

ERIE INSURANCE EXCHANGE,  
100 Erie Insurance Place  
Erie, PA 16530,

Plaintiff,

vs.

FRANKLIN RETIREMENT SOLUTIONS,  
INC.,  
2300 Computer Avenue  
Suite J54  
Willow Grove, PA 19090,

JALINSKI ADVISORY GROUP, INC.,  
1400 Hooper Avenue  
Suite 210  
Toms River, NJ 08753,

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Filed and Attested by the  
Office of Judicial Records

COMMERCE PROGRAM

07 JAN 2019 02:43 pm

M. BRYANT

JANUARY TERM, 2019

No. \_\_\_\_\_

### **NOTICE TO DEFEND**

#### **NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

#### **AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita a o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTAT DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SINO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE IENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

Philadelphia Bar Association  
Lawyer Referral and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

Asociacion De Licenciados  
De Filadelfia  
Servicio De Referencia E  
Informacion Legal  
One Reading Center  
Filadelfia, Pennsylvania 19107  
(215) 238-6333  
TTY (215) 451-6197

**FOWLER HIRTZEL MCNULTY &  
SPAULDING, LLP**

**BY:** 

**DATED:** January 7, 2019

---

ALLAN C. MOLOTSKY, ESQUIRE  
DENNIS CHOW, ESQUIRE  
MATTHEW D. VODZAK, ESQUIRE  
Attorneys for Plaintiff  
Erie Insurance Exchange

**FOWLER HIRTZEL MCNULTY &  
SPAULDING, LLP**

BY: ALLAN C. MOLOTSKY, ESQUIRE

E-MAIL: amolotsky@fhmslaw.com

I.D. # 28923

MATTHEW D. VODZAK, ESQUIRE

E-MAIL: mvodzak@fhmslaw.com

I.D. # 309713

2000 MARKET STREET, SUITE 550

PHILADELPHIA, PA 19103

215-789-4848

ERIE INSURANCE EXCHANGE,  
100 Erie Insurance Place  
Erie, PA 16530,

Plaintiff,

vs.

FRANKLIN RETIREMENT SOLUTIONS,  
INC.,

2300 Computer Avenue

Suite J54

Willow Grove, PA 19090,

JALINSKI ADVISORY GROUP, INC.,

1400 Hooper Avenue

Suite 210

Toms River, NJ 08753,

Defendants.

ATTORNEYS FOR PLAINTIFF  
ERIE INSURANCE EXCHANGE

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

COMMERCE PROGRAM

JANUARY TERM, 2019

No. \_\_\_\_\_

**COMPLAINT - ACTION FOR DECLARATORY JUDGMENT**

Plaintiff, Erie Insurance Exchange ("Erie"), by and through its counsel, Fowler Hirtzel McNulty & Spaulding, LLP, alleges against the Defendants as follows:

**PARTIES**

1. Erie is a reciprocal insurance exchange organized under the Insurance Company Law of the Commonwealth of Pennsylvania.

2. Upon information and belief, Defendant, Franklin Retirement Solutions, Inc. (“Franklin Retirement”), is a Pennsylvania corporation or other business, with a place of business at 2300 Computer Avenue, Suite J54, Willow Grove, PA 19090.

3. Upon information and belief, Defendant, Jalinski Advisory Group, Inc. (“Jalinski”), is a New Jersey corporation or other business with a principal place of business at 1400 Hooper Avenue, Suite 210, Toms River, NJ 09753.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction under 42 Pa.C.S.A. §§ 931(a) and 7532, as no other statute or general rule vests exclusive original jurisdiction of this action in another court of this Commonwealth.

5. Venue is proper because Franklin Retirement regularly conducts business in Philadelphia County.

6. Venue is also proper since the underlying action, which is the source of the insurance coverage dispute raised in this action, was filed in the United States District Court for the Eastern District of Pennsylvania, and this District includes Philadelphia County.

### **FACTUAL BACKGROUND**

7. This matter is an insurance coverage dispute related to an action initiated by Jalinski against Franklin Retirement in the United States District Court for the Eastern District of Pennsylvania captioned Jalinski Advisory Group, Inc. v. Franklin Retirement Solutions, Inc., docket number 2:18-cv-00801-AB (the “Underlying Action”). A true and correct copy of the operative complaint in the Underlying Action (the “Underlying Complaint”), is attached and incorporated by reference as **Exhibit “A”**.

8. The Underlying Complaint arises out of claims of willful trademark infringement. See Ex. A., ¶ 1.

9. Specifically, Jalinski alleges that Franklin Retirement has infringed upon Jalinski's registered trademarks "The Financial Quarterback" and "Financial Quarterback" by operating under the name "Your Retirement Quarterback." See Ex. A., ¶¶ 2-3.

10. Jalinski alleges that Franklin Retirement has used the name "Your Retirement Quarterback" in offering its own accounting, tax, business management, financial, financial investment, financial planning, and financial advisory services to Franklin Retirement's clients; education to clients through seminars and online blogs, bulletins, e-books and alerts, public presentations to clients, public appearances and publications and presentations directed to potential clients and the general public; and radio broadcasts, television appearances, and other public appearances, including radio broadcasts that compete directly with, and are heard on the same radio station that carries, Jalinski's radio broadcasts. See Ex. A., ¶ 3.

11. Jalinski alleges that Franklin Retirement's actions violated federal and state law; and that Franklin Retirement has continued in its actions even after receiving a cease-and-desist letter from Jalinski's counsel. See Ex. A., ¶ 3.

12. Jalinski alleges that Franklin Retirement's unlawful conduct has caused and will continue to cause serious and irreparable harm to Jalinski; consumer confusion, dilution, and damages and diminishment of the economic value of Jalinski's trademark. See Ex. A., ¶ 4.

13. In the Underlying Action, Jalinski has sought monetary and injunctive relief for trademark infringement, unfair competition, false designation of origin, and trademark dilution in violation of the Lanham Act, 15 U.S.C. § 1051, et seq.; and related acts of trademark infringement,

unfair competition, unfair and deceptive trade practices and dilution under Pennsylvania law, including 73 P.S. §§ 201-3 and -9.2; and 54 Pa.C.S.A. § 1124. See Ex. A., ¶ 7.

14. Jalinski further alleges that, since early 2006, it has continuously provided financial advisory and investment management services for its clients under the brand name, “The Financial Quarterback.” See Ex. A., ¶ 11.

15. Jalinski alleges that, since at least 2009, Josh Jalinski, in his capacity as president and CEO, has hosted the Radio Programs titled “The Financial Quarterback,” which provides listeners with advice regarding personal finance and wealth/investment management, and is broadcast in the New York and New Jersey area, and is available across the United States on [www.iheartradio.com](http://www.iheartradio.com) and the iHeartRadio app. See Ex. A., ¶ 12.

