **our** representative. Report any theft to the police as soon as possible. If the loss involves a credit card or fund transfer card, notify the company or bank that issued the card;

B. Protect the property from further damage. Make any reasonable repairs necessary to protect the property. Keep an accurate record of any repair expenses;

C. Prepare an inventory of damaged and stolen property showing for each item the quantity, age, description, **actual cash value** and amount of loss claimed. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;

D. At any reasonable time and place **we** designate, and as often as **we** reasonably require:

- (1.) show **us** the damaged property;
- (2.) submit to questions under oath concerning the loss while not in the presence of any other person defined as **you**, and sign and swear to the answers; and
- (3.) allow **us** to examine and copy any records and documents **we** request;

E. Within 60 days after **our** request, **you** must send **us** a signed, sworn proof of loss, stating to the best of **your** knowledge and belief:

- (1.) the date, time, location and cause of loss;
- (2.) **your** interest and that of others in the property involved, including all liens on the property;
- (3.) a description of each item, including all information contained in the inventory described in C. above;
- (4.) a description of other insurance which may cover the loss;
- (5.) any changes in ownership, use, occupancy

or possession of the property that took place during the policy period;

(6.) at **our** request, the specifications of any damaged dwelling or structure;

(7.) receipts for additional living expenses **you** incur and records supporting the fair rental value loss;

(8.) evidence or affidavit supporting a claim under the Credit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage stating the amount and cause of loss.

3. **How We Settle A Loss.** Covered property losses are settled as follows:

A. **Coverage A Dwelling** – refer to Dwelling Loss Settlement endorsement attached.

B. **Coverage B - Other Structures**

Subject to the applicable deductible, **we** will pay the full cost of repair or replacement without deduction for depreciation for the structure subject to the following:

- (1.) **We** will only be liable for the **actual cash value** of the structure until the repair or replacement is complete; and
- (2.) **Our** liability will not exceed the smallest of:
 - a. the limit of liability applicable to the structure;
 - b. the cost to repair or replace the damaged structure which will be used on the same premises;
 - c. the amount actually and necessarily spent to repair or replace the damaged structure intended for the same use;
 - d. the direct financial loss **you** incur; or
 - e. **our** pro-rata share of any loss when divided with any other valid and collectible insurance applying to the covered property at the time of loss.

We will pay full replacement cost under A. and B. above, whether or not actual repair or replacement is complete, whenever the full cost of repair or replacement is less than \$5,000.

You may disregard the provisions under B. above relating to settlement on a replacement cost basis and make a claim for loss on an **actual cash value** basis, but not exceeding the smallest of:

- (1.) the limit of liability applicable to the structure;
- (2.) the direct financial loss **you** incur; or

- (3.) **our** pro-rata share of any loss when divided with any other valid and collectible insurance applying to the covered property at the time of loss.

Such election will not stop **you** from making a further claim within 180 days after the loss, provided **you** still have an insurable interest in the property, for any additional liability according to the provisions of this Condition.

C. Structures That Are Not Dwelling Structures.

Subject to the applicable deductible, **we** will pay the **actual cash value** at the time of the loss. Payments will not exceed the amount necessary to repair or replace the damaged or stolen property or the limit of insurance applicable to the property, whichever is less.

D. Replacement Cost Provision for Personal Property.

Subject to the applicable deductible, **we** will pay the full cost of repair or replacement without deduction for depreciation for the following property:

- (1.) Coverage C - Personal Property, subject to the limitations described below;
- (2.) If covered in this policy, awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to dwellings.

This **Replacement Cost** Provision will also apply to the following articles or classes of property if they are separately described and specifically insured in this policy:

- (1.) Jewelry;
- (2.) Furs and garments trimmed with fur or consisting principally of fur;
- (3.) Cameras, projection machines, films and related articles of equipment;
- (4.) Musical equipment and related articles of equipment;
- (5.) Silverware, silver-plated ware, goldware, gold plated ware and pewterware, but excluding pens, pencils, flasks, smoking implements or jewelry;
- (6.) Golfer's equipment meaning golf clubs, golf clothing and golf equipment; and
- (7.) Guns.

Property listed below is not eligible for **replacement cost** settlement. Any loss shall be settled at **actual cash value** at the time of loss but not exceeding the amount necessary to repair or replace:

- (1.) Antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced with new articles;
- (2.) Articles whose age or history contribute substantially to their value. This includes but is not limited to memorabilia, souvenirs and collector's items;
- (3.) Articles not maintained in good or workable

condition; or

- (4.) Articles that are obsolete or outdated and are stored or not being used.

Our liability for any loss shall not exceed the smallest of the following amounts for any one **occurrence**:

- (1.) the full cost of repair at the time of the loss;
- (2.) the **replacement cost** of the property at the time of loss without deduction for depreciation;
- (3.) the limit of liability of this policy applicable to the damaged, destroyed or stolen property; or
- (4.) for loss to any item separately described and specifically insured in this policy, the limit of liability that applies to the item.

When the cost to repair, restore or replace the damaged or stolen property under this **Replacement Cost** Provision is more than \$500 for the entire loss, payment will be on an **actual cash value** basis, not to exceed the limit of liability shown in the Declarations page for Coverage C - Personal Property or any special limit of liability described in the policy, until the actual repair or replacement is complete. **You** may make a claim for loss on an **actual cash value** basis and then make claim within 180 days after the loss for any additional payment on a **replacement cost** basis if **you** repair, restore or replace the damaged or stolen property.

4. **Our Settlement Of Loss.** **We** will adjust all losses with **you**. **We** will pay **you** unless some other person is named in the policy or is legally entitled to receive payment. **We** will pay within 60 days after **we** receive **your** proof of loss and reach agreement with **you**, or there is an entry of a final judgment or there is a filing of an appraisal award with **us**.

If a municipality has elected to apply the provisions of Michigan Public Act 495 of 1980, a portion of **our** payment for fire or explosion loss to insured real property in that municipality will be withheld in the event that the loss is subject to the provisions of the Act. **We** will pay the withheld amount either to the municipality or to **you** and the mortgagee, if any, according to the provisions of Public Act 495. **We** will notify **you**, any mortgagee and the municipality of any loss subject to the provisions of Public Act 495.

5. **Our Settlement Options.** **We** have the option of taking all or part of the property at the agreed or appraised value. **We** have the option to repair, rebuild or replace the damaged or destroyed property with property of like kind and quality within a reasonable time. **We** must give **you** notice of **our** intention within 30 days after **we** receive **your** signed, sworn proof of loss.

6. **Abandoned Property.** We are not obligated to accept any property abandoned by you.

7. **Appraisal.** If you and we fail to agree on the amount of loss, either you or we can make a written demand for an appraisal. Each party will select a competent and impartial appraiser and notify the other within 20 days of the appraiser's identity. The two appraisers will select a competent and impartial umpire. If the two appraisers are unable to select an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.

The appraisers will appraise the loss and determine separately the full replacement cost, actual cash value and the loss as to each item. Any disagreement between the appraisers will be resolved by the umpire. The written award by two of these three people will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire. All other expenses of appraisal will be paid by the party which incurs them.

8. **Rights and Duties Of Mortgagee.** The term "mortgagee" includes a trustee or a land contract holder, if applicable.

If a mortgagee is named in the Declarations, any payment for loss under Coverage A or B will be made to the mortgagee and you, as interests appear. If more than one mortgagee is named, payment will be made in the order of priority of the mortgagees.

The interest of the mortgagee under this policy will not be affected by any action or neglect by you. The interest of the mortgagee under this policy will terminate unless it notifies us of any change of ownership, occupancy or substantial change in risk of which the mortgagee has knowledge and pays upon demand any premium due if you fail to do so.

We will notify the mortgagee if you fail to give us proof of loss. Within 60 days after receiving such notice, the mortgagee must give us proof of loss. Policy conditions relating to appraisal, time of payment and time of bringing lawsuit apply to the mortgagee.

We will give the mortgagee not less than 10 days notice of cancellation or nonrenewal of the insurance protecting its interest.

If we pay the mortgagee for any loss and deny payment to you:

A. we will be subrogated to the extent of our payment to all the rights that the mortgagee has under the mortgage on the property; or

B. at our option, we may pay to the mortgagee the whole principal on the mortgage and any

interest due. In this event, we may receive a full assignment and transfer of the mortgage and all securities held as collateral for the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

Our cancellation of the policy also applies to agreements under this condition.

If a municipality has elected to apply the provisions of Michigan Public Act 495 of 1980, a portion of our payment for fire or explosion loss to insured real property in that municipality will be withheld in the event that the loss is subject to the provisions of the Act. We will pay the withheld amount either to the municipality or to you and the mortgagee, if any, according to the provisions of Public Act 495. We will notify you, any mortgagee and the municipality of any loss subject to the provisions of Public Act 495.

9. **Loss To A Pair Or Set.** In case of loss to a pair or set we may elect to:

A. Repair or replace any part to restore the pair or set to its value before the loss; or

B. Pay the difference between actual cash value of the property before and after the loss.

Loss to a part will not be considered a total loss of the pair or set.

10. **No Benefit To Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

11. **Suit Against Us.** No action may be brought against us by you unless there has been full compliance with all of the policy provisions and the lawsuit is filed within one year after the date of loss. The time for filing a lawsuit against us is tolled from the time you notify us of the loss until we deny liability in writing.

12. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of all insurance covering the loss.

13. **Recovered Property.** If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned or retained by you, you will return to us the amount you received for the recovered property or the loss payment will be adjusted based on the amount you received for the recovered property.

SECTION II - COVERAGES

COVERAGE E - PERSONAL LIABILITY

LOSSES WE COVER UNDER COVERAGE E - PERSONAL LIABILITY

If a claim is made or a suit is brought against **you** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, **we** will:

1. pay up to **our** limit of liability for the damages for which **you** are legally liable; and
2. provide a defense at **our** expense by counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** may investigate and settle any suit or claim that **we** decide is appropriate. **Our** duty to settle or defend ends when the amount **we** pay for damages resulting from the **occurrence** equals **our** limit of liability.

LOSSES WE DO NOT COVER UNDER COVERAGE E - PERSONAL LIABILITY

We do not cover:

1. **bodily injury** or **property damage** resulting from:
 - A. an act or omission by **you**, whether sane or insane, which may reasonably be expected or subjectively intended to cause **bodily injury** or **property damage**.

This exclusion applies even if the **bodily injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than which may reasonably be expected or subjectively intended;

- B. an act or omission committed by **you** while insane or while lacking the mental capacity to control **your** conduct or while unable to form any intent to cause **bodily injury** or **property damage**;

- C. a criminal act or omission by **you**. This exclusion applies whether or not **you**:
 - (1.) are charged with a crime;
 - (2.) are convicted of a crime by a court, jury or plea of nolo contendere; or
 - (3.) enter a plea of guilty whether or not accepted by the court; or

- D. an act or omission which is criminal in nature and committed by **you** while lacking the mental capacity to appreciate the criminal nature or wrongfulness of the act or omission or to conform **your** conduct to the requirements of the law or to form the necessary intent under the law.

2. **bodily injury** or **property damage** arising out of or in connection with a **business** engaged by **you**. This exclusion applies, but is not limited to, an act or omission regardless of its nature or

circumstance, when it involves a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**.

This exclusion does not apply to:

- A. employment as teachers and school administrators, including activities of a teacher in inflicting corporal punishment, while in the course and scope of his or her educational employment.
 - B. **your** occasional or part-time **business** activities if **you** are under 19 years of age or a full time student under 21 years of age.
3. **your** legal liability to any person resulting from **your** regular care of one or more persons anywhere for economic gain and regardless of whether such care or premises is licensed or not. The mutual exchange of home day care services is not considered to be for economic gain. This exclusion does not apply to **your** occasional care or babysitting.
4. **bodily injury** or **property damage** arising out of the rendering of or failing to render professional services of any kind.
5. **bodily injury** or **property damage** arising out of the use of any premises owned by **you**, rented to **you**, or rented to others by **you**.

Coverage does apply to the **insured premises**. Coverage is provided for **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

6. **bodily injury** or **property damage** arising out of:
 - A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of any motorized land vehicle or trailer;
 - B. the entrustment by **you** of a motorized land vehicle to any person.

This exclusion does not apply to:

- A. a motorized land vehicle in dead storage or used exclusively on an **insured premises**;
 - B. any motorized land vehicle which is designed principally for recreational use off public roads, not subject to motor vehicle registration, licensing or permits, and owned by **you**, but only while the vehicle is on the **insured premises**;
 - C. a motorized wheel chair;
 - D. a motorized land vehicle not designed for use on public roads and not subject to motor vehicle registration, used to service an **insured premises**;
 - E. a boat, camper, home or utility trailer not towed

by or carried on a motorized land vehicle;

F. a motorized golf cart owned by **you** while used for golfing.

G. a motorized bicycle, tricycle or similar type of equipment owned by **you** while on the **insured premises**; or

H. **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

7. **bodily injury** or **property damage** arising out of:

A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of an excluded watercraft described below;

B. the entrustment by **you** of an excluded watercraft described below to any person.

Excluded watercraft include watercraft:

A. owned by or rented to **you** powered by inboard or inboard-outdrive engine or motor power of more than 50 horsepower;

B. powered by one or more outboard engines or motors with a total of 50 horsepower or more if the outboard motors are owned by **you**; or

C. owned by or rented to **you** that are sailing vessels, with or without auxiliary power, that are 26 feet or more in overall length.

We do cover bodily injury to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

8. **bodily injury** or **property damage** arising out of:

A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of an aircraft or hovercraft;

B. the entrustment by **you** of an aircraft or hovercraft to any person.

Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles.

We do cover bodily injury to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

9. **bodily injury** or **property damage** caused directly or indirectly by war, including the following and any consequence of any of the following:

A. undeclared war, civil war, insurrection, rebellion or revolution;

B. warlike act by a military force or military personnel; or

C. destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed to be a warlike act even if accidental.

10. **bodily injury** or **property damage** arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs.

Coverage is provided for:

A. the legitimate use of prescription drugs by a person following the orders of a licensed physician; and

B. **you** if **you** do not have knowledge of the act or acts mentioned above and are not in a position to possess that knowledge.

11. **bodily injury** to any insured within the meaning of Part 1 of the definition of **you**.

12. **bodily injury** or **property damage** resulting in any manner from the discharge, disposal, release or escape of:

A. vapors, fumes, acids, toxic chemicals, toxic liquids or toxic gases; or

B. waste materials or other irritants, contaminants or pollutants.

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

Coverage is provided if the loss is sudden and accidental.

13. **bodily injury** or **property damage** arising out of any liability statutorily imposed on **you** resulting from the discharge, disposal, release or escape of:

A. vapors, fumes, acids, toxic chemicals, toxic liquids or toxic gases; or

B. waste materials or other irritants, contaminants or pollutants.

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

14. **bodily injury** caused by transmission of any venereal disease, Herpes, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC), Human Immunodeficiency Virus (HIV) or any other communicable disease, or any related or resulting symptom, effect, condition, disease or illness.

15. any loss assessment charged against **you** as a member of an association, corporation or community of property owners, except as provided under Section II - Additional Coverages, 4. Loss Assessment.
16. any liability assumed by **you** under any unwritten contract or agreement, or by any contract or agreement in connection with **your business**.
17. **property damage** to property owned by **you**.
18. **property damage** to property occupied or used by **you**, rented to **you**, in **your** care or over which **you** have physical control. Coverage is provided for **property damage** caused by fire, explosion or smoke.
19. **bodily injury** or **property damage** for which **you** are insured under any nuclear energy liability policy or would be insured but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by American Nuclear Insurers, Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.
20. **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by **you** under any workers compensation, non-occupational disability or occupational disease law.
21. **bodily injury**:
 - A. caused by a violation of a penal law or ordinance committed by **you** or with **your** knowledge or consent;
 - B. sustained by any person as a result of an offense directly or indirectly related to the employment of this person by **you**;
 - C. arising out of **your business** activities;
 - D. arising out of civic or public activities performed for pay by **you**; or
 - E. assumed by **you** under any written contract or agreement except any indemnity obligation assumed by **you** under a written contract directly relating to the ownership, maintenance or use of the **insured premises**.
22. any liability or damages arising out of any act, statement, omission, fraud, misrepresentation, fraudulent, silent or negligent concealment in the sale of any real or personal property, including, but not limited to the **residence premises**, by **you**, or any claim arising out of or under the Michigan "Seller Disclosure Act", Public Act 92 of the Public Acts of 1993 and including any amendments thereto.
23. the liability of any person, and **we** will not pay any claims for damages, which result directly or indirectly from the actual, alleged or threatened sexual molestation of a person by **you**.
24. **your** liability arising out of any court ordered restitution, fine or sanction.
25. punitive and exemplary damages awarded against **you**.
26. **bodily injury** or **property damage** arising out of:
 - A. toxic or pathological properties of lead, lead compounds or lead contained in any materials;
 - B. any cost or expense to abate, mitigate, remove or dispose of lead, lead compounds or materials containing lead;
 - C. any supervision, instruction, recommendations, warnings or advice given or which should have been given in connection with paragraphs A. or B. above; or
 - D. any obligation to share damages with or repay someone else who must pay damages in connection with injury or damage as described in any subsection above.
27. **bodily injury** or **property damage** arising out of:
 - A. any fungus or spore;
 - B. any substance, vapor or gas produced by or arising out of any fungus or spore. This includes, but is not limited to, any metabolite such as a mycotoxin or a volatile organic compound; or
 - C. any:
 - I. Material, product, dwelling or structure, including components thereof; or
 - II. Concentration of water, moisture, humidity or other liquids on or within such items in C. (I.) above; that contains, harbors, nurtures or acts as a means for growth of any fungus or spore.
 - III. But this only applies to the extent that any of the items in C. (I.) or C. (II.) above result in, cause or contribute concurrently or in any sequence to such injury or damage described in A. or B. above;
 - D. costs expended by anyone for testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any of the items described in A. B. or C. above;
 - E. other cause or event to the extent that it contributed concurrently or in any sequence to such injury, damage or costs described in items A. through D. above;
 - F. supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with items A. through E. above;
 - G. duty to share damages with or repay someone else who must pay costs because

of such injury, damage or costs described in items A. through F. above.

COVERAGE F - MEDICAL PAYMENTS TO OTHERS LOSSES WE COVER UNDER COVERAGE F -MEDICAL PAYMENTS TO OTHERS

We will pay the necessary **medical expenses** that are incurred or medically ascertained within three years from the date of the accident causing **bodily injury**. This coverage does not apply to **you** or regular residents of **your** household, except **residence employees**. This coverage does apply to others who sustain **bodily injury** as a result of an accident, while they are:

1. on the **insured premises** with **your** permission.
2. off the **insured premises**, if the **bodily injury**:
 - A. arises out of a condition on the **insured premises** or immediately adjoining ways;
 - B. is caused by **your** activities;
 - C. is caused by a **residence employee** in the course of employment by **you**; or
 - D. is caused by an animal owned by **you** or in **your** care.

Payment under Coverage F is not an admission of liability by **us** or **you**.

LOSSES WE DO NOT COVER UNDER COVERAGE F -MEDICAL PAYMENTS TO OTHERS

We do not cover:

1. **bodily injury** resulting from:
 - A. an act or omission by **you**, whether sane or insane, which may reasonably be expected or subjectively intended to cause **bodily injury**.
This exclusion applies even if the **bodily injury** is of a different kind or degree, or is sustained by a different person or property, than which may reasonably be expected or subjectively intended;
 - B. an act or omission committed by **you** while insane or while lacking the mental capacity to control **your** conduct or while unable to form any intent to cause **bodily injury**;
 - C. a criminal act or omission by **you**. This exclusion applies whether or not **you**:
 - (1.) are charged with a crime;
 - (2.) are convicted of a crime by a court, jury or plea of nolo contendere; or
 - (3.) enter a plea of guilty whether or not accepted by the court; or
 - D. an act or omission which is criminal in nature and committed by **you** while lacking the mental capacity to appreciate the criminal nature or wrongfulness of the act or omission or to conform **your** conduct to the requirements of the law or to form the

necessary intent under the law.

2. **bodily injury** arising out of or in connection with a **business** engaged by **you**. This exclusion applies, but is not limited to, an act or omission regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**.

This exclusion does not apply to:

- A. employment as teachers and school administrators, including activities of a teacher in inflicting corporal punishment, while in the course and scope of his or her educational employment.
- B. **your** occasional or part-time **business** activities if **you** are under 19 years of age or a full time student under 21 years of age.
3. **your** legal liability to any person resulting from **your** regular care of one or more persons anywhere for economic gain and regardless of whether such care or premises is licensed or not. The mutual exchange of home day care services is not considered to be for economic gain. This exclusion does not apply to **your** occasional care or babysitting.
4. **bodily injury** arising out of the rendering of or failing to render professional services of any kind.
5. **bodily injury** arising out of the use of any premises owned by **you**, rented to **you**, or rented to others by **you**.

Coverage does apply to the **insured premises** and is provided for **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

6. **bodily injury** arising out of:
 - A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of any motorized land vehicle or trailer;
 - B. the entrustment by **you** of a motorized land vehicle to any person.

We do cover:

- A. a motorized land vehicle in dead storage or used exclusively on an **insured premises**;
- B. any motorized land vehicle which is designed principally for recreational use off public roads, not subject to motor vehicle registration, and owned by **you**, but only while the vehicle is on the **insured premises**;
- C. a motorized wheel chair
- D. a vehicle not designed for use on public roads and not subject to motorized land vehicle registration, used to service an **insured premises**;

- E. a boat, camp, home or utility trailer not towed by or carried on a motorized land vehicle;
- F. a motorized golf cart owned by **you** while used for golfing
- G. a motorized bicycle, tricycle or similar type of equipment owned by **you** while on the **insured premises**; or
- H. **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

7. **bodily injury** arising out of:

- A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of an excluded watercraft described below;
- B. the entrustment by **you** of an excluded watercraft described below to any person.

Excluded watercraft include watercraft:

- A. owned by or rented to **you** powered by inboard or inboard-outdrive engine or motor power of more than 50 horsepower;
- B. powered by one or more outboard engines or motors with a total of 50 horsepower or more if the outboard motors are owned by **you**;
- C. owned by or rented to **you** that are sailing vessels, with or without auxiliary power, that are 26 feet or more in overall length.

We do cover **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

8. **bodily injury** arising out of:

- A. the ownership, maintenance, occupancy, use, renting, loaning, loading or unloading of an aircraft or hovercraft;
- B. the entrustment by **you** of an aircraft or hovercraft to any person.

Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles.

We do cover **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by **you**.

9. **bodily injury** caused directly or indirectly by war, including the following and any consequence of any of the following:

- A. undeclared war, civil war, insurrection, rebellion or revolution;
- B. warlike act by a military force or military personnel; or

- C. destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed to be a warlike act even if accidental.

- 10. **bodily injury** arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs.

Coverage is provided for:

- A. the legitimate use of prescription drugs by a person following the orders of a licensed physician; and
- B. **you** if **you** do not have knowledge of the act or acts mentioned above and are not in a position to possess that knowledge.

- 11. **bodily injury** to any insured within the meaning of Paragraph 1 of the definition of **you**.

- 12. **bodily injury** resulting in any manner from the discharge, disposal, release or escape of:

- A. vapors, fumes, acids, toxic chemicals, toxic liquids or toxic gases; or
- B. waste materials or other irritants, contaminants or pollutants.

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

Coverage is provided if the loss is sudden and accidental.

- 13. **bodily injury** arising out of any liability statutorily imposed on **you** resulting from the discharge, disposal, release or escape of:

- A. vapors, fumes, acids, toxic chemicals, toxic liquids or toxic gases; or
- B. waste materials or other irritants, contaminants or pollutants.

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

- 14. **bodily injury** caused by transmission of any venereal disease, Herpes, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC), Human Immunodeficiency Virus (HIV) or any other communicable disease, or any related or resulting symptom, effect, condition, disease or illness.

15. **bodily injury** to a **residence employee** if the **bodily injury** occurs off the **insured premises** and does not arise out of or in the course of **your** employment.
16. **bodily injury** from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
17. **bodily injury** to any regular resident of the **insured premises**, except **your residence employee**.
18. **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided under any workers compensation, non-occupational disability or occupational disease law.
19. The liability of any person, and **we** will not pay any claims for damages, which result directly or indirectly from the actual, alleged or threatened sexual molestation of a person by **you**.
20. **bodily injury** arising out of:
 - A. toxic or pathological properties of lead, lead compounds or lead contained in any materials;
 - B. any cost or expense to abate, mitigate, remove or dispose of lead, lead compounds or materials containing lead.
 - C. Any supervision, instruction, warnings, recommendations, or advice given or which should have been given in connection with paragraphs A. or B. above; or
 - D. any obligation to share damages with or repay someone else who must pay damages in connection with injury or damage as described in any subsection above.
21. **bodily injury** arising out of:
 - A. any fungus or spore;
 - B. any substance, vapor or gas produced by or arising out of any fungus or spore. This includes, but is not limited to, any metabolite such as a mycotoxin or a volatile organic compound; or
 - C. any:
 - I. Material, product, dwelling or structure, including components thereof; or
 - II. Concentration of water, moisture, humidity or other liquids on or within such items in C. (I.) above; that contains, harbors, nurtures or acts as a means for growth of any fungus or spore.
 - III. But this only applies to the extent that any of the items in C. (I.) or C. (II.) above result in, cause or contribute concurrently or in any sequence to such injury or damage described in A. or B. above;
 - D. costs expended by anyone for testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any of the items described in A. B. or C. above;
 - E. other cause or event to the extent that it contributed concurrently or in any sequence to such injury, damage or costs described in items A. through D. above;
 - F. supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with items A. through E. above;
 - G. duty to share damages with or repay someone else who must pay costs because of such injury, damage or costs described in items A. through F. above.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Damage to Property of Others.** **We** will pay up to \$500 per **occurrence** for **property damage** to property of others caused by **you**. At **our** option, **we** will pay the cost to either repair or replace the damaged property.

We will not pay for **property damage**:

- A. to the extent of any amount recoverable under Section I of this policy;
- B. caused intentionally by **you** if **you** are 13 years of age or older;
- C. to property owned by **you**;
- D. to property owned by or rented to any of **your**

tenants or any resident of **your** household;

- E. arising out of:
 - (1.) any act or omission in connection with a premises **you** own, rent or control, other than the **insured premises**;
 - (2.) a **business** engaged in by **you**; or
 - (3.) the ownership, maintenance, occupancy, operation, use, or loading or unloading of any motor vehicle, aircraft or watercraft. Coverage is provided for any motorized land vehicle which is designed principally for recreational use off public roads, not subject to motor vehicle registration, licensing or permits, and not owned by **you**.

2. Claim Expenses. We will pay:

- A. all costs **we** incur and costs taxed against **you** in any suit **we** defend;
- B. premiums on bonds required in any suit **we** defend, but not for bond amounts more than the limit of liability for Coverage E - Personal Liability. **We** are not obligated to apply for or furnish any bonds;
- C. reasonable expenses **you** incur at **our** request;
- D. up to \$250 per day for lost wages or salary, but not other income, because **you** attended a hearing or trial at **our** request; and
- E. interest on the entire judgement awarded in any suit **we** defend which accrues after entry of the judgment and before **we** pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

3. First Aid Expenses. We will pay expenses for first aid to others you incur at the time of the accident for bodily injury covered under this policy. We will not pay for first aid to you.**4. Loss Assessment. We will pay up to \$1000 for your share of any loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of:**

- A. **bodily injury** or **property damage** to which Section II of this policy would apply;
- B. liability for an act of a director, officer or trustee

in the capacity as a director, officer or trustee, provided:

- (1.) the director, officer or trustee is elected by the members of a corporation or association of property owners; and
- (2.) the director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**. **We** do not cover loss assessments charged against **you** or a corporation or association of property owners by any governmental body.

Regardless of the number of assessments, the limit of \$1000 is the most **we** will pay for loss arising out of:

- A. one **occurrence**; or
- B. a covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.

5. Statutorily Imposed Vicarious Parental Liability. We will pay the statutorily imposed limit or \$3000, whichever is less, for the legal obligation you are required to pay as a result of acts of a minor child who resides with you.

SECTION II - CONDITIONS

1. Limit of Liability. Under Coverage E - Personal Liability, the limit of liability shown in the Declarations for "each **occurrence**" is the maximum **we** will pay for all damages as the result of any one **occurrence**. All **bodily injury** and **property damage** resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one **occurrence**.

Under Coverage F - Medical Payments to Others, the limit of liability shown in the Declarations for "each person" is the maximum **we** will pay to any one person as a result of any one **occurrence**.

2. Severability. Subject to the limit of liability, this insurance applies separately to each covered person or organization against whom claim is made or suit is brought.**3. What You Must Do After An Accidental Loss.** In case of an accident or **occurrence**, **you** must do the following things:

- A. Promptly notify **us** or **our** representative, stating:

1. **Your** name.

2. **Your** policy number.

3. The date, the place and the circumstances of the loss.

4. The name and address of anyone who might have a claim against **you**.

5. The names and addresses of any witnesses.

Your notice to **our** authorized representative is considered notice to **us**. Failure to give any notice required by this section shall not invalidate any claim made by a person seeking coverage. It must be shown not to have been reasonably possible to give such notice promptly and that notice was given as soon as was reasonably possible.

B. Promptly send us any legal papers relating to the accident or occurrence.**C. At our request, assist us in:**

- (1.) making settlement;
- (2.) the enforcement of any right of recovery against any person or organization who may be liable to **you**;
- (3.) the conduct of suits and attend hearings

- and trials; and
 (4.) securing and giving evidence and obtaining the attendance of witnesses.

- D. Under Damage to Property of Others in Section II-Additional Coverages, give **us** a sworn statement of the loss within 60 days after the loss and show **us** the damaged property if in **your** control.
- E. Submit to examinations by **us**, under oath, as often as may be reasonably required.
- F. **You** must not voluntarily pay any money, assume any obligations, or incur any expenses, other than for first aid to others at the time of the loss as provided for in this policy.
4. **Duties of an Injured Person Under Coverage F – Medical Payments to Others.** The injured person, or someone acting for that person, will promptly give **us** written proof of the claim, submit to examinations by **us**, under oath, as often as may be reasonably required and authorize **us** to obtain copies of all medical records and reports.

The injured person will submit to a physical examination by a doctor of **our** choice when and as often as **we** may reasonably require.

5. **Our Payment of Loss Under Coverage F - Medical Payments to Others.** We may pay the injured person or the provider of the medical services.

6. **Lawsuits Against Us.** No action may be brought against **us** by **you** unless there has been full compliance with all of the policy provisions and the lawsuit is filed within one year after the date of loss. The time for filing a lawsuit against **us** is tolled from the time **you** notify **us** of the loss until **we** formally deny liability.

No action with respect to Coverage E - Personal Liability can be brought against **us** until **your** obligation has been determined either by final judgment or agreement signed by **us**.

No one will have the right to join **us** as a party to any action against **you**.

7. **Other Insurance Under Coverage E - Personal Liability.** This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess, over the limits of liability that apply in this policy.

GENERAL CONDITIONS - SECTIONS I AND II

1. **Policy Period.** This policy applies only to losses occurring during the policy period shown on the Declarations.
2. **Concealment or Fraud.** This policy is void as to all persons within the meaning of Paragraph 1 of the definition of **you** if any person so defined intentionally conceals or misrepresents any material fact or circumstance or makes false statements or engages in fraudulent conduct relating to this insurance, either before or after a loss.
3. **Conformity To Statute.** The terms of this policy which are in conflict with the statutes of the state in which the **insured premises** is located are hereby amended to conform to such statutes.
4. **Death.** If any person named in the Declarations dies, **we** insure:
- the spouse, if a resident of the household at the time of death;
 - the legal representative of the deceased, but only with respect to the premises and property of the deceased covered by this policy at the time of death;
 - any member of the deceased's household who was covered at the time of death, but only while a resident of the **insured premises**;
 - with respect to the property of the deceased, the person having proper temporary custody thereof, but only until appointment and

qualification of a legal representative.

5. **Liberalization.** If **we** make a change which broadens coverage under this edition of **your** policy without additional premium charge, that change will automatically apply to **your** insurance as of the date **we** implement the change in **your** state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations. This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of **our** policy.
6. **Waiver or Change Of Policy Provisions.** Any waiver or change in any provision of this policy must be in writing. **Our** request for an appraisal or examination under oath will not waive any of **our** rights.

7. **Cancellation.**

A. If **you** cancel.

- (1.) The first **Named Insured** shown on the Declarations may cancel this policy by giving written notice or returning the policy to **us** or **our** authorized representative and stating the date on which the cancellation is to be effective. Upon proof that **you** no longer have an insurable interest in the Dwelling to which this policy applies, **we** may honor a cancellation effective date that predates **your** request, but for no greater a period than 30 days;

- (2.) When **you** cancel this policy, the return premium will be calculated on a pro rata basis.

