

532647

NEW YORK SUPREME COURT

Appellate Division : Third Department

Docket No.: 532647

Chenango County Index No.: 2019-5393

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs-Appellants,

vs.

STERLING INSURANCE COMPANY,

Defendant-Respondent,

and

HBE GROUP, INC.,

Defendant.

SIGNED

RECEIVED
APP. DIV.
3RD DEPT.
2021 SEP -8 PM 3-52

RECORD ON APPEAL

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Attorneys for Plaintiff-Appellant
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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT PURSUANT TO CPLR §5531.....	iii
NOVEMBER 20, 2020 NOTICE OF APPEAL.	1
NOVEMBER 20, 2020 INFORMATIONAL STATEMENT	2
DECEMBER 28, 2020 AMENDED NOTICE OF APPEAL.	6
DECEMBER 28, 2020 INFORMATIONAL STATEMENT.	8
* * * * *	
DECISION AND ORDER OF THE HON. JOSEPH A. MCBRIDE, DATED OCTOBER 21, 2020, WITH NOTICE OF ENTRY, DATED OCTOBER 23, 2020, <i>APPEALED FROM</i>	12
DECISION AND ORDER OF THE HON. JOSEPH A. MCBRIDE, DATED OCTOBER 21, 2020, ENTERED NOVEMBER 30, 2020, <i>APPEALED FROM</i>	19
* * * * *	
JULY 13, 2020 DEFENDANT STERLING INSURANCE COMPANY'S NOTICE OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO CPLR 3212 OR IN THE ALTERNATIVE, TO DISMISS THE GENERAL BUSINESS LAW CLAIM PURSUANT TO CPLR 3211 OR 3212.....	25
JULY 13, 2020 AFFIDAVIT OF ATTORNEY PETER W. KNYCH IN SUPPORT OF DEFENDANT STERLING'S MOTION FOR SUMMARY JUDGMENT	27
Exhibit A: August 27, 2019 Plaintiff's Amended Complaint.	38
Exhibit B: November 4, 2019 Defendant Sterling's Answer to First Amended Complaint.	43
Exhibit C: Certified Copy of Insurance Policy for 2895 State Route 7, Harpursville, NY, policy period 7/1/2016 through 7/1/2017.....	51
Exhibit D: Entrustment Exclusion.....	95

Exhibit E:	April 13, 2019 Police Report.....	96
Exhibit F:	March 5, 2020 Deposition Transcript of Edward Daire.....	99
Exhibit G:	March 3, 2020 email from paralegal Patrick Orr to Peter Knych and photographs.	190
Exhibit H:	November 8, 2019 Stipulation of Discontinuance as to Defendant HBE Group, Inc.....	215
AUGUST 16, 2020 PLAINTIFFS' NOTICE OF CROSS-MOTION.....		216
AUGUST 16, 2020 AFFIRMATION OF RONALD R. BENJAMIN IN SUPPORT OF PLAINTIFFS' MOTION TO AMEND COMPLAINT AND ADD PARTY DEFENDANT.....		217
Exhibit 1:	August 17, 2020 Plaintiffs' Proposed Amended Complaint.	219
AUGUST 20, 2020 REPLY AFFIDAVIT OF PETER W. KNYCH, IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION		227
Exhibit A:	Copy of Penal Law § 145.....	237
Exhibit B:	Treatises/Articles Describing Vandalism as a Crime under New York Law	239
Exhibit C:	Unpublished Decision [Entrustment Exclusion].	255
AUGUST 19, 2020 AFFIDAVIT OF MICHAEL DOWNIE, CLAIMS MANAGER OF DEFENDANT STERLING.		262
Exhibit A:	May 23, 2019 letter from Michael Downie, Vice President of Claims to Edward and Allison Daire..	264
AUGUST 20, 2020 AFFIDAVIT OF PATRICK DORNER.....		265
* * * * *		
STIPULATION PURSUANT TO CPLR § 5532.....		

NEW YORK SUPREME COURT

Appellate Division : Third Department

Docket No.: 532647

Chenango County Index No.: 2019-5393

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs-Appellants,

-vs-

STERLING INSURANCE COMPANY,

Defendant-Respondent.

and

HBE GROUP, INC.,

Defendant.

STATEMENT PURSUANT TO CPLR § 5531

Pursuant to CPLR 5531, there follows a description of the action:

1. The Chenango County Supreme Court Index number is 2019-5393.
2. The full names of the original parties are: EDWARD DAIRE and ALLISON DAIRE

-iii-

vs. STERLING INSURANCE COMPANY and HBE GROUP, INC.


3. The action was commenced in Supreme Court, Chenango County.

4. This action was commenced on or about August 12, 2019, by the filing of a Summons and Complaint. August 27, 2019 an Amended Complaint was filed. Issue was joined by service of an Answer to the August 27, 2019 Amended Complaint on or about November 4, 2019.

5. This is an appeal from a Decision and Order of the Honorable Joseph A. McBride, dated October 21, 2020, and filed and entered by the Chenango County Clerk on October 23, 2020m and the Decision and Order of the Honorable Joseph A. McBride, dated October 21, 2020, and filed and entered by the Chenango County Clerk on November 30, 2020.

6. The appeal is taken on a full reproduced record.

Dated: July 12, 2021
Binghamton, New York



Ronald R. Benjamin
LAW OFFICE OF RONALD R. BENJAMIN
*Attorneys for Plaintiffs-Appellants Edward Daire
and Allison Daire*
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442

STATE OF NEW YORK : SUPREME COURT
COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE

Plaintiffs/Appellants,

NOTICE OF APPEAL

Index No.: 2019-5393

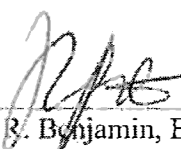
-VS-

STERLING INSURANCE COMPANY, and
HBE GROUP, INC.,

Defendants/Appellees.

PLEASE TAKE NOTICE that plaintiffs Edward Daire and Allison Daire, by and through their attorney, the Law Office of Ronald R. Benjamin, hereby appeals to the Appellate Division, Third Judicial Department, from the Decision and Order of the Hon. Joseph A. McBride dated October 21, 2020, granting defendants Sterling Insurance Company and HBE Group, Inc., Summary Judgment, entered with the Clerk of the Supreme Court for the County of Chenango on October 23, 2020. This appeal is taken from each and every part, as well as the whole thereof.

Dated: November 20, 2020
Binghamton, New York



Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin
Attorney for Plaintiffs Edward Daire and Allison Daire
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442

Supreme Court of the State of New York

Appellate Division: Third Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
EDWARD DAIRE and ALLISON DAIRE, <div style="text-align: center;">Plaintiffs/Appellants,</div> <div style="text-align: center;">- against -</div> HBE GROUP, INC., and STERLING INSURANCE COMPANY, <div style="text-align: center;">Defendants/Respondents.</div>		Date Notice of Appeal Filed
Case Type		Filing Type
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation
		<input type="checkbox"/> Contracts
		<input type="checkbox"/> Estate Matters
		<input type="checkbox"/> Prisoner Discipline & Parole
		<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
<input type="checkbox"/> Amended Judgement	<input type="checkbox"/> Finding	<input type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court		County: Chenango	
Dated: 10/21/2020		Entered: 10/23/2020	
Judge (name in full): Joseph A. McBride		Index No.: 2019-5393	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.			
Appeal from the Decision and Order of the Hon. Joseph McBride dated August 21, 2020, which erroneously granted the defendant insurer's motion for summary judgment dismissing plaintiffs' complaint due to defendant insurer's failure to pay plaintiffs' insurance loss claim on the grounds that its landlord policy excluded vandalism and other acts of destruction by a tenant under an entrustment exclusion, as someone to whom the property was entrusted.			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

(1) Whether a factual dispute remained and the court erroneously ruled the "Dishonest or Criminal Acts" exemption in the Policy was, as a matter of law, an express entrustment exclusion under the facts in the case at bar, and improperly construed the same in favor of the insurer.

(2) Whether the language in the subject exclusion is ambiguous as to whether or not "anyone to whom you entrust property for any purpose" includes the tenant in a rental property and can be expanded to include what it refers to as any and all "occupants" who at some point may have stayed at the rental property.

(3) Whether a factual dispute remained and the court erroneously ruled that the exclusion provision unambiguously includes vandalism as a criminal act where the insurance policy does not define the term vandalism, and defendant failed to establish that the acts of destruction and work done by the tenants without plaintiff's permission constituted renovations rather than mere vandalism, and the court erroneously failed to construe the ambiguity in the exclusion terms in favor of the insured plaintiffs.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Edward Daire	Plaintiff	Appellant
2	Allison Daire	Plaintiff	Appellant
3	HBE Group, Inc.	Defendant	Respondent
4	Sterling Insurance Company	Defendant	Respondent
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Informational Statement - Civil

Attorney Information			
Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.			
Attorney/Firm Name: Ronald R. Benjamin, Esq., Law Office of Ronald R. Benjamin			
Address: 126 Riverside Drive, P.O. Box 607			
City: Binghamton	State: NY	Zip: 13902-0607	Telephone No: (607) 772-1442
E-mail Address: ronbenjaminlaw@stny.rr.com			
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1,2			
Attorney/Firm Name: Peter W. Knych, Esq., Knych & Whritenour, LLC			
Address: One Park Place, 300 South State Street			
City: Syracuse	State: NY	Zip: 13202	Telephone No: (315) 472-1175
E-mail Address: PK@pknychlaw.com			
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3,4			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

Informational Statement - Civil

**STATE OF NEW YORK : SUPREME COURT
COUNTY OF CHENANGO**

EDWARD DAIRE and ALLISON DAIRE

Plaintiffs/Appellants,

-vs-


**STERLING INSURANCE COMPANY, and
HBE GROUP, INC.,**

Defendants/Appellees.

**AMENDED
NOTICE OF APPEAL**
Index No.: 2019-5393

PLEASE TAKE NOTICE that plaintiffs Edward Daire and Allison Daire, by and through their attorney, the Law Office of Ronald R. Benjamin, hereby appeals to the Appellate Division, Third Judicial Department, from the Decision and Order of the Hon. Joseph A. McBride dated October 21, 2020, granting defendants Sterling Insurance Company and HBE Group, Inc., Summary Judgment, entered with the Clerk of the Supreme Court for the County of Chenango on October 23, 2020, and from the Decision and Order of the Hon. Joseph A. McBride dated October 21, 2020, granting defendants Sterling Insurance Company and HBE Group, Inc., Summary Judgment and denying plaintiffs' cross-motion for leave to file a second amended complaint with respect to plaintiffs' second cause of action under GBL §349, entered with the Clerk of the Supreme Court for the County of Chenango on November 30, 2020. This appeal is taken from each and every part, as well as the whole thereof.

Dated: December 28, 2020
Binghamton, New York



Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin

*Attorney for Plaintiffs Edward Daire and
Allison Daire*
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442

Supreme Court of the State of New York

Appellate Division: Third Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
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Case Type	<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> Filing Type </div> <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
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<input type="checkbox"/> Contracts <input type="checkbox"/> Estate Matters <input type="checkbox"/> Prisoner Discipline & Parole <input type="checkbox"/> Torts		

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
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<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: Supreme Court		County: Chenango	
Dated: 10/21/2020		Entered: 11/30/2020	
Judge (name in full): Hon. Joseph A. McBride		Index No.: 2019-5393	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
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Appeal from the Decision and Order of the Hon. Joseph McBride dated August 21, 2020, which erroneously granted the defendant insurer's motion for summary judgment dismissing plaintiffs' complaint due to defendant insurer's failure to pay plaintiffs' insurance loss claim on the grounds that its landlord policy excluded vandalism and other acts of destruction by a tenant under an entrustment exclusion, as someone to whom the property was entrusted.			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

- (1) Whether a factual dispute remained and the court erroneously ruled the "Dishonest or Criminal Acts" exemption in the Policy was, as a matter of law, an express entrustment exclusion under the facts in the case at bar, and improperly construed the same in favor of the insurer.
- (2) Whether the language in the subject exclusion is ambiguous as to whether or not "anyone to whom you entrust property for any purpose" includes the tenant in a rental property and can be expanded to include what it refers to as any and all "occupants" who at some point may have stayed at the rental property.
- (3) Whether a factual dispute remained and the court erroneously ruled that the exclusion provision unambiguously includes vandalism as a criminal act where the insurance policy does not define the term vandalism, and defendant failed to establish that the acts of destruction and work done by the tenants without plaintiff's permission constituted renovations rather than mere vandalism, and the court erroneously failed to construe the ambiguity in the exclusion terms in favor of the insured plaintiffs.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Edward Daire	Plaintiff	Appellant
2	Allison Daire	Plaintiff	Appellant
3	Sterling Insurance Group	Defendant	Respondent
4	HBE Group, Inc.	Defendant	Respondent
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Informational Statement - Civil

Attorney Information			
Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.			
Attorney/Firm Name: Ronald R. Benjamin / Law Office of Ronald R. Benjamin			
Address: 126 Riverside Drive, P.O. Box 607			
City: Binghamton	State: NY	Zip: 13902-0607	Telephone No: (607) 772-1442
E-mail Address: ronbenjaminlaw@stny.rr.com			
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1 and 2			
Attorney/Firm Name: Peter W. Knych, Esq., Knych & Whitenour, LLC			
Address: One Park Place, 300 South State Street			
City: Syracuse	State: NY	Zip: 13202	Telephone No: (315) 472-1175
E-mail Address: PK@pknychlaw.com			
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 3 and 4			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

Informational Statement - Civil

NYSCEF DOC. NO. 50

RECEIVED NYSCEF: 10/23/2020

NYSCEF DOC. NO. 39

RECEIVED NYSCEF: 10/23/2020

FILED: APPELLATE DIVISION - 3RD DEPT - PENDING

NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 01/10/2021

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

NOTICE OF ENTRY

vs.

Index No.: 2019-5393

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendant.

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of the Honorable Joseph A. McBride, J.S.C., Chenango County Supreme Court, dated October 21, 2020, and entered in the Chenango County Clerk's Office on October 21, 2020, stamped with proof of entry. A copy of the Order is attached.

Date: October 23, 2020.

By:



Peter W. Knych, Esq.
KNYCH & WHRITENOUR, LLC
Attorneys for Defendant
Sterling Insurance Company
One Park Place, Suite 404
300 South State Street
Syracuse, New York 13202
Telephone (315) 472-1175

To: Ronald Benjamin, Esq.
Law Office of Ronald Benjamin
Attorneys for Plaintiffs
Edward Daire and Allison Daire
126 Riverside Drive
Binghamton, New York 13905

NYSCEF DOC. NO. 50

RECEIVED NYSCEF: 12/01/2022

NYSCEF DOC. NO. 39

RECEIVED NYSCEF: 10/23/2020

NYSCEF DOC. NO. 37

RECEIVED NYSCEF: 10/21/2020

At a Motion Term of the Supreme Court
of the State of New York held in and for
the Sixth Judicial District at the
Chenango County Courthouse, Norwich,
New York, on the 24th day of August
2020.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding
STATE OF NEW YORK
SUPREME COURT : CHENANGO COUNTY

EDWARD DAIRE and ALLISON DAIRE

Plaintiff(s),

DECISION AND ORDER

Index No. 2019-5393

-vs-

HBE GROUP, INC. and STERLING
INSURANCE COMPANY,

Defendant(s).

APPEARANCES:

COUNSEL FOR PLAINTIFFS:

LAW OFFICES OF RONALD BENJAMIN
By: Ronald Benjamin, Esq.
126 Riverside Drive
Binghamton, NY 13905

COUNSEL FOR DEFENDANTS:

KNYCH & WHRITENOUR, LLC
By: Peter W. Knych, Esq.
One Park Place, Suite 404
300 South State Street
Syracuse, NY 13202

JOSEPH A. MCBRIDE, J.S.C.

The case at hand follows a complaint alleging breach of contract and deceptive business practices against Defendants by failing to pay an insurance pay-out following Plaintiffs claim. On this motion, Defendants, HBE Group Inc., d/b/a Sterling Insurance Company ("Defendants") seek summary judgment pursuant CPLR §3212 against Plaintiffs, Edward and Allison Daire (collectively "Plaintiffs"). Plaintiffs filed a response in opposition, and each party appeared through counsel for oral argument on August 24, 2020, via Skype for Business. Court received and reviewed said motions and decided; as discussed below.¹

BACKGROUND FACTS

Plaintiffs own a single-family dwelling at 2895 State Route 7, Harpursville, NY ("the property"). Plaintiffs secured an insurance policy with Defendants for the property including coverage for criminal vandalism with an express entrustment exclusion. In 2015, Plaintiffs rented the property to Carole Sweet. By verbal agreement, the understanding was that Ms. Sweet would rent-to-own the property over a 10-year period. While Ms. Sweet was renting, she could make no repairs or changes to the property. Plaintiffs allowed Ms. Sweet to change the locks, but never inspected the premises to determine the condition. In 2017, with Plaintiffs' knowledge and consent, Ms. Sweet allowed her two daughters and one infant granddaughter to stay at the property. At some point in 2017 or 2018, Plaintiffs claim Ms. Sweet's daughter, Amber Stack "threatened" to destroy or damage the property in retaliation to "teach [Plaintiff] a lesson." In approximately November 2018, Plaintiffs initiated an eviction proceeding for failure to pay rent. For some unknown reason, the eviction did not become effective until March 2019. When Plaintiff gained access to the house in April 2019, he found substantial damage to the property in what has been described as unauthorized renovation repairs. While Plaintiffs cannot be sure who performed the damage, he is "99% sure it was the tenants trying to renovate" which he reports was expressly prohibited. Plaintiffs reported the damage to the police claiming it was unauthorized changes/ renovations to the structure of the property. No arrests were made.

¹ All the papers filed in connection with this motion are included in the electronic file maintained by the County Clerk and have been considered by the Court.

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Upon receiving an estimate to repair the damage, Plaintiffs filed a claim with Defendants for approximately \$63,000.00 due to “vandalism” claiming the damage was performed by the “intentional acts” by the occupants. Defendants denied the claim citing the entrustment exclusion barred recovery in this situation. Pursuant the entrustment exclusion, if the vandalism is done by someone the party entrusted, like a tenant, acting alone or in concert with others, the Policy excluded coverage for that damage. It should be noted that unauthorized repairs or negligent renovations are not covered by this policy.

After the coverage was denied, Plaintiffs initiated this lawsuit for breach of contract and deceptive business practices. Plaintiffs claim that Defendant’s “ambiguous language” of the entrustment exception is deceptive and caused Plaintiffs injury. Defendants filed the current motion for summary judgment claiming that there is no question of fact and the case should be dismissed as a matter of law as the entrustment exclusion bars recovery. In opposition, Plaintiffs argue that Defendant’s summary judgment motion should be denied as there is a question of fact as to the definition of vandalism and whether the damage is vandalism or faulty workmanship. At oral argument, Plaintiffs claim Defendants should be responsible for the damage suffered by this out of possession landlord. Defendants submit the clear language of the insurance policy.

LEGAL DISCUSSION AND ANALYSIS

Pursuant CPLR §3212(b), the motion for summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of either party. When seeking summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. Winegrad v. N.Y. Univ. Med. Ctr., 64 N.Y.2d 851, 853 (Ct. of App. 1985); Zuckerman v. New York, 49 N.Y.2d 557 (Ct of App. 1980). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (Ct. of App. 1986); Winegrad, 64 N.Y.2d 851, 853. “When faced with a motion for summary judgment, a court’s task is issue finding rather than issue determination (see, Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [Ct. of App. 1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the

benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact.” Boston v. Dunham, 274 AD2d 708, 709 (3rd Dept. 2000); see, Boyce v. Vazquez, 249 AD2d 724, 726 (3rd Dept. 1998). The motion “should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists.” Haner v. DeVito, 152 AD2d 896, 896 (3rd Dept. 1989); Asabor v. Archdiocese of N.Y., 102 AD3d 524 (1st Dept. 2013). Mere conclusions and expressions of hope are insufficient to conquer a motion for summary judgement and the defendant must submit admissible evidence when stating their defense. See Zuckerman, 49 N.Y.2d 557. Finally, it “is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact.” Vega v. Restani Constr. Corp., 18 NY3d 499, 505 (Ct. of App. 2012).

In the case at bar, Defendants, as the moving party, must establish a *prima facie* case that the undisputed facts bar recovery as a matter of law. Case law depicts that “construing an unambiguous contract is a function of the court, rather than a jury” where “the Court must give a plain and unambiguous provisions their ordinary meaning.” United Specialty Ins. Co. v. Barry Inn Realty, Inc., 130 F. Supp. 3d 834, 838 (USDC for SDNY 2015); citing Teitelbaum Holdings, Ltd. V. Gold, 48 NY2d 51, 56 (Ct. of App. 1979). Further, the Court of Appeals directs that “an insurance contract’s language ‘must be given its ordinary meaning,’ and ‘common words’ in a policy such as entrusted are not ‘used as words of art with legalistic implications’.” Lexington Park Realty LLC v. National Union Fire Ins. Co. of Pittsburgh, PA, 120 AD3d 413, 414 (1st Dept. 2013); quoting Abrams v. Great Am. Ins. Co., 269 NY 90, 92 (Ct. of App. 1935). It is well established in New York that the term “entrust” means possession of the premises with confidence that the property would be used consistent with the controlling element being the design of the owner. See United Specialty Ins. Co., 130 F. Supp. 3d at 839; citing Abrams 269 NY at 92. Therefore, the “entrustment exclusion in an insurance policy applies to persons whose status is created or accepted by the assured as a result of a consensual relationship between the parties.” United Specialty Ins. Co., 130 F. Supp. 3d at 839.

As an initial matter, the Court finds that whether the damages were performed by the hands of Ms. Sweet, her daughters, or a hired contractor the entrustment exclusion applies. Plaintiffs entrusted Ms. Sweet with the property. In the scope of that entrustment it is the duty of the person in possession to maintain the premises consistent with the design of the owner. See

United Specialty Ins. Co., 130 F. Supp. 3d at 839. While the scope of the agreement was by oral contract only, the undisputed understanding is that there were not to be any renovations to the property during Ms. Sweet's tenancy. Further, the Court finds that it is undisputed that Plaintiffs knew Ms. Sweet's daughters were living in the property with his knowledge and consent. By extension, the daughters were too entrusted with the property.

Moreover, looking at the relevant insurance policy, Plaintiffs are covered by 18 enumerated perils, including vandalism, and not including negligent repair or unauthorized modification of the building. If Plaintiffs argue that Ms. Sweet engaged in unauthorized repairs, they would not be covered, and the complaint would be dismissed as a matter of law. If Plaintiffs argue that the daughters engaged in criminal vandalism, the entrustment exception would apply as the vandalism was performed by the occupants of the premises to whom Plaintiffs entrusted.

Therefore, the Court finds the Defendants met their burden establishing a *prima facie* defense that the reported claim falls outside the scope of the insurance policy. Now, the burden shifts to Plaintiffs to establish a material question of fact. Plaintiffs fail to point to one single item in the record that raises a material issue of fact. Initially Plaintiffs claim that there is a question of fact as to the definition of vandalism. The Court is unpersuaded by this notion. Giving the insurance policy the ordinary meaning of common words, vandalism is defined as with criminal intent. Further, Plaintiffs themselves clearly characterize the incident as vandalism with a criminal intent. Plaintiffs filed a police report claiming vandalism with criminal intent. Plaintiffs filed their claim with the Defendants claiming vandalism with criminal intent. Therefore, The Court finds the record is devoid of a single disputed question of fact and the Plaintiffs are barred from insurance coverage in this situation based on the policy they secured for the property.

Therefore, looking at the facts in the light most favorable to the Plaintiffs and giving every reasonable inference, the Plaintiffs fail to defeat the motion for summary judgment by failing to provide admissible evidence that raises material questions of fact. The Defendant's motion for summary judgment is GRANTED.

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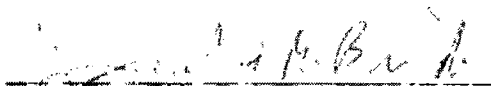
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Based on all the foregoing, the Court finds that both Defendants' motions for summary judgment must be GRANTED and the matter is dismissed.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this **DECISION AND ORDER** by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 10/21, 2020
Norwich, New York


HON. JOSEPH A. MCBRIDE
Supreme Court Justice

At a Motion Term of the Supreme Court
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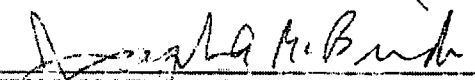
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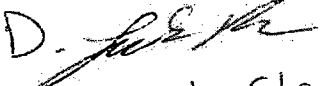
CONCLUSION

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Dated: 11/21, 2020
Norwich, New York


HON. JOSEPH A. MCBRIDE
Supreme Court Justice

Entered November 30, 2020 at 3:45PM
D. 
Deputy County Clerk

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

NOTICE OF MOTION

vs.

Index No.: 2019-5393

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendant.

Motion Made By:

Defendant *Sterling Insurance Company*, by its
attorneys, Knych & Whritenour, LLC.Date, Time and Place
of Hearing:Motion returnable before the Hon. *Joseph A. McBrade*,
S.J.C. on *August 24, 2020* at *1:30 pm* ~~at the Chenango~~
~~County Courthouse, 13 Eaton Avenue, Norwich, New~~
~~York 13815~~ *via Skype*

Supporting Papers:

Affidavit of *Peter W. Knych, Esq.*, sworn to on the
13th day of July, 2020 with attached Exhibits; and the
accompanying Memorandum of Law.

Relief Requested:

Grant Defendant Sterling's Motion for Summary
Judgment dismissing the complaint pursuant to CPLR
3212; or in the alternative, dismiss the General
Business Law claim pursuant to CPLR 3211 or 3212.

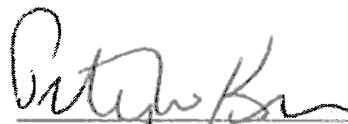
Grounds for Relief:

(1) The testimony of Plaintiff Edward Daire
establishes as a matter of law that the Sterling
Policy's "entrustment exclusion" effectively
eliminates insurance coverage under the Sterling
insurance policy for the plaintiff's insurance claim
and 2) The absence of proof of any pattern of conduct
by Sterling directed at the general public of any
improper claims handling entitles Sterling to
dismissal of the General Business Law claim.

Pursuant to CPLR § 2214(b), answering affidavits, if any, must be served no less than seven (7) days before the return date of this motion.

Dated: July 13, 2020

By:


Peter W. Knych, Esq.
KNYCH & WHRITENOUR, LLC
Attorneys for Defendant
Sterling Insurance Company
One Park Place, Suite 404
300 South State Street
Syracuse, New York 13202
Telephone (315) 472-1175

To: Marya Young, Esq.
Law Office of Ronald Benjamin
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126 Riverside Drive
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STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

vs.