16. More recently, Josh Jalinski has made numerous and frequent public appearances on broadcast and cable television networks, such as CNBC, in pod casts, and in seminars for actual and potential clients of Jalinski, which Jalinski relies on, in part, to advertise and promote its financial and investment management services. See Ex. A., ¶ 12.

17. Jalinski is the owner of United States Trademark Serial Number 86353875, registered by the United States Patent and Trademark Office (“USPTO”) on April 21, 2015, based on an application filed on July 31, 2014, for the word mark “The Financial Quarterback” in international class 41 for educational and entertainment services; namely, conducting seminars, making personal appearances, performing speaking engagements, radio and television appearances, and ongoing radio programs in the fields of business, finance, investment, money management, and financial planning (the “Class 41 Trademark”). See Ex. A., ¶ 14.

18. Jalinski is the assignee and owner of United States Trademark Serial Number 7752160, registered by the USPTO on April 27, 2010, registration number 3782665, based on an

application filed on June 4, 2009, for word mark “Financial Quarterback” in international class 36 for financial planning and investment advisory services, financial planning for retirement, and other such financial services (the “Class 36 Trademark”). See Ex. A., ¶ 15.

19. Jalinski alleges that the Class 36 trademark has been acknowledged as incontestable under § 15 of the Trademark Act, 15 U.S.C. § 1065. See id.

20. Jalinski is also the owner of U.S. Trademark Serial Number 86314778, registered by the USPTO on November 28, 2017, registration number 5346562, based on an application filed on June 19, 2014, for the word mark “The Financial Quarterback” in international class 36 for financial planning and investment advisory services, financial planning for retirement, and other such financial services (collectively, the “Class 36 Trademarks”). See id.

21. JAG is the owner of U.S. Trademark Serial Number 86318879, registered by the USPTO on November 28, 2017, registration number 5346463, based on an application filed on June 24, 2014, for the word mark “The Financial Quarterback” in international class 35 for connecting buyers and sellers of financial assets, business management consulting (the “Class 35 Trademark”). See Ex. A., ¶ 15.

22. Jalinski also alleges to own the following pending U.S. trademark applications for the word mark “The Financial Quarterback”: serial number 86314005 in international class 42 (mobile application for providing financial advice and financial analysis); serial number 86318839 in international class 16 (printed publications in the fields of finance, investment, money management, and financial planning); and serial number 86318944 in international class 9 (downloadable computer software and electronic newsletters, publications and audio recordings in the field of financial analysis and financial forecasting). See Ex. A., ¶ 17.

23. Jalinski alleges that it is the nationwide common-law owner of the word mark “The Financial Quarterback” by virtue of its use of that term in commerce since at least 2006. See Ex. A., ¶ 18.

24. Jalinski alleges that Franklin Retirement renders business management, financial management, investment management, investment advisory, financial planning, and financial advisory services to its clients in interstate commerce, where Jalinski’s radio programs are regularly available to listeners via over-the-air broadcast radio stations, internet streaming, and otherwise. See Ex. A., ¶ 19.

25. Jalinski alleges that Franklin Retirement has unlawfully repeatedly mimicked and infringed the Financial Quarterback Trademark, by operating under the name “Your Retirement Quarterback,” in offering financial and investment advisory services to its clients and prospective clients on Franklin Retirement’s website, in promotional materials and advertising, and in personal appearances and presentations to its actual and prospective clients. See Ex. A., ¶ 20.

26. Jalinski has also alleged that Franklin Retirement has also unlawfully repeatedly mimicked and infringed the Financial Quarterback Trademark in radio broadcasts, television appearances, and other public appearances, including radio broadcasts that compete directly with, and from time to time have been heard on the same radio station as, Jalinski’s radio broadcasts. See id.

27. Jalinski has alleged that Franklin Retirement has repeatedly mimicked and infringed Jalinski’s Financial Quarterback Trademark to characterize, identify, describe, and market the aforesaid financial and educational services, as well as its radio broadcasts, television appearances, and other public appearances, and continued to do so despite Jalinski’s demands that it cease this conduct. See Ex. A., ¶ 21.



28. Jalinski alleges that Franklin Retirement is not related to or affiliated with Jalinski in any way and has not sought or received a license or authorization from Jalinski for any purpose whatsoever, including the acts described herein. See Ex. A., ¶ 22.

29. Jalinski alleges that Franklin Retirement's infringement of Jalinski's trademark unlawfully wrests from Jalinski control over its reputation and, upon Jalinski's information and belief, is unjustly enriching Franklin Retirement. See Ex. A., ¶ 23.

30. Jalinski alleges that Franklin Retirement's use of the phrase "Your Retirement Quarterback" is confusingly similar to Jalinski's registered marks, and is likely to lead to confusion among consumers as to the identity of the provider of services using such name or mark. See Ex. A., ¶ 24.

31. Jalinski alleges that Franklin Retirement's unauthorized acts have caused and will continue to cause irreparable damage to Jalinski's and its business and goodwill. See Ex. A., ¶ 25.

32. Jalinski further alleges that, upon information and belief, Franklin Retirement has intentionally and willfully violated Jalinski's trademark. See Ex. A., ¶ 26.

33. Counts I, II, and III of the Underlying Complaint are entitled "Trademark Infringement Under Section 32(1) of the Lanham Act (15 U.S.C. § 1114(a)).

34. Count I pertains to Jalinski's Class 41 Trademark.

35. Count II pertains to Jalinski's Class 36 Trademarks

36. Count III pertains to Jalinski's Class 35 Trademark.

37. In Counts I, II, and III, Jalinski alleges that Franklin Retirement's mimicking and use of Jalinski's "Financial Quarterback Trademark" constitutes knowing, willful, and deliberate infringement in violation of Section 32(1) of the Lanham Act. See Ex. A., ¶¶ 28, 33, 38.

38. Jalinski alleges that Franklin Retirement's mimicking and use of "Financial Quarterback Trademark" is likely to cause confusion; cause mistake; and/or deceive as to the affiliation, connection, or association between Franklin Retirement and Jalinski. See Ex. A., ¶¶ 29, 34, 39.

39. Jalinski seeks injunctive relief, recovery of Franklin Retirement's profits, actual damages, enhanced-profits damages, costs, and attorneys' fees. See Ex. A., ¶¶ 31, 36, 41.

40. Counts IV, V, and VI of the Underlying Complaint are entitled Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) for JAG's Class 4, Class 36 Trademarks, and Class 35 Trademark, respectively.

41. Jalinski alleges that Franklin Retirement's mimicking and use of "Financial Quarterback Trademark" constitutes a false designation of origin. See Ex. A., ¶¶ 43, 49, 55.

42. Counts VII, VIII, and IX of the Underlying Complaint are entitled Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)) for JAG's Class 41 Trademark, Class 36 Trademarks, and Class 35 Trademark, respectively.

