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A31173-7/SHL/vsc/223902

IN THE FLORIDA SUPREME COURT
CASE NO. 86,598

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

HARCO NATIONAL INSURANCE COMPANY,

Petitioner,

vs.

FRANCISCO ROBLES,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF CASE AND FACTS*

This case interprets the appraisal provision in an automobile insurance policy.

Francisco Robles purchased a 1980 Ford dump truck in May 1989 which was financed by a \$28,643.00 loan from Capital Bank. Robles insured this vehicle with Harco National Insurance Company.

On October 22, 1990, Robles filed a Proof of Loss with Harco, claiming that the truck was stolen. Robles sought reimbursement for the loss pursuant to the terms and conditions of the Harco policy. The policy provided that the maximum damages recoverable at the time of loss was the actual cash value or the cost of repairing or replacing the stolen property, whichever was less, minus a \$1,000.00 deductible. (A 2, 10) If the parties disagreed on the amount of loss, the insurance contract established an appraisal provision to determine what sum was due and owing:

*The symbol "R" refers to the Index to the Record on Appeal. Because of the multiple amendments to the Record, some documents may be referenced specifically.

The symbol "A" refers to the attached Appendix.

All emphasis is added unless noted to be in the original.

SECTION III - BUSINESS AUTO CONDITIONS

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

A. LOSS CONDITIONS

1. APPRAISAL

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual case value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim. (A 10-11)

* * *

In November 1990, Harco offered \$17,303.00 as the actual cash value of the truck, subject to Robles' \$1,000.00 deductible. (Robles Depo. P. 56, Harco's Ex. E to Depo.) Robles refused the payment. In a letter dated January 21, 1991, Harco requested that Robles submit to an appraisal of the loss pursuant to the contract terms. Robles' appraiser valued the truck at \$29,000.00 (subject to the \$1,000.00 deductible). Harco's appraiser valued the

vehicle at \$16,000.00, subject to the deductible. (Harco's answers to interrogatories propounded 8-5-91) Because of the dispute between the parties' appraisers, the two appraisers then selected a neutral umpire pursuant to the terms and conditions of the policy's appraisal provision. (Kuhn Depo. P. 6, Horowitz Depo. P. 45-46, 60, 61; Ex. H to Robles Depo., Ex. I to Horowitz Depo.) This umpire valued the truck at \$16,000.00. (Kuhn Depo. P. 6-7, 43; Harco's answers to interrogatories propounded 8-5-91; Harco's response to plaintiff's first request for production propounded 8-5-91; Ex. H to Robles Depo.) The trial court found that the umpire's decision that the truck had a value of \$16,000.00 established this as a "decision agreed to by any two" appraisers in accordance with the terms and conditions of the policy.

Following the neutral umpire's appraisal, Harco tendered \$15,000.00 to Robles (the appraisal minus the deductible). (Ex. J to Robles Depo.) Robles rejected the offer and filed suit seeking sums in excess of both the appraisal provision and the limits of insurance coverage provided by the contract.¹

¹Robles' complaint criticized the evaluation procedure set by the appraisal provision and assessed that Harco should pay more than the neutral umpire's evaluation. (R. 1-26) Robles unsuccessfully moved for summary judgment based on the loss payee clause. (R. 79-81) Robles said that the truck's financing exceeded the value of the truck and asserted that until the loan was satisfied, the appraised value of the vehicle was irrelevant, the appraisal provisions and insurance limits were

Harco moved for summary judgment on the grounds that Robles' recovery was limited to the amount established pursuant to the policy's appraisal provisions. (R. 114-123) The trial court granted summary judgment in favor of Harco, but the Third District Court of Appeal reversed on the authority of *American Reliance Insurance Co. v. Village Homes at Country Walk*, 632 So.2d 106 (3d DCA), rev. denied, 640 So.2d 1106 (Fla. 1994), which said that this type of appraisal clause is void because of lack of mutuality. In a companion case currently pending before this Court, *State Farm Fire & Casualty Co. v. Licea*, 649 So.2d 910 (Fla. 3d DCA 1995), a different panel of the Third District noted a belief that the *American Reliance v. Country Walk* case was wrongly decided and that the correct rule of law was stated in Judge Cope's dissent:

This panel is of the opinion that Judge Cope's dissent in *American Reliance v. Country Walk*, sets forth the correct rule of law, to wit: That by participating in an arbitration proceeding to determine the amount of loss suffered by an insured, the insurer is in no way deprived of the right to later contest the existence of insurance coverage for that loss.

