

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 770237

THEODORE N. LERNER, et al.

Appellants

v.

GENERAL INSURANCE COMPANY OF AMERICA

Appellee

APPENDIX

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MOTION FOR JUDGMENT

TO: THE HONORABLE JUDGES OF THE  
CIRCUIT COURT OF FAIRFAX COUNTY

COMES NOW the Plaintiff, Tysons Corner Regional Shopping Center, and moves this Honorable Court for judgment against the Defendant in the amount of Four Thousand Seven Hundred Eleven Dollars (\$4,711.00) plus costs and interest, and in support thereof states as follows:

COUNT I

1. Plaintiff, Tysons Corner Regional Shopping Center, is a general partnership organized under the laws of the State of Maryland, the general partners of which are H. Max Ammerman and Josephine Ammerman, his wife, Theodore N. Lerner and Annette M. Lerner, his wife, and the Gudelsky Company, a general partnership organized under the laws of the State of Maryland, the general partners of which are Homer S. Gudelsky and the Estate of Isadore Gudelsky, deceased. All are hereinafter collectively referred to as "Tysons."

2. The Defendant, General Insurance Company of America, t/a Safeco Insurance, is a corporation organized under the laws of

the State of Washington, and is authorized to do business in Virginia and conducts an insurance business in Virginia, and is hereinafter called "Safeco."

3. On or about July 22, 1971, Defendant issued a Blanket Liability Insurance Policy, Number CP 233415, whereby Safeco became legally obligated to pay on behalf of Tysons all sums which Tysons should become legally obligated to pay as damages because of bodily injury or property damage to which the said insurance applied, caused by an occurrence.

4. Under the terms of the said policy, the Defendant was further required to defend any suit against the Plaintiff seeking damages against the Plaintiff because of bodily injury even if the allegations of the suit are groundless, false or fraudulent.

5. On April 30, 1974, a suit styled Patricia P. Cassidy, et al v. Tysons Corner Regional Shopping Center, et al, Law No. 31241 was filed against the Plaintiff in the Circuit Court of Fairfax County seeking damages on account of alleged bodily injury to Michelle Cassidy on August 8, 1973 at Tysons Corner Regional Shopping Center. (The parties plaintiff in said suit are hereinafter collectively referred to as "Cassidy").

6. The policy of insurance hereinabove referred to was in full force and effect on the date of said alleged injury.

7. The events alleged by Cassidy constituted an "occurrence" as defined in said policy.

8. Said policy contains no exclusion from coverage for punitive damages or claims for punitive damages and "applies" to such claims.

9. The Defendant, Safeco, through its representatives, advised the plaintiff that Safeco would defend Tysons against the claim of Cassidy for compensatory damages only, and that Tysons should secure separate representation for the punitive

damages claimed by Cassidy.

10. The Defendant, Safeco, through its representatives, further advised Tysons that Safeco would decline to pay any award for punitive damages and engaged in a course of conduct which caused Tysons to reasonably fear that any defense presented by Safeco would be primarily directed to Cassidy's claim for compensatory damages, and not toward defeating and/or minimizing Cassidy's claim for punitive damages.

11. Whether or not Safeco would voluntarily pay any punitive damages awarded Cassidy against Tysons, Plaintiff had a substantial interest in avoiding a judgment for punitive damages, and Safeco had an obligation to present such defense vigorously and competently.

12. Tysons was obliged to secure separate representation to raise all matters of defense to Cassidy's claim for punitive damages, and upon trial of the case, said claim was stricken as a matter of law by the trial judge at the conclusion of the presentation of Plaintiff's evidence, all of which inured to the benefit of Safeco.

13. As a direct result of Safeco's refusal to defend Tysons in accordance with terms of the policy and Safeco's assertion that it would not pay any punitive damages awarded in favor of Cassidy against Tysons, although Safeco was in fact obliged to pay such damages, Tysons reasonably incurred attorneys fees and expenses in the sum of \$4,111.00.

#### COUNT II

1. Paragraphs 1, 2, 3 and 4 of Count I are hereby incorporated by reference herein.

2. On August 10, 1973, a suit styled Wayne Wilt, et ux v. H. Max Ammerman, et al, Law No. 29702, was filed against the Plaintiff herein in the Circuit Court of Fairfax County seeking

damages to Plaintiff's automobile on May 12, 1972 as a result of an incident commencing at the Tysons Corner Regional Shopping Center. (The Plaintiffs in said suit are hereinafter referred to as "Wilt").

3. The policy of insurance hereinabove referred to was in full force and effect on the date of said alleged incident.

4. The events alleged by Wilt constituted an "occurrence" as defined in said policy.

5. Said policy contains no exclusion from coverage for punitive damages or claims for punitive damages and "applies" to such claims.

6. The Defendant, Safeco, through its representatives, advised the Plaintiff that Safeco would defend Tysons against the claim of Wilt for compensatory damages only, and that Tysons should secure separate representation for the punitive damages claimed by Wilt.

7. The Defendant, Safeco, through its representatives, further advised Tysons that Safeco would decline to pay any award for punitive damages and engaged in a course of conduct which caused Tysons to reasonably fear that any defense presented by Safeco would be primarily directed to Cassidy's claim for compensatory damages, and not toward defeating and/or minimizing Wilt's claim for punitive damages.

8. Whether or not Safeco would voluntarily pay any punitive damages awarded Wilt against Tysons, Plaintiff had a substantial interest in avoiding a judgment for punitive damages, and Safeco had an obligation to present such defense vigorously and competently.

9. Tysons was obliged to secure separate representation to raise all matters of defense to Wilt's claim for punitive damages, and upon trial of the case, said claim was dismissed with prejudice upon the motion of Wilt, all of which inured to the

benefit of Safeco.

10. As a direct result of Safeco's refusal to defend Tysons in accordance with terms of the policy and Safeco's assertion that it would not pay any punitive damages awarded in favor of Wilt against Tysons, although Safeco was in fact obliged to pay such damages, Tysons reasonably incurred attorneys fees in the sum of \$600.00.

WHEREFORE, Plaintiff, Tysons Corner Regional Shopping Center moves for judgment against the Defendant, General Insurance Company of America, in the sum of \$4,111.00 with interest on \$4,111.00 from May 14, 1975 and on \$600.00 from February 18, 1975 and its costs.

TYSONS CORNER REGIONAL SHOPPING CENTER

ANSWER AND GROUNDS OF DEFENSE

Comes now General Insurance Company of America, by counsel, and for Answer and Grounds of Defense to the plaintiff's Motion for Judgment, states as follows:

COUNT I

1. The defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of Count I of the plaintiff's Motion for Judgment.

2. The defendant denies the allegations in Paragraph 9 of Count I of the plaintiff's Motion for Judgment.

3. The defendant admits that it advised Tysons that Safeco would decline to pay any award for punitive damages but denies the remaining allegations contained in Paragraph 10 of the plaintiff's Motion for Judgment.

4. The defendant admits that the plaintiff had a substantial interest in avoiding a judgment for punitive damages as alleged in Paragraph 11 of the plaintiff's Motion for Judgment but denies that it had an obligation to defend a claim for punitive damages as alleged in Paragraph 11 of Count I of the plaintiff's Motion for Judgment.

5. The defendant denies that Tysons was obliged to secure separate representation as alleged in Paragraph 12 of Count I of the plaintiff's Motion for Judgment, admits that the claim was stricken as a matter of law by the trial Judge and states that there may have been some benefit to Safeco, but that

this benefit is primarily the plaintiff's.

6. The defendant denies the allegations contained in Paragraph 13 of Count I of the plaintiff's Motion for Judgment.

## COUNT II

1. The defendant reasserts and adopts its answers set forth above to Paragraphs 1, 2, 3 and 4 of Count I.

2. The defendant admits the allegations contained in Paragraphs 2, 3, 4 and 5 of Count II of the plaintiff's Motion for Judgment.

3. The defendant denies the allegations in Paragraph 6 of Count II of the plaintiff's Motion for Judgment.

4. The defendant admits that it advised Tysons that Safeco would decline to pay any award for punitive damages but denies the remaining allegations contained in Paragraph 7 of the plaintiff's Motion for Judgment.

5. The defendant admits that the plaintiff had a substantial interest in avoiding a judgment for punitive damages as alleged in Paragraph 8 of the plaintiff's Motion for Judgment but denies that it had an obligation to defend a claim for punitive damages as alleged in Paragraph 8 of Count II of the plaintiff's Motion for Judgment.

6. The defendant denies that Tysons was obliged to secure separate representation as alleged in Paragraph 9 of Count II of the plaintiff's Motion for Judgment, admits that the claim was stricken as a matter of law by the trial Judge and states that there may have been some benefit to Safeco, but that this benefit is primarily the plaintiff's.

7. The defendant denies the allegations contained in Paragraph 10 of Count II of the plaintiff's Motion for Judgment.

8. For further answer to the plaintiff's Motion for Judgment, the defendant states:

- 7 - That its policy of insurance in force at the

for Judgment covered claims for compensatory damages only.

b. That the defendant fully and completely performed under the contract of insurance which was in force at the time of the alleged occurrence.

c. That as a matter of law, there was no obligation on the part of the defendant to pay on behalf of the plaintiff any recovery that may have been made by the plaintiffs in the two suits filed against the plaintiff as set forth in the plaintiff's Motion for Judgment for punitive damages or to defend a claim or claims for punitive damages.

WHEREFORE, having fully answered the plaintiff's Motion for Judgment, the defendant states that this cause of action should be dismissed, and that the defendant should be awarded a judgment for its costs in defending this cause of action.

GENERAL INSURANCE COMPANY OF AMERICA

ORDER

THIS MATTER came on to be heard this 1st day of NOV, 1976, upon the motion of the Plaintiff requesting the Court to permit the Plaintiff to non-suit Count II of the Motion for Judgment filed herein, and

IT APPEARING to the Court that the Plaintiff's motion to non-suit Count II of the Motion for Judgment should be granted, it is

ORDERED and DECREED that the Plaintiff herein is permitted to non-suit Count II of the Motion for Judgment, and

The Clerk of the Court is directed to enter the non-suit of Count II of the Motion for Judgment.

ENTERED this 1st day of NOV, 1976.

STIPULATION OF FACTS

COME NOW the parties hereto, by counsel, and enter into the following stipulation of facts:

1. On or about July 22, 1971, Defendant General Insurance Company of America, t/a Safeco Insurance (hereinafter referred to as "Safeco") issued a Blanket Liability Insurance Policy, Number CP 233415, (a copy of which is attached and is incorporated by reference) whereby Safeco became legally obligated to pay on behalf of Tysons Corner Regional Shopping Center (hereinafter referred to as "Tysons") all sums which Tysons should become legally obligated to pay as damages because of bodily injury or property damage to which the said insurance applied, caused by an "occurrence."