43. Jalinski alleges that Franklin Retirement's mimicking and use of "Financial Quarterback Trademark" constitutes dilution of Jalinski's trademarks under Section 43(c) of the Lanham Act. See Ex. A., ¶¶ 61-62, 67-68, 73-74.

44. Count X of the Underlying Complaint is entitled Common Law Trademark Infringement and Unfair Competition.

45. Jalinski alleges that Franklin Retirement's mimicking and use of Jalinski's "Financial Quarterback Trademark" constitutes common-law trademark infringement under Pennsylvania law. See Ex. A., ¶ 79.

46. Count XI of the Underlying Complaint for Deceptive Trade Practices under 73 P.S. §§ 201-3 and -9.2 (“UTPCPL”).<sup>1</sup>

47. Jalinski pleads that Franklin Retirement’s actions constitute a violation of the UTPCPL. See Ex. A., ¶ 85.

48. Count XII of the Underlying Complaint is entitled Dilution under 54 Pa.C.S.A. § 1124.

49. Jalinski pleads that Franklin Retirement’s actions constitute a violation of 54 Pa.C.S.A. § 1124. See Ex. A., ¶ 91.

50. For all twelve counts, Jalinski alleges that Franklin Retirement’s conduct was knowing, willful, and in bad faith. See Ex. A., ¶¶ 30, 35, 40, 46, 52, 58, 64, 70, 76, 82, 88, 94.

51. As relief, Jalinski seeks a judgment that Franklin Retirement has willfully infringed Jalinski’s trademarks, willfully engaged in unfair competition, willfully diluted Jalinski’s trademarks; an injunction against further infringement, unfair competition, or dilution; an order directing the destruction of all infringing advertising; an award of Franklin Retirement’s non-duplicative profits; enhanced profits and damages; treble damages; punitive damages; and costs and reasonable attorneys’ fees.

### **THE ERIE POLICY**

52. Erie issued its Ultrapack Plus Policy of Insurance (“Erie Policy”) on a renewal basis to Franklin Retirement Solutions, Policy Number Q461590567, for the policy period of October 15, 2017 to October 15, 2018. A true and correct copy of the Declarations Page of the Erie Policy is attached as **Exhibit “B”**.

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<sup>1</sup> The Underlying Complaint consistently refers to “73 Pa. Stat. Ann. §§ 201-3 & 9.2.” It is apparent that these citations refer to the Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), Act of Dec. 17, 1968, P.L. 1224, No. 387, which is not codified in the Pennsylvania Consolidated Statutes, but can be found in Title 73 of Purdon’s Pennsylvania Statutes.

53. The insuring agreement for Coverage B – Personal or Advertising Injury, is written on form CG 0001 (04/13). A copy of Form CG 0001 (04/13) is attached as **Exhibit “C”**.

54. The insuring agreement for the Erie Policy provides, as follows, in pertinent part:

**COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of ‘personal and advertising injury’ to which this insurance applies. We will have the right and duty to defend the insured against any ‘suit’ seeking those damages. However, we will have no duty to defend the insured against any ‘suit’ seeking damages for ‘personal and advertising injury’ to which this insurance does not apply. . . .

\* \* \*

b. This insurance applies to ‘personal and advertising injury’ caused by an offense arising out of your business but only if the offense was committed in the ‘coverage territory’ during the policy period.

\* \* \*

See Ex. C., at 5.

55. The Erie Policy includes the following relevant exclusions:

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

‘Personal and advertising injury’ caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict ‘personal and advertising injury.’

\* \* \*

**c. Material Published Prior to Policy Period**

‘Personal and advertising injury’ arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

\* \* \*

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

‘Personal and advertising injury’ arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another’s advertising idea in your ‘advertisement’.

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

\* \* \*

**k. Electronic Chatrooms Or Bulletin Boards**

‘Personal and advertising injury’ arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another’s Name or Product**

‘Personal and advertising injury’ arising out of the unauthorized use of another’s name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another’s potential customers.

\* \* \*

**p. Recording And Distribution Of Material Or Information In Violation Of Law**

‘Personal and advertising injury’ arising directly or indirectly out of any action or omission that violates or is alleged to violate:

\* \* \*

4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

\* \* \*

See Ex. C., at 6-7.

56. Section V of the Erie Policy contains the following relevant definitions:

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

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

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

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

\* \* \*

See Ex. C., at 11-14.

57. The policy is also endorsed with endorsement PK-GL (12/14), entitled Punitive Damages Coverage. A copy of endorsement PK-GL (12/14) is attached as **Exhibit “D”**.

58. Endorsement PK-GL (12/14) to the Erie Policy provides, in relevant part, as follows:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

...

**Insuring Agreement of Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

**Insuring Agreement**

We will pay those sums that the insured becomes legally obligated to pay as damages, including vicarious liability for punitive or exemplary damages to the extent allowed by law, because of ‘personal and advertising injury’ to which this insurance applies. We will have the right and duty to defend the insured against any ‘suit’ seeking those damages. However, we will have no duty to defend the insured against any ‘suit’ seeking damages for ‘personal and advertising injury’ to which this insurance does not apply...

This insurance applies to ‘personal and advertising injury’ caused by an offense arising out of your business but only if the offense was committed in the ‘coverage territory’ during the policy period.

\* \* \*

See Ex. D.

59. Erie is defending Franklin Retirement under a full reservation of rights in the Underlying Action.

### **COUNT I – DECLARATORY JUDGMENT**

60. Erie incorporates by reference the preceding paragraphs of this Complaint, as though they were set forth at length herein.

61. Coverage B provides coverage only for personal or advertising injuries.

62. The Underlying Complaint does not allege a personal or advertising injury.

63. Erie accordingly has no duty to defend or indemnify Franklin Retirement in the Underlying Action.

**WHEREFORE**, Erie respectfully requests that the Court enter judgment in its favor, granting the following relief:

(1) Declaring that Erie has no duty to defend Franklin Retirement Solutions, Inc., in the Underlying Action;

(2) Declaring that Erie has no duty to indemnify Franklin Retirement Solutions, Inc., in the Underlying Action; and

(3) Such other and further relief, as the Court deems appropriate.

### **COUNT II – DECLARATORY JUDGMENT**

64. Erie incorporates by reference the preceding paragraphs of this Complaint, as though they were set forth at length herein.

65. The Erie Policy precludes coverage for claims of infringement of copyright, patent, trademark, or trade secret.

66. The Underlying Complaint alleges claims only for trademark infringement, which are not covered by the Erie Policy.

67. Erie accordingly has no duty to defend or indemnify Franklin Retirement in the Underlying Action.



**WHEREFORE**, Erie respectfully requests that the Court enter judgment in its favor, granting the following relief:

- (1) Declaring that Erie has no duty to defend Franklin Retirement Solutions, Inc., in the Underlying Action;
- (2) Declaring that Erie has no duty to indemnify Franklin Retirement Solutions, Inc., in the Underlying Action; and
- (3) Such other and further relief, as the Court deems appropriate.