B. If **we** cancel.

- (1.) When **you** have not paid the premium, **we** may cancel at any time by notifying the first **Named Insured** at least 10 days before the date cancellation is to take effect;
- (2.) **We** may cancel for reasons which conform to our underwriting rules by notifying the first **Named Insured** at least 30 days before the date cancellation is to take effect;
- (3.) The notice will be delivered or mailed to the first **Named Insured** at the first **Named Insured's** address last known to **us** or **our** authorized representative. Proof of mailing will be sufficient proof of notice;
- (4.) When **we** cancel this policy, the return premium will be calculated on a pro rata basis.

- C. The minimum earned premium on any policy which is cancelled by **you** or **us** shall not be less than the pro rata premium for the expired time or \$25.00, whichever is greater.

- D. If **you** have elected to use **our** scheduled payment program, failure to pay any installment when due will result in cancellation. If the policy is reinstated after cancellation, there shall be no coverage during the period of time between the date the policy was cancelled and the date of the reinstatement. A check which is not honored for any reason will not constitute payment and will not continue coverage beyond any date when such coverage would otherwise terminate for lack of payment.

- E. Cancellation will not affect any claim that originated prior to the date of cancellation.

8. **Nonrenewal.** **We** may elect not to renew this policy. **We** may do so by delivering to **you**, or

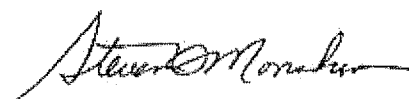
mailing to **you** at **your** mailing address shown in the Declarations, written notice at least 30 days before the renewal date of this policy. Proof of mailing will be sufficient proof of notice.

If **we** offer to renew this policy, and **you** decline, it will automatically terminate at the end of the policy term. Payment of the required renewal premium must be received in **our** office before the due date to constitute acceptance of the offer to renew **your** policy. Payments for the renewal premium received in **our** office within 30 days after the due date will constitute an offer to renew the policy effective 12:01a.m. the day after the payment is received. The policy may, at **our** option, be renewed with new effective dates. **We** will only pay for a loss or claim occurring within the policy effective dates.

9. **Assignment.** **You** may not assign this policy to another person without **our** written consent.
10. **Bankruptcy or Insolvency.** **Your** bankruptcy or insolvency will not relieve **us** of any obligation under this policy.
11. **Premium.** All premiums for this policy will be computed in accordance with **our** rules, rates, rating plans, premiums and minimum premiums in effect at the beginning of **your** current policy period. Each year, on the renewal date of the policy the premium for renewal of this policy will be computed on the basis of **our** manuals then in use. Premiums are payable on the dates set forth by **us**. **We** will round premium adjustments made for any reason to the nearest dollar, in accordance with the manuals in use by **us**.
12. **Change of Address.** The **Named Insured** shall give **us** written notice within 30 days of any change of address from that shown on the Declaration page.
13. **Our Rights to Recover Payment.** When a covered loss occurs, **your** right to recover from any person, company or organization becomes **ours**. **You** must protect these rights and help **us** enforce them.

SIGNATURE CLAUSE

In witness whereof, we MEEMIC Insurance Company, have caused this policy to be issued and signed by our President and Chief Executive Officer.



President and Chief Executive Officer



Meemic
INSURING OUR EDUCATIONAL COMMUNITY

Certified Copy
Name: PATRICK KLINE
Title: OW Manager
Date: 2/11/2016

RECEIVED by MSC 3/1/2021 2:13:22 PM

It is agreed between you and us that the following changes are made to your Homeowners Insurance Policy.

The Following changes apply to Form H03 (04/12)

Michigan Homeowners Policy Amendatory Endorsement

DEFINITIONS

Under **DEFINITIONS**, the following definitions have been revised:

"RESIDENCE PREMISES" means the one, two, three or four family dwelling used as a private residence by **you**, other structures and land located at the address named on the Declarations. **Residence Premises** does not include any portion of the premises used for **business purposes**.

"YOU" and **"YOUR"** definition of spouse has been revised:

1. the person or persons shown as **Named Insured** and if a resident of the same household:
 - A. the spouse of such person or persons; the spouse is considered a resident relative of the household even if they are:
 - (1.) temporarily away from your **resident premises**, if he or she intends to live at your **residence premises**; or
 - (2.) no longer living at, and does not intend to continue to live at, your **residence premises**, but only until the earlier of the following:
 - a. the effective date of another policy listing the spouse as the **named insured**; or
 - b. until the last day of the policy period during which the spouse ceased living at the **residence premises**.

SECTION I - COVERAGES

Under **COVERAGES**, applying to **SECTION I, LOSSES WE DO NOT COVER UNDER COVERAGES A - DWELLING AND B - OTHER STRUCTURES** under item 10.

If any of these cause fire or the sudden and accidental escape of water or steam from a **plumbing**, heating or air conditioning system, fire protective sprinkler system or household appliance, **we** cover the direct physical damage caused by the fire, water or steam is deleted and replaced by the following:

If any of these cause fire or the sudden and accidental water damage not otherwise excluded, from a **plumbing**, heating or air conditioning system, fire protective sprinkler system or household appliance, **we** cover the direct physical damage caused by the fire, water or steam.

Under COVERAGES, applying to SECTION I, **LOSSES WE DO NOT COVER UNDER COVERAGES A - DWELLING AND B - OTHER STRUCTURES** under item 12. **Vandalism or Malicious Mischief** has been revised with the following:

12. **Vandalism or Malicious Mischief** if the **residence premises** was vacant for more than 60 consecutive days immediately prior to the loss. A **residence premises** being constructed is not considered vacant.

Under COVERAGES, applying to SECTION I, **SPECIAL LIMITATIONS ON CERTAIN PROPERTY UNDER COVERAGE C**, item 11. has been revised with the following:

11. \$500 for any property, while away from the **residence premises**, used at any time or in any manner in or for a **business**.

We do cover:

Up to \$2500 off premise for Educators who use their own personal property in their daily school activities or other school related functions.

Under COVERAGES, applying to SECTION I, **LOSSES WE COVER UNDER COVERAGES C – Personal Property** under item 17. **Glass or Safety Glazing Material** has been revised with the following:

17. **Glass or Safety Glazing Material** which is part of a dwelling, storm door or storm window.

We do not cover loss at the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling under construction is not considered vacant.

SECTION I – ADDITIONAL COVERAGES

Under **Additional Coverages**, item 10. **Employee Owned Computer Equipment** the following has been revised:

- D. Intentional Loss, meaning any of **your** intentional or criminal acts if the loss that occurs:

- (1.) may be reasonably expected to result from such acts; or
- (2.) is in fact the intended result of such acts.

This exclusion applies regardless of whether or not **you** are actually charged with or convicted of a crime; However, for the insurer to establish an intentional or criminal act or omission for purposes of this exclusion by other than a criminal conviction, the insurer must independently prove beyond a reasonable doubt that the person committed such an intentional or criminal act or omission.

SECTION I - CONDITIONS

Under **CONDITIONS**, applying to SECTION I, **Our Settlement Of Loss**, the first paragraph has been revised with the following:

We will pay within 30 days after **we** receive **your** proof of loss and reach agreement with **you**, or there is an entry of a final judgment or there is a filing of an appraisal award with **us**.

Under **CONDITIONS**, applying to SECTION I, **Appraisal**, the first paragraph is deleted in its entirety and replaced with the following:

7. **Appraisal.** If **you** and **we** fail to agree on the amount of loss, either **you** or **we** can make written demand for an appraisal. Each party will select a competent, independent appraiser and notify the other within 20 days of the appraiser's identity. The two appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, **you** or **we** may request that the choice be made by a judge of the circuit court for the county in which the loss occurred or where the **residence premises** is located.

SECTION II – COVERAGES

The following revisions have been made to **LOSSES WE DO NOT COVER UNDER COVERAGES E – PERSONAL LIABILITY** and **LOSSES WE DO NOT COVER UNDER COVERAGES – F MEDICAL PAYMENTS TO OTHERS**, item 1. has been revised with the following:

We do not cover:

1. **bodily injury** or **property damage** resulting from:

- A. an act or omission by a **named insured** which is intended or could reasonably be expected to cause **bodily injury** or **property damage**. This exclusion applies even if the **bodily injury** or **property damage** is different from, or greater than, that which is expected or intended.
- B. a criminal act or omission committed by a **named insured** even if that **named insured** lacked the mental capacity to:
 - (1.) appreciate the criminal nature or wrongfulness of the act or omission; or
 - (2.) conform his or her conduct to the requirements of the law; or
 - (3.) form the necessary intent under the law.

This exclusion applies whether or not a **named insured**:

- (1.) is charged with a crime; or
- (2.) is convicted of a crime by a court, jury or plea of nolo contendere; or
- (3.) enters a plea of guilty whether or not accepted by the court.

If a **named insured** is not charged with a crime, or not convicted of a crime, or does not enter a plea of guilty or nolo contendere, **we** must prove in a civil court of law that the **named insured** could have been convicted of a criminal act or omission, or an act or omission criminal in nature, beyond a reasonable doubt.

SECTION II - CONDITIONS

Under **CONDITIONS** apply to SECTION II – **Lawsuits Against Us** is deleted in its entirety and replaced with the following:

6. **Lawsuits Against Us.** **We** may not be sued under this Part:
- A. unless there is full compliance with all the terms of this policy; and
 - B. under Coverage E, until the obligation of a **named insured** to pay is finally determined either by judgment against the **named insured** after actual trial or by written agreement of the **named insured**, the claimant and **us**.

Meemic Insurance Policy

Unless **we** consent, no one may make us a party to a suit to determine the liability of a **named insured**. This requirement does not apply if we have not responded to a written demand for payment within a reasonable period of time following receipt of the written demand so as to enable **us** to investigate the facts and circumstances of the loss.

Under **CONDITIONS** that apply to SECTION II – **Other Insurance Under Coverage E – Personal Liability**.

7. **Other Insurance Under Coverage E - Personal Liability.** When other valid and collectible insurance is present **we** will settle on a pro-rata basis. Our share will be the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, if the other insurance is specifically written as excess insurance over this policy, the limits of this policy apply first.

GENERAL CONDITIONS – SECTION I AND II

Under **GENERAL CONDITIONS**, SECTION I and II, **Death**, item A. and C. have been revised to the following:

4. **Death.** If any person named in the Declarations dies, **we** insure:
- A. the spouse of such person or persons; the spouse is considered a resident relative of the household even if they are:
 - (1.) temporarily away from your **resident premises**, if he or she intends to live at your **residence premises**; or
 - (2.) no longer living at, and does not intend to continue to live at, your **residence premises**, but only until the earlier of the following:
 - a. the effective date of another policy listing the spouse as the **named insured**; or
 - b. until the last day of the policy period during which the spouse ceased living at the **residence premises**.
 - C. any member of the deceased's household, excluding the spouse, who was covered at the time of death, but only while a resident of the **insured premises**;

Under **GENERAL CONDITIOIONS**, SECTION I and II, **Cancellation**,

7. **Cancellation.**
- A. If **you** cancel.
 - (1.) The **Named Insured** shown on the Declarations may cancel this policy upon request by contacting **us** or **our** authorized representative and stating the date on which the cancellation is to be effective. **We** may honor a cancellation effective date that predates **your** request, but for no greater a period than 30 days;

THIS ENDORSEMENT FORMS A PART OF THE POLICY TO WHICH IT IS ATTACHED. ALL OTHER POLICY PROVISIONS APPLY.

APPENDIX

12

Policy Number: HOP0268181

Policy Period:

07/28/15 to 07/28/16

12:01 A.M. Standard Time
at the Location of the Residence Premises

DECLARATIONS PAGE

ATTACH TO POLICY

Policy Type:

HOMEOWNERS Renewal

Policyholder Since: 2014

Date Mailed: 06/25/15

Change Effective:

NAMED INSURED and MAILING ADDRESS:

ANGELA JONES
4244 LAKE POINTE
DETROIT MI 48224

REPRESENTATIVE: (586)359-2286

GARDNER INSURANCE AGENCY
21731 MACK AVE
SAINT CLAIR SHORES MI 48080

RENEWAL

DESCRIBED LOCATION: The residence premises covered hereunder
is located at the above address, unless otherwise stated herein:THE RESIDENCE PREMISES ABOVE IS THE
ONLY PREMISES EXCEPT WHERE NOTED BELOW:*Insurance is provided only with respect to the following coverages for which a Limit of Liability is specified, subject to all conditions of this policy.*

SECTION I COVERAGES

A - DWELLING
B - OTHER STRUCTURES
C - PERSONAL PROPERTY
D - LOSS OF USE

LIMITS OF LIABILITY

148000

14800

88800

ACTUAL LOSS SUSTAINED

SECTION II COVERAGES

E - PERSONAL LIABILITY
F - MEDICAL PAYMENTS TO OTHERS

300000 Each Occurrence

1000 Per Person

DEDUCTIBLE: Any loss by perils insured against under Section I of this policy is subject to a deductible: **500 FIXED**INCLUDED COVERAGE(S): REPLACEMENT COST WITH 125% CAP-DWELLING
REPLACEMENT COST ON CONTENTS

FORMS and ENDORSEMENT(S) MADE PART OF THIS POLICY AT TIME OF ISSUE: Form: H03(0412) Endorsement(s): (See Attached)

BASIC PREMIUM: \$ **2,811.00**
ADDITIONAL PREMIUM: \$ **1,984.00 -**
TOTAL ANNUAL PREMIUM: \$ **827.00**

PREMIUM ADJUSTMENT:

MORTGAGEE(S)/LAND CONTRACT(S):

1119703551
CITIMORTGAGE INC
ISAOA
PO BOX 7706

MORTGAGEE(S)/LAND CONTRACT(S):

MORTGAGEE(S)/LAND CONTRACT(S):

SPRINGFIELD OH 45501

ADDITIONAL INSURED:

ADDITIONAL INSURED:

ADDITIONAL INSURED:

RATING INFORMATION:

CONSTRUCTION: 1 CONSTRUCTION YEAR: 2008 NO. OF FAMILIES: 001
TERRITORY CODE: 206 PROTECTION CLASS: 03 PREMIUM GROUP: 06C

Policy Number: HOP0268181



Meemic Insurance Company
P.O. Box 217019
Auburn Hills, MI 48321-7019
www.Meemic.com 1-888-4 MEEMIC

DECLARATIONS PAGE

Policy Type:
HOMEOWNERS

NAMED INSURED:
ANGELA JONES

DESCRIPTION OF ITEM(S) COVERED:

FORM NUMBER	DESCRIPTION	INSURANCE AMOUNT	PREMIUM
COV E INCR(07/95)	HOMEOWNERS - DELUXE PROGRAM		15.00
COVERAGE16(04/01)	INCREASED LIMIT PERS LIABILITY		40.00
MI-99 200(12/14)	SUMP PUMP & SEWER BACKUP	5000	Included
	HOME AMENDATORY ENDORSEMENT		
	EDUCATIONAL K-12 PROFESSIONALS		
	YOUR INSURANCE SCORE: 863(P1)		
	MULTIPLE POLICY DISCOUNT		
	NEW HOME DISCOUNT		
	PROTECTIVE DEVICES - COMBO		
	TOTAL DISCOUNT(S)		2,039.00-
	ORDINANCE OR LAW 10% OF COV A		

SUMMARY OF PREMIUMS

BASIC PREMIUM:	\$	2,811.00
ADDITIONAL PREMIUM:	\$	1,984.00-
SCHEDULED PERSONAL PROPERTY:	\$	
TOTAL ANNUAL PREMIUM	\$	827.00

APPENDIX

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Check Inquiry Summary

Mortgagee Check

Bank of America
Merrill Lynch

Account Number: 2770707988

Account Name: Meemic Insurance Company

Bank ID: [REDACTED]

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Meemic Insurance Company
P.O. Box 217019
Auburn Hills, MI 48321-7019

10/20/16 6503665

Citi

Bank of America
Troy, Michigan 48064

70-2328
719

\$53,356 DOLLARS AND 49 CENTS

OCT 26 2016

\$53,356.49

pwilcox

San S. Maloney

615373.1

DIMONT

Order Of

REGARDING FILE NUM: 6153731, ACCOUNT OF ANGELA JONES

PLEASE VOID AFTER 180 DAYS

030185529

Check Details

Check Number: 6503665 Amount: 53,356.49
Account Number: [REDACTED] Posted Date: 10/27/2016
Account Name: Meemic Insurance Company Paid Date: 10/27/2016
Bank ID: 071923284

Electronic Endorsement Information

BOFD - Bank Of First Deposit

Bank Name: WELLS FARGO BANK, NA (BOFD) Date: 10/27/2016
Date: 10/26/2016 R/T: 11300016
R/T: [REDACTED] Sequence Number: [REDACTED]
Sequence Number: [REDACTED]

APPENDIX

14

Summary Disposition Order on Primary Claim

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANGELA JONES,

Plaintiff,

vs.

Case No. 16-002960-CK

Hon. John H. Gillis, Jr.

16-002960-CK

MEEMIC INSURANCE COMPANY,

Defendant.

FILED IN MY OFFICE
WAYNE COUNTY CLERK
5/3/2017 4:05:15 PM
CATHY/M. GARRETT

Jo Robin Davis P31263
Attorney for Plaintiff
30300 Northwestern Hwy., Suite 104
Farmington Hills, MI 48334
(248)932-0100 ext 254
jdavis@jorobindavis.com

Michael F. Schmidt P25213
Attorneys for Defendant
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800
(248)6492316 (fax)
mschmidt@harveykruse.com

/s/ Latonya Smith

**ORDER LIFTING STAY OF PROCEEDING, RE-OPENING CASE, REVERSING
ORDER DENYING DEFENDANT MEEMIC INSURANCE COMPANY'S MOTION
FOR SUMMARY DISPOSITION AND GRANTING SUMMARY DISPOSITION TO
DEFENDANT MEEMIC INSURANCE COMPANY**

At a session of said court held in the Courthouse, City of Detroit,
County of Wayne, State of Michigan on the ____ day of
5/3/2017, 2017.

PRESENT: HONORABLE JOHN H. GILLIS, JR.
Circuit Judge

The defendant, Meemic Insurance Company, having filed an Application for Leave to Appeal to the Michigan Court of Appeals from the court's orders of 12/28/16 denying Meemic's motion for summary disposition and 1/30/17 denying Meemic's motion for rehearing, and the Court of Appeals having issued its order of 4/19/17 reversing the order of 12/28/16 denying

Summary Disposition Order on Primary Claim

Meemic's motion for summary disposition and stating that defendant Meemic Insurance Company's motion for summary disposition should have been granted,

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The court's order of 3/31/17 ordering a stay of proceeding is lifted.
2. The above captioned case is re-opened.
3. The court's order of 12/28/16 denying defendant's motion for summary disposition is reversed.
4. Summary disposition is granted to the defendant Meemic Insurance Company as to all claims by the plaintiff per the Court of Appeals order of 4/19/17 and the plaintiff's complaint is dismissed with prejudice.
5. This is not the final order and does not close the case because there remains the pending the counterclaim by Meemic Insurance Company against the plaintiff.

/s/ John H. Gillis, Jr.

Circuit Judge

16-002960-CK

5/3/2017

HARVEY KRUSE

ATTORNEYS & COUNSELORS
A PROFESSIONAL CORPORATION
1050 WILSHIRE DRIVE, SUITE 320, TROY, MICHIGAN 48084-1526 248-649-7800

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APPENDIX

15

Final Order for First Suit

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANGELA JONES,

Plaintiff and Counterclaim-Defendant,

vs.

Case No. 16-002960-CK
Hon. John H. Gillis, Jr.

MEEMIC INSURANCE COMPANY,

Defendant and Counterclaim-Plaintiff.

Jo Robin Davis P31263
Attorney for Plaintiff
30300 Northwestern Hwy., Suite 104
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(248)932-0100 ext 254
jdavis@jorobindavis.com

Michael F. Schmidt P25213
Nathan Peplinski P66596
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1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800
(248)6492316 (fax)
mschmidt@harveykruse.com
npeplinski@harveykruse.com

STIPULATION FOR ENTRY OF ORDER OF DISMISSAL

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties that the attached order be entered as the final order of dismissal regarding defendant's counter claim and that:

- 1) the motion to dismiss the counter claim for lack of jurisdiction based on the \$25,000 threshold by plaintiff Angela Jones is granted;
- 2) the motion to amend the counter claim by defendant Meemic Insurance Company is denied as moot based on the ruling of lack of jurisdiction;
- 3) defendant Meemic Insurance Company's counter claim is dismissed without prejudice;

HARVEY KRUSE

ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
1050 WILSHIRE DRIVE, SUITE 320, TROY, MICHIGAN 48064-1526 248-649-7800

Final Order for First Suit

- 4) this is a final order resolving the last pending claim for this matter and closes this case.

/s/Jo Robin Davis
JO ROBIN DAVIS (P31263)
Jo Robin Davis, PLLC
Attorney For Plaintiff
30300 Northwestern Highway, Ste. 104
Farmington Hills, MI 48334

/s/ Nathan Peplinski
MICHAEL F. SCHMIDT (P25213)
NATHAN PEPLINSKI (P66596)
Harvey Kruse PC
Attorney For Defendant
1050 Wilshire Drive, Suite 320
Troy, MI 48084-1526

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Final Order for First Suit

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANGELA JONES,

Plaintiff and Counterclaim-Defendant,

vs.

Case No. 16-002960-CK
Hon. John H. Gillis, Jr.

MEEMIC INSURANCE COMPANY,

Defendant and Counterclaim-Plaintiff.

Jo Robin Davis P31263
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30300 Northwestern Hwy., Suite 104
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Troy, MI 48084
(248) 649-7800
(248)6492316 (fax)
mschmidt@harveykruse.com
npeplinski@harveykruse.com

REVISED ORDER OF DISMISSAL

At a session of said court held in the Courthouse, City of Detroit,
County of Wayne, State of Michigan on
5/3/2018.

PRESENT: HONORABLE JOHN H. GILLIS, JR.
Circuit Judge

In accordance with the above Stipulation,

IT IS HEREBY ORDERED THAT the motion to dismiss the counter claim for lack of jurisdiction based on the \$25,000 threshold by plaintiff Angela Jones is granted.

IT IS FURTHER ORDERED THAT the motion to amend the counter claim by defendant Meemic Insurance Company is denied as moot based on the ruling of lack of jurisdiction.

HARVEY KRUSE

ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
1050 WILSHIRE DRIVE, SUITE 320, TROY, MICHIGAN 48064-1526 248-649-7800

Final Order for First Suit

IT IS FURTHER ORDERED THAT defendant Meemic Insurance Company's counter claim is dismissed without prejudice.

This is a final order resolving the last pending claim for this matter and closes this case.

/s/ John H. Gillis, Jr. 5/3/2018

Circuit Judge

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Current Case Complaint

APPENDIX

16

Current Case Complaint

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MEEMIC INSURANCE COMPANY,

Plaintiff,

vs.

Case No.
Hon.

-CK

ANGELA JONES,

Defendant.

Michael F. Schmidt P25213
Attorney for Plaintiff
1050 Wilshire Drive, Suite 320
Troy, MI 48084
(248) 649-7800
(248)6492316 (fax)
mschmidt@harveykruse.com

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Wayne County Circuit Court. The action is no longer pending. The case number was 16-002960-CK and judge assigned to the action was Judge John H. Gillis, Jr.

**COMPLAINT BY PLAINTIFF MEEMIC INSURANCE COMPANY
AGAINST DEFENDANT ANGELA JONES**

DEMAND FOR JURY TRIAL

NOW COMES the plaintiff, Meemic Insurance Company, by and through its attorneys HARVEY KRUSE, P.C. and for its complaint against the defendant, Angela Jones, states as follows:

1. The plaintiff, Meemic Insurance Company, is a Michigan corporation with its principal place of business located in Oakland County, Michigan which conducts business in

HARVEY KRUSE

ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
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Current Case Complaint

Wayne County, Michigan.

2. The defendant, Angela Jones, is a resident of the City of Detroit, Wayne County, Michigan.

3. The amount in controversy is in excess of \$55,856.49.

4. The claim involves a fire which occurred at 4244 Lakepointe, Detroit, Michigan on 9/28/15.

5. The defendant, Angela Jones ("Jones"), previously filed suit against the plaintiff, Meemic Insurance Company ("Meemic"), in *Angela Jones v Meemic Insurance Company*, Wayne County Civil Action Number 16-002960-CK assigned to Judge John H. Gillis, Jr. seeking to recover under a homeowners insurance policy issued by Meemic to Jones, policy number HOP0268181 (copy attached as Exhibit A) for alleged damages resulting from the fire which occurred on 9/28/15 at 4244 Lakepointe, Detroit, Michigan.

6. During Meemic's investigation following the fire of 9/28/15, Meemic discovered that Jones had made material misrepresentations in the application for the policy.

7. Meemic then rescinded the policy from its inception based on the material misrepresentations made in the application by correspondence of 2/19/16 and at that time refunded the premiums.

8. After the fire occurred on 9/28/15, Meemic issued an Advance Payment to Jones in the amount of \$2,500 pursuant to an Advance Payment Receipt and Reservation of Rights of 9/28/15 per copy attached as Exhibit B.

9. Pursuant to this Advance Payment Receipt and Reservation of Rights, which was signed by Jones on 9/28/15, Jones agreed that if the policy or claim was not valid and additional payment was not required by Meemic, Jones would repay the partial payment to Meemic:

Current Case Complaint

I further understand if the policy or the claim is not valid an additional payment is not required by the Company, I will repay this partial payment to the Company. (See Exhibit B)

10. Meemic was thus entitled to recover the \$2,500 previously advanced to Jones pursuant to the agreement because the policy was rescinded.

11. Meemic is further entitled to recover the \$2,500 paid to Jones because the payment to Jones was made by mistake, because at the time of the payment Meemic was unaware of the fact that Jones had made material misrepresentations in the application for the policy.

12. Meemic then filed a motion to file a counterclaim against Jones to recover the amounts paid by Meemic to Jones by mistake before learning of Jones' misrepresentations in the application.

13. The court granted the motion to allow Meemic to file the counterclaim on 10/21/16.

14. Meemic then filed a countercomplaint to recover the \$2,500 paid to Jones by mistake before learning of the misrepresentation in the application.

15. Meemic then filed a motion for summary disposition as to Jones' initial complaint on the basis that the Meemic policy issued to Jones was appropriately rescinded based upon the misrepresentations made by Jones in the application.

16. The trial court denied the motion by order of 12/28/16.

17. Meemic then filed an application for leave to appeal to the Michigan Court of Appeals.

18. The Michigan Court of Appeals then issued an order on 4/19/17 reversing the trial court and ordering that Meemic was entitled to summary disposition based upon the

Current Case Complaint

misrepresentations made in the application.

19. On remand from the Court of Appeals the trial court then entered an order of summary disposition in favor of Meemic as to all claims made by Jones in her complaint per the direction of the Michigan Court of Appeals order by order of summary disposition of 5/3/17.

20. Jones then filed an application for leave to appeal to the Supreme Court.

21. The Michigan Supreme Court then issued its order on 1/3/18 denying Jones' application for leave to appeal on the basis that the court was not persuaded that the question presented should be reviewed by the court.

22. After Meemic had filed its countercomplaint, Meemic was required to pay the loss payee/mortgagee listed on the policy regardless of the rescission of the policy, due to the loss payable clause in the policy.

23. After the trial court, Michigan Court of Appeals and Supreme Court had ruled that Meemic was entitled to summary disposition and had appropriately rescinded the policy, it then sought to amend its counterclaim to add that Meemic was entitled to also recover from Jones the \$53,356.49 which Meemic had subsequently paid to the loss payee Dimont & Associates in trust for CitiMortgage in the amount of \$53,356.49 pursuant to the mortgagee/loss payee's rights under the Meemic policy.

24. The court denied the motion to amend on the basis that the court did not have jurisdiction.

25. Meemic has thus filed this complaint.

COUNT I

26. The plaintiff, Meemic, repeats and realleges all of allegations contained in this complaint as though set forth fully herein.

Current Case Complaint

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27. After the fire occurred on 9/28/15, Meemic issued an Advance Payment to Jones in the amount of \$2,500 pursuant to an Advance Payment Receipt and Reservation of Rights of 9/28/15 per copy attached as Exhibit B.

28. Pursuant to this Advance Payment Receipt and Reservation of Rights, which was signed by Jones on 9/28/15, Jones agreed that if the policy or claim was not valid and additional payment was not required by Meemic, Jones would repay the partial payment to Meemic:

- I further understand if the policy or the claim is not valid an additional payment is not required by the Company, I will repay this partial payment to the Company. (See Exhibit B)

29. Since the trial court, Michigan Court of Appeals and Supreme Court have all ruled that Meemic properly rescinded the policy, Meemic is thus entitled to recovery of the \$2,500 previously advanced to Jones pursuant to this agreement.

30. Meemic is further entitled to recover the \$2,500 paid to Jones because the payment to Jones was made by mistake, because at the time of the payment Meemic was unaware of the fact that Jones had made material misrepresentations in the application for the policy.

WHEREFORE, the plaintiff, Meemic Insurance Company, prays for judgment against the defendant, Angela Jones, for recovery of the \$2,500 advance payment plus interest, costs and attorney fees.

COUNT II

31. The plaintiff, Meemic, repeats and realleges all of the allegations and claims made in this complaint as though set forth fully herein.

32. The Homeowners Policy issued to Angela Jones by Meemic Insurance, policy number HOP0268181 with a policy period from 7/28/15 to 7/28/16 contains Section I -

Current Case Complaint

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Conditions which include conditions regarding Rights and Duties of Mortgagee which include:

If **we** pay the mortgagee for any loss and deny payment to **you**:

- A. **we** will be subrogated to the extent of **our** payment to all the rights that the mortgagee has under the mortgage on the property; or
- B. at **our** option, **we** may pay to the mortgagee the whole principal on the mortgage and any interest due. In this event, **we** may receive a full assignment and transfer of the mortgage and all securities held as collateral for the mortgage debt. (Exhibit A, p 15)

33. The Meemic Homeowners Policy issued to Angela Jones lists the mortgagee as CitiMortgage, Inc. (Exhibit A, dec page)

34. Pursuant to the mortgagee/loss payee's rights under the Meemic Homeowners Policy issued to Angela Jones, Meemic paid the loss payee, Dimont & Associates in trust for CitiMortgage the amount of \$53,356.49.

35. The trial court, Michigan Court of Appeals and Michigan Supreme Court have issued orders that Meemic properly denied coverage to Jones and rescinded the policy based on misrepresentations made in the application.

36. Thus, pursuant to the above cited condition of the policy, Meemic is entitled to be subrogated to the extent of its payments to all rights that the mortgagee has under the mortgage on the property and has a full assignment and transfer of the mortgage and all securities.

37. Meemic is entitled to recovery of the total amount paid to the mortgagee/loss payee in the amount of \$53,356.49 from Jones.

HARVEY KRUSE

ATTORNEYS & COUNSELORS A PROFESSIONAL CORPORATION
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Current Case Complaint

WHEREFORE, the plaintiff, Meemic Insurance Company, prays for judgment against the defendant, Angela Jones, for recovery of the \$53,356.49 paid to the mortgagee/loss payee plus interest, costs and attorney fees.

Respectfully Submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Dr., Ste. 320
Troy, MI 48084
(248)649-7800

DATED: May 15, 2018

DEMAND FOR JURY TRIAL

NOW COMES the plaintiff by and through its attorneys, HARVEY KRUSE, P.C., and hereby demands a trial by jury.

Respectfully submitted,
HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt
Michael F. Schmidt P25213
1050 Wilshire Drive, Suite 320
Troy, Michigan 48084
(248) 649-7800

DATED: May 15, 2018

Trail Court Opinion

APPENDIX

17

Trial Court Opinion

STATE OF MICHIGAN
In the Circuit Court for the County of Wayne

MEEMIC INSURANCE COMPANY,

Plaintiff,

CASE NO. 18-005480-CK
HON. JOHN H. GILLIS, JR.

-v-

ANGELA JONES,

Defendant.

_____ /

OPINION

Factual Background

This matter involves an insurance claim for residential property located at 4244 Lakepointe in Detroit, Michigan (“the property”). Defendant ANGELA JONES (“Jones”) signed an Application for purchasing an insurance policy with Plaintiff MEEMIC INSURANCE COMPANY (“Meemic”). The Application was for issuance of homeowner’s insurance. The one-year policy was issued with an effective date of coverage from July 28, 2014 through July 28, 2015.

In the Meemic Application dated June 26, 2014, Jones represented to Meemic that the policy was being purchased to insure the property as her primary residence. She also indicated that the property was not being rented to others. Jones averred in the Application’s underwriting questionnaire that she expected to reside at the premises continuously throughout the policy period. Jones certified at the end of the Application that her answers and information were true and correct.

The Application notified Jones of her continuing duty to notify Meemic of any changes in the information provided, such as additions to or renovation of the structure, or changes in occupancy. The Application informed Jones that if any of her answers were false or misleading, or

Trial Court Opinion

materially affected Meemic's underwriting risk, Meemic could declare the policy null and void.