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendants.

**ATTORNEY'S AFFIDAVIT
IN SUPPORT OF DEFENDANT
STERLING'S MOTION
FOR SUMMARY JUDGMENT**

Index No.: 2019-5393

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

PETER W. KNYCH, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and I am a member of the law firm of KNYCH & WHRITENOUR, LLC attorneys in this action for Defendant Sterling Insurance Company ("Sterling").

2. I make this affidavit in support of Sterling's motion for summary judgment seeking: 1) dismissal of the Complaint based on the testimony of Plaintiff Edward Daire, which establishes as a matter of law that the Sterling Policy's "entrustment exclusion" effectively eliminates insurance coverage for the Daires' first-party property damage claim made under the Sterling insurance policy and 2) in the alternative, dismissal of the New York General Business Law and bad faith claims handling allegations made against Sterling relative to its claims handling practices.

3. The standard insurance policy issued to a landlord--like plaintiffs--does not cover the landlord for the dishonest or criminal acts of the tenant (to whom the landlord has entrusted

the property) that cause damage to the property. The standard insurance policy issued to a landlord does not provide the landlord with a guarantee that whomever he entrusts the property to as tenants will be moral or ethical and not engage in dishonest or criminal acts to damage the property. In the present case, Plaintiffs Daire admit that all the damage for which they make an insurance claim was caused by the tenants to whom they entrusted the property. Sterling properly and effectively disclaimed and denied coverage under its standard insurance policy for these damages.

PROCEDURAL BACKGROUND: LITIGATION

4. Plaintiffs commenced this action against their first-party property insurer, Sterling, asserting that Sterling breached its insurance policy contract by refusing to acknowledge coverage and pay the Plaintiffs what the Plaintiffs contend is \$63,000 in damages to their rental property, a single family house in Harpursville, New York, where Plaintiffs contend that said damage was caused by the tenants/occupants to whom the Daires had entrusted the property. The Daires claim that all the damages were the result of dishonest or criminal acts by the occupants who were living at the property with the Daires' knowledge and consent. A copy of the Amended Complaint is attached hereto as Exhibit A.

5. Sterling answered the Complaint with an Answer that asserted several affirmative defenses, one of which was what is commonly known as the "Entrustment Exclusion" which states in pertinent part:

EXCLUSIONS THAT APPLY TO YOUR POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may

affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

...

4. **Dishonest or Criminal Acts**-means loss caused by or resulting from any dishonest or criminal act by *you*, any of *your* partners, employees, directors, trustees, authorized representatives or anyone, to whom *you* entrust property for any purpose:

- a. Acting alone or in collusion with others; or;
- b. Whether or not occurring during the hours of employment. This is [sic] exclusion does not apply to acts of destruction by *your* employees, but theft by an employee is not covered.

See Policy, FL-2, p. 4, Ed. 1/92. (Underline Added). Hereinafter "Entrustment Exclusion."

A copy of Sterling's Answer is attached hereto as Exhibit B.

6. As to Co-Defendant HBE Group, Inc., this Defendant was discontinued from the lawsuit. A copy of the filed stipulation of discontinuance is attached hereto as Exhibit H.

THE STERLING INSURANCE POLICY

7. The Sterling Insurance Policy was issued to the plaintiffs and potentially covered them under Coverage A for damage to their rental property. A certified copy of the Sterling insurance policy issued to the Daires and upon which their insurance claim is made is attached hereto as Exhibit C ("the Policy"). A copy of the Entrustment Exclusion from the Policy is attached for easier review by the court as Exhibit D.

8. The Policy provides only limited coverage such that in order for damage to be covered by the Policy, the damage must be caused by one or more of 19 enumerated perils. The peril for which plaintiffs seek coverage is the peril of "vandalism" which states in pertinent part:

10. Vandalism-excepting loss at the insured premises while the residence is vacant for more than 30 consecutive days immediately

before a loss. A residence under construction is not considered vacant.

See Policy, FL-2, page 1, Ed. 1/92.

9. If, however, the vandalism was caused by someone to whom the property was entrusted (such as a tenant), the Policy excludes coverage for the damage caused by a tenant's vandalism pursuant to the Entrustment Exclusion.

10. The common understanding of the term "vandalism" is a:

Willful or malicious destruction or defacement of public or private property.

See Merriam Webster Dictionary definition. There can be no reasonable dispute that vandalism is a dishonest or criminal act.

11. As such, in order for the Daires to even potentially recover under the Sterling Policy they must prove that all the damage for which they make a claim was damage caused by "vandalism." The Daires have the burden of proving that all the damages for which they make a claim were damages caused by vandalism.

12. Only after the Daires meet their burden of proof and prove that the damages for which they make a claim were caused by vandalism, then Sterling must prove that the vandalism was caused by an individual or individuals, acting alone or in collusion with others, to whom the Daires "entrusted" the Property within the meaning of the Sterling Policy's Entrustment Exclusion set forth above.

13. In this case, the Daires assert that all the damage done to their property, and for which they made a claim under the Sterling Policy, was damage caused by the tenants/occupants that constituted a dishonest and/or criminal act. Mr. Daire claims the vandalism took the form of the Occupants attempting to renovate the property without his approval. Plaintiffs filed a police

report regarding that damage. A copy of the police report filed by Mr. Daire is attached hereto as Exhibit E.

14. Mr. Daire gave extensive deposition testimony regarding the occupants of the house who he admits he entrusted the property to. He also testified about his knowledge and belief that the occupants/tenants were the ones who caused all the damage to his property for which he made a claim to Sterling. A complete copy of Mr. Daire's deposition testimony is attached hereto as Exhibit F.

15. Photographs of some of the damages to the property from the alleged dishonest and criminal attempts at renovation by the occupants for which the Daires seek payment under the Sterling Policy are attached hereto as Exhibit G.

SUMMARY OF EDWARD DAIRE'S DEPOSITION TESTIMONY

16. Plaintiffs, at all pertinent times, resided in East Rutherford, New Jersey. (Edward Daire dep., page 4, Ex. F). Plaintiffs purchased a single family dwelling at 2895 State Route 7, Harpursville, New York in about 2012 ("the Property") which they rented out over the years.

17. In 2015, Plaintiff Edward Daire started renting the Property to Carol Sweet. (Daire dep., page 9, Ex. F). The Daires allowed Carol Sweet and her daughters to live at the property from 2015 until the Plaintiffs had them evicted on March 31, 2019. (Daire dep., page 9, Ex. F). Plaintiff Edward Daire had an oral agreement that was vague but that would allow Carol Sweet to essentially rent the property for 10 years with an option to then own it or buy it. (Daire dep., pages 13 and 14, Ex. F). However, under his agreement he claims he gave "no permission" for any of the occupants of the house to make repairs or make renovations to it. (Daire dep., pages 17 and 71, Ex. F).

18. From the time Mr. Daire started renting the house to Carol Sweet in 2015, he never inspected the interior of the house to determine its condition or to determine if the occupants were damaging or destroying it. (Daire dep., page 21, Ex. F). He would, from time to time, enter the kitchen but chose not to go anywhere else in the house. (Daire dep., pages 21 and 22, Ex. F). He allowed the occupants to put on their own locks on the house such that, as of the time of their eviction, he had no key to even enter the house. (Daire dep., page 78, Ex. F). He essentially turned over all control of the house to its occupants and entrusted it to them.

19. In or about 2017, Carol Sweet started allowing her two daughters and two of her daughters' infant children to live at the house. (Daire dep., page 28, Ex. F). Mr. Daire admits he allowed them to live at the house with his "knowledge and consent." (Daire dep., page 28, line 20-24, Ex. F). He never objected to their living at the house. (Daire dep., page 29, line 16, Ex. F). He imposed no restrictions on the occupants as to who could live in the house. (Daire dep., page 29, line 21-24, Ex. F). He did nothing to check out the honesty or dishonesty of these occupants other than speaking to his former tenant about Carol Sweet. (Daire dep., page 34, Ex. F).

20. He evicted the occupants on March 31, 2019 and gained his first access to the house in approximately four years on April 13, 2019. He admits that one of Carol Sweet's daughters, who he let live in the house, Amber Sweet, had threatened to damage his property back in 2017. (Daire dep., page 88, Ex. F). Notwithstanding that threat, he did not have them evicted until March 31, 2019. When explaining why he waited as long as he did to evict, he claimed that his local Binghamton lawyer at the time, Chris Cambell, was a "shyster lawyer" who failed to follow his instructions and evict these people. (Daire dep., pages 32 and 33, Ex. F).

21. Upon accessing the house, he saw that the occupants had damaged the house through what appeared to be improper and unauthorized or approved attempts at renovation and alteration of the structure. (See Photos, Knych Aff., Ex. F). The only exception was a rock through a picture window, which he did not think was an improper and unauthorized attempt at renovation or repair.

22. He estimates the damages caused by these occupants at approximately \$62,000, although Sterling contends that they are substantially less. (Daire dep., pages 40 and 41, Ex. F).

23. At the time Mr. Daire discovered the damages on April 13, 2019, he had the property insured with Sterling Insurance Company under a Policy that contained the following exclusion:

EXCLUSIONS THAT APPLY TO *YOUR* POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

...

4. **Dishonest or Criminal Acts**-means loss caused by or resulting from any dishonest or criminal act by *you*, any of *your* partners, employees, directors, trustees, authorized representatives or anyone, to whom *you* entrust property for any purpose:

- a. Acting alone or in collusion with others; or;
- b. Whether or not occurring during the hours of employment. This is [sic] exclusion does not apply to acts of destruction by *your* employees, but theft by an employee is not covered.

See Policy, FL-20, p. 4, Ed. 1/92.

24. As to all the damages for which he makes a claim against Sterling, Mr. Daire believes that they were caused by Carol Sweet or her daughter Amber Sweet. (Daire dep., pages

26 and 27, Ex. F). He believes the occupants caused the damage and that his belief that they did so is "without a doubt." (Daire dep., page 53, line 20-24, page 64, Ex. F). He testified he has no reason to believe the damages for which he seeks insurance coverage were caused by anyone but, the occupants, Carol Sweet or Amber Sweet. (Daire dep., page 27, line 28, Ex. F).

25. As to the occupants who caused the damage, he described them as "vandals." (Daire dep., page 69, line 6, Ex. F). He testified that these occupants "should be criminally prosecuted." (Daire dep., page 67, line 17, Ex. F). He described what they did as ripping his house apart through unauthorized renovations describing their actions as "insane." (Daire dep., page 66, Ex. F). He believes his damages claim under the Sterling policy evidence an improper, unauthorized, dishonest and criminal act to alter the house by the occupants who he admits he entrusted the property. (Daire dep., page 45, Ex. F). Mr. Daire, believing that the damages to his property were the result of criminal behavior by the occupants, for which he filed a police report. A copy of that police report is attached as Exhibit E. (Daire dep., page 37, Ex. F).

26. Consistent with his belief that the occupants caused the damage, upon accessing the building after the eviction he saw no signs of any forced entry into the building. (Daire dep., page 79, Ex. F). He believed that the damages for which he makes an insurance claim were "intentional acts of damage" by the Occupants. (Daire dep., page 79, line 14, Ex. F). These were unauthorized attempts at altering the structure. (Daire dep., pages 81 and 82, Ex. F).

27. As to the broken window (which is the only damage in the house that could be viewed as not an improper unauthorized attempt at renovation), he believes that the new window cost him \$250 and, to install it, a couple hundred dollars. (Daire dep., page 83, Ex. F). He believes this window was broken intentionally by Amber Sweet when she threw a rock through the window. (Daire dep., page 51 and page 83, Ex. F).

28. The cost to replace the window is below the Sterling policy deductible of \$500 and thus Sterling has no obligation to pay for it.

29. As to Sterling Insurance Company and the Daire's claim for \$62,000, Mr. Daire admits that he knows of no improper conduct by Sterling unrelated to his insurance claim. (Daire dep., page 77, Ex. F). He knows of no deceptive practices engaged in by Sterling. (Daire dep., page 77, Ex. F).

EVEN ASSUMING THAT THERE WAS VANDALISM, THE DAIRE'S ADMIT IT WAS DONE BY THOSE TO WHOM THEY ENTRUSTED THE PROPERTY AND THUS THE STERLING ENTRUSTMENT EXCLUSION APPLIES TO ELIMINATE COVERAGE AS A MATTER OF LAW

30. The Sterling Policy does not guarantee or promise a landlord reimbursement for damages intentionally done by occupants and tenants to whom the insured, a landlord, entrusts the property. The Policy effectively excludes or eliminates coverage for damage that is done intentionally or criminally by an occupant who resides at the property with the landlord's/insured's knowledge and consent. The landlord cannot pass on to an insurer, like Sterling, the landlord's responsibility for making sure that whomever he entrusts the rental property to, does not criminally or dishonestly destroy it.

31. The Sterling policy's entrustment exclusion is standard in the majority, if not all, landlord insurance policies.

32. Mr. Daire admits that all the damages to the Daires' house (with the exception of the broken window) were damages caused by the unauthorized attempts at renovation by the Occupants. Mr. Daire asserts that what damaged his property was an attempt to engage in a willful or malicious destruction of his property. Even if those actions constitute acts of vandalism, Sterling asserts that the Policy's Entrustment Exclusion effectively eliminates any

obligation on the part of Sterling to pay for the damage caused by the acts of vandalism the people who Mr. Daire testified he entrusted the property to.

33. The Daires entrusted the property to Carol Sweet and her daughters and with the Daires' knowledge and consent, the Daires allowed them to occupy the property from 2015 until the time of their eviction on March 31, 2019. The Daires assert that these tenants intentionally caused damages as a result of unauthorized renovations to the property that were improperly done. The Daires characterize this damage as having been done by the occupants and as having been dishonest and criminal in nature because they were done or attempted without the Daires knowledge or consent.

34. Assuming Mr. Daire's testimony to be true for purposes of this motion, his testimony establishes as a matter of law that the Sterling Policy's "Entrustment Exclusion" effectively eliminates any obligation under the Sterling Policy for Sterling to pay the Daires for this damage. This point is argued more fully in Point I and Point II of the accompanying Memorandum Of Law.

**THE DAIRE'S' GENERAL BUSINESS LAW CLAIM SHOULD BE DISMISSED AS A
MATTER OF LAW**

35. The Daires made a conclusory allegation in their complaint that Sterling has violated General Business Law Section 349 and that they are entitled to damages as a result of the violation of that statute.

36. The Daires do not make any factual allegations in their complaint that the alleged wrongful denial of coverage by Sterling was part of a consumer oriented practice of bad faith claims handling. Moreover, Mr. Daire testified that he has no knowledge of any improper claims

handling practices committed by Sterling other than what he claims is the improper denial of his claim.

37. If the plaintiffs' complaint is not dismissed in its entirety based on the Entrustment Exclusion, then Sterling is entitled to summary judgment dismissing the General Business Law claim pursuant to CPLR 3211 or CPLR 3212. This point is argued more fully in Point III in the accompanying Memorandum Of Law.

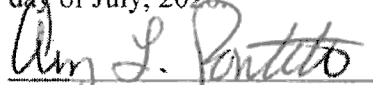
WHEREFORE, your deponent respectfully requests that the Complaint be dismissed in its entirety and in the alternative that the General Business Law cause of action/claim be summarily dismissed.

By:



Peter W. Knych, Esq.
KNYCH & WHRITENOUR, LLC
Attorneys for Defendant
Sterling Insurance Company
One Park Place, Suite 404
300 South State Street
Syracuse, New York 13202
Telephone (315) 472-1175

Sworn to before me this 13th
day of July, 2020.



Notary Public

Amy L. Pontello
NOTARY PUBLIC, State of New York
No. 01P06186265
Qualified in Oswego County
Commission Expires Sept. 28, 2020
Sept.



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2019-5393

EDWARD DAIRE et al v. HBE GROUP, INC., d/b/a STERLING INSURANCE COMPANY

Assigned Judge: None Recorded

Documents Received on 08/27/2019 09:21 AM

Doc #	Document Type
3	SUMMONS - SUPPLEMENTAL (PRE RJI)
4	COMPLAINT (AMENDED)

Filing User

Ronald R Benjamin | ronbenjaminlaw@stny.rr.com | 607-427-9191
126 Riverside Drive, Binghamton, NY 13905

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHENANGO

-----X
EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

FIRST AMENDED
COMPLAINT

-against-

STERLING INSURANCE COMPANY, and
HBE GROUP, INC.,

Defendant.
-----X

Plaintiffs, Edward Daire and Allison Daire, by and through her attorneys, Law Offices of Ronald R. Benjamin, as and for their complaint, herein allege as follows:

1. Plaintiffs Edward and Alison Daire reside at 333 King Road, Town of Greene, County of Chenango, State of New York, 13778.
2. That Defendant Sterling Insurance Company is registered in the State of New York to sell insurance with principal offices located at 182 Barnerville Road, Cobleskill, New York 12043. (Hereafter "Sterling").
3. That Defendant HBE Group, Inc. is a domestic business corporation duly registered to conduct business in the State of New York with executive offices at 6 Slawson Street, Dolgeville, New York, 13329, and is an agent of Sterling Insurance Company.
4. That Sterling entered into a contract with defendant whereby the defendant would provide insurance for premises located at 2895 State Route 7, Town of Colesville, County of Broome, State of New York, 13787 which included the loss resulting from vandalism, said policy number being "LP16045937".
5. That plaintiffs rented the premises to tenants who vandalized said premises.

6. That said vandalism caused plaintiffs to incur damages to the property in the amount of \$70,000.00 - \$75,000.00.

7. That the aforesaid vandalism has caused the aforesaid premises to be uninhabitable pending repair of the vandalism.

**AS AND FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

8. Plaintiff re-alleges and repeats paragraphs 1 through 7 as if fully set forth herein.

9. That the plaintiff's policy was in full force and effect at the time of the reported loss, and plaintiff duly reported the loss to defendant on or about April 13, 2019.

10. That the defendants denied coverage on said claim on the frivolous basis that the vandalism by said tenants constituted remodeling of the premises which was not covered under the policy.

11. That despite plaintiffs repeated demands for payment on the policy for the damages as set forth above, defendant persists in refusing to honor said policy.

12. That defendants' refusal to honor the policy is a breach of the agreement between the plaintiffs and defendant.

13. That as of the results of the aforesaid conduct plaintiff has been damaged and is entitled to compensatory damages in an amount to be proven at trial.

14. That as a result of the willful bad faith refusal by defendant to honor its policy plaintiffs are entitled to exemplary damages in an amount to be proven at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
DECEPTIVE ACTS AND PRACTICES - GENERAL BUSINESS LAW § 349**

15. Plaintiff re-alleges and repeats paragraphs 1 through 14 as if fully set forth herein.

16. That defendants' conduct as described herein is intended to mislead a reasonable

consumer at large in purchasing vandalism insurance from defendant.

17. That defendants' conduct is intended to inordinately delay and deny coverage under its policies to the detriment of the consuming public at large.

18. That said conduct amounts to a material representation or omission likely to mislead a reasonable consumer such as plaintiffs in contravention of General Business Law section 349.

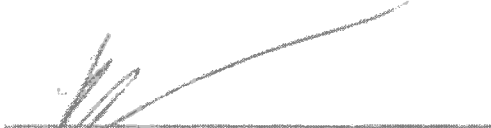
19. That plaintiffs incurred damages as described herein as a result of defendant's deceptive acts and practices.

20. That as a result of the material misrepresentation or omission by defendant plaintiffs are entitled to treble damages and reasonable attorney fees in an amount to be proven at trial.

WHEREFORE, plaintiffs Edward Daire and Allison Daire, hereby demand judgment against the defendants as follows:

- (A) Award plaintiffs compensatory damages in an amount to be determined at trial.
- (B) Award plaintiffs exemplary damages in an amount to be determined at trial.
- (C) Award plaintiffs treble damages in an amount to be determined at trial.
- (D) Award plaintiffs the costs and disbursements in prosecuting this action along with such other and further relief as the Court deems just and proper under the circumstance.

Dated: August 27, 2019
Binghamton, New York



Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin
Attorney for Plaintiffs Edward Daire and Allison Daire

FILED: CHENANGO COUNTY CLERK 12/01/2022 03:28 PM

INDEX NO. 2019-5393

NYSCEF DOC. NO. 50

FILED: CHENANGO COUNTY CLERK 07/13/2020 01:47 PM

RECEIVED NYSCEF: 12/01/2022
INDEX NO. 2019-5393

NYSCEF DOC. NO. 12

FILED: CHENANGO COUNTY CLERK 08/27/2019 09:21 AM

RECEIVED NYSCEF: 07/13/2020
INDEX NO. 2019-5393

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2019-5393

EDWARD DAIRE et al v. HBE GROUP, INC., d/b/a STERLING INSURANCE COMPANY

Assigned Judge: None Recorded

Documents Received on 11/04/2019 04:19 PM

Doc #	Document Type
5	ANSWER to First Amended Complaint

Filing User

Peter Walter Knych | pk@pknychlaw.com | 3154721175
300 South State Street, Suite 404, Syracuse, NY 13202

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Page 1 of 1

R-43

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

vs.

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendant.

**DEFENDANT
STERLING'S
ANSWER TO
FIRST AMENDED
COMPLAINT**

Index No.: 2019-5393

Defendant *Sterling Insurance Company ("Sterling")*, by its attorneys, Knych & Whritenour, LLC, answers the First Amended Complaint of the Plaintiffs as follows:

1. DENIES KNOWLEDGE or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 5 and 7 of the First Amended Complaint.
2. ADMITS the truth of the allegations contained in paragraphs 2 and 3 of the First Amended Complaint.
3. DENIES the truth of the allegations contained in paragraphs 4 and 6 of the First Amended Complaint.

**AS AND FOR AN ANSWER TO
THE FIRST CAUSE OF ACTION**

4. Repeats and realleges each and every admission and denial of the allegations contained in paragraphs 1 through 7 of the First Amended Complaint as realleged in paragraph 8 with the same force and effect as though fully set forth herein.

5. ADMITS the truth of the allegations contained in paragraph 9 of the First Amended Complaint.

6. With respect to the allegations in paragraph 10 of the First Amended Complaint, ADMITS that Defendant Sterling has denied coverage on the claim and DENIES each and every other allegation contained in that paragraph.

7. With respect to the allegations in paragraph 11 of the First Amended Complaint, ADMITS that Defendant Sterling continues to refuse to pay the claim because the claim is not covered under the insurance policy, and DENIES each and every other allegation contained in said paragraph.

8. DENIES the truth of the allegations contained in paragraphs 12, 13 and 14 of the First Amended Complaint.

**AS AND FOR AN ANSWER TO
THE SECOND CAUSE OF ACTION**

9. Repeats and realleges each and every admission and denial of the allegations contained in paragraphs 1 through 14 of the First Amended Complaint as realleged in paragraph 15 with the same force and effect as though fully set forth herein.

10. DENIES the truth of the allegations contained in paragraphs 16, 17, 18, 19 and 20 of the First Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
(Fails to State a Valid Cause of Action for Exemplary Damages)

11. Upon information and belief, Plaintiffs have failed to set forth a valid cause of action or claim for exemplary damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE*(Fails to State a Valid Cause of Action)*

12. Upon information and belief, Plaintiffs' Second Cause of Action fails to state a valid cause of action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE*(Fails to Mitigate Damages)*

13. Upon information and belief, Plaintiffs failed to mitigate all or part of their damages for which they now make claim against Sterling.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Upon information and belief, the policy of insurance upon which this action is brought provides coverage only if the claim falls within one or more of 18 enumerated perils as set forth in policy form FL-2, Ed. 1/92.

15. Upon information and belief, the majority of Plaintiffs' claim does not fall within one or more of the 18 enumerated perils of the policy which must be proven in order for the Plaintiffs to potentially recover under the policy.

16. Upon information and belief, the Plaintiffs are not entitled to insurance coverage for damage that is not caused by one or more of the 18 enumerated perils set forth in the policy.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. The policy of insurance upon which this action is brought contains the following exclusion:

EXCLUSIONS THAT APPLY TO *YOUR* POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other

Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

...

6. **Faulty, Inadequate or Defective:**

- a. Planning, zoning, development, surveying, siting;
- b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- c. Materials used in repair, construction, renovation or remodeling; or
- d. Maintenance of part or all of any property on or off the *insured premises*.

FL-20, p. 4-5, Ed. 1/92.

18. Upon information and belief, if Plaintiffs prove all or some of the damage was caused by one or more of the 18 enumerated perils of the Policy (Sterling asserts there is not sufficient proof) then Exclusion 6 stated above applies to eliminate coverage for all or part of Plaintiffs' claim for damages.

19. Pursuant to Exclusion 6, Defendant has no obligation to pay all or part of Plaintiffs' claim.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

20. The policy of insurance upon which this action is brought contains the following Exclusion:

EXCLUSIONS THAT APPLY TO *YOUR* POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

...

13. **Wear and Tear**-means damage caused by:

- a. Wear and tear, marring, scratching, or chipping;
- b. Inherent vice, latent defect, deterioration or mechanical breakdown;
- c. Rust or corrosion, mold, mildew, wet or dry rot, contamination, pollution or smog;
- d. Dampness or dryness of atmosphere, changes in or extremes of temperature; or
- e. Birds, vermin, rodents or insects.

FL-20, p. 5, Ed. 1/92.

21. Upon information and belief, if Plaintiffs prove all or some of the damage was caused by one or more of the 18 enumerated perils of the Policy (Sterling asserts there is not sufficient proof) then Exclusion 13 stated above applies to eliminate coverage for all or part of Plaintiffs' claim for damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

22. The policy of insurance upon which this action is brought contains the following exclusion:

EXCLUSIONS THAT APPLY TO *YOUR* POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

...

4. **Dishonest or Criminal Acts**-means loss caused by or resulting from any dishonest or criminal act by *you*, any of *your* partners, employees, directors, trustees, authorized representatives or anyone, to whom *you* entrust property for any purpose:

- a. Acting alone or in collusion with others; or
- b. Whether or not occurring during the hours of employment. This is [sic] exclusion does not apply to

acts of destruction by *your* employees, but theft by an employee is not covered.

FL-20, p. 4, Ed. 1/92.

23. Upon information and belief, if Plaintiffs prove that all or some of the damage was caused damage caused by one or more of the 18 enumerated perils set forth in the policy, the damage resulting from that covered peril is not covered under the Sterling policy because that damage was caused by or resulted from a dishonest or criminal act of the Plaintiffs' tenants or some other third party to whom Plaintiffs entrusted the property.

24. Pursuant to Exclusion 4, Sterling has no obligation to pay all or part of Plaintiffs' claim.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. The policy of insurance upon which this action is brought contains a \$500 deductible on any claim covered under the policy.