### **COUNT III – DECLARATORY JUDGMENT**

68. Erie incorporates by reference the preceding paragraphs of this Complaint, as though they were set forth at length herein.

69. The Erie Policy precludes coverage for knowing violation of the rights of another.

70. The Underlying Complaint alleges that Franklin Retirement willfully infringed on the trademarks of Jalinski.

71. Claims of willful infringement are not covered by the Erie Policy.

72. Erie accordingly has no duty to defend or indemnify Franklin Retirement in the Underlying Action.

**WHEREFORE**, Erie respectfully requests that the Court enter judgment in its favor, granting the following relief:

- (1) Declaring that Erie has no duty to defend Franklin Retirement Solutions, Inc., in the Underlying Action;
- (2) Declaring that Erie has no duty to indemnify Franklin Retirement Solutions, Inc., in the Underlying Action; and
- (3) Such other and further relief, as the Court deems appropriate.

#### **COUNT IV – DECLARATORY JUDGMENT**

73. Erie incorporates by reference the preceding paragraphs of this Complaint, as though they were set forth at length herein.

74. Even assuming that the allegations in the Underlying Complaint trigger the insuring agreement of the Erie Policy, which Erie denies, coverage is otherwise precluded by operation of the various other exclusions contained in the Erie Policy.

**WHEREFORE**, Erie respectfully requests that the Court enter judgment in its favor, granting the following relief:

(1) Declaring that Erie has no duty to defend Franklin Retirement Solutions, Inc., in the Underlying Action;

(2) Declaring that Erie has no duty to indemnify Franklin Retirement Solutions, Inc., in the Underlying Action; and

(3) Such other and further relief, as the Court deems appropriate.

#### **COUNT V – DECLARATORY JUDGMENT**

75. Erie incorporates by reference the preceding paragraphs of this Complaint, as though they were set forth at length herein.

76. The Erie Policy expressly precludes coverage for punitive or exemplary damages.

77. Even assuming that the allegations in the Underlying Complaint trigger the insuring agreement of the Erie Policy, which Erie denies, Erie has no duty to indemnify Franklin for any punitive or exemplary damages.

**WHEREFORE**, Erie respectfully requests that the Court enter judgment in its favor, granting the following relief:

(1) Declaring that Erie has no duty to defend Franklin Retirement Solutions, Inc., in the Underlying Action;

(2) Declaring that Erie has no duty to indemnify Franklin Retirement Solutions, Inc.,  
in the Underlying Action; and

(3) Such other and further relief, as the Court deems appropriate.

**FOWLER HIRTZEL MCNULTY &  
SPAULDING, LLP**

**BY:** 

**DATED:** January 7, 2019

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ALLAN C. MOLOTSKY, ESQUIRE  
MATTHEW D. VODZAK, ESQUIRE  
Attorneys for Plaintiff  
Erie Insurance Exchange

VERIFICATION

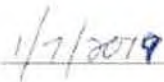
I hereby verify that the statements made by *Erie Insurance Exchange* and contained in the foregoing *Complaint - Action for Declaratory Judgment* are true and correct to the best of my knowledge, information and belief. I understand that any false statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

I certify that I am a duly authorized representative of *Erie Insurance Exchange* and, as such, am authorized to make this Verification on its behalf.

BY:

  
DEBRA W. WILSON  
COMMERCIAL LIABILITY  
CLAIMS SPECIALIST

Dated:



# EXHIBIT "A"

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JALINSKI ADVISORY GROUP, INC.,  
1400 Hooper Avenue  
Suite 210  
Toms River, NJ 08753

Plaintiff,

v.

FRANKLIN RETIREMENT SOLUTIONS, INC.,  
2300 Computer Avenue  
Suite J54  
Willow Grove, PA 19090

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT  
(JURY TRIAL DEMANDED)**

Plaintiff Jalinski Advisory Group, Inc. (“JAG”), for its Complaint against defendant Franklin Retirement Solutions, Inc. (“FRS”), alleges as follows:

**Nature of Action and Relief Sought**

1. All of the claims herein arise out of and are based on FRS’s willful infringement of JAG’s trademark rights, which FRS is well of aware of but chooses to disregard.
2. JAG owns the registered trademarks “The Financial Quarterback” and “Financial Quarterback” (collectively the “Financial Quarterback Trademark”) under which it (a) offers financial advisory and investment management services, and (b) provides educational services in the field of financial and wealth management (the “Educational Services”). JAG provides these services through the following mediums, among others: (1) broadcasts via traditional “over-the

air” radio stations, on-line-streaming through the internet and podcasts, and regularly scheduled, weekly radio programs hosted by radio personality and financial expert Josh Jalinski (“Jalinski”) (the “Radio Programs”); (2) seminars and other educational services for clients and members of the public concerning financial and wealth management; and (3) television, film and other broadcast and public appearances by Jalinski as an educational and motivational speaker concerning financial and wealth management. JAG additionally provides for the dissemination of news, information and education regarding personal finance and wealth/investment management.

3. FRS has used JAG’s Financial Quarterback Trademark, by operating under the name “Your Retirement Quarterback,” in offering (a) its own accounting, tax, business management, financial, financial management, financial planning, and financial advisory services to its clients, (b) education to clients through seminars and on-line blogs, bulletins, e-books and alerts, public presentations to clients, public appearances and publications and presentations directed to potential clients and the general public, and (c) radio broadcasts, television appearances, and other public appearances, including radio broadcasts that compete directly with, and are heard on the same radio station that carries, Jalinski’s radio broadcasts, all in violation of federal and state law. FRS has failed to cease its use of JAG’s trademark even after receiving a cease-and-desist letter from JAG’s counsel.

4. FRS’s unlawful conduct has caused and will continue to cause serious and irreparable harm to JAG. Consumers are likely to be confused as to a perceived affiliation, connection, association, sponsorship, endorsement, approval or permission received from JAG and the Radio Programs that does not exist. FRS’s conduct is likely to dilute the distinctive and source-identifying quality of JAG’s trademark and to damage, erode and diminish the economic

value of JAG's trademark, which JAG alone has the right to commercially exploit.

5. JAG seeks injunctive and monetary relief against FRS's acts of federal trademark infringement, unfair competition, false designation of origin, and trademark dilution in violation of the Lanham Act, 15 U.S.C. § 1051 *et seq.*; and related acts of trademark infringement, unfair competition, unfair and deceptive trade practices and trademark dilution under Pennsylvania law, including 73 Pa. Stat. Ann. §§ 201-3 & 9.2 and 54 Pa. Stat. Ann. § 1124.

#### **The Parties**

6. Plaintiff JAG is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business at 1400 Hooper Avenue, Suite 210, Toms River, NJ 08753. JAG has also maintained locations at 111 Broadway, New York, NY 10006 and at 3379 Route 206 South, Bordentown, NJ 08505.