The Meemic policy was renewed by Jones for another year in 2015. The coverage was effective as of July 28, 2015. The renewed policy had been in force for approximately 2 months, when a catastrophic fire occurred at the property ("the fire"). The fire occurred on September 28, 2015 and resulted in more than \$50,000 in damages. On the day of the fire, Meemic advanced \$2,500 to Jones. Jones signed an agreement indicating she understood that her insurance claim was under investigation by Meemic, and that the advance did not mean that her claim had either been accepted or denied. Jones agreed that if the policy or claim was not valid, she would repay the advance to Meemic.

On October 6, 2015, eight days after the fire, Meemic took a recorded statement from Jones. Jones admitted in her testimony that she leased the property during the first year of the policy. The tenant, Gwendolyn Sommers, lived at the house from November, 2013 through November, 2014. On February 19, 2016, Meemic sent a letter to Jones rescinding the insurance policy. Meemic's letter indicated that material facts or circumstances relating to the insurance, and to renewal of the policy, were concealed or misrepresented.

None of the above facts are disputed by the parties.

Procedural Background

Jones filed suit against Meemic on March 4, 2016, alleging breach of the homeowner's insurance policy, Case No. 16-002960-CK. The manager of Meemic's Underwriting Department, Patrick Kline, submitted an Affidavit on August 30, 2016 that had Meemic known the true facts at the time of the Application, it would not have issued the policy to Jones.

Meemic filed a Countercomplaint on October 24, 2016 to recover the \$2,500 advance that it had paid to Jones. Meemic filed a Motion for Summary Disposition of the allegations in Jones' Complaint, stating that rescission of the policy was appropriate because Jones made material

Trial Court Opinion

misrepresentations in her insurance Application. This court denied Meemic's dispositive motion by Order dated December 28, 2016.

Meemic filed an Application for Leave with the Michigan Court of Appeals. The Court of Appeals issued an Order on April 19, 2017, reversing the denial of Meemic's motion. The Order indicated that Meemic was entitled to summary disposition because Jones' misrepresentation about her residence was material, and entitled Meemic to rescind the policy. On May 3, 2017, this Court issued its Order granting Meemic summary disposition as to all claims in Jones' Complaint. The case remained open, however, as to the Counterclaim seeking reimbursement of the \$2,500 advance filed by Meemic.

On March 14, 2018, Meemic sought to amend its Counter Complaint to seek recovery of the \$53,356.49 paid to CitiMortgage, Jones' mortgagee. Jones filed a Motion to Dismiss the Counter Complaint based on failure to meet the \$25,000 jurisdictional threshold. On May 3, 2018, this Court granted Jones' Motion to Dismiss the Counterclaim, and denied Meemic's Motion to Amend as moot. The May 3rd Order closed the 2016 case and placed it in final status.

Meemic filed suit against Jones in the pending case, Case No. 18-005480-CK, on May 15, 2018. Meemic sought to recover the \$2,500 advance that it made to Jones under the now rescinded homeowner's policy ("Count I"). Meemic's Complaint also sought recovery of the funds it paid to the mortgagee, CitiMortgage, in the amount of \$53,356.49 ("Count II").

On June 22, 2018, Jones filed a Motion for Summary Disposition, arguing that Count I must be dismissed because this Court lacked jurisdiction over a \$2,500 claim. Jones also argued that Count II should be dismissed because the Court of Appeals affirmed the rescission of Jones' homeowner's policy, and Meemic cannot rely upon a provision in a rescinded policy.

On July 9, 2018, Meemic filed a Response stating that the amount in controversy between the parties currently exceeds the \$25,000 threshold, so the Court does have jurisdiction over

Trial Court Opinion

Meemic's Complaint. Further, Meemic stated that the standard mortgage clause in the homeowner's policy created a separate insurance contract with CitiMortgage, the mortgage holder. Meemic argued that the policy clearly states that rescission of the policy with Jones, the primary insured, does not affect Meemic's obligation to pay off the note held by CitiMortgage. Rather, the standard mortgage clause requires Jones to repay Meemic for the amount it paid to CitiMortgage. In its Response, Meemic included a Counter-Motion for Summary Disposition seeking a return of the \$2,500 advance, and reimbursement of the \$53,356.49 that it paid to mortgagee CitiMortgage.

On August 2, 2018, the parties argued their respective Summary Disposition Motions. The Court decided to continue the hearing to a later date. The matter was adjourned to October 4, 2018.

Issues

- (1) Whether the lower court's dismissal of Meemic's \$2,500 Counterclaim in Case No. 16-002960-CK for lack of subject matter jurisdiction prevented Meemic from filing a separate lawsuit to recoup its cash advance under the policy based upon Jones' argument that *res judicata* or the law of the case doctrine barred the claim?
- (2) Whether Meemic's rescission of the homeowner's policy due to Jones' misrepresentation in the Application also voided the standard mortgage clause, or whether Meemic was still required to pay off the balance of Jones' indebtedness to mortgagee CitiMortgage even though no insurance proceeds were due to Jones as the primary insured.

Standards of Review

A dispositive motion filed pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the Complaint. A summary disposition motion filed under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions and other documentary evidence submitted or filed in the action to determine whether a genuine issue of

any material fact exists to warrant a trial. *Spiek v Michigan Dep't of Transportation*, 456 Mich 331, 337-338 (1998), citing *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 138 (1997).

Analysis

A. The \$2,500 Advance. After the fire occurred at the property located at 4244 Lakepointe in Detroit, Meemic advanced a partial payment of \$2,500 to Jones under her homeowner's policy. Jones signed a receipt for the advance, acknowledging that the claim was under investigation, and agreeing to repay the \$2,500 if coverage was later denied:

“I understand that the Company is continuing to investigate, in good faith, the claim I have made, that my claim has neither been accepted nor denied, that the advance payment is not an admission of liability on the part of the Company, and that this advance should not be considered payment under the policy. * * * *

“I further understand that if the policy or the claim is not valid and additional payment is not required by the Company, I will repay this partial payment to the Company.”

Jones does not address the validity of her agreement with Meemic to repay the advance if her insurance claim was later denied. Rather, Jones states that Claim I of Meemic's Complaint must be dismissed because it does not satisfy the \$25,000 threshold for jurisdictional purposes. Jones also argues that, because Meemic's 2016 counterclaim to recoup the \$2,500 advance was dismissed for lack of jurisdiction, Meemic is barred from seeking reimbursement under principles of *res judicata* and the law of the case doctrine. In this Court's opinion, none of Jones' arguments are valid.

On April 17, 2017, the Michigan Court of Appeals held that Meemic was entitled to summary disposition on Jones' breach of contract claims because Meemic was entitled to rescind the policy. The only viable claim left standing in the 2016 case was Meemic's Counterclaim for repayment of the \$2,500 advance. The Court determined that because there were no remaining claims left to satisfy the jurisdictional threshold, it had no choice but to dismiss the Counterclaim.

The Stipulated Order dismissing Meemic's Counterclaim on May 3, 2018 indicated that the

Trial Court Opinion

claim was being dismissed *without prejudice*. Because this was a procedural dismissal, and not a decision on the merits, *res judicata* is inapplicable. *Adair v Michigan*, 470 Mich 105, 121 (2004). Meemic was at liberty to refile a lawsuit seeking repayment of the \$2,500 advance and recovery of the proceeds it paid to the mortgagee CitiMortgage.

The Court agrees with Meemic that the law of the case doctrine is equally inapposite to this matter. The doctrine applies only where there is a previous appellate ruling in the case on a question of law, and there had been a remand to the lower tribunal, or a subsequent appeal, in the same case. *Driver v Hanley (After Remand)*, 226 Mich App 558, 565 (1997).

The Court has jurisdiction to consider the issue of whether Meemic is entitled to repayment of the advance made to Jones under the homeowner's policy. The Court finds that Meemic is entitled to judgment of \$2,500 on this issue as a matter of law.

B. The Standard Mortgage Clause in Meemic's Policy. After the catastrophic fire occurred on September 28, 2015, Meemic investigated the insurance claim filed by Jones. Jones admitted in a recorded statement that she did not live at the property while the homeowner's policy was in force, but leased the home to a tenant for one year. In a letter dated February 19, 2016, Meemic rescinded Jones' coverage under the policy, citing concealment of material facts relating to the insurability of the property. Pursuant to the standard mortgage clause contained in the policy, Meemic was required to reimburse CitiMortgage the loss of \$53,356.49. CitiMortgage was listed as both mortgagee and lienholder in the Application and on the Declarations Page of the policy.

Jones argues that because Meemic elected to rescind her policy, the policy no longer exists. Jones states that none of the policy provisions are enforceable against her. Jones believes that Meemic cannot recoup from her its payment to CitiMortgage, the lienholder, because Meemic was not required to make payments to anyone under the "non-existent" policy.

Michigan recognizes an insurer's duty to pay a mortgage holder or lienholder the proceeds

Trial Court Opinion

of an insurance policy despite any wrongful action or neglect by the insured. The duty arises where a homeowner's policy contains a "standard mortgage clause" or "standard loss payable clause", which creates a separate contract of insurance between the mortgage holder and the insurance company. *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 383-384 (1992), citing *Hastings v Westchester Fire Ins Co*, 73 NY 141 (1878), n. 10. The Meemic policy at issue contains a standard mortgage clause that addresses the rights and duties of CitiMortgage, as the mortgagee:

"Rights and Duties of Mortgagee. * * * *

"If a mortgagee is named in the Declarations, any payment for loss under Coverage A or B will be made to the mortgagee [CitiMortgage] and you [Jones], as interests appear. If more than one mortgagee is named, payment will be made in the order of priority of the mortgagees.

"The interest of the mortgagee under this policy will not be affected by any action or neglect by you."

The policy language clearly states that CitiMortgage maintains its right to recover proceeds under the homeowner's policy despite any wrongful action or neglect by Jones. In Michigan, it has long been held that a standard mortgage clause creates a separate, independent contract of insurance between the insurer and the mortgage holder. *Citizens State Bank of Clare v State Mut Rodden Fire Ins Co*, 276 Mich 62, 69 (1936); *Cottrell v Clark*, 126 Mich App 276, 280 (1983). Meemic's rescission of its contractual obligation to pay Jones under the homeowner's policy did not extinguish the mortgagee's right to payment under the standard mortgage clause. The purpose of the standard mortgage clause is to protect the mortgagee or lienholder from the actions of an insured that may result in rescission of the policy. *Marketos v American Employers Ins Co*, 240 Mich App 684, 691-693 (2000), *rev'd on other grounds* 465 Mich 407 (2001), citing *Cole v Mich Mut Ins Co*, 116 Mich App 51, 55 (1982).

The Meemic policy provides a mechanism to resolve the very scenario presented by the facts in this case. Where the mortgagee or mortgage holder is paid under the standard mortgage clause,

and the primary insured is not paid, Meemic is subrogated to the rights of the mortgage holder as against the insured:

Rights and Duties of Mortgagee. * * * *

“If we [Meemic] pay the mortgagee [CitiMortgage] for any loss and deny payment to you [Jones]:

- A. We will be subrogated to the extent of our payment to all the rights that the mortgagee has under the mortgage on the property; or
- B. At our option, we may pay to the mortgagee the whole principal on the mortgage and any interest due. In this event, we may receive a full assignment and transfer of the mortgage and all securities held as collateral for the mortgage debt.”

Under the unambiguous language in the homeowner’s policy, Meemic became subrogated to the rights of the mortgagee, CitiMortgage, when it paid \$53,356.49 to CitiMortgage under the standard mortgage clause. The right of subrogation under a standard mortgage clause has been the law in Michigan for more than 80 years. It was first recognized in a 1936 Michigan Supreme Court decision, *Citizens State Bank of Clare, supra* at 70-71. *Citizens State Bank* is still considered binding precedent in Michigan for the proposition that such subrogation provisions are enforceable where the policy is void due to an insured’s misrepresentation. *See also, JC Wyckoff & Assoc Inc v Standard Fire Ins Co*, 936 F2d 1474, 1482 (CA 6, 1991), n. 5 (entire policy void under MCL §500.2832).

The Court acknowledges that there are many State and Federal cases in other jurisdictions that support the right of subrogation under a standard mortgage clause. The Court agrees that subrogation provisions should be enforced because they provide a mechanism for the lender to be protected without placing all of the risk upon the insurer. There are important public policy considerations for including standard mortgage clauses in homeowner’s policies. The system is designed to place the risk on the insured to encourage compliance with insurance policy terms and conditions. Without standard mortgage clauses in homeowner’s policies, mortgage loans and home

Trial Court Opinion

purchasing would come to a grinding halt, because lenders would no longer have the means to protect their security interests.

Jones' position runs contrary to the unambiguous contract language in the homeowner's policy. The standard mortgage clause contained in the policy required Meemic to reimburse CitiMortgage for the loss. Meemic became subrogated to the rights of the mortgagee, CitiMortgage, when it paid \$53,356.49 to CitiMortgage. Based upon the terms of the homeowner's policy, and well-established precedent in Michigan, Jones is required to repay the loss to Meemic under the right of subrogation for Meemic's payment of the loss to the mortgagee. The Court finds that Meemic is entitled to a judgment of \$53,356.49 under the standard mortgage clause in the policy as a matter of law.

Conclusion

This Court has reviewed the briefs and exhibits filed by the parties. For the reasons stated above, the Court will deny Jones' Motion for Summary Disposition, and will grant the Counter-Motion for Summary Disposition Motion on behalf of Meemic for return of the \$2,500 Advance Payment and reimbursement of the \$53,356.49 paid to CitiMortgage.

This is a final order that closes the case. The Court no longer retains jurisdiction of this matter.

Dated: 10/05/2018

/s/ John H. Gillis, Jr.
Judge, Wayne County Circuit Court

APPENDIX

18

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Trial Court Order Denying Reconsideration

Date _____

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APPENDIX

19

Jones's Court of Appeal Brief

STATE OF MICHIGAN

IN THE COURT OF APPEALS

(On Appeal from the Wayne County Circuit Court)

MEEMIC INSURANCE COMPANY,

Plaintiff/Appellee,

v

Court of Appeals Docket No. 346361
Lower Court Case No. 18-005480-CK
Hon. John H. Gillis, Jr.

ANGELA JONES,

Defendant/Appellant.

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DEFENDANT/APPELLANT'S CORRECTED BRIEF ON APPEAL*ORAL ARGUMENT REQUESTED*

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Jones's Court of Appeal Brief

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STATEMENT OF QUESTIONS PRESENTED

WHETHER THE LOWER COURT ERRED IN CONCLUDING DEFENDANT JONES WAS LIABLE TO PLAINTIFF MEEMIC PURSUANT TO A POLICY PROVISION PLAINTIFF MEEMIC ELECTED TO RESCIND.

Defendant/Appellant Angela Jones says “Yes.”

Plaintiff/Appellee Meemic Insurance Company says “No.”

The lower court says “No.”

JURISDICTIONAL STATEMENT

Defendant/Appellant Angela Jones appeals from the lower court’s Order of Judgment dated 10/5/18 (Exhibit D; Register of Actions: 10/5/18¹) and Order Denying Reconsideration dated 10/24/18 (Exhibit E; Register of Actions: 10/24/18²).

This Court has jurisdiction pursuant to MCR 7.202 (6)(a)(1) and MCR 7.203(A)(1).

¹ Register of Actions 10/5/18, Order of Judgment

² Register of Actions 10/24/18, Order Denying Reconsideration

STANDARD OF REVIEW

This court reviews de novo whether a trial court properly granted a motion for summary disposition. Barnard Mfg Co, Inc v Gates Performance Engineering, Inc, 285 Mich App 362; 775 NW2d 618 (2009).

STATEMENT OF FACTS AND PROCEEDINGS

Defendant Angela Jones owned a home at 4244 Lakepointe, Detroit, Michigan. When she purchased homeowners insurance from Plaintiff Meemic she was not residing in the home. But she was there when on 9/28/15 the home was damaged by fire of an undetermined cause. The policy Ms. Jones purchased from Meemic is attached as Exhibit A. On 2/9/16, Meemic sent a letter (Exhibit B) rescinding policy #HOP0268181 from its inception date of July 28, 2014. Ms. Jones filed suit for breach of contract, Wayne County docket: 16-002960-CK. Meemic filed a counterclaim for a \$2,500.00 advance on contents after the fire (Counter-Complaint). The lower court denied Meemic's motion for summary disposition and by Order of 4/19/17 (Exhibit C) this Court granted summary disposition in Meemic's favor, concluding Meemic was entitled to rescind the policy even though the alleged misrepresentation was not false when the policy renewed or on the date of the fire.

After remand the lower court granted Ms. Jones' motion to dismiss the counter-claim for lack of subject matter jurisdiction. The dismissal was without prejudice and Meemic filed the instant lawsuit. The lower court entered an Opinion and Order on 10/5/18, granting summary disposition to Meemic for the \$2,500.00 advance and \$53,536.49 Meemic paid to the mortgagee, CitiMortgage (Exhibit D). By Order of 10/24/18 the lower court denied Ms. Jones' motion for reconsideration (Exhibit E). It is from the court's orders of 10/5/18 and 10/24/18 that Defendant Jones presently appeals (Defendant Jones does not appeal the award of \$2,500.00).

ARGUMENT**THE LOWER COURT ERRED IN CONCLUDING DEFENDANT JONES WAS LIABLE TO PLAINTIFF MEEMIC PURSUANT TO A POLICY PROVISION PLAINTIFF MEEMIC ELECTED TO RESCIND.****A. MEEMIC DECIDED TO RESCIND THE POLICY, RENDERING IT VOID AB INITIO.**

In its letter dated 2/19/16 entitled “RECISSION [SIC] OF AB INITIO POLICY FROM INCEPTION, Meemic concluded:

“As a result, Meemic Insurance Company has **decided** to RESCIND AND VOID the policy issued to you (Policy Number HOP0268181) effective July 28, 2014. Therefore your claim on September 28, 2015 is denied.” (emphasis added)

Rather than simply deny Defendant’s claim, Plaintiff Meemic **decided** to rescind and void the policy from the date of its inception.

Insurance contracts are subject to the same principles that apply to any other species of contract. Rory v Continental Ins Co, 473 Mich 457, 461; 703 NW2d 23 (2005). When an insurance policy is rescinded it is considered void ab initio and is considered to have never existed at all. United Security Ins Co v Comm’r of Ins, 133 Mich App 38, 42; 348 NW2d 34 (1984), quoting 8B Appleman, Insurance Law and Practice. To rescind a contract is to not merely terminate it but to abrogate and undo to it from the beginning. Wall v Zynda, 283 Mich 260, 264; 278 NW 66 (1938).

B. BY RESCINDING THE POLICY, MEEMIC RESCINDED THE CONTRACT BETWEEN MEEMIC AND CITIMORTGAGE.

This policy contains a standard mortgage clause which provides:

“If a mortgagee is named in the Declarations, any payment for loss under Coverage A or B will be made to the mortgagee and **you**, as interests appear. If more than one mortgagee is named, payment will be made in the order of priority of the mortgagees.

The interest of the mortgagee under this policy will not be affected by any action or neglect by you.”

Pursuant to the above-quoted policy language, the mortgagee’s interest is not affected by the insured’s conduct; and CitiMortgage would have been entitled to recover from Meemic had Meemic not decided to rescind the contract and declare it void.

The lower court held at p. 7 of its opinion of 10/5/18 that the policy language quoted above clearly states that CitiMortgage maintains its right to recover proceeds under the homeowners policy despite any wrongful action or neglect by Jones. That would be true had Meemic not elected to rescind the policy from its inception. The policy language upon which Meemic and the lower court relied no longer exists due to Meemic’s decision to rescind the policy rather than to simply deny Ms. Jones’ claim.

C. MEEMIC’S PAYMENT WAS VOLUNTARY AND THEREFORE NOT RECOVERABLE FROM DEFENDANT JONES.

In Cottrell v Clark, 126 Mich App 276, 280; 337 NW2d 58 (1983), the Court merely held the standard mortgage clause created an independent contract between the named mortgagee and insurer. In this case the standard mortgage clause in the Meemic policy creates an independent contract between the mortgagee, CitiMortgage and the insurer, Meemic but that contract ceased to exist once Meemic decided to rescind the policy, causing the policy to have never existed. Therefore, Meemic was not required to pay CitiMortgage and its payment to CitiMortgage was voluntary. Under the voluntary payment doctrine, it cannot be recovered. Lingle v Elmwood Tp, 142 Mich 194; 105 NW 604, 606 (1905). Plaintiff Meemic made a voluntary payment to CitiMortgage. Plaintiff Meemic has no right, contractual or otherwise, to be reimbursed by Defendant Jones by virtue of Plaintiff Meemic’s decision to rescind the policy of insurance.

D. ASSUMING ARGUENDO MEEMIC WAS REQUIRED TO PAY CITIMORTGAGE PURSUANT TO THE STANDARD MORTGAGE CLAUSE, PLAINTIFF MEEMIC IS NOT ENTITLED TO SUBROGATE AGAINST DEFENDANT JONES BECAUSE THE CONTRACT BETWEEN PLAINTIFF MEEMIC AND DEFENDANT JONES HAS BEEN RESCINDED.

The lower court held the standard mortgage clause quoted above created an independent contract between the mortgagee and Meemic “to protect the mortgagee or lienholder from the actions of an insured that may result in rescission of the policy” (Op. 10/5/18, p. 7). If rescission of the policy does not affect that separate contract, Plaintiff Meemic would be required to make payment to CitiMortgage. But given that Meemic rescinded its contract with Defendant Jones, there is no policy language under which Meemic can collect from Jones that exists after rescission.

Had Plaintiff Meemic not decided to rescind the policy, the policy provides:

“If we pay the mortgagee for any loss and deny payment to you:

we will be subrogated to the extent of our payment to all the rights that the mortgagee has under the mortgage on the property”

Plaintiff Meemic did not merely deny payment to Defendant Jones, it rescinded the contract between Plaintiff Meemic and Defendant Jones, which includes the above-quoted policy language. Plaintiff cannot insist upon a contract right that no longer exists.

In Cushman v Avis, 28 Mich App 370, 372; 184 NW2d 294 (1970), the parties rescinded their contract. Thereafter plaintiff sought to rely upon a contractual provision to sue. The Court held that the language of the rescinded contract was unavailable to Plaintiff because the contract language never existed:

Rescission abrogates the contract completely. **After a binding election to rescind, a party cannot insist on former contract rights.** It is as if no such contract had been made. 17A C.J.S. Contracts s 440, pp. 551, 552; 1 Black on Rescission and Cancellation (2d Ed.), s 1;

283 Mich. 260, 264, 278 N.W. 66; Travelers Insurance Company v. Carey (1970), 24 Mich.App. 207, 180 N.W.2d 68.

Under Michigan law, when a contract is rescinded, all former contract rights are annulled. Diamond Computer Sys, Inc v SBC Communications, Inc, 424 FSupp2d 970, 986 (ED Mich, 2006), quoting Samuel D Begola Services, Inc v Wild Bros, 210 Mich App 636, 640 (1995).

E. THE CASES UPON WHICH THE LOWER COURT RELIED ARE NOT APPLICABLE UNDER MCL 500.2833.

In Citizens State Bank of Clare v State Mut Rodded Fire Ins Co of Michigan, 276 Mich 62, 71; 267 NW 785 (1936), the insurer denied the insured's claim. The Court held the insurer was required to pay the mortgagee bank and could subrogate against the insured mortgagor. The lower court herein was correct in concluding at p. 8 of Opinion 10/5/18 that subrogation principles are enforceable but erred in concluding the provisions are enforceable when the insurer elects to rescind the policy. The lower court's reliance on footnote 5 of J.C. Wyckoff & Associates v Standard Fire Ins Co, 936 F2d 1474, 1482 (6th Cir, 1991) n5 on p. 8 of its Opinion of 10/5/18 was misplaced. The footnote states:

The insurance policy contained the standard policy language relevant to fraud and false swearing that is provided by Michigan statute:

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Mich.Comp.Laws Ann. § 500.2832.

Before 1/1/92, all fire insurance policies issued in Michigan were required to conform the standard fire insurance policy language in MCL 500.2832. However, MCL 500.2832 was

repealed effective 1/1/92 and replaced by MCL 500.2833. Williams v Auto Club Group Ins Co, 224 Mich App 313, 318; 569 NW2d 403 (1997). Instead of stating the policy “shall be void,” MCL 500.2833 (1)(c) provides:

Sec. 2833. (1) Each fire insurance policy issued or delivered in this state shall contain the following provisions:

(c) That the policy **may be void** on the basis of misrepresentation, fraud, or concealment. (emphasis added)

The statute no longer renders a policy automatically void on the basis of misrepresentation. By electing to rescind the policy and declare it void from inception, Meemic effectually erased the policy provision which provides for subrogation.

F. CONCLUSION

The lower court’s opinion that the policy language mandates reimbursement is erroneous. Regardless of whether or not Plaintiff Meemic was required to reimburse CitiMortgage, there was no contract existing between Plaintiff Meemic and Defendant Jones once Plaintiff Meemic rescinded the policy. After making a binding election to rescind, Plaintiff Meemic cannot insist upon its former contractual rights.

RELIEF REQUESTED

WHEREFORE, Defendant/Appellant ANGELA JONES respectfully requests this Honorable Court reverse the lower court's judgment requiring Defendant/Appellant to reimburse Plaintiff/Appellee \$53,536.49 and award whatever relief this Court deems fair and equitable.

Dated: April 29, 2019

Respectfully submitted,

/s/ Jo Robin Davis
JO ROBIN DAVIS (P31263)
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(248) 932-0100

APPENDIX

20

1995 WL 141899

Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

Albert D. PEER and Lee A. Peer,

v.

MINNESOTA MUTUAL FIRE
& CASUALTY COMPANY

Civ. A. No. 93-2338.

March 27, 1995.

Attorneys and Law Firms

Thomas R. Wilson, Crawford, Wilson, Ryan & Agulnick,
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Jr., Ltd., Philadelphia, PA, for plaintiffs.

Michael F. Henry, Eric D. Freed, Cozen & O'Connor,
Philadelphia, PA, for defendants.

MEMORANDUM

DUBOIS, District Judge.

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*1 This diversity case arises out of the denial by defendant, Minnesota Mutual Fire and Casualty Company ("Minnesota"), of a fire damage claim submitted by plaintiffs, Albert and Lee Peer (the "Peers"), under a homeowner's insurance policy. Presently before the Court are the parties' Cross-Motions for Summary Judgment. For the reasons that follow, the Court will grant Minnesota's Motion with

respect to the Peers' claims and with respect to Minnesota's counterclaims for rescission and for any payments made and to be made to the mortgagee. The Court will deny Minnesota's Motion in all other respects and will deny the Peers' Motion in its entirety.

I. Procedural History

On May 13, 1992, a fire damaged the house and possessions of the Peers in West Chester, Pennsylvania. At the time of the fire, the Peers' house and personal property were covered by a policy of insurance issued by Minnesota, Policy No. 001–203–070. The Peers submitted a claim of approximately \$850,000 under that insurance policy, and Minnesota retained the services of Stanley M.P. Amey, an independent insurance adjuster, and his company, Stanley M.P. Amey, Inc. (the “Amey defendants”), for the purpose of investigating and adjusting the Peers' claim.

On April 1, 1993, after their claim was denied, the Peers filed a Complaint against Minnesota in the Court of Common Pleas of Chester County, Pennsylvania.¹ The Complaint was based on breach of contract (Count I), “lack of utmost fair dealing” (Count II) and “bad faith and outrageous conduct” (Count III). Count IV of the Complaint set forth a claim for “bad faith and outrageous conduct” against the Amey defendants.

On May 3, 1993, defendants filed a Notice of Removal of the action pursuant to 28 U.S.C. § 1441 *et seq.* on the basis of diversity of citizenship between the parties. In the Petition which accompanied the Notice, defendants stated that although the Peers and the Amey defendants were citizens of Pennsylvania, there was complete diversity of citizenship because the Amey defendants were improperly joined as co-defendants with Minnesota, a Minnesota citizen, in order to defeat federal jurisdiction over the case. Defendants argued that the claims asserted against the Amey defendants were not actionable under Pennsylvania law, and that even if they were, the Peers failed to allege such claims properly.

The defendants filed a Motion to Dismiss the Amey defendants, and the Peers, arguing that there was not complete diversity of citizenship, filed a Motion to Remand. By Memorandum and Order dated December 21, 1993, the Court held that the Amey defendants were fraudulently joined as defendants and dismissed Count IV of the Complaint, the only count in which they were named.

On January 2, 1994, the Peers filed a Motion for Reconsideration and Vacation of the Order dismissing the Amey defendants and for Leave to File an Amended Complaint. By Order dated January 21, 1994, the Court denied the Peers' Motion for Reconsideration and Vacation but granted leave to file a motion for leave to join additional defendants pursuant to 28 U.S.C. § 1447(e) on or before February 4, 1994. Because the Peers never filed such a

motion, the Court, by Order dated July 5, 1994, directed the parties to submit by July 18, 1994, a joint written report regarding the filing of an amended complaint joining additional defendants. To date, no such report has been filed. On July 18, 1994, however, counsel for Minnesota sent a letter to the Court with a copy to plaintiffs' counsel which stated: “Presumably, it became obvious to the plaintiffs that no cause of action existed against any third-party, since Your Honor requested plaintiffs to specify in a proposed Amended Complaint those causes of action against the Amey defendants. Obviously, if any causes of action existed, plaintiffs would have filed same.”² Plaintiffs' counsel never responded to defense counsel's letter. In light of the foregoing, the Court will address the issues raised in the original Complaint against Minnesota.

II. Complaint and Counterclaim

*2 Count I of the Peers' Complaint is based on breach of contract and alleges that from July 31, 1991, to July 31, 1992, Minnesota, pursuant to a homeowner's policy, Policy No. 001–203–070, insured the Peers' residence at 513 Legion Drive in West Chester, Pennsylvania, against fire and other loss. The policy provides coverage of \$500,000 for damage to the house, \$375,000 for damage to household contents and \$250,000 for loss of use. As a result of the fire, the Peers estimate that they suffered damage to their house in the amount of \$327,062, loss and damage to their household contents in the amount of \$522,013 and loss of use in a presently undetermined amount. The Peers allege in the Complaint that Minnesota only paid \$25,000 for damage to their household contents and \$15,000 for additional living expenses although the Peers filed proofs of loss with Minnesota within 60 days of the fire. Under Count I of the Complaint, the Peers seek: (1) \$327,062 for damage to their house; (2) \$350,000 for loss of and damage to their household contents (the limit of their household contents coverage less the \$25,000 advance payments already made by Minnesota); (3) such amount as may be determined for additional living expense and loss of use; and (4) interest from the date of the loss at the legal rate and costs.

Count II of the Peers' Complaint is based on “lack of utmost fair dealing” and alleges that Minnesota, through its agents, employees and independent contractors, failed to act with the utmost fair dealing in investigating, estimating, adjusting and paying or refusing to pay the Peers' claims. Without alleging any additional facts, the Peers state that Minnesota (1) misrepresented pertinent facts relating to coverage; (2)

refused to pay the Peers' claims without conducting a reasonable investigation; (3) did not attempt in good faith to effectuate a prompt, fair and equitable settlement of the Peers' claims when it knew or should have known that its liability was reasonably clear; (4) compelled the Peers to institute legal proceedings to recover the amount due despite knowledge that its liability was reasonably clear; (5) negligently and/or wantonly acted or omitted to act upon inadequate investigation in determining the amount of the loss and claim, failing to make payment to the Peers, failing to accept or deny the claims, attempting to reach an agreement upon the amount of the claims, conducting its investigation of the claims, requesting documents and information from the Peers and conducting oral examination of the Peers; (6) failed to respond promptly to the Peers' proof of loss; (7) failed to advise the Peers of the reasons for the delay in processing the claims and when a decision might be expected on the claims; (8) failed to make a reasonable effort to determine the amount of damage and loss and reach agreement with respect thereto including the use of appraisal proceedings; and (9) otherwise acted or omitted to act without reasonable basis in a knowing, arbitrary, capricious or reckless manner or with wanton disregard for the rights of the Peers and their mortgagee and the duties of Minnesota with respect to the claims, insurance policy and related documents. Under Count II of the Complaint, the Peers seek (1) \$147,013 for loss and damage to their household contents (the portion of the loss above the coverage limit); (2) judgment that Minnesota's defenses are invalid and unenforceable; and (3) interest from the date of the loss at the legal rate and costs.

*3 Count III of the Peers' Complaint is based on "bad faith and outrageous conduct" and, without alleging any additional facts, states that Minnesota's conduct (1) was a breach of the contract of insurance; (2) was a breach of its obligation of utmost fair dealing; (3) constituted bad faith; and (4) was outrageous; and that Minnesota "had no reasonable basis, the lack of which Minnesota either knew or acted or omitted to act in reckless disregard of such lack." *Compl.* ¶ 15. Under Count III of the Complaint, the Peers seek (1) interest on the amount of their claims from the date the claims were made in an amount equal to the prime rate of interest plus three percent; (2) punitive damages; and (3) attorney's fees and costs.