26. Upon information and belief, if Plaintiffs prove damage caused by one or more of the 18 enumerated perils in the policy, and if that damage is not excluded from coverage, then the claim so proved is subject to a \$500 deductible and Sterling is not liable for damages in excess of the policy's \$500 deductible.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

27. Upon information and belief, none of the Plaintiffs' damages or loss that make up their insurance claim is covered under the terms and conditions of the Sterling policy.

WHEREFORE, Defendant Sterling Insurance Company demands judgment including the following:

1. An Order dismissing the First Amended Complaint in its entirety;
2. The costs and disbursements of this action;
3. Such other and further relief as the Court deems just.

Dated: November 4, 2019

KNYCH & WHITENOUR, LLC

By: 

Peter W. Knych, Esq.
Attorneys for Defendant
Sterling Insurance Company
One Park Place, Suite 404
300 South State Street
Syracuse, New York 13202
Telephone: (315) 472-1175

TO: Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin
Attorney for Plaintiffs
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
Telephone (607) 772-1442

**Sterling Insurance Company**

P.O. Box 9, 182 Barnerville Road, Cobleskill New York 12043

www.sterlingins.com

Organized 1895

Phone: (800) 462-4661

Fax: (518) 234-3167

Claims Fax: (518) 234-8570

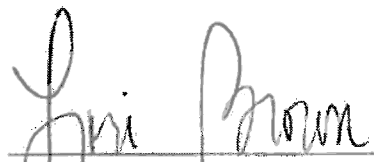
March 5, 2020

Re: Policy # LP16045937
Insured: Edward Daire
Allison Daire

Attached please find a copy of policy LP16045937 for the following term: July 1, 2018 through July 1, 2019 term. (All forms)

Also the declaration pages only for the term: 7/1/2016-7/1/2017 & 7/1/2017- 7/1/2018.

I hereby certify that to the best of my knowledge this is a true copy of the original policy.


Lori Brown, CPCU


Date

Assistant Vice President, Commercial Lines Underwriting

Telephone: (800) 462-4661

Fax: (518) 234-3167

Claims Fax: (518) 234-8570

<http://www.sterlingins.com>

182 Barnerville Road, P.O. Box 9, Cobleskill, New York 12043-0009

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Sterling Insurance Company

P.O. Box 9, 182 Barnerville Road, Cobleskill New York 12043

Landlords Package Policy

New Business Declaration

MTA

Original Effective Date:

07/01/2016

Declaration Effective Date:

07/01/2016

POLICY NUMBER

LP16045937

POLICY PERIOD

FROM 07/01/2016 TO 07/01/2017 12:01 AM EASTERN STANDARD TIME

NAMED INSURED AND ADDRESS:

EDWARD DAIRE
ALLISON DAIRE
405 1/2 MARION STREET
ENDICOTT, NY 13760

AGENCY: 747-747

PHONE: (607) 639-1930

RINKER AGENCY LLC
191 MAIN STREET
PO BOX 23
AFTON, NY 13730-0023

THIS REPLACES ALL PREVIOUSLY ISSUED POLICY DECLARATIONS, IF ANY. THIS POLICY APPLIES ONLY TO ACCIDENTS, OCCURRENCES, OR LOSSES WHICH HAPPEN DURING THE POLICY PERIOD SHOWN ABOVE. THIS DECLARATION DOES NOT SUPERSEDE ANY CANCELLATION NOTICES.

PREMIUM SUMMARY

Your total policy premium of \$914.00 breaks down as follows:

Basic Premium	\$901.00	Total Discounts	\$0.00
Endorsement Premium	\$13.00	NYS Fire Fee	\$0.00

POLICY CHARGES & CREDITS SUMMARY

(amounts in this section are already reflected in the coverage premiums below where applicable)

10% Renovated Credit

INSURED PROPERTY ADDRESS - LOCATION 1

2895 STATE ROUTE 7 HARPURSVILLE, NY 13787

LIABILITY LIMITS - LOCATION 1

The Liability Limits in this section are shared by all items at this location where coverage is indicated

COVERAGE	EACH OCCURRENCE	AGGREGATE
Coverage L - Bodily Injury & Property Damage	\$300,000	
	EACH PERSON	EACH ACCIDENT
Coverage M - Premises Medical Pay	\$1,000	\$25,000

COVERAGES - LANDLORDS PACKAGE ITEM 1 - LOC 1 - BLDG 1

COVERAGE	LIMIT	PREMIUM
Coverage A - Residence	\$255,000	\$865.00
Coverage B - Related Private Structure On The Premises	\$25,500	
Coverage D - Additional Living Expense or Loss of Rents	\$25,500	
Coverage L - Bodily Injury & Property Damage	see LOC 1 Liab section above	\$28.00
Coverage M - Premises Medical Pay	see LOC 1 Liab section above	\$8.00

FORMS AND ENDORSEMENTS - LANDLORDS PACKAGE ITEM 1 - LOC 1 - BLDG 1

FORM	DATE	DESCRIPTION	LIMIT	PREMIUM
FL-2	01/92	Cause of Loss		
FL-52A	12/98	Trampoline Exclusion		(\$2.00)
FL-OLT	01/92	Premises Liability Ins. Coverage Part		
NY STAT-1	11/08	NY Statutory Endorsement		
SFL-345	04/13	Equipment Breakdown Enhancement Endorsement		\$15.00

LANDLORDS PACKAGE ITEM 1 - LOC 1 - BLDG 1

Rate Plan	Landlords Package	Form	FL-2
Vandalism	Yes	ACV/RC	Residence Replacement Cost
Construction	Frame	Deductible	500
Protection	Semi-Protected	Number Families	1 Family
Occupancy	Non-Owner Occupied	Year Built	1970

R-52

NYSCEF DOC. NO. 50

FILED: CHENANGO COUNTY CLERK 07/13/2020 01:47 PM

RECEIVED NYSCEF: 12/01/2022

NYSCEF DOC. NO. 14

RECEIVED NYSCEF: 07/13/2020

LANDLORDS PACKAGE ITEM 1 - LOC 1 - BLDG 1 (continued)

Prudent Protection No 150 amp electric w/controlled Yes
circuit breakers

Heating System installed within 30 years Yes

CHARGES & CREDITS - LANDLORDS PACKAGE ITEM 1 - LOC 1 - BLDG 1

(amounts in this section are already reflected in the coverage premiums above)

10% Renovated Credit

POLICY FORMS AND ENDORSEMENTS

FORM	DATE	DESCRIPTION	LIMIT	PREMIUM
FL-18	06/96	Intentional Acts Exclusion		
FL-185	12/05	Automatic Inflation Protection		
FL-20	01/92	Agreement		
FL-30	05/92	Amendatory Endorsement		
FL-425	04/10	New York Policy Conditions Amendatory Endorsement		
FL-73	05/10	Earth Movement Exclusion Clarification		
FL-83	02/02	Amendment of Policy Conditions		
FL-84A	04/94	New York Amendatory Endorsement		
FMD-1	08/08	Important Flood Exclusion Notice		
ML-217	09/99	Intentional Acts Clarification		
ML-430B	02/08	Renewal Endorsement		
ML-60	06/99	Modification of Terminology		
NSC	01/91	Notice to Senior Citizens		
SIC-TERR-D	01/15	Notice of Terrorism Insurance Coverage Disclosure		\$0.00
TERR-COV	01/15	Notice of Terrorism Insurance Coverage		\$0.00

R-53



FL-18
Ed. 6/96

Intentional Acts Exclusion

Refer to Supplemental Declarations if information is not shown on this form.

The amended coverage provided under this endorsement is subject to the *terms* contained in the General Policy Provisions.

WHAT WE DO NOT PAY FOR

The following exclusion is added to **EXCLUSIONS THAT APPLY TO YOUR POLICY** shown in FL-20:

15. **Intentional Acts**-~~we~~ do not pay for loss which results from an act committed by or at the direction of an *insured* and with the intent to cause a loss.

FL-18

Ed. 6/96



FL-185
Ed. 12/05

AUTOMATIC INFLATION PROTECTION

Refer to Supplemental Declarations if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

During the term of this policy, Coverages A and B will be increased on the annual renewal date by the average percentage change factor of the construction cost index used in the company's current replacement cost estimator.

FL-185

Ed. 12/05

URB

FL-20
Ed. 1/92**AGREEMENT**

We will provide the insurance described in this policy during the policy period, in return for *your* compliance with all of the *terms* and provisions of this policy. The policy consists of this Agreement, the Declarations, Supplemental Declarations (if any), the General Policy Provisions, Causes of Loss sections and any forms and endorsements made part of it, including any State mandated endorsements. Each part is subject to all of the policy *terms* relating to it including the *terms* applicable to the entire policy.

Endorsements attached to this policy which increase existing coverage or add new coverage may result in a premium increase. Electing increased deductibles, coverage limiting endorsements or exclusionary endorsements may result in a reduction of premium.

It is recommended that *you* read and understand this contract and retain it for future reference.

The Table of Contents shows the policy format. The coverage(s) *you* selected are shown on the Declarations Page or other attachments comprising a part of this policy.

TABLE OF CONTENTS

Agreement.....	page 1
General Policy Provisions	page 1-10
Definitions.....	page 1-2
Principal Coverages	page 2-4
Incidental Coverages	page 4
Exclusions That Apply to <i>Your</i> Policy	page 4-5
How Much <i>We</i> Pay for Loss or Claim	page 5-6
Payment of Loss or Claim.....	page 6-7
What <i>You</i> Must do in Case of Loss or Claim	page 7
Conditions Applicable to All Coverages	page 7-10
Covered Causes of Loss.....	page Att.
Replacement Cost Provision (when applicable)	page Att.
Farm Coverages (when applicable)	page Att.
Endorsements (when applicable).....	page Att.

GENERAL POLICY PROVISIONS

Definitions-these definitions apply to this policy.

1. The words *you* or *your* refers to the person or entity shown as named *insured* on the Declarations Page. It includes any additional *insured* but only with respect to Principal Coverages A and B and only for the *insured premises*.
2. The words *we*, *us* or *our* refers to the Insurance Company named on the Declaration Page.
3. *Business* means a trade, profession or other occupation including farming, all whether full or part time. It does not include the rental or holding for rent of any part of the *insured premises*.
- 4 *Insured* means *you* or *your* legal representative. However, *your* legal representative is an *insured* only with respect to property covered by this insurance.
 - a. If *you* are an individual and the *residence* is *your* primary dwelling, *your* spouse and relatives and any persons under the age of 21 in *your* care are *insureds*; provided that all such persons are regular residents of *your* household.
 - b. Each person or entity listed on the Declaration Page is a separate *insured* under this policy, but this does not increase *our* amount of insurance under this policy.
5. *Insured premises* means the *residence* described on the Declarations Page including Related Private Structures and the grounds at the described location.
6. *Motorized vehicle* means any self-propelled land or amphibious vehicle (regardless of horsepower, number of wheels or method of surface contact) including parts and equipment. This does not include small motorized equipment for the service of the *insured premises*, such as power lawn mowers and snowblowers. The following categories of *motorized vehicles* have specific meaning as used in this policy.
 - a. *Motor vehicle* means a *motorized vehicle*, trailer or semi-trailer (including any attached machinery or apparatus):
 - 1) subject to *motor vehicle* registration; or
 - 2) designed for use or travel on public roads.

- b. *Recreational motor vehicle* means a *motorized vehicle* (other than a *motor vehicle* as defined above), trailer, or attached apparatus, designed or used for recreation, vacation or leisure time activities.
7. *Pollutant* means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
8. *Residence* means the one to four family house or a one or two family mobile home owned by the *insured* and located on the *insured premises*.
9. *Terms* means Provisions, Limitations, Exclusions and Definitions as used in this policy and any forms or endorsements attached.

PRINCIPAL COVERAGES

Coverage A-Residence (when applicable)

This policy covers the *residence* on the *insured premises* including additions, built-in components and fixtures.

1. *We* cover building materials and supplies located on the *insured premises* for use in construction of or to the *residence*.
2. *We* cover permanently installed carpeting, stoves, refrigerators and appliances furnished with those parts of the *insured premises* you rent to others.

Coverage A does not cover:

1. outdoor antennas (including satellite systems), their lead-in wiring, accessories, masts and towers except as provided under Incidental Coverages.
2. trees, shrubs, plants and lawns except as provided under Incidental Coverages.
3. land, including the land on which the property is located. This includes costs of excavating, removing, grading or filling land, or water in or on that land.
4. pools, piers, wharves, docks, underground pipes, flues, conduit and drains, and retaining walls that are not part of the building.

Coverage B-Related Private Structures on the Premises

(applicable only when Coverage A is in force)

You may apply up to 10% of the Coverage A amount of insurance to Coverage B, any payment under this option reduces the Coverage A amount of insurance for the same loss.

This policy covers Related Private Structures on the *insured premises* which are not attached to *your residence*, (structures connected to the *residence* by only a fence, utility line, or similar connection are considered to be Related Private Structures). This coverage includes fences, driveways, sidewalks and other permanently installed outdoor yard fixtures.

We cover building materials and supplies located on the *insured premises* for use in construction of or to Related Private Structures.

Coverage B does not cover:

1. structures designed or used for *business*; (however, this exclusion does not apply to structures rented, held for rental or otherwise used solely for private, non-commercial garage purposes).
2. outdoor antennas (including satellite systems), their lead-in wiring, accessories, masts and towers, except as provided under Incidental Coverages.
3. trees, shrubs, plants and lawns, except as provided under Incidental Coverages.
4. land, including the land on which the property is located. This includes costs of excavating, removing, grading or filling land, or water in or on that land.
5. pools, piers, wharves, docks, underground pipes, flues, conduit and drains, and retaining walls that are not part of the building.

Coverage C-Personal Property (when applicable)

1. **While on the *insured premises***-this policy covers Personal Property owned or used by an *insured*. At *your* option, the personal property of guests and *domestic employees* is covered while on that portion of the *insured premises* occupied exclusively by an *insured*.
2. **While Away From the *insured premises***-*you* may apply up to 10% of the Coverage C amount of insurance, not to exceed \$2500, to cover Personal Property owned or used by an *insured*, while away from the *insured premises*, anywhere in the world. This does not increase the Coverage C amount of insurance.
3. **Change of Location**-When *you* move to another location where *you* intend to permanently reside:
 - a. the Coverage C amount of insurance applies pro-rata at each location for 30 days from the date *you* begin to move but not extending past the expiration date of the policy; and
 - b. property in transit is covered against direct loss by covered causes of loss for an amount up to 10% of Coverage C amount of insurance.

When *you* move, this change of location coverage applies in place of *your* coverage for property while away from the *insured premises*.

4. **Limitations on Certain Property**-these special limits do not increase the Coverage C amount of insurance. The special limit for each category below is the total amount for all loss to all property in that category.

- a. \$100 on money, banknotes, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals and numismatic properties;
- b. \$500 on securities, commercial paper, stamps, philatelic property, tickets, accounts, deeds, evidences of debt, passports, manuscripts, unpublished works and other valuable papers; (commercial paper means drafts, checks, certificates of deposit and notes other than banknotes, including negotiable orders of withdrawal);
- c. \$500 on jewelry, watches, precious and semi-precious stones, gems and furs;
- d. \$500 on grave markers;
- e. \$500 on guns and gun accessories;
- f. \$500 on watercraft including their trailers, equipment, accessories and outboard motors;
- g. \$1000 on silverware, goldware, pewterware and items plated with gold or silver; or
- h. \$2500 on *motorized vehicles* used exclusively to service the *insured premises* or those designed and used exclusively to assist the handicapped and not licensed for use on public roads.

The following property is covered only while on the *insured premises* and is limited to the amount stated:

- i. \$500 on *business* property of any *insured*; or
 - j. \$500 on dismounted camper bodies and trailers not used with watercraft.
5. **Personal Property not covered**-Coverage C does not cover:
- a. property covered by any scheduled insurance;
 - b. animals, insects, birds and fish;
 - c. *motorized vehicles* including their parts and equipment, except those vehicles used exclusively to service the *Insured premises* and those designed and used exclusively to assist the handicapped, subject to Limitations on Certain Property;
 - d. aircraft, including their parts and equipment;
 - e. *business* property away from the *insured premises*;
 - f. property of roomers, boarders and tenants who are not *insureds*;
 - g. outdoor antennas (including satellite systems), their lead-in wiring, accessories, masts and towers, except as provided under Incidental Coverages;
 - h. losses that result from any credit card or fund transfer card; or
 - i. any device, accessories or antennas designed for reproducing, receiving, transmitting recording or playing back data, sound or picture (or any film, tape, wire, record or other media designed for use with such device) which may be operated from the electrical system of a *motorized vehicle*, farm equipment or watercraft while in or on a *motorized vehicle*, farm equipment or watercraft.

Coverage D - Additional Living Expense or Loss of Rent Coverage

You may apply up to 10% of the Coverage A or 20% of Coverage C, amount of insurance (which ever is applicable) to Coverage D. Any payment under this coverage reduces the Coverage A or Coverage C amount of insurance for the same loss. *You* may recover either Additional Living Expense or Loss of Rents, at *your* option. The period of time is not limited by the policy period. Under Coverage D *we* pay:

1. The reasonable and necessary increase in living expense *you* incur to maintain the normal standard of living of *your* household if the portion of the *insured premises* containing *your* household is made unfit for occupancy by a covered loss. *We* pay only for the period of time reasonably required to make the *insured premises* fit for occupancy or to settle *your* household in new quarters, whichever is less.
2. The reasonable and necessary increase in *your* living expense or loss of rents for a period of up to two weeks if the *premises* immediately adjoining the *insured premises* are damaged by a covered cause of loss insured by this policy and *you* are prohibited by act of Civil Authority from using the *insured premises*. *We* will pay the fair rental value of that part of the *insured premises* that *you* rent, or hold for rental, to others if damage by a covered cause of loss makes that part unfit for its normal use. *We* pay only for the period of time reasonably required to make that part fit for occupancy. Loss of rents covers only those expenses which necessarily continue during the repairs and it does not include any loss or expense due to cancellation of any lease or rental agreement.

Coverage E-Farm Personal Property

This coverage (provided only when an amount of insurance and a premium charge is shown for the coverage on the Declarations) is described in the farm forms attached to this policy.

Coverage F-Farm Structures This coverage (provided only when an amount of insurance and a premium charge is shown for the coverage on the Declarations) is described in the farm forms attached to this policy.

INCIDENTAL COVERAGES

This policy provides the following Incidental Coverages. These Incidental Coverages are subject to all of the *terms* of the applicable Principal Coverages A, B, or C. These Incidental Coverages do not increase the amount of insurance stated for the Principal Coverages.

1. Removal

a. Emergency Removal

- 1) *We* pay for loss to covered property while removed from the *insured premises* for preservation from damage from covered causes of loss. Such property is covered against direct loss from causes of loss, not otherwise excluded or limited by this policy, for the first five days. It is covered against loss from covered causes of loss for an additional 25 days. This coverage does not extend past the expiration date of the policy.
- 2) *We* pay up to \$250 towing charge to move a covered mobile home endangered by a covered cause of loss.

b. Debris Removal

- 1) *We* will pay the reasonable costs to remove the debris of covered property after an insured loss.
- 2) *We* will pay the reasonable costs to remove ash, dust or particulate matter from a volcanic action that caused direct loss to covered buildings or covered property within a building.

We do not pay for these costs:

- 1) To extract *pollutants* from land or water; or
- 2) To remove, restore or replace polluted land or water.

2. Trees, plants, Shrubs and Lawns

You may apply up to 5% of the coverage A amount of insurance to cover trees, shrubs, plants and lawns on the *insured premises*. *We* pay only for loss caused by the following covered causes of loss: Fire, Lightning, Explosion and (if insured under this policy) Riot, Civil Commotion, Aircraft, Vehicles not owned or operated by *you* or by an occupant of the *insured premises*, and Vandalism. *We* do not pay more than \$250 for any one tree, plant or shrub including the cost of removing the debris of the covered item.

We do not cover trees, shrubs, plants and portions of lawn:

- a. Grown for *business* purposes; or
- b. Located more than 250 feet from the *residence* on the *insured premises*.

3. Tenant's improvements and betterments-If *you* are a tenant, *you* may apply up to 10% of the Coverage C amount of insurance to cover direct loss by covered causes of loss to permanent fixtures, alterations, improvements and additions installed on the *insured premises* and made or acquired at *your* expense. Any payment under this option reduces the coverage C amount of insurance for the same loss.

4. Outdoor Antenna Coverage-*We* pay up to \$500 for direct loss by covered causes of loss to outdoor antennas, including their lead-in wiring, accessories, masts and towers. Any payment under this option reduces the Coverage B amount of insurance for the same loss.

EXCLUSIONS THAT APPLY TO YOUR POLICY

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

1. *Business Interruption*-means loss resulting from the interruption of *business*.

2. *Civil Authority*-means loss, including seizure, confiscation or destruction of property, caused by the order of any civil authority. This includes acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body. *We* do pay for acts of destruction ordered by governmental authority and taken at the time of fire to prevent its spread if the fire would be covered under this coverage part.

3. *Delay or loss of Market*.

4. *Dishonest or Criminal Acts*-means loss caused by or resulting from any dishonest or criminal act by *you*, any of *your* partners, employees, directors, trustees, authorized representatives or anyone, to whom *you* entrust property for any purpose:

- a. Acting alone or in collusion with others; or
- b. Whether or not occurring during the hours of employment. This is exclusion does not apply to acts of destruction by *your* employees; but theft by an employee is not covered.

5. *Earth Movement of any Kind*-includes any earth movement (other than sinkhole collapse), such as earthquake, landslide, mudflow, or earth sinking, rising or shifting. But, if loss or damage by fire or explosion results, *we* will pay for the resulting loss or damage.

6. *Faulty, Inadequate or Defective*:

- a. Planning, zoning, development, surveying, siting;

- b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- c. Materials used in repair, construction, renovation or remodeling; or
- d. Maintenance of part or all of any property on or off the *insured premises*.
- 7. **Neglect**-means neglect by an *insured* to use all reasonable means to save and preserve covered property when endangered by a covered cause of loss.
- 8. **Nuclear Clause**-*We* do not cover loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from a covered loss under this policy. But, if loss or damage by fire results, *we* will pay for the resulting loss or damage.
- 9. **Ordinance or Law**-means loss or increased cost resulting from enforcement of any code, ordinance or law regulating the use, construction, repair or demolition of a building or other structure, including the cost of removing its debris. When breakage of glass is covered by this policy, *we* pay to replace the damaged glass with safety glazing where required by code, ordinance or law.
- 10. **Power Interruption**-means loss caused by the interruption of power or other utility services resulting from any cause, whether insured under this policy or not, if the interruption takes place away from the *insured premises*. *We* pay for loss to covered property by power interruption as the direct result of damage to covered property on *premises* caused by a covered cause of loss.
- 11. **War**-means undeclared war, civil war, insurrection, rebellion, warlike act by a military force or military personnel, or destruction, seizure or use of property for a military purpose. It includes any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.
- 12. **Water Damage**-means loss caused by:
 - a. Flood, surface water, waves, tides, tidal water, tidal waves or overflow of a body of water or spray from any these, all whether wind driven or not;
 - b. Water which backs up through sewers or drains;
 - c. Water below the surface of the ground pressing on, flowing or seeping through:
 - 1) Foundations, walls, floors or paved surfaces;
 - 2) Basements, whether paved or not; or
 - 3) Swimming pools or other structures.

But if loss or damage by fire or explosion results, *we* will pay for that resulting loss or damage.

- 13. **Wear and Tear**-means damage caused by:
 - a. Wear and tear, marring, scratching, or chipping;
 - b. Inherent vice, latent defect, deterioration or mechanical breakdown;
 - c. Rust or corrosion, mold, mildew, wet or dry rot, contamination, pollution or smog;
 - d. Dampness or dryness of atmosphere, changes in or extremes of temperature; or
 - e. Birds, vermin, rodents or insects.- 14. **Weather**-*We* do not pay any loss if weather conditions contribute in any way, with a cause or event excluded in 1 through 13 above, to produce the loss.

HOW MUCH WE PAY FOR LOSS OR CLAIM

Settlement of property losses covered by this policy shall be made in accordance with the following provisions:

1. **Property losses will settled on the basis of the lesser of the following amounts:**
 - a. The applicable limit of insurance;
 - b. The amount of *your* interest in the property;
 - c. The actual cash value of the property at the time of the loss including an appropriate deduction for depreciation, however caused;
 - d. The cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
 - e. The amount computed after applying the deductible or other limitation applicable to the loss;
 - f. (Applies to mobile homes only at *your* option) the amount equal to the difference between the actual cash value of the property immediately before the loss and its actual cash value immediately after the loss; or
 - g. When applicable, *we* will settle property losses under the *terms* and conditions of the Replacement Cost Provision.
2. **Deductible**-The deductible applies to the following:
 - a. Coverage A—*Residence*
 - b. Coverage B—Related Private Structures
 - c. Coverage C—Personal Property
 - d. Incidental Coverages
 - e. All additional property coverages added by endorsement. The deductible applies to all covered causes of loss unless otherwise stated in the Declarations or any endorsement.

- 1) *We* pay only that part of the loss over the deductible stated in the Declarations or endorsement. Not more than one deductible applies per loss, but:
 - a) If this policy covers more than one building, the deductible applies separately to each building.
 - b) If this policy covers only *business* or personal property, the deductible applies separately to such property in each building.
- 2) If coverage is otherwise restricted by Special Amounts of Insurance, *our* liability must be separately computed under both the deductible and the special Amount of insurance, *we* pay the lesser of the two amounts.
- 3) If a different deductible amount applies separately to *your* building and to the property within the building, the higher of the deductibles shall apply to a loss.
3. **Insurance Under More Than One Coverage**-if more than one coverage of this policy insures the same loss, *we* pay no more than the actual claim, loss or damage sustained.
4. **Insurance Under More Than One Policy.**
 - a. *You* may have other insurance subject to the same plan, *terms*, conditions and provisions as the insurance under this policy. If *you* do, *we* will pay *our* share of the covered loss or damage. *Our* share is the proportion that the applicable amount of Insurance under this policy bears to the amount of all insurance covering on the same basis.
 - b. If there is other insurance covering the same loss or damage, other than that described in (a) above, *we* will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether *you* can collect on it or not. But, *we* will not pay more than the applicable amount of Insurance.
5. **Loss to a Pair or Set**-If there is a covered loss to an article which is part of a pair or set, *we* will elect to:
 - a. Pay the cost to repair or replace any part to restore the pair or set to its pre-loss value; or
 - b. Pay the difference in the actual cash value of the pair or set just before the loss and the actual cash value just after the loss.
6. **Restoration of Amount of Insurance**-any loss *we* pay under this policy does not reduce the Amount of Insurance applying to a later loss.
7. **Tenant's Improvements and Betterments**-If there is a covered loss, *we* will pay either 1, 2 or 3:
 1. The actual cash value of loss if the property is repaired or replaced, within a reasonable time, at *your* expense.
 2. A portion of *your* original cost if *you* do not make repairs. The payment will be at that same proportion as the unexpired days bears to the original number of days granted by *your* lease. If *your* lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
 3. Nothing, if others pay for repairs or replacement.