7. Upon information and belief, defendant FRS is a corporation organized and existing under the laws of the State of Pennsylvania, having a principal address and place of business at 2300 Computer Avenue, Suite J54, Willow Grove, PA 19090.

#### **Jurisdiction and Venue**

8. This Court has jurisdiction under Section 30 of the Lanham Act, 15 U.S.C. § 1121; under Sections 1331, 1338(a) and (b) and 1367(a) of the Judicial Code, 28 U.S.C. §§ 1331, 1338(a) and (b) and 1367(a) (with respect to claims under 73 Pa. Stat. Ann. §§ 201-3 & 9.2 and 54 Pa. Stat. Ann. § 1124; and the common law of the State of Pennsylvania); and under Sections 2201 and 2202 of the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202..

9. Upon information and belief, this Court has personal jurisdiction over Defendant based upon its contacts with this forum, including regularly and intentionally doing business here and/or committing acts giving rise to this lawsuit here.



10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

**Facts Common to All Claims**

**I. Jalinski Advisory Group**

**A. JAG's Brand and Services**

11. Since early 2006, JAG has continuously provided financial advisory and investment management services for its clients under the brand name "The Financial Quarterback."

12. Since at least 2009, Jalinski, in his capacity as JAG's President and CEO, has hosted the Radio Programs titled "The Financial Quarterback," which provide listeners with advice regarding personal finance and wealth/investment management and is broadcast in the New York and New Jersey area on 710 AM WOR, 770 AM WABC and 1160 AM WOBM. The Radio Programs are broadcast weekly in major markets throughout the United States and are available nationally and internationally on [www.iheartradio.com](http://www.iheartradio.com) and the iHeartRadio app. More recently, Jalinski has made numerous and frequent public appearances on broadcast and cable television networks, such as CNBC, in pod casts, and in seminars for actual and potential clients of JAG.

13. JAG relies in part on The Radio Programs to advertise and promote the financial and investment management services provided by JAG.

**B. JAG's Asserted Trademark Rights**

14. JAG is the owner of United States Trademark Serial Number 86353875, registered by the United States Patent and Trademark Office ("USPTO") on April 21, 2015, based on an application filed on July 31, 2014, for the word mark "The Financial Quarterback" in international class 41 for educational and entertainment services; namely, conducting seminars, making personal appearances, performing speaking engagements, radio and television

appearances, and ongoing radio programs in the fields of business, finance, investment, money management, and financial planning (the “Class 41 Trademark”).

15. JAG is the assignee and owner of United States Trademark Serial Number 77752160, registered by the USPTO on April 27, 2010, registration number 3782665, based on an application filed on June 4, 2009, for the word mark “Financial Quarterback” in international class 36 for financial planning and investment advisory services, financial planning for retirement, and other such financial services (the “Class 36 Trademark”). This class 36 trademark has been acknowledged as incontestable pursuant to Section 15 of the Trademark Act, 15 U.S.C. §1065. JAG is also the owner of United States Trademark Serial Number 86314778, registered by the USPTO on November 28, 2017, registration number 5346562, based on an application filed on June 19, 2014, for the word mark “The Financial Quarterback” in international class 36 for financial planning and investment advisory services, financial planning for retirement, and other such financial services (collectively, the “Class 36 Trademarks”).

16. JAG is the owner of United States Trademark Serial Number 86318879, registered by the USPTO on November 28, 2017, registration number 5346563, based on an application filed on June 24, 2014, for the word mark “The Financial Quarterback” in international class 35 for connecting buyers and sellers of financial assets, business management consulting (the “Class 35 Trademark”).

17. JAG is also the owner of the following pending U.S. trademark applications for the word mark “The Financial Quarterback”: serial number 86314005 in international class 42 (mobile application for providing financial advice and financial analysis); serial number 86318839 in international class 16 (printed publications in the fields of finance, investment, money management, and financial planning); and serial number 86318944 in international class

9 (downloadable computer software and electronic newsletters, publications and audio recordings in the field of financial analysis, and financial forecasting).

18. By virtue of using the “Financial Quarterback Trademark” in commerce since at least 2006, JAG has established and is the owner of common law trademark rights for the word mark “The Financial Quarterback.” JAG has also established and now owns common law trademark rights as a result of its use of the mark nationwide.

## **II. Defendant FRS’s Unauthorized Activities**

19. Upon information and belief, FRS renders business management, financial management, investment management, investment advisory, financial planning, and financial advisory services to its clients in interstate commerce, where Jalinski’s Radio Programs are regularly available to listeners via over-the air broadcast radio stations, internet streaming, and otherwise.

20. FRS has unlawfully repeatedly mimicked and infringed the Financial Quarterback Trademark, by operating under the name “Your Retirement Quarterback,” in offering financial and investment advisory services to its clients and prospective clients on FRS’s website, in promotional materials and advertising and in personal appearances and presentations to its actual and prospective clients. FRS has also unlawfully repeatedly mimicked and infringed the Financial Quarterback Trademark in radio broadcasts, television appearances and other public appearances, including radio broadcasts that compete directly with, and from time to time have been heard on the same radio station as, Jalinski’s radio broadcasts.

21. FRS has repeatedly mimicked and infringed JAG’s Financial Quarterback Trademark to characterize, identify, describe and market the aforesaid financial and educational services, as well as its radio broadcasts, television appearances and other public appearances, and

continued to do so notwithstanding JAG's demands that it cease this conduct.

22. FRS is not related to or affiliated with JAG in any way and has not sought or received a license or authorization from JAG for any purpose whatsoever, including the acts described herein.

23. FRS's infringement of JAG's trademark unlawfully wrests from JAG control over its reputation and, upon information and belief, is unjustly enriching FRS.

24. FRS's use of the phrase "Your Retirement Quarterback" is confusingly similar to JAG's registered marks, and is likely to lead to confusion among consumers as to the identity of the provider of services using such name or mark.

25. FRS's unauthorized acts as described herein have caused and will continue to cause irreparable damage to JAG and its business and goodwill unless restrained by this Court.

26. Upon information and belief, and as evidenced by the facts and circumstances alleged above, FRS has intentionally and willfully violated JAG's trademark.

#### **COUNT I**

#### **Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)) (JAG's Class 41 Trademark)**

27. JAG repeats and incorporates herein by reference each of the foregoing allegations.

28. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes knowing, deliberate and willful infringement of JAG's Class 41 Trademark under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

29. FRS's mimicking and use use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods,

services and/or commercial activities.

30. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

31. As a result of FRS's infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

**COUNT II**  
**Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1))**  
**(JAG's Class 36 Trademarks)**

32. JAG repeats and incorporates herein by reference each of the foregoing allegations.

33. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes knowing, deliberate and willful infringement of JAG's Class 36 Trademarks under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

34. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

35. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

36. As a result of FRS's infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

**COUNT III**

**Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1))  
(JAG's Class 35 Trademark)**

37. JAG repeats and incorporates herein by reference each of the foregoing allegations.

38. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes knowing, deliberate and willful infringement of JAG's Class 35 Trademark under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

39. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

40. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

41. As a result of FRS's infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

**COUNT IV**

**Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (JAG's Class 41 Trademark)**

42. JAG repeats and incorporates herein by reference each of the foregoing allegations.

43. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes a false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

45. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the "Financial Quarterback Trademark."

46. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

47. As a result of FRS's infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116 and 1117.

#### **COUNT V**

#### **Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (JAG's Class 36 Trademarks)**

48. JAG repeats and incorporates herein by reference each of the foregoing allegations.

49. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes a false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services



and/or commercial activities.

51. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the "Financial Quarterback Trademark."

52. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

53. As a result of FRS's infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116 and 1117.

#### **COUNT VI**

#### **Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (JAG's Class 35 Trademark)**

54. JAG repeats and incorporates herein by reference each of the foregoing allegations.

55. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes a false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

56. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

57. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for



which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the “Financial Quarterback Trademark.”

58. Upon information and belief, FRS’s aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

59. As a result of FRS’s infringement, JAG is entitled to injunctive relief and is also entitled to recover FRS’s profits, JAG’s non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys’ fees under 15 U.S.C. §§ 1125(a), 1116 and 1117.

**COUNT VII**  
**Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c))**  
**(JAG’s Class 41 Trademark)**

60. JAG repeats and incorporates herein by reference each of the foregoing allegations.

61. As a result of JAG’s popular radio show, JAG’s “Financial Quarterback Trademark” has gained distinctiveness and is entitled to protection against dilution by blurring or tarnishment.

62. FRS’s mimicking and use of JAG’s “Financial Quarterback Trademark” constitutes dilution of JAG’s Class 41 Trademark under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

63. FRS’s mimicking and use of JAG’s “Financial Quarterback Trademark” is likely to dilute the trademark at least by eroding the public’s identification of the trademark with JAG and by lessening the capacity of the trademark to identify and distinguish JAG’s goods and/or services.

64. Upon information and belief, FRS’s aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

65. As a result of FRS's dilution of JAG's "Financial Quarterback Trademark," JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1125(c), 1116 and 1117.

**COUNT VIII**  
**Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c))**  
**(JAG's Class 36 Trademarks)**

66. JAG repeats and incorporates herein by reference each of the foregoing allegations.

67. As a result of JAG's popular radio show, JAG's "Financial Quarterback Trademark" has gained distinctiveness and is entitled to protection against dilution by blurring or tarnishment.

68. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes dilution of JAG's Class 36 Trademarks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

69. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to dilute the trademark at least by eroding the public's identification of the trademark with JAG and by lessening the capacity of the trademark to identify and distinguish JAG's goods and/or services.

70. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

71. As a result of FRS's dilution of JAG's "Financial Quarterback Trademark," JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under

15 U.S.C. §§ 1125(c), 1116 and 1117.

**COUNT IX**

**Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c))  
(JAG's Class 35 Trademark)**

72. JAG repeats and incorporates herein by reference each of the foregoing allegations.

73. As a result of JAG's popular radio show, JAG's "Financial Quarterback Trademark" has gained distinctiveness and is entitled to protection against dilution by blurring or tarnishment.

74. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes dilution of JAG's Class 35 Trademark under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

75. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to dilute the trademark at least by eroding the public's identification of the trademark with JAG and by lessening the capacity of the trademark to identify and distinguish JAG's goods and/or services.

76. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

77. As a result of FRS's dilution of JAG's "Financial Quarterback Trademark," JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, enhanced profits and damages, and costs and reasonable attorneys' fees under 15 U.S.C. §§ 1125(c), 1116 and 1117.

**COUNT X**

**Common Law Trademark Infringement and Unfair Competition**

78. JAG repeats and incorporates herein by reference each of the foregoing

allegations.

79. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes common law trademark infringement and unfair competition with JAG under the common law of the State of Pennsylvania.

80. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

81. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the "Financial Quarterback Trademark."

82. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

83. As a result of FRS's conduct, JAG is entitled to injunctive relief and is also entitled to recover FRS's profits, JAG's non-duplicative actual damages, punitive damages, and costs and reasonable attorneys' fees.

#### **COUNT XI**

##### **Deceptive Trade Practices under 73 Pa. Stat. Ann. §§ 201-3 & 9.2**

84. JAG repeats and incorporates herein by reference each of the foregoing allegations.

85. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes a violation of 73 Pa. Stat. Ann. §§ 201-3 & 9.2.

86. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely

to cause confusion, cause mistake and/or deceive as to the affiliation, connection or association between FRS and JAG, and/or as to JAG's sponsorship or approval of FRS's goods, services and/or commercial activities.

87. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the "Financial Quarterback Trademark."

88. Upon information and belief, FRS's aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

89. As a result of FRS's conduct, JAG is entitled to injunctive relief and is also entitled to recover actual damages, enhanced damages, treble damages, punitive damages, and costs and reasonable attorneys' fees.

**COUNT XII**  
**Dilution under 54 Pa. Stat. Ann. § 1124**

90. JAG repeats and incorporates herein by reference each of the foregoing allegations.

91. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" constitutes a violation of 54 Pa. Stat. Ann. § 1124.

92. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" is likely to dilute the trademark at least by eroding the public's identification of the trademark with JAG and by lessening the capacity of the trademark to identify and distinguish JAG's goods and/or services.

93. FRS's mimicking and use of JAG's "Financial Quarterback Trademark" has caused, and unless enjoined, will continue to cause substantial and irreparable injury to JAG for

which JAG has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the “Financial Quarterback Trademark.”

94. Upon information and belief, FRS’s aforesaid conduct has been undertaken knowingly, willfully and in bad faith.

95. As a result of FRS’s conduct, JAG is entitled to injunctive relief enjoining FRS’s conduct described above.

**Jury Demand**

JAG demands a trial by jury.

**Relief Sought**

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant as follows:

1. Judgment that FRS has:
  - a. Willfully infringed JAG’s Class 41 Trademark, Class 36 Trademarks and Class 35 Trademark in violation of § 1114 of Title 15 in the United States Code;
  - b. Willfully engaged in unfair competition and/or used false designations of origin in violation of § 1125(a) of Title 15 in the United States Code;
  - c. Willfully diluted JAG’s Class 41 Trademark, Class 36 Trademarks and Class 35 Trademark in violation of § 1125(c) of Title 15 in the United States Code;
  - d. Willfully infringed JAG’s “Financial Quarterback Trademark” and engaged in unfair competition in violation of the common law of Pennsylvania;
  - e. Willfully committed unfair and deceptive acts and unfair trade practices in violation of 73 Pa. Stat. Ann. §§ 201-3 & 9.2; and
  - f. Willfully diluted JAG’s “Financial Quarterback Trademark” in violation of 54 Pa. Stat. Ann. § 1124.