649 So.2d at 911. The *Licea* court then certified express and direct conflict with decisions of the other four District Courts of Appeal.

unenforceable, and that Harco must automatically pay the outstanding amount of the loan. Harco denied the allegations in the complaint and counterclaimed that Robles wrongfully refused the \$15,000 tender. (R. 51-68)

Harco filed its timely notice to invoke this Court's discretionary jurisdiction based upon its similarity to issues presented in the *Licea* case.

ISSUE

WHETHER AN APPRAISAL CLAUSE REMAINS
BINDING AND ENFORCEABLE BECAUSE OF
MUTUALITY OF OBLIGATION EVEN WHERE THE
INSURANCE POLICY RESERVES THE RIGHT TO
CONTEST THE EXISTENCE OF COVERAGE.
BINDING THE PARTIES ONLY TO THE ISSUE OF
LOSS AND LEAVING COVERAGE DISPUTES FOR
RESOLUTION BY THE COURTS DOES NOT RENDER
AN APPRAISAL PROVISION UNENFORCEABLE.

ARGUMENT SUMMARY

Public policy favors appraisal clauses because, much like arbitration provisions, they reduce litigation. An appraisal clause provides an effective method for parties to an insurance contract to resolve disagreements about the amount of loss, which is often their only dispute.

Over a century ago, this Court determined that a similar appraisal clause is valid and enforceable. This Court should reaffirm its position that an appraisal clause retains its mutuality of obligation and remains binding even where the arbitration resolves only the amount of loss and the carrier retains the right to resolve coverage disputes in a court of law.

The instant decision of the Third District conflicts not only with a decision of this Court but also with decisions of numerous other district courts. The case of *American Reliance v. Country Walk*, (which forms the basis for the Third District's opinion) contradicts public policy and will cause needless litigation. The *Country Walk* decision should be overruled and the Third District's decision should be reversed.

ARGUMENT

AN APPRAISAL CLAUSE REMAINS BINDING AND ENFORCEABLE BECAUSE OF MUTUALITY OF OBLIGATION EVEN WHERE THE INSURANCE POLICY RESERVES THE RIGHT TO CONTEST THE EXISTENCE OF COVERAGE. BINDING THE PARTIES ONLY TO THE ISSUE OF LOSS AND LEAVING COVERAGE DISPUTES FOR RESOLUTION BY THE COURTS DOES NOT RENDER AN APPRAISAL PROVISION UNENFORCEABLE.

APPRAISAL CLAUSES HAVE ALWAYS BEEN FAVORED AS AN EFFICIENT METHOD TO RESOLVE VALUATION DISPUTES.

Appraisal clauses enjoy a long history of acceptance and enforcement. The appraisal process provides a simple method for resolving valuation disputes, which are exclusively factual matters. The appraisal process is uncomplicated: Typically, each party selects an independent appraiser and the two appraisers then select a competent and impartial umpire. An agreement by any two of the three appraisers establishes the amount of loss and ends the dispute.

Over 100 years ago, this Court was asked to review a similar appraisal clause and ruled:

Ever since the decision in 1853 in the House of the Lords. . . it has been uniformly held in England and in this country that provisions like this in a policy of insurance for the ascertainment and settlement of the amount of loss or damage by submission to arbitrators are proper, legal and binding on the parties . . . The parties in this case, in pursuance of this valid and binding provision of the policy here sued on, entered into a solemn written compact submitting the matter of the "amount" of the loss or damage to two arbitrators or appraisers of their own choosing, with power in them to choose a third as umpire in case of

their failure to agree ... why the assured are not bound by their agreement of submission of this award that followed we cannot comprehend from anything exhibited in the record ... By this award were they bound, and to the amount awarded were they limited to their right to recover ...