PAYMENT OF LOSS OR CLAIM

1. **In the event of loss or damages to property covered under this policy, *we* will, at *our* option:**
 - a. Pay the loss in money;
 - b. Rebuild, repair or replace with property of equivalent kind and quality, to the extent practicable, within a reasonable time. *We* will give *you* notice of *our* intent to rebuild, repair or replace within 30 days after receipt of a conforming Sworn Statement in Proof of Loss.
 - c. Take all or any part of the property at the agreed or appraised value. Any property that *we* have paid for or replaced shall become *our* property.
2. ***Your* Property**-*We* will adjust all losses with *you*. A covered loss will be payable after a conforming Sworn Statement in Proof of Loss is received, and the amount of loss has been established by written agreement with *you* or by the filing of an appraisal award with *us*. Payment will be to *you* unless another loss payee is named in the policy.
3. **Property of Others**-Losses to property of others may be adjusted with *you*. *We* reserve the right to adjust with and pay to the owners. Payment to the owners satisfies *our* obligation to *you* for loss of this property. *We* may also choose to defend *you* against any suits arising from claims by the owners of the property.
4. **Liens for Unpaid Taxes**-*We* are required by the Insurance Law to deduct the claim of any tax district from the amount *we* pay *you* for a loss by fire.
To the extent *we* pay any tax district the amount certified as *your* unpaid taxes, *we* are no longer obligated to pay this amount to *you*. *Our* payment of such claim to the tax district within 30 days of the receipt of the certificate of lien shall be considered by *you* and *us* that such claim was valid and properly paid. This does not apply to a one or two family residential structure.

WHAT *YOU* MUST DO IN CASE OF LOSS OR CLAIM

1. **Notice**
 - a. In case of a loss or if *you* become aware of anything that indicates that there might be a claim under this policy, *you* must:
 - 1) Promptly give *us* or *our* agent notice (in writing if requested);

- 2) Promptly notify the police when the act causing the loss is also a violation of the Law.
- b. The notice to *us* must state:
 - 1) *your* name, the kind of policy, policy number, and the time, place and circumstances of the loss; and
 - 2) Names and addresses of all known or potential claimants and witnesses.
2. **Protect Property**-*You* must take all reasonable steps to protect covered property at and after a covered loss to avoid further damage. *We* pay for repairs which are reasonable and necessary to protect the property from further damage, provided *you* keep an accurate record of such expenses. These payments do not increase the amount of insurance otherwise applicable to the loss.
3. **Exhibit Property**-*You* must exhibit the damaged property and permit inspections as often as *we* reasonably request.
4. **Cooperation**-*You* must cooperate with *us* in performing all of the acts required by this policy.
5. **Proof of Loss**-*You* must submit to *us* a Sworn Statement in Proof of Loss signed and sworn to by *you*, within 60 days of *our* request. The Sworn Statement in Proof of Loss will set forth, to the best of *your* knowledge and belief, the following information:
 - a. The time, origin and cause of loss;
 - b. *Your* interest, and that of all others, in the property involved and all mortgages or liens on the covered property;
 - c. All other contracts of insurance covering any of the property involved;
 - d. Any change in title, use or occupancy of the property during the policy period;
 - e. All available plans and specifications of the damaged property, including fixtures and machinery a part thereof;
 - f. Detailed estimates of repair of the damage establishing the actual cash value of each item and the amount of loss claimed; and
 - g. If requested, an inventory of damaged personal property showing in detail the quantity, description, cost, actual cash value and amount of loss. *You* must attach to the inventory copies of all bills, receipts and related documents that substantiate the inventory.
6. **Volunteer Payments**-*You* must not, except at *your* own cost, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses.
7. **Additional Duties**-Each *insured*, at *our* request, will separately:
 - a. Submit to examination under oath, at such times as may be reasonably required, about any matter relating to this insurance or *your* claim, including *your* books and records. In such event, *your* answers must be signed;
 - b. Produce records, including tax returns and bank microfilms of all canceled checks, relating to value, loss and expenses and permit copies and extracts to be made of them as often as *we* reasonably request; and
 - c. Assist in enforcing any right of recovery which *you* may have against any party causing the loss.

CONDITIONS APPLICABLE TO ALL COVERAGES

In addition to the policy *terms*, which are contained in other sections of this policy, the following conditions also apply.

1. **Assignment**-Assignment of this policy is not valid without *our* written consent.
2. **Required Policy Period**-Means a period of three years from the date the policy is first issued or voluntarily renewed.
3. **Cancellation**:
 - a. By *you-you* may cancel this policy at any time by giving *us* written notice or returning the policy to *us* and stating when thereafter the cancellation is to be effective.
 - b. By *us-we* may cancel this policy by written notice delivered to or mailed to *you* at the mailing address shown in the Declarations. Proof of delivery or mailing is sufficient proof of notice.
 - c. *We* refund premium for the unexpired policy as follows:
 - 1) If canceled by *us*-on a pro-rata basis; or
 - 2) If canceled by *you*-on the basis of *our* short rate table, unless *our* bylaws, as set forth in this policy, require that refunds be computed on a pro-rata basis.
 - d. Refund of Premium-Payment or tender of unearned premium is not a condition of cancellation. If the unearned premium is not refunded with the cancellation notice, it will be sent to *you* within a reasonable time.
 - e. When *we* may Cancel-*we* may cancel the policy under the following conditions:
 - 1) Non-payment of Premium-If the premium has not been paid when due, *we* may cancel at any time by giving the required notice at least 15 days before cancellation is to be effective.
 - 2) New Policy-If this is a new policy which has been in effect less than 60 days and is not a renewal, *we* may cancel for any reason by giving the required notice at least 30 days before cancellation is effective. A renewal of a policy issued by *us* is not a new policy.
 - 3) Policy with a *Term* Over One Year-If this policy is written for a term longer than one year, *we* may cancel for any reason by giving *you* the required notice at least 45 days (but not more than 60 days) before the anniversary date of the required policy period.

- 4) All Other Situations-If this policy has been in effect 60 days or more or is a renewal of a policy issued by *us*, *we* may cancel only for the reasons set forth below and by giving the required notice at least 30 days before cancellation is effective. The reasons are:
 - a) The policy was obtained through fraud, material misrepresentation or omission of fact which, if known to *us*, would have caused *us* not to issue the policy; or
 - b) There has been a material change or increase in hazard of the risk.
4. **Non-renewal**-*We* may elect not to renew or continue this policy by giving written notice of *our* intent at least 45 days (but not more than 60 days) before the end of the required policy period. The notice may be delivered to or mailed to *you* at the mailing address shown in the Declarations. Proof of delivery or mailing shall be sufficient proof of notice.
5. **Change, Modification or Waiver of Policy Terms**-A waiver or change of any *terms* of this policy must be issued by *us* in writing to be valid. *Our* request for an appraisal or examination under oath does not waive any of *our* rights. If *we* adopt any revision of forms or endorsements during a policy period which would broaden coverage under this policy without additional premium, the broadened coverage will automatically apply to this policy. If this policy is on a continuous basis (with no specified expiration date), *we* may substitute or add, upon any anniversary date, forms or endorsements which are authorized for use on this policy in accordance with *our* manual rules in effect at the time. If the change in forms or endorsements reduces coverage or limits, *we* must notify *you* as provided under the Non-renewal *terms* contained in this endorsement.
6. **Conformity with Statute**-*Terms* of this policy, in conflict with the statutes of the state where the premises described in the Declarations are located, are amended to conform to such statutes.
7. **Misrepresentation, Concealment or Fraud**-This entire policy is void if, whether before or after a loss:
 - a. An *insured* has willfully concealed or misrepresented:
 - 1) Any material fact or circumstance concerning this insurance; or
 - 2) An *insured's* interest herein.
 - b. There has been fraud or false swearing by an *insured* regarding a matter relating to this insurance or the subject thereof.
8. **Inspection**-*We* are permitted, but not obligated, to inspect *your* property and operations. *Our* inspection or any resulting advice or report does not warrant that *your* property or operations are safe or healthful or are in compliance with any law, rule or regulation.
9. **Policy Premium**-If this policy is issued without a specified expiration date, it may be continued by payment of the required premium for the next annual period. The premium must be paid to *us* as specified on *our* premium notice.
10. **Recoveries**-If *we* pay an *insured* for loss under this policy and lost or damaged property is recovered or payment is made by those responsible for the loss, the following provisions apply:
 - a. The *insured* must notify *us* or *we* will notify the *insured* promptly if either recovers the property or receives payment.
 - b. Any proper expenses incurred by either party in making the recovery are reimbursed first.
 - c. The *insured* may keep recovered property by refunding *us* the amount of the claim paid or any lesser amount to which *we* agree.
 - d. If the claim paid is less than the agreed loss due to a deductible, special limit of insurance or other limiting *terms* of the policy, any recovery will be pro-rated between the *insured* and *us* based on *our* respective interests in the loss.
11. **Subrogation**:
 - a. If *we* make a payment under this policy, *we* may require that the *insured* assign to *us* his or her right of recovery against any person for loss to the extent of the payment. The *insured* must do everything necessary to make this assignment and secure *our* rights.
 - b. *We* are not liable for any loss if an *insured* does anything after the loss occurs to impair *our* right to recover. *You* may waive *your* right of recovery in writing before a loss occurs without voiding the coverage.
 - c. If *we* pay a loss to or on behalf of an *insured* and the *insured* recovers damages from another person for the same loss, the *insured* shall hold the amount recovered in trust for *us* and shall reimburse *us* as provided under Recoveries.
12. **Suit Against Us**-No suit to recover any property loss may be brought against *us* unless:
 - a. The *terms* of this policy have been fully complied with; and,
 - b. The Suit is commenced within two years after the loss. If any law of the state where the premises described in the Declarations are located makes this limitation invalid, then suit must begin within the shortest period permitted by the law.
13. **Abandonment of Property**-*We* may take the property, or any part of it, at the agreed or appraised value, but an *insured* may not abandon the covered property to *us* unless *we* specifically agree.

14. **Appraisal**-If *you* and *we* do not agree on the cost to repair or replace, actual cash value of or amount of loss to covered property when loss occurs, either party may demand that these amounts be determined by appraisal. If either makes a written demand for appraisal, each shall notify the other of the appraiser's identity within 20 days of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, *you* or *we* can ask a judge of a court of record in the state where the property is located to select an umpire. The appraisers will then determine the amount of the damage stating separately and in detail: The cost to repair or replace, actual cash value of, and the amount of loss to each building item and item of personal property. If the appraisers submit a written report of any agreement to *us*, the amount agreed upon will be the amount of damage or value. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three, sets the cost to repair or replace, actual cash value of and amount of loss to each item. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by *you* and *us*.
15. **No Benefit To Bailee**-Insurance under this policy shall not directly or indirectly benefit any hired carrier or anyone else who is paid for assuming custody of covered property.
16. **Secured Party Coverage**-Applies only to coverage on mobile homes and personal property; (this entire clause is void unless the name of a secured party is inserted in the Declarations. This clause applies only to the interest of a secured party and does not affect the *insured's* rights or duties under the policy). If a secured party is named in this policy, any loss payable on property subject to the security interest shall be payable to the secured party and *you* as interest may appear. If there is more than one security interest in the same property, the order of payment shall be the same as their order of priority. If *we* deny *your* claim, that denial shall not apply to a valid claim of a secured party, if such party has:
- Notified *us* of any change in ownership, occupancy or substantial change in risk of which the secured party became aware;
 - Paid any premium due under the policy on demand if *you* have not made such payment; and
 - Submitted a signed, Sworn Statement in Proof of Loss within 60 days if an *insured* has failed to do so.
- Policy conditions relating to appraisal, suit against *us* and loss payment apply to the secured party. If the policy is canceled by *us* the secured party shall be notified at least 10 days before the date cancellation takes effect. If *we* pay the secured party for any loss for which *we* have denied payment to *you*:
- We* are subrogated to all rights of the secured party granted under the security agreement; or
 - At *our* option, *we* may pay the secured party the remaining amount due on the security agreement plus interest and receive a full assignment of the security agreement and any Securities held as collateral for the agreement. However, the secured party's interest is not covered for conversion, embezzlement or secretion by an *insured* in possession of the encumbered property, unless specifically insured against and a premium paid for such.
17. **Mortgage clause**-Applies Only to Coverage on Buildings (this entire clause is void unless the name of the mortgagee (mortgage holder), or trustee under a trust deed, is inserted in the Declarations. This clause applies only to the mortgagee or trustee and does not affect *your* rights or duties under this policy).
- We* will pay for loss or damage to buildings to each mortgagee shown on the Declarations and to *you* as interest may appear. If more than one mortgagee is named in the Declarations, they shall be paid in that order of priority.
 - The mortgagee is entitled to receive loss payment even if the mortgagee has started foreclosure or other similar proceedings on the building or structure.
 - The insurance for the mortgagee continues in effect even when *your* insurance may be void because of *your* acts, neglect or failure to comply with policy *terms*, provided that the mortgagee:
 - Pays any premium due under this policy at *our* request insofar as *you* have failed to do so;
 - Submits a signed, Sworn Statement in Proof of Loss within 60 days after receiving notice from *us* of *your* failure to do so; and
 - Notifies *us* of any change in ownership, occupancy or substantial changes in risk known to the mortgagee. If all of these conditions are met, then the *terms* of this policy will apply directly to the mortgagee.
 - If *we* pay the mortgagee for a loss where *your* insurance may be void as a result of *your* acts, neglect or failure to comply with policy *terms* then:
 - The mortgagee's rights under the mortgage will be transferred to *us* to the extent of the amount *we* pay; and
 - The mortgagee's right to recover the remainder of the mortgage debt from *you* will not be impaired. At *our* option, *we* may pay the mortgagee the remaining principal and accrued interest in return for a full assignment of the mortgagee's interest and any instruments given as security for the mortgage debt.
 - If *we* cancel this policy, *we* will give written notice to the mortgagee at least:
 - 10 days before the effective date of cancellation if *we* cancel for nonpayment of premium or other statutory reasons; or
 - 30 days before the effective date of cancellation if *we* cancel for any other reason.

- f. If *we* do not renew this policy, *we* will give written notice to the mortgagee at least 10 days before the expiration of this policy.
18. **Additional Provisions**-Notwithstanding any other provisions of this policy:
- a. In the event of loss, *we* will pay no more than the lesser of the following:
- 1) The actual cash value of the property at the time of loss; or
 - 2) The amount which it would cost to repair or replace the property with material of like kind and quality, to the extent practical, within a reasonable time after loss; however:
 - a) *We* do not pay any increased cost of repair or reconstruction by reason of any ordinance, code or law regulating construction or repair; and
 - b) *We* do not, unless specifically provided in this policy, pay for loss resulting from the interruption of *business* or manufacturing; or
 - 3) An amount not exceeding the amount of insurance shown in the Declarations, but in any event for no more than the interest of the *insured*.
- b. The provisions of the appraisal clause set out in the standard fire policy and the provisions of section 3408 of the Insurance Law, including determinations as to the amount of loss or damage rendered thereunder, shall be binding on all parties to the contract of insurance evidenced by this policy.



FL-30
Ed. 5/92

AMENDATORY ENDORSEMENT PRINCIPAL COVERAGES

Refer to Supplemental Declarations if information is not shown on this form.

For an additional premium, *we* provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

Coverage B-Related Private Structures on the Premises-is deleted and replaced by the following:

Coverage B-Related Private Structures on the Premises.

This policy covers related private structures on the *insured premises* which are not attached to *your residence*.

(Structures connected to the *residence* by only a fence, utility line or similar connection are considered to be related private structures).

This coverage includes fences, driveways, sidewalks, and other permanently installed outdoor yard fixtures.

Coverage B does not cover:

1. structures designed or used for *business*; (However, this exclusion does not apply to structures rented, held for rental or otherwise used solely for private garage purposes).
2. outdoor antennas (including satellite systems), their lead-in wiring, accessories, masts and towers, except as provided under Incidental Coverages; and
3. trees, plants, shrubs and lawns.

Coverage D-Additional Living Expense & Loss of Rents Coverage-is deleted and replaced by the following:

Coverage D-Additional Living Expense and Loss of Rent Coverage.

Under Coverage D *we* pay:

1. the reasonable and necessary increase in living expenses *you* incur to maintain the normal standard of living of *your* household if the portion of the *insured premises* containing *your* household is made unfit for occupancy by a covered loss. *We* pay only for the period of time reasonably required to make the *insured premises* fit for occupancy or to settle *your* household in new quarters, whichever is less. This period of time is not limited by the policy period.
2. the fair rental value of that part of the *insured premises* that *you* rent, or hold for rental, to others if damage by a covered cause of loss makes that part unfit for its normal use. *We* pay only for the period of time reasonably required to make the *insured premises* fit for occupancy. Loss of rents covers only those expenses which necessarily continue during the repairs and it does not include any loss or expense due to cancellation of any lease or rental agreement. This period of time is not limited by the policy period.

This Change Applies To Form FL-1R ONLY

Optional causes of loss-Extended Coverage-The following causes of loss, 3 through 7, are subject to an additional premium charge and apply only if a premium for Extended Coverage is shown on the Declarations Page, is deleted and replaced by the following:

Extended Coverage-The following causes of loss, 3 through 7, are included in the basic premium charge.

LEAD EXCLUSION

WHAT *WE* DO NOT PAY FOR

The following exclusion is added to the **EXCLUSIONS** shown in the General Liability Coverage:

We do not pay for loss resulting directly or indirectly from *bodily injury*:

1. resulting from inhalation or ingestion of dust, chips or other residues of lead or lead based materials adorning the interior or exterior of the covered building(s);
2. resulting from ingestion of leaded leachate from plumbing systems comprising part of the *insured premises*; or
3. resulting from ingestion of lead or residues of lead from the soil comprising a part of the *insured premises*.



FL-425

Ed. 4/10

NEW YORK POLICY CONDITIONS AMENDATORY ENDORSEMENT (For use with FL-20 Ed. 11/79 and FL-20 Ed. 1/92)

The coverage under this endorsement is subject to the *terms* contained in the General Policy Conditions. This endorsement amends the following policy condition(s):

Under the heading **Policy Conditions**, When *We* May Cancel subsection No. 2. e. in the FL-20 Ed. 11/79 and the heading **Conditions Applicable to All Coverages**, When *We* May Cancel subsection No. 3. e. in the FL-20 Ed. 1/92, the subsection is deleted and replaced, respectively, in each referenced form as follows:

- e. **When We May Cancel** - *We* may cancel the policy under the following conditions:
- 1) Non-Payment of Premium-If the premium has not been paid when due, *we* may cancel at any time by giving the required notice at least 15 days before cancellation is effective.
 - 2) New Policy-If this is a new policy which has been in effect less than 60 days and is not a renewal, *we* may cancel by providing a statement giving the specific reason or reasons for cancellation and by giving the required notice at least 30 days before cancellation is effective. A renewal of a policy issued by *us* is not a new policy.
 - 3) Policy with Term Over One Year-If this policy is written for a term longer than one year, *we* may cancel for any reason by giving *you* the required notice at least 45 days (but not more than 60 days) before the anniversary date of the *required policy period*.
 - 4) All Other Situations - If this policy has been in effect 60 days or more or is a renewal of a policy issued by *us*, *we* may cancel only for the reasons set forth below and by giving the required notice at least 30 days before the cancellation is effective. The reasons are:
 - a. conviction of a crime arising out of acts increasing the hazard insured against;
 - b. discovery of fraud or material misrepresentation in obtaining the policy or in the presentation of a claim thereunder;
 - c. discovery of willful or reckless acts or omissions increasing the hazard insured against;
 - d. physical changes in the property insured occurring after issuance or last annual anniversary date of the policy which result in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last voluntarily renewed; or
 - e. a determination by the superintendent that the continuation of the policy would violate or would place the insurer in violation of the New York Insurance Law.

The Anti-Arson Application Section is New Material:

- 5) Anti-Arson Application - When the anti-arson application is applicable to the property covered by this policy pursuant to New York Insurance Department Regulation 96, *your* policy is amended to include the following provisions:
 - a. If *you* fail to return the completed, signed and affirmed anti-arson application to *us* or the agent or broker within 45 days of the effective date of coverage, *we* shall cancel such coverage by giving written notice in compliance with the applicable provisions of subsection (b) of section 3425 of the New York Insurance Law;
 - b. If *you* fail to return the completed, signed and affirmed anti-arson application to *us* prior to the annual renewal date of the policy, *we* shall cancel the policy in accordance with Section 3425(c)(2)(F) of the New York Insurance Law.

Under the heading **Policy Conditions**, Non-Renewal subsection 3. in the FL-20 Ed. 11/79 and the heading **Conditions Applicable to All Coverages**, Non-Renewal No. 4. in the FL-20 Ed. 1/92, the subsection is deleted and replaced in each referenced form as follows:

Non-Renewal - *We* may elect not to renew or continue this policy by giving written notice of *our* intent at least 45 days (but not more than 60 days) before the end of the *required policy period*. This notice shall contain *our* specific reason(s) for non-renewal or conditional renewal. The notice may be delivered to or mailed to *you* at the mailing address shown in the Declarations. Proof of delivery or mailing shall be sufficient proof of notice.

All other *terms* and conditions remain unchanged.

FL-425

Ed. 4/10

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R-67

FL-73
Ed. 5/10

EARTH MOVEMENT EXCLUSION CLARIFICATION

The exclusion contained in this endorsement is subject to the *terms* contained in *your* policy

EXCLUSIONS

The EXCLUSIONS THAT APPLY TO PROPERTY COVERAGES contained in *your* policy are clarified as follows:

The Earth Movement of any Kind exclusion contained in *your* policy is deleted and replaced as follows:

Earth Movement of any Kind-which includes, but is not limited to:

- a. earthquake, including tremors or land shock waves that occur before, during or after a volcanic eruption;
- b. landslide, mudslide or mudflow;
- c. subsidence, sinkhole, erosion, expanding or contracting, volcanic eruption or effusion including outpouring of lava or ash, except when sinkhole collapse and volcanic action are separately addressed by this policy; or
- d. any other earth movement including earth sinking and earth rising or shifting arising out of, caused by or resulting from any human or animal act or any act of nature.

We pay for direct loss by fire, explosion, and (if covered by this policy) theft resulting from earth movement. Explosion does not include volcanic eruption or effusion.

All other *terms* and conditions remain unchanged.

FL-73
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Ed. 5/10

FL-83
Ed. 2/02**AMENDMENT OF POLICY CONDITIONS**

(For Use with FL-20 Ed. 11/79 and FL-20 Ed. 1/92)

The coverage under this endorsement is subject to the *terms* contained in the General Policy Conditions. This endorsement amends the **CONDITIONS APPLICABLE TO ALL COVERAGES**.

The following provision is added to item 2, **CANCELLATION**:

- g. **Conditional Reinstatement**-if *we* issue a cancellation notice because *you* didn't pay the required premium when due and *you* then tender payment by check, draft or other remittance which is not honored on presentation, *your* policy will terminate on the date and time shown on the cancellation notice and any notice *we* issue which waives the cancellation or reinstates the policy is void. This means *we* will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice. *We* will give *you* notice of the dishonor of *your* remittance as soon as practicable but this shall not interrupt the cancellation of this policy.

Item 2d. under **CANCELLATION** is deleted and replaced as follows:

- d. *We* refund premium for the unexpired policy period on a pro-rata basis. Any unearned premium amounts under \$5.00 will be refunded only on *your* request.

The following provision is added to the **POLICY CONDITIONS** in accordance with Insurance Law section 3407-a:

When *you* have a claim of damage to real property pending; *we* will, at *your* request, furnish *you* or *your* representative designated in writing, a copy of any written estimate(s) of the cost of damages to your real property that *we* prepared or had prepared on *our* behalf. *We* will respond within thirty days after the request or preparation, whichever is later, and *we* will show all real property deductions under consideration in the estimate(s). *We* are not required to provide an estimate unless *we* prepared one or had one prepared for *us*.

URB

FL-84A
Ed. 4/94**NEW YORK AMENDATORY ENDORSEMENT**
(For use with FL-30 Ed. 5/92)

The coverage under this endorsement is subject to the *terms* contained in the General Policy Conditions. This endorsement amends the following policy condition.

Under the heading **Coverage B-Related Private Structures on the Premises**, subsection titled **Coverage B does not cover** on form FL-30 Ed. 5/92; the subsection is deleted and replaced as follows:

Coverage B does not cover:

1. structures designed or used for *business*; (However, this exclusion does not apply to structures rented, held for rental or otherwise used solely for private, non-commercial garage purposes).
2. outdoor antennas (including satellite systems), their lead-in wiring, accessories, masts and towers, except as provided under Incidental Coverages.
3. trees, plants, shrubs and lawns, except as provided under Incidental Coverages.
4. land, including the land on which the property is located. This includes the cost of excavating, removing, grading or filling land, or water in or on that land.
5. pools, piers, wharves, docks, underground pipes, flues, conduits and drains, and retaining walls that are not part of the building.

D-Additional Living Expense & Loss of Rents Coverage-is deleted and replaced by the following:

Coverage D Additional Living Expense or Loss of Rent Coverage

Under Coverage D *we* pay:

1. the reasonable and necessary increase in living expenses *you* incur to maintain the normal standard of living of *your* household if the portion of the *insured premises* containing *your* household is made unfit for occupancy by a covered loss. *We* pay only for the period of time reasonably required to make the *insured premises* fit for occupancy or to settle *your* household in new quarters, whichever is less. This period of time is not limited by the policy period; or
2. the fair rental value of that part of the *insured premises* that *you* rent, or hold for rental, to others if damage by a covered cause of loss makes that part unfit for its normal use. *We* pay only for the period of time reasonably required to make the *insured premises* fit for occupancy. Loss of rents covers only those expenses which necessarily continue during the repairs and it does not include any loss or expense due to cancellation of any lease or rental agreement. This period of time is not limited by the policy period.

There is a Change Applicable to Form FL-1R ONLY:

Optional causes of loss-Extended Coverage-The following causes of loss, (3 through 9), are subject to an additional premium charge and apply only if a premium for Extended Coverage is shown on the **Declarations Page** is deleted and replaced by the following:

Extended Coverage-The following causes of loss, (3 through 9), are included in the basic premium charge.