2. An injunction prohibiting FRS and each of its agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert therewith from continuing infringement, false designation of origin, unfair competition, and dilution of JAG's "Financial Quarterback Trademark," including at least from selling, offering to sell, distributing or advertising goods and/or services that mimic or use JAG's "Financial Quarterback Trademark;"

3. An order directing the destruction of all advertising materials related to goods and/or services that mimic or use FRS's "Financial Quarterback Trademark;"

4. An award of FRS's non-duplicative profits, JAG's actual damages, enhanced profits and damages, treble damages, punitive damages, and costs and reasonable attorneys' fees for FRS's trademark infringements and dilution, and acts of unfair competition and unfair business practices; and

5. Such other and further relief as this Court deems just and proper.

Date:

2/21/18

BY:

**EARP COHN P.C.**

  
Douglas F. Johnson  
PA Bar ID #40036  
Charles P. Montgomery  
PA Bar ID #309822  
123 S. Broad St., Suite 1030  
Philadelphia, PA 19109  
[dfjohnson@earpcohn.com](mailto:dfjohnson@earpcohn.com)  
Tel.: (215)-963-9520  
Fax: (215) 963-9620

*Counsel for Plaintiff, Jalinski  
Advisory Group, Inc.*

**BARTON LLP**

Maurice N. Ross, Esquire  
420 Lexington Avenue, 18<sup>th</sup> Floor  
New York, NY 10170  
[mross@bartonesq.com](mailto:mross@bartonesq.com)  
Tel.: (212) 687-6262  
Fax.: (212) 687-3667

*Co-Counsel for Plaintiff,  
Jalinski Advisory Group, Inc.*

*Pro Hac Vice Application  
To Be Submitted*



# EXHIBIT "B"

## Ultrapack Plus Policy Declarations Renewal Certificate

**Mailing Name and Address for Insured:**

FRANKLIN RETIREMENT SOLUTIONS  
2300 COMPUTER RD STE J-54  
WILLOW GROVE PA 19090-1742



AA8713

**Other Interest:**

As Listed Below

**Named Insured's Full Name:**

FRANKLIN RETIREMENT SOLUTIONS

**Agent:**

AA8713 ALL COUNTY INSURANCE

**Policy Period:**

10/15/2017 to 10/15/2018

**Policy Number:**

Q461590567

**Agent Address and Phone**

ALL COUNTY INSURANCE  
545 CHESTER PIKE  
PROSPECT PARK PA 19076-1406  
610-586-8600

Policy begins at 12:01 A.M. standard time on the effective date and ends at 12:01 A.M. standard time on the expiration date. Standard time is determined at the stated address of the named insured.

The insurance applies to those premises described below. This is subject to all applicable terms of the policy and attached forms and endorsements.

### Premium Summary

Pay Plan Discount Applies

**Total Annual Policy Premium:**

\$745.00

(This is not a bill. Your invoice will follow in a separate mailing.)

**Property Protection - As Per Attached Supplemental Declarations  
Deductible (Property Protection Only) \$500**

### Policy-Level Coverages

#### Liability Protection

#### Limits of Insurance

#### Commercial General Liability Limits of Insurance

Each Occurrence Limit	\$1,000,000
Damage to Premises Rented to You	\$1,000,000 Any One Premises
Medical Expense limit	\$5,000 Any One Person
Personal & Advertising Injury Limit	\$1,000,000 Any One Person or Organization
General Aggregate Limit	\$3,000,000
Products/Completed Operations Aggregate Limit	\$3,000,000

Insured Name: FRANKLIN RETIREMENT SOLUTIONS  
Policy Number: Q461590567  
Policy Period: 10/15/2017 to 10/15/2018

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**Optional Coverages**

**Deductible**

**Amount of Insurance**

**Policy-Level Optional Coverages:**

**Property and Inland Marine - Optional Coverages:**

Terrorism

Included

**General Liability - Optional Coverages:**

Additional Insured-Managers or Lessors of Premises (CG2011)

Additional Insured-Managers or Lessors of Premises (CG2011)

Insured Name: FRANKLIN RETIREMENT SOLUTIONS  
Policy Number: Q461590567  
Policy Period: 10/15/2017 to 10/15/2018

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## Supplemental Declarations

### Location 1 / Building 1

**Address:**

2300 COMPUTER RD STE J54  
WILLOW GROVE PA 19090-1742

**County:** Montgomery

**Occupancy/Operations:**

Office - NOC

**Interest of Named Insured In Such Premises:** Tenant/Partial

Coverage	Deductible	Amount of Insurance
<b>Property Protection</b>		
1. Buildings		NIL
2. Business Personal Property and Personal Property of Others Replacement Cost Theft Exclusion Applies: No	Property Deductible	\$82,000
3. Income Protection & Extra Expense		Actual Loss Sustained 12 Months
Automatic Adjustment of Business Personal Property and Personal Property of Others Coverage - 1%		

## Policy-Level Additional Interests

**Additional Insured - Managers or Lessors of Premises**

REM-WILLOW GROVE LP  
2300 Computer Ave  
G36

Willow Grove PA 19090-1756

**Additional Insured - Managers or Lessors of Premises**

CRP Commercial Services, LLC  
2300 COMPUTER RD STE G36  
WILLOW GROVE PA 19090-1756

## Schedule of Static Forms

Form Number	Edition Date	Description
/		
UPP	01/10	ULTRAPACK PLUS POLICY
PK0001	09/17 *	ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART
PKAX	01/10	PRODUCTION OR PROCESS MACHINERY - DEDUCTIBLE
CL0209	11/10	IMPORTANT NOTICE - LEAD LIABILITY EXCLUSION
CL0212	11/10 *	IMPORTANT NOTICE - POLICY SERVICE FEES
CL0217	11/10 *	IMPORTANT NOTICE - NO FLOOD COVERAGE
PKGP	01/10	AMENDMENT OF MOBILE EQUIPMENT DEFINITION
PKGT	01/10	AMENDMENT OF OCCURENCE DEFINITION FOR SUBCONTRACTED WORK
PKRG	01/10	PENNSYLVANIA AMENDATORY ENDORSEMENT - LOSS PAYMENT CONDITION
PKRH	01/10	PENNSYLVANIA AMENDATORY ENDORSEMENT - CONDITIONS
PK0003	07/16	ULTRAPACK PLUS EXTRA LIABILITY COVERAGES
CG0001	04/13	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0099	11/85	CHANGES IN GENERAL LIABILITY FORMS FOR COMMERCIAL PACKAGE POLICIES

Insured Name: FRANKLIN RETIREMENT SOLUTIONS  
 Policy Number: Q461590567  
 Policy Period: 10/15/2017 to 10/15/2018

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### Schedule of Static Forms - (continued)