Hanover Fire Ins. Co. v. Lewis, 10 So. 297, 302 (Fla. 1891).

This Court's decision closely followed two decisions from the United States Supreme Court which also approved the use of appraisal clauses:

Such a stipulation, not ousting the jurisdiction of the Courts, but leaving the general question of liability to be judicially determined, and simply providing a reasonable method of estimating and ascertaining the amount of the loss is unquestionably valid, according to the uniform current of authority in England and in this Country.

Hamilton v. Liverpool & London Globe Ins. Co., 136 U.S. 242, 255; 10 S.Ct. 945, 949; 34 L.Ed., 419 (1890).

A provision in a contract with the payment of money upon a contingency that the amount to be paid should be submitted to arbitrators, whose award shall be final as to that amount, but shall not determine the general question of liability, is undoubtedly valid.

Hamilton v. Home Ins. Co., 137 U.S. 370, 385; 11 S.Ct. 133, 138; 34 L.Ed. 708, (1890).

APPRAISAL CLAUSES EASE THE BURDENS ON THE COURT SYSTEM

Appraisal clauses have long been favored because they provide parties with a prompt, practical procedure to obtain a binding determination of the amount of a loss, which is frequently their only point of disagreement.

State Farm Fire & Cas. Co. v. Middletown, 648 So.2d 1200 (Fla. 3d DCA 1995); *Roe v. Amica Mutual Ins. Co.*, 533 So.2d 279 (Fla. 1988); *Midwest Mutual Ins. Co. v. Santiesteban*, 287 So.2d 665 (Fla. 1973).

The Supreme Court again encouraged the use of appraisal clauses in the case of *Hardware Dealer's Mutual Fire Ins. Co. v. Glidden Co.*, 284 U.S. 151, 159; 52 S.Ct. 69, 71 (1931):

We share in the common knowledge that the amount of loss is a fruitful and often the only subject of controversy between insured and insurer; that speedy determination of the public liability such as may be secured by arbitration of this issue is a matter of wide concern [citations omitted]; that, in the appraisal of the loss by arbitration, expert knowledge and prompt inspection of the damaged property may be availed of to an extent not ordinarily possible in the course of the more deliberate process of a judicial proceeding.

As this case notes, the damage valuation process under an appraisal clause is separate and distinct from the issue of whether coverage exists. Damage and coverage issues are unrelated; the occurrence of damage does not equate to the existence of coverage (for example, an insured who intentionally burns down his home suffers damages, but enjoys no coverage for his arson). The appraisal clause focuses on factual establishment of the amount of damages; appraisers do not consider coverage issues and do not make legal determinations as to the existence of coverage under a particular policy:

The function of the appraisers is to determine the amount of damage resulting from various items submitted for their consideration. It is certainly not their function to resolve questions of coverage and interpret provisions of the policy.

Jefferson Ins. Co. of N.Y. v. Superior Ct., 3 Cal.3d 398; 90 Cal. Rptr. 608, 611; 475 P.2d 880, 883 (1970). Indeed, appraisers who consider matters beyond the valuation of loss and decide such issues as liability, ownership, or fraud, are acting outside the scope of their authority. See, for example: *St. Paul Fire & Marine Ins. Co. v. Wright*, 629 P.2d 1202 (Nev. 1981); *Elberon Bathing Co. v. Ambassador, Inc.*, 389 A.2d 439, 445 (N.J. 1978).