2. Under the terms of the said policy, Safeco was further required to defend any suit against Tysons seeking damages against it because of bodily injury even if the allegations of the suit are groundless, false or fraudulent.

3. On April 30, 1974, a suit styled Patricia P. Cassidy, et. al v. Tysons Corner Regional Shopping Center, et. al, Law No. 31241 was filed against the Plaintiff in the Circuit Court of Fairfax County seeking compensatory damages in the amount of \$50,000 and punitive damages in the amount of \$500,000 on account of alleged bodily injury to Michelle Cassidy on

August 8, 1973 at Tysons Corner Regional Shopping Center. (The parties plaintiff in said suit are hereinafter collectively referred to as "Cassidy").

4. On August 10, 1973, a suit styled Wayne Wilt, et ux v. H. Max Ammerman, et. al., Law No. 29702, was filed against the Plaintiff herein in the Circuit Court of Fairfax County seeking compensatory damages in the amount of \$ 50,000 and punitive damages in the amount of \$ 250,000 on account of injury to Plaintiff's automobile on May 12, 1972 as a result of an incident commencing at the Tysons Corner Regional Shopping Center. (The Plaintiffs in said suit are hereinafter referred to as "Wilt").

5. The policy of insurance hereinabove referred to was in full force and effect on the date of the said alleged injuries.

6. The events alleged by Cassidy and Wilt constituted "occurrences" as defined in said policy.

7. Said policy contains no exclusion from coverage for punitive damages or claims for punitive damages.

8. Tysons made timely demand on Safeco to defend Plaintiff against the claims of Cassidy and Wilt for compensatory and punitive damages.

9. The Defendant, Safeco, through its representatives, advised the Plaintiff that Safeco would defend Tysons against the claims of Cassidy and Wilt for compensatory damages only, and that Tysons should secure separate legal representation for the punitive damages claimed by Casssidy and Wilt.

10. The Defendant, Safeco, through its representatives, further advised Tysons Corner that Safeco would decline to pay any award for punitive damages.

11. Whether or not Safeco would voluntarily pay any punitive damages awarded Cassidy or Wilt or both against Tysons,

Plaintiff had a substantial interest in avoiding a judgment for punitive damages.

12. Tysons was obliged to secure separate legal representation to raise all matters of defense to the claims for punitive damages and Tysons personal counsel participated in both trials. Upon trial of the cases, Cassidy's claim for punitive damages was stricken as a matter of law by the trial judge at the conclusion of the presentation of Plaintiff's evidence and Wilt's claim was dismissed with prejudice upon the motion of Wilt, all of which inured to the benefit of Safeco.

13. As a direct result of Safeco's refusal to defend Tysons in accordance with terms of the policy and Safeco's assertion that it would not pay any punitive damages awarded in favor of Cassidy or Wilt or both against Tysons, Tysons incurred attorney's fees and expenses in the sum of \$4,111.00.

TYSONS CORNER REGIONAL SHOPPING CENTER



Commercial Policy

MPP ACCOUNT NO.

BLANKET LIABILITY INSURANCE

Item 1. Named Insured and P.O. Address (Number, Street, Town, County, State, ZIP Code)

TYSONS CORNER CENTER, INC.  
P.O. 1455  
WHEATON, MONTGOMERY, MARYLAND

Business of Named Insured is: SHOPPING CENTER

The Named Insured is  Individual  Corp.  Partnership  Joint Venture  Other

Item 2. Policy Term 3 Years 7-22-71 Inception 7-22-74 Expiration

Item 3. The insurance afforded shall apply in accordance with the following DECLARATIONS as stated herein.  
CF 045

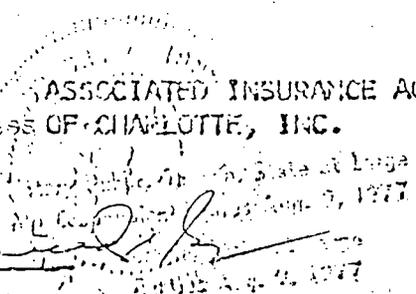
Item 4. Provisional premium subject to audit:



GENERAL INSURANCE COMPANY OF AMERICA  
Home Office/ Seattle, Washington

\$21,483. 3 YEAR ADVANCE

I Jack B. Edmonds, Jr. Notary Public  
Georgia State At Large Certify this is a true and exact copy of the original as witnessed by me.



This 23, January 1975

CHARLOTTE, N.C. 8-18-71

BLANKET LIABILITY INSURANCE  
(COVERAGE SUPPLEMENT)

1. COVERAGE A - BODILY INJURY - except Automobile  
COVERAGE B - PROPERTY DAMAGE - except Automobile  
COVERAGE L - PERSONAL LIABILITY

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence. The company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient. The company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

- (a) to bodily injury or property damage included within the war hazard with respect to liability assumed by the insured under any contract or agreement or expenses for first aid under the Supplementary Payments provision;
- (b) to any obligation for which the insured or any carrier as his insuree may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (c) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured; but this exclusion does not apply to (1) any domestic employee, or (2) liability assumed by the insured under any contract;
- (d) to property damage: (1) to property owned or transported by the insured; (2) to property occupied by or rented to the insured, except damage to a rented residence or private garage caused by a private passenger automobile; (3) to property under bailment to the insured (except injury to or destruction of such property arising out of the use of elevators or escalators or to liability assumed under sidetrack agreements); (4) to that particular part of any property (i) upon which operations are being performed by or on behalf of the insured, or (ii) out of which such injury or destruction arises; (5) to premises alienated by the named insured arising out of such premises or any part thereof; (6) to the named insured's products arising out of such products or any part of such products; (7) to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; But parts (2) and (3) of this exclusion do not apply under Coverage L to property damage included within the fire hazard;
- (e) to bodily injury or property damage resulting from the failure of the named insured's products or work completed by or for the named insured to perform the function or serve the purpose intended by the named insured, if such failure is due to a mistake or deficiency in any design, formula, plan, specifications, advertising material or printed instructions prepared or developed by any insured; but this exclusion does not apply to bodily injury or property damage resulting from the active malfunctioning of such products or work;
- (f) to damages, because of property damage, due:
  - (1) to the cost of repairing or replacing any defective goods or products manufactured, sold, handled or distributed by the named insured or defective work completed by or for the named insured;
  - (2) to the loss of use of any such defective goods or products or completed work, or to damages resulting from the loss of use of such defective goods or products or completed work;

- (g) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (h) to contractual liability assumed by the insured, if the insured or his indemnitee is an architect, engineer or surveyor, for bodily injury or property damage arising out of professional services performed by such insured or indemnitee, including
  - (1) the preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications and
  - (2) supervisory, inspection or engineering services.
- (i) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
  - (1) any automobile or aircraft owned or operated by or rented or loaned to the named insured, or
  - (2) any other automobile or aircraft operated by any person in the course of his employment by the named insured;

but this exclusion does not apply (i) to the parking of an automobile on insured premises, if such automobile is not owned by or rented or loaned to the named insured, or (ii) under Coverage L to bodily injury to any domestic employee arising out of and in the course of his employment by any insured except while such employee is engaged in the operation or maintenance of aircraft;

- (j) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to the named insured;
- (k) under Coverage L, to any liability or injury arising out of or in connection with any business, or the rendering or omission of any professional services.

2. COVERAGE E - PREMISES MEDICAL EXPENSES

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

Exclusions

This insurance does not apply

- (a) to bodily injury
  - (1) arising out of the ownership, maintenance, operation, use, loading or unloading of
    - (i) any automobile or aircraft owned or operated by or rented or loaned to the named insured, or
    - (ii) any other automobile or aircraft operated by any person in the course of his employment by the named insured;but this exclusion does not apply to the parking of an automobile on the insured premises, if such automobile is not owned by or rented or loaned to the named insured;
  - (2) arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft, if the bodily injury occurs away from the insured premises; or
  - (3) arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to the named insured;
- (b) to bodily injury
  - (1) included within the completed operations hazard or the products hazard;
  - (2) arising out of operations performed for the named

(continued on reverse side)

include changing the size of or moving buildings or other structures.

- (3) resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, but this exclusion (b)(3) applies only if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or is an owner or lessor of premises used for such purposes;
- (4) included within the war hazard;

c) to bodily injury

- (1) to the named insured, any partner therein, any tenant or other person regularly residing on the insured premises or any employee of any of the foregoing if the bodily injury arises out of and in the course of his employment therewith;
  - (2) to any other tenant if the bodily injury occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the bodily injury occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;
  - (3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;
  - (4) to any person if any benefits for such bodily injury are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
  - (5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;
- (d) to any medical expense for services by the named insured, any employee thereof or any person or organization under contract to the named insured to provide such services.

#### COVERAGE M - PERSONAL MEDICAL PAYMENTS

The company will pay to or for each person who sustains bodily injury caused by accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury (a) is sustained while on the insured premises or (b) is sustained elsewhere and (1) arises out of a condition in the insured or arises on the ways immediately adjoining on land, or (2) is caused by any insured, by any domestic employee in the course of his employment by an insured, or by any animal owned by or in the care of any insured or (3) is sustained by any domestic employee and arises out of and in the course of his employment by any insured.

#### Exclusions

This coverage does not apply:

- (a) to bodily injury arising out of any act or omission in connection with premises (other than the insured premises) owned, rented or controlled by any insured, but this exclusion does not apply to bodily injury sustained by any domestic employee arising out of and in the course of his employment by any insured;
- (b) to bodily injury arising out of (1) business pursuits of any insured except activities therein which are ordinarily incident to non-business pursuits or (2) the rendering of or failing to render professional services;
- (c) to bodily injury included within (1) the aircraft hazard or (2) the war hazard;
- (d) to bodily injury to any person, including a domestic employee, if any person or organization has a policy providing workmen's compensation or occupational disease benefits for such bodily injury or if benefits for such bodily injury are in whole or in part either payable or required to be provided under any workmen's compensation or occupational disease law;
- (e) to bodily injury to (1) any insured under parts (a) and (c)(1) of "Persons Insured," (2) any person, other than a domestic employee, regularly residing on any part of the

#### 4. COVERAGE N - PHYSICAL DAMAGE TO PROPERTY

The company will at its option either (a) pay for the actual cash value of property physically injured or destroyed during the policy period by any insured, or (b) repair or replace such property with other property of like quality and kind, but the limit of the company's liability under Coverage N for "each occurrence" shall not exceed \$250.00.