On May 10, 1993, Minnesota filed an Answer to the Complaint setting forth 27 affirmative defenses, a number of which are based on instances of alleged fraud by the Peers in obtaining insurance and submitting claims. Minnesota also filed a Counterclaim against the Peers, seeking (1)

reimbursement of all payments made to the Peers or to others on their behalf, including interest on that amount; (2) compensatory damages including investigation expenses, attorney's fees, costs of suit and other costs and expenses incurred and to be incurred as a result of the Peers' pattern of fraudulent conduct in violation of the Pennsylvania Insurance Fraud Statute, 18 Pa.Cons.Stat. Ann. § 4117 (Supp.1994); (3) an order rescinding the policy of insurance from its inception; and (4) an order voiding the policy of insurance from its inception.

III. Motions for Summary Judgment

On June 22, 1994, Minnesota filed a Motion for Summary Judgment on the Peers' Complaint and its Counterclaim. Minnesota argues that the affidavits and exhibits attached to its Motion and the admissions of the Peers by their failure to respond to Minnesota's Requests for Admissions which, at the time of the filing of the Motion, had been outstanding for almost one year, establish as a matter of law (1) that the insurance policy issued to the Peers is void *ab initio* because the Peers acquired the policy through fraud, misrepresentation and concealment; (2) that the insurance policy is void by operation of the concealment and fraud provisions of the policy because the Peers submitted false and misleading insurance claims; and (3) that the insurance policy is void by operation of the concealment and fraud provisions of the policy because the Peers testified falsely under oath at examinations conducted by the insurance company. Minnesota argues that because of these fraudulent acts, they are entitled to recover all payments made under the policy and any future payments that might have to be made to the mortgagee of the damaged property. Minnesota also argues that the Peers' fail to allege any facts in support of their claims for extra-contractual relief and, in light of their conduct, they cannot state valid claims for relief. Finally, Minnesota argues that the Peers' pattern of fraudulent conduct entitles Minnesota to recover damages under the Pennsylvania Insurance Fraud Statute.

*4 The Peers also filed a Motion for Summary Judgment on Minnesota's Counterclaim and their Complaint. In support of their Motion the Peers attach only their own sworn statement, which alleges additional facts relating to Minnesota's investigation and subsequent denial of their claims, sets forth a detailed history of their claims on prior insurance policies and explains their dealings with Minnesota regarding the application for insurance and the submission of claims. The Peers argue that Minnesota's Motion for Summary Judgment should be denied because the Peers'

statement contradicts the affidavits submitted by Minnesota and creates genuine issues of material fact. The Peers also argue that because they obtained the insurance policy without completing a formal application, summary judgment cannot be granted on the basis of fraud in the application. Finally, the Peers argue that Minnesota's bad faith conduct "deprives it of its fraud and false swearing defense." Although their Complaint claims both compensatory and punitive damages, the Peers' Motion seeks summary judgment "on liability for compensatory damages" only.

IV. Summary Judgment Standard

Summary judgment is warranted when the Court finds that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if the evidence is such that a reasonable jury could find for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court is not free to weigh the evidence for itself but rather must decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251–52. In making this determination, the court must inevitably consider the substantive evidentiary burden of the parties that would apply at the trial on the merits. *See Id.* at 254 ("[I]n ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.").

V. The Peers' Claim for Breach of Contract

A. Fraud in the Application

The Court concludes that Minnesota is entitled to summary judgment with respect to the contract claim because Mr. Peer acted in bad faith by signing a blank application for insurance without verifying the truthfulness of the responses provided. It is well-established under Pennsylvania law that an insurer may rescind a policy if it can show by clear and convincing evidence (1) that the application contained a representation that was false; (2) that the false representation was material to the risk being insured; and (3) that the insured made the representation in bad faith or knew, when making the representation, that the representation was false. *See New York Life Ins. Co. v. Johnson*, 923 F.2d 279, 281 (3d Cir.1991); *American Franklin Life Ins. Co. v. Galati*, 776 F.Supp. 1054, 1059 (E.D.Pa.1991); *Shafer v. John Hancock Mut. Life Ins. Co.*, 189 A.2d 234, 236 (Pa.1963); *A.G. Allebach, Inc. v. Hurley*, 540 A.2d 289, 294 (Pa.Super.1988); *Batka v. Liberty*

Mut. Fire Ins. Co., 704 F.2d 684 (3d Cir.1983) (burden of proof); *Highmont Music Corp. v. J.M. Hoffmann Co.*, 155 A.2d 363, 366 (Pa.1959) (same).

*5 It is beyond all cavil that the insurance application at issue contains false representations material to the risk being insured. The Peers application with Minnesota is a single page form entitled "Quote Request Form," which contains information about the borrowers and the property to be insured and asks six questions including the following: "HAS BORROWER HAD ANY HOMEOWNER CLAIMS WITHIN THE PAST 3 YEARS? IF YES, DESCRIBE." *See Def.'s Mot. for Summ.J.* Exhibit 5C.³ The box next to the response "NO" has been checked by hand, and Mr. Peer's signature, dated May 15, 1991, appears at the bottom of the form. *See Id.* According to the Peers' sworn statement attached to their Cross-Motion for Summary Judgment, however, the Peers had made at least three homeowners claims within the past three years. The Peers submitted a claim to Allstate Insurance Company on or about September 1, 1988, as a result of an act of vandalism which occurred at their home in Parker, Colorado; the Peers submitted a claim to State Farm Fire and Casualty Insurance Company ("State Farm") on or about November 8, 1989, as a result of a theft and an act of vandalism which occurred at their home at 1001 Radley Drive, West Chester, Pennsylvania; and the Peers submitted a claim to Aetna Life and Casualty Insurance on or about July 16, 1991, as a result of a fire at their Radley Drive home. As a result of these three claims, the Peers were paid in excess of \$290,000.⁴

Furthermore, Minnesota has submitted uncontradicted affidavits from three employees, all of whom state that had the Peers' Quote Request Form contained accurate information regarding their prior losses, the insurance policy would not have been issued. *See Def.'s Mot. for Summ.J.* Exhibit 6, ¶ 24 (Whitehead affidavit); *Id.* Exhibit 8, ¶¶ 21, 22 (Breslain affidavit); *Id.* Exhibit 9, ¶¶ 25–27 (Evans affidavit). Because "[i]nformation on an insurance application is material if knowledge or ignorance of it would influence the decision of the issuing insurer to issue the policy," *see Galati*, 776 F.Supp. at 1060 (construing Pennsylvania law), the omitted information concerning prior losses was material. *See also Hartman v. Keystone Ins. Co.*, 21 Pa. 466, 477 (1853) ("Every fact is material which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium.").

The Peers do not dispute that the Quote Request Form they submitted to Minnesota contains false representations material to the risk being insured. Instead, they argue that Minnesota is not entitled to summary judgment because they signed the Quote Request Form in blank and were unaware of the false information provided to Minnesota by a third party. The Court rejects this argument. Even if the Court were to assume, *arguendo*, that the Peers had no knowledge of the false information on the Quote Request Form, the Court nevertheless concludes that Minnesota is entitled to summary judgment with respect to the contract claim because signing an insurance application in blank when it contains an affirmation of the accuracy of the responses constitutes bad faith as a matter of law.

*6 Under Pennsylvania law, “[w]here an application includes an affirmation that the applicant has read and attests to the accuracy of the contents of the application, the applicant may not avoid the responsibility imposed by the application by signing a blank form and leaving it to another to fill in the appropriate responses.” *Galati*, 776 F.Supp. at 1061; *see also Van Riper v. Equitable Life Assurance Soc’y*, 561 F.Supp. 26, 33 (E.D.Pa.1982), *aff’d*, 707 F.2d 1397 (3d Cir.1983); *Kearns v. Philadelphia Life Ins. Co.*, 585 A.2d 53, 54 (Pa.Super.), *appeal denied*, 598 A.2d 284 (Pa.1991). Even if the applicant provides correct information to the individual entrusted to complete the form, the subsequent failure to review and correct the information which was improperly recorded constitutes bad faith. *See Id.*; *Monarch Life Ins. Co. v. Donahue*, 708 F.Supp. 674 (E.D.Pa.1989) (construing Pennsylvania law) (“By certifying the veracity of the representations made in the application by his signature, an insured is estopped not only from claiming that he was induced into making misrepresentations, but also from asserting that questions were not asked or that the answers given were not recorded properly.”).

The Peers do not dispute that the Quote Request Form contains an affirmation that the answers supplied are true. *See Pls.’ Resp. to Def.’s Mot. for Summ.J. and Pls.’ Cross-Motion for Summ.J.* at 2. At the bottom of the form, directly above the signature space, the following sentence appears: “The answers are true and correct to the best of my knowledge and I have received the HomePlus coverage outline.” Therefore, the Peer’s conduct constitutes bad faith as a matter of law.⁵

Because the Court concludes as a matter of law that the Peers’ conduct constitutes fraud in the application, Minnesota’s Motion for Summary Judgment with respect to the Peers’

contract claim will be granted, and the Peers’ Motion for Summary Judgment with respect to this claim will be denied.

B. False Testimony

The Court also concludes that Minnesota’s Motion for Summary Judgment should be granted with respect to the contract claim because the evidence accompanying Minnesota’s Motion for Summary Judgment establishes that Mr. Peer made false statements during his examination under oath on September 8, 1992, regarding his financial condition and involvement in a prior lawsuit and that he intentionally concealed a material fact, the assignment of his insurance claim.⁶

The fraud and concealment provisions of the Peers’ policy state that “[t]he entire policy will be void if, whether before or after a loss, an insured has: (a) intentionally concealed or misrepresented any material fact or circumstance; (b) engaged in fraudulent conduct; or (c) made false statements; relating to this insurance.” *Def.’s Mot. for Summ.J.* Exhibit 1, at 4 (HO-350).⁷ The Peers’ policy with Minnesota also contains a standard clause which gives Minnesota the right to question the insured under oath with regard to the loss.

*7 Minnesota retained Harry G. Mahoney, Esquire, to conduct an examination of the Peers under oath. On August 17, 1992, Mr. Mahoney sent the Peers a letter which informed them of Minnesota’s intention to examine them under oath and requested that, at the time of the examination, they produce various documents including “[a]ny and all documentation establishing mortgages made or loans secured by Albert D. Peer, Jr., and/or Lee A. Peer from January 1, 1987 to the date of this correspondence.” *Id.* Exhibit 12A, at 4.

On September 8, 1992, Mr. Mahoney examined Mr. Peer under oath. During the examination, Mr. Mahoney asked Mr. Peer whether he had brought any documents regarding “mortgages, loans, et cetera.” *Id.* Exhibit 12C, at 80. Thomas R. Wilson, Esquire, Mr. Peer’s counsel for this examination, replied, “I don’t believe there are any.” *Id.* Mr. Mahoney then explicitly asked Mr. Peer whether he or Mrs. Peer had any other loans outstanding at that time. Mr. Peer replied that, besides some credit card charges, he and his wife had no other outstanding debts:

Q: For that period of time identified in paragraph 12, January 1st, ‘87 to the present, aside from the mortgage, the first mortgage, the second mortgage on the property,

Legion Drive, the First Financial, and the promissory note from you and Mrs. Peer to Mr. Gomez, do you have any other mortgages, loans, anything else, promissory notes, which resulted in debt to you during that period of time, whether it be on property, personal?

A: There's some credit cards and things, but the kind of thing you're asking here, I don't believe there is.

Q: Just credit card charges?

A: Yeah. I don't buy a car because I have a company car.

Q: No business loans by Mrs. Peer, to your knowledge?

A: Not to the best of my knowledge.

Id. at 80–81.

At the time of his examination under oath, Mr. Peer owed his employer, Adolph Coors Company (“Coors”), the sum of \$224,725. This debt arose out of two loans to the Peers by Coors in May and July, 1990, which enabled plaintiffs to exercise certain stock options for the purchase of 10,000 shares of Coors Class B non-voting, common stock. On June 19, 1992, Harold R. Smethills, Executive Vice President of Coors, notified Mr. Peer that, by virtue of the sale of those shares of stock to another party and Mr. Peer's subsequent failure to repay the borrowed funds to Coors, he was in violation of “Paragraph 3(a) of the [Promissory] Notes and Paragraph 9(a) of the 1983 Non–Qualified Stock Option Plan, As Amended Effective February 13, 1992, the terms of which are incorporated in the Option Agreements.” *Id.* Exhibit 22, at P–2. The letter further states that it “shall serve as Coors' formal demand for immediate payment in full of the principal due under both notes and interest payments due at the time of payment.” *Id.*

Over the next few weeks, Mr. Peer repeatedly demonstrated his knowledge of the debt to Coors by corresponding with several Coors executives, making partial payments and entering into two separate assignment and security agreements. On June 26, 1992, Mr. Peer sent Mr. Smethills a letter, which included a \$25,000 check for partial payment of the debt and promised an additional \$45,000 in the near future. *Id.* Exhibit 22, at P–3. Mr. Peer sent Mr. Smethills another letter on July 8, 1992, which informed him that he was unable to repay the amount he owed and stated that “[t]he only course of action is to have you proceed to collateralize the debt.” *Id.* Exhibit 22, at P–4.

*8 Mr. Peer entered into an agreement with Coors on July 9, 1992, by which he assigned certain salary and life insurance payments to Coors and gave Coors a security interest in the proceeds of these payments. *Id.* Exhibit 22, at P–5. In addition, on July 31, 1992, Mr. Peer and Coors executed an Assignment and Security Agreement covering a portion of the Peers' insurance claim against Minnesota at issue in this case. *Id.* Exhibit 22, at P–8.

On July 29, 1992, two days prior to the assignment of the Peers' insurance claim against Minnesota, Mr. Peer sent Mr. Smethills a letter, which discussed their ongoing negotiations. In that letter, Mr. Peer explained that because of a first mortgage on the house, he could only assign his claim for contents coverage. He also stated that he did not want Coors to inform Minnesota of the assignment:

If you will get me a corrected copy of the assignment to cover contents only I will sign it. However, both Young Adjustment Company and I believe that given the problems we have had with the insurance company to date, if the assignment is filed with them it will delay the settlement of the claim. I do not believe that any additional delay is in anyone's interest. I can only say that the day I get the content's [sic] settlement you will get a check for the entire balance I owe Coors.

Id. Exhibit 22, at P–6.

On August 20, 1992, less than three weeks before his examination under oath by Mr. Mahoney, Mr. Peer again acknowledged his debt to Coors by sending a memorandum to David H. Hoffmann, President and Chief Executive Officer of Graphic Packaging Corporation, a Coors subsidiary. In this memorandum Mr. Peer unequivocally stated, “I am responsible for the debt to Coors and I will pay it in full as soon as I can settle the contents portion of the insurance claim.” *Id.* Exhibit 22, at P–10.

In a subsequent letter to Mr. Hoffmann dated September 16, 1992, Mr. Peer again expressed his desire not to disclose the assignment of his insurance claim to Minnesota:

On July 31, 1992 as a condition of my return to work you required that I sign an assignment for the contents portion of my Homeowners Insurance Policy No. 001-203-070 issued by Minnesota Mutual Fire & Casualty Company.

At the time I signed the agreement I told you I would do so only with the assurance that you would not have the agreement filed with the insurance company. I informed you that I believe that filing that agreement with the insurance company will guarantee a long drawn out legal fight with the insurance company to collect on the fire claim. You assured me that the agreement would not be filed with the insurance company.

Id. Exhibit 22, at P-11.

It is indisputable that Mr. Peer testified falsely about the Coors loans during his examination under oath and intentionally concealed the assignment of his insurance claim. Mr. Peer's numerous letters to Coors executives confirm that he knew about the substantial debt, that he was attempting to make arrangements for payment and collateralization, and that he conditioned the assignment of his insurance claim on Coors' agreement to conceal the assignment from Minnesota.

*9 In addition to his false statements concerning the Coors loans and his intentional concealment of the assignment of his insurance claim, Mr. Peer also made false statements at the September 8, 1992, examination under oath regarding lawsuits brought against him within the past ten years. In his letter dated August 17, 1992, Mr. Mahoney requested "[a] full and complete list of any law suits and/or bankruptcy proceedings involving Albert D. Peer, Jr., and/or Lee A. Peer filed in the last ten (10) years." *Id.* Exhibit 12A. At the examination under oath on September 8, 1992, the following exchange occurred between Mr. Mahoney and Mr. Peer regarding that request:

Q: Sir, item No. 17 in my correspondence to you requests a full and complete list of any lawsuits and/or bankruptcy proceedings involving you or Mrs. Peer in the last ten years. Can you tell me, sir, aside from the lawsuits coming out of the Radley Run fire ... were you a party to any lawsuit in the last ten years?

A: Going back to definitions, what's your definition of a party to?

Q: A party to is one who either brings or defends a lawsuit. You are either a plaintiff, defendant,

additional defendant. Sometimes they're called third-party defendants. Sometimes they're called intervening parties.

A: No, sir.

Q: Have you been involved in litigation in the last ten years as a witness of some sort? Maybe that's the problem here.

A: No. The problem is Lee is involved in a class action lawsuit in Denver, but it's really Lee, not me. And when you ask me, I have to ...

Q: Either you individually or having some interest as a spouse with Lee?

A: Lee is involved in a class action lawsuit in Denver.

Q: Are you a party to that lawsuit?

A: No, sir.

Id. Exhibit 12D, at 138-39.

Although Mr. Peer denied the existence of any lawsuits against him within the past ten years when questioned at his examination under oath, he was involved in a lawsuit brought by his ex-wife, Meredith M. Peer, arising out of a Separation Agreement and Stipulation incorporated into a divorce decree entered on January 13, 1983, by a Colorado court. As a result of a Motion by his ex-wife to Set Aside Real Property Division, or in the Alternative, to Clarify Property Division, filed on October 18, 1989, Mr. Peer had a judgment entered against him by the Colorado court in the amount of \$54,821.56. *Id.* Exhibit 28. Mr. Peer was represented by counsel in that matter and appeared in court at a hearing. On August 16, 1991, Meredith Peer transferred the Colorado judgment to Pennsylvania, and notice of that judgment was sent to Mr. Peer in accordance with Pennsylvania Rule of Civil Procedure 236.

In light of the foregoing, it is indisputable that Mr. Peer testified falsely in response to questions about lawsuits to which he was a party. Despite the fact that Mr. Peer retained counsel in connection with the suit by his ex-wife, appeared in court in Colorado, and received notice of a judgment against him for \$54,821.56, all within ten years of the examination under oath, Mr. Peer denied being a party to any lawsuits within the past ten years.

*10 Even though the Peers testified falsely regarding the existence of the loans from Coors and the lawsuits to which

they were parties and intentionally concealed the assignment of their insurance claim against Minnesota, the policy will only be void by operation of the fraud and concealment provisions if those misrepresentations are material. Whether misrepresentations made to an insurance company by the insured are material is generally a mixed question of law and fact. However, materiality can be decided as a matter of law if reasonable minds cannot differ on the question. *See Long v. Insurance Co. of N. Am.*, 670 F.2d 930, 934 (10th Cir.1982); *Gould v. American-Hawaiian S.S. Co.*, 535 F.2d 761, 771 (3d Cir.1976).

A misrepresentation is material if “a reasonable insurance company, in determining its course of action, would attach importance to the fact misrepresented.” *Long*, 670 F.2d at 934. A misrepresentation is also material if “[it] may be said to have been calculated either to discourage, mislead or deflect the company's investigation in any area that might seem to the company, at that time, a relevant or productive area to investigate.” *Fine v. Bellefonte Underwriters Ins. Co.*, 725 F.2d 179, 184 (2d Cir.1984). The Court concludes that the Peers' misrepresentations concerning the Coors loans and the lawsuit against Mr. Peer and the intentional concealment of the assignment of their insurance claim are material. Furthermore, the Court concludes that reasonable minds could not differ on the question of materiality so the issue is decided as a matter of law.

As demonstrated by the August 17, 1992, letter by Mr. Mahoney, Minnesota's investigation concentrated on the Peers' financial condition at the time of their claims. This focus was entirely reasonable and appropriate because an insurer is entitled to know whether any possible motive exists for insurance fraud. The questions regarding outstanding debt and prior lawsuits are clearly designed to probe this area of the Peers' background and are therefore material. Moreover, the Peers' concealment of the assignment of their insurance claim certainly was designed to “discourage, mislead or deflect the company's investigation.” Mr. Peer explicitly conditioned his assignment of the insurance claim on Coors' promise not to tell Minnesota because “filing that agreement with the insurance company will guarantee a long drawn out legal fight with the insurance company to collect on the fire claim.” This was a calculated effort to curtail Minnesota's investigation and therefore the intentional concealment of the assignment is material.

In response to Minnesota's extensive proof that the Peers made material false statements at their September 8, 1992, examination, the Peers respond as follows:

With respect to debt, we understood these questions to relate to commercial debt and not stock transactions with Dean's employer and a judgment. If those questions had been asked, we would have willingly provided the information. The bank was informed of the stock transactions. Also, the bank was informed of the judgment in favor of Dean's first wife prior to the losses when a second mortgage was put on the insured premises. We made no attempt to conceal this information.

*11 *Statement of Albert D. Peer and Lee A. Peer in Opp'n to Minnesota Mutual's Mot. for Summ.J.* ¶ 52. The Court is mindful that, in deciding a motion for summary judgment, it must view the evidence in the light most favorable to the non-moving party, *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), and resolve any conflicts in the non-movant's favor. *See Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir.1992), *cert. denied*, 113 S.Ct. 1262 (1993). The presence of a mere scintilla of evidence in support of the non-moving party's position, however, is not sufficient to withstand the motion. *See Carlson v. Arnot-Ogden Memorial Hosp.*, 918 F.2d 411, 413 (3d Cir.1990). Moreover, a non-moving party “may not rest on its mere denials” but must set forth specific facts showing that there is a genuine issue for trial. *First Nat. Bank of Pennsylvania v. Lincoln Nat. Life Ins. Co.*, 824 F.2d 277, 282 (3d Cir.1987).

An issue is sufficiently “genuine” to prevent the granting of summary judgment only if the evidence presented is such that a reasonable jury could find for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Court is not free to weigh the evidence for itself but rather must decide “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* In this case, the Court concludes that a reasonable jury could not find for the Peers because the evidence is so one-sided. The Peers' representation that they did not understand

the questions regarding debt is belied by the fact that, less than three weeks earlier, Mr. Peer informed Coors that he did not want to notify Minnesota about the assignment of the insurance claim because it “will guarantee a long drawn out legal fight with the insurance company to collect on the fire claim.” Furthermore, the Peers did not respond at all to Minnesota's proof that the Peers concealed a prior lawsuit. At the examination under oath, after requesting and being given an explanation of the question regarding lawsuits, Mr. Peer denied being a party to any suit within the past ten years, and that was admittedly untrue. The fact that the Peers may have given *the bank* the correct information about the lawsuit is entirely irrelevant to the question at hand—whether the Peers testified falsely at their sworn examination by Minnesota.

Because of Mr. Peer's false statements concerning the Coors loans and the lawsuit to which he was a party and because he intentionally concealed the assignment of his insurance claim to Coors, the Court concludes that, under the fraud and concealment provisions, the policy is void. Accordingly, Minnesota's Motion for Summary Judgment with respect to the Peers' contract claim will be granted, and the Peers' Motion for Summary Judgment with respect to this claim will be denied.⁸

VI. The Peers' Claims for Lack of Utmost Fair Dealing and Bad Faith

***12** In addition to their claim for damages under a breach of contract theory, the Peers set forth claims entitled “lack of utmost fair dealing” and “bad faith and outrageous conduct.” *See Compl.* at 4–6. The Peers' claim for “lack of utmost fair dealing” sets forth nine allegations which, without any factual support, merely repeat, almost word for word, the description of a number of unfair claim settlement practices contained in the Pennsylvania Unfair Insurance Practices Act (“UIPA”). *See* 40 Pa.Stat. Ann. § 1171.5(a)(10). The claim for “bad faith and outrageous conduct” incorporates the allegations set forth in the breach of contract claim and the “lack of utmost fair dealing” claim and concludes that these actions “constituted bad faith and were outrageous.” *See Id.*

Under Pennsylvania law it is well-settled that the UIPA does not provide a private right of action, *see Lombardo v. State Farm Mut. Auto. Ins. Co.*, 800 F.Supp. 208, 212 (E.D.Pa.1992), and that “an insured has no [common law] cause of action against an insurer for punitive damages or damages similar to punitive damages as a result of bad faith practices.” *See Opinion dated December 21, 1993* at 10.

Construing the Peers' Complaint liberally, however, the Court will treat the Complaint as though it seeks the remedies provided by 42 Pa.Cons.Stat. Ann. § 8371 for Minnesota's alleged bad faith conduct in investigating and rejecting their claims. *See Diamon v. Penn Mut. Fire Ins. Co.*, 372 A.2d 1218 (Pa.Super.1977) (holding that implied covenant of good faith in investigating and rejecting claims is a condition of the insurance policy that may be spelled out clearly in so many words or may be implied in fact). The Court does so because the Peers' Response to Defendant's Motion for Summary Judgment describes *Diamon* as “the leading case” on the obligation of good faith and utmost fair dealing, *see Pls.' Resp.* at 7, and the demand for relief sought in the “bad faith and outrageous conduct” claim coincides exactly with the remedies that a court may award under 42 Pa.Cons.Stat. Ann. § 8371. *See Compl.* at 6.⁹

As an initial matter, the Court must consider whether an insured who breaches a contract of insurance by making false statements and intentionally concealing material facts may prevail on a claim for breach of an implied duty of good faith and fair dealing. In *Diamon*, the Pennsylvania Superior Court considered a somewhat similar question—whether an insured's claim of bad faith investigation would be barred by the insured's failure to comply with a suit limitation clause contained in the insurance policy. That court, citing approvingly to *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032 (Ca.1973), held that the insurer's duty of good faith and fair dealing is unconditional and independent of the performance of the insured's contractual obligations.¹⁰ Assuming, without deciding, that an insured's breach of the fraud and concealment provision of an insurance policy does not bar an action for bad faith, the Court nevertheless concludes that Minnesota is entitled to summary judgment on this claim because it made approximately \$40,000 in partial payments to the Peers while investigating their claims and denied their claims because the investigation disclosed evidence of fraud.

***13** As the Pennsylvania Supreme Court has stated, in jurisdictions that recognize a cause of action for bad faith conduct on the part of an insurer, “a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.” *D'Ambrosio*, 431 A.2d at 971 (quoting *Anderson v. Continental Ins. Co.*, 271 N.W.2d 368, 376 (Wis.1978)). In light of the evidence of fraud obtained by Minnesota in its investigation, the Court concludes that Minnesota had a

reasonable basis for denying the Peers' claims. *See Def.'s Reply Mem. of Law* Exhibit A, ¶ 8. Because that evidence is sufficient for the Court to decide, as a matter of law, that the Peers testified falsely and intentionally concealed material facts relating to issuance of the insurance policy, it follows *a fortiori* that it is also sufficient to establish that Minnesota had a reasonable basis for denying the claims. *See American Franklin Life Ins. Co. v. Galati*, 776 F.Supp. 1054, 1064 (E.D.Pa.1991) (granting insurer's motion for judgment on the pleadings with respect to bad faith claim because insurer had reasonable basis for its actions in light of insured's misstatements on insurance application). Accordingly, Minnesota's Motion for Summary Judgment with respect to the Peers' claims for lack of utmost fair dealing and bad faith will be granted, and the Peers' Motion for Summary Judgment with respect to these claims will be denied.

VII. Minnesota's Counterclaims for Insurance Fraud, Rescission, and Any Payments Made and to be Made to the Mortgagee

A. Insurance Fraud

Pursuant to the Pennsylvania Insurance Fraud Statute, 18 Pa.Cons.Stat. Ann. § 4117, Minnesota claims it is entitled to recover compensatory damages, including reasonable investigation expenses, costs of suit and attorney's fees, because the Peers engaged in a pattern of violating the statute.¹¹ Minnesota has established as a matter of law that the Peers signed their insurance application in blank without verifying the truthfulness of the responses provided and testified falsely during the investigation of their claims. However, this evidence, standing alone, is not sufficient for the Court to conclude as a matter of law that the Peers engaged in a "pattern" of violating the Pennsylvania Insurance Fraud Statute.

Minnesota argues that the Peers committed several other acts of fraud which, when considered together with the misrepresentations in the Quote Request Form submitted to Minnesota, and false testimony, warrant the conclusion that the Peers engaged in a pattern of violating the Pennsylvania Insurance Fraud Statute as a matter of law. The Court disagrees. The Court considered all of Minnesota's allegations of fraud in connection with the Peers' contract claim and the Peers' claims for breach of utmost fair dealing and bad faith and concluded that genuine issues of material fact remain with respect to some of these allegations of fraud. *See supra* nn. 4, 6, 7. The fraud which the Court has found as a matter

of law, standing alone, is insufficient to support a finding that the Peers engaged in a pattern of violating the statute as a matter of law.¹² Accordingly, the Court will deny Minnesota's Motion for Summary Judgment with respect to their counterclaim for insurance fraud.

B. Rescission

*14 Minnesota argues that if the Court determines that the Peers committed fraud in the application or violated the fraud and concealment provisions of the insurance policy, it is entitled to rescind the policy and recover from the Peers any amounts paid to them or to others on their behalf. In light of the Court's holding that the Peers committed fraud in the application and violated the fraud and concealment provisions of the policy, it follows ineluctably that Minnesota is entitled to rescission of the policy. *See supra* Sections V.A and V.B. Accordingly, the Court will enter an order declaring the insurance policy void *ab initio* and rescinded, order the Peers to return any payments made to them by Minnesota, and order Minnesota, subject to any right of setoff, to refund all premiums paid by the Peers.¹³

C. Payments Made and to be Made to the Mortgagee

Minnesota also claims that because of a standard mortgage clause contained in the policy it is entitled to recover from the Peers "all advances and potential payments to be made to the mortgagee." *Def.'s Mot. for Summ. J.* at 72-73.¹⁴ The Court agrees. A standard mortgage clause in an insurance policy, such as this one, creates a separate, distinct, and independent contract of insurance in favor of the mortgagee. *See Overholt v. Reliance Ins. Co.*, 179 A. 554, 556 (Pa.1935):

Where a policy is issued to the owner and a mortgagee clause is attached, the company is, in effect, making two contracts. First it is agreeing to indemnify the owner for the loss of the property, and second, it is insuring the creditor's security for his debt. If the circumstances are such that the company would be liable to the owner under the policy, a payment to the mortgagee would be in relief of the mortgage debt, but if, for any reason, the company would not be liable to the owner, its liability to the

creditor would nevertheless continue. In the latter case, the liability to the creditor would be the same as though the company had insured the creditor's interest alone and, if it pays the creditor, it would be entitled to be subrogated to his rights.

Taylor v. Seckinger, 184 A.2d 317, 319 (Pa.Super.1962) (citations omitted).

By the clear terms of the policy, Minnesota is subrogated to the rights of the mortgagee and is entitled to collect from the Peers any amounts paid in satisfaction of their mortgage obligation. See *Lavin v. Fireman's Ins. Co. of Newark*, No. 91-0114, slip op. at 3-4 (E.D.Pa. October 25, 1993). The Peers have not disputed that Minnesota is entitled to recover payments made or to be made to the mortgagee if the Court finds that Minnesota properly withheld payment to the Peers. Accordingly, the Court concludes that Minnesota is entitled to recover all payments made, and any future payments that might have to be made, to the mortgagee. Minnesota's Motion for Summary Judgment with respect to its counterclaim for payments made and to be made to the mortgagee will be granted.¹⁵

VIII. Requests for Admissions

*15 In July, 1993, Minnesota served the Peers with Requests for Admissions which ask the Peers to admit various incidents of fraudulent conduct. See *Def.'s Mot. for Summ. J.* Exhibit 31. To date, the Peers have not responded to Minnesota's Requests for Admissions nor have they filed a motion pursuant to Federal Rule of Civil Procedure 36(b) to withdraw any admissions which may have resulted by operation of law. Minnesota argues that it is entitled to summary judgment on its Counterclaim and all of the Peers' claims because, in light of the Peers' failure to respond, all facts contained in the Requests for Admissions are deemed admitted and conclusively established.

Although some courts have held that a failure to respond to requests for admissions, without additional evidence, is an adequate basis for granting summary judgment, many of these courts have done so only when the Motion for Summary Judgment is unopposed. See *Sony Corp. of Am. v. D.S. Audio, Inc.*, No. 88-2346, 1988 U.S. Dist. LEXIS 12494, at *1 (E.D.Pa. November 7, 1988); *Freed v. Plastic*

Packaging Materials, Inc., 66 F.R.D. 550, 552 (E.D.Pa.1975); *Shapiro, Bernstein & Co. v. "Log Cabin Club Ass'n"*, 365 F.Supp. 325, 327 (N.D.W.Va.1973). In addition, this Court is particularly reluctant to grant summary judgment based on the Peers' failure to respond to requests for admissions given the fact that a court may permit withdrawal of admissions unless it would result in prejudice to the party who obtained the admissions. See *Eckell v. Borbridge*, 114 Bankr. 63, 66 (E.D.Pa.1990).