IMPORTANT FLOOD INSURANCE NOTICE

FMD-1

Ed. 8/08

Your homeowners or dwelling policy does NOT provide coverage for loss caused by flood or mudslide, which is defined in part, by the National Flood Insurance Program as:

A general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.

If you are required by your mortgage lender to have flood insurance on your property, or if you feel that your property is susceptible to flood damage, insurance covering damage from flood is available on most buildings and contents in participating communities through the National Flood Insurance Program.

Information about flood insurance and whether your community participates in the program can be obtained from your insurance company, from your insurance agent/broker, or directly from the National Flood Insurance Program by calling 1-800-638-6620 or via their website at <http://www.floodsmart.gov>.

FMD-1

Ed. 8/08



ML-217
Ed. 9/99

INTENTIONAL ACTS CLARIFICATION

Refer to Supplemental Declarations if information is not shown on this form.

The clarification under this endorsement is subject to the *terms* contained in the General Liability Coverage.

WHAT *WE* DO NOT PAY FOR

The following clarification is added to the General Liability Coverage:

We do not pay for *bodily injury, property damage* or costs from the actual or alleged willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity on recreational property made available without cost to users.

All other *terms* and conditions remain unchanged.

ML-217

Ed. 9/99

ML-430B
Ed. 2/08

RENEWAL ENDORSEMENT

Refer to Supplemental Declarations if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

This policy may be continued by payment of the required premium for the next policy period. The premium must be paid to *us* as specified in the premium notice.

If any of the forms attached to *your* policy are revised, *we* will enclose a copy of that revision with *your* renewal policy.

If *we* adopt any revision of forms or endorsements during a policy period which would broaden coverage under this policy without additional premium, *your* policy will be liberalized to include that broadened coverage.

THIS CONTINUATION CERTIFICATE IS CONDITIONED ON PAYMENT OF THE REQUIRED PREMIUM FOR THE NEXT POLICY PERIOD. THIS IS AN IMPORTANT INSURANCE DOCUMENT AND IT SHOULD BE RETAINED WITH YOUR POLICY.

PLEASE REFER TO YOUR POLICY FOR A COMPLETE DESCRIPTION OF YOUR COVERAGES AND FORMS. PLEASE CONTACT YOUR AGENT FOR ASSISTANCE. THANK YOU.

ML-430B

Ed. 2/08



ML-60
Ed. 6/99

MODIFICATION OF TERMINOLOGY

(Applicable to manufactured homes produced after 1967)

Refer to Supplemental Declaration if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

Modification of Terminology

To the extent that the words "mobile home(s)" or "mobile home park(s)" appear in this policy, the words are substituted for and replaced by "manufactured home(s)" and "manufactured home park(s)" respectively.

ML-60

Ed. 6/99



NSC

Notice to Senior Citizen Insureds

New York Insurance Law provides that Senior Citizen Insureds may designate a third party to whom we shall submit Notices of Cancellation, Nonrenewal, or Conditional Renewal.

If you are a Senior Citizen Insured (age 65 or older) and a New York resident, you may elect to designate a third party to whom we will transmit copies of such notices.

In the event you wish to designate a third party for this purpose, you must notify us by certified mail, return receipt requested, that a third party has been designated. Such notice to us must contain, in writing, an acceptance by the third party designee; such designee shall provide written notice to us and to the senior citizen insured.

If you are a Senior Citizen Insured and need assistance or additional information regarding this subject, you may contact your agent, or you may write to the company at the Home Office, Bamerville Road, Cobleskill, New York 12043.

Sterling Ins. Co.**1/91**

SIC-TERR-DISC

Ed. 1/15

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015 (the Act), you have insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that where coverage is provided by this policy for losses resulting from certified acts of terrorism, such losses may be partially reimbursed by the United States Government under a formula established by federal law. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020; of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The premium charged for this coverage is provided below and does not include any charges for the portion of loss that may be covered by the federal government under the Act.

You should also know that the Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds \$100 billion. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

Any coverage provided by your policy in compliance with the Act is limited by the terms, conditions, limits, exclusions and other provisions of your policy.

No terrorism exclusion or limitation is permitted to the extent that coverage is otherwise required by law. Accordingly, no such exclusion or limitation is permissible for coverage with respect to the peril of fire that is subject to New York Insurance Law Section 3404 or for workers’ compensation insurance. An insured cannot voluntarily waive this statutorily mandated coverage.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$0.00.

SIC-TERR-DISC

R-76

ED. 1/15

TERR-COV
Ed. 1/15

NOTICE OF TERRORISM INSURANCE COVERAGE

Refer to Supplemental Declarations if information is not shown on this form.

The portion of *your* annual premium that is attributable to coverage for acts of terrorism is \$ _____.

Coverage for *acts of terrorism* is included in *your* policy. The term *act of terrorism* as defined in Section 102(1) of the Terrorism Risk Insurance Act, as amended in 2015 (the Act), means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an *act of terrorism*; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

To the extent coverage for such certified *acts of terrorism* is provided by *your* policy, any losses resulting from certified *acts of terrorism* may be partially reimbursed by the United States Government under a formula established by the Act. Under the formula, the United States Government reimburses the following percentage of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage: 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020.

The Act contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified *acts of terrorism* when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, *your* coverage may be reduced. As such, if aggregate insured losses resulting from certified *acts of terrorism* exceed \$100 billion dollars in any one calendar year beginning January 1 and ending December 31, the Treasury will not pay for any portion of the amount of those losses that exceed the \$100 billion cap.

Should the Secretary of the Treasury make a determination that the aggregate amount of loss from certified *acts of terrorism* has exceeded the \$100 billion cap in a calendar year beginning January 1 and ending December 31, and *we* have met our insurer deductible under the Act, then *we* will not pay for any portion of loss resulting from a certified *act of terrorism* that exceeds \$100 billion. Should the loss resulting from certified *acts of terrorism* exceed \$100 billion in any one calendar year beginning January 1 and ending December 31, any covered losses up to \$100 billion are subject to pro rata allocation according to procedures established by the Secretary of the Treasury under the Act.

Any coverage provided by *your* policy in compliance with the Act is limited by the *terms*, conditions, limits, exclusions and other provisions of *your* policy. The *terms* of this coverage are not intended to provide coverage for any loss or damage that would be otherwise excluded under this policy by any other exclusion(s) that address war, military action or nuclear hazards.

No terrorism exclusion or limitation is permitted to the extent that coverage is otherwise required by law. Accordingly, no such exclusion or limitation is permissible for coverage with respect to the peril of fire that is subject to New York Insurance Law Section 3404 or for workers' compensation insurance. An *insured* cannot voluntarily waive this statutorily mandated coverage.

All other *terms* and conditions remain unchanged.

TERR-COV

R-77

ED. 1/15



FL-2
Ed. 1/92

CAUSES OF LOSS

We insure under Coverage A (and Coverage C when applicable) against direct physical loss or damage by these causes of loss:

1. **Fire or Lightning.**
2. **Explosion**-including loss or damage caused by explosion of gas or fuel in the fire box, combustion chamber or flues.
We do not pay for loss or damage caused by:
 - a. explosion of steam boilers, steam pipes, steam turbines or steam engines if owned, leased by or operated under control of an *insured*;
 - b. electric arcing;
 - c. rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
 - d. water hammer;
 - e. rupture, bursting or operating of pressure relief devices; or
 - f. rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
3. **Windstorm or Hail**-excepting the following loss or damage:
 - a. caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind driven or not;
 - b. to the interior of a building or mobile home, or to the property inside, caused by dust, rain, sand, sleet, snow or water, all whether wind driven or not. Loss caused by dust, rain, sand, sleet, snow or water is covered if these elements enter through an opening in the roof or walls resulting from damage caused by the direct force of wind or hail; or
 - c. to watercraft (except rowboats and canoes on the *insured premises*) including their trailers, accessories, equipment and outboard motors unless such property is inside a fully enclosed building.
4. **Riot or Civil Commotion**-including loss or damage resulting directly from pillage and looting that occurs during a riot or civil commotion, where it is taking place. *We* also cover loss or damage caused by striking employees of the building owner or tenant while strikers occupy the *insured premises*.
5. **Aircraft**-including loss or damage caused by impact by an aircraft, or parts falling from it, with the covered property. The term aircraft includes spacecraft and self-propelled missiles.
6. **Vehicles**-including loss or damage caused by impact by a vehicle, or an object thrown by it, with the covered property.
We do not pay for loss or damage caused by a vehicle:
 - a. owned, leased or operated by *you* or an occupant of the *insured premises*; or
 - b. to *your* fence(s), driveway(s) or walk(s).
7. **Smoke**-meaning sudden and accidental damage from smoke excepting, smoke from industrial operations or agricultural smudging.
8. **Sinkhole Collapse**-meaning loss or damage caused by sudden settlement or collapse of the earth supporting covered property. The earth settlement or collapse must result from subterranean voids created by the action of water on a limestone or similar rock formation.
We do not pay for the value of land or the cost of filling sinkholes.
9. **Volcanic Action**-meaning direct loss or damage caused by volcanic action, including airborne volcanic blast or shockwaves; ash, dust or particulate matter; or lava flow. All volcanic actions that occur within any 72 hour period will constitute a single *occurrence*.
We do not pay for removal of ash, dust or particulate matter unless it causes direct physical loss to the described property.
10. **Vandalism**-excepting loss at the *insured premises* while the *residence* is vacant for more than 30 consecutive days immediately before a loss. A *residence* under construction is not considered vacant.
11. **Breakage of Glass or Safety Glazing Materials**-meaning accidental breakage of glass or safety glazing material which is part of the *insured premises*.

We do not pay for such loss if the *residence* is vacant for more than 30 consecutive days immediately before a loss.

A *residence* under construction is not considered vacant.

12. **Falling Objects**-excepting the following loss or damage:
 - a. to the interior of a building or mobile home, or to the property inside, unless the falling object has first damaged the outside walls or roof by impact;
 - b. to *business* or personal property in the open; or
 - c. to the falling object itself.
13. **Weight of Ice, Snow or Sleet**-including physical damage to the *residence* or to the property inside.

We do not pay for loss:

 - a. to awnings or canopies and their supports and to gutters and downspouts; or
 - b. to swimming pools, retaining walls, fences, septic tanks, piers, wharves, docks, foundations, patios, paved areas and outdoor equipment not permanently installed.
14. **Collapse of a Building or Any Part of a Building**-excepting settling, cracking, shrinking, bulging or expansion of a building.

We do not pay for these losses unless they are caused directly by collapse of a building:

 - a. damage to awnings or canopies and their supports and gutters and downspouts.
 - b. damage to swimming pools, retaining walls, fences, septic tanks, piers, wharves, docks, foundations, patios, paved areas and outdoor equipment; or
 - c. damage which results from an excluded cause or event.
15. **Sudden and Accidental Tearing Apart, Cracking, Burning or Bulging**-of a heating or air conditioning system or water heater.

We do not pay for loss caused by freezing.
16. **Accidental Discharge or Overflow of Water or Steam**-from within a plumbing, heating, air conditioning, automatic fire protective sprinkler system or domestic appliance.

We do not pay for loss or damage caused by:

 - a. continuous or repeated seepage or leakage; or
 - b. discharge or overflow if the *residence* has been vacant for more than 30 consecutive days immediately before a loss.

A *residence* under construction is not considered vacant.

We do not pay for loss or damage to the system or appliance from which the water or steam escapes however, *we* do pay the reasonable cost of removing and replacing only those parts of the *residence* necessary to make repairs to the system or domestic appliance involved.
17. **Freezing of Plumbing, Heating, Air Conditioning Systems, Automatic Fire Protective Sprinkler Systems or Domestic Appliances**-excepting loss or damage on the *insured premises* while the *residence* is vacant, unoccupied or being constructed.

We do cover such loss or damage if an *insured* has used reasonable care to maintain heat in the *residence* or to shut off all water and to completely drain the system and domestic appliances.
18. **Sudden and Accidental Damage from Artificially Generated Electrical Currents**-excepting loss or damage to tubes, transistors and similar electronic components.

Replacement Cost Provision
(Not Applicable To Mobile Homes
Whether Or Not On A Permanent Foundation)

(*Our* liability under this provision is subject to the *terms* of How Much *We* Pay for Loss or Claim in the General Policy Provisions).

1. This provision applies only to covered buildings, including additions and built-in components and fixtures, covered under Coverage A-*Residence* and Coverage B-Related Private Structures on the Premises. The building must have a permanent foundation and roof. This provision does not apply to:
 - a. mobile homes whether or not on a permanent foundation;
 - b. domestic appliances;
 - c. carpeting, curtains and drapes all whether or not permanently installed;
 - d. detachable building items including screens, awnings, storm doors and windows, and window air conditioners; or
 - e. outdoor structures (other than buildings) which are not permanent components or fixtures of a building. These include (but are not limited to) swimming pools, fences, paved areas, submersible pumps and sump pumps.

2. If the amount of insurance on the damaged buildings is less than 80 percent of its replacement cost at the time of loss, *we* pay the larger of the following (in excess of the deductible):
 - a. actual cash value of the damaged part of the building; or
 - b. that proportion of the replacement cost of the damaged part which *our* amount of insurance on the building bears to 80 percent of the full current replacement cost of the building.
3. If the amount of insurance on the damaged building is at least 80 percent of its replacement cost at the time of loss, *we* pay the full cost of repair or replacement of the damaged part without deduction for depreciation. *We* pay the smallest of the following amounts:
 - a. the amount of insurance applicable to the building;
 - b. the cost (in excess of the deductible) to repair or replace the damage on the same premises using materials of equivalent kind and quality, to the extent practical; or
 - c. the amount (in excess of the deductible) actually and necessarily spent to repair or replace the damage.
4. When the cost to repair or replace exceeds the lesser of \$1,000 or 5 percent of the applicable amount of insurance on the damaged building, *we* are not liable for more than the actual cash value of the loss until actual repair or replacement is completed.
5. *You* may make a claim for the actual cash value amount of the loss before repairs are made. A claim for any additional amount payable under this provision must be made within 180 days after the loss.



FL-342
Ed. 4/16

UNDERGROUND UTILITY LINE ENDORSEMENT

Refer to Supplemental Declarations if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

Policy Number: _____

Named *Insured*: _____

SCHEDULE

Underground Utility Line Coverage Per <i>Occurrence</i> Limit:	<u>\$10,000</u>
Underground Utility Line Coverage Per <i>Occurrence</i> Deductible:	<u>\$500</u>

This policy is amended to include the following *terms* outlined below. All other *terms* of the policy apply, except as amended by this endorsement.

UNDERGROUND UTILITY LINE COVERAGE

We cover direct physical loss to *underground utility line covered property* that is caused by an *underground utility line occurrence* at the *insured premises*. Underground Utility Line Coverage extends to any Coverage D provided in the policy to which this endorsement attaches. The Underground Utility Line Coverage Per *Occurrence* Limit shown in the Schedule above is the most we pay for any one loss, regardless of the number of *underground utility line occurrences*.

DEFINITIONS

The following definitions are added:

1. *Underground Utility Line Covered Property* as used herein means any piping or wiring that provides the following services to an *insured premises*: electrical power, heating, natural gas, waste disposal, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission. However, *underground utility line covered property* does not include any piping or wiring that is above ground.
2. *Underground Utility Line Occurrence* as used herein means loss or damage caused by:
 - a. Wear and tear;
 - b. Rust or other corrosion, decay, deterioration, hidden or latent defect;
 - c. Collapse, but not including sinkhole or subsidence collapse;
 - d. Electrical, mechanical or pressure systems breakdown; or
 - e. Freezing.

Underground utility line occurrence will only apply to causes of loss listed above. However, *underground utility occurrence* will include any excavation costs associated with the repair or replacement of *underground utility line covered property*.
3. *Green* means products, materials, methods and processes certified by a *green authority* that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.
4. *Green authority* means an authority on *green* buildings, products, materials, methods or processes certified and accepted by Leadership in Energy and Environmental Design (LEED®), Green Building Initiative Green Globes®, Energy Star Rating System or any other recognized *green* rating system.

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. In the General Policy Provisions, under How Much *We* Pay For Loss Or Claim, Deductible is deleted and replaced by the following with respect to the coverage provided by this endorsement.

Deductible

- a. The deductible shown in the Schedule above applies to all coverages provided by this endorsement.
 - b. Subject to the limit set forth in the Schedule above, *we* pay that part of the loss, damage, or expense over the deductible. Only one deductible applies at each location.
2. Subject to the other *terms* shown under How Much *We* Pay For Loss Or Claim in the General Policy Provisions, and the *terms* of this endorsement, *we* settle Underground Utility Line losses according to the Replacement Cost Terms.

Replacement Cost Terms - The smaller of the following amounts is used in computing How Much *We* Pay For Loss or Claim for Underground Utility Line losses:

- a. The cost, at the time of loss, to replace the lost or damaged part of the property, without deduction for depreciation;
- b. The cost, at the time of loss, to repair the damaged part of the property; or
- c. The limit set forth in the Schedule above.

EXTENSION OF COVERAGE**Green Environmental, Safety, and Efficiency Improvements**

If covered property requires repair or replacement due to an *underground utility line occurrence*, *we* will pay:

1. The additional cost to repair or replace that property with equipment that is better for the environment, safer, or more efficient than the equipment being repaired or replaced;
2. The additional reasonable and necessary fees incurred by the *insured* for an accredited professional certified by a *green authority* to participate in the repair or replacement of physically damaged covered property as *green*;
3. The additional reasonable and necessary cost incurred by the *insured* for certification or recertification of the repaired or replaced *underground utility line covered property* as *green*;
4. The additional reasonable and necessary cost incurred by the *insured* for *green* in the removal, disposal or recycling of damaged *underground utility line covered property*; or
5. The Coverage D loss during the additional time required for repair or replacement of covered property, consistent with *green*, in the coverages above.

However, *we* will not pay more than 150% of what the cost would have been to repair or replace such property with like kind and quality, inclusive of fees, costs, and any loss of use loss incurred as stated above.

This Extension of Coverage will be part of, and not an addition to, the limit set forth in the Schedule above.

FL-52A
Ed. 12/98

TRAMPOLINE EXCLUSION

Refer to Supplemental Declarations if information is not shown on this form.

The exclusion under this endorsement is subject to the *terms* contained in the Liability Coverage Section.

WHAT WE DO NOT PAY FOR

The following exclusion is added to the EXCLUSIONS shown in the policy section titled EXCLUSIONS:

1. Exclusions that apply to Both Personal Liability and Medical Payments to Others or Exclusions that apply to Bodily Injury, Property Damage or Premises Medical Payments Coverages:

*We do not pay for **bodily injury** or **property damage** or Medical Payments to Others arising out of injury or damage sustained while tumbling, exercising or otherwise using a **trampoline** owned or used by **you**, **your** tenant, a resident of **your** tenant or other resident of **your** household.*

ADDITIONAL DEFINITIONS

Trampoline means a resilient membrane supported by springs in a circular or rectangular frame and used as a springboard and landing area for tumbling, gymnastics or exercise activities.

FL-52A

Ed. 12/98



FL-OLT
Ed. 1/92

PREMISES LIABILITY INSURANCE COVERAGE PART FOR RESIDENCE, APARTMENT AND TWO TO FOUR FAMILY DWELLINGS

AGREEMENT

We agree to provide Premises Liability insurance and the other related coverages described in this Policy in return for payment of the required premium. *We* have added this Coverage Part to *your* Property Insurance Policy. It will expire at the same time the Property Insurance Policy expires and it is subject to the same cancellation provisions.

It is important that *you* read each part of this policy carefully to understand the coverage provided, *your* obligations and *our* obligations under the policy. Each coverage is subject to all *terms* relating to that coverage.

The complete Premises Liability Coverage consists of the declarations page, this booklet, and other endorsements which may be added.

The Table of Contents shows how the coverage part is organized and will help *you* locate particular sections.

TABLE OF CONTENTS

	Page no.
Agreement.....	1
Definitions.....	1-2
Principal <i>Bodily Injury</i> and <i>Property Damage</i> Coverages	2
Incidental <i>Bodily Injury</i> and <i>Property Damage</i> Coverages.....	3
Exclusions.....	3-5
What <i>You</i> Must Do In Case of Loss.....	5
How Much <i>We</i> Pay for Loss or Claim.....	5-6
Payment of Loss or Claim	6
Policy Conditions.....	6-7

DEFINITIONS-The following definitions apply to this policy.

- The words *you* and *your* refer to the person or entity named in the Declarations and the words *we*, *us* and *our* refer to the insurance company named in the Declarations.
- Bodily injury* means *bodily injury*, bodily sickness or bodily disease sustained by any person which occurs during the policy period, including death at any time resulting from such *bodily injury*, bodily sickness or bodily disease.
- Business* means a trade, profession, or other occupation including farming, all whether full or part time, or the rental of any property to others. (However, *business* does not include the rental of the *insured premises* for residential purposes)
- Insured*-Each of the following is an *insured* under the conditions and limitations set forth below:
 - If the named *insured* is an individual, *insured* means *you* and, if residents of *your* household, *your* relatives and any person under the age of 21 in *your* care or in the care of *your* resident relatives.
 - If the named *insured* is a partnership or joint venture, any partner or member and their spouse is an *insured* but only with respect to the conduct of the *business*.
 - If the named *insured* is an organization, the executive officers, members of the board of trustees, directors and governors are *insureds* while acting within the scope of their duties as officers or directors. Stockholders are also *insureds* but only with respect to their liability as stockholders.
 - If *you* die while *insured* under this policy *your* protection passes to *your* legal representative or other person having proper temporary custody of covered property. However, this person or *your* legal representative is an *insured* only with respect to insurance on covered property and legal liability arising out of the property. Any

person who is an *insured* at the time of *your* death continues to be an *insured* while residing on the *insured premises*.

- e. Each person listed above is a separate *insured* under this policy, but this does not increase *our* limit of liability under this policy.

5. **Insured Premises.**

a. **Described Location:**

- 1) If *you* own the one to four family house described in the Declarations, the *insured premises* means that house, related private structures, and grounds at that location.
- 2) If *you* own the townhouse or row house described in the Declarations, the *insured premises* means that townhouse or row house, related private structures and grounds used or occupied exclusively by *your* household for residential purposes at that location.
- 3) If *you* own the one or two family mobile home described in the Declarations, the *insured premises* means that mobile home, related private structures and grounds at that location.
- 4) If *you* reside in the condominium unit, cooperative, apartment or rented premises described in the Declarations, the *insured premises* means the parts of the described location which are used or occupied exclusively by *your* household for residential purposes.

b. *Insured premises* also include the following:

- 1) any premises used by *you* in connection with the described location; and
- 2) approaches and access ways immediately adjoining the *insured premises*.

6. **Medical expenses** mean reasonable and necessary expenses for medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, prosthetic devices, and eyeglasses, including contact lenses.

7. **Motorized Vehicle** means any self-propelled land or amphibious vehicle (regardless of horsepower, number of wheels or method of surface contact) including parts and equipment. (This does not include small motorized equipment for the service of the *insured premises* such as power lawn mowers and snow blowers)

The following categories of *motorized vehicles* have specific meanings as used in this policy.

a. **Motor Vehicle** means a *motorized vehicle*, trailer or semi-trailer (including any attached machinery or apparatus):

- 1) subject to *motor vehicle* registration; or
- 2) designed for use or travel on public roads.

b. **Recreational motor vehicle** means a *motorized vehicle* (other than a *motor vehicle* as defined above), trailer, or attached apparatus designed or used for recreation, vacation or leisure time activities.

8. **Occurrence** means an accident, including continuous or repeated exposure to substantially similar conditions.

9. **Property Damage** means injury to or destruction of tangible property including the loss of its use.

10. **Residence** means a one to four family house, a townhouse, a row house, or one or two family mobile home.

11. **Terms** as used in this policy mean provisions, limitations, exclusions and definitions.

PRINCIPAL BODILY INJURY AND PROPERTY DAMAGE COVERAGES

Coverage L-Premises Liability Coverage

We pay up to *our* limit of liability, all sums for which the *insured* is legally liable because of *bodily injury* or *property damage* caused by an *occurrence* to which this coverage applies. *We* shall have the right and duty to defend any suit seeking damages, even if any of the allegations of the suit are groundless, false or fraudulent, provided the suit resulted from *bodily injury* or *property damage* not excluded under this coverage. The *bodily injury* or *property damage* must result from the ownership, maintenance or use of the *insured premises*, and operations necessary or incidental to the *insured premises*.

We will defend (with counsel of *our* choice) any suit seeking damages, provided the suit resulted from *bodily injury* or *property damage* not excluded under this coverage. *We* may make any investigation and settle any claim or suit that *we* decide is appropriate. *We* are not obligated to provide a defense after *we* have paid, either by judgement or settlement, an amount equal to *our* limit of liability.

Coverage M-Premises Medical Payments

We provide Premises Medical Payments only if a limit of liability for Premises Medical Payments is shown on the Declarations.

We pay the necessary *medical expenses* incurred or medically determined within one year from the date of an accident causing *bodily injury* to which this coverage applies. This coverage applies only to *bodily injury*

1. caused by a condition in the *insured premises*.
2. caused by operations covered by the *bodily injury* liability afforded by this policy.

INCIDENTAL BODILY INJURY AND PROPERTY DAMAGE COVERAGES

This policy provides the following Incidental Liability Coverages. These incidental coverages are subject to the *terms* of the Principal Liability Coverages. These incidental coverages do not increase the limit of liability stated for the principal coverages except: Claims Expense Coverage and First Aid Expense Coverage.