While the appraisal process is sometimes compared to arbitration, important distinctions exist:

The distinctions are significant. An agreement for arbitration ordinarily encompasses the disposition of the entire controversy between the parties, and judgment may be entered upon the award, whereas an appraisal establishes only the amount of loss and not liability. Arbitration is conducted as a quasi judicial proceeding, with hearings, notice of hearings, oaths of arbitrators and oaths of witnesses. Appraisers act on their own skill and knowledge, need not be sworn and need hold no formal hearings so long as both sides are given an opportunity to state their positions.

Elberon Bathing Co. v. Ambassador, Inc., 389 A.2d at 447.

PUBLIC POLICY SUPPORTS ENCOURAGING THE APPRAISAL PROCESS

Public policy has long favored alternative dispute resolution and routinely requires exhaustion of administrative remedies before seeking access to the

courts. Enforcing of an appraisal clause clearly does not infringe upon a litigant's right to a jury trial. This Court has specifically stated that appraisal clauses "do not fall within that class of arbitrations that undertake to oust the courts of their jurisdiction, and that are therefor obnoxious to the law." *Hanover Fire Ins. Co. v. Lewis, supra*, 10 So. at 302. See also, 14 COUCH ON INSURANCE § 50.30 (federal and state constitutions are not violated by insurance policy provisions for arbitration or appraisal of the amount of loss).

Assuming *arguendo* that the instant policy provides for arbitration rather than appraisal, this Court has held that even non-binding arbitration provisions are valid and follow public policy. *Roe v. Amica Mutual Ins.*, 533 So.2d 279 (Fla. 1988). It must also be noted that the instant provision does not give an open ended escape to the insurer. Rather, the policy specifically states that "a decision agreed to by any two [appraisers] will be binding." Harco's retention of the right to deny a claim merely references the fact that its right to assert a coverage defense (such as non-cooperation or late notice) or coverage exclusion is not waived by participation in the appraisal process. This provision does not give the insurer the right to reject the decision of majority of the appraisers regarding the value of the loss. *Hanover Fire Ins. Co. v. Lewis, supra*; *Roe v. Amica Mutual Ins., supra*.

The Third District's majority decision in the *American Reliance v. Country Walk, supra*, case decided that a similar appraisal clause was unenforceable because of a perceived lack of mutuality of obligation. The court reached this conclusion based upon the carrier's reservation of the right to deny the claim even after participation in arbitration. As the dissent notes, however, this reservation is no more than a statement that a carrier who merely agrees to participate in the appraisal process is not abandoning any coverage defenses which may be available.

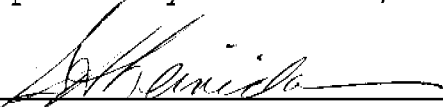
Numerous decisions in this state acknowledge the viability of appraisal provisions in insurance contracts. See, for example: *Montalvo v. Travelers*, 643 So.2d 648 (Fla. 5th DCA 1994); *J.F.F. of Palm Beach v. State Farm*, 630 So.2d 1089 (Fla. 4th DCA 1984); *U.S.F & G v. Woolard*, 523 So.2d 798 (Fla. 1st DCA 1988); *Kenilworth Ins. Co. v. Drake*, 396 So.2d 836 (Fla. 2d DCA 1981); See also: cases cited in *State Farm Ins. Co. v. Licea, supra*. These opinions all state that "by participating in an arbitration proceeding to determine the amount of loss suffered by an insured, the insurer is in no way deprived of the right to later contest the existence of insurance coverage for that loss." *State Farm Fire & Casualty Co. v. Licea*, 649 So.2d at 911.

In the instant case, enforcement of the appraisal provision is particularly appropriate because Robles voluntarily participated in the entire appraisal process and never challenged the enforceability of this policy provision until he was faced with a result he did not like. Robles should not be allowed to challenge the validity of the appraisal clause after voluntarily participating in the appraisal process through its conclusion.

CONCLUSION

It is respectfully requested that this Honorable Court should overrule the case of *American Reliance Insurance Co. v. Village Homes at Country Walk*, 632 So.2d 106 (Fla. 3d DCA), *rev. denied*, 640 So.2d 1106 (Fla. 1994), reverse the decision of the Florida Third District Court of Appeals and remand this case with directions to affirm the summary final judgment which was entered by the trial court.