In light of the Peers' opposition to Minnesota's Motion for Summary Judgment and the dearth of caselaw construing the Pennsylvania Insurance Fraud Statute, this Court will not grant summary judgment based on the Peers' failure to respond to Requests for Admissions. See 8A Charles A. Wright et al., *Federal Practice and Procedure* § 2264, at 578-79 ("[T]he courts should explore the possibility that prejudice can be avoided by imposing other conditions rather than holding a party to an untrue or unintended admission on a vital issue in a case.").

IX. Conclusion

For the foregoing reasons, the Court will grant Minnesota's Motion with respect to the Peers' claims and with respect to Minnesota's counterclaims for rescission and for any payments made and to be made to the mortgagee. The Court will deny Minnesota's Motion in all other respects and will deny the Peers' Motion in its entirety. An appropriate order follows.

ORDER

AND NOW, to wit, this 27th day of March, 1995, upon consideration of the Motion of defendant, Minnesota Mutual Fire & Casualty Company, for Summary Judgment (Document No. 19), the Response by plaintiffs, Albert D. Peer and Lee A. Peer, to defendant's Motion for Summary Judgment and the Cross-Motion of plaintiffs, Albert D. Peer and Lee A. Peer, for Summary Judgment (Document No. 21), and the Reply Memorandum of defendant, Minnesota Mutual Fire & Casualty Company, to plaintiffs' Response and Cross-Motion (Document No. 22), for the reasons set forth in the accompanying Memorandum, IT IS ORDERED that:

*16 1. The Motion of defendant, Minnesota Mutual Fire & Casualty Company, for Summary Judgment is GRANTED IN PART AND DENIED IN PART. Defendant's Motion for

Summary Judgment is GRANTED with respect to plaintiffs' claims and with respect to defendant's counterclaims for rescission and for payments made and to be made to the mortgagee. In all other respects, defendant's Motion for Summary Judgment is DENIED; and

2. The Cross-Motion of plaintiffs, Albert D. Peer and Lee A. Peer, for Summary Judgment is DENIED; and

IT IS FURTHER ORDERED that the policy of insurance issued to Albert D. Peer and Lee A. Peer by Minnesota Mutual Fire & Casualty Company, Policy Number 001-203-070, is declared void *ab initio* and rescinded. Plaintiffs shall return any payments made to them by Minnesota Mutual Fire & Casualty Company, and Minnesota Mutual Fire & Casualty Company, subject to any right of setoff, shall refund all premiums paid by plaintiffs.¹

1 The Peers brought an earlier action against Minnesota in the Court of Common Pleas of Chester County under the same insurance policy to recover approximately \$30,000 for water damage to their home. That action is still pending.

2 A copy of the letter will be docketed.

3 The Peers argument that the Quote Request Form is not "an application" is without merit. The Quote Request Form is the document the Peers used to initiate their insurance with Minnesota, and the fact that the document is not titled "application" is of no legal significance.

4 Minnesota also argues that the Peers supplied false information on their insurance application regarding prior cancellations and non-renewals and the non-business use of the property. The Court concludes that the Peers have raised genuine issues of material fact with respect to these matters.

5 The Court notes that the Peers should have been on notice of the problems associated with signing an insurance application in blank because of an earlier dispute with State Farm regarding a claim they filed on or about November 8, 1989. After paying only a small part of the claim, State Farm refused to pay the remainder and canceled the Peers' insurance. Among the reasons State Farm gave in their Notice of Cancellation was that "your 5/1/89 Homeowners application with us in Colorado didn't disclose your

prior 4/10/88 loss with Allstate." *Def.'s Mot. for Summ. J.* Exhibit 3G. Although the Peers argue now that State Farm canceled their policy in "an attempt to protect itself," they admit that problem began when they signed the State Farm application in blank and the information was subsequently filled in by a receptionist in the sales department. *See Statement of Albert D. Peer and Lee A. Peer in Opp'n to Minnesota Mutual's Mot. for Summ. J.* ¶ 33.

6 Minnesota also argues that at the September 8, 1992, examination, the Peers testified falsely regarding the amount they paid for certain furniture destroyed in the fire and the fact that they never filed income tax returns for 1989 and 1990, and, in an examination by Stanley Amey on June 2, 1992, that they were in no financial trouble and had no bad debts. The Court concludes that the Peers have raised genuine issues of material fact regarding these matters.

7 Minnesota also argues that the Peers engaged in fraudulent conduct by submitting altered invoices and checks and misrepresenting the items damaged in the fire. The Court concludes that the Peers have raised genuine issues of material fact regarding these matters.

8 In response to Minnesota's allegations of fraud, the Peers argue at length that Minnesota's bad faith investigation, besides entitling the Peers to damages, deprives Minnesota of their fraud and false swearing defenses. *See Pls.' Resp. to Def.'s Mot. for Summ. J. and Pls.' Cross-Motion for Summ. J.* at 7-13. Because of the Court's conclusion that there was no bad faith investigation or denial of claims, this contention need not be addressed. *See infra* Section VI.

9 Because the Peers' claim for bad faith damages pursuant to 42 Pa.Cons.Stat.Ann. § 8371 was joined with claims for breach of contract and breach of the implied duty of good faith, the Court need not consider whether § 8371 provides a separate, independent cause of action against an insurer or whether it merely allows a court to provide an additional remedy if it determines that an insurer has acted in bad faith. *See Romano v. Nationwide*

Mutual Fire Ins. Co., 1994 Pa.Super. LEXIS 2632, at *7 (August 26, 1994).

10 In a later case, *D'Ambrosio v. Pennsylvania Nat'l Mut. Casualty Ins. Co.*, 431 A.2d 966, 968 (Pa.1981), the Pennsylvania Supreme Court declined to follow a different part of the holding in *Gruenberg* which allowed an insured to bring an action in tort for breach of the implied covenant of good faith and fair dealing.

11 18 Pa.Cons.Stat. Ann. § 4117 provides as follows:

§ 4117. Insurance Fraud

(a) Offense defined.—A person commits an offense if the person does any of the following:

(2) Knowingly and with the intent to defraud any insurer, presents or causes to be presented to any insurer any statement forming a part of, or in support of, an insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the insurance claim.

(3) Knowingly and with the intent to defraud any insurer, assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer in connection with, or in support of, an insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the insurance claim.

(g) Civil Action.—An insurer damaged as a result of a violation of this section may sue therefor in any court of competent jurisdiction to recover compensatory damages, which may include reasonable investigation expenses, costs of suit and attorney fees. An insurer may recover damages if the court determines that the defendant has engaged in a pattern of violating this section.

12 The Court makes no determination at this time as to whether, if proven at trial, the other allegations of fraud referenced *supra* in footnotes 4, 6 and 7 would be sufficient to establish a “pattern” of violating the Pennsylvania Insurance Fraud Statute.

13 According to Minnesota, it paid the Peers \$24,587.39 on April 16 and May 5, 1992, in connection with their water loss claim and \$48,519.45 on May 13, May 21, June 18, and June 23, 1992, in connection with their fire loss claim. *See Def.'s Mot. for Summ. J.* at 11. The Peers' Complaint, on the other hand, represents that Minnesota paid them a total of \$40,000 in connection with the fire loss claim. *See Compl.* ¶ 11. The Court will schedule a telephone conference to determine whether the Peers dispute Minnesota's calculation of the payments made to them in connection with the water loss and fire loss claims. If the parties cannot agree on the amount of the payments, a hearing will be scheduled.

14 The mortgage clause of the policy provides as follows:

If we pay the mortgagee for any loss and deny payment to you:

(a) we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

(b) at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

Def.'s Mot. for Summ. J. Exhibit 1, at 10 (HO-3).

15 The Court will also address the amount Minnesota is entitled to recover in connection with this counterclaim during the telephone conference it intends to schedule.

1 The Court will schedule a telephone conference with counsel in due course to determine whether plaintiffs dispute Minnesota Mutual Fire & Casualty Company's calculation of (a) the payments made to plaintiffs in connection with the water loss and fire loss claims; and (b) the payments made and to be made to the mortgagee. If the parties cannot agree on the amount of the payments, a hearing will be scheduled.

All Citations

Not Reported in F.Supp., 1995 WL 141899

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APPENDIX

21

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER R. KENRICK,
Plaintiff-Appellee,

UNPUBLISHED
December 20, 2002

V

No. 228571
Ottawa Circuit Court
LC No. 97-029291-DM

LUANN M. KENRICK,
Defendant-Appellant,

and

LEWIS MASTERS,
Intervenor-Appellant.

Before: Jansen, P.J. and Smolenski and Wilder, JJ.

PER CURIAM.

Defendant and intervenor appeal the trial court's order denying their motion to compel payment of equitable mortgage from closing escrow. We reverse.

I. Facts

Plaintiff filed this action of divorce in 1997. The parties agreed to terms of the divorce, and a settlement was placed on the record in April 1999. The judgment of divorce, which incorporates the terms of the settlement and was not entered until June 28, 1999, provides in part that the proceeds of the sale of the marital home shall be divided equally by plaintiff and defendant. At the time the settlement was placed on the record mortgage payments on the marital home were several months in arrears. Shortly thereafter, plaintiff and defendant received notice from the bank that the mortgage was in foreclosure and that a mortgage foreclosure sale was scheduled for May 20, 1999. Defendant sought intervenor's assistance (intervenor is defendant's father) in preventing the foreclosure sale.

Intervenor agreed to provide the funds and to make such direct payments as were necessary to cancel the foreclosure sale, thereby preserving the parties' respective equity in the marital home. In exchange, defendant agreed that when the home was sold, intervenor would be reimbursed from the sale proceeds. Thereafter, on May 9, 1999 intervenor made payments totaling \$173,251.33 to the mortgage company and the law firm handling the foreclosure

proceedings, and the foreclosure proceedings were cancelled. Intervenor then alerted plaintiff that he had paid the mortgage, that the foreclosure sale had been cancelled, and that intervenor sought reimbursement of these funds, jointly from plaintiff and defendant, from the proceeds of the sale of the marital home. Plaintiff, who had had no prior discussions with intervenor concerning reimbursement, refused to sign a promissory note agreeing to reimburse intervenor. On November 24, 1999, intervenor filed an equitable mortgage with the Ottawa County Register of Deeds. Subsequently, the marital home was sold for \$289,000, and these proceeds have been held in escrow during the pendency of these proceedings.

Intervenor filed a motion to intervene in the divorce action, which the trial court granted. The trial court then entertained arguments from the parties regarding the proper disposition of the proceeds from the sale of the marital home. Plaintiff asserted that because he did not solicit intervenor's assistance and had no agreement to reimburse intervenor for his payment of the mortgage, intervenor's actions amounted to a gift to plaintiff that plaintiff had no obligation to repay. Defendant and intervenor contended that the doctrine of equitable subrogation applies to these facts, and that intervenor's equitable mortgage on the property should be enforced to require plaintiff to share in intervenor's reimbursement..

The trial court denied the relief sought by defendant and intervenor, reasoning that the doctrine of equitable subrogation did not apply because

[intervenor] did not pay the parties' mortgage at the behest of [plaintiff], nor did he even discuss his intentions to make the payment with [plaintiff]. Only after making the payment did [intervenor] seek an agreement from [plaintiff] to repay. The case law is clear that subrogation is not available to mere volunteers.

The trial court further concluded that the motion to compel payment should be denied because "[t]he Michigan Supreme Court has made clear that an agreement or intent to repay must be established before the court can impose an equitable lien".

Defendant's and intervenor's motion for reconsideration on this issue was denied, and this appeal ensued.

II. Standard of Review

We review de novo an equitable determination reached by the trial court. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). The trial court's findings of fact to support the equitable determination are reviewed for clear error. *Id*.

III. Analysis

In *Hartford Accident & Indemnity Co v Used Car Factory, Inc*, 461 Mich 210, 215; 600 NW2d 630 (1999), our Supreme Court defined the doctrine of equitable subrogation as follows:

Equitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other. It is well-established that the subrogee acquires no greater rights than those possessed by the subrogor, and that the subrogee may

not be a “mere volunteer.” [Quoting *Commercial Union Ins Co v Medical Protective Co*, 426 Mich 109, 117; 393 NW2d 479 (1986) (opinion of Williams, C.J.) (citations omitted).]

The Court further noted that “[e]quitable subrogation is a flexible, elastic doctrine of equity” and that “its application should and must proceed on the case-by-case analysis characteristic of equity jurisprudence.” *Hartford, supra*, 215.

Applying this doctrine to the dispute at hand, the trial court found that intervenor was a “mere volunteer” when he paid off the note and mortgage on the marital home, and that therefore equitable subrogation could not be applied to grant intervenor any right or remedy against plaintiff. We disagree, and hold that the trial court clearly erred in finding that intervenor was a “mere volunteer”.

Equitable relief in favor of defendant and intervenor is compelled by *Smith v Sprague*, 244 Mich 577, 578-581; 222 NW 207 (1928). In *Smith*, the plaintiff was divorced from the son of the defendant and her husband (Mr. Sprague), but had remained friendly with her former in-laws. Mr. Sprague requested from plaintiff loans totaling \$9,500 in order to satisfy mortgage debt, which was due and soon to be foreclosed, on a parcel of land owed by defendant and Mr. Sprague as tenants by the entireties. *Id.* at 578. In consideration of the loans, Mr. Sprague promised to grant plaintiff a mortgage for the debts and he did in fact deliver demand notes to her for the amounts due. *Id.* However, he died without paying the notes or providing security for them, and defendant neither made the same promise nor ratified the promises made by her husband. *Id.* at 579. The plaintiff sought subrogation to the rights of the mortgagees on the real property owned by the defendant and the Supreme Court granted relief. In finding for plaintiff, the court held:

. . . While the evidence is capable of the fair inference that Mr. Sprague was authorized to act and did act for both himself and [the defendant], *the matter is not necessary to decision*. We are not here enforcing a contract. Subrogation does not depend upon contract. It is an equitable principle.

It is no longer narrow and technical in its scope, but has been broadened and extended to cover particular facts and circumstances, where it is equitable that a person furnishing money to pay a debt should be substituted for the creditor or in place of the creditor. It has been called the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity, and good conscience ought to pay it.

“It is proper in all cases to allow it where injustice would follow its denial.” It will not be allowed to a mere stranger or volunteer.

The purpose served by the evidence that plaintiff paid the money to satisfy the mortgage at the instance, promise, and request of Mr. Sprague, one of the tenants by the entireties, is that it shows that plaintiff was not a mere volunteer. And it is a sufficient showing.

It was not necessary to go further and show that Mrs. Sprague, the defendant, also made like promise and request. An illustrative case is *Simonson v Lauck*, 93 N.Y. Supp. 965. There one, at the request of one of four tenants in common and for his benefit, tendered to the mortgagee the full amount due under the mortgage and requested an assignment, stating that he was acting at the tenants request, and it was held that he was not a mere volunteer to whom right of subrogation should be denied.

Another case is *Ogden v Totten*, 17 Ky. Law Rep. 1390 (34 S.W. 1081). There the holders of a purchase-money lien and a mortgage lien on a homestead, after the death of the husband, threatened to sell the property, and the widow who owned but a life interest, procured one to take up the lien debts, and he was held entitled to subrogation.

...

Defendant here had benefit equal to that received by her husband from plaintiff's money used to satisfy the mortgage debt. The trial court was right in granting subrogation. [*Id.* at 579-581 (citation omitted)(emphasis added).]

Here, as in *Smith*, because intervenor acted at the request of defendant, intervenor was not a mere volunteer. Moreover, plaintiff realized a benefit equal to the benefit received by defendant because of intervenor's action to satisfy the note and cancel the foreclosure proceeding. Accordingly, equitable subrogation, as "the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity, and good conscience ought to pay it," is applicable to these facts.

For the foregoing reasons, we reverse the trial court's order denying defendant's and intervenor's motion to compel equitable mortgage from the closing escrow, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder

APPENDIX

22

Mortgage

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Bernard J. Youngblood
Wayne County Register of Deeds
March 10, 2008 03:22 PM
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#200070802 MTG FEE: \$33.00



MORTGAGE

NOTICE: THIS MORTGAGE LIMITS THE ABILITY OF THE MORTGAGOR TO TRANSFER THE DESCRIBED PROPERTY OR TO USE THIS PROPERTY AS SECURITY FOR FURTHER LOANS WITHOUT THE SPECIFIC WRITTEN CONSENT OF HABITAT FOR HUMANITY DETROIT.

THIS MORTGAGE ("Security Instrument") is given on February 4, 2008. The mortgagor is Angela Jones, a single woman whose address is 20017 Hartwell, Detroit, Michigan 48235 ("the Borrower"). This Security Instrument is given to Habitat for Humanity Detroit whose address is 14325 Jane, Detroit, Michigan 48205 ("Habitat"), and which is a Michigan not-for-profit corporation. The Borrower is purchasing the Property (described below) for Seventy Eight Thousand Two Hundred Fifty Five Dollars and Eighty Six Cents (U.S. \$78,255.86). Federal HOME funds have been used to arrive at this purchase price (see Paragraph 1 below). The Borrower owes Habitat the sum of Seventy Eight Thousand Two Hundred Fifty Five Dollars and Eighty Six Cents (U.S. \$78,255.86). This debt is evidenced by the Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on April 1, 2033. This Security Instrument secures to Habitat: (a) the repayment of the debt evidenced by the Note with interest, and all renewals, extensions, and modifications of the Note including, but not limited to the Gifted Equity and the Habitat Subsidy as described in the Note; (b) the payment of all other sums with interest, advanced under Paragraph 9 to protect the security of this Security Instrument; (c) the performance of the Borrower's covenants and agreements under this Security Instrument and the Note, (d) the contingent liability for the repayment of the Principal Reduction Amount as defined in Paragraph 1 below, and (e) any portion of the Gifted Equity or the Habitat Subsidy owed by the borrower to Habitat under the terms of the Note. For this purpose, the Borrower does hereby mortgage, warrant, grant, and convey to Habitat, with power of sale, the following described property located in the City of Detroit, Wayne County, Michigan:

Lots 298 and 299, Abbott & Beymers Cloverdale Subdivision, according to the plat thereof as recorded in liber 29, pages (s) 97 of Plats, Wayne County Records,

which has the address of 4244 Lakepointe, Detroit, Michigan 48224 and which has a property tax identification parcel number of Ward 21, Item No's. 064570 & 064571 together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. This Security Instrument shall also cover all replacement structures and additions. All of the foregoing is referred to in this Security Instrument as the "Property."

The Borrower covenants that the Borrower is lawfully seized of the Property and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. The Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants and non-uniform covenants to constitute a uniform security instrument covering real property.

The Borrower and Habitat agree as follows:

1. **Special Principal Reduction.** The amount to be paid by the Borrower to Habitat for the purchase of the Property has been reduced by \$10,000.00 through federal HOME funds provided through the Michigan State Housing Development Authority. This amount is called the "MSHDA Principal Reduction Amount." The MSHDA Principal Reduction Amount is a forgivable loan paid to and for the benefit of the Borrower. No interest shall be owed by the Borrower on the MSHDA Principal Reduction Amount and no payment shall be due and owing to Habitat for this amount except as provided below, and in the Note. However, the MSHDA Principal Reduction Amount shall be repaid by Borrower to Habitat or, in the event that Habitat is no longer in existence, to Habitat for Humanity of Michigan, Inc. of Lansing, Michigan, from the proceeds of any sale, transfer, refinancing or conveyance of the Property made within five years of the date of this Security Instrument.

1.2. **Additional Principal Reduction.** The amount to be paid by the Borrower to Habitat for the purchase of the Property may also have been reduced by other funds through sources such as the Federal

HFH-Michigan Standard Mortgage
Revised December 28, 2005

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Home Loan Bank. The sum of these funds is called the "Additional Principal Reduction Amount". Obligations regarding these funds are defined in separate documents.

1.3. Principal Reduction Amount. The sum of the MSHDA Principal Reduction Amount and the Additional Principal Reduction Amount (if any) is called the "Principal Reduction Amount".

1.4. Habitat Subsidy. Habitat has informed the borrower of its cost of construction in the Purchase Agreement. To arrive at the purchase price given above, Habitat has deducted from its cost of construction the Principal Reduction Amount. The borrower shall not be required to pay more than the assessed value of the property as determined by an independent appraisal process (in this instance, **Ninety Thousand Dollars (U.S. \$90,000.00)**). Any difference between Habitat's cost of construction and the sum of the mortgage amount (not to exceed the appraised value) and the Principal Reduction Amount shall be considered to be a net loss to Habitat at the time of sale. This net loss, reported on the closing statements as an additional benefit to the borrower, is called the "Habitat Subsidy." The Habitat Subsidy shall be subject to partial or full repayment as outlined in Section 8.5 below.

2. Payment of Principal, Interest; and Late Charges. The Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and late charges due under the Note.

3. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Habitat, the Borrower shall pay to Habitat on the day monthly payments are due under the Note, until the Note is paid in full, a sum for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by the Borrower to Habitat, in accordance with the provisions of Paragraph 9. These items are called "Escrow Items" and the monthly payments are called "Escrow Funds." Habitat may, at any time, collect and hold Escrow Funds in an amount not to exceed that permitted by applicable law. Habitat may estimate the amount of Escrow Items due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Escrow Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity or in any Federal Home Loan Bank. Habitat shall apply the Escrow Funds to pay the Escrow Items. Habitat may not charge the Borrower for holding and applying the Escrow Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Habitat pays the Borrower interest on the Escrow Funds and applicable law permits Habitat to make such a charge. However, Habitat may require the Borrower to pay a one-time charge for an independent real estate tax reporting service used by Habitat in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Habitat shall not be required to pay the Borrower any interest or earnings on the Escrow Funds. The Borrower and Habitat may agree in writing, however, that interest shall be paid on the Escrow Funds. Habitat shall give to the Borrower, without charge, an annual accounting of the Escrow Items showing credits and debits to the Escrow Funds and the purpose for which each debit to the Escrow Funds was made. The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Escrow Funds held by Habitat exceed the amounts permitted to be held by applicable law, Habitat shall account to the Borrower for the excess Escrow Funds as required by applicable law. If the amount of the Escrow Funds held by Habitat at any time is not sufficient to pay the Escrow Items when due, Habitat may so notify the Borrower in writing, and, in such case the Borrower shall pay to Habitat the amount necessary to make up the deficiency. The Borrower shall make up the deficiency in no more than twelve monthly payments, at Habitat's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Habitat shall promptly refund to the Borrower any Escrow Funds held by Habitat. If, under Paragraph 22, Habitat shall acquire or sell the Property, Habitat, prior to the acquisition or sale of the Property, shall apply any Escrow Funds held by Habitat at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

4. Application of Payments. Unless applicable law provides otherwise, all payments received by Habitat under Paragraphs 2 and 3 shall be applied to interest, late fees, escrow costs, and other charges before principal or Escrow Items.

5. Charges; Liens. The Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property that may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. The Borrower shall pay these obligations in the manner provided in paragraph 2, or if not

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paid in that manner, the Borrower shall pay them on time directly to the person or entity to which these obligations are owed. The Borrower shall promptly furnish to Habitat all notices of amounts to be paid under this paragraph. If the Borrower makes these payments directly, the Borrower shall promptly furnish receipts to Habitat evidencing the payments.

The Borrower shall not transfer or further encumber all or any part of the Property or any interest in the Property without the prior written consent of Habitat.

The Borrower shall discharge any lien which has priority over this Security Instrument unless the Borrower:

- (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Habitat;
- (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in Habitat's opinion operate to prevent the enforcement of the lien; or
- (c) secures from the holder of the lien an agreement satisfactory to Habitat subordinating the lien to this Security Instrument.

If Habitat determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Habitat may give the Borrower a notice identifying the lien. The Borrower shall satisfy the lien or take one or more of the actions set forth within 10 days of giving of notice.

6. Hazard or Property Insurance. The Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Habitat requires insurance. This insurance shall be maintained in the amounts and for the periods that Habitat requires. The insurance carrier providing the insurance shall be chosen by the Borrower subject to Habitat's approval which shall not be unreasonably withheld. If the Borrower fails to maintain coverage described above, Habitat may, at Habitat's option, obtain coverage to protect Habitat's rights in the Property in accordance with Paragraph 9.

All insurance policies and renewals shall be acceptable to Habitat and shall include a standard mortgagee clause. Habitat shall have the right to hold the policies and renewals. If Habitat requires, the Borrower shall promptly give to Habitat all receipts of paid premiums and renewal notices. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and Habitat. Habitat may make proof of loss if not made promptly by the Borrower.

Unless Habitat and the Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of Property damaged, if the restoration or repair is economically feasible and Habitat's security is not lessened. If the restoration or repair is not economically feasible or Habitat's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to the Borrower. If the Borrower abandons the Property, or does not answer within 30 days a notice from Habitat that the insurance carrier has offered to settle a claim, then Habitat may collect the insurance proceeds. Habitat may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Habitat and the Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 2 and 3 or change the amount of the payments. If under Paragraph 22 the Property is acquired by Habitat, the Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Habitat to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

7. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application. The Borrower shall occupy, establish, and use the Property only as the Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as the Borrower's principal residence as long as this Security Instrument is in effect, unless Habitat otherwise agrees in writing. The Borrower shall be in default if the Borrower fails to occupy the Property as outlined above.

The Borrower shall not destroy, damage or impair the Property. The Borrower shall keep the Property in reasonable repair and shall not allow the Property to substantially deteriorate. The Borrower shall not commit waste on the Property or allow others to do so.

The Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Habitat's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Habitat's security interest. The Borrower may cure such a default and reinstate the Security Instrument, by causing the action or proceeding to be dismissed with a ruling that, in Habitat's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Habitat's security interest.

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The Borrower shall also be in default if the Borrower, during the homeowner selection or loan application process, gave materially false or inaccurate information or statements to Habitat (or failed to provide Habitat with any material information), including, but not limited to, representations concerning the Borrower's occupancy of the Property as a principal residence.

8. Purchase Option/Right of First Refusal. The Borrower agrees that, in the event that the Borrower desires to sell the Property at any time prior to the satisfaction or termination of this Security Instrument and its underlying Note, the Borrower must first offer to sell the Property to Habitat pursuant to the terms indicated in this paragraph. The offer to Habitat ("Offer") shall be made in writing at least sixty (60) days before the Borrower accepts any offer to purchase the Property from any third party. Habitat shall have sixty (60) days from the date of receipt of the Offer to accept or reject the Offer.

The purchase price for the Property when offered to Habitat pursuant to this paragraph shall be the sum of all principal payments made pursuant to the Note, if this right is exercised within three (3) years of the date of the Security Instrument.

If this Purchase Option/Right of First Refusal is exercised thereafter, the purchase price shall be equal to the current value of the Property. However, the amount paid shall be reduced by any amounts owing to Habitat (1) as repayment of the Principal Reduction Amount, (2) as remaining debt owed under the Note, (3) through application of Paragraph 3(D) of the Note dealing with Allocation of Gifted Equity, and (4) through application of Paragraph 3(F) of the Note dealing with Allocation of any Habitat Subsidy. The "current value" will be (a) an amount determined by a licensed residential appraiser selected by Habitat, (b) an amount equal to the average of two (2) "broker's price opinions" provided by real estate brokers selected by Habitat, or (c) an amount equal to a bona fide offer to purchase the Property made to the Borrower by a person unrelated to the Borrower. It shall be within Habitat's sole discretion to determine which method shall be used to determine "current value".

In the event that Habitat exercises this Purchase Option/Right of First Refusal, the transaction shall be closed on or before sixty (60) days from the date of Habitat's acceptance of the Offer. Any conveyance of the Property contrary to this Purchase Option/Right of First Refusal shall be null and void. In the event of such a conveyance, Habitat shall have the option, at any time within three (3) years of actual notice of such conveyance, to purchase the Property from the titleholder of record pursuant to the terms and condition of this paragraph.

8.5 Shared Appreciation Pursuant to Section 1.5 above, any net loss to Habitat at the time of sale (Habitat Subsidy) shall be reported on the closing statements and included in the accompanying Note as subject to a "Shared Appreciation" clause stipulating the following terms: In the event of the resale of the property by the borrower during the term of this mortgage, the amount of the net proceeds (after closing costs) realized by the borrower shall be divided between the borrower and Habitat. The "Shared Appreciation" due to Habitat shall not exceed the amount of the Habitat Subsidy (net loss at the time of original sale). Furthermore, the percentage of Shared Appreciation due to Habitat shall be reduced annually on a prorated basis (declining by an equal percentage throughout the term of the original mortgage).

9. Protection of Habitat's Rights in the Property. If the Borrower fails to perform the covenants and agreements contained in the Security Instrument, or there is a legal proceeding that may significantly affect Habitat's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Habitat may do and pay for whatever is necessary to protect the value of the Property and Habitat's rights in the Property including but not limited to performing any repairs to the property without advance notice to the Borrower. Habitat's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Habitat may take action under this Paragraph 9, Habitat does not have to do so.

Any amounts disbursed by Habitat under this Paragraph 9 shall become additional debt of the Borrower secured by this Security Instrument. Unless the Borrower and Habitat agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Habitat to the Borrower requesting payment.

10. Inspection. Habitat or its agent may make reasonable entries upon and inspections of the Property. Habitat shall give the Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

11. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Habitat.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, including gifted equity as described in the Note, whether or not then due, with any excess paid to the Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount secured by this Security Instrument immediately before the taking, unless the Borrower and Habitat otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to the Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount secured by this Security Agreement immediately before the taking, unless the Borrower and Habitat otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by the Security Instrument whether or not the sums are then due.

If the Property is abandoned by the Borrower, or if, after notice by Habitat to the Borrower that the condemnor offers to make an award or settle a claim for damages, The Borrower fails to respond to Habitat within 30 days after the date the notice is given, Habitat is authorized to collect and apply the proceeds, at its option, either to restore or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Habitat and the Borrower otherwise agree in writing, any application of proceeds to principal shall not postpone the due date of the monthly payments referred to in Paragraphs 2 and 3 or change the amount of such payments.

12. Borrower Not Released; Forbearance By Habitat Not a Waiver. Any forbearance by Habitat in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy and shall not release the Borrower from any other obligation under this Security Instrument or the Note.

13. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Habitat and the Borrower, subject to the provisions of Paragraph 18. The Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant, and convey such Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Habitat and any other Borrower may agree to extend, modify, forbear, or make any accommodations with regard to the terms of this Security Instrument or the Note without such Borrower's consent.

14. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to permitted limit; and (b) any sums already collected from the Borrower which exceeded permitted limits will be refunded to the Borrower. Habitat may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to the Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

15. Notices. Any notice to the Borrower provided for in this Security Instrument shall be given in writing by delivering it personally or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the property address or any other address the Borrower designates by notice to Habitat. Any notice to Habitat shall be given by first class mail to Habitat's address stated herein or any other address Habitat designates by notice to the Borrower. Any notice provided for in the Security Instrument shall be deemed to have been given to the Borrower or Habitat when given as provided in this paragraph.

16. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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17. Borrower's Copy. The Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred, as defined in the Note, (or if a beneficial interest in the Borrower is sold or transferred and Borrower is not a natural person) without Habitat's prior written consent, Habitat may, at its option, require immediate payment in full of all sums secured by this Security Instrument, and the Borrower shall not be entitled to any portion of the Gifted Equity nor of the Habitat Subsidy. However, this option shall not be exercised by Habitat if exercise is prohibited by federal law as of the date of this Security Instrument.

If Habitat exercises this option, Habitat shall give the Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed (or personally delivered) within which the Borrower must pay all sums secured by this Security Instrument. If the Borrower fails to pay these sums prior to the expiration of this period, Habitat may invoke any remedies permitted by this Security Instrument without further notice or demand on the Borrower.

19. Borrower's Right to Reinstate. If the Borrower meets certain conditions, the Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify of reinstatement) before sale of the Property pursuant to any power of sale contained herein; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that the Borrower: (a) pays Habitat all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Habitat may reasonably require to assure that the lien of this Security Instrument, Habitat's rights in the Property and the Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by the Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Paragraph 18.

20. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to the Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, the Borrower will be given written notice of the change in accordance with Paragraph 15 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

21. Hazardous Substances. As used in this Paragraph 21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 21, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection. The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. The Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

The Borrower shall promptly give Habitat written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which the Borrower has actual knowledge. If the Borrower learns, or is notified by any governmental or regulatory authority that any removal of any Hazardous Substance or other remediation affecting the Property is necessary, the Borrower shall promptly take all such remedial actions.

22. Acceleration; Remedies. Habitat shall give notice to the Borrower prior to acceleration following the Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Paragraph 18 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the

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action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to the Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of the Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Habitat at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Habitat shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 22, including, but not limited to, reasonable attorneys' fees and costs of the title evidence.