#### Exclusions

This coverage does not apply to injury or destruction:

- (a) of property owned by or rented to any insured, any tenant of any insured or any resident of the named insured's household;
- (b) caused intentionally by any insured over twelve years old;
- (c) arising out of (1) any act or omission in connection with premises (other than the insured premises) owned, rented or controlled by any insured, (2) business pursuits or professional services or (3) the ownership, maintenance, operation, use, loading or unloading of any land motor vehicle, trailer or semi-trailer, farm machinery or equipment, aircraft or watercraft.

#### 5. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured and, if an individual, the spouse of such named insured if a resident of the same household;
  - (b) for Coverages A and B
    - (1) if the named insured is designated in the declarations as (i) a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
    - (ii) other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
  - (2) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and
  - (3) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,
    - (i) an employee of the named insured while operating any such equipment in the course of his employment, and
    - (ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;
- provided that no person or organization shall be an insured under this paragraph (3) with respect to:
- (i) bodily injury to any fellow employee of such person injured in the course of his employment, or
  - (ii) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).
- This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.
- (c) for Coverages L, M and N
    - (1) if residents of the named insured's household, his spouse, the relatives of either, and any other person under the age of twenty-one in the care of any insured;
    - (2) under Coverages L and M, with respect to animals and watercraft owned by any insured, any person or organization legally responsible therefor, except a

- (3) under Coverages L and M, with respect to farm tractors and trailers and self propelled or motor or animal drawn farm implements, any employee of any insured while engaged in the employment of the insured.

## LIMITS OF LIABILITY

Regardless of the number of insureds under this policy, the company's liability is limited as follows.

### (a) Coverages A and B -

#### (1) Divided Limits Plan

(i) The limit of bodily injury liability expressed in the additional declarations as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one occurrence; but the total liability of the company for all damages because of bodily injury sustained by two or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the declarations as applicable to "each occurrence." The total liability of the company for all damages because of (A) all bodily injury included within the completed operations hazard and (B) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the declarations as "aggregate."

(ii) The total liability of the company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the declarations as applicable to "each occurrence." The total liability of the company for all damages because of all property damage to which this coverage applies shall not exceed the limit of property damage liability stated in the declarations as "aggregate."

Such aggregate limit shall apply separately with respect to each project away from premises owned by or rented to the named insured.

Aggregate limits of liability as stated in this policy shall apply separately to each annual policy period.

#### (2) Combined Limits Plan

The limit of liability under the Combined Limits Plan expressed in the additional declarations as applicable to "each occurrence" is the total limit of the company's liability under the bodily injury liability and property damage liability coverages combined for all damages as the result of any one occurrence provided:

- (i) with respect to all damages included within the (A) completed operations hazard and the (B) products hazard, such limit of liability shall be the total limit of the company's liability during each annual policy period as the result of one or more than one occurrence;
- (ii) with respect to all damages arising out of property damage (other than the completed operation hazard, or the products hazard) such limit of liability shall be the total limit of the company's liability during each annual policy period as the result of one or more than one occurrence, but said limit of liability shall apply separately to each project with respect to operations being performed away from premises owned by or rented to the insured;
- (iii) with respect to any occurrence for which the notice of this policy is given in lieu of security, such limit of liability shall be applied in accordance with the applicable terms of such law, except that the total limit of liability shall not be reduced.

For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

"person" is the limit of the company's liability for all medical expense for bodily injury to any one person as the result of any one accident, but subject to the above provision respecting "each person," the total liability of the company under Premises Medical Payments Coverage for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the declarations as applicable to "each accident."

### (c) Coverage L -

The limits of liability afforded for Coverages A and B shall apply to Coverage L, provided the limits of liability so afforded shall not be less than: \$25,000 per person and \$25,000 each occurrence for bodily injury; \$25,000 each occurrence for property damage liability; or if combined limits, \$25,000 each occurrence.

### (d) Coverage M -

The limit of liability stated in the declarations as applicable to "each person" is the limit of the company's liability under Coverage M for all medical expense for bodily injury to any one person as the result of any one accident, but subject to the above provision respecting "each person," the total liability of the company under Coverage M for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the declarations as applicable to "each accident."

### (e) Coverages E and M -

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

## 7. POLICY PERIOD

This insurance applies only to bodily injury or property damage which occurs: (a) for Coverages A and B, during the policy period within the policy territory; (b) for Coverages L and M, during the policy period; (c) for Coverage E, during the policy period within the United States of America, its territories or possessions, or Canada.

## 8. ADDITIONAL DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

- (a) "aircraft hazard" includes bodily injury and property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any aircraft but this hazard does not include bodily injury to any domestic employee arising out of and in the course of his employment by any insured except while such employee is engaged in the operation or maintenance of aircraft;
- (b) "business" means any professional, commercial occupation or industrial enterprise, except (1) activities which are ordinarily incident to non-business pursuits; (2) activities of an incidental business nature (not the regular business or occupation of an insured) while conducted on the insured premises or on vacant land owned or rented to an insured; (3) one, two, three or four family dwellings (including outbuildings), farms and farm land when such are rented or held for rental to others by an insured; (4) acts or activities of the named insured or spouse incident to his or her employment by another, except (i) while operating commercial or industrial machinery or equipment; or (ii) while engaged in rendering professional services (other than teaching); or (iii) while holding an elective or appointive office of a municipal, county, state or federal government;
- (c) "contractual liability" means liability expressly assumed under a contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;
- (d) "domestic employee" means an employee of an insured performing duties not in connection with the business of the insured;

(e) "fire hazard" includes property damage to any premises not owned by an insured and to house furnishings therein if such property damage arises out of (1) fire, (2) explosion, or (3) smoke or smudge caused by sudden, unusual and faulty operation of any heating or cooking unit;

(f) "insured premises"

(1) for Coverage E, means all premises (except such premises as defined under paragraph (2) of this definition) owned by or rented to the named insured with respect to which the named insured is afforded coverage for bodily injury liability under this policy, and includes the ways immediately adjoining on land;

(2) for Coverages L, M and N, means (i) all premises where the named insured or his spouse maintains a residence and private approaches thereto and other premises and private approaches thereto for use in connection with said residence, except property maintained or used for conducting business pursuits and farms, (ii) individual or family cemetery plots or burial vaults, (iii) premises in which an insured is temporarily residing, if not owned by an insured, and (iv) vacant land, other than farm land, owned by or rented to an insured;

(g) "medical expense" means expenses for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services;

(h) "war hazard" includes all bodily injury and property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or

condition incident to any of the foregoing.

9. ADDITIONAL CONDITIONS

(a) Medical Reports; Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require. The company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

(b) Insured's Duties When Loss Occurs -- Coverage N.

When loss occurs, the insured shall give written notice as soon as practicable to the company or any of its authorized agents, file sworn proof of loss with the company within ninety-one days after the occurrence of loss, exhibit the damaged property, if within his control, and cooperate with the company in all matters pertaining to the loss or claims with respect thereto.

(c) Excess Insurance -- Coverage L.

With respect to loss arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft, this insurance shall be excess insurance over any other valid and collectible insurance available to the insured.

**PERSONAL INJURY LIABILITY INSURANCE  
(COVERAGE SUPPLEMENT)**

**I. COVERAGE P - PERSONAL INJURY LIABILITY**

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury (herein called "personal injury") sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the named insured's business.

**Group A** - false arrest, detention or imprisonment, or malicious prosecution;

**Group B** - the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by, or on behalf of the named insured;

**Group C** - wrongful entry or eviction, or other invasion of the right of private occupancy;

if such offense is committed during the policy period within the United States of America, its territories or possessions, or Canada, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement;
- (b) to personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any insured;
- (c) to personal injury sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the named insured;
- (d) to personal injury arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the named insured was made prior to the effective date of this insurance.
- (e) to personal injury arising out of a publication or utterance described in Group B concerning any organization or business enterprise, or its products or services, made by or at the direction of any insured with knowledge of the falsity thereof.

**II. PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the named insured is designated in the declarations as an individual, the person so designated;
- (b) if the named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the named insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to personal injury arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

**III. LIMITS OF LIABILITY; INSURED'S PARTICIPATION**

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain personal injury, or (3) claims made or suits brought on account of personal injury, the total liability of the company for all damages because of all personal injury to which this coverage applies, sustained by any one person or organization, shall not exceed the limit of personal injury liability stated in the declarations as "each person aggregate."

Subject to the above provision respecting "each person aggregate," the total limit of the company's liability under this coverage for all damages shall not exceed the limit of personal injury liability stated in the declarations as "general aggregate."

If a participation percentage is stated in the schedule for the insured, the company shall not be liable for a greater proportion of any loss than the difference between such percentage and one hundred percent and the balance of the loss shall be borne by the insured; provided, the company may pay the insured's portion of a loss to effect settlement of the loss, and, upon notification of the action taken, the named insured shall promptly reimburse the company therefor.

**IV. AMENDED DEFINITION**

When used in reference to this insurance:

"damages" means only those damages which are payable because of personal injury arising out of an offense to which this insurance applies.

## CONDITIONS APPLICABLE ONLY TO SECTION II

### SUPPLEMENTARY PAYMENTS

The company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the company, all costs taxed against the insured in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured not to exceed \$250 per bail bond, but the company shall have no obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for first aid to others at the time of an occurrence for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the insured at the company's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$25 per day because of his attendance at hearings or trials at such request.

### DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"automobile hazard" includes bodily injury or property damage arising out of:

- (1) the ownership, maintenance, operation, use, loading or unloading of
  - (a) any automobile owned or operated by or rented or loaned to the named insured, or
  - (b) any other automobile operated by any person in the course of his employment by the named insured;

but this definition does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to the named insured.

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

"bailement" means a delivery of property by any person to the insured for some purpose beneficial to either the insured or such person or both under a contract, express or implied, for the insured to carry out such purpose and to redeliver such property or otherwise dispose of it as provided.

"bodily injury" means bodily injury, sickness or disease sustained by any person;

"completed operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the named insured under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or

- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"damages" includes damages for death and for care and loss of services resulting from bodily injury and damages for loss of use of property resulting from property damage;

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hoist or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet, or hydraulic or mechanical hoists used for dumping materials from trucks;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

"insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable in-

(continued on reverse side)

The insured shall be liable separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.