Form Number	Edition Date	Description
CG2011	04/13	ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES
CG2147	12/07	EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2167	12/04	FUNGI OR BACTERIA EXCLUSION
UFB213	11/12 *	SUBSCRIBER'S AGREEMENT
CG2170	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
CG2196	03/05	SILICA OR SILICA-RELATED DUST EXCLUSION
PKGL	12/14	PUNITIVE DAMAGES COVERAGE
CL0396	01/17 *	IMPORTANT NOTICE - DATA BREACH RESPONSE EXPENSES COVERAGE
CG2106	05/14	EXCL-ACCESS OR DISCLOSURE OF CONFIDENT OR PERS INFO AND DATA-RELATED LIAB - WITH LIMIT BOD INJ EXCEP
CG2109	06/15	EXCLUSION - UNMANNED AIRCRAFT
IL0017	11/98	COMMON POLICY CONDITIONS
IL0021	09/08	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
IL0910	07/02	PENNSYLVANIA NOTICE
IL0952	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IL985F	01/15 *	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT
IL0246	09/07	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
PKMJ	01/10	EXCLUSION - LEAD LIABILITY
PKMD	01/10	EXCLUSION - ASBESTOS
PKMQ	12/14	EXCLUSION - PROFESSIONAL LIABILITY
PKRO	01/10	AMENDMENT OF POLICY - TWO OR MORE COVERAGE PARTS

# EXHIBIT "C"

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

### SECTION I – COVERAGES

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

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

- 1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - 2) The "bodily injury" or "property damage" occurs during the policy period; and

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

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

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

- 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

##### 2. Exclusions

This insurance does not apply to:

###### a. Expected Or Intended Injury

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

**b. Contractual Liability**

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

- 1) That the insured would have in the absence of the contract or agreement; or
- 2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

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

- 1) Causing or contributing to the intoxication of any person;
- 2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

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

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

**d. Workers' Compensation And Similar Laws**

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

**e. Employer's Liability**

"Bodily injury" to:

- 1) An "employee" of the insured arising out of and in the course of:
  - a) Employment by the insured; or
  - b) Performing duties related to the conduct of the insured's business; or
- 2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph 1) above.

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

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

**f. Pollution**

- 1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;



- ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
  - iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - i) Any insured; or
    - ii) Any person or organization for whom you may be legally responsible; or
  - d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- 2) Any loss, cost or expense arising out of any:
- a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
- g. Aircraft, Auto Or Watercraft**
- "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- 1) A watercraft while ashore on premises you own or rent;
- 2) A watercraft you do not own that is:
  - a) Less than 26 feet long; and
  - b) Not being used to carry persons or property for a charge;
- 3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- 4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- 5) "Bodily injury" or "property damage" arising out of:
  - a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - b) The operation of any of the machinery or equipment listed in Paragraph f.2) or f.3) of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- 1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- 2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **j. Damage To Property**

"Property damage" to:

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

Paragraphs 1), 3) and 4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

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

Paragraphs 3), 4), 5) and 6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

#### **l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

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

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

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

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

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- 1) "Your product";
- 2) "Your work"; or
- 3) "Impaired property";

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

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- 1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

- 2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

- 3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- 4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III – Limits Of Insurance.**

**COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

**I. Insuring Agreement**

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

- 1) The amount we will pay for damages is limited as described in Section **III – Limits Of Insurance**; and
- 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

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

### j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- 1) Advertising, broadcasting, publishing or telecasting;
- 2) Designing or determining content of web sites for others; or
- 3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

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

### k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

### l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

### m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

### n. Pollution-related

Any loss, cost or expense arising out of any:

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

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- 1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- 2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- 3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- 4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**COVERAGE C – MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- 1) On premises you own or rent;
- 2) On ways next to premises you own or rent; or
- 3) Because of your operations;

provided that:

- a) The accident takes place in the "coverage territory" and during the policy period;
- b) The expenses are incurred and reported to us within one year of the date of the accident; and
- c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- 1) First aid administered at the time of an accident;
- 2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- 3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.



- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - 1) Agrees in writing to:
      - a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - c) Notify any other insurer whose coverage is available to the indemnitee; and

- d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

2) Provides us with written authorization to:

- a) Obtain records and other information related to the "suit"; and
- b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

I. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

1) "Bodily injury" or "personal and advertising injury":

a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph 1)a) above;

c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph 1)a) or b) above; or

d) Arising out of his or her providing or failing to provide professional health care services.

2) "Property damage" to property:

a) Owned, occupied or used by;

b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

1) With respect to liability arising out of the maintenance or use of that property; and

2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage C;

b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage A; and

b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- 1) How, when and where the "occurrence" or offense took place;
- 2) The names and addresses of any injured persons and witnesses; and
- 3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- 1) Immediately record the specifics of the claim or "suit" and the date received; and
- 2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- 1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- 2) Authorize us to obtain records and other information;

- 3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- 4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### **4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

###### **a. Primary Insurance**

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

###### **b. Excess Insurance**

- 1) This insurance is excess over:

- a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or



iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

b) The total of all deductible and self-insured amounts under all that other insurance.

4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

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

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

#### 7. Separation Of Insureds

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

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

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

#### 8. Transfer Of Rights Of Recovery Against Others To Us

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

#### 9. When We Do Not Renew

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

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

#### SECTION V – DEFINITIONS

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

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

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

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

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

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - 1) Goods or products made or sold by you in the territory described in Paragraph a. above;
  - 2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
  - 3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

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

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

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

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

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

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) Power cranes, shovels, loaders, diggers or drills; or
  - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

- 1) Equipment designed primarily for:
  - a) Snow removal;
  - b) Road maintenance, but not construction or resurfacing; or

c) Street cleaning;

- 2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

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

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - 1) Products that are still in your physical possession; or
  - 2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- a) When all of the work called for in your contract has been completed.
- b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

- b. Does not include "bodily injury" or "property damage" arising out of:
  - 1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - 2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - 3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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

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

21. "Your product":

a. Means:

- 1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - a) You;
  - b) Others trading under your name; or
  - c) A person or organization whose business or assets you have acquired; and
- 2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- 2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- 1) Work or operations performed by you or on your behalf; and
- 2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- 2) The providing of or failure to provide warnings or instructions.

# EXHIBIT “D”



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PUNITIVE DAMAGES COVERAGE**

### **INDIANA, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**A. Insuring Agreement of Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

**1. Insuring Agreement**

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

- 1) The amount we will pay for damages is limited as described in Section **III** - Limits of Insurance; and
- 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - 2) The "bodily injury" or "property damage" occurs during the policy period; and
  - 3) Prior to the policy period, no insured listed under Paragraph 1. of Section **II** - Who Is An Insured and no "employee" authorized

by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section **II** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end to the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **II** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**B. Insuring Agreement of Section I - Coverage B - Personal And Advertising Injury Liability** is replaced by the following:

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages, including vicarious liability for punitive or exemplary damages to the extent allowed by law, because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

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

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

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.