1. **Contracts and Agreements Coverage**-We pay for damages for *bodily injury* or *property damage* resulting from liability assumed by an *insured* under a contract, relating to the *insured premises* provided:
 - a. the contract is in writing and made before the loss; and
 - b. it is not in connection with *business* activities of any *insured*.
2. **Claims and Defense Expense Coverage**-We pay the following expenses incurred in connection with a suit defended by *us* under the Personal Liability coverage:
 - a. costs taxed to the *insured*;
 - b. expenses incurred by *us*;
 - c. actual loss of earnings by an *insured*, up to \$50 per day, for time spent away from work at *our* request;
 - d. other necessary expenses incurred at *our* request;
 - e. interest accruing after entry of a judgment but ending when *we* tender or pay up to the applicable limit of liability;
 - f. prejudgment interest awarded against the *insured* on that part of the judgement *we* pay. *If we* make an offer to pay the applicable limit of liability, *we* will not pay any prejudgment interest based on that period of time after the offer;
 - g. premiums on appeal bonds or bonds to release attachments up to *our* limit of liability; (*we* are not required to apply for or furnish any bonds) and
 - h. premiums up to \$500 per bail bond required of any *insured* because of an accident or traffic law violation arising out of the use of any vehicle to which this policy applies. (*We* are not required to apply for or furnish any bonds). *We* do not pay for punitive or exemplary damages, or defense costs related thereto. This exclusion applies regardless of any other provision of this policy or endorsements attached to this policy.
3. **First Aid Expense Coverage**-Regardless of an *insured's* legal liability, *we* pay expenses incurred by an *insured* for first aid to persons, other than *insureds*, for *bodily injury* covered by this policy.
4. **Incidental Motorized Vehicle Coverage**-We pay for *bodily injury* or *property damage* which:
 - a. occurs on the *insured premises* and results from the ownership, maintenance, use, loading or unloading by an *insured* of:
 - 1) *motorized vehicles* not subject to motor vehicle registration because of their type or use; or
 - 2) *recreational motor vehicles*;
 - b. occurs away from the *insured premises* and results from *motorized vehicles* designed exclusively for use off public roads and used principally to service the *insured premises* and not subject to *motor vehicle* registration.
5. **Incidental Business Coverage**-We pay for *bodily injury* or *property damage* resulting from:
 - a. the occasional rental of the portion of the *insured premises* normally occupied by *you*, exclusively for residential purposes;
 - b. the rental of any other portion of the *insured premises* for residential purposes; (No family unit may include more than two roomers or boarders)
 - c. the rental of a portion of the *insured premises* as a school, studio, office or private garage;
 - d. incidental activities normally performed by minors; and
 - e. activities in conjunction with *business* pursuits which are ordinarily considered *non-business* in nature.
6. **Watercraft**-We pay for *bodily injury* or *property damage* resulting from the ownership or maintenance of watercraft, while ashore on the *insured premises*.
7. **Operations at Insured Premises**-We pay for *bodily injury* or *property damage* resulting from structural alterations and repairs conducted on the *insured premises*. These operations must not change the use of the premises from that described in the Declarations.

EXCLUSIONS

1. **Exclusions that Apply to Bodily Injury, Property Damage and Premises Medical Payments Coverages**

This Policy does not apply to liability:

- a. caused directly or indirectly by war; (This means undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction, seizure or use of property for a military purpose. It includes any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental)

- b. resulting from the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of aircraft;
- c. resulting from the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading by an *insured* of *motorized vehicles* or watercraft, except as provided under Incidental *Bodily Injury* and *Property Damage* Coverages;
- d. resulting from the use of a *motorized vehicle* in any racing, speed, pulling or pushing, demolition or stunting activity or contest or in the practice or preparation for such activity or contest;
- e. resulting from the rendering of or failing to render professional services;
- f. resulting from activities in connection with an *insured's business*, except as provided under Incidental *Bodily Injury* and *Property Damage* Coverages;
- g. resulting from premises owned, rented or controlled by an *insured* other than the *insured premises*;
- h. caused intentionally by or at the direction of any *insured*, including unintentionally caused injuries resulting from assault, battery and/or sexual abuse by or at the direction of any *insured*;
- i. for *bodily injury* if benefits are payable or required to be provided by an *insured* under any workers' compensation, non-occupational disability, occupational disease or similar law;
- j. for which an *insured* under this policy is also an *insured* under a nuclear energy liability policy or would be an *insured* but for the exhaustion of its limits of liability. (A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors)
- k. resulting from *bodily injury* to any employee of the *insured* arising out of and in the course of his/her employment by the *insured* or to any obligation of the *insured* to indemnify or contribute with another because of damages arising out of such injury.
- l. for *bodily injury* or *property damage* for which an *insured* may be held liable:
 - 1. as a person or organization engaged in the manufacture, distribution, sale or serving of alcoholic beverages; and
 - a) when an *insured* serves or provides alcoholic beverages at a fee; whether for profit or otherwise and whether a license is required or not; or
 - b) when an *insured* serves or provides alcoholic beverages free; if a license is required for such activities;
 - 2. if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
 - a) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage; or
 - b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but, part 2 b) of this exclusion **does not apply** with respect to liability of an *insured* as owner or lessor described in 2. above;

- m. caused by structural alterations, new construction or demolition operations performed by or for *you* except as provided in Incidental *Bodily Injury* and *Property Damage* Coverages; or
- n. for *bodily injury* or *property damage* for which an *insured* may be held liable:
 - 1. resulting directly or indirectly from the transmission of a communicable disease by an *insured* or an employee of an *insured*; or
 - 2. resulting from the use, possession, manufacture, sale or distribution of controlled substances as shown in 21 USCS 812 and amendments. The legitimate use of prescription drugs is excepted from this exclusion.
- 2. **Exclusions that Apply only to Bodily injury and Property damage**-This coverage does not apply to liability:
 - a. for *bodily injury* to *you* and, if residents of *your* household, *your* relatives, and any other person under the age of 21 in *your* care or in the care of *your* resident relatives;
 - b. assumed under any contract or agreement, except as provided under incidental Liability and Medical Payments Coverages;
 - c. for damage to property owned by any *insured*; for damage to property rented to, occupied by, used by, or in the care of an *insured*; and
 - d. resulting from *bodily injury* or *property damage* arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
 - 1. at or from premises owned, rented or occupied by the named *insured*;
 - 2. at or from any site or location used by or for the named *insured* or others for the handling, storage, disposal, processing or treatment of waste;
 - 3. which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the named *insured* or any other person or organization for whom the named *insured* may be legally responsible; or

4. at or from any site or location on which the *named insured* or any contractors or subcontractors working directly or indirectly on behalf of the *named insured* are performing operations:
 - a) if the pollutants are brought on or to the site or location in connection with such operations; or
 - b) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

For the purpose of this provision, pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

We do not pay for any loss, cost or expense arising out of any governmental direction or request that the *named insured* test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

This exclusion does not apply to *bodily injury or property damage* caused by heat, smoke or fumes from a hostile fire. For the purpose of this exclusion, hostile fire means a fire which becomes uncontrollable or breaks out from where it was intended to be.

3. **Exclusion that Apply only to Premises Medical Payments** - This coverage does not apply to *bodily injury*:
 - a. to an *insured*;
 - b. to any tenant or other person regularly residing on the *insured premises*;
 - c. to any person while on the *insured premises* because a *business* is conducted or professional services are rendered there; or except as provided under Incidental *Bodily injury* and *Property damage* Coverages; and
 - d. to any person, if benefits are provided under any workers' compensation, non-occupational disability, occupational disease or similar law.

WHAT YOU MUST DO IN CASE OF LOSS

1. **Notice.**
 - a. In case of a loss or if an *insured* becomes aware of anything that indicates there might be a claim under this policy, he or she must, as soon as reasonably practicable, give *us* or *our* agent notice;
 - b. The notice to *us* must state:
 - 1) the *insured's* name, policy identification, the time, place, and circumstances of the loss; and
 - 2) names and addresses of any potential claimants and witnesses.
2. **Cooperation** - The *insured* must cooperate with *us* in performing all acts required by this policy.
3. **Volunteer Payments** - The *insured* must not, except at his or her own cost, voluntarily make any payments, assume any obligations, or incur any other expenses except first aid at the time of *bodily injury*.
4. **Additional Duties - Bodily Injury and Property Damage Coverages** - In the event of an *occurrence* which might result in a claim for *bodily injury* or *property damage* liability under this policy, the *insured* must also do the following:
 - a. promptly forward to *us* copies of all notices, demands, or legal papers received in connection with the *occurrence*; and
 - b. at *our* request, assist in:
 - 1) making settlements;
 - 2) the conduct of suits including attending trials and hearings;
 - 3) enforcing any right of contribution or indemnification against any party who may be liable to any *insured* for the injury or damage;
 - 4) securing and giving evidence; and
 - 5) obtaining the attendance of witnesses.
5. **Additional Duties - Premises Medical Payments** - In case of a Premises Medical Payments loss, the following are also required:
 - a. The injured person or someone acting on such persons behalf must:
 - 1) give *us* written proof of claim (under oath if requested) as soon as practical; and
 - 2) authorize *us* to obtain copies of medical reports and records;
 - b. The injured person shall submit to physical examinations by physicians selected by *us* when and as often as *we* reasonably require.

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. **Under Bodily injury and Property damage Coverages** - The limits of liability stated in the Declarations are the maximum amounts *we* pay for loss in a single *occurrence* under these coverages, regardless of the number of:
 - a. persons insured under this policy;
 - b. parties who sustain injury or damage; or
 - c. claims made or suits brought.

2. **Under Premises Medical Payments Coverage** for the limit of liability stated in the Declarations for "each person" is the limit for all *medical expense* for *bodily injury* to any person as the result of any one accident and the total paid in each accident for two or more persons shall not exceed the limit of liability stated for "each accident." Payment of a claim under the Premises Medical Payments Coverage does not constitute an admission of liability under the Premises Liability Coverage.
3. **Insurance Under More Than One Policy**-If there is other valid and collectible insurance which applies to a loss or claim, or would have applied in the absence of this policy, the insurance under this policy shall be considered excess insurance and shall not apply or contribute to the payment of any loss or claim until the amount of such other insurance is exhausted.
4. **Restoration of Limit of Liability**-Any loss *we* pay under this policy does not reduce the limits of liability.

PAYMENT OF LOSS OR CLAIM

Any person, who has secured a judgment against an *insured* for a covered loss or has liability established by a written agreement between the claimant, an *insured* and *us*, is entitled to recover under this policy to the extent of coverage provided.

POLICY CONDITIONS

In addition to the policy *terms* which are contained in other sections of this policy, the following conditions also apply.

1. **Assignment**-This policy is void if assigned without *our* written consent.
2. **Change, Modification, or Waiver of Policy Terms**-A waiver or change of any *terms* of this policy must be issued by *us* in writing to be valid. *Our* request for an appraisal or examination under oath does not waive any of *our* rights. If *we* adopt any revision of forms or endorsements during a policy period which would broaden coverage under this policy without additional premium, the broadened coverage will automatically apply to this policy. If this policy is issued on a continuous basis (with no specified expiration date) *we* may substitute or add, upon any anniversary date, forms or endorsements which are authorized for use on this policy in accordance with *our* manual rules in effect at the time.
3. **Conformity with Statute**-*Terms* of this policy, in conflict with the statutes of the state where the premises described in the Declarations are located, are amended to conform to such statutes.
4. **Misrepresentation, Concealment or Fraud**-This entire policy is void if, whether before or after a loss:
 - a. An *insured* has willfully concealed or misrepresented:
 - 1) any material fact or circumstance concerning this insurance; or
 - 2) an *insured's* interest herein;
 - b. There has been fraud or false swearing by an *insured* regarding any matter relating to this insurance or the subject thereof.
5. **Inspection**-*We* are permitted but not obligated to inspect *your* property and operations. *Our* inspection or any resulting advice or report does not warrant that *your* property or operations are safe or healthful or are in compliance with any law, rule or regulation.
6. **Policy Premium**-If this policy is issued without a specified expiration date, it may be continued by payment of the required premium for the next annual period. The premium must be paid to *us* before each anniversary date. This policy expires on any anniversary date that the premium has not been received by *us*. Premium is subject to adjustment on the basis of the rates in effect at each anniversary date.
7. **Subrogation**.
 - a. If *we* make a payment under this policy, *we* may require that the *insured* assign to *us* his or her right of recovery against any person for the loss to the extent of the payment. The *insured* must do everything necessary to make this assignment and secure *our* rights.
 - b. *We* are not liable for any loss if an *insured* does anything after the loss occurs to impair *our* right to recover. *You* may waive *your* right of recovery in writing before a loss occurs without voiding the coverage.
 - c. If *we* pay a loss to or on behalf of an *insured* and the *insured* recovers damages from another person for the same loss, the *insured* shall hold the amount recovered in trust for *us* and shall reimburse *us* as provided under Recoveries.
8. **Suit Against Us**.

Liability Coverage-No suit may be brought against *us* to recover amounts due for *bodily injury* or *property damage* liability unless:

 - a. the *terms* of this policy have been fully complied with; and
 - b. the amount of any *insured's* liability has been conclusively fixed:
 - 1) by a final judgment against the *insured* following trial; or
 - 2) by written agreement of the *insured*, the claimant and *us*.

No person shall have any right under this policy to join or implead *us* in any action brought to determine an *insured's* liability.

9. **Bankruptcy of an *Insured***-Bankruptcy or insolvency of any *insured* or his or her estate does not relieve *us* of any of *our* obligations under this policy.

10. **Policy Period**-This policy applies only to *bodily injury* or *property damage* which occurs during the policy period.

NY STAT-1
Ed. 11/08

NY STATUTORY ENDORSEMENT

Refer to Supplemental Declarations if information is not shown on this form.

The amendment under this endorsement is subject to the *terms* contained in *your* policy.

The following provisions are added to *your* policy.

1. Failure to give any notice required to be given by this liability policy within the time prescribed shall not invalidate any claim made by the *insured*, injured person or any other claimant, unless the failure to provide timely notice has prejudiced *us*, except when it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter.
2. With respect to a claim for personal injury or wrongful death of any person, if *we* disclaim liability or deny coverage based upon the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against *us*, in which the sole question is *our* disclaimer or denial based on the failure to provide timely notice, unless within sixty days following such disclaimer or denial, the *insured* or the insurer:
 - a. initiates an action to declare the rights of the parties under the insurance policy; and
 - b. names the injured person or other claimant as a party to the action.

All other *terms* and conditions remain unchanged.

NY STAT-1
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Ed. 11/08

URB

SFL-345
Ed. 4/13**EQUIPMENT BREAKDOWN ENHANCEMENT ENDORSEMENT**

Refer to Supplemental Declarations if information is not shown on this form.

We provide coverage under this endorsement subject to the *terms* contained in the General Policy Provisions.

Policy No. _____

Named *Insured*: _____**COVERED CAUSES OF LOSS***We* pay for direct physical loss to covered property caused by *equipment breakdown* as provided by this endorsement.**DEDUCTIBLE**

The coverage provided by this endorsement is subject to a \$500 per occurrence deductible.

CONDITIONS APPLICABLE TO *EQUIPMENT BREAKDOWN*

1. *Equipment breakdown* is an added covered cause of loss shown in the underlying property insurance afforded by *your* policy.
2. The specific *terms* and conditions of this endorsement shall take precedence over any other conflicting *terms* and conditions stated in any other part of *your* policy.
3. The additional *terms* and conditions applicable to the coverage extensions shown below shall be in addition to all other *terms* and conditions of *your* policy.
4. Any specific amounts of insurance shown in this endorsement shall take precedence over any other amounts of insurance or limits of liability shown elsewhere in *your* policy.
5. Whenever covered property is found to be in, or exposed to, a dangerous condition, any of *our* representatives may immediately suspend the insurance against loss or damage to that covered property for the causes of loss covered by this endorsement. Coverage can be suspended and possibly reinstated by delivering or mailing a written notice of suspension / coverage reinstatement to *your* last known address or the address where the covered property is located. Once suspended, *your* insurance can be reinstated only by an endorsement to this policy for that equipment. If *we* suspend *your* insurance, *you* will get a pro rata refund of premium. But, the suspension will be effective even if *we* have not yet made or offered a refund.
6. Jurisdictional Inspections - If any covered property under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, *we* agree to perform such inspection on *your* behalf. *We* do not warrant that conditions are safe or healthful.

WHAT WE PAY FOR***Equipment breakdown****Equipment breakdown* as used herein means:

Direct physical loss or damage both originating within:

1. boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding: waste disposal piping; any piping forming part of a fire protective system; furnaces; and any water piping other than: boiler feed water piping between the feed pump and the boiler; boiler condensate return piping; or water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes;
2. any mechanical, electrical, electronic or fiber optic equipment; and

caused by, resulting from, or consisting of: mechanical breakdown, electrical breakdown, electronic breakdown, rupture, bursting, bulging, implosion, or steam explosion.

If covered electrical equipment requires drying out as a result of moisture; *we* only pay for the direct expenses incurred of such drying out.

WHAT WE DO NOT PAY FOR

However, *equipment breakdown* will not mean:

1. direct physical loss or damage caused by or resulting from any of the following; however, if loss or damage not otherwise excluded results, then *we* will pay for such resulting damage:
 - a. wear and tear;
 - b. rust or other corrosion, decay, deterioration, hidden or latent defect, mold or any other quality in property that causes it to damage or destroy itself;
 - c. smog;
 - d. settling, cracking, shrinking or expansion;
 - e. nesting or infestation, or discharge or release of waste products or secretions, by birds, insects, rodents or other animals;
 - f. any accident, loss, damage, cost, claim, or expense, whether preventative, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing, or processing of data by any computer system including any hardware, programs or software; or
 - g. scratching and marring.
2. loss, damage, cost or expense directly caused by, contributed to, resulting from or arising out of the following causes of loss: fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

INCIDENTAL COVERAGES**1. CFC Refrigerants**

We will pay for the additional and necessary incurred cost to repair or replace covered property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances resulting from an *equipment breakdown*. Additional costs mean those in excess of what would have been required to repair or replace covered property, had no CFC refrigerant been involved. *We* also pay for additional loss as described under the consequential or loss of income coverages provided by this endorsement, caused by the presence of a refrigerant containing CFC substances.

We pay no more than the least of the following:

- a. the cost to repair the damaged property and replace any lost CFC refrigerant;
- b. the cost to repair the damaged property, retrofit the system to accept a non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
- c. the cost to replace the system with one using a non-CFC refrigerant.

2. Hazardous Substances Remediation

The following applies despite any Ordinance or Law Exclusions found elsewhere in this policy. This coverage does not apply to damage or contamination caused by any refrigerant, including ammonia.

We will pay for *pollutant* clean up and removal and for any additional expense incurred by *you* for the repair or replacement or disposal of covered property damaged, contaminated, or polluted as a result of an *equipment breakdown*. The most *we* will pay for this coverage is \$100,000.

This incidental coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of *pollutants*. But *we* will pay for testing which is performed in the course of extracting the *pollutants* from the land or water.

3. Consequential Losses

We will pay for loss of *perishable goods* due to spoilage resulting from lack or excess of power, light, heat, steam or refrigeration caused by an *equipment breakdown* to types of property covered by this policy, that are located on or within 1,000 feet of *your* described premises and owned or used by *you* at *your* described premises, or owned by a public utility.

Perishable goods means personal property maintained under controlled conditions for its preservation and susceptible to loss or damage if the controlled conditions change.

However, *we* will not pay for any loss, damage, cost or expense directly caused by, contributed to, resulting from or arising out of the following causes of loss: fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

The most *we* will pay for loss or damage under this coverage is \$100,000.

4. Power Interruption

We pay for *your* loss of income from the interruption of power or other utility services to covered property on or within 1,000 feet of the *insured premises* as the direct result of an *equipment breakdown* to equipment that is owned by a utility, landlord or other supplier, with whom *you* have a contract to supply *you* with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission. The equipment must meet the definition of *equipment breakdown* except that it is not covered property.

However, *we* will not pay for any loss, damage, cost or expense directly caused by, contributed to, resulting from or arising out of the following causes of loss: fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

5. Expediting Expenses

We will pay for expediting expense incurred as a result of an *equipment breakdown* with respect to *your* damaged covered property. *We* will pay the *reasonable extra cost* to make temporary repairs, expedite permanent repairs and expedite permanent replacement.

Reasonable extra cost shall mean the extra cost of temporary repair and of expediting the repair of such damaged equipment of the *insured*, including overtime and the extra cost of express or other rapid means of transportation. This will be a part of and not an addition to the limit per loss.

6. Refrigerant Contamination

We pay for loss from contamination by refrigerant used in refrigerating, cooling or humidity control equipment at the described premises as a result of an *equipment breakdown*. The most *we* pay for loss or damage under this coverage is \$100,000.

7. Loss of income, meaning loss of income resulting directly from the necessary interruption of *your* business caused by an *equipment breakdown*, is covered for up to a 30 day period. The deductible does not apply to this agreement.

Under this agreement, income is defined as the sum of:

- a. net profit;
- b. payroll expenses;
- c. taxes;
- d. interest;
- e. rents and all other necessary operating expenses incurred by the business.

We pay up to \$100,000, or any larger amount endorsed on the policy, for the loss of income which shall be the income *your* business could be reasonably expected to have earned during the period of interruption had no loss occurred less the income *your* business actually earned during that period. In no event will *we* pay more than the reduction in income less charges and expenses which do not necessarily continue during the period. Coverage also applies to expenses *you* incur to reduce loss of income, not otherwise covered by any other agreement in this policy, but only to the extent that they actually reduce *your* loss of income.

You shall make every reasonable effort to resume complete or partial operation as soon as possible and, where practicable, use substitute facilities and property.

We do not pay for any loss of income:

- a. resulting from suspension, lapse or cancellation of any lease, license, contract or order.
- b. caused directly or indirectly by enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures.
- c. caused directly or indirectly by interference at the premises by strikers or other persons with rebuilding, repairing or replacing property or with the resumption or continuation of operations.

8. Environmental, Safety and Energy Efficiency Improvements

If covered property requires repair or replacement due to an *equipment breakdown*, *we* will pay *your* additional cost to replace with equipment that is better for the environment, safer, or more energy efficient than the equipment being replaced. However, *we* will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not apply to any property to which actual cash value applies.

All other *terms* and conditions remain unchanged.

INCIDENTAL COVERAGES

This policy provides the following Incidental Coverages. These Incidental Coverages are subject to all of the *terms* of the applicable Principal Coverages A, B, or C. These Incidental Coverages do not increase the amount of insurance stated for the Principal Coverages.

1. Removal**a. Emergency Removal**

- 1) *We* pay for loss to covered property while removed from the *insured premises* for preservation from damage from covered causes of loss. Such property is covered against direct loss from causes of loss, not otherwise excluded or limited by this policy, for the first five days. It is covered against loss from covered causes of loss for an additional 25 days. This coverage does not extend past the expiration date of the policy.

- 2) *We* pay up to \$250 towing charge to move a covered mobile home endangered by a covered cause of loss.

b. Debris Removal

- 1) *We* will pay the reasonable costs to remove the debris of covered property after an insured loss.
- 2) *We* will pay the reasonable costs to remove ash, dust or particulate matter from a volcanic action that caused direct loss to covered buildings or covered property within a building.

We do not pay for these costs:

- 1) To extract *pollutants* from land or water; or
- 2) To remove, restore or replace polluted land or water.

2. Trees, plants, Shrubs and Lawns

You may apply up to 5% of the coverage A amount of insurance to cover trees, shrubs, plants and lawns on the *insured premises*. *We* pay only for loss caused by the following covered causes of loss: Fire, Lightning, Explosion and (if insured under this policy) Riot, Civil Commotion, Aircraft, Vehicles not owned or operated by *you* or by an occupant of the *insured premises*, and Vandalism. *We* do not pay more than \$250 for any one tree, plant or shrub including the cost of removing the debris of the covered item.

We do not cover trees, shrubs, plants and portions of lawn:

- a. Grown for *business* purposes; or
- b. Located more than 250 feet from the *residence* on the *insured premises*.

3. Tenant's Improvements and betterments-If *you* are a tenant, *you* may apply up to 10% of the Coverage C amount of insurance to cover direct loss by covered causes of loss to permanent fixtures, alterations, improvements and additions installed on the *insured premises* and made or acquired at *your* expense. Any payment under this option reduces the coverage C amount of insurance for the same loss.**4. Outdoor Antenna Coverage**-*We* pay up to \$500 for direct loss by covered causes of loss to outdoor antennas, including their lead-in wiring, accessories, masts and towers. Any payment under this option reduces the Coverage B amount of insurance for the same loss.**EXCLUSIONS THAT APPLY TO YOUR POLICY**

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. For other Exclusions, Limitations and Property Not Covered which may affect *your* policy, see Principal Coverages, Incidental Coverages, and other endorsements added to *your* policy.

1. Business Interruption-means loss resulting from the interruption of *business*.**2. Civil Authority**-means loss, including seizure, confiscation or destruction of property, caused by the order of any civil authority. This includes acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body. *We* do pay for acts of destruction ordered by governmental authority and taken at the time of fire to prevent its spread if the fire would be covered under this coverage part.**3. Delay or loss of Market.****4. Dishonest or Criminal Acts**-means loss caused by or resulting from any dishonest or criminal act by *you*, any of *your* partners, employees, directors, trustees, authorized representatives or anyone, to whom *you* entrust property for any purpose:

- a. Acting alone or in collusion with others; or
- b. Whether or not occurring during the hours of employment. This is exclusion does not apply to acts of destruction by *your* employees; but theft by an employee is not covered.

5. Earth Movement of any Kind-includes any earth movement (other than sinkhole collapse), such as earthquake, landslide, mudflow, or earth sinking, rising or shifting. But, if loss or damage by fire or explosion results, *we* will pay for the resulting loss or damage.**6. Faulty, Inadequate or Defective:**

- a. Planning, zoning, development, surveying, siting;

Prospero, Mary Jane

From: FOIL
Sent: Thursday, April 25, 2019 10:53 AM
To: Prospero, Mary Jane
Cc: Janis, Eric C.
Subject: FW: Edward Daire

FREEDOM OF INFORMATION MEMORANDUM

To: Mary Jane Prospero
CC: Undersheriff Eric Janis
From: Michael V. Tanzini, Deputy Records Access Officer
Date: April 25, 2019
Subject: Attached request for information

Please provide the information requested on the below Freedom of Information request from Edward Daine to the Records Access Office.

A response to this request is due on May 2nd. Public Officers Law §89(3) states that within five (5) business days one of three options must be completed:

- *Provision of Record(s).
- *Denial with reason for exemption from access under FOI Law.
- *Provision of an approximate date when the record(s) requested will be provided, available for review or denied.

If you have any concerns or reservations about this request, or if it will take longer than 5 business days to come back to this office, please notify this office in writing or by replying to this email.

Please mark the appropriate area on the form, and elaborate on denials when necessary.