"mobile equipment" means a land vehicle (including any machinery or machinery attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording liability to equipment of the following types forming an integral part of or permanently attached to such vehicles: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mixer-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"named insured" means the person or organization named in Item 1. of the declarations of this policy;

"named insured's products" means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but "named insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"non-owned automobile hazard" means any automobile other than an owned or hired automobile or, if the named insured is an individual, an automobile personally operated by the named insured or members of his family;

"occurrence" means an event, including injurious exposure to conditions, which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

"personal hazard" means any domestic activities of the insured, not in connection with the business of the insured;

"policy territory" means anywhere in the world, provided, however, that: (1) resulting claims are asserted within the United States of America, its possessions, or Canada, and (2) it shall apply to suits and judgments for damages resulting therefrom only if suit is commenced in a court in the United States of America, its possessions or in Canada;

"products hazard" includes bodily injury and property damage arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

"property damage" means injury to or destruction of tangible property;

"suit" includes an arbitration proceeding to which the insured is required to submit or to which the insured has submitted with the company's consent.

#### Financial Responsibility Laws

Such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of any motor vehicle financial responsibility law to the extent of the coverage and limit of liability required by such law but in no event in excess of the limits of liability stated in this policy.

#### Insured's Duties in the Event of Occurrence, Claim or Suit

In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the com-

pany or any of its authorized agents as soon as practicable. The named insured shall promptly take at his expense all reasonable steps to prevent other bodily injury or property damage from occurring out of the same or similar conditions, but such expense shall not be recoverable under this policy.

If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury or property damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of an occurrence.

#### Action Against Company

No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

#### Other Insurance

If, applicable to the loss, there is any valid and collectible insurance, whether on a primary, excess or contingent basis, available to the insured (in this or any other carrier), there shall be no insurance afforded hereunder as respects such loss; except, that if the applicable limit of liability of this policy is in excess of the applicable limit of liability provided by the other insurance, this policy shall afford excess insurance over and above such other insurance in an amount sufficient to afford the insured a combined limit of liability equal to the applicable limit of liability afforded by this policy. Insurance under this policy shall not be construed to be concurrent or contributing with any other insurance which is available to the insured.

#### Three Year Policy

If this policy is issued for a period of three years, the limits of the company's liability shall apply separately to each consecutive annual period thereof.

#### Arbitration

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

#### Policy Term

In the event the policy is written without any insurance afforded under Section 1 - "Property" of the policy, the inception and expiration time shall be 12:01 A.M. Standard Time at the address of the insured as stated in the Declarations, otherwise such time shall be Noon Standard Time.

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

AUDIT COPY

ADDITIONAL INSURED  
(OPERATIONS)

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$1403.

It is agreed:

1. The "Person Insured" provision is amended to include as an insured the person or organization designated below, but only with respect to his liability arising out of the operation of the named insured;
2. If the named insured is a fiduciary, the insurance afforded by this endorsement shall not apply to any executive officer or employee with respect to injury to or sickness, disease or death of another executive officer or employee of the same employer injured in the course of his employment.

Name	Interest	P.O. Address
TYSON'S CORNER CENTER, INC.	MERCHANTS ASSOCIATION	P.O. 1455 WHEATON, MD.

All terms and conditions of the policy, issued by either SAFECO Insurance Company of America, General Insurance Company of America, or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*J. W. Hamersla* SECRETARY

*Andr. H. Swamy* PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	COVER AGE	CLASS OP CODE	UNEARNED SR PR FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
TYSON'S CORNER CENTER, INC.							
EMPLOYMENT EFFECTIVE DATE 10-20-71	ADD'L INS.		.75%			1863.	1403.
POLICY NUMBER CP 233-15		BRANCH OFFICE DC/JP/PT					
POLICY EXPIRE DATE 7-22-74		APP ACCT NUMBER					
ENDORSEMENT NUMBER 1 RC-1		TYPING DATE 10-22-71					
ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - TOTALS GROSS							

H.C.

AGENT LICENSED



This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

REVISED  
**ADDITIONAL INSURED  
 (OPERATIONS)**

It is agreed:

1. The "Person Insured" provision is amended to include as an insured the person or organization designated below, but only with respect to his liability arising out of the operation of the named insured;
2. If the named insured is a fiduciary, the insurance afforded by this endorsement shall not apply to any executive officer or employee with respect to injury to or sickness, disease or death of another executive officer or employee of the same employer injured in the course of his employment.

Name	Interest	P.O. Address
TYSON'S GYMNASIUM CENTER, INC.	MERCHANTS ASSOCIATION	P.O. BOX 1455 WILMINGTON, DELAWARE, 19101

IN CONSIDERATION OF A RETURN PREMIUM OF \$1487.00, REIMBURSEMENT OF \$15,000.

All terms and conditions of the policy, issued by either SAFECO Insurance Company of America, General Insurance Company of America, or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*J. D. Hammerla* SECRETARY

*Ernest H. Swamy* PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	TYSON'S GYMNASIUM CENTER, INC.			COVER AGE	CLASS OR CODE	UNEARNED SR PR FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
ENDORSEMENT EFFECTIVE DATE	1-22-74						\$	\$	\$	\$
POLICY NUMBER	1-22-74	BRANCH OFFICE	WILMINGTON							
POLICY EXP. DATE	1-22-74	APP ACCT NUMBER								
ENDORSEMENT NUMBER	2	ISSUE DATE								
							TOTALS GROSS			

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

IN CONSIDERATION OF THE CONTINUANCE OF THIS POLICY IT IS AGREED THAT THE NAMED INSURED IS AMENDED TO READ:

TYSONS CORNER REGIONAL SHOPPING CENTER, A PARTNERSHIP COMPOSED OF THEODORE H. LEWNER, MAX AMERMAN AND THE GULELESKY COMPANY T/A TYSONS CORNER CENTER

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*H. D. Hamersla*  
H. D. HAMERSLA & COMPANY

*Robert H. Lawrence*  
ROBERT H. LAWRENCE, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	TYSONS CORNER CENTER, INC.			COVER AGE	CLASS OR CODE	UNEARNED SUPPLY FACTOR	DEDUCTIBLE PREMIUM	RETURN PREMIUM	NEW TERM PREMIUM	ADDITIONAL PREMIUM
ENDORSEMENT NUMBER	8-5-72	<small>(at the time of policy inception in the policy)</small>					\$	\$	\$	\$
ENDORSEMENT DATE	CF233415	ENDORSEMENT NUMBER	DC/BN/RA							
EXPIRES	7-22-74	ENDORSEMENT DATE								
ENDORSEMENT NUMBER	3	ENDORSEMENT NUMBER	E-5-72							
P/A ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC.							TOTALS GROSS			

RESIDENT LICENSED AGENT

N.C.

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

AUDIT  
COPY

IN CONSIDERATION OF THE CONTINUANCE OF THIS POLICY, IT

IS AGREED THAT THE NAMED INSURED'S NAME IS AMENDED TO READ:

THEODORE H. LERNER AND ANNETTE M. LERNER, W.  
MAX AMERMAN AND JOSEPHINE P. AMERMAN AND  
THE GUDELSKY COMPANY T/A THE TYSONS CORNER  
REGIONAL SHOPPING CENTER AND TYSONS CORNER  
MERCHANTS ASSOCIATION, INC.

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or National Insurance Company of America, remain unchanged except as amended by this endorsement.

*E. D. Hammerla*  
E. D. HAMMERLA, JR. 191347

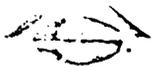
*Guido H. Lowery*  
GUIDO H. LOWERY, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

NEEDED	COVER AGE	CLASS OR CODE	UNLAPSED SR. PR FACTOR	OLD FULL TERM PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
INSURED	TYSONS CORNER CENTER, INC.						
ENDORSEMENT EFFECTIVE DATE	10-3-72	(in the hour of day dated in the policy)		\$	\$	\$	\$
CLASSIFICATION	CP 233415	GROUP CLASS MAY AGENT	DC/WH/PRI				
ISSUE DATE	7-22-74	NUMBER					
ENDORSEMENT EFFECTIVE DATE	4	TERMINAL DATE	10-9-72				

ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - NAD'S GROSS

RESIDENT LICENSED AGENT



This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

IN CONSIDERATION OF THE CONTINUANCE OF THE POLICY, IT IS AGREED THAT THE SPENCER CORPORATION IS ADDED AS AN ADDITIONAL NAMED INSURED.

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*H. D. Hammerla*  
 H. D. HAMMERLA, JR., AGENT

*Gordon H. Swamy*  
 GORDON H. SWAMY, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	COVER AGE	CLASS OR CODE	UNLARNED SURVIVOR FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
THE SYSTEMS CENTER REGIONAL SHOPPING CENTER, ET AL.				\$	\$	\$	\$
ENDORSEMENT EFFECTIVE DATE: 6-4-73							
CLASSIFICATION: CP 233415							
DATE OF ENDORSEMENT: 7-22-74							
ENDORSEMENT NUMBER: 5							
TOTALS GROSS							

ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - N.C.  
 RESIDENT LICENSED AGENT



This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

IN CONSIDERATION OF THE CONFIDENCE OF THIS POLICY, IT IS AGREED THAT TYSON'S CORNER CENTER MERCHANTS ASSOCIATION, INC., IS ADDED IN LIEU OF TYSON'S CORNER MERCHANTS ASSOCIATION INC.

*Whelan*

*Timothy H. Swamy*

NON-MONEY APR 9 1974

DIVISION

This endorsement is executed by the company stated in the declarations.

*J. P. Hammerla*  
J. P. HAMMERLA, SECRETARY

*Timothy H. Swamy*  
TIMOTHY H. SWAMY, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

NO. PER	TYSON'S CORNER CENTER, INC.	COVER AGE	CLASS OR CODE	USE ADDED SHIP FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
INSURANCE	3/2/74				\$	\$	\$	\$
EXPIRES	6/25/74							
CLASS	7122174							
EXPIRES	37							
EXPIRES	4/13/74							
1. ASSOCIATED INSURANCE AGENCIES OF AMERICA 2. THE ASSOCIATED INSURANCE AGENCIES OF AMERICA 3. INTERNATIONAL ASSURANCE COMPANY OF AMERICA (Source of Bond is shown by the company name on the bill)					TOTALS GROSS			

ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - I.A.A.





SAFECO INSURANCE COMPANY OF AMERICA  
 GENERAL INSURANCE COMPANY OF AMERICA  
 FIRST NATIONAL INSURANCE COMPANY OF AMERICA

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

IN CONSIDERATION OF THE CONTINUANCE OF THE POLICY, IT IS AGREED THAT THE SPENCER CORPORATION IS ADDED AS AN ADDITIONAL NAMED INSURED.