The Borrower hereby acknowledges that this Security Instrument contains a POWER OF SALE and that in the event Habitat elects to foreclose by advertisement pursuant to the POWER OF SALE, in accordance with MCLA 600.3201 et seq., THE BORROWER EXPRESSLY WAIVES NOTICE THEREOF (EXCEPT ANY NOTICE REQUIRED UNDER THE AFORESAID STATUTE), A HEARING PRIOR TO SALE AND ANY RIGHT, CONSTITUTIONAL OR OTHERWISE, THAT THE BORROWER MIGHT OTHERWISE HAVE TO REQUIRE A JUDICIAL FORECLOSURE.

Habitat or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument including the repayment of the Principal Reduction Amount described in Paragraph 1 and Habitat's portion of any Gifted Equity described in Paragraph 3 of the Note; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Habitat shall prepare and file a discharge of the Security Instrument without charge to the Borrower.

Witnesses:

Traci L. Odum
Witness

Traci L. Odum
Print Name

Angela Jones
Angela Jones, Borrower

State of Michigan }
County of Wayne } ss

The foregoing Security Instrument was acknowledged before me on **February 4, 2008** by **Angela Jones** as his/her/their free act and deed.

Carmen Proctor Notary Public
Oakland County, Michigan

My Commission Expires: 06-09-13

Drafted by:
John Perna
Habitat for Humanity Detroit
14325 Jane
Detroit, MI 48205

Return to:
Lisa Carter
Habitat for Humanity Detroit
14325 Jane
Detroit, MI 48205

CARMEN PROCTOR
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 9, 2013
Acting in the County of Oakland

APPENDIX

23

Potential Homebuyer Agreement

RECEIVED by MSC 3/1/2021 2:13:22 PM



14325 Jane
Detroit, Michigan 48205
(313) 521-6691 Fax (313) 371-3400

Potential Homebuyer Agreement

May 17, 2007

Dear

Angela Jones

This letter is to inform you that you have been selected by the Habitat for Humanity Detroit Board of Directors to purchase a house, which will be constructed by you and Habitat for Humanity Detroit (hereafter referred to as HFHD). During the recent visit to your home by HFHD representatives, HFHD's partnership housing program was explained to you and your family. This letter only serves to review those discussions. This letter is not a contract to purchase a home because it only states our mutual understanding and it lacks the specific elements needed to form a contract to purchase a home (i.e., price of the home, time when construction will be completed, specific plans for the house, etc.).

HFHD intends to do its best to provide you with a new or renovated home. However, HFHD is a non-profit housing ministry. We depend on volunteer efforts and donations and have limited resources. Therefore, ***HFHD cannot and does not guarantee that you will be able to purchase a new or renovated home.*** At the same time, HFHD believes there is a good chance that you will have the opportunity to purchase a home if you and your family complete the following requirements:

Prior to HFHD agreeing to sell you a house, you and your family will need to have satisfied the following requirements:

1. To have paid \$3,000 (at least \$150 per month) toward closing costs, which is refundable if you and your family fail to meet the requirements of the partnership housing program. **Payments are due by the first of each month beginning July 1, 2007.**
2. Write your sweat equity plan within two weeks of signing this agreement. To put in at least **24 hours per month** (single family) or **48 hours per month** (2 family) toward the total required 300 sweat equity hours per adult (18 years or older) as a Habitat partner (total sweat equity requirement per family will not exceed 400 hours). The sweat equity requirement can be fulfilled by you and your family performing various jobs at HFHD. Hours begin immediately.
3. You may also designate 3-4 proxies in your plan to complete up to 100 hours of the minimum 300 hours with you. At least half of the hours must be spent in the construction of your prospective home or another Habitat home. ***HFHD will not pay you or compensate you***

for any of these sweat equity hours in the event that you and your family decide to leave the HFHD partnership or your application is otherwise terminated.

Our volunteers work on construction Tuesday through Saturday from 8:30 a.m. to 5:00 p.m. You and your family are welcome to work during these hours whether or not you are skilled in construction work.

HFHD values your time and the safety of you and your family. Because the work site can be dangerous, children under the age of 16 years cannot be brought to the construction site. A parent or responsible adult must accompany each child aged 16-17 years old when working on the construction site. Those aged 18 years and older may work on the construction site without a parent or responsible adult.

HFHD is rooted in community involvement. Your family's cooperation in interacting with volunteers and contributors is important to our success. You may be asked about promotional publications or participating in media events related to your home or the Habitat mission. Time spent in these types of activities can be counted towards sweat equity hours.

In addition, we may be able to provide opportunities for you to volunteer in other ways. In order to schedule your hours, you must contact the Volunteer Director at (313) 231 -5129.

3. Attend and complete all homeownership-training classes that will cover many topics relating to homeownership. Time spent in classes can be counted toward your sweat equity hours.
4. Your acceptance as a HFHD partner family is based on the information contained in your application. In the event that HFHD determines that the information contained in your application was materially inaccurate or if there is a materially negative change in your financial situation (such as loss of employment), HFHD reserves the right to postpone or terminate your selection as a partner family. You must notify HFHD immediately if there is a significant change in your financial situation. HFHD is committed in working with its partner families when they experience difficulties.

In addition, all of the information reported in your application will be verified. In the event that the verification process produces materially negative results (such as a delinquent rental history), HFHD reserves the right to postpone or terminate your selection as a partner family.

5. Payoff or settle all outstanding excessive credit obligations, collection and/or charge-off accounts within 90 days from the date of signature on this agreement. You will be given written notice of which accounts must be paid off or settled.
6. Just prior to closing, your credit report will be ordered and examined to ensure that you continue to have the ability to purchase a home. If you have any outstanding collection account(s), judgment(s), repossession(s), or lien(s) against you, the closing will be delayed until such accounts have been paid or settled in full.

Houses constructed by HFHD are built with your labor and with volunteer labor. In addition, many materials and monies used to build the houses have been donated. While HFHD will make reasonable efforts to complete the house in accordance with the plan, we are unable to promise that all houses will be built according to the plan or that all houses will be built. Therefore, HFHD cannot guarantee completion dates or the total selling costs of the houses we build.

Potential Homebuyer Agreement

RECEIVED by MSC 3/1/2021 2:13:22 PM

HFHD will agree to sell a home to you and finance the purchase price on a no-interest basis upon completion. Your deed will contain a Right of First Refusal that will allow HFHD to repurchase your house in the event you decide to sell it in the future. In addition, other legal documents will be prepared and signed.

When you move into your new house, we will provide you with a schedule of monthly house payments. These monthly payments will include payments for principal, insurance, property taxes, and maintenance. HFHD will hold a lien (the mortgage) on the house, which will be released when you have paid your mortgage balance in full.

You have been identified as the potential homebuyer of a home in the Morning Side Community. The Standard HFHD Home description will be reviewed. The terms of the sale, your responsibility to pay on the mortgage, and the consequences of non-payment, will be reviewed. This letter is to help you understand what is involved in HFHD's partnership ministry. By acknowledging this letter, you are indicating that you understand this partnership and that you will complete the above requirements. Also, you are agreeing to become involved as a partner in the ministry of HFHD.

By signing this letter, HFHD is indicating that we will work with you in developing a plan for a simple, decent home for you and your family. At the appropriate time, we will begin to review with you the possible cost of the home, the time when construction will begin and hopefully be completed, and other matters. In addition, HFHD will share where the new house will be built.

By signing below, you understand that you and your family must complete the requirements set forth in this letter and that you need to live up to the spirit of HFHD's partnership housing program. If you are unable to meet these requirements, we will not be able to continue the partnership with you.

Read and understood this Thurs day of May 17 in the year 2007.

Prospective Homeowner: Angela Jones

Read and understood this _____ day of _____ in the year _____.

Prospective Homeowner: _____

Executive Director: X Cynthia M. [Signature] Date: 6/14/07

APPENDIX

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Angela Jones
January 21, 2016

Page 1

STATE OF MICHIGAN

EXAMINATION UNDER OATH OF ANGELA JONES

INSURANCE COMPANY: MEEMIC INSURANCE COMPANY

CLAIM NUMBER: 20033355

The Examination of ANGELA JONES,
Taken at 1050 Wilshire Drive, Suite 320,
Troy, Michigan,
Commencing at 1:48 p.m.,
Thursday, January 21, 2016,
Before Maureen Collier, CSR-7422.

Jones Examination Under Oath Transcript
Angela Jones
January 21, 2016

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STATE OF MICHIGAN

EXAMINATION UNDER OATH OF ANGELA JONES

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1 Troy, Michigan

2 Thursday, January 21, 2016

3 1:48 p.m.

4

5 ANGELA JONES,

6 was thereupon called as a witness herein, and after
7 having first been duly sworn to testify to the truth,
8 the whole truth and nothing but the truth, was
9 examined and testified as follows:

10 MR. SCHMIDT: Let the record show this is
11 the examination under oath of Angela Jones pursuant to
12 a Meemic policy in regard to the loss of 9/28/15.

13 EXAMINATION

14 BY MR. SCHMIDT:

15 Q. Ms. Jones, I'm going to ask you some questions about
16 the loss of 9/28/15. Please listen to my question.
17 If you understand it, answer it. If you don't, let me
18 know, and I can repeat it or rephrase it. Is that
19 understandable?

20 A. Yes.

21 Q. And please give a verbal answer to every question so
22 the court reporter can take it down. Try to stay away
23 from words like uh-huh. Either say yes, no, or some
24 other complete verbal answer. Is that understandable?

25 A. Yes.

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- 1 Q. Do you have any records from 2013?
- 2 A. No.
- 3 Q. And do you have any records from 2015?
- 4 A. No.
- 5 Q. You have no W-2s or anything or what?
- 6 A. Well, on the letter it says 2012, '13, and '14.
- 7 Q. Okay.
- 8 A. So you didn't ask for '15.
- 9 Q. But do you have '15 somewhere?
- 10 A. I don't have them yet.
- 11 Q. Well -- okay. Do you have any pay stubs from 2015?
- 12 A. No, because you guys didn't ask for that.
- 13 Q. No, I know. But I'm saying do you have them?
- 14 A. No. I don't have them yet.
- 15 Q. As you got paid all through the year, didn't you get a
- 16 pay stub or what?
- 17 A. We don't get pay stubs. Everything is on the
- 18 computer. So I have to print stuff off on the
- 19 computer at my job.
- 20 Q. Direct deposit?
- 21 A. Yes.
- 22 Q. This H&R Block thing you gave us, it says your federal
- 23 tax return summary for 2014. It says you had wages of
- 24 \$13,401. Does that sound right to you?
- 25 A. Yes.

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1 Q. Then it says for 2013 had no wages. Is that right or
2 wrong?

3 A. **No wages? That's got to be wrong.**

4 Q. It says zero.

5 A. **Because I was working in 2013.**

6 Q. So you don't agree with that?

7 A. **No.**

8 Q. Okay. The \$13,401 all came from what employer?

9 A. **Well, actually when I was working for Hartford, they**
10 **had shut down. So I was off, and I was collecting**
11 **unemployment.**

12 Q. Is that all unemployment or is any from Hartford?

13 A. **Let me see. I don't know. I guess all of it's from**
14 **Hartford, from my job, because the gross was 21 so --**
15 **for 2013, I don't even know why that's even zero right**
16 **there because I was working. I've been working.**

17 Q. Are those W-2s or something? Can I see what those
18 are?

19 A. **Uh-hmm.**

20 Q. So you got attached to that, you got miscellaneous
21 income. You got \$7,329 from Michigan --

22 A. **That's unemployment.**

23 Q. No. Michigan State Housing Development Authority.
24 What was that for?

25 **A. Oh. That was -- let me see. That was for, I rented**

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1 **my house out.**

2 Q. How does Michigan State Housing Development Authority
3 get involved in it?

4 A. **Because that was Section 8.**

5 Q. **So who did you rent the house out to?**

6 A. **Gwendolyn Summers.**

7 Q. **And what period was that, do you recall?**

8 A. **From 2013 to 2014.**

9 Q. **All of 2013?**

10 A. **No. She came in November of 2013.**

11 Q. **November of '13 to what?**

12 A. **To November of 2014.**

13 Q. **So that's the entire period she was there,**

14 **November '13 to November '14?**

15 A. **Yes.**

16 Q. She wasn't there before or after that?

17 A. **No.**

18 Q. Did you rent it out to anybody else?

19 A. **No.**

20 Q. So other than renting to Gwendolyn Summers from
21 November of '13 to November of '14, you never rented
22 4224 Lakepointe to anybody else.

23 A. **No.**

24 Q. Correct?

25 A. **Yes.**

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- 1 Q. And what was the rental charge?
- 2 A. **700.**
- 3 Q. Per month?
- 4 A. **Yes.**
- 5 Q. So did Gwendolyn pay you for that or what?
- 6 A. **No. Section 8 paid me.**
- 7 Q. And then you got \$6,641 from --
- 8 A. **Unemployment.**
- 9 Q. -- unemployment; correct?
- 10 A. **Yes.**
- 11 Q. And then you got a W-2 for \$1,018.09 from Dollar Tree?
- 12 A. **Yes. That was the year I worked there.**
- 13 Q. And then you got a W-2 from Community Development
- 14 Institute of Headstart of \$13,288.70?
- 15 A. **Yes.**
- 16 Q. That's the place that got shut down?
- 17 A. **Well, when they got shut down, they just picked us up.**
- 18 **That still was all with the government.**
- 19 Q. Pardon me?
- 20 A. **It was still with the government. That was still a**
- 21 **head start program. It was just -- CDI actually took**
- 22 **over because my agency had shut down. But it was**
- 23 **still all funded through the government.**
- 24 Q. Well, did you keep working for CDI then or not?
- 25 A. **No. That's what I'm saying. It shut it down.**

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- 1 Q. What did they mess up on?
- 2 A. **Where it say homeowner. They have my sister's name.**
- 3 Q. Angie Jones identified herself as homeowner's sister.
- 4 You're not the homeowner's sister. You're the
- 5 homeowner; right?
- 6 A. **Yes.**
- 7 Q. Until the homeowner, Vicki Harwick (phonetic),
- 8 arrives. Who's that?
- 9 A. **My stepsister. I'm the homeowner; that's why I said I**
- 10 **don't know how they did that.**
- 11 Q. Was Vicki Harwick living at 4422?
- 12 A. **No.**
- 13 Q. And she's your stepsister?
- 14 A. **Yes.**
- 15 Q. And where does she live today, do you know?
- 16 A. **I don't even talk to her.**
- 17 Q. So you don't have a current location?
- 18 A. **No.**
- 19 Q. You got in an argument about the break-in or something
- 20 else?
- 21 A. **Oh, no, no. Something else.**
- 22 Q. Was anything taken at that time?
- 23 A. **Yes. They had stole some items. But like I said,**
- 24 **they didn't --**
- 25 Q. Okay. Do you have any -- for Number 13, have you ever

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1 had any insurance claims denied --

2 A. No.

3 Q. -- for the last six years?

4 A. No.

5 Q. And then for Number 14 of Exhibit 1: Any records or
6 documents regarding placing 4424 Lakepointe for sale?

7 A. I don't know if Ms. Hubbard got it.

8 Ms. Hubbard, was you able to get that --
9 when I was trying to sell my house, did you get -- was
10 you able to get that --

11 MS. HUBBARD: No. That's why we asked you
12 to bring it today.

13 THE WITNESS: Oh. Well, I thought when I
14 had spoke with you, you had said that I had to sign
15 that form to release it and --

16 MS. HUBBARD: Correct.

17 THE WITNESS: Oh, I'm sorry. I didn't --

18 BY MR. SCHMIDT:

19 Q. Was the house for sale?

20 A. Yeah. I had put it up for --

21 Q. Who was the realtor?

22 A. Keller Williams.

23 Q. Keller Williams?

24 A. Yes.

25 Q. And they're in Grosse Pointe or Detroit?

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- 1 **A. I'm not for sure where she was at.**
- 2 Q. Who was the realtor? Do you know her name?
- 3 **A. I forgot her name.**
- 4 Q. What date was it for sale?
- 5 **A. I put it on the market like in -- between May and June**
6 **of 2014.**
- 7 Q. Just for those two months or for --
- 8 **A. No.**
- 9 Q. May of 2014 till when? Till the fire?
- 10 **A. No. They had just, actually they just called me and**
11 **said -- I guess when you put the house on the market,**
12 **it lasts for so many months. I'm not for sure. But**
13 **they had just called me and asked me about my house**
14 **still been on the market.**
- 15 Q. So how long was it on the market, from May '14 until
16 when?
- 17 **A. I say I guess until December or January.**
- 18 Q. January of '15?
- 19 **A. No. That was 2015 when I put my house on the market.**
- 20 Q. You said May of '14.
- 21 **A. I'm sorry. 2015.**
- 22 **Q. May of '15?**
- 23 **A. This was just last year. Yes.**
- 24 **Q. May of '15.**
- 25 **A. Yes.**

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1 Q. Till?

2 A. I say --

3 Q. Now?

4 A. Yeah, because I just got a phone call from somebody
5 saying about my house being on the market.

6 Q. Okay. Were there signs out there?

7 A. No. Actually the lady that actually came, she took
8 pictures or whatever. I had someone that came out to
9 the house to look at it, and she decided that she
10 didn't want it because she said the house was too
11 small for her and her kids.

12 Q. Are you the titled owner of that house?

13 A. Yes.

14 Q. Do you have a title?

15 A. No. I don't have it with me.

16 Q. But you do have a title?

17 A. Yes.

18 Q. And is it your understanding that even though it's a
19 Habitat for Humanity house, you're allowed to sell it?

20 A. Yes, I'm allowed to sell it.

21 Q. What were you selling it for, the price?

22 A. I think it was 55 or 60.

23 Q. 55 or 60,000?

24 A. Yes. I'm sorry. Yes.

25 Q. But I thought you said your --

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1 **A. I owe like --**

2 Q. -- mortgage was 80-something thousand dollars or
3 something.

4 **A. Okay. And I owe like --**

5 Q. The mortgage was 80,000 you said.

6 **A. Yes, and I owe like I guess about 50-something**
7 **thousand on the house. Might be 48 now.**

8 Q. But you already paid some in. But you'd be satisfied
9 with just getting what you owed and not getting what
10 you put into it?

11 **A. I was fine with that.**

12 Q. If we look at this mortgage account form you gave us,
13 I think it says -- what's this say here? As of
14 January 16, it says you owed still \$53,000.

15 **A. Okay.**

16 Q. Do you remember that? Does that sound right to you?

17 **A. Yes.**

18 Q. See where my thumb is there? I can't read it.

19 **A. 53,356.**

20 Q. So that's what you still owed them?

21 **A. Yes.**

22 Q. So you only had one person look at it?

23 **A. Yes.**

24 Q. But there's no for sale sign up? Did you tell them
25 not to put one up, or they didn't want to put one up

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1 or what?

2 **A. Well, she didn't never say put one up. When she came**
3 **to my house, she was the realtor. So I just assumed**
4 **that -- she had it online so --**

5 Q. Did you ever discuss with her why there was no sign?

6 **A. No, because I didn't think to ask all that. If she**
7 **was a realtor, I mean, she didn't say put a sign up.**
8 **So I didn't put a sign up.**

9 Q. Number 15 on Exhibit 1 is any police report. You gave
10 me the one already we marked. Is there any other
11 police reports you have from anything going on at --

12 **A. No.**

13 Q. -- 4224 Lakepointe?

14 **A. No.**

15 Q. And then we didn't talk about -- I guess we skipped
16 over -- Item Number 2 was do you have any bills and
17 receipts or checks or bank records or charge accounts,
18 appraisals, photographs, sales slips or documentation
19 regarding any and all purchases of any items that you
20 claim were damaged or lost in the fire?

21 **A. I say no. I mean, I just have a list of the stuff**
22 **that I had at my house, but that's it. I don't**
23 **remember.**

24 Q. How did you make the list up?

25 **A. I just tried to remember what all I --**

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1 Q. That's your receipt you got for the three bags of
2 clothes?

3 A. Yeah, from Salvation Army.

4 Q. And it says on it three bags of clothes.

5 A. I mean, that's what they put on there.

6 MARKED FOR IDENTIFICATION

7 EXAMINATION EXHIBIT 11

8 Receipt

9 2:55 p.m.

10 BY MR. SCHMIDT:

11 Q. Okay. So Ms. Jones, we've marked as Exhibit 11,
12 that's the receipt you got from Salvation Army on
13 10/10/15?

14 A. Uh-hmm. Yes.

15 Q. For taking the clothes there?

16 A. Yes.

17 Q. It's three bags of clothes, but I mean can you give us
18 any more description so we can know which ones -- if
19 we went back to the house and took a list of the
20 stuff, what items would be in the three bags? Dresses
21 or pants or shirts? What are we talking about?

22 A. Dresses, dress pants, dress shirts, sweaters, some
23 robes. My son had a couple of outfits. Just
24 everyday, just clothes. Summer dresses, summer
25 shorts, summer everything.

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1 Q. Okay. Other than the three bags of clothes,
2 everything else on your list, Exhibit 10, is still in
3 the house.

4 A. Yes. And I still have clothes and stuff in the house,
5 too.

6 Q. And that would include any furniture you had, too,
7 that's still in the house.

8 A. All my furniture is still in the house.

9 Q. Your TV set or --

10 A. Everything else is in the house.

11 Q. Now, where did you live before you lived at -- when
12 did you move in to 4224 -- I'm sorry. 4244
13 Lakepointe. When did you move in there?

14 A. 2014.

15 Q. In November after Summers moved out?

16 A. Yes.

17 Q. And you lived there up until the time of the fire.

18 A. Yes.

19 Q. And it was just you and anyone else?

20 A. My son, he be there. But he not there.

21 Q. Okay. Where did you live before that?

22 A. I stayed in an apartment.

23 Q. Where was that?

24 A. In Harper -- I mean, not Harper Woods. Clinton
25 Township.

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1 Q. In where?

2 A. Clinton Township.

3 Q. And what was the address there?

4 A. I think it was 36923 Harper.

5 Q. And what period were you living there?

6 A. I stayed there for a year.

7 Q. So that would be November '13 to '14?

8 A. Yes.

9 Q. And who lived there with you?

10 A. Just basically me. My son came through every now and
11 then.

12 Q. Okay. And then before the Harper address, where did
13 you live?

14 A. Oh, shoot. Ms. Hubbard, do you have that list? I
15 stayed a couple places.

16 Q. Well, you had the --

17 A. I had my house since 2008, so I stayed in my house
18 from the time I got my house until I rented it out
19 that year. So when I rented out that year, I moved
20 into an apartment. Then I came back to my house.

21 Q. Okay. So from 2008 to November of '13, were you
22 living at 4244 Lakepointe?

23 A. Yes.

24 Q. For that whole period of time?

25 A. Yes.

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- 1 Q. Okay. And then where did you live before that?
- 2 A. **I stayed at 10729 Santa Maria.**
- 3 Q. 107 --
- 4 A. **29 Santa Maria.**
- 5 Q. That's in Detroit?
- 6 A. **Yes. I stayed on a street, on Harwick.**
- 7 Q. Santa Maria. That's between Seven and Six Mile;
- 8 right?
- 9 A. **Yep. It's right there because you guys got -- Meemic**
- 10 **got -- they just opened up a company inside a building**
- 11 **right there on that corner.**
- 12 Q. I used to live on Santa Clara; that's why I know that
- 13 street.
- 14 A. **Okay.**
- 15 Q. Before you were born probably. Let me see. It was
- 16 before you were born.
- 17 A. **I stayed on a street called Harwick. I don't remember**
- 18 **the address.**
- 19 Q. Who did you live with on Santa Maria?
- 20 A. **I always had my own place. I stayed with my mom right**
- 21 **there on Santa Maria.**
- 22 Q. That was your mother's house?
- 23 A. **Yeah. That was back in the day.**
- 24 Q. Is your mother still alive?
- 25 A. **Yes.**

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1 Q. In the period of time before the fire at 4244
2 Lakepointe, had you ever had any problems with any
3 electrical, anything like that?

4 A. Somebody had broke my window on the side of my house,
5 and they wind up -- actually, I guess they assumed
6 that it was my alarm system. And they actually cut
7 the meter, the DTE meter.

8 Q. And that was the break-in you talked about or a
9 different one?

10 A. That was just a different one.

11 Q. When was that?

12 A. In June.

13 Q. June of '15?

14 A. 2015.

15 Q. So just before the fire.

16 A. Yes. And then when they did that, I say like probably
17 two days later my neighbor called. Me and my son had
18 left out the house. Matter of fact, he was there that
19 day. June, that day.

20 Me and my son had left out the house, and
21 my neighbor called and was like I smell smoke. The
22 smoke detectors and stuff was going off. She said I'm
23 going to go get -- I guess she went and got the guy
24 across the street as well, and they came over. She
25 said they smelled smoke. I said well, call the fire

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1 department.

2 So she called the fire department. They
3 came, whatever. By the time I got to the house, they
4 was gone. But it was a false alarm. It was nothing
5 wrong as far as no smoke or anything like that.

6 Q. Other than somebody cutting the meter at the break-in
7 in June '15, any other electrical problems you ever
8 had in the house?

9 A. No.

10 Q. When you left the day of the fire, had you had
11 breakfast that morning?

12 A. No.

13 Q. You don't normally have breakfast?

14 A. I eat breakfast with the kids at school.

15 Q. Pardon me?

16 A. I eat breakfast with the kids at school.

17 Q. So you didn't turn anything on in the kitchen?

18 A. I didn't eat anything. No.

19 Q. Did you leave any appliances on that morning?

20 A. No.

21 Q. When you rented your house, how did you get a
22 customer to -- did you have to advertise or something?
23 How did you do that?

24 A. How did I what?

25 Q. When you rented out 4244 Lakepointe, did you -- how

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- 1 did you get a customer to --
- 2 **A. Oh. A friend of mine put it on Section 8.**
- 3 **Q. A website?**
- 4 **A. Yes.**
- 5 **Q. Was Ms. Summers living there by herself or did she**
6 **have others with her?**
- 7 **A. She had two boys. Three kids.**
- 8 **Q. Three kids?**
- 9 **A. Yes. She had just had another baby.**
- 10 Q. And at the time of the fire in September, August and
11 September of '15, just go over your monthly expenses
12 at the time. So you said you were spending somewhere
13 around 4 to \$500 for your mortgage?
- 14 **A. Mortgage was 400. My phone bill was 50. My lights**
15 **and gas was connected, so that was like 100.**
- 16 Q. Who was your utility?
- 17 **A. DTE.**
- 18 Q. They were both electric and gas?
- 19 **A. Yes.**
- 20 Q. Okay. How about -- do you have a car?
- 21 **A. A car note.**
- 22 Q. What was that?
- 23 **A. 320.**
- 24 Q. How about car insurance?
- 25 **A. 250 for two cars.**

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- 1 Q. What's the other car? Your son's?
- 2 A. Yes.
- 3 Q. Okay. Clothes, what did you spend on clothes every
- 4 month?
- 5 A. I say about 250, 300.
- 6 Q. And what were you spending on food and groceries?
- 7 A. I say about \$100 a month.
- 8 Q. Just 100 a month?
- 9 A. Yeah, because it was just me.
- 10 Q. Any expenses for your son?
- 11 A. Uh-uh. He's grown.
- 12 Q. Anything else or that's it?
- 13 A. That's it.
- 14 Q. In August and September of 2015, were you like under
- 15 any kind of financial duress or anything?
- 16 A. No.
- 17 Q. Why was the house for sale?
- 18 A. Because I wanted to sell my house because I was
- 19 looking to find something to buy, something else.
- 20 Q. What did you want to do?
- 21 A. I'm sorry?
- 22 Q. What, you wanted bigger, smaller, somewhere else?
- 23 What was the issue?
- 24 A. No. I wanted something smaller.
- 25 Q. Had you looked somewhere or not?

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1 **A. I was looking, but I mean I didn't find anything.**

2 **MARKED FOR IDENTIFICATION**

3 **EXAMINATION EXHIBIT 12**

4 **Insurance Application**

5 **3:21 p.m.**

6 BY MR. SCHMIDT:

7 **Q. I'm going to show you, this is Exhibit 12. And this**
8 **is the -- I'll come over there.**

9 **This is the Meemic Homeowners Insurance**
10 **Application. Do you recall seeing that before?**

11 **A. Yes.**

12 **Q. Is that your initials at the bottom of Page 1?**

13 **A. Yes.**

14 **Q. And that's your initials at the bottom of Page 2?**

15 **A. That doesn't look like my signature.**

16 **Q. Your initials. That's your initials --**

17 **A. Okay. That's it. Okay.**

18 **Q. So that's your initials on the bottom of each page;**
19 **right?**

20 **A. Yes.**

21 **Q. And then if you look on Page 3, is that your**
22 **signature?**

23 **A. Yes.**

24 **Q. And it's dated 6/26/14?**

25 **A. Yes.**

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1 Q. Okay. And do you recall, you filled this out at the
2 Meemic office?

3 A. Yes.

4 Q. At an insurance agent's office?

5 A. I guess, yes.

6 Q. Do you remember where it was?

7 A. In Grosse Pointe.

8 Q. Okay. And do you remember filling the stuff out on
9 the page with the agent?

10 A. I don't know what that is, DPS. I don't know where he
11 got that but --

12 Q. Detroit Public Schools?

13 A. Yes.

14 Q. Teacher. Are you aware to be an Meemic insured, you
15 had to be a teacher?

16 A. Right.

17 Q. So you told him you were a teacher?

18 A. Yes. I was a substitute teacher.

19 Q. Okay. All right. It says, Number 2, does the
20 property owner reside and expect to continue to reside
21 at the premises throughout the policy period, and
22 that's checked yes?

23 A. Okay.

24 Q. So when you filled that out on June 26th of 2014,
25 that's not correct, is it? You weren't living there

1 from November '13 to November '14; correct?

2 **A. I was not what?**

3 Q. You were not living at the address of 4244 Lakepointe
4 from November '13 to November '14; correct?

5 **A. I was staying in my house in November '14.**

6 Q. No. You said that --

7 **A. I rented my house out in 2013.**

8 **Q. November --**

9 **A. To November '14.**

10 Q. Right.

11 **A. Right.**

12 Q. So November '13 to November '14, you weren't living at
13 4244; correct?

14 **A. Right.**

15 Q. Okay. This is dated 6/26/14.

16 **A. Right.**

17 Q. That's when you were not living there; correct?

18 **A. Right. I was not living there.**

19 Q. But you answered that -- does the property owner
20 reside and expect to continue to reside at the
21 premises throughout the policy period. You answered
22 yes. That's incorrect, isn't it? Because you were
23 not living there.

24 **A. I mean, I didn't know if I had to -- I mean, because**
25 **it was my house. So I didn't know I had to actually**

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1 give y'all information as far as me renting my house
2 out.

3 Q. No. It says does the property owner reside. You know
4 what reside means. That means you live there.

5 A. Oh, well --

6 Q. You did not live there; correct?

7 A. I didn't live there, and I didn't pay attention to
8 that.

9 Q. So this answer on here to Number 2, that answer is
10 wrong; correct?

11 A. Yes, it's wrong.

12 Q. Okay.

13 A. Because like you said, I was not actually staying
14 there.

15 Q. Right.

16 A. Like I said, I didn't know if I wanted to rent my
17 house out, I didn't know I had to inform my insurance
18 company to let them know that I rented the house out.

19 Q. All right.

20 A. Because it's my first time actually being a homeowner.
21 It's my first time actually renting a house out. So I
22 just assumed to put yes, because it was still my home
23 regardless of was I staying there or not.

24 Q. Yeah, but the question was -- and you're a school
25 teacher. Is says do you reside there. And you knew

Angela Jones
January 21, 2016

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1 you didn't reside there; correct?

2 **A. I mean, I didn't -- like I said, I didn't know so --**

3 **Q. No. I mean -- okay. You knew in June of '14, when**

4 you signed Exhibit 12, that you did not reside at 4244

5 Lakepointe; correct?

6 **A. Right. But once again, I didn't know that I had to**

7 actually be staying in my house in order to be a

8 homeowner, insurance as far as with any company. **So**

9 I'm just assuming that if I want to rent my house out,

10 **I could rent it out.**

11 Q. The 4244 Lakepointe never went into foreclosure, did
12 it?

13 **A. No.**

14 Q. Did it?

15 **A. No.**

16 Q. The address of 35914 Sunset, that's where you live
17 now, isn't it?

18 **A. Yes. It's my auntie.**

19 Q. Pardon me?

20 **A. It's my auntie house.**

21 Q. That's your aunt's house?

22 **A. Yes.**

23 Q. And what's her name?

24 **A. Melody Calhoun.**

25 Q. C-A-L-H-O-U-N?

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1 Q. Okay. Then there's some items we didn't get today.
2 I'm going to send you a letter and specify those.
3 Then you can get those over to us. Okay?