Thank you.

c. file

FOR AGENCY USE ONLY

☒ Approved 1 Number of Copies Responsive to the Request

☐ Denied for Reason(s) checked below:

☐ Confidential Disclosure

☐ Part of Investigatory Files

☐ Unwarranted Invasion of Personal Privacy ☐ Record is not maintained by this Agency ☐ Record of which this Agency is Legal Custodian Cannot be found ☐ Exempted by Statute Other than the FOI Law ☐ Insufficient information provided/more information necessary to complete ☐ Other (Specify): _____

Signature

Title

Date

Michael V. Tanzini
 Second Deputy Clerk
 Deputy Records Access Officer
 Broome County Legislature
 (607) 778-2131

-----Original Message-----

From: webmaster@co.broome.ny.us <webmaster@co.broome.ny.us>

Sent: Tuesday, April 23, 2019 9:24 AM

To: FOIL <foil.broome@broomecounty.us>

Subject: Edward Daire

Submitted on Tuesday, April 23, 2019 - 9:24am Submitted by anonymous user: 10.1.2.8 Submitted values are:

Your Name: Edward Daire

Your Email: eddaire19@gmail.com


Your Daytime Phone Number: 607-760-8288

Your Full Mailing Address: 333 King Road Greene NY 13778 County Department you are Requesting Records From: Sheriff & Corrections For Sheriff's Requests, please put DOB and time frame for individuals in question: 05/18/54 April 4/13/19 - 4/18/19

Requested Information: police report in regards to property damage of 2895 Route 7 Harpursville NY 13778 by renters (Carol Sweet and Daughter)

The results of this submission may be viewed at:

<http://www.gobroomecounty.com/node/27037/submission/32115>

	BROOME COUNTY SHERIFF	
	INCIDENT FIELD SUPPLEMENT	
		INCIDENT# 2019-00007164

EVENT	INCIDENT TYPE Civil Matter		INCIDENT DATE/TIME 04/13/2019 13:09	DISPATCH DATE/TIME 04/13/2019 13:13	ARRIVED DATE/TIME 04/13/2019 13:30
	LOCATION 2895 ROUTE 7 HARPURSVILLE, NY				

SUBJECT	SUBJECT JACKET/ROLE Adult Person Interviewed		NAME (LAST, FIRST, MIDDLE, SUFFIX) DAIRE, EDWARD J				
	DOB 05/18/1954	AGE 64	ADDRESS (STREET, CITY, STATE, ZIP) 333 KING RD GREENE, NY 13778				
	RACE White		SEX Male	HEIGHT	WEIGHT	HAIR	EYE
	ALBANY/STATE		PRIMARY PHONE (607)760-8288		EMAIL		

SUBJECT	SUBJECT JACKET/ROLE Adult Not Interviewed		NAME (LAST, FIRST, MIDDLE, SUFFIX) Sweet, Carol S				
	AGE 58		ADDRESS (STREET, CITY, STATE, ZIP) 2895 ROUTE 7 HARPURSVILLE, NY 13787				
	RACE White		SEX Female	HEIGHT	WEIGHT	HAIR	EYE
	ALBANY/STATE		PRIMARY PHONE		EMAIL		

VEHICLE	VEHICLE ROLE					
	VEH YR	TYPE/MAKE/MODEL				STYLE
	PLATE / STATE		VIN	TOP COLOR	BOTTOM COLOR	
	ADDITIONAL DESCRIPTIVE INFORMATION					

INCIDENT - SUPPLEMENTAL NARRATIVE	
<p>I responded to the above address in the T/ Colesville for a Civil Matter complaint. Upon arrival I spoke to Edward Daire. Edward stated he rented this residence out to Carol Sweet. Edward advised that while Carol was renting the house multiple windows were damaged. Four out of the five toilets do not work. Multiple floors in the house have been painted over. There is damage to wall, doors and cabinets throughout the entire house. Carol and her daughter have since been evicted from the residence. Edward advised he would like a Police report for insurance purposes and for when he goes to Court. End of report.</p> <p>Dep. Derek Linebaugh #586</p>	

ADDITIONAL SUBJECTS, VEHICLES MAY BE PRINTED ON FOLLOWING PAGES

REPORTING OFFICER 586 Linebaugh	DATE 04/13/2019	REVIEWED BY Rowlands, Dennis R	04/13/2019
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1

1 STATE OF NEW YORK

2 SUPREME COURT

:

COUNTY OF CHENANGO

3 - - - - -
4 EDWARD DAIRE and ALLISON DAIRE,

5 Plaintiff,

6 -against-

Index No. 2019-5393

7 STERLING INSURANCE GROUP COMPANY and

8 HBE GROUP, INC,

Defendants.

9 - - - - -
10 An Examination Before Trial held at 126 Riverside
11 Drive, Binghamton, New York, on the 5th day of March,
12 2020, commencing at 2:37 PM.

13
14 BEFORE: CZERENDA COURT REPORTING, INC.

15 71 State Street

16 Binghamton, New York 13901-3318

17 JESSICA BRIELMEIER

18 Shorthand Reporter

19 Notary Public

20 Binghamton - (607) 723-5820

21 (800) 633-9149

22
23
24 WITNESS: EDWARD DAIRE

A P P E A R A N C E S

LAW OFFICE OF RONALD BENJAMIN; 126 Riverside Drive,
Binghamton, New York 13905; Counsel for Plaintiff;

MARYA YOUNG, ESQ, of Counsel.

KNYCH & WHRITENOUR; One Park Place, Suite 404,
300 South State Street, Syracuse, New York 13202;
Counsel for Defendants; PETER KNYCH, ESQ, of Counsel.

S T I P U L A T I O N S

It is stipulated by and between the parties
hereto that the filing of the deposition is waived;
that the deposition may be signed before any Notary
Public; and that all objections, except as to the form
of the question, are reserved to the time of the trial,
in conformance with the Uniform Rules for the New York
State Trial Courts, Part 221.

3

Edward Daire by Mr. Knych

1 (Whereupon Exhibits A through G
2 were marked for identification)

3 E D W A R D D A I R E, having been called as a
4 witness, being duly sworn, testified as follows:

5 EXAMINATION BY

6 MR. KNYCH:

7 Q. So on the record, state your name, please,
8 sir.

9 A. Edward Daire.

10 Q. Mr. Daire, my name is Peter Knych. I'm an
11 attorney. I represent the defendant, Sterling
12 Insurance Company, in this lawsuit that you and wife
13 have filed for an insurance claim, arising out of
14 property damage that occurred at 2895 State Route 7 in
15 Harpursville, New York.

16 I'm going to ask you some questions regarding
17 your lawsuit, your claim. If you don't understand a
18 question, will you tell me and I will ask it a
19 different way?

20 A. Yes.

21 Q. A couple rules to follow: You need to give
22 me a verbal response to each of my questions. If you
23 nod your head or go uh-uh, I will say, is that a yes or
24 no, to make an accurate record. Another rule: Let me

R-101

4

Edward Daire by Mr. Knych

1 finish asking the question before you start your
2 answer. We don't want to talk at the same time.

3 Do you understand those rules?

4 A. Yes.

5 Q. How old are you?

6 A. Sixty-six.

7 Q. Where do you currently reside?

8 A. I'm sorry. I did it already. I'll be 66 in
9 May. I'm 65.

10 Q. All right. You cannot --

11 A. I understand that.

12 Q. Let me finish. You cannot turn to your wife
13 and ask her any questions or be prompted by her in any
14 way. Do you understand that?

15 A. Yes.

16 Q. Okay. Where do you currently reside?

17 A. Right now I am at 141 Humboldt Street, East
18 Rutherford, New Jersey.

19 Q. All right. As of April of 2019, you were
20 owner of the property?

21 A. Yes.

22 Q. And did you own it with anyone else?

23 A. My wife.

24 Q. So the deed is in your two peoples' name --

5

Edward Daire by Mr. Knych

1 A. Yes.

2 Q. You need to let me finish my question before
3 you start you answer, okay? Do you understand that,
4 sir?

5 A. Yes.

6 Q. All right. How long had you owned that
7 property?

8 A. Are you done with the question?

9 Q. Yeah.

10 A. Twenty, twenty-five years.

11 Q. Sir, you know, if you want, we can end this
12 right now, you can go back to New York City and --

13 A. I don't come from New York City.

14 Q. Well, wherever you're from, you can go back
15 there and we can get a referee and --

16 A. Twenty years.

17 Q. Do you want to proceed with the deposition or
18 not?

19 A. Yes.

20 Q. Then don't ask me if I'm done with my
21 question when I haven't said anything for like three
22 seconds.

23 A. You're looking out into space, so I wasn't
24 really sure.

6

Edward Daire by Mr. Knych

1 Q. All right. As of March 2019, did you own any
2 other properties?

3 A. Yes.

4 Q. How many rental properties did you own
5 besides the property in --

6 A. I owned in Endicott, and I owned a house next
7 door to 2891.

8 Q. Next door to the Harpursville property?

9 A. Yes.

10 Q. Are those both single-family houses?

11 A. The one in Endicott was not, no; and the one
12 in Harpursville, yes.

13 Q. What was the Endicott property?

14 A. It was a four-family.

15 Q. And were both of those rental properties
16 owned by deed by you and your wife?

17 A. Yes.

18 Q. And as of April 2019, did you own any other
19 rental properties?

20 A. I think I sold Endicott in 2018. 2019, I
21 owned 2891, Route 7.

22 Q. And did you manage any rental properties
23 besides that property, Harpursville, and 2891?

24 A. Prior?

Edward Daire by Mr. Knych

1 Q. As of April 2019, did you manage any
2 properties?

3 A. No.

4 Q. Were you employed in any other job or
5 capacity as of April 2019 other than a landlord?

6 A. Yes.

7 Q. What was your job?

8 A. I drive a bus for New Jersey Transit.

9 Q. Okay. And with respect to the properties
10 here in Upstate New York, did you have a property
11 manager?

12 A. No.

13 Q. Who's Margaret or Megan Daire?

14 A. My sister.

15 Q. And from time to time, whether formally or
16 informally, would she assist you in addressing any of
17 the needs for these two properties?

18 A. Yes.

19 Q. Anybody else that would do that, either
20 formally or informally?

21 A. Yes.

22 Q. Who else?

23 A. Robert Moore. I have a brother, Steven
24 Daire, and my wife, Allison. And, also, I had the

8

Edward Daire by Mr. Knych

1 neighbor at 2891.

2 Q. Do you know his or her name?

3 A. Rebecca Lipper -- no, Rebecca Gellite.

4 Q. So as of January 2019, the property at 2895,
5 was that rented to anyone?

6 A. Yes.

7 Q. And would that have been Carol Sweet?

8 A. Yes.

9 Q. Did you have a written lease or some other
10 written document --

11 A. No.

12 Q. -- with her?

13 A. I'm sorry.

14 Q. With her?

15 A. No. No. It came down to a verbal agreement.
16 I'm sorry. Can I add one thing?

17 Q. Go ahead.

18 A. I sent my brother by there numerous times to
19 get ahold of her. They would give me no information
20 where she was.

21 Q. Okay. And, by the way, if I interrupt you
22 it's because --

23 A. Sorry.

24 Q. It's okay. I know we had a tough start.

9

Edward Daire by Mr. Knych

1 If I interrupt you, it's because you've
2 answered the question and I'm trying to move on. If I
3 interrupt you and you still want to answer the
4 question, you can say, Peter, let me add something to
5 that, if you want to do that?

6 A. Okay. No problem. Thank you.

7 Q. When did Carol Sweet first start living at
8 the property?

9 A. Jeez, I got to remember.

10 Q. Approximately.

11 A. Five years ago, six years ago.

12 Q. So that would be 2015 --

13 A. Yes.

14 Q. -- approximately.

15 When did she last live at the property?

16 A. To be honest, that question, I don't know.

17 Q. So it's my understanding that you got access
18 to the property April 13, 2019, and discovered damage,
19 is that your understanding?

20 A. Yes.

21 Q. And it's also my understanding that there may
22 have been an eviction around March 31, 2019, is that
23 your understanding?

24 A. Yes.

R-107

10

Edward Daire by Mr. Knych

1 Q. And so from 2015 when she first moved in
2 until she left the property some time before April 13,
3 2019, did anyone else live there?

4 A. As far as I know, her daughters did.

5 Q. And anybody else besides that?

6 A. I really don't know.

7 Q. And her daughters, were they adult daughters
8 or children?

9 A. Yes. They -- matter of fact, Amber Stack,
10 she had two children.

11 Q. To your knowledge, those two children lived
12 there?

13 A. Yes.

14 Q. And do you know approximately their ages?

15 A. One was, I think -- I called Social Services.
16 There was cat feces through the whole house. They were
17 9 -- roughly 9 and 12.

18 Q. You can think to yourself as long as you want
19 and take -- but when you whisper like that, the court
20 reporter is trying to get down what you say, just so
21 you know.

22 A. Okay.

23 Q. The other adult daughter that lived there, do
24 you know her name?

11

Edward Daire by Mr. Knych

1 A. No, I do not.

2 Q. And when were you --

3 A. Excuse me. The only one I ever really had
4 any problems with was Amber Stack. I had major
5 problems with her.

6 Q. What's the nature of the problems?

7 A. Well, she'd call the police on me if I showed
8 up, whatever. I did something with her mother, Ambit,
9 for the electric, and she called up Ambit and
10 complained saying that I tried to defraud the family.

11 Q. What's Ambit?

12 A. Ambit is an electric company like when you go
13 to Agway or -- it's subsidiary of New York State Gas &
14 Electric.

15 Q. So I've marked as Exhibit F some e-mails that
16 appear to be from you to various addresses, one of
17 which appears to be a law firm and these documents have
18 been provided to me by your attorney's office. And
19 they are labeled pages 1 through 4, and they appear to
20 be talking about evicting Carol Sweet.

21 A. Okay.

22 Q. And the person you appear to be communicating
23 with is Charlie Collison?

24 A. Yeah, Charlie Collison.

12

Edward Daire by Mr. Knych

1 Q. Is that a man, a lawyer?

2 A. An attorney, yes.

3 Q. Was he the lawyer you retained to evict
4 Ms. Sweet?

5 A. He was a total mistake. Yes.

6 Q. And on an e-mail, Exhibit F, page 3, which
7 appears to be from you, it says -- and I'll read it:
8 "Carol Sweet probably paid \$850 on the taxes on 2895 on
9 State Route 7." Okay?

10 A. Yes.

11 Q. Do you see where it says that?

12 A. Yes. I actually -- I didn't realize that I
13 just did that on my phone. It was an old e-mail, but I
14 figure I would send it to --

15 Q. Is that an e-mail that you sent to that
16 attorney?

17 A. Yes.

18 Q. Why would Carol Sweet have been paying taxes?

19 A. That was beyond me. I have no idea. Matter
20 of fact, I contacted Tommy Stewart over at the tax
21 office, because they were going to hit me with a
22 penalty after I paid it full. Why they went over there
23 with a -- with that, I have no idea.

24 Q. So any adults that you dealt with at that

R-110

13

Edward Daire by Mr. Knych

1 house during the period of then tenancy with Carol
2 Sweet, other than Carol Sweet and her daughter, Amber,
3 any other adults that you dealt with?

4 A. No.

5 Q. And did you ever have a written lease with
6 them?

7 A. No.

8 Q. And on Exhibit F, again, which is e-mails,
9 from page two is an e-mail from Meg to you and it says,
10 and I quote, "don't you have the thing where you and
11 the renter did an inspection checklist. If not, I
12 guess we should make one up." And that e-mail is dated
13 May 8, 2019.

14 So this is after you discovered the damage.
15 Do you know what Meg was referring to on that?

16 A. No, I do not.

17 Q. Had you ever had any communication with Carol
18 Sweet or any of her adult daughters about having them
19 rent the property but doing so as part of an agreement
20 where they might eventually own it?

21 A. Yes, I did.

22 Q. Can you tell me generally what those
23 discussions consisted of?

24 A. They consisted of she made the payments for

14

Edward Daire by Mr. Knych

1 ten years or whatever on time and we would consider
2 rent to own.

3 Q. Okay. But "she," you mean Carol Sweet?

4 A. Yes.

5 Q. Was this early on or before her tenancy where
6 you said to Carol -- maybe not these words by words
7 like it -- if you rent from me for ten years and you
8 make payments on time, then at the end of ten years,
9 either you will be an owner or you will need to pay us
10 a certain amount of money or some of your rent for ten
11 years will be a credit to owning.

12 What was it?

13 A. I said, more or less, that -- well, I said
14 that if she had made her payments within ten years,
15 that she could go to a bank and pay whatever. I don't
16 know exactly. I don't remember. Okay.

17 That after ten years if she made her payments
18 on time, that after that time, I would deduct payments
19 on what was paid on the house and sell it to her. Yes.

20 Q. So you would give her some credit for the
21 rent payments that she had made over ten years as part
22 of the sale of the house?

23 A. Correct.

24 Q. Had you agreed on a price for the sale of the

15

Edward Daire by Mr. Knych

1 house?

2 A. Yes.

3 Q. What was that?

4 A. \$115,000.

5 Q. Had you agreed what credit she would receive
6 each month towards that \$115,000?

7 A. After the first couple of months when
8 everything went wrong, no.

9 Q. Right before it went wrong, what was the
10 deal?

11 A. After the ten years, I would -- after ten
12 years that I would state to the bank that she made her
13 payments for ten years on time. And that I would take
14 off part of what she paid me on a percentage to buy the
15 place.

16 Q. So the \$115,000, if she had made timely
17 payments for ten years, what would she have had to pay
18 to own it?

19 A. I didn't go any further than that. She never
20 made it.

21 Q. Right. But --

22 A. I understand the question.

23 After aggravating of no payments, of going
24 back over there and fighting with them...

R-113

16

Edward Daire by Mr. Knych

1 Q. I understand all that.

2 Just to save time, when you first had this
3 verbal agreement or when you first had this agreement
4 with her, was it your understanding that at the end of
5 ten years, the price of the house that she would have
6 to pay would be \$115,000 or --

7 A. It would be less.

8 Q. Less than that?

9 A. It would be less. Yes.

10 Q. Do you have an approximation?

11 A. I honestly don't.

12 Q. And was that in writing anywhere?

13 A. No.

14 Q. Was that negotiated between you and her or
15 was it your wife that was --

16 A. No. It was negotiated between her and I. In
17 fact, her daughters were not there. But I am quite
18 positive -- I know -- whatever happens, I am sure that
19 I wouldn't -- if I rented a place or anything else, I
20 would not allow someone to go in there and destroy it.
21 That, I'm sure of.

22 I mean, basically to take the value of the
23 house away and equity of the home, why would you rip
24 out kitchens and bathrooms?

R-114

17

Edward Daire by Mr. Knych

1 Q. I understand.

2 So from the time she moved in until the time
3 she moved out, were there any other discussions about
4 this rent-to-own verbal agreement between you and her
5 other than what you testified?

6 A. No. After the first year, it broke down.
7 The whole thing broke down.

8 Q. This woman, Carol Sweet, did she work
9 anywhere?

10 A. She worked -- actually, she rented a place
11 that -- in Harpursville. A friend of ours owned Belden
12 Hill Mobile Homes. She was renting her a home and said
13 she was clean and responsible. That's the only reason
14 I got involved with her. She worked at the Spot Diner.

15 Q. Spot Diner?

16 A. I'm sorry. I got sidetracked.

17 Q. So prior to her eviction, did you say to
18 Carol Sweet -- maybe not these exact words but words
19 like it -- you can make some repairs or improvements if
20 you want?

21 A. No, I did not.

22 Q. Did she ask you for permission --

23 A. No.

24 Q. -- to make any repairs or improvements?

18

Edward Daire by Mr. Knych

1 A. No. I had Robert Moore go by and put a roof
2 on the house. I went by with -- the insurance company
3 stopped by where they were going to drop my insurance.
4 I had fixed windows myself personally. I fixed
5 electrical outlets in front of the house, and I fixed
6 the -- on the side house, I fixed the windows so the
7 insurance company would not drop -- so your insurance
8 company would not drop me.

9 That, you should have paperwork, too.

10 Q. So, Chet Zaremba, who's an engineer who came
11 by the house and who I believe spoke to you from the
12 insurance company, either he or Pat Dorner, the
13 adjuster?

14 A. There's a joke.

15 Q. One of those guys, did one of them say to
16 you, had you given her permission to do anything; and
17 did you say -- maybe not these exact words -- I told
18 her that she could do some work, but I thought it was
19 only painting?

20 A. No, I did not. No, I did not.

21 Q. Okay.

22 A. I did not allow her to go and paint my vinyl
23 floors that cost me over \$1,000, knock down my kitchen
24 walls that cost me -- I'm surprised the house is still

19

Edward Daire by Mr. Knych

1 standing. I'm glad your company is insuring it.

2 Q. Other than dealing with Ms. Sweet relative to
3 the house, did you deal with any other adult that lived
4 there about the house?

5 A. Yes, I did. I'm sorry. You can finish your
6 question. I apologize.

7 Q. I know you had some issues dealing with Amber
8 Stack, but did you have any communication with Amber
9 Stack about the terms of the rental or the rent-to-own
10 or any repairs or improvements?

11 A. About that, no, I did not. The last time I
12 saw Amber Stack, I lost my temper, and she threatened
13 to call the State Police on me.

14 Q. All right. Let me move on.

15 When were you last physically in the house
16 before April 13, 2019?

17 A. I actually had my hip replaced, so that's the
18 only reason my wife went to court. When I was actually
19 there was -- Jesus, I sent my brother there -- that
20 was...

21 Q. If you whisper, she's going to get --

22 A. I'm sorry. I'm trying to think.

23 November, I believe.

24 Q. Of what year? Of 2018?

R-117

20

Edward Daire by Mr. Knych

1 A. 2018, yes.

2 Q. Did you go into the house?

3 A. I only got to the back door.

4 Q. Did you go into the house through the back
5 door?

6 A. I walked into the -- I walked -- I entered
7 the door at the farthest entrance and closed the door
8 behind me.

9 Q. How far can you see into the house once
10 you're in that entrance?

11 A. Not far.

12 Q. What does that mean? A few feet, 30 feet?

13 A. No. I saw Amber in my face. I saw her seven
14 or eight feet.

15 Q. And had you walked forward, would you have
16 entered into a kitchen?

17 A. I walked into the kitchen, yes. But I had
18 her in front of me hollering at me to get out of the
19 house that they owned it.

20 Q. Could you see anything into the kitchen?

21 A. At first, no. I didn't even notice -- no, I
22 did not. No.

23 Q. When was the last time before that you had
24 been in the house?

21

Edward Daire by Mr. Knych

1 A. Quite a few months. Quite a few months.

2 Q. Ten years?

3 A. No. It's only going on for five. Ten is a
4 little ridiculous. I'm not trying to be -- let's go
5 about two months. I was going by there every month or
6 so trying to collect rent money. I was probably there
7 in October or September.

8 Q. Were you going into the house --

9 A. No. I was never allowed into the house.

10 Q. You need to let me finish. I know this is
11 upsetting for you or emotional so --

12 A. You don't let me finish my question (sic)
13 either. You don't let me finish the answer either.
14 I'm sorry. We will start again.

15 Q. Just so you know, the reason I didn't let you
16 finish the answer was because I didn't finish the
17 question and, therefore, your answer would not have
18 been responsive to the question because I didn't finish
19 the question. We are both learning from this process.

20 A. Yes. No problem. Actually, I'm having a
21 good time. At least I got you to laugh.

22 Q. You did. You were last in there, I think you
23 said, a couple of months before April and then you said
24 even before that it was a couple of months, and on that

22

Edward Daire by Mr. Knych

1 occasion, were you able to enter into the house other
2 than in this back hallway?

3 A. No. And they never let me --

4 Q. When was the last time before April 13, 2019,
5 that you had gotten into the house beyond this
6 entranceway?

7 A. Okay. I never went any further than the
8 kitchen, but that was -- every time I went there,
9 everything looked perfect. That's what is really
10 shocking.

11 I understand what you're saying. April 13th
12 was after I had her evicted. The last time I was in
13 the house was -- no, I never got any further than the
14 kitchen. And that had to be somewhere in '18, end of
15 November of 2018.

16 Q. When you were in the kitchen in 2018, did you
17 see any renovations or changes made to it --

18 A. No.

19 Q. -- from when it existed, when you first
20 rented to her?

21 A. No, I did not.

22 Q. And we've had marked as Exhibit G, pages 1
23 through 136, photographs that your lawyer provided to
24 us with handwriting on the back of some of the

23

Edward Daire by Mr. Knych

1 photographs. Is that your handwriting --

2 A. Yes, it is.

3 Q. -- on the back of the photographs?

4 A. Yes.

5 Q. And it's all your handwriting --

6 A. Yes.

7 Q. -- on the back of all the photographs?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. Did you take these photographs?

12 A. Yes, I did.

13 Q. Were they taken on April 13, 2019?

14 A. Yes, most of them.

15 Q. Most of them were, but some of them --

16 A. No. They were all taken -- they were all
17 taken at the same day. I was going to say Robert Moore
18 was with me when I took them.

19 Q. All right. And that day was April 13, 2019?

20 A. Yes.

21 Q. And any of the conditions that are shown in
22 these photos that show damage or change to your
23 building, had you ever seen that damage or change on
24 any other occasion when you were in the house?

R-121

24

Edward Daire by Mr. Knych

1 A. No, I did not.

2 Q. Do you know of anyone who had been in the
3 house, say, in the three years before April 13, 2019,
4 that was there on your behalf? So maybe it was your
5 wife or --

6 A. Yes.

7 Q. -- Robert Moore or someone else?

8 A. I had Robert put a roof on.

9 Q. Inside the house?

10 A. Inside the house, no.

11 Q. Okay.

12 A. It was easy enough, no.

13 Q. That was a good answer and we move on.

14 A. It was so perfect outside, I figured there
15 was no sense in it, to be honest.

16 Q. So when you first rented to Ms. Sweet, did
17 you give her a key?

18 A. There was a code. I had a combination code
19 on the back door which I took off. Actually, she put
20 her own lock on. Yes. I did not hand her a key, no.

21 Q. And she was living there at least initially
22 with your permission?

23 A. Yes.

24 Q. Had she ever been evicted from the time she

25

Edward Daire by Mr. Knych

1 first moved in around 2015 until she was evicted which
2 we believe was March 31, 2019?

3 A. That eviction was for sure. I went to court.
4 Was I trying to evict her before that, yes, I did. Was
5 she evicted, no.

6 Q. So the instances before that when you tried
7 to evict her was that she hadn't paid rent?

8 A. Yes.

9 Q. And you didn't formally evict her, why? Did
10 she make a down payment or what?

11 A. I kept being softhearted and let her get
12 caught up. I mean, that's basically I was too far away
13 to sit on top of her. With the rules and regulations
14 in the State of New York, no matter what you do -- the
15 place I had in Endicott, if they turn the water off or
16 they don't pay the bill, I could be arrested. It's a
17 sad state of affairs.

18 Q. The utilities, do you know whose name they
19 were in?

20 A. They were in Amber Stack's. Now, they lived
21 there for the last two months or three months with no
22 water, no electric. The toilet bowls -- I'm still not
23 done cleaning the place. Out of five bathrooms, I have
24 one that works.

R-123

26

Edward Daire by Mr. Knych

1 Q. So the water bill was in Amber Stack's name?

2 A. The water was --

3 Q. Is that correct?

4 A. -- is well. The electric bill was Amber
5 Stack, as far as I know, yes.

6 Q. The heat source in the property as of April
7 or March of 2019, do you know what that was?

8 A. When I was there, I had fuel oil and I also
9 had propane gas heaters, which are gone. And at one
10 time I had an outside fuel -- I had an outside coal
11 burner which they destroyed. I was paying \$2,000 a
12 year feeding two houses off that one stove.