*Cancel 7/22/75*  
*Spencer Corp*

NON-MONEY JUL 25 1973

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*J. W. Hammerla*  
 J. W. HAMMERLA, PRESIDENT

*Robert H. Lawrence*  
 ROBERT H. LAWRENCE, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	THE TYSON'S CORNER REGIONAL SHOPPING CENTER, ET AL	COVER AGE	CLASS OR CODE	UNPAID RATED FACTOR	OLD FULL TERM PREMIUM	RETURN PREMIUM	NEW FULL TERM PREMIUM	ADDITIONAL PREMIUM
ENDORSEMENT REFERENCE POLICY NUMBER	6-4-75 <small>or the date of one listed in the policy</small>				\$	\$	\$	\$
POLICY NUMBER	CP 233415		CLAR/BV/JS					
EXP. DATE	7-22-74							
ENDORSEMENT NUMBER	5		6-10-73					
					TOTALS GROSS			

ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - N.C.  
 RESIDENT LICENSED AGENT



Safeco Insurance Company  
Atlanta Office  
Dan Campbell

ASSOCIATED INSURANCE AGENCIES, INC.

Phone 332-9025  
219 S. Church St. Charlotte, N. C. 28202

MEMBER AGENCIES:  
AFFILIATED WITH THE INSURANCE AGENCY  
AFFILIATED WITH THE INSURANCE AGENCY  
MEMBER INSURANCE AGENCY  
AFFILIATED WITH THE INSURANCE AGENCY  
MEMBER INSURANCE AGENCY



to: Tysons Corner Center, Inc.  
CP233415

DATE 7/19/73

Dear Mr. Campbell:

original memo of 6/13/73 requesting The Lerner Corporation be added as additional named insured effective 6/4/73 got messed up or I did.

Please see the attached endorsement adding Spencer Corp. rather than the Lerner? Please advise me and send a corrected endorsement.

Thank you for your time and help.

nda)

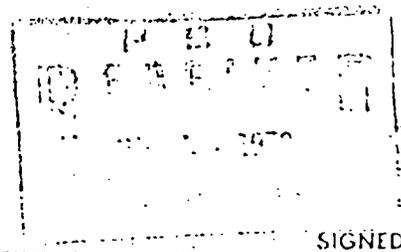
PLEASE REPLY BELOW

NO REPLY NECESSARY

DATE

SIGNED

*Handwritten signature*



SIGNED

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

0015123

IN CONSIDERATION OF THE CONTINUANCE OF THIS POLICY, IT IS AGREED THAT THE NAMED INSURED'S NAME IS AMENDED TO READ:

THEODORE N. LERNER AND ANNETTE M. LERNER, II.  
 MAX AMERMAN AND JOSEPHINE F. AMERMAN AND  
 THE GUDELSKY COMPANY T/A THE TYSONS CORNER  
 REGIONAL SHOPPING CENTER AND TYSONS CORNER  
 MERCHANTS ASSOCIATION, INC.

*Spec*  
*10/1/72*

100-1000-100-1512

NAME CHANGE

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or National Insurance Company of America, remain unchanged except as amended by this endorsement.

*H. W. Hamersala*  
W.D. MEMBER I.A. #1007222

*John H. Lawrence*  
WORKING SECRETARY, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

ENDORSEMENT	COVER AGE	CLASS OR CODE	UNEARNED SUPPLY FACTOR	OLD (FULL TERM) PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
ENDORSEMENT						
10-3-72				\$	\$	\$
CP-233415		DG/AM/PH				
7-22-74						
10-9-72						

ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - N.C.

RESIDENT LICENSED AGENT



ASSOCIATED INSURANCE AGENCIES, INC.

Phone 332 9025

221 S. Church St. Charlotte, N. C. 28202

- DOMESTIC INSURANCE AGENCY
- ALIEN LIFE INSURANCE AGENCY
- VISITOR INSURANCE AGENCY
- U.S. MARINE INSURANCE AGENCY
- FOREIGN INSURANCE AGENCY
- REINSURANCE AGENCY



Speed

Atlanta Office

Suspensa 10-24-

ECT: Tysons Corner # CP 233415

DATE 10-3-72

Please endorse once again to correct the named insured  
 Theodore N. Lerner and Annette M. Lerner, H. Max  
 Ammerman and Josephine F. Ammerman, and the Gubelsky  
 company T/A The Tysons Corner Regional Shopping Center  
 and Tysons Corner Merchants Association, Inc.

SIGNED

PLEASE REPLY BELOW

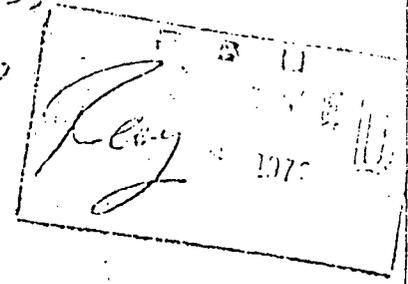
NO REPLY NECESSARY

DATE

11/6/72  
 [Signature]

Thanks,

[Signature]  
 [Signature]



SIGNED

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

IN CONSIDERATION OF THE CONTINUANCE OF THIS POLICY IT IS AGREED THAT THE NAMED INSURED IS AMENDED TO READ:

TYSONS CORNER REGIONAL SHOPPING CENTER, A PARTNERSHIP COMPOSED OF THEODORE H. LEHNER, MAX ANNEFMAN AND THE GULELESKY COMPANY T/A TYSONS CORNER CENTER.

NAME CHANGE

*Book*

*[Signature]*

NON-MONEY AUG 10 1972

All terms and conditions of the policy, issued by SAFECO Insurance Company of America, General Insurance Company of America or Fidelity National Insurance Company of America, remain unchanged except as amended by this endorsement.

*W.D. Hammerla*  
W. D. HAMMERLA, SECRETARY

*Robert H. Sawyer*  
ROBERT HAWLEY, PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

NO. OF POLY.	TYSONS CORNER CENTER, INC.	COVER ALL	CLASS OR CODE	UNEARNED SR. OR FALL IDB	GEN. FIDEL. TERM. PREMIUM	RETURN PREMIUM	NEW FIDEL. TERM. PREMIUM	ADDITIONAL PREMIUM
ISSUE DATE	8-8-72 <small>(for the time of this stated in the policy)</small>				\$	\$	\$	\$
POLY. NO.	CP233415		LC/DV/RA					
ISSUE DATE	7-22-74							
NO. OF POLY.	3							
ISSUE DATE			8-8-72					
					TOTALS GROSS			

P/A ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC.

H.C.

RESIDENT LICENSED AGENT



This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

REVISED  
**ADDITIONAL INSURED  
 (OPERATIONS)**

It is agreed:

1. The "Person Insured" provision is amended to include as an insured the person or organization designated below, but only with respect to his liability arising out of the operation of the named insured;
2. If the named insured is a fiduciary, the insurance afforded by this endorsement shall not apply to any executive officer or employee with respect to injury to or sickness, disease or death of another executive officer or employee of the same employer injured in the course of his employment.

Name	Interest	P.O. Address
TYSON'S COMBED CENTER, INC.	MERCHANTS ASSOCIATION	P.O. BOX 1455 WREATHEN, N.C.

IN CONSIDERATION OF A FIDUCIARY POSITION OF SAID INSURED, THIS ENDORSEMENT IS VOID.

MONEY MAR 13 1972

*Handwritten signature and date: 2/14/72*

All terms and conditions of the policy, issued by either SAFECO Insurance Company of America, General Insurance Company of America, or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*J. W. Hamner* SECRETARY

*John H. Swamy* PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	COVER AGE	CLASS OR CODE	UNEARNED SH PR FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
TYSON'S COMBED CENTER, INC.							
ENDORSEMENT EFFECTIVE DATE	for the hour of day stated in the policy						
POLICY NUMBER	BRANCH OFFICE						
POLICY EXP. DATE	WPP ACCT NUMBER						
ENDORSEMENT NUMBER	TYPING DATE						
ASSOCIATED BORG & MCGEE OF CHARLOTTE, INC.				TOTALS GROSS			

RESIDENT LICENSED AGENT



This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**ADDITIONAL INSURED  
 (OPERATIONS)**

IN CONSIDERATION OF AN ADDITION PREMIUM OF \$1403.

It is agreed:

1. The "Person Insured" provision is amended to include as an insured the person or organization designated below, but only with respect to his liability arising out of the operation of the named insured;
2. If the named insured is a fiduciary, the insurance afforded by this endorsement shall not apply to any executive officer or employee with respect to injury to or sickness, disease or death of another executive officer or employee of the same employer injured in the course of his employment.

Name	Interest	P.O. Address
TYSON'S CORNER CENTER, INC.	MERCHANTS ASSOCIATION	P.O. 1455 WHEATON, MONTGOMERY, MD.

*NO MONEY OCT 25 1974*  
*Annex*  
*Void*

All terms and conditions of the policy, issued by either SAFECO Insurance Company of America, General Insurance Company of America, or First National Insurance Company of America, remain unchanged except as amended by this endorsement.

*J. D. Himmelsla* SECRETARY

*Erna H. Swamy* PRESIDENT

COMPLETE THE FOLLOWING IF NOT ATTACHED TO POLICY WHEN POLICY IS ISSUED:

INSURED	COVER AGE	CLASS OR CODE	UNEARNED SR PR FACTOR	OLD (FULL TERM) PREMIUM	RETURN PREMIUM	NEW (FULL TERM) PREMIUM	ADDITIONAL PREMIUM
TYSON'S CORNER CENTER, INC.							
ENDORSEMENT EFFECTIVE DATE	10-20-71	For the hour of day stated in the policy)		1110	75%	1603.	1403.
POLICY NUMBER	CP 233415	BRANCH OFFICE	DC/JM/PL				
POLICY EXP. DATE	7-22-74	PROD ACCT NUMBER					
ENDORSEMENT NUMBER	1 RC-1	TYPING DATE	10-22-71				
ASSOCIATED INSURANCE AGENCIES OF CHARLOTTE, INC. - TOTALS GROSS							1403.

N.C.  
 -37-

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF FAIRFAX COUNTY:

COME NOW the plaintiffs, and move this Honorable Court for judgment against the defendants, jointly and severally, on the grounds and in the amount as hereinafter set forth:

1. The plaintiffs are citizens and residents of the Republic of Ireland.

2. The defendant Tyson's Corner Regional Shopping Center is a general partnership organized under the laws of the State of Maryland, the general partners of which are defendants H. Max Ammerman and Josephine F. Ammerman, his wife; Theodore N. Lerner and Annette M. Lerner, his wife, and the Gudelsky Company, a general partnership organized under the laws of the State of Maryland, the general partners of which are defendants Homer S. Gudelsky and the Estate of Isadore Gudelsky, deceased. All defendants are hereinafter collectively referred to as "Tysons."