4 A. **Okay. You need more documentation?**

5 Q. A few things that you said you didn't have that I just
6 want to make another list and send it to you.

7 A. **Okay.**

8 Q. We can go off the record.

9 (The examination was concluded at 3:52 p.m.
10 Signature of the witness was not requested by
11 counsel for the respective parties hereto.)
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January 21, 2016

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CERTIFICATE

STATE OF MICHIGAN

COUNTY OF MACOMB

I, MAUREEN COLLIER, a Notary Public in
and for the above county and state, do hereby certify
that this examination was taken before me at the time
and place hereinbefore set forth; that the witness was
by me first duly sworn to testify to the truth; that
this is a true, full and correct transcript of my
stenographic notes so taken; and that I am not
related, nor of counsel to either party, nor
interested in the event of this cause.



MAUREEN COLLIER, CSR-7422

Notary Public

Macomb County, Michigan

My commission expires: February 9, 2021

APPENDIX

25

Ocwen Loan Servicing, LLC v. Nationwide Mut. Fire Ins. Co.

United States District Court for the Southern District of Indiana, Indianapolis Division

March 29, 2012, Decided; March 29, 2012, Filed

1:07-cv-01449-SEB-DML

Reporter

2012 U.S. Dist. LEXIS 43705 *; 2012 WL 1067854

OCWEN LOAN SERVICING, LLC, Plaintiff, vs.
NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY and AMERICAN FAMILY
MUTUAL INSURANCE COMPANY, Defendants.

Subsequent History: Modified by, Judgment entered by Ocwen Loan Servicing, LLC v. Nationwide Mut. Fire Ins. Co., 2013 U.S. Dist. LEXIS 45083 (S.D. Ind., Mar. 28, 2013)

Counsel: [*1] For OCWEN LOAN SERVICING, LLC, as servicer and attorney-in-fact for HSBC Bank USA, NA, as Trustee on behalf of ACE Securities Corp Home Equity Loan Trust and for the registered holders of ACE Securities Corp Home Equity Loan Trust Series 2005-SN1 Asset Backed Pass-Through Certificates, Plaintiff: Chantelle Renee Neumann, PRO HAC VICE, POTESIVO & ASSOCIATES, P.C., Rochester Hills, MI; Lucy Renee Dollens, Melanie D. Margolin, Michael A. Rogers, FROST BROWN TODD LLC, Indianapolis, IN.

For NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, Defendant: Beth A Barnes, Michael R. Bain, Samuel Dustin Ellingwood, Seth Robert Wilson, HUME SMITH GEDDES GREEN & SIMMONS, Indianapolis, IN.

For AMERICAN FAMILY MUTUAL INSURANCE COMPANY, Defendant: Robert Scott O'Dell, O'DELL & ASSOCIATES, P.C., Carmel, IN.

Judges: SARAH EVANS BARKER, United States District Judge.

Opinion by: SARAH EVANS BARKER

Opinion

ORDER ON PENDING MOTIONS

This cause is before the Court on cross-motions for summary judgment. On May 31, 2011, Defendant, American Family Mutual Insurance Company ("American Family"), filed a Motion for Summary Judgment [Docket No. 81] seeking judgment as a matter of law as to all causes of action asserted against it by Plaintiff, Ocwen Loan [*2] Servicing, LLC ("Ocwen"), in its Complaint [Docket No. 1]. Also on May 31, 2011, Plaintiff filed its Motion for Summary Judgment [Docket No. 86] seeking judgment as a matter of law as to its breach of contract and bad faith claims against American Family and its breach of contract claim against Defendant, Nationwide Mutual Fire Insurance Company ("Nationwide"). For the reasons detailed in this entry, the Court: (1) DENIES American Family's Motion for Summary Judgment on Ocwen's breach of contract claim against American Family and GRANTS American Family's Motion for Summary Judgment on Ocwen's quasi-contract and bad faith claims against American Family; (2) GRANTS Ocwen's Motion for Summary Judgment on its breach of contract claim against American Family and DENIES Ocwen's Motion for Summary Judgment on its bad faith claim against American Family; and (3) DENIES Ocwen's Motion for Summary Judgment against Nationwide.

Factual Background

Keith and Shonda Allen ("the Allens") own real property located at 422 South Talley Avenue in Muncie, Indiana. Compl. ¶¶ 6-7. In May of 1999, the Allens executed a note and mortgage secured by this property with National City Bank.¹ Compl. Ex. 1 at 1. HSBC [*3] Bank USA, N.A. purchased the note and mortgage from National City Bank in November of 2004, and service of the entire loan was contemporaneously transferred to Ocwen.² Pl.'s Br. Ex. 3B at 1; Pl.'s Br. Ex. 6 at 1. In executing the mortgage, the Allens agreed "to procure and maintain in effect at all times hazard (fire and extended coverage) insurance in an amount which is at least equal to the total amount of indebtedness secured hereby or the replacement value of the Mortgaged Premises" Compl. Ex. 1 at 1.

On July 19, 2005, the Allens took out a homeowners' insurance policy with Nationwide, an Ohio corporation with its principal place of business in Ohio. Compl. ¶¶ 3, 9. Policy number 91 13 HP 164976 ("the Nationwide Policy") covered the Allens' Talley Avenue residence up to a liability limit of \$234,000 and had a period of effectiveness running between July 15, 2005 and July 15, 2006. Compl. Ex. [*4] 2 at 1. The Nationwide Policy listed the Allens as "named insureds" and Ocwen as "first mortgagee." *Id.* at 1-2. It covered "accidental direct physical loss to property described" except for certain exclusions—including, but not limited to, "[i]ntentional acts, meaning loss resulting from an act committed by or at the direction of an insured." *Id.* at 10, 12. The term "intentional acts" excluded coverage for "all insureds." *Id.* at 12.

The Nationwide Policy also contained a standard mortgage clause which provided, in pertinent part, as follows:

If a mortgagee is named in this policy, a loss payable . . . will be paid to the mortgagee and

you,³ as interests appear. . . . If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a) notifies us of change in ownership, occupancy, or substantial change in risk of which the mortgagee is aware;
- b) pays premium due under this policy on our demand, if you neglected to pay the premium;
- c) submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions related to Your Duties After Loss, Loss Payment, Appraisal, and Suit Against Us apply to the [*5] mortgagee.

Compl. Ex. 2 at E3. Nationwide was obligated to notify the mortgagee at least ten days before canceling the policy. Further, this provision stated that "[s]ubrogation will not impair the right of the mortgagee to recover the full amount of [its] claim." *Id.*

The Allens also applied for a homeowners' insurance policy with American Family Mutual Insurance Company ("American Family"), a Wisconsin corporation with its principal place of business in Wisconsin. Compl. ¶¶ 4, 10. They signed the application for policy number 13-BG1873-01-PHGS-IN ("the American Family Policy") on October 14, 2005. Am. Fam.'s Br. Ex. A at 2. Like the Nationwide Policy issued before it, the American Family Policy insured the Allens' Talley Avenue residence up to a liability limit of \$234,000, and its period of effectiveness was a year (from October 14, 2005 to October 14, 2006). *Id.*; Pl.'s Br. at 4. On its declarations page, the American Family Policy also identified both of the Allens as "named insureds" and [*6] Ocwen as "mortgagee." Pl.'s Br. Ex. 3 at 21.

The American Family Policy also contained a

¹ National City Bank is currently doing business as PNC.

² Ocwen is a Florida limited liability company with its principal place of business in Florida. Its only member is Ocwen Financial Corporation, a Florida corporation with its principal place of business in Florida. Compl. ¶¶ 1, 2.

³ With respect to the insurance policies discussed in this entry, the terms "you" and "your" refer to the named insureds; similarly, the terms "we," "our," and "us" refer to the respective insurer.

mortgage clause that was substantially similar to the one set forth in the Nationwide Policy, the terms of which are as follows:

If a mortgagee is named in this policy, any loss payable on buildings will be paid to the mortgagee and you, as interests appear. . . . If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a) notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b) pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c) submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so.

Am. Fam.'s Br. Ex. J at 9. Several other provisions in the American Family Policy were routine inclusions and are not in apparent dispute in this lawsuit.⁴

Agent Rick [*7] Spangler spoke with the Allens by telephone in October 2005 to facilitate submission of their application for the American Family Policy. Am. Fam.'s Br. Ex. H ¶¶ 3, 8. At that time, neither of the Allens advised Mr. Spangler of any prior property losses they had experienced or insurance claims that had been submitted. *Id.* ¶¶ 9-10. On the application itself, the Allens indicated "no" in response to the question of whether they had any past or current losses at any locations. Am. Fam.'s Br. Ex. A at 1. In signing the application, they expressly represented as follows: "These statements are accurate to the best of my knowledge. [American Family] may rely upon them in issuance of this policy." *Id.* at 2. One of the "general conditions" of the American Family Policy provides that "[the] entire policy is void if, before or after a loss, any insured has: intentionally

concealed or misrepresented any material fact or circumstance; engaged in fraudulent conduct; or made false statements relating to this insurance." Am. Fam.'s Br. Ex. J at 13.

American Family's designated evidence of record reveals discrepancies between the Allens' statements in the American Family application and their subsequent [*8] admissions of fact. Specifically, in a recorded statement taken on or about November 16, 2005, Mr. Allen admitted the following prior property losses: two fires affecting rental property in 1993 and 1996; two automobile fires in the 1990s; a jewelry loss in 2001; and four house fires at the Talley Avenue residence in 1989, 1990, 2000, and 2003. Am. Fam.'s Br. ¶ 16; Am. Fam.'s Br. Exs. B, C, G. Lucreia Smith, an underwriter for American Family, characterized the discrepancies between Mr. Allen's remarks and the Allens' application answers as "misrepresentations," reporting as follows with respect to the property losses:

Had American Family . . . known of the misrepresentations . . . and the true facts of [the Allens'] prior fire losses and claims, the policy would not have been issued or a higher premium would have been charged. The fact that the Allens had suffered numerous fires to real property would have resulted in a rejection of the application for any coverage with American Family . . . and the policy of insurance would never have been written or issued pursuant to the underwriting guidelines. American Family . . . relied upon the misrepresentations contained in the application [*9] . . . to its detriment in issuing the policy.

Am. Fam.'s Br. Ex. I ¶¶ 12-13. Similarly, the second page of the American Family Policy warns policyholders that "we [, American Family,] may void this policy if the statements you [, the insured,] have given us are false and we have relied on them." Am. Fam.'s Br. Ex. J at 2.

American Family became aware of the Allens' misrepresentations just two days after November

⁴ For instance, intentional loss, "meaning any loss or damage arising out of any act committed: by or at the direction of any insured; and with the intent to cause a loss," was listed in the American Family Policy as an exclusion. Am. Fam.'s Br. Ex. J at 7.

14, 2005, the day the Allens submitted an insurance claim reporting a November 12, 2005 total fire loss to the Talley Avenue residence. Am. Fam.'s Br. Ex. G ¶ 14; Pl.'s Br. at 6. On November 17, 2005, American Family sent the Allens a reservation of rights letter. Am. Fam.'s Br. Ex. G ¶ 14. Then, on November 29, 2005, American Family sent Mr. Allen a letter "void[ing] the policy *ab initio* . . . [and] return[ing] the entire premium payment." *Id.* at 14-15.

Meanwhile, the Allens also sought reimbursement from Nationwide. They submitted a claim to Nationwide on November 21, 2005 for damages arising from the November 12, 2005 fire loss. Pl.'s Br. at 6. Nationwide denied the Allens' claim in a letter dated June 12, 2006. In the letter, the claims representative stated, "Our investigation [*10] found that this loss was the result of an intentional act," and that Nationwide would not provide coverage or indemnifications to the Allens for the loss. *Id.*; Compl. Ex. 3 at 1.

On September 8, 2006, the Allens filed a lawsuit against Nationwide, American Family, Richard Spangler d/b/a Rick Spangler Agency, and Ocwen in the Delaware County Circuit Court. Ocwen's Amended Answer contained a cross-claim against Nationwide and American Family asserting three counts against Nationwide (breach of contract, promissory estoppel, and unjust enrichment) and three counts against American Family (breach of contract, quasi-contract, and bad faith). The essence of Ocwen's crossclaim was that both Nationwide and American Family had wrongfully refused to pay insurance proceeds to which Ocwen believed it was entitled as mortgagee under the Allens' homeowners' insurance policies. American Family subsequently moved for summary judgment, and the state court granted this motion, entering final judgement in favor of American Family and against the Allens.⁵ In its ruling, the Delaware County

Circuit Court held that: (1) the American Family Policy was void as to the Allens based on the Allens' material misrepresentations [*11] in their insurance application; (2) American Family was not liable to the Allens for any damages stemming from the November 12, 2005 Talley Avenue fire loss; and (3) American Family was entitled to a final judgment as a matter of law on all of the Allens' claims in that lawsuit. Am. Fam.'s Br. Ex. L at 2. In the same case, Ocwen filed a Motion for Summary Judgment on its cross-claim against both Nationwide and American Family on November 4, 2009, and the court denied Ocwen's motion on June 16, 2010.

For Mr. Allen, waging the state court battle has arguably been one of his lesser worries. On November 15, 2007, a federal grand jury returned a true bill of indictment charging him as a member of a conspiracy to violate 18 U.S.C. § 844(h) by using fire to commit mail fraud. Am. Fam.'s Br. Ex. E at 1. The United States submitted a "Factual Basis for Kenneth Allen Plea," which provided that the November 12, [*12] 2005 fire "was not accidental. . . . Further investigation discovered evidence that implicated Allen in arson-for-profit in the fire at his . . . house, and also other fires." *Id.* at 4. The Court⁶ accepted Mr. Allen's guilty plea on April 9, 2008 and sentenced him to forty-eight (48) months in prison. *Id.* at 7-8.

Ocwen filed the instant action in this court on November 9, 2007. Its Complaint contained the same counts as the cross-claim in state court: (1) breach of contract, promissory estoppel, and unjust enrichment against Nationwide, and (2) breach of contract, quasi-contract, and bad faith against American Family. As it did in the state court cross-claim, Ocwen asserts that the Allens' homeowners' insurance policies entitle it to the payment of insurance proceeds. Ocwen seeks damages in the

⁵The Delaware County Circuit Court's decision is not *res judicata* because the parties and issues are not identical to those present in the instant litigation and therefore do not constitute the same nucleus of

operative facts. See *Alvear-Velez v. Mukasey*, 540 F.3d 672, 677 (7th Cir. 2008).

⁶The criminal proceeding against Mr. Allen, No. 1:07-cr-0153-SEB-KPF, took place before this court.

amount of the Allen's total principal debt on November 12, 2005 (\$79,390.08) with interest and fees incurred to the date of judgment. Additionally, Ocwen requests punitive damages in the amount of \$392,936.73 and a declaration that the American Family Policy is "valid, applicable, and enforceable." [*13] Compl. ¶ 56A; Pl.'s Br. at 18.

Legal Analysis

I. Standard of Review

Because the interpretation of written contracts such as insurance policies is typically a matter of law, disputes arising under the terms of such agreement are particularly appropriate for resolution by summary judgment. *See Hurst-Rosche Eng'rs, Inc. v. Commercial Union Ins. Co.*, 51 F.3d 1336, 1342 (7th Cir. 1995). Summary judgment is warranted when the record demonstrates that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In deciding whether genuine issues of material fact exist, the court construes all facts in a light most favorable to the non-moving party and draws all reasonable inferences in favor of the same. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Courts are often confronted with cross-motions for summary judgment because Rules 56(a) and (b) of the Federal Rules of Civil Procedure allow plaintiffs and defendants to move for such relief. In these circumstances, courts must consider the motion of each party individually to determine if the [*14] party has satisfied the Rule 56 standard. *Am. Gen. Life Ins. Co. v. Tomlinson Ins. Trust*, No. 1:08-cv-1747-SEB-TAB, 2010 U.S. Dist. LEXIS 103730, 2010 WL 3893673, at *3 (S.D. Ind. Sept. 30, 2010) (citing *Kohl v. Ass'n of Trial Lawyers of Am.*, 183 F.R.D. 475, 478 (D. Md. 1998)). Thus,

our review of the record before us requires us to draw all inferences in favor of the party against whom a particular issue in the motion under consideration is asserted. *Int'l Bhd. of Elec. Workers, Local 176 v. Balmoral Racing Club*, 293 F.3d 402, 404 (7th Cir. 2002); *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th Cir. 1998).

II. Claims Between American Family and Ocwen

A. Breach of Contract

In Count Four of its Complaint, Ocwen alleges that American Family's duty to tender insurance proceeds under the Allens' policy was triggered by the Allens' timely payment of insurance premiums. Ocwen also states that the American Family Policy's mortgage clause created an independent contract between Ocwen and American Family, which "presumably created a contractual duty for American Family to pay the proceeds of the policy to Ocwen in the event of a loss."⁷ Compl. ¶¶ 47, 50-51. In response, American Family argues that there can be no [*15] breach of contract claim without the existence of a valid contract. American Family contends that its decision to void the policy *ab initio* on November 29, 2005 completely nullified the contract and now precludes Ocwen from using it as the basis of its breach of contract claim. Ocwen counters in its Motion for Summary Judgment that the American Family Policy "only allows cancellation of the insured's contract—not the mortgagee's separate and distinct policy." Pl.'s Br. at 8.

Under Indiana law, the interpretation of an insurance policy is a matter of law, and insurance policies are subject to the same rules of construction as any other contracts. *Westfield Cos. v. Knapp*, 804 N.E.2d 1270, 1273-74 (Ind. Ct. App.

⁷ Alternatively, Ocwen claims that it is a third-party beneficiary to whom American Family has breached its duty to pay insurance proceeds. Compl. ¶ 52; Pl.'s Br. at 8.

2004). Both the insurer and the insured—the contracting parties—have distinct expectations regarding the policy: the insurer seeks payment in the form of premiums, and the insured seeks the satisfaction of knowing that his property is protected should specifically covered losses occur. Nevertheless, subsidiary parties [*16] may also claim an interest in insurance policy proceeds if certain conditions are fulfilled. *Safeco Ins. Co. of Am. v. Howard*, No. 2:09-cv-166, 2010 U.S. Dist. LEXIS 129072, 2010 WL 5058549, at *2 (N.D. Ind. Dec. 6, 2010) (noting that "[a] party's interest . . . need not arise from ownership"). Mortgagees are precisely the type of party contemplated by such holdings. *See id*; *Fifth Third Bank v. Ind. Ins. Co.*, 771 N.E.2d 1218, 1223 (Ind. Ct. App. 2002).

Before we determine what interest, if any, Ocwen may have in the insurance policy proceeds at issue here, we must decide whether the American Family Policy is a valid contract. We address this issue preliminarily because Indiana law sets out three *prima facie* elements for a breach of contract claim, the threshold one being the existence of a contract. *Niezer v. Todd Realty, Inc.*, 913 N.E.2d 211, 215 (Ind. Ct. App. 2009). Deeming a contract void defeats the entire claim for the reason that "[a] void contract is 'of no legal effect, so that there is really no contract in existence at all'" to be breached. *Marathon Oil Co. v. Collins*, 744 N.E.2d 474, 478 n.3 (Ind. Ct. App. 2001) (quoting BLACK'S LAW DICTIONARY 326 (7th ed. 1999)). Similarly, a voidable contract [*17] is one that may be rescinded⁸ at the option of one of the contracting parties; if the party exercises this option, it is as if the contract never existed and, accordingly, cannot be breached. *See Colonial Penn Ins. Co. v. Guzorek*, 690 N.E.2d 664, 674 n.4 (Ind. 1997). An insurer entitled to rescind a policy has two options: (1) void the policy in its entirety and return the contracting parties to the status quo ex ante, or (2) affirm the policy and seek damages from the

insured. *See Allianz Ins. Co. v. Guidant Corp.*, 884 N.E.2d 405, 414 (Ind. Ct. App. 2008). Longstanding principles of case law instruct us that Indiana's general rule is that a contract must be rescinded in whole, not in part. *Prudential Ins. Co. of Am. v. Smith*, 231 Ind. 403, 108 N.E.2d 61, 65 n.5 (Ind. 1952); *see also Allianz Ins. Co.*, 884 N.E.2d at 415 (party that voids a contract "may not choose certain provisions to affirm and certain provisions to reject"); *Barrington Mgmt. Co. v. Draper Family Ltd. P'ship*, 695 N.E.2d 135, 142 (Ind. Ct. App. 1998) (party "must affirm or avoid the contract in whole and cannot treat it as good in part and void in part").

Here, American Family contends that there can be no breach of contract because there is no contract in existence for the Court to recognize. Specifically, American Family asserts that the Allens' material misrepresentations in their application for insurance suffice to void the American Family Policy *ab initio*. Representations are considered material "if the fact[s] omitted or misstated, if truly stated, might reasonably have influenced the insurer in deciding whether to reject or accept the risk or charge a higher premium." *French v. State Farm Fire & Cas. Co.*, 950 N.E.2d 303, 312 (Ind. Ct. App. 2011). The misrepresentations must also have deceived the insurer, which must in turn demonstrate having acted in reliance upon them. *State Farm Mut. Auto Ins. Co. v. Price*, 181 Ind. App. 258, 396 N.E.2d 134, 136 (Ind. Ct. App. 1976). Our review of the record leads us to conclude that, with respect to the Allens, American Family has presented adequate evidence to satisfy the standards for material misrepresentations. American Family's underwriter has provided the following key testimonial statements confirming our belief:

[The [*19] Allens did not] advise[] American Family Mutual Insurance Company of any other insurance claims at the time of the application, including specifically the fire losses to the Talley and/or Turner properties. . . . The fact that the Allens had suffered

⁸ "To rescind means to void the contract from its inception," *i.e.*, *ab initio*. [*18] *Am. Underwriters Grp., Inc. v. Williamson*, 496 N.E.2d 807, 808 n.1 (Ind. Ct. App. 1986).

numerous fires to real property would have resulted in a rejection of the application for any coverage with [American Family], and the policy of insurance would never have been written or issued pursuant to the underwriting guidelines.

Pl.'s Br. Ex. 9 at 3. The Allens' answer of "no" to the question of whether they had ever had "any past/current losses at any location" plainly constitutes a misstated fact which, if truly stated, would have influenced American Family to reject the risk. Further, Indiana law supports American Family's decision to rely on the Allens' factual representations and imposes "no duty to look beneath the surface" of these statements. *Foster v. Auto-Owners Ins. Co.*, 703 N.E.2d 657, 660 (Ind. 1998) (citing *Guzorek*, 690 N.E.2d at 674). American Family's decision to issue an insurance policy to the Allens corroborates its reliance on the Allens' misstatements of fact and demonstrates deception on the Allens' part. Accordingly, [*20] the Allens' answers regarding prior property losses embody material misrepresentations of fact.

In Indiana, "a material misrepresentation . . . in an insurance application, relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option." *Brennan v. Hall*, 904 N.E.2d 383, 387 (Ind. Ct. App. 2009) (citing *Foster*, 703 N.E.2d at 659). Any applicant for insurance who signs an application containing material misrepresentations is chargeable with knowledge of their falsity and is deemed to have adopted the statements as his own. *Id.* This asymmetry of information exchanged causes a failure of the "meeting of the minds" that is required in contract formation—namely, the risk to be insured. Failure to achieve such consensus negates mutuality and undermines the contract's validity. See *Guzorek*, 690 N.E.2d at 672; *Fox Dev., Inc. v. England*, 837 N.E.2d 161 165 (Ind. Ct. App. 2005); *Wallem v. CLS Indus., Inc.*, 725 N.E.2d 880, 883 n.1 (Ind. Ct. App. 2000). As the American Family Policy declares on the first page, "[T]his policy is conditioned upon the truth of your

statements." Am. Fam.'s Br. Ex. J at 1. Thus, although American Family properly expected to [*21] receive an accurate accounting of the Allens' insurance claims and fire history, the Allens' fabricated version of events prevented both parties from manifesting true assent. A lie regarding property loss—material as to both the underwriting guidelines and the actual November 12, 2005 fire loss—therefore permitted American Family to void the insurance policy with respect to the Allens.

Nevertheless, it is also our view that under established precedent, severing contractual ties between American Family and the Allens need not affect Ocwen's interests identically. Although Indiana case law on this point does not abound, the Indiana Court of Appeals has ruled that insurers "may not rescind a policy on the ground of . . . misrepresentation of the insured so as to escape liability to third parties." *Coy v. Nat'l Ins. Ass'n*, 713 N.E.2d 355, 362 (Ind. Ct. App. 1999) (citing *Am. Underwriters Grp., Inc. v. Williamson*, 496 N.E.2d 807, 810-11 (Ind. Ct. App. 1986)). The Seventh Circuit has also acknowledged that "public policy may be an appropriate rationale in limited circumstances to enforce a voidable contract." *N. Assurance Co. of Am. v. Summers*, 17 F.3d 956, 963 (7th Cir. 1994) (recognizing [*22] *Am. Underwriters Grp.* rationale but declining to extend to a distinguishable set of facts). We believe the situation before us—i.e., where "the mortgagee's interest is in the [insureds'] indebtedness, not in the property," *Fifth Third Bank*, 771 N.E.2d at 1223—is one warranting enforcement of the contract so as to protect the innocent third party. Furthermore, we note the Indiana Supreme Court's express holding that a mortgagee's right to foreclose "in no way repudiates its right to demand payment from the insurance. Both the property pledged and the insurance constitute [the mortgagee's] security for the debt, and it [may] proceed against either or both." *Loving v. Ponderosa Sys., Inc.*, 479 N.E.2d 531, 537 (Ind. 1985).

Perhaps even more relevant to this lawsuit is the

role a "standard" or "union" mortgage clause⁹ plays in contract formation. Ocwen avers that the effect of such a clause is to create a separate contract between American Family and Ocwen, one which operates in complete isolation from the now-void agreement between American Family and the Allens. American Family, as before, maintains that once it exercised its option to void the insurance policy, the rescission effectively [*23] nullified any contractual rights Ocwen might have asserted. Stated otherwise, American Family understands Indiana's mandate to "affirm or avoid the contract in whole" to mean that the Court must treat the American Family Policy as one single contract which is now void as to the Allens, American Family, and Ocwen. After careful review of the relevant contract law principles, we must disagree.

Our research reveals no Indiana Supreme Court case law directly addressing the parties' dispute as to whether listing a mortgagee on an insurance policy creates a separate contract [*24] between the mortgagee and insurer. Thus, we look to *Property Owners Insurance Cos. v. Hack*, 559 N.E.2d 396 (Ind. Ct. App. 1990), for guidance. The Indiana Court of Appeals adopted the stance Ocwen now takes on the matter, stating as follows:

[A mortgagee]'s name may appear on the policy under one or more of several designations. As a loss payee [named in a simple "open" mortgage clause], the [mortgagee] has no contract with the insurer, its rights are derivative of the named insured's rights, and it is subject to the same defenses as is the named insured. Accordingly, if the named insured commits arson, thereby

excluding himself from coverage, any loss payees are also denied coverage. Conversely, if the mortgagee is listed under a . . . standard, or union, mortgage clause, it is universally held that the mortgagee has entered into a separate contract with the insurer and is entitled to payment regardless of the mortgagor's acts or omissions.

Id. at 400. A decade later, in *Fifth Third Bank*, the Indiana Court of Appeals relied on *Hack* in reaffirming this ruling that a standard mortgage clause creates a discrete contract between the insurer and any listed mortgagee "as [*25] its interest appears."¹⁰ *Fifth Third Bank*, 771 N.E.2d at 1223.

With such a sparse foundation in Indiana case law, it borders on foolhardy to conclude that the *Hack* and *Fifth Third Bank* opinions describe a view that is "universally held" in Indiana. Because the Seventh Circuit has not yet opined on whether a standard mortgage clause gives rise to a separate contract, we look to the other circuit courts for guidance. The First, Second, Third, Fourth, Fifth, Sixth, Eighth, and Ninth Circuits have all determined (when interpreting state law) that such clauses do create insurer-mortgagee contracts divaricated from the original insurer-insured contract. *See In re Tower Air, Inc.*, 397 F.3d 191, 204 (3d Cir. 2005); *Cont'l Ins. Co. v. Bahnan*, 216 F.3d 150, 155 (1st Cir. 2000) ("Under [a standard mortgage clause], the insurer's obligation to the mortgagee is independent . . . here, the insurer has a defense as to the insured/mortgagor, but none as to the mortgagee."); *J.C. Wyckoff & Assocs. v. Std. Fire Ins. Co.*, 936 F.2d 1474, 1493 (6th Cir. 1991) (same); *U.S. v. Commercial Union Ins. Cos.*, 821 F.2d 164, 166 (2d Cir. 1987) [*26] ("A standard mortgage clause . . . protect[s] the interests of a mortgagee from any acts or omissions . . . by the insured"); *Ingersoll-Rand Fin. Corp. v. Emp'rs. Ins.*

⁹"A policy that simply provides that it shall be payable to the mortgagee as his interest may appear is called an 'open mortgage clause.' . . . This clause is to be distinguished from the 'union mortgage clause.' In the latter clause it is stipulated, in substance, that in case of loss the policy is payable to the mortgagee and that his interest as payee shall not be invalidated or affected by any act or omission of the mortgagor." *Fed. Nat'l Mortg. Ass'n v. Great Am. Ins. Co.*, 157 Ind. App. 347, 300 N.E.2d 117, 120 (Ind. Ct. App. 1973) (quoting *Prudential Ins. Co. v. German Mut. Fire Ins. Ass'n*, 228 Mo. App. 139, 60 S.W.2d 1008, 1009 (Mo. Ct. App. 1933)).

¹⁰The phrase "as its interests appears" refers to the amount of the debt owed to the mortgagee. *Fifth Third Bank*, 771 N.E.2d at 1223-24.

of *Wausau*, 771 F.2d 910, 913 (5th Cir. 1985) ("[T]he modern decisions are unanimous . . . in holding that a mortgagee under a standard mortgage clause may . . . recover from the insurer for a loss sustained by the mortgaged property, even though the risk be excluded from the policy coverage, where any act of the mortgagor has caused or contributed to the loss as resulting from an excluded risk; and even though as between the mortgagor-insured and the insurer there is no coverage because of some default by the mortgagor."); *J.B. Kramer Grocery Co. v. Glens Falls Ins. Co.*, 497 F.2d 709, 712 (8th Cir. 1974) ("[The mortgagee's] right to recovery is unaffected by the acts of the insured."); *Tarleton v. De Veuve*, 113 F.2d 290, 297 (9th Cir. 1940) ("With but few exceptions, the courts are in agreement that where the interest of a mortgagee is protected by a standard . . . mortgage clause, there exists an independent contract between the mortgagee and the insurer, and the mortgagee's rights under the mortgage clause cannot be [*27] invalidated by any act or neglect of the mortgagor or owner."); *N.Y. Underwriters Ins. Co. v. Cent. Union Bank of S.C.*, 65 F.2d 738, 739 (4th Cir. 1933) ("The mortgage clause protects the mortgagee against any act or neglect of the mortgagor, whether prior or subsequent to its execution."); see also *Seventh Ave. Boutique, Inc. v. Aetna Ins. Co.*, 573 F. Supp. 1027, 1028 (N.D. Ill. 1983) (same); *In re Mount Calvary Baptist Church*, 162 B.R. 181, 190 (Bankr. N.D. Ill. 1993) (same). Even as we acknowledge that the foregoing decisions do not bind us precedentially, we are sufficiently persuaded by these circuits' broad consensus, which we adopt and shall apply here in resolving the issues before us. We therefore conclude that the Allens' designation of Ocwen as first mortgagee on the American Family Policy effectively created two separate contractual relationships which American Family was obligated to honor: one with the Allens, and another with Ocwen. As a result, Ocwen's contract with American Family survives the dissolution of the Allens' former insurance policy.

Because Ocwen and American Family entered into

a valid and enforceable contract separate from the one by and between the Allens [*28] and American Family, their agreement must be construed using the familiar tenets of contract interpretation. One of the most basic precepts of contract construction is that where contract language is clear and unambiguous, it should be given its plain meaning. *Eli Lilly Co. v. Home Ins. Co.*, 482 N.E.2d 467, 470 (Ind. 1985); *Newnam Mfg., Inc. v. Transcont'l. Ins. Co.*, 871 N.E.2d 396, 401 (Ind. Ct. App. 2007). Courts must therefore give all contract language effect and "construe the insurance policy as a whole, rather than considering individual words, phrases, or paragraphs." *Westfield Cos.*, 804 N.E.2d at 1274; see also *W. S. Life Ins. Co. v. Acton*, 779 N.E.2d 941, 943 (Ind. Ct. App. 2002) (holding that courts should "interpret the language of a contract so as not to render any words, phrases, or terms ineffective or meaningless"). Any ambiguities in the contract must be construed strictly against the insurer. *Beam v. Wausau Ins. Co.*, 765 N.E.2d 524, 528 (Ind. 2002).