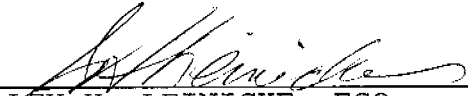
Respectfully Submitted,


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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 29th day of January, 1996, to: Carlos Lidsky, Esq., Carlos Lidsky, P.A., 145 E. 49th Street, Hialeah, Florida 33013, Attorneys for Appellant; Leo Bueno, Esq., Leo Bueno, Attorney, P.A., Post Office Box 440545, Miami, Florida 33144-0545, Attorneys for Appellant; Manuel Morales, Jr., Esq., Manuel R. Morales, Jr., P.A., Biscayne Building, Suite 711, 19 West Flagler Street, Miami, Florida 33130, Attorney for Alejandro Robles.

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IN THE SUPREME COURT OF FLORIDA
CASE NO. 86,598

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_____ /

**APPENDIX
TO
PETITIONER'S BRIEF ON THE MERITS**

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1. Harco National Insurance Business Auto Physical Damage Policy, Policy No. CA3700540	1-12

**BUSINESS AUTO
PHYSICAL DAMAGE POLICY**

HARCO NATIONAL INSURANCE COMPANY

ADMINISTRATIVE OFFICE: SCHAUMBURG, ILLINOIS 60173

**THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY
DAMAGE LIABILITY INSURANCE AND DOES NOT COMPLY WITH ANY
FINANCIAL RESPONSIBILITY LAW OR ANY STATUTORY REQUIRE-
MENT FOR NO-FAULT COVERAGES.**

BUSINESS AUTO PHYSICAL DAMAGE DECLARATIONS (Continued)

ITEM FOUR
SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS
PHYSICAL DAMAGE COVERAGE

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY AND DEDUCTIBLE	RATE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE, COST OF REPAIRS, OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO, BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING.		
SPECIFIED CAUSES OF LOSS	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO. FOR LOSS CAUSED BY MISCHIEF OR VANDALISM. THE DEDUCTIBLE SHOWN ABOVE OR \$25 WHICH- EVER IS GREATER		
COLLISION	ACTUAL CASH VALUE, COST OF REPAIRS, OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO.		
		TOTAL PREMIUM	

PHYSICAL DAMAGE COVERAGE for covered "autos" you hire or borrow is excess unless indicated below by ""

If this box is checked PHYSICAL DAMAGE COVERAGE applies on a direct primary basis and for the purposes of the condition entitled OTHER INSURANCE, any covered "auto" you hire or borrow is deemed to be a covered "auto" you own.

004

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE CLAUSE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

- A. We will pay you and the loss payee named in the policy for "loss" to a covered "auto," as interest may appear.
- B. The insurance covers the interest of the loss payee unless the "loss" results from conversion, secretion or embezzlement on your part.
- C. We may cancel the policy as allowed by the CANCELLATION Common Policy Condition.
- D. If we make any payments to the loss payee, we will obtain his or her rights against any other party.
- Cancellation ends this agreement as to the loss payee's interest. If we cancel the policy we will mail you and the loss payee the same advance notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in, Florida, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

A. PHYSICAL DAMAGE COVERAGE is changed as follows:

1. No deductible applies to "loss" to glass used in the windshield.
2. All other PHYSICAL DAMAGE COVERAGE provisions will apply.

IL 00 17 11 85

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions:

A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. INSPECTIONS AND SURVEYS

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

E. PREMIUMS

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 00 03 11 85

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
BUSINESS AUTO COVERAGE PART
COMMERCIAL CRIME COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY—NEW YORK

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.



CA 00 10 01 87

BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V—DEFINITIONS.