3. The cause of action which is the subject matter of this suit arose in the County of Fairfax, Virginia.

4. On August 8, 1973, and for a period of time theretofore defendant Tysons was the owner of certain real and personal property located in the County of Fairfax, Virginia, consisting of commercial buildings, maintenance equipment, and other property, known as "Tyson's Corner Center," hereinafter referred to as "Center." The Center is a large shopping complex, consisting of a number of large and small retail stores contained within a single building, and sharing a common enclosed hallway. Said retail stores are lessees of defendant Tysons, which profits from their operations, and which invites the general public to the Center for its business purposes and that of the lessees. Members of the general public are invited by the defendant Tysons to traverse the common hallway, and are required to do so in order to go to, from and between the said retail stores. The common hallway is under the control and ownership of defendant Tysons.

5. Defendant Tysons was under a duty, as business invitor, to maintain the common hallway and keep it clean and safe for the passageway of its business invitees, said duty being nondelegable.

6. On August 8, 1973, the plaintiff Patricia P. Cassidy visited the Center as a member of the general public and at the business invitation of the defendants. She was accompanied by several of her children, including the plaintiff, Michelle K. Cassidy, an infant of two years of age.

7. On August 8, 1973, agents and employees of defendant Tysons were engaged in a cleaning or wax stripping operation in the common hallway of the Center, and had placed a liquid chemical substance upon a portion of the floor. The area where the chemical

substance had been placed had been partially roped off with a single rope which would easily admit a child under it, and a single sign had been placed stating: "Caution, Wet Floor." The area where the chemical substance had been placed was not completely roped off, a passageway having been left open into the area.

8. The defendant Tysons, and its agents and employees, had both actual and constructive knowledge that the chemical substance on the floor was dangerous, and would cause chemical burns upon coming into contact with human skin or eyes.

9. No warning or notice was given to the general public, or to either of the plaintiffs, that the chemical substance on the floor was dangerous to human skin, or would cause burns or injury to persons coming into contact with it.

10. On August 8, 1973, the plaintiff Michelle walked into the open passageway, and stepped upon the said liquid chemical substance on the floor. She immediately slipped upon said substance and fell to the floor, coming into contact with the substance over large parts of her body.

11. Upon seeing Michelle fall, an employee of defendant Tysons picked her up, and advised the child's mother to get the chemical substance off Michelle, since it would cause burns. The mother, plaintiff Patricia, took Michelle from the employee, thereby coming into contact with the chemical substance herself.

12. The contact of said chemical substance with the skin of plaintiff Patricia caused an immediate intense burning and stinging sensation, and the plaintiff Michelle began to cry and scream, and to suffer intense pain.

13. After Michelle was hosed off with water by her mother, employees and agents of the defendant Tysons then undertook to

provide medical advice and assistance to the plaintiffs, which included the advice that it was unnecessary to secure the attention of a physician.

14. Plaintiff Michelle was taken to the offices of defendant Tysons, where agents and employees of said defendant washed the affected areas with water, but omitted to provide additional first aid measures of which they had knowledge, having previously been advised of such additional measures by the manufacturer of the chemical substance. The agents and employees of said defendant also omitted to inform the child's mother of the additional measures.

15. The aforesaid acts and omissions of the employees and agents of defendant Tysons constituted gross, wanton and wilful negligence, in utter disregard for the safety and well being of the plaintiffs, and of the public generally.

16. As a direct and proximate result of the gross negligence as aforesaid, plaintiff Patricia P. Cassidy was severely injured, has suffered great physical and mental pain due to her own injuries and those of her child, and has incurred and is continuing to incur expenses for medical attention and medicines for herself and her child, Michelle.

17. As a direct and proximate result of the gross negligence as aforesaid, plaintiff Michelle K. Cassidy was severely and permanently injured, and has suffered and continues to suffer great physical and mental pain and anguish.

WHEREFORE plaintiff Patricia P. Cassidy demands judgment against each defendant and against all defendants, jointly and severally, for compensatory damages in the amount of Ten Thousand Dollars (\$10,000.00), and punitive damages in the amount of Five

Hundred Thousand Dollars (\$500,000.00), with interest and costs; plaintiff Michelle K. Cassidy demands judgment against each defendant and against all defendants, jointly and severally, for compensatory damages in the amount of Fifty Thousand Dollars (\$50,000.00), and punitive damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), with interest and costs.

PATRICIA P. CASSIDY  
MICHELLE K. CASSIDY

DEFENDANT'S MEMORANDUM OF LAW

Facts

The parties have entered into a Stipulation of Facts, which is a part of the record. However, there are two paragraphs in the Stipulation which need clarification.

In Paragraph No. 12 of the Stipulation, the parties agree that Tysons was obliged to secure separate counsel in the defense of the claims for punitive damages; that Tysons' counsel did, in fact, participate in the trial; and that Cassidy's claim for punitive damages was stricken as a matter of law; "all of which inured to the benefit of Safeco."

By this Stipulation, it is not intended that Safeco indirectly agrees that it had any obligation whatsoever to defend the claims for punitive damages. On the contrary, it is Safeco's position that it did not owe Tysons coverage for the punitive damage claim, and it had no obligation whatsoever to defend the punitive damage claim. Should the Court rule otherwise, then, of course, there will be some benefit to Safeco because the punitive damage claim was not lost by default.

In Paragraph No. 13, the parties not only agree that Tysons incurred attorney's fees and expenses in the sum of \$4,111.00 but also agree that said sum was reasonable. In other words, should the Court find in favor of the plaintiffs, it should be in the sum of \$4,111.00 and costs of this suit. It should be

understood, however, that the defendant does not agree that the plaintiffs are entitled to interest from May 14, 1975.

The plaintiffs introduced as an exhibit to be considered by the Court a copy of the Motion for Judgment filed in the case of Cassidy vs. Tysons. A review of the Motion for Judgment reflects that the plaintiffs alleged that they slipped on the floor at the Tysons Corner Shopping Center; that a portion of the floor had been covered with a liquid chemical substance which was used by agents or employees of Tysons to strip wax off the floor; that the chemical substance caused severe burns; that defendant Tysons, and its agents and employees, had both actual and constructive knowledge that the chemical substance on the floor was dangerous and would cause chemical burns upon coming in contact with human skin or eyes; that no warning was given to the general public or to either of the plaintiffs that the chemical substance on the floor was dangerous to human skin or would cause burns or injury to persons coming into contact with it.

It can be readily inferred from the foregoing allegations that the tortious conduct alleged was performed pursuant to the direction, authorization and with knowledge of defendant Tysons; and any punitive damages would be assessed to punish Tysons for its gross, wanton and wilful negligence in exposing the public to a dangerous chemical substance without providing adequate notice or warning of the dangerous nature of the chemical. Also, the punitive damages would be awarded in such a case to deter the use of such chemical substance by persons owning and controlling areas open to the public and in the absence of sufficient warning of the dangers involved.

#### Argument

There are two issues in this case which the Court must decide, and only two; namely; -44-

- I. IS IT AGAINST THE PUBLIC POLICY OF VIRGINIA TO INSURE AGAINST PUNITIVE DAMAGE AWARDS?
- II. DOES AN INSURER HAVE AN OBLIGATION TO DEFEND A CLAIM FOR PUNITIVE DAMAGES, NOWTITHSTANDING THE FACT THAT SUCH A CLAIM IS NOT COVERED?

I.

Since the Virginia legislature has not spoken on this issue, we must examine the case law. A careful examination of the decisions of the Supreme Court of Virginia discloses that our Court has not been called upon to decide this issue. Therefore, this being a case of first impression in Virginia, we must examine the cases in other states deciding this issue and then come up with our best judgment as to what our Court will decide if and when it agrees to do so.

Due to the nature of punitive damages, Courts have generally held that a liability policy insuring against an award of punitive damages is against public policy. The reason behind such decisions is based on the deterrent purpose of awarding punitive damages: The wrongdoer should be punished, and an example should be made so as to preclude others from following the same course of action. If one could indemnify himself against his reckless, wanton and wilful acts and avoid the punishment through taking out an insurance policy covering punitive damages, then the purpose of assessing punitive damages against a wrongdoer would be circumvented.

Courts in Kansas, Minnesota, Colorado, Florida, New York, Connecticut, New Jersey, Pennsylvania and Missouri have held that it is against public policy to insure against a punitive damage award.

Because punitive damages are generally regarded as having the function of punishing the defendant and deterring others, the contention has often been made that the same public policy which precludes insurance against criminal liability should operate to avoid imposing liability upon an insurer for punitive damages allowed against the insured.

Included in the cases so holding are the following, which are found in 20 ALR3rd, commencing on page 349.

Holding that conduct of the insured which might be characterized as wilful and wanton did not fall within the policy exclusion of liability for intentional misconduct, the Court in American Ins. Co. v. Saulnier, (1965, DC Conn) 242 F.Supp. 257, said that any further sum which a jury in assessing damages might add as a deterrent to punish the insured would not be recoverable under the policy, and that a clear separation could be maintained between compensatory damages and those which are punitive by the submission of interrogatories to the jury, it being contrary to public policy to insure a person against a financial penalty imposed as a restraint against a wilful wrongdoer.

Stating that in Florida punitive damages are awarded beyond actual damages suffered, as a punishment to the defendant and as a deterrent to others, as distinguished from compensatory damages which arise from actual and direct pecuniary loss, mental suffering, value of time lost, actual expenses and bodily pain and suffering, the Court in Nicholson v. American Fire & Casualty Ins. Co., (1965, Fla. App.), 177 So2d 52, held that Florida public policy precluded holding a liability insurer for punitive damages imposed upon the insured. It was said to be immaterial whether the language of the policy extended to such damages, and the Court also held that it was immaterial that the insured, from the policy, might have expected coverage against such a claim.

THE BURDEN OF PAYING PUNITIVE DAMAGES SHOULD REST ULTIMATELY, AS WELL AS NOMINALLY, ON THE PARTY WHO ACTUALLY COMMITTED THE WRONG, SAID THE COURT IN Crull v. Glob, (1964, Mo.App.), 382 SW2d 17, CONCLUDING THAT IT WOULD BE AGAINST PUBLIC POLICY TO PERMIT INSURANCE COVERAGE TO BE OBTAINED AGAINST SUCH LIABILITY, SINCE THE CHIEF PURPOSE OF PUNITIVE DAMAGES WAS PUNISHMENT TO THE OFFENDER AND A DETERRENT TO SIMILAR CONDUCT BY OTHERS AND THE IMPOSITION OF SUCH DAMAGES WAS BASED ON THE THESIS THAT WRONGDOING IS DISCOURAGED BY THE IMPOSITION OF PERSONAL PUNISHMENT; AND IF A PERSON WERE ABLE TO INSURE HIMSELF AGAINST SUCH PUNISHMENT, HE WOULD GAIN A FREEDOM INCONSISTENT WITH THE ESTABLISHING OF SANCTIONS AGAINST SUCH MISCONDUCT. SEE ALSO Esmond v. Liscio, (1966) 209 Pa. Super. 200, 224 A2d 793, ALSO REFERRED TO IN THE ALR ANNOTATION CITED ABOVE.