As indicated above, the mortgage clause set out in the American Family Policy provides as follows: "If a mortgagee is named in this policy, any loss payable on buildings will be paid to the mortgagee and you[, the Allens], [*29] as interests appear." This provision also advises the insured that denial of his claim will not affect a valid claim of the mortgagee, provided that the mortgagee fulfills certain enumerated conditions. Reading the contract in light of all the circumstances, we conclude that the November 12, 2005 Talley Avenue residence fire loss activated American Family's duty to tender "any loss payable" on this covered dwelling to Ocwen and the Allens, "as interests appear." We have already established that the Allens' misrepresentations effectively terminated their interest in the loss proceeds; hence, American Family's lone obligation was to Ocwen. Moreover, Ocwen had no corresponding duty to comply with other listed conditions because American Family did not deny the Allens' claim. We reject Ocwen's contention that American Family's November 29,

2005 letter to the Allens constituted a denial of the Allens' claim and characterize the communication as one voiding the American Family Policy *ab initio* only with respect to the Allens. Similarly, we do not interpret numbers 12, 13, and 20 of American Family's affirmative defenses¹¹ to convey a denial of coverage to the Allens. As discussed above, [*30] the Allens' contract with American Family was wholly separate from Ocwen's contract with American Family. Therefore, when American Family failed to tender loss proceeds under Ocwen's separate insurance policy entitlements, American Family breached its contract with Ocwen and caused Ocwen to suffer damages in the amount of the Allens' indebtedness.

As a final matter regarding this breach of contract claim, we address American Family's argument that Ocwen's lawsuit is time-barred. American Family refers the Court to Section I, paragraph 18 of the "Conditions" section of the American Family Policy ("Suit Against Us"), which provides, in pertinent part, that "[s]uit must be brought within one year after the loss or damage occurs." Am. Fam.'s Br. at 22 (citing Am. Fam.'s Br. Ex. J at 9). Declaring—correctly, of course—that Ocwen's November 9, 2007 filing date well exceeds one year past the November 12, 2005 [*31] fire loss, American Family notes that courts often honor such time limitations to prevent unreasonable delay. *Id.* at 23-24 (citing *Summers v. Auto-Owners Ins. Co.*, 719 N.E.2d 412, 414 (Ind. Ct. App. 1999)). We remind American Family that, in the context of insurance policies, contractual limitations periods are not favored because of "Indiana's strong preference that cases be decided on their merits." *Auto-Owners Ins. Co. v. Hughes*, 943 N.E.2d 432, 436 (Ind. Ct. App. 2011); *Summers*, 719 N.E.2d at 414. We also note *Summers*'s holding that "contractual limitation periods may be waived by

an insurer if its conduct is sufficient to create a reasonable belief . . . that strict compliance with the policy provision will not be required." *Id.* at 415. Here, because the evidence of record suggests that both Ocwen and American Family may have been unclear as to where they stood in terms of the contract as early as November 2005, we conclude that it is reasonable to excuse Ocwen's delayed filing. Accordingly, American Family is estopped from enforcing the limitations period in the instant matter. To echo the Indiana Court of Appeals, "[t]o hold otherwise . . . would be to allow the insurer to lull [*32] [Ocwen] into not pressing [its] rights and then deny liability on the basis of the limitation period." *Wingenroth v. Am. States Ins. Co.*, 455 N.E.2d 968, 970 (Ind. Ct. App. 1983).

With these points in mind, we conclude that there is no genuine issue of material fact regarding the question of whether American Family breached its contract with Ocwen, and Ocwen is entitled to judgment as a matter of law on the issue. Therefore, Ocwen's Motion for Summary Judgment on its breach of contract claim against American Family is GRANTED, and American Family's Motion for Summary Judgment on the same claim is DENIED. American Family is liable to Ocwen for the principal amount of mortgage debt on the Talley Avenue residence as of November 12, 2005, plus accrued interest and fees incurred up to the date of judgment.¹²

B. Quasi-Contract

Count Five of Ocwen's Complaint sounds in quasi-contract. [*33] Ocwen contends that it relied on the Allens' representations that American Family would insure the Talley Avenue residence and, as a result, neither required the Allens to obtain secondary insurance nor took out its own hazard

¹¹ Affirmative defense number 12 states that the policy's terms and conditions exclude Ocwen's claim. Number 13 states that Ocwen's claim is barred by the Allens' misrepresentations, and Number 20 states that "the [d]efendant's policy of insurance was void." Am. Fam.'s Answer at 12-13.

¹² Ocwen is not entitled to consequential damages. See *Burleson v. Ill. Farmers Ins. Co.*, 725 F. Supp. 1489, 1499 (S.D. Ind. 1989) (concluding that "consequential damages are not recoverable in Indiana from an insurer in a direct action on a policy where there is no showing of bad faith on the insurer's behalf").

insurance policy to protect its interest in the mortgage debt. Further, Ocwen asserts that: (1) it relied on the American Family Policy to its detriment; (2) American Family received a benefit by collecting premiums from the Allens; and (3) American Family's post-loss return of premiums to the Allens does not remedy Ocwen's loss. Compl. ¶¶ 59-61.

A quasi-contract, or a contract "implied in law," is not a contract in the true sense of the term. Rather, this concept "rest[s] on a legal fiction imposed by law without regard to the assent of the parties." *Higginbottom ex rel. Davis v. Keithley*, 103 F. Supp. 2d 1075, 1083 (S.D. Ind. 1999) (citing *Galloway v. Methodist Hosps., Inc.*, 658 N.E.2d 611, 614-15 (Ind. Ct. App. 1995)). A party bringing a quasi-contract claim must allege that its opponent "expressly or impliedly requested a benefit or accepted a benefit which it had the opportunity to decline." *Forsythe Racing, Inc. v. Player's Co.*, No. 1:04-cv-2102-SEB-VSS, 2005 WL 2218365, at *5 (S.D. Ind. Sept. 8, 2005) [*34] (citing *Garage Doors of Indianapolis, Inc. v. Morton*, 682 N.E.2d 1296, 1303 (Ind. Ct. App. 1997)). Preventing unjust enrichment is the doctrine's primary purpose. *Keithley*, 103 F. Supp. 2d at 1083 (citing *Wright v. Pennamped*, 657 N.E.2d 1223, 1229-30 (Ind. Ct. App. 1995)).

Finding no arguments in the briefing addressing quasi-contract from either Ocwen or American Family save American Family's general assertion that all of Ocwen's claims are barred, we decline to delve into the nuances of this equitable remedy. Where, as here, we have determined that a contract actually existed and was breached, there is no basis for further recovery. *Cf. Zoeller v. E. Chi. Second Century, Inc.*, 904 N.E.2d 213, 220 (Ind. 2009) (discussing appropriateness of quasi-contract where "under the law of natural and immutable justice there *should* be a recovery") (emphasis added). We therefore conclude that, given the absence of any unjust enrichment, Ocwen is not entitled to the imposition of a quasi-contract as a matter of law, and we GRANT American Family's Motion for

Summary Judgment on this issue.

C. Bad Faith

Next, we address whether American Family has presented adequate facts to establish that it is entitled [*35] to judgment as a matter of law on Ocwen's bad faith claim against it. American Family argues that where there is a legitimate conflict in the evidence or the interpretation of the law, a good faith basis to dispute liability and/or refuse to pay an insurance claim exists. It further alleges that Indiana case law permits insurers to deny liability without incurring the risk of punitive damages and that public policy does not support requiring insurers to choose between paying or litigating. *Am. Fam.'s Br.* at 30. In response, Ocwen contends that American Family's refusal to pay policy proceeds was unfounded because of American Family's: (1) election to void the Allens' policy; (2) attempt to assert a contractual time limitation against Ocwen; and (3) reliance on a coverage position which, according to Ocwen, "has absolutely no basis in Indiana law." *Pl.'s Br.* at 14.

Indiana law imposes a duty on all insurance companies to deal with policyholders¹³ in good faith, and breach of this duty provides a cause of action sounding in tort. *USA Life One Ins. Co. of Ind. v. Nuckolls*, 682 N.E.2d 534, 541 (Ind. 1997). "In the context of the denial of insurance claims, a finding of bad faith requires [*36] evidence of a state of mind reflecting a dishonest purpose, moral obliquity, furtive design, or ill will." *Ag One Co-op v. Scott*, 914 N.E.2d 860, 864 (Ind. Ct. App. 2009). Thus, neither poor judgment nor negligence will suffice to state a claim for dealing with an insured in bad faith; "the additional element of conscious wrongdoing must be present." *Id.* (quoting *Spencer v. Bridgewater*, 757 N.E.2d 208, 212 (Ind. Ct. App.

¹³ We impute this duty to American Family's dealings with Ocwen in this situation because of "the unique character of the insurance contract which supports the conclusion that there is a 'special relationship.'" *Cain v. Griffin*, 849 N.E.2d 507, 510 (Ind. 2006).

2001)). Punitive damages, although available if bad faith can be demonstrated, will not be imposed when a party "seeks to litigate an honest dispute," regardless of whether that party's theory of recovery is ultimately correct. *Willsey v. Peoples Fed. Sav. & Loan Ass'n of E. Chi.*, 529 N.E.2d 1199, 1208 n.7 (Ind. Ct. App. 1988) (citing *Vernon Fire & Cas. Ins. Co. v. Sharp*, 264 Ind. 599, 349 N.E.2d 173, 181 (Ind. 1976)).

Indiana specifically defines "[t]he obligation of good faith and fair dealing with respect to the discharge [*37] of the insurer's contractual obligation [to] include[] the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim." *Erie Ins. Co. v. Hickman*, 622 N.E.2d 515, 519 (Ind. 1993). Even so, "insurance companies may, in good faith, dispute claims." *Id.* at 520; *see also Eberle v. Prudential Ins. Co. of Am.*, No. 4:05-cv-0030, 2007 U.S. Dist. LEXIS 11481, 2007 WL 541821, at *9-10 (N.D. Ind. Feb. 14, 2007). The parameters of the aptly dubbed "right to disagree" rule have been established over the years by case law. In *Vernon Fire*, the Indiana Supreme Court addressed the "right to disagree" rule thusly:

It is evident that the exercise of this right may directly result in the intentional infliction of temporal damage The infliction of this damage has generally been regarded as privileged, and not compensable, for the simple reason that it is worth more to society than it costs, *i.e.*, the insurer is permitted to dispute its liability in good faith because of the prohibitive social costs of a rule which would make claims nondisputable. [*38] Insurance companies burdened with such liability would either close their doors or increase premium rates to the point where only the rich could afford insurance.

Vernon Fire, 349 N.E.2d at 181.

In *Hoosier Insurance Co. v. Mangino*, 419 N.E.2d 978 (Ind. Ct. App. 1981), the Indiana Court of Appeals interpreted *Vernon Fire* and its progeny as requiring a complete "[a]bsence of *any reasonable grounds* for denying liability" before a factfinder may infer malice or oppressive conduct from an insurer's failure to pay a claim. *Id.* at 983 (emphasis added) (citing *Vernon*, 349 N.E.2d at 181; *First Fed. Sav. & Loan Ass'n of Indianapolis v. Mudgett*, 397 N.E.2d 1002 (Ind. Ct. App. 1979); *Rex Ins. Co. v. Baldwin*, 163 Ind. App. 308, 323 N.E.2d 270 (Ind. Ct. App. 1975)). The court recognized that arson presents a unique situation wherein the insurer may be uncertain of what, if any, proceeds must be tendered. *See generally id.* at 987-90. Importantly, the court held that "an insurance company is not required to either pay or litigate at its peril." *Id.* at 988. By contrast, in *Riverside Insurance Co. v. Pedigo*, 430 N.E.2d 796 (Ind. Ct. App. 1982), the court stressed that flagrant conduct—namely, an insurer's concealment of [*39] an arson investigation and failure to tell insureds that the insurer was denying a claim—"clearly [lies] outside the 'right to disagree' rule." *Id.* at 808.

The instant litigation falls straightforwardly within the boundaries of the "right to disagree" rule as articulated by the Indiana courts. In light of the Allens' misrepresentations, the subsequent criminal prosecution and conviction of Mr. Allen, and the heretofore unclear status of Indiana law regarding mortgagees' rights under homeowners' insurance policies, we cannot conclude that American Family's dealings with Ocwen amounted to bad faith. Rather, we believe the evidence demonstrates a conflict in the parties' interpretation of the law, which certainly provides a reasonable basis to question liability. We therefore find that there is no genuine issue of material fact as to American Family's good faith in handling its dispute with Ocwen. American Family is entitled to judgment as a matter of law, and its Motion for Summary Judgment on Ocwen's bad faith claim is GRANTED. Accordingly, Ocwen's Motion for Summary Judgment on its bad faith claim against

American Family is DENIED.

III. Ocwen's Motion as to Nationwide's Alleged Breach [*40] of Contract

In Count One of its Complaint, Ocwen alleges that its right to receive insurance proceeds under the Nationwide Policy is not adversely affected by the insurer's denial of coverage to the insureds. Ocwen makes the very general assertion that, pursuant to the mortgage clause, it must "compl[y] with the listed requirements" to preserve this right. Compl. ¶ 20. Claiming to have adhered to "all applicable portions of the [m]ortgage [c]lause," Ocwen argues that Nationwide's subsequent refusal to tender policy proceeds to Ocwen is a breach of contract. Ocwen further states that Nationwide's denial of the Allens' claim does not terminate the obligation to honor Ocwen's valid claim. *Id.* ¶ 23. Nationwide rejoins that because Ocwen is bound by four additional policy provisions, nonpayment on Nationwide's part cannot be deemed a breach of contract unless Ocwen demonstrates compliance with the mortgage clause *and* the other four provisions, to wit: paragraphs 3, 5, 6, and 8 of the Nationwide Policy. According to Nationwide, Ocwen's failure to comply with paragraph 5(c) vitiates any duty Nationwide may have had under the mortgage clause to pay insurance proceeds to Ocwen.

Again, as with [*41] Ocwen's breach of contract claim against American Family, we first address whether there is a legally enforceable contract between Ocwen and Nationwide. This claim presents a slightly different situation because Nationwide did not void the policy it issued to the Allens, but the result is nonetheless identical: because Ocwen is listed as mortgagee in the Nationwide Policy, we hold that a separate contract between Ocwen and Nationwide exists. Thus, once more, we rely on routine canons of contract interpretation to determine whether Ocwen is entitled to judgment as a matter of law on its breach of contract claim against Nationwide.

Paragraph 5(c) of Section I ("Loss Payment"), upon which Nationwide relies in support of its argument, provides:

We will pay you unless some other person is named in this policy to receive payment. Payment will be made within 60 days after we receive your proof of loss and:

- (1) reach agreement with you; or
- (2) there is an entry of a final judgment; or
- (3) there is a filing of an appraisal award with us.

Compl. Ex. 2 at E2. The mortgage clause expressly states that policy conditions relating to this paragraph apply to a mortgagee. *Id.* at E3. Nationwide alleges that [*42] because Paragraph 5(c)'s conditions for payment have not been satisfied, it bears no obligation to pay policy proceeds to Ocwen.

Examining this provision in light of both the entire policy and the evidence in the record, we first observe that the Allens filed their proof of loss on November 21, 2005. Ocwen subsequently filed Claim 9113HP164976111205 with Nationwide in order to protect its interests and, presumably, to satisfy Paragraph 5(c) of its independent agreement with Nationwide. Compl. ¶¶ 13, 15. Thus, to trigger Nationwide's duty to pay Ocwen, fulfillment of one of Paragraph 5(c)'s three conditions was compulsory. Viewing the facts in the light most favorable to Nationwide, the non-movant, as we are required to do at this summary judgment stage, we conclude that Paragraph 5(c) has not been satisfied.

Condition (1) of the "Loss Payment" clause essentially became a non-issue because Nationwide denied the Allens' claim on June 12, 2006. In our view, no reasonable juror could conclude that Nationwide's posture constitutes "reaching agreement" with its insured. The same is true as between Nationwide and Ocwen; neither party disputes that Nationwide has not officially denied Ocwen's [*43] claim or that the amount of the

Allens' debt¹⁴ remains in controversy. Accordingly, we find that the first condition has not been satisfied. We can also dispense expeditiously with Condition (2) by noting that there has been no entry of a final judgment. The parties' debate regarding the June 2010 state court's denial of Ocwen's Motion for Summary Judgment is nothing more than a red herring, as Indiana courts have routinely held that "the denial of a motion for summary judgment is not a final judgment from which an appeal may be taken, because no rights have been thereby foreclosed." *Loving*, 479 N.E.2d at 534; *see also Bd. of Trs. of Ball State Univ. v. Strain*, 771 N.E.2d 78, 81 (Ind. Ct. App. 2002) (noting that an order denying summary judgment "does not irretrievably dispose of one or more issues between the parties"); *Keith v. Mendus*, 661 N.E.2d 26, 35 (Ind. Ct. App. 1996) (same). Finally, finding no evidence of an appraisal award in the submissions to the Court, we must conclude that none of Paragraph 5(c)'s prerequisites were met.

Because of Ocwen's rebuttal to Nationwide based on a contention of [*44] ambiguity, it of course bears repeating that Indiana's general rule is to construe any ambiguous language in an insurance contract against the insurer. This rule evolved because insurance policies—which are drafted solely by the insurer—can be viewed as contracts of adhesion. *See Beam*, 765 N.E.2d at 528; *Hayes v. Allstate Ins. Co.*, 722 F.2d 1332, 1335 (7th Cir. 1983) (citing *Freeman v. Commonwealth Life Ins. Co.*, 149 Ind. App. 211, 271 N.E.2d 177, 181 (Ind. Ct. App. 1971)). An ambiguity exists when reasonable persons, upon reading the contract, would find its terms susceptible to more than one interpretation. *Adult Grp. Props., Ltd. v. Imler*, 505 N.E.2d 459, 466 (Ind. Ct. App. 1987). Nevertheless, "for purposes of summary judgment," ambiguous terms are to be construed in favor of the insured "only if the ambiguity exists by reason of the language used and not because of . . . facts." *Cinergy Corp. v. Assoc. Elec. & Gas Ins. Servs.*,

865 N.E.2d 571, 574 (Ind. 2007); *see also McCae Mgmt. Corp. v. Merchants Nat'l Bank & Trust Co. of Indianapolis*, 553 N.E.2d 884, 887 (Ind. Ct. App. 1990). As a result, we emphasize that there is no genuine issue of material fact that Ocwen is not entitled to recover from Nationwide [*45] in an action for breach of contract. Therefore, Ocwen's Motion for Summary Judgment against Nationwide is DENIED.

Conclusion

Based on the foregoing analysis in this entry, the Court now rules as follows on the Cross-Motions for Summary Judgment:

- (1) Ocwen's Motion for Summary Judgment with respect to its breach of contract claim against American Family is GRANTED, and American Family's Motion for Summary Judgment on the same claim is DENIED;
- (2) American Family is liable to Ocwen for the mortgage amount due on the Talley Avenue residence as of November 12, 2005, plus accrued interest and fees incurred up to the date of judgment;
- (3) American Family's Motion for Summary Judgment on Ocwen's quasi-contract claim against American Family is GRANTED;
- (4) American Family's Motion for Summary Judgment on Ocwen's bad faith claim against American Family is GRANTED, and Ocwen's Motion for Summary Judgment on the same claim is DENIED; and
- (5) Ocwen's Motion for Summary Judgment on its breach of contract claim against Nationwide is DENIED

IT IS SO ORDERED.

Date: 03/29/2012

/s/ Sarah Evans Barker

SARAH EVANS BARKER, JUDGE

United States District Court

Southern District of Indiana

¹⁴ As explained above, this amount represents Ocwen's interest in the loss proceeds.

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APPENDIX

26

Register of Action

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REGISTER OF ACTIONS

CASE No. 18-005480-CK

RELATED CASE INFORMATION

Related Cases

16-002960-CK (Prior Action)

PARTY INFORMATION

Defendant	Jones, Angela	Lead Attorneys Jo Robin Davis <i>Retained</i> (248) 932-0100(W)
Plaintiff	Meemic Insurance Company	Michael F. Schmidt <i>Retained</i> (248) 649-7800(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
05/15/2018	Complaint, Filed
05/15/2018	Service Review Scheduled
05/15/2018	Status Conference Scheduled
05/15/2018	Case Filing and Jury Trial Fee - Paid
05/29/2018	Answer to Complaint, Filed
05/29/2018	Answer to Complaint, Filed
05/29/2018	Proof of Service, Filed
05/29/2018	Proof of Service, Filed
05/30/2018	Service of Complaint, filed
05/30/2018	Proof of Service, Filed
06/14/2018	Miscellaneous Pleadings, Filed
06/14/2018	Proof of Service, Filed
06/22/2018	Motion for Summary Judgment/Disposition, Filed
06/22/2018	Proof of Service, Filed
06/29/2018	Reassignment - Prior Case, Signed and Filed
07/03/2018	Notice of Hearing, Filed
07/03/2018	Proof of Service, Filed
07/03/2018	Praecipe, Filed (Judicial Officer: Gillis, John H., Jr.)
07/09/2018	Reply to Brief, Filed
07/09/2018	Proof of Service, Filed
07/25/2018	Reply to Brief, Filed
07/25/2018	Proof of Service, Filed
07/27/2018	Reply to Brief, Filed
07/27/2018	Proof of Service, Filed
08/02/2018	Motion Hearing (9:00 AM) (Judicial Officer Gillis, John H., Jr.) Result: Held for Further Settlement
08/06/2018	Notice of Hearing, Filed
08/06/2018	Proof of Service, Filed
08/06/2018	Praecipe, Filed (Judicial Officer: Gillis, John H., Jr.)
08/09/2018	Notice of Hearing, Filed
08/09/2018	Praecipe, Filed (Judicial Officer: Gillis, John H., Jr.)
08/09/2018	Proof of Service, Filed
08/15/2018	Status Conference (8:00 AM) (Judicial Officer Gillis, John H., Jr.) 08/15/2018 <i>Reset by Court to 08/15/2018</i> Result: Reviewed by Court
08/15/2018	Status Conference Scheduling Order, Signed and Filed
08/16/2018	Settlement Conference Scheduled
09/19/2018	Notice of Hearing, Filed
10/04/2018	Motion Hearing (9:00 AM) (Judicial Officer Gillis, John H., Jr.) 09/05/2018 <i>Reset by Court to 09/13/2018</i> 09/13/2018 <i>Reset by Court to 09/20/2018</i> 09/20/2018 <i>Reset by Court to 10/04/2018</i> Result: Reviewed by Court
10/04/2018	Motion for Miscellaneous Action Granted, Order to Follow (Judicial Officer: Gillis, John H., Jr.)
10/05/2018	Case Evaluation - General Civil
10/05/2018	Closed/Final -Ord Summary Jdmnt/Disp Grntd, Signed and Filed
10/05/2018	Opinion of Court, Signed and Filed
10/22/2018	Motion for Reconsideration/Rehearing, Filed
10/22/2018	Proof of Service, Filed
10/24/2018	Miscellaneous Pleadings, Filed
10/24/2018	Proof of Service, Filed
10/24/2018	Order Denying Motion, Signed and Filed
11/16/2018	Appearance of Attorney, Filed

Appellant's Appendix_203a

RECEIVED by MSC 3/1/2021 2:13:22 PM

Register of Action

RECEIVED by MSC 3/1/2021 2:13:22 PM

11/16/2018 [Proof of Service, Filed](#)
 11/26/2018 [Miscellaneous Pleadings, Filed](#)
 11/26/2018 [Proof of Service, Filed](#)
 11/26/2018 [Proof of Service, Filed](#)
 11/26/2018 [Claim of Appeal, Filed-WVD](#)
 11/26/2018 [Proof of Service, Filed](#)
 03/28/2019 **CANCELED Settlement Conference** (9:00 AM) (Judicial Officer Gillis, John H., Jr.)
 Case Disposed/Order Previously Entered
 04/01/2019 *Reset by Court to 03/28/2019*
 03/28/2019 [Transcript, Filed](#)
 04/24/2019 [Proof of Service, Filed](#)
 04/24/2019 [Proof of Service, Filed](#)
 04/29/2019 [Proof of Service, Filed](#)
 04/29/2019 [Proof of Service, Filed](#)
 05/02/2019 [Proof of Service, Filed](#)
 05/02/2019 [Miscellaneous Pleadings, Filed](#)
 05/02/2019 [Proof of Service, Filed](#)
 06/03/2019 [Letter, Filed](#)
 06/03/2019 [Claim of Appeal, Filed](#)
 06/03/2019 [Proof of Service, Filed](#)
 05/21/2020 [Higher Court Order/Decision Received by Circuit Court](#)
 07/07/2020 [Higher Court Order/Decision Received by Circuit Court](#)

FINANCIAL INFORMATION

	Plaintiff Meemic Insurance Company		
	Total Financial Assessment		325.00
	Total Payments and Credits		325.00
	Balance Due as of 02/03/2021		0.00
05/15/2018	Transaction Assessment		260.00
05/15/2018	eFiling	Receipt # 2018-38748	(235.00)
06/01/2018	eFiling	Receipt # 3CC-2018-09445	(25.00)
06/22/2018	Transaction Assessment		20.00
06/22/2018	eFiling	Receipt # 2018-49277	(20.00)
10/22/2018	Transaction Assessment		20.00
10/22/2018	eFiling	Receipt # 2018-87897	(20.00)
06/04/2019	Transaction Assessment		25.00
06/04/2019	eFiling	Receipt # 2019-45929	(25.00)
		HARVEY KRUSE, P.C.	
		Meemic Insurance Company	
		Jo Robin Davis, PLLC	
		Jo Robin Davis, PLLC	
		Jo Robin Davis, PLLC	

APPENDIX

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Home Cases, Opinions & Orders

Case Search

Case Docket Number Search Results - 346361

Appellate Docket Sheet

COA Case Number: 346361**MSC Case Number: 161865**

MEEMIC INSURANCE COMPANY V ANGELA JONES

1	MEEMIC INSURANCE COMPANY Oral Argument: Y Timely: Y	PL-AE	RET	(25213) SCHMIDT MICHAEL F
2	JONES ANGELA Oral Argument: Y Timely: Y	DF-AT	RET	(31263) DAVIS JO ROBIN

COA Status: Case Concluded; File Open**MSC Status:** Pending on Application**Case Flags:** Electronic Record

- 11/13/2018 1 Claim of Appeal - Civil
 Proof of Service Date: 11/13/2018
 Jurisdictional Checklist: Y
 Register of Actions: Y
 Fee Code: EPAY
 Attorney: 31263 - DAVIS JO ROBIN
- 10/05/2018 2 Order Appealed From
 From: WAYNE CIRCUIT COURT
 Case Number: 18-005480-CK
 Trial Court Judge: 28527 GILLIS JOHN H JR
 Nature of Case:
 Summary Disposition Granted - For Plaintiff
- 11/13/2018 3 Correspondence Received
 For Party: 2 JONES ANGELA DF-AT
 Attorney: 31263 - DAVIS JO ROBIN
 Comments: letter to reporter Reba Hooper requesting transcript of 8/2/18 hearing
- 11/16/2018 4 Appearance - Appellee
 Date: 11/16/2018
 For Party: 1 MEEMIC INSURANCE COMPANY PL-AE
 Attorney: 25213 - SCHMIDT MICHAEL F
- 12/03/2018 5 Invol Dismissal Warning - No Steno Cert
 Attorney: 31263 - DAVIS JO ROBIN
 Due Date: 12/24/2018
 Comments: No cert for evt#3
- 12/13/2018 6 Transcript Requested By Atty Or Party
 Date: 12/13/2018
 Timely: Y
 Reporter: 6917 - HOOPER REBA O
 Hearings:
 08/02/2018
 Comments: Transcript order from Court Reporting Services

Appellant's Appendix_206a

12/18/2018 7 Steno Certificate - Tr Request Received
Date: 12/13/2018
Timely: Y
Reporter: 6917 - HOOPER REBA O
Hearings:
08/02/2018

01/02/2019 8 Invol Dismissal Warning - No Dkt Stmt
Attorney: 31263 - DAVIS JO ROBIN
Due Date: 01/23/2019

01/07/2019 9 Docketing Statement MCR 7.204H
For Party: 2 JONES ANGELA DF-AT
Proof of Service Date: 01/07/2019
Filed By Attorney: 31263 - DAVIS JO ROBIN

01/07/2019 10 Other
Date: 01/07/2019
For Party: 2 JONES ANGELA DF-AT
Attorney: 31263 - DAVIS JO ROBIN
Comments: Dup cpy of trns req in Evt#6

03/18/2019 11 Transcript Overdue - Notice to Reporter
Mail Date: 03/20/2019
Reporter: 6917 - HOOPER REBA O
Comments: 8/2/18 hrg date

03/21/2019 12 Notice Of Filing Transcript
Date: 03/20/2019
Timely: Y
Reporter: 6917 - HOOPER REBA O
Hearings:
08/02/2018

04/24/2019 13 Brief: Appellant
Proof of Service Date: 04/24/2019
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 31263 - DAVIS JO ROBIN
For Party: 2 JONES ANGELA DF-AT
Comments: E-file appendices not printed for file; Amended Brf - see evt 15

04/25/2019 14 Defective Filing Letter
Event: 13
Defect:
Jurisdictional Statement - Cured

04/29/2019 15 Brief: Amended - Appellant
Proof of Service Date: 04/29/2019
Oral Argument Requested:
Timely Filed:
Filed By Attorney: 31263 - DAVIS JO ROBIN
For Party: 2 JONES ANGELA DF-AT
Comments: Amended to include jurisdictional statement; E-filed appendices not printed for file

05/02/2019 16 Defect Cured
Event: 13
P/S Date: 04/29/2019
Defect:
Jurisdictional Statement - Cured

05/29/2019 17 Brief: Appellee
 Proof of Service Date: 05/29/2019
 Oral Argument Requested: Y
 Timely Filed: Y
 Filed By Attorney: 25213 - SCHMIDT MICHAEL F
 For Party: 1 MEEMIC INSURANCE COMPANY PL-AE

05/30/2019 19 Noticed
 Record: REQST
 Mail Date: 05/31/2019

06/06/2019 20 Electronic Record Filed

06/18/2019 22 Brief: Reply
 Proof of Service Date: 06/18/2019
 Oral Argument Requested:
 Timely Filed:
 Filed By Attorney: 31263 - DAVIS JO ROBIN
 For Party: 2 JONES ANGELA DF-AT

02/04/2020 29 Submitted on Case Call
 District: D
 Item #: 8
 Panel: CMM,BAS,TCC

02/04/2020 30 Oral Argument Audio
 Listen to audio in MP3 format

05/21/2020 33 Opinion - Per Curiam - Unpublished
 View document in PDF format
 Pages: 7
 Panel: CMM,BAS,TCC
 Result: Reversed and Remanded

06/11/2020 34 Motion: Reconsideration of Opinion
 Proof of Service Date: 06/11/2020
 Filed By Attorney: 25213 - SCHMIDT MICHAEL F
 For Party: 1 MEEMIC INSURANCE COMPANY PL-AE
 Fee Code: EPAY
 Answer Due: 06/25/2020

06/24/2020 35 Answer - Reconsideration
 Proof of Service Date: 06/24/2020
 Event No: 34 Reconsideration of Opinion
 For Party: 2 JONES ANGELA DF-AT
 Filed By Attorney: 31263 - DAVIS JO ROBIN

06/30/2020 36 Submitted on Reconsideration Docket
 Event: 34 Reconsideration of Opinion
 District: C

07/07/2020 37 Order: Reconsideration - Deny - Appeal Remains Closed
 View document in PDF format
 Event: 34 Reconsideration of Opinion
 Panel: CMM,BAS,TCC
 Attorney: 25213 - SCHMIDT MICHAEL F

08/04/2020 38 Bill of Costs Filed
 Attorney: 31263 - DAVIS JO ROBIN

08/07/2020 39 Objection to Bill of Costs
 Attorney: 25213 - SCHMIDT MICHAEL F

08/07/2020 40 Costs Taxed Per MCR 7.219
Attorney: 31263 - DAVIS JO ROBIN

08/14/2020 41 Motion: Motion
Filed By Attorney: 31263 - DAVIS JO ROBIN
Comments: Motion to Review Costs

08/17/2020 42 Answer - Motion
Event No: 41 Motion
Filed By Attorney: 25213 - SCHMIDT MICHAEL F

08/18/2020 43 SCt: Application for Leave to SCt
Supreme Court No: 161865
Answer Due: 09/15/2020
Fee: E-Pay
For Party: 1
Attorney: 25213 - SCHMIDT MICHAEL F

08/18/2020 44 SCt Case Caption
Proof Of Service Date: 08/18/2020

08/20/2020 46 Submitted on Special Motion Docket
Event: 41 Motion
District: L

09/09/2020 47 Order: Deny - Generic
View document in PDF format
Event: 41 Motion
Panel: CMM,BAS,TCC
Attorney: 31263 - DAVIS JO ROBIN

09/14/2020 48 SCt: Answer - SCt Application/Complaint
Filing Date: 09/14/2020
For Party: 2 JONES ANGELA DF-AT
Filed By Attorney: 31263 - DAVIS JO ROBIN

10/05/2020 49 SCt: Reply - SCt Application/Complaint
Filing Date: 10/05/2020
For Party: 1 MEEMIC INSURANCE COMPANY PL-AE
Filed By Attorney: 25213 - SCHMIDT MICHAEL F

01/20/2021 50 SCt Order: MOAA -Oral Argument on Lv Appl
View document in PDF format

Case Listing Complete