SECTION I—COVERED AUTOS

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos"

A. DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS

- | SYMBOL | DESCRIPTION |
|--|--|
| 1 = OWNED "AUTOS" ONLY. | Only those "autos" you own. This includes those "autos" you acquire ownership of after the policy begins. |
| 2 = OWNED PRIVATE PASSENGER "AUTOS" ONLY. | Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins. |
| 3 = OWNED "AUTOS" OTHER THAN PRIVATE PASSENGER "AUTOS" ONLY. | Only those "autos" you own that are not of the private passenger type. This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins. |
| 4 = SPECIFICALLY DESCRIBED "AUTOS". | Only those "autos" described in ITEM THREE of the Declarations for which a premium charge is shown. |
| 5 = HIRED "AUTOS" ONLY. | Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your employees or partners or members of their households. |

B. OWNED AUTOS YOU ACQUIRE AFTER THE POLICY BEGINS

1. If symbols 1, 2 or 3 are entered next to a coverage in ITEM TWO of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if symbol 4 is entered next to a coverage in ITEM TWO of the Declarations, an "auto"

you acquire will be a covered "auto" for that coverage only if:

- a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
- b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

SECTION II—PHYSICAL DAMAGE COVERAGE

A. COVERAGE

1. We will pay for "loss" to a covered "auto" or its equipment under:
 - a. Comprehensive Coverage. From any cause except:
 - (1) The covered "auto's" collision with another object; or
 - (2) The covered "auto's" overturn.
 - b. Specified Causes of Loss Coverage. Caused by:
 - (1) Fire, lightning or explosion;
 - (2) Theft;
 - (3) Windstorm, hail or earthquake;
 - (4) Flood;
 - (5) Mischief or vandalism; or
 - (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
 - c. Collision Coverage. Caused by:
 - (1) The covered "auto's" collision with another object; or
 - (2) The covered "auto's" overturn.

2. Towing.

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.



3. Glass Breakage—Hitting a Bird or Animal—Falling Objects or Missiles.

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. Coverage Extension. We will also pay up to \$10 per day to a maximum of \$300 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for the transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

B. EXCLUSIONS

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

a. Nuclear Hazard.

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War or Military Action.

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

2. Other Exclusions.

- a. We will not pay for "loss" to any of the following:

- (1) Tape decks or other sound reproducing equipment unless permanently installed in a covered "auto".

(2) Tapes, records or other sound reproducing devices designed for use with sound reproducing equipment.

(3) Sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "auto" manufacturer for the installation of a radio.

- b. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

(1) Wear and tear, freezing, mechanical or electrical breakdown.

(2) Blowouts, punctures or other road damage to tires.

C. LIMIT OF INSURANCE

The most we will pay for "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

D. DEDUCTIBLE

For each covered "auto", our obligation to pay for repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

SECTION III—BUSINESS AUTO CONDITIONS

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

A. LOSS CONDITIONS

1. APPRAISAL

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and

umpire equally.

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

2. DUTIES IN THE EVENT OF LOSS

a. In the event of "loss", you must give us or our authorized representative prompt notice of the "loss". Include:

- (1) How, when and where the "loss" occurred;
- (2) To the extent possible, the names and addresses of any injured persons and witnesses;

b. Additionally, you must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at your own cost.
- (2) Cooperate with us in the investigation, settlement or defense of any suit.
- (3) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (4) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (5) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (6) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Form until there has been full compliance with all the terms of this Coverage Form.

4. LOSS PAYMENT

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "loss" to impair them.

B. GENERAL CONDITIONS

1. BANKRUPTCY

Bankruptcy or insolvency of the Named Insured or the Named Insured's estate will not relieve us of any obligations under this Coverage Form.

2. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. LIBERALIZATION

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. NO BENEFIT TO BAILEE

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. OTHER INSURANCE

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance.
- b. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. PREMIUM AUDIT

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total

premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Form, we cover "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico; and
- d. Canada.

We also cover "loss" to a covered "auto" while being transported between any of these places.

SECTION IV—DEFINITIONS

- A. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads.
- B. "Loss" means direct and, accidental loss on damage.