Of particular significance is the case of Northwestern Nat. Casualty Co. v. McNulty (1962, CAS Fla.), 307 F2d 432. THIS CASE IS PARTICULARLY SIGNIFICANT, SINCE THE FIFTH CIRCUIT DECIDED THIS CASE ON THE BASIS OF WHAT IT CONSIDERED TO BE VIRGINIA LAW. THE COURT HELD THAT IN FLORIDA AND VIRGINIA, PUNITIVE DAMAGES WERE AWARDED FOR PUNISHMENT AND DETERRENCE. THE COURT SAID THAT THIS REQUIRED THAT THE DAMAGES REST ULTIMATELY, AS WELL AS NOMINALLY, ON THE PARTY ACTUALLY RESPONSIBLE FOR THE WRONG; AND IF THAT PERSON WERE PERMITTED TO SHIFT THE BURDEN TO AN INSURANCE COMPANY, PUNITIVE DAMAGES WOULD SERVE NO USEFUL PURPOSES, SINCE THEY DO NOT COMPENSATE THE PLAINTIFF FOR HIS INJURY, AND THERE IS NO POINT IN PUNISHING THE INSURANCE COMPANY, WHICH HAS DONE NO WRONG. THE COURT ADDED THAT IN ACTUAL FACT, IF SUCH RECOVERY WERE PERMITTED, THE BURDEN WOULD ULTIMATELY COME TO REST NOT ON THE INSURANCE COMPANY BUT ON THE PUBLIC AT LARGE, SINCE THE ADDED LIABILITY WOULD BE PASSED ALONG TO PREMIUM PAYERS, AND SOCIETY WOULD BE PUNISHING ITSELF FOR THE WRONG COMMITTED BY THE INSURED. IN ADDITION, SAID THE COURT, THERE ARE SUBSTANTIAL PRACTICAL DIFFICULTIES IN PERMITTING INSURANCE AGAINST PUNITIVE

damages, since to do so would produce a serious conflict of interest between the insurer and the insured in settlement negotiation and trial tactics. There would also be difficulties with the rule that in assessing punitive damages, evidence of the financial standing of the defendant may be considered, especially in connection with the rule against referring to the defendant's insurance coverage in the presence of the jury. The Court pointed out that punitive damages awards frequently have no relation to the injured party's actual injuries and said that such verdicts are justifiable only if the man who pays is a wrongdoer. In summary, the Court emphasized that by punitive damages, it meant damages awarded with a view to punishing the defendant for irresponsible conduct and deterring similar misconduct. The misconduct referred to was said to be intentional or malicious wrongdoing, or action or inaction in such a conscious disregard of others that a jury might fairly infer that the wrong partook of a criminal character, whether or not punishable as an offense against the state.

In reviewing the nature of punitive damages in Virginia, it is respectfully submitted that the Virginia Courts, when dealing with the function of punitive damages and exemplary damages, have held that the purpose of assessing such damages is to punish the defendant for malicious conduct or to display to others an example of the consequences they may expect if they engage in similar conduct; and that such awards are not by way of compensation to the injured party, F.B.C. Stores, Inc. v. Duncan, 214 Va. 246, 198 S.E.2d 595 (1973); Giant of Va., Inc. v. Pigg, 207 Va. 679, 152 S.E.2d 271 (1967); Dalton v. Johnson, 204 Va. 102, 129 S.E.2d 647 (1963); Wright v. Everett, 197 Va. 608, 90 S.E.2d 855 (1956); Cedd v. Jenkins, 194 Va. 704, 74 S.E.2d 791 (1953); Weatherford v. Birchett, 158 Va. 741, 164 S.E. 535 (1932); Hines v. Gravins, 136 Va. 313, 112 S.E. 869 (1922). -48-

this would establish a foundation for the public policy argument that since punitive damages are awarded solely to punish the offender and deter similar conduct in the future and not to compensate the injured party; therefore, insuring against such awards would be contrary to the purpose of awarding punitive damages, and it is respectfully submitted that it is contrary to the public policy of Virginia to insure against a punitive damage award.

## II.

Counsel for Tysons argues that the language in the insuring agreement, "the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, . . . required Safeco to defend the Cassidy suit, notwithstanding the fact that it may be against the public policy of Virginia to insure against a punitive damage award.

On this issue, although there are no cases directly in point, we do find Virginia cases which stand for the proposition that an insurer is not required to defend a cause of action unless the allegations in the complaint state a cause of action within the coverage of the policy.

In Accident Corp. v. Washington Co., 148 Va. 829 (1927), the insured was an employer who brought an action against its insurer to recover monies paid out pursuant to an award in favor of a representative of an employee who had been killed in the course of his employment, the award predicated on the violation of the Child Labor Law: i.e., the employer illegally hiring a 14-year-old in violation of the Child Labor Law was sufficient to sustain a judgment against the employer as a result of the death of the employee regardless of the employer's negligence. -49-

The contract of insurance indemnified the employer against any suits or actions brought by employees for injuries sustained during the course of their employment with the employer insured, conditioned on the employee being legally employed.

The Court held that a condition to coverage in the insurance policy was that the employee bringing the action was legally employed; therefore, the action brought against the employer in the instant case was not covered under the terms of the policy. The employer asserted that under the insurance contract, the insurer was required to defend any suits instituted against him on account of injuries sustained by employees, although such suits, other proceedings, allegations or demands are wholly groundless, false and fraudulent. The Court held that:

"It is scarcely logical to hold that this provision concerning the rights and obligations to defend the suit, which is often contained in the indemnity policies, would be intended to bind the insurer to take charge and defend a suit in which, under the terms of the policy, it had no interest. If this were true, it would result in compelling the insurer to waive its claims of non-liability, because it is quite generally held that if the insurer does defend and a judgment results against the employer, the insurer is bound to pay the judgment." Pp. 843, 844

The Court went on to state:

"In our opinion, the only reasonable construction of the policy here is that the insurer was under no obligation to defend the case against the insured when it would not be liable under its contract for any recovery that may be had. On the contrary, it should refrain from interfering in any way with the insured in respect to the defense of the case."

It should be noted that the case presented an action brought against the insured that was wholly outside the policy provisions requiring the employee to be legally employed at the time of the injuries; however, the Court did cite cases in which actions instituted against employers alleged violations of child

Labor law and negligence on the part of the employer. It recognized that when two causes of action are presented in the complaint against the insured--one in which the insurer would be liable, and one in which it is outside the terms of the policy--the insurer could proceed to defend those claims which fell within the policy provisions and would not be bound to assume the defense, based on allegations, predicated on a cause of action outside the terms of the policy.

The Federal District Court case of Safeway Moving & Storage Corp. v. Aetna Ins. Co., 317 F.Supp. 238 (1970), the issue was whether an insurance policy purporting to cover liability of the insured as determined and "imposed by law" required the insurer to indemnify the insured for monies paid out pursuant to an award by an administrative proceeding and an administrative determination of liability. The defendant also sought to recover the costs of defending the action in the administrative proceeding.

Upon establishing that the injuries complained of and the award in the administrative proceeding were covered by the terms of the policy, the Court held that the insurance company was obligated under the terms of the contract to provide coverage and pay any resulting judgment against the insured. As to the duty of the insurer to defend an action brought against its insured, the Court quoted from London Guaranty & Accident Co. v. C. B. White & Bros., 188 Va. 195 (1948), and went on to state:

"Where the suit does not allege a cause of action which could result in a judgment within the language of coverage, the failure to defend is justified and creates no breach of contract; where, however, the allegations may result in liability which would invoke the insurance coverage, the duty to defend is likewise invoked, and a refusal to defend, although based on an erroneous assumption that the allegations do not fall within the coverage of the policy, creates a contractual breach."

P. 245

The insurer was held liable for that judgment against the insured, the costs of the defense undertaken by the insured and also for consequential damages resulting from the breach of the contract to indemnify the contract to defend.

Counsel for the plaintiffs correctly state on page 2 of his Memorandum of Law that the United States Court of Appeals for the Fifth Circuit found in the case of Commercial Union Ins. Co. of N. Y. v. Reichard, 404 F.2d 863 (1968) that where a employer was sued by a victim of an assault by the employer's servant, and the sole liability of the employer was by virtue of the doctrine of respondeat superior, a policy of insurance not specifically excluding punitive damages was valid and enforceable.

It is respectfully submitted that the instant case is not one where the sole liability of Tysons was by virtue of the doctrine of respondeat superior. As stated above, it is clear from a review of the Motion for Judgment filed in the Cassidy case that allegations were made that defendant Tysons had both actual and constructive knowledge that the chemical substance on the floor was dangerous; and that defendant Tysons failed to give warning or notice to the general public or to the Cassidys that the chemical substance on the floor was dangerous to human skin. It is incorrect to state as the plaintiffs have stated on pages 2 and 3 of their Memorandum of Law that defendant Tysons' only alleged liability was by virtue of the doctrine of respondeat superior.

Plaintiffs also argue on page 3 of their Memorandum of Law that since punitive damages are not excluded from the coverage of the policy, they are, therefore, as a matter of law included within the coverage of the policy. However, it is respectfully submitted that what the Courts have held is that it is against public policy to insure against punitive damages; and it is respectfully submitted that if it is against the public

an exclusion is not required in the policy.

The defendant respectfully submits that judgment here-  
in should be entered for the defendant.

Respectfully submitted,

PLAINTIFF'S REPLY MEMORANDUM

In response to the memorandum submitted by the Defendant to the court after oral argument in this case, Plaintiffs' present the following points by way of clarification.

I

THE MOTION FOR JUDGMENT IN THE CASE OF CASSIDY v. TYSONS CORNER, et. al SEEKS ONLY TO IMPOSE VICARIOUS LIABILITY ON THE PLAINTIFFS HEREIN FOR PUNITIVE DAMAGES.

Defendant's memorandum states at page 1 and at page 10 that the Cassidy Motion for Judgment sought judgment against the Plaintiffs herein for wanton, wilful and reckless acts. Review of the Motion for Judgment discloses the following allegation:

"15. The aforesaid acts and omissions of the employees and agents of defendant Tysons constituted gross, wanton and willful negligence..."

Paragraphs 13 and 14 specify what the acts of the "employees and agents" of Tysons were--the undertaking "to provide medical advice and assistance to the plaintiffs, which included the advice that it was unnecessary to secure the attention of a physician." (paragraph 13) and an allegation that the "agents and employees of said defendant washed the affected areas with water, but omitted to provide additional first aid measures of which they had knowledge, having been previously advised of such

additional measures by the manufacturer of the chemical substance. The agents and employers of said Defendant also omitted to inform the child's mother of the additional measures.

By the above quoted language the Plaintiffs in the Cassidy Motion for Judgment clearly designated the specific conduct which allegedly constituted grounds for punitive damages.

Defendant claims that the allegations in paragraph 8 are allegations of conduct on Tyson's part which constitute grounds for punitive damages. If so, why does the Plaintiff therein not allege in paragraph 15 that Tyson's participated in the "gross, wanton and willful negligence"? The reason is that the allegations in paragraph 8 that the dangerous nature of the chemical substance was known or knowable to Tysons is a predicate to the establishment of liability of the Plaintiffs herein for the acts of their agents through authorization or ratification.

Plaintiffs respectfully submit that the declaration by the Defendant on page 2 of its Memorandum that "There are two issues in this case which the Court must decide, and only two," is incorrect. The Court must also decide whether there is any allegation of acts of the Plaintiffs herein in the Cassidy Motion for Judgment for which punitive damages would stand. Plaintiffs submit that there are no such allegations, that the Cassidy Motion for Judgment sought to impose liability upon them for the "wanton and willful" acts of their agents and employees, and that, under authority previously submitted, the Defendant is liable for its failure to defend.

Defendant relies upon a series of Virginia cases for the proposition that if the judgment sought is not within the coverage of the policy, the insurer need not defend. These cases (Accident Corp. v. Washington Co., 148 Va. 829 (1927); Safeway Moving and Storage Corp. v. Aetna Ins. Co., 317 F. Supp. 238 (1970); London

are contract cases which proceed upon the analysis that since the claim in question was not covered by the language of the policy, the insured had not bargained for defense of the action, and, as a contract matter, there had been no breach by the insurer in refusing to defend.

Defendant here relies upon the deus ex machina of public policy to relieve it of the bargained for obligation of its own, standard, unilaterally drafted contract, in which there appears no disclaimer of or exclusion for coverage for punitive damages. The rationale of the above cases is not authority for the relief of the Defendant from its duty to defend upon its unilateral, un-bargained for decision to deny coverage.

As pointed out in Plaintiffs memorandum, the language of the policy clearly includes, as a matter of contract interpretation, coverage for punitive damages. Abbi Urigen Oldsmobile Buick, Inc. v. General Casualty Co. of America; Ohio Casualty Insurer Co. v. Carr; (supra, Plaintiffs' Memorandum). As a question of contract law, the Defendant does have an obligation to provide coverage under the language of the policy, and under the Accident Corp., Safeway Moving and Storage Corp., and London Guaranty Corp. cases defend.

### III

Plaintiffs do not concede, by ignoring the Defendant's argument that public policy precludes coverage for punitive damage. As pointed out to the Court in argument, the States that have considered the question have split, the following finding coverage to be proper--Southern Farm Bureau Casualty Insurance Co. v. Daniel 440 SW 2d 582 (Ark. 1969); Abbie Urigen Oldsmobile Buick, Inc., (Supra, Utah); Sazenby v. Universal Underwriters Insurance Co., 383 SW 2d 1 (Tenn. 1964); Price v. Hartford, 502 P2d 522 (Ariz. 1972).

Public policy is not clearly on the side of denial of coverage for punitive damages, or at least it can be said the positions advanced for denial are not sound. Denial of coverage will not stop the alcohol or drug sodden reckless driver or turn him into a "reasonable man." The criminal courts exist for this purpose, if it can be accomplished. Insurance companies are not "innocent victims" of awards for punitive damages anymore than they are innocent victims of awards for negligence--these are risks included by insurance companies in calculation of premiums as a prudent business practice.

By ignoring the Defendants public policy argument, Plaintiffs emphasize to the Court that it has no bearing or application to the present case.

THEODORE M. LERNER, et. al  
by counsel



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

FAIRFAX COUNTY  
FAIRFAX CITY

PRINCE WILLIAM COUNTY  
FALLS CHURCH CITY

ARTHUR W. SINCLAIR  
BARNARD F. JENNINGS  
JAMES KEITH  
WILLIAM G. PLUMMER  
LEWIS D. MORRIS  
PERCY THORNTON, JR.  
BURCH MILLSAP  
JAMES C. CACHERIS  
THOMAS J. MIDDLETON  
RICHARD J. JAMBORSKY  
JUDGES

FAIRFAX COUNTY COURTHOUSE  
4000 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030

November 15, 1976

Mr. Adelard L. Brault  
10533 Main Street  
Fairfax, Virginia 22030

Mr. Gerald R. Walsh  
4069 Chain Bridge Road  
Fairfax, Virginia 22030

Re: Lerner, et al v. Safeco;  
At Law No. 35420

Gentlemen:

The case comes before me on the pleadings and an agreed statement of fact. The sole question presented is whether the defendant insurance company is obligated to reimburse the plaintiff for \$4,111.00, that being the attorneys fee incurred in defending a claim for punitive damages.

The question has two parts: a) does public policy preclude insurance against punitive damages; and if the answer is "Yes," b) does the policy require the company to defend against the claim for punitive damages anyway.

Full memoranda of authorities have been submitted by counsel and all the cases on the subject have been cited to the court. After consideration of these cases and the argument of counsel I am of the opinion there should be a judgment for the defendant on the ground that a policy insuring against damages levied as punitive is violative of public policy, and this being so, there was no duty on the defendant company to defend this aspect of the action.

The reason for the conclusion can be simply stated. Punitive

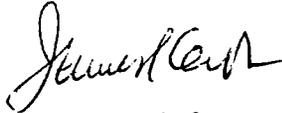
damages are to punish and deter. For a clear definition see Doubles "Virginia Jury Instructions" No. 2309. The Virginia cases emphasize this purpose. By permitting a person to insure against this punishment, he gains a freedom inconsistent with its purpose; it could be likened to insurance against criminal fines, which is undoubtedly contrary to public policy. So while there is a sharp division of authority on this question, I am persuaded by the logic of the case law to hold that a policy insuring against punitive damages is violation of public policy. Northwestern National, etc. v. McNulty, 307 Fed. 432; American Surety, etc. v. Gold, 375 F2 523.

This being so, it is not necessary to deal with the coverage question, which has been the basis for decision to the contrary in some jurisdictions. I am not persuaded by the reasoning of the Reichard case relied on by plaintiff, which allows coverage where the sole liability of the employer is by virtue of the doctrine of respondeat superior. Corporations can only act through their servants and agents and can only be punished through punitive damages. The whole basis for the public policy would be destroyed where corporations are concerned if this exception were established.

Since punitive damages cannot be covered under the policy by reasons of public policy, there is no duty to defend against this claim. Accident Corp. v. Washington Co., 148 Va. 829, and other cases cited in defendant's brief.

Mr. Brault can prepare an order in accord with the foregoing and submit it to Mr. Walsh for his approval as to form.

Very truly yours,



James Keith

JK:elc

FINAL ORDER

THIS MATTER came on to be heard for trial on the 1st day of November, 1976, without the intervention of a jury, the parties appearing by counsel, and was heard on Count I of the plaintiffs' Motion for Judgment, plaintiffs having non-suited Count II prior to the trial commencing; the defendant's Answer and Grounds of Defense; a Stipulation of Facts and Blanket Liability Insurance Policy No. CP 233415 incorporated therein by reference; and a copy of the Motion for Judgment in the case styled Patricia P. Cassidy, et al, vs. Tysons Corner Regional Shopping Center, et al, At Law No. 31241, in the Circuit Court of Fairfax County, admitted as plaintiffs' Exhibit 1; and the argument of counsel, there being no oral testimony presented by either party; and

WHEREUPON, the case was submitted to the Court for decision, plaintiffs having tendered their Memorandum of Law. Defendant was granted leave to file a Memorandum. Thereafter, plaintiffs filed a Reply Memorandum, and the issues were then considered by the Court.

And the Court being of the opinion that judgment should be entered for the defendant for reasons stated in its letter opinion dated November 15, 1976, which is incorporated herein by reference, it is

ADJUDGED and ORDERED that judgment be, and it hereby is, entered in favor of the defendant.

And this Order is final.

Entered this 17th day of  
December, 1976.

K/ James Keith  
James Keith, Judge

I ASK FOR THIS:

K/  
Adelard L. Brault  
BRAULT, LEWIS, GESCHICKTER & PALMER  
Counsel for Defendant

PLAINTIFFS OBJECT AND EXCEPT TO THE RULING OF THE COURT ON THE GROUNDS THAT PUBLIC POLICY DOES NOT PROHIBIT INSURANCE COVERAGE FOR AWARDS OF PUNITIVE DAMAGES, AND, EVEN IF IT DOES, PUBLIC POLICY DOES NOT PROHIBIT OR RELIEVE INSURERS FROM FULLY DEFENDING AT INSURERS' OWN EXPENSE, CLAIMS FOR PUNITIVE DAMAGES, PARTICULARLY WHEN SUCH CLAIMS ARE WITHOUT MERIT; AND, IN ANY EVENT, PUBLIC POLICY DOES NOT PROHIBIT AN EMPLOYER'S INDEMNIFICATION BY WAY OF INSURANCE FOR AWARDS OF PUNITIVE DAMAGES OR THE EXPENSE OF DEFENSE ARISING FROM CLAIMS BASED ON EMPLOYEE ACTS UNDER THE DOCTRINE OF RESPONDIAT SUPERIOR:

K/  
Gerald R. Walsh  
McCANDLISH, LILLARD, BAUKNIGHT, CHURCH & BEST  
Counsel for Plaintiffs

ASSIGNMENTS OF ERROR

1. The trial court erred in holding that public policy prohibits insurance against liability for punitive damages.

2. The trial court erred in holding that public policy prohibits insurance against liability for punitive damages where the sole liability claimed is by virtue of the doctrine of respondeat superior.

3. Even assuming that public policy prohibits insurance against liability for punitive damages, the trial court erred in holding that the insurer had no duty to defend against punitive damages.