13 Q. When you say "they destroyed," do you mean
14 Carol Sweet?

15 A. Yes. They were -- she was going to buy coal
16 and use it, but she didn't do that. She let it set up
17 and it froze, the bottom cracked, and that's when I
18 ripped it out.

19 Q. So all these photos, Exhibit G, 1 through 36,
20 this shows what you claim is damage or unauthorized
21 alterations to the property, is that correct?

22 A. Do I claim that, yes.

23 Q. Is it your understanding all of this damage
24 and alteration was done by Carol Sweet or Amber Stack?

27

Edward Daire by Mr. Knych

1 A. As far as I know, it has to be Carol Sweet.
2 I had nothing to do with -- once you rent a place, you
3 have no -- if somebody moves in, you have no recourse.

4 Q. And do know of any males, adult males --

5 A. I think -- I'm sorry.

6 Q. -- any adult males that ever lived at the
7 property?

8 A. I don't know if he lived there or what. I
9 think Amber Sweet (sic) was going through a third or
10 fourth husband. I think somehow he had been involved.
11 I don't know his name. No, I do not.

12 As a matter of fact, I had his e-mail
13 address. I don't know if I still have it.

14 Q. If some third party did any of the damage
15 that's shown in Exhibit G, page 1 through 136, is it
16 your understanding or your knowledge that it was done
17 at the direction of Carol Sweet?

18 A. I don't know. I don't know.

19 Q. Do you have any reason to believe that some
20 person unknown to Carol Sweet went into the property
21 and did any of the damage?

22 A. No. Other than Amber Stack threatening me on
23 quite a few different occasions, how she was going
24 to -- whatever, she was going to teach me a lesson.

28

Edward Daire by Mr. Knych

1 Q. So when did you first realize Amber Stack and
2 the other adult daughter were living there?

3 A. Not toward the end of last -- I'm sorry. I
4 have to think back the years. I really do. Time goes
5 by so fast. The older you get, the quicker the years
6 go.

7 I think about -- it must have been 2017 with
8 the second floor -- on the second floor on the home, I
9 thought Carol had rented it out because there was two
10 bathrooms up there and a kitchen. I thought she had
11 rented it out and had her daughter living -- I thought
12 she had rented it out. At that point, yes, I asked
13 her, and which I got nowhere.

14 Q. You asked Carol Sweet what?

15 A. If she's renting out the second floor, and
16 she said, no. She has her daughters staying there.

17 Q. All right. "Her daughters" being the two
18 adult daughters and the kids?

19 A. I think there's two kids, a boy and a girl.

20 Q. Was that acceptable to you that they could
21 live there?

22 A. As long as she was paying the bills, I didn't
23 care. I mean, at that point, it's a big house.

24 Q. But you did not -- am I correct you did not

29

Edward Daire by Mr. Knych

1 instruct Carol that her two adult daughters or children
2 could not live there, is that correct?

3 A. No, I did not. I did not know the kids were
4 there until the very end.

5 Q. Did you say 2017?

6 A. 2017, I met her -- I met that Amber and the
7 other daughter. I did not know she had kids until
8 October or whatever until right before the eviction
9 of -- in November. That's when I realized she had kids
10 there.

11 Q. But it was your understanding that Carol was
12 allowed to allow her two adult daughters to live in the
13 house?

14 A. I knew they were living --

15 Q. In 2017?

16 A. Before 2017, no, I did not. But I did not
17 object.

18 Q. Okay.

19 A. One time it had five bathrooms and two
20 kitchens.

21 Q. Was there any restrictions that you put on
22 Carol Sweet or her two adult daughters as far as who
23 could live there?

24 A. No, I did not.

R-127

30

Edward Daire by Mr. Knych

1 Q. As between you and your wife, you're the one
2 that's dealing with tenants, Carol and the daughters,
3 not your wife, is that correct?

4 A. Correct. My wife did the eviction. The only
5 reason she did the eviction was because I was in the
6 hospital for the hip replacement. The last six or
7 seven months, I couldn't walk. That's why I stopped
8 going by there.

9 Q. To your knowledge, did Meg Daire or Steve
10 Daire or Rob Moore or Matt Garbett have any
11 communication with Carol or her adult daughters on your
12 behalf?

13 A. I know Robert Moore was down there and did
14 some -- fixed some plumbing or something like that the
15 first year or so that Carol was there.

16 Q. 2015 or 2016?

17 A. Yeah. I know that. He was inside the house
18 and he fixed some plumbing in the cellar and did a
19 couple other things for me, which I paid him.

20 Q. Any communication that you're aware that any
21 of those people had with any of these tenants?

22 A. Carol didn't want to pay him, and Robert said
23 he wasn't going back. I said, I don't blame him. I'd
24 pay him.

31

Edward Daire by Mr. Knych

1 Q. Any other communication?

2 A. Like I said, my brother, Steve, would stop by
3 and asked them a couple times for Carol's phone number
4 and a few other things, which the daughter refused to
5 give him, give him any cooperation whatsoever. And
6 they did say they knew they were behind on rent and
7 they did state to him, if I had come by, they were
8 going to call the Sheriff's Department. So that's when
9 I stayed away.

10 Q. So did you keep a written record of the rent
11 that they paid and the rent they owed?

12 A. I'm sure I have it. I'm sure I have it, yes.
13 I'm going to be quite honest, okay, what I did was I
14 gave her an account. I gave her my personal account at
15 NBT Bank. I gave her the account number to make the
16 payments.

17 So I do have that. All I have to do is get
18 my records out from NBT Bank from the last five years
19 and it is in there. She's behind thousands of dollars.

20 Q. What was the monthly rent payment that was
21 due?

22 A. It should've been \$1,000 a month.

23 Q. And were you responsible for paying taxes or
24 was she supposed to?

32

Edward Daire by Mr. Knych

1 A. We worked out, basically, I told her I was
2 going to pay the taxes when we first started. I could
3 pay them in full and she was supposed to reimburse me
4 and she did not. But that was only out of the \$1,000.

5 Q. So are you saying, in addition to \$1,000 a
6 month, she would reimburse you for the total taxes?

7 A. No. That was out of the \$1,000 a month she
8 was going to pay me and I was going to pay the taxes.
9 I paid the insurance. I paid the insurance, I paid the
10 taxes out of my pocket.

11 Q. And in terms of the dealing with the rental
12 payments, was that something that you handled
13 exclusively or did your wife or some other person
14 assist you on that?

15 A. The payments -- she made them directly to NBT
16 Bank.

17 Q. Okay. But did anybody on --

18 A. No.

19 Q. -- your behalf have --

20 A. No.

21 Q. -- communication with the rental issues?

22 A. No.

23 Q. And why did you wait as long as you waited to
24 evict Carol and the daughters? Why wait that long?

R-130

33

Edward Daire by Mr. Knych

1 A. Well, because Charlie Collison finally did it
2 when I got ahold of him four or five months later after
3 they were supposed to do it when I threatened to write
4 a letter to the Attorney Board in Albany, he finally
5 did it for free. Because, to be honest, he's another
6 shyster lawyer. I will leave it like that.

7 Q. When you say "another," are -- is there some
8 other lawyer you are referring to as a shyster?

9 A. To be honest, every one I've met. That's not
10 true. I'm sorry.

11 They were supposed to do it four or five
12 months prior and they did not take care of it --

13 Q. So five months prior to October, November of
14 '18, why did you wait even that long? Why not do it --

15 A. Because I was under the impression they were
16 taking care of it. When I finally called back and they
17 stopped answering my phone calls and didn't return my
18 phone calls, they had my abstracts and everything from
19 my properties. And he just -- Carol did a closing for
20 me in Endicott, I finally got Charlie on the phone and
21 after he told me this long story about how he had
22 somebody call him back from the city anyhow, as long as
23 it's on my dollar, I will listen to you.

24 I said, I finally got him to call me back

34

Edward Daire by Mr. Knych

1 when I threatened to call up Albany and write a letter
2 to the ethics board in Albany. He ran right in, he had
3 her in court next week, evicted. Why I waited? I just
4 put it on the back burner, to be honest. I had so many
5 other things going on. I put it on the back burner and
6 I just stopped thinking about it. And I said, wait a
7 second, this has been going on for months, something
8 wrong here.

9 Q. What did you do, if anything, to vet or
10 investigate Carol or her daughters to determine whether
11 or not they were honest, not criminals, what did you
12 do?

13 A. I checked with -- as I said, with Rebecca at
14 the Belden Hill Mobile Homes, and she had rented her,
15 Carol Sweet, her home, after she had a new house built.
16 And she said that they fall behind on the payments once
17 in a while. They were pretty good about that, but they
18 kept the place very nice.

19 Q. Anything else that you did besides that?

20 A. No.

21 Q. Do you know whether Carol or any of her
22 daughters were living in the property at the time that
23 they were evicted on March 31st of 2019?

24 A. Her daughters were there, Carol wasn't.

35

Edward Daire by Mr. Knych

1 Q. Do you know where Carol was?

2 A. No, I do not. I tried for quite a few
3 months, that's why I sent my brother by.

4 Q. Do you have the eviction papers?

5 MRS. DAIRE: I have something with
6 me. This is the eviction note. She -- and
7 then he wrote something out in longhand.

8 MR. KNYCH: For the record,
9 Allison is handing me some two pages which I
10 will have marked.

11 MRS. DAIRE: It's the eviction
12 notice.

13 (Whereupon Exhibit H was marked for
14 Identification)

15 BY MR. KNYCH:

16 Q. So for the record, we've marked it as
17 Exhibit H, two pages. The first page one is a petition
18 to recover possession of real property, and page two
19 appears to be a handwritten sworn statement.

20 I'm showing what's been marked as Exhibit A,
21 the first page, which is a declaration of your
22 insurance policy. I can tell you that your lawyer's
23 office provided me with this.

24 Do you recognize this as the first page of

36

Edward Daire by Mr. Knych

1 your insurance policy?

2 A. Yes.

3 Q. I have an Exhibit B, what's called a property
4 loss notice. It's filled out by the insurance agent
5 and it's dated April 13, 2019. And the description is
6 that tenants evicted 3-31, insured gained access 4-13
7 and discovered damage.

8 Is that what you told the agent? Did you
9 call the agent?

10 A. Yes.

11 Q. Is that what you told the agent -- maybe not
12 those exact words -- but words like it?

13 A. Yes.

14 Q. And when you said that the tenants were
15 evicted, did you mean the two adult daughters and
16 Carol?

17 A. I meant Carol, basically, whoever was living
18 there. But Carol Sweet -- I didn't do -- my wife took
19 care of the eviction, but Carol Sweet showed up for it.

20 Q. So, Carol Sweet did show up for the eviction,
21 as far as you know, sir?

22 A. Yes. I was in the hospital getting a hip
23 replaced.

24 Q. In April or in March?

R-134

37

Edward Daire by Mr. Knych

1 A. Yes.

2 I feel so much better. What a relief.

3 Q. How old is Carol approximately?

4 A. Late 40s. They all can smoke, but they can't
5 pay their rent.

6 MRS. DAIRE: Oh, she's 58.

7 Q. We also marked as Exhibit D, page one, a
8 police report. And did you make a report to the police
9 on April 13, 2019?

10 A. Yes, I did.

11 Q. And did a police officer come to the property
12 while --

13 A. Yes, the Sheriff's Department. And he said,
14 you can thank your governor for this. That's a quote.

15 Q. And it says in the police report, and I
16 quote, "Carol and her daughter have since been evicted
17 from the residence."

18 Is that your understanding, that you had
19 evicted both Carol and her daughter?

20 A. I remember. I was so mad with Amber, I
21 probably said that, yes. After the loss I sustained
22 there.

23 Q. Were you ever paid in a way other than money
24 being deposited in that bank account?

R-135

38

Edward Daire by Mr. Knych

1 A. No.

2 Q. So nobody sent you a check or a money order?

3 A. Towards the end at the final eviction -- I'm
4 trying to remember. They worked out something in court
5 that she gave me a couple hundred dollars.

6 To be honest, I don't remember if it was a
7 check. I believe she gave me a check.

8 Q. By "her," who do you mean?

9 A. Carol Sweet. On the eviction notice there on
10 the writing, she paid me a couple hundred dollars.

11 Q. The claim that you're making, are you
12 claiming any damage to contents in the house as opposed
13 to the building itself?

14 A. As far as I know, they said -- I would like
15 to. My air-conditioner -- I found my air-conditioner
16 out in the backyard. I found my sinks in the backyard.
17 I found my second-floor bath --

18 Q. I don't mean to interrupt you. I'm just
19 looking at your policy. It doesn't look like --

20 A. I'm not covered for that, right. No, I'm
21 not.

22 Q. Exhibit G, page two, one of the documents
23 that your lawyer sent us yesterday was an estimate
24 from...

39

Edward Daire by Mr. Knych

1 A. Orlanzo.

2 Q. Who is the estimate from, some construction
3 company?

4 A. Orlanzo. He didn't put his name on it?
5 Orlanzo Briggs.

6 Q. Is that an estimate that you got?

7 A. It was an estimate that I got, yes.

8 Q. And have you gotten any other estimate for
9 repairs?

10 A. I have Matt Garbett, who put the kitchen in.
11 I don't know if it -- I have it on my phone. I tried
12 texting it...

13 Q. I'm going to request a copy of it.

14 A. I was hopping it was here.

15 Q. Your other lawyer, Ron Benjamin, when I spoke
16 to him two days ago, I indicated that I had not been
17 provided with the discovery responses and that I'm
18 reserving my right to question you and your wife if I
19 do get discovery responses and there's information in
20 there that I need to question you on.

21 If we do that, I can probably have you go to
22 the court reporter's office in New York or New Jersey
23 or wherever you live and not have you drive up here. I
24 can try and make that accomodation.

40

Edward Daire by Mr. Knych

1 A. Thank you very much. He didn't...

2 Q. As to the Briggs' estimate, which is
3 Exhibit G, page two, is it your understanding that the
4 work described in this estimate and the dollar amounts
5 are to repair all damage for which Carol Sweet is
6 responsible?

7 A. No.

8 Q. What's it for?

9 A. Well, that's basically what he went through,
10 through the home, but I also have this stuff from Matt
11 Garbett just for the kitchen and the bathrooms alone.
12 I tried contacting Orlanzo again to ask him to do other
13 stuff for me, and the man never returned my phone call,
14 if we are being quite honest.

15 But he did not itemize it. I don't basically
16 know -- that's what Matt sent me just on the kitchen
17 alone what he did what it would cost to replace it
18 right now.

19 Q. So let me ask this --

20 A. I'm sorry. I can't believe it. I sent him
21 the papers. I can't believe they are not here.

22 Q. So this estimate is for \$63,000. Do you
23 believe the damage for which Carol Sweet is responsible
24 for is more than that?

41

Edward Daire by Mr. Knych

1 A. I believe it is, yes.

2 Q. And as to all the damage in your house for
3 which you make an insurance claim, do you attribute
4 that damage as being the responsibility of Carol Sweet?

5 A. Yes. We took care of senior citizens there
6 for 20 years, my wife and I. We had five working
7 bathrooms, two kitchens. I have one bathroom now that
8 works. I have plumbing ripped out of the wall, out of
9 the ceiling.

10 Q. And the photographs that you took and the
11 description of the damages, what do you believe is the
12 cause of these damages as shown in the photographs and
13 as described in the handwritten notes on some of the
14 photographs? What is the cause?

15 A. The cause, insanity. Why would somebody take
16 out -- rip out a bathroom? Why would somebody in the
17 house on something -- you want to have the word equity?
18 Why would somebody rip out a kitchen? Why would
19 somebody move a stove over, rip out your hood and not
20 even hook the stove back up, put it back to the wall?

21 Q. Do you believe that they were attempting to
22 renovate?

23 A. I believe they are insane. I believe they
24 are actually -- that Amber was really mad enough at

42

Edward Daire by Mr. Knych

1 me to do whatever she could to spite me because
2 whatever -- do anything she could do to hurt me, she
3 would do.

4 Q. Do you see in any of the photographs or did
5 you see at the property after they were evicted that at
6 least some of what was going on was an attempt that may
7 have been extremely careless or improper, was to
8 attempt to try to renovate the structure?

9 A. Lean against the wall, you could fall through
10 it. Did I see anything there? All I saw was a rock
11 through my window that your insurance company said that
12 they wouldn't pay for. It cost me over \$1,000 to
13 replace in the driveway, which I spent days -- I spent
14 three weeks cleaning the place out and it's still not
15 clean. Not counting the cat feces and the toilet
16 above -- the toilet is overflowing. It took me a week
17 to clean the toilets out.

18 Do I see -- all I see is insanity, total
19 insanity. What I see is my wallet hurting. What I
20 feel is totally violated, to be quite honest. Why
21 would somebody rip out half a bathroom? Just leave the
22 bowl there. All the pips are ripped out. I wanted to
23 cry when I saw that. I wanted to cry.

24 Q. Do you know, was there ever a period of time

R-140

43

Edward Daire by Mr. Knych

1 during the tenancy that Carol Sweet was not living
2 there?

3 A. The last couple of months, the last four or
4 five months is when I tried to get ahold of her. It
5 had to be at least four months.

6 Q. Right. But you were calling?

7 A. I was calling. I was stopping by there. I
8 would knock on the door and nobody was answering. And
9 that's when I finally had my brother go by -- when I
10 caught up with Amber --

11 Q. Do you know if she was hiding in a closet --

12 A. I have no idea.

13 Q. You need to let me finish my question.

14 A. Okay.

15 Q. Do you know if she was she hiding in the
16 house and just not wanting to deal with you face to
17 face, or did she move out? Do you know?

18 A. Her car was there. No one would answer the
19 door.

20 Q. Carol's car was there?

21 A. Carol -- she had a, I think it was -- it will
22 come to me... A Chevy something, a fairly new car.
23 She was making her payments on it. They didn't
24 repossess it.

44

Edward Daire by Mr. Knych

1 Q. Do you have any reason to believe that she
2 had moved out prior to the eviction?

3 A. I could not get ahold of her. Every time I
4 went there nobody knew where she was. They would not
5 give me any information. They would not give her phone
6 number.

7 Q. Other than that, do you have any reason --

8 A. No.

9 Q. So if your wife or any of these other
10 witnesses whose names I mentioned: Robert Moore, Matt
11 Garbett, Steve Daire, or Meg Daire, to your knowledge,
12 if they had a reason to believe that Carol had moved
13 out before you evicted her, would you have expected
14 them to have told you of that?

15 A. I don't...

16 Q. Were they generally keeping you advised of
17 what they knew and didn't know at that property?

18 A. No. No. No. I would even ask my neighbors
19 at 2891 if they had seen her around, and they would
20 tell me, yes, they had.

21 Q. Okay. But did anyone indicate to you that
22 they had thought she had moved out?

23 A. No. No.

24 Q. And these other people whose names I read

45

Edward Daire by Mr. Knych

1 off, if they did have knowledge that she had moved out,
2 would you have expected them to tell you or your wife?

3 A. Robert would've told me, yes. He was the man
4 that went by there the most.

5 Q. Would you expect Steven to tell you or Meg?

6 A. Yes.

7 Q. And none of those people told you that she
8 had moved out, is that correct?

9 A. Correct. I will try to keep it to one word.

10 (Whereupon a discussion was held
11 off the record)

12 BY MR. KNYCH:

13 Q. So when I look at these photos, Exhibit G, 1
14 through 136, I see some damage that could in no way be
15 part of an attempt to renovate or improve. And then I
16 see other kinds of damages which still may be vandalism
17 but appear to be a sloppy, a careless attempt to
18 renovate or improve.

19 Did you see those two kinds of damages there?

20 A. I will agree with you, yes.

21 Q. The damage that I saw in the photos that
22 would not be part of a renovation, one example of that
23 would be what is described as a hole through a window,
24 right? That would be one example of that?

46

Edward Daire by Mr. Knych

1 A. Yes.

2 Q. Was it just one window that was cracked or
3 more than one window?

4 A. There was three, I believe. There was a hole
5 completely through the driveway. It was completely
6 smashed. Upstairs the inside of a double-pane window
7 was broken right out. You could see the jagged edges
8 of the window still stuck on there.

9 On the second floor and on the first floor
10 and I believe the room that they painted my
11 thousand-dollar vinyl floor, blue. I tried to wash it
12 with bleach; it didn't work well.

13 Q. And so as to those broken windows, do you
14 know whether someone initially broke them or whether
15 they were accidentally broken?

16 A. There was a rock laying on the other side
17 from the driveway side, on the driveway side going into
18 the home, the picture window had a two-foot hole
19 through it. And your insurance company claimed that my
20 deductible \$500 would cover it. That didn't work well.

21 Q. So that picture that you're referring to, I
22 have Exhibit C consisting of four pages, is that
23 picture window shown on page three of that exhibit?

24 A. That is the second-floor window that's

R-144

47

Edward Daire by Mr. Knych

1 broken. This was right here, this is where the window
2 was. That's the window that the rock was thrown
3 through. This (indicating) one was the inside pane
4 that was smashed.

5 Q. And you're referring to the bottom photo on
6 page three of Exhibit C. Where did you see the rock?

7 A. Okay. You're on the top photo. I believe it
8 should be a picture there somewhere of it. I know I
9 took it before I took the window out.

10 Q. So these are not your pictures, just so you
11 know. Let me see if I can find your pictures.

12 A. Okay. Where you see the siding of the house,
13 the lower window where it was put over again, that's
14 the window that was broken. That's the window that was
15 broken. You can see the hole.

16 Q. Referring to Exhibit 1, page 79, and did you
17 say you took a picture of the rock?

18 A. No, I did not. When I went inside, there was
19 a rock laying on the floor. I just took a picture of
20 the window.

21 Q. Any reason why you didn't take a picture of
22 the rock?

23 A. I'm not an investigator.

24 Q. Okay.

48

Edward Daire by Mr. Knych

1 A. That's the window I replaced that your
2 company said my deductible should cover that.

3 Q. So you're referring to Exhibit G, page 86, is
4 that a replacement window that you put in?

5 A. Yes.

6 Q. So you first went to the property -- and we
7 can fix this, but it's my understanding you went there
8 on April 13, 2019?

9 A. Right.

10 Q. You said all of these photos were taken, are
11 you saying that the very first day you went you did the
12 replacement of that window?

13 A. No, I did not. No. I took that picture
14 after I replaced the window. You can see the siding
15 here (indicating) does not match the building and
16 everything else. That picture was taken when Robert
17 Moore and I replaced that window.

18 Q. So some of the photos at least --

19 A. Yes.

20 Q. -- may not have been taken at the same time,
21 April 13th, they may have been taken later?

22 A. This photo was definitely taken later after
23 being replaced. I also have photos in there when I put
24 my bathroom back together on the second floor when I

49

Edward Daire by Mr. Knych

1 found the parts outside.

2 Q. That's to this photo, number 80 on Exhibit G,
3 the paneling to the right of it, did you put that in or
4 did --

5 A. Yes, I bought it. I bought it and put it in.
6 That was the original window, you can see that was part
7 of the window that I pulled out.

8 Q. Was this window, before you put the paneling,
9 was it three windows?

10 A. Yes. It was -- if you go back to your
11 exhibit in front of it, yes.

12 Q. All right.

13 A. That was the original window.

14 Q. And the three windows that were previously in
15 the area shown in Exhibit G, page 80, what was the
16 nature of the break or the problem with those windows?

17 A. The center picture window had a big hole in
18 it, a two-foot hole.

19 Q. Do you know, was that caused accidentally or
20 intentionally?

21 A. I would say it was quite intentional.

22 Q. What makes you think that?

23 A. There was a rock laying on the other side of
24 it.

R-147

50

Edward Daire by Mr. Knych

1 Q. On that window, there was a rock as well?

2 A. You're going back now. You're going ahead.

3 Go back to the other picture.

4 Q. No. I'm talking about --

5 A. This is the replacement window that I put in.

6 Q. Right. But there were other windows to --

7 A. Yes. There was one big picture window.

8 Q. Let me restate that.

9 On Exhibit G, page 80, we are not taking the
10 windows that had the rock through it. Were there
11 broken windows at one point here (indicating)?

12 A. Yes.

13 Q. And do you know whether or not the break of
14 the window was intentionally or accidentally?

15 A. I believe it was intentionally.

16 Q. What's the basis of that?

17 A. The rock laying on the other side of the
18 window. I did not take a picture of it.

19 Q. Are you saying that there were at least two
20 windows that were broken at different locations, both
21 of which had a rock at the other side?

22 A. No. No, I'm not.

23 Q. But this is the first floor, right?

24 A. That's the driveway side, yes. That was the

51

Edward Daire by Mr. Knych

1 one that had the big rock through it. That was the
2 window that had the rock through it. You can see a
3 hole in it, if you tilt it, you can see it. It's in
4 there somewhere.

5 Q. So the whole pane didn't shatter, correct?

6 A. This was -- this had a big hole right in the
7 middle of it; a two-foot hole in the middle of it.
8 It's there somewhere.

9 If you tilt this up, if you tilt to the right
10 light, you will be able to see it. That's the only
11 reason I put the replacement window in was I wanted to
12 close the house up.

13 Q. Who do you think threw that rock?

14 A. I believe Amber Stack did it. I took -- I'm
15 still taking garbage out of the house. I put it up for
16 sale. A real estate agent contacted me last week and
17 asked me if it is going to be broom cleaned, because I
18 still have a pile of junk.

19 Q. Were you planning to put it up for sale
20 before you evicted them?

21 A. No. I wasn't really sure -- I'll be honest,
22 I didn't really know what to do.

23 Q. What's the demand price?

24 A. Right now?

R-149

52

Edward Daire by Mr. Knych

1 Q. What is it listed for?

2 A. To be honest, I haven't looked. She said it
3 was worth \$100,000, but the way it looks right now,
4 it's not going to happen. I paid \$100,000 for it
5 20 years ago; more than 20 years ago when I bought it
6 back in '95 or '94.

7 Q. So do these photos that are part of
8 Exhibit G, do they show that either kitchen cabinets or
9 countertops were moved from their position that you
10 knew they were in to some other room? Did they move a
11 kitchen?

12 A. Yes.

13 Q. Did the kitchen at the time you first rented
14 it to her was on the first floor?

15 A. It was on the first floor and one on the
16 second floor.

17 MS. DAIRE: I have a picture of
18 the kitchen.

19 Q. Where did they move it to?

20 A. To be honest, I don't know. I noticed they
21 made tables out of my cabinet doors -- out of my
22 kitchen cabinet doors. They ripped out the
23 second-floor kitchen and moved it down -- parts of it
24 to the first floor and it was perfectly -- they ripped

R-150

53

Edward Daire by Mr. Knych

1 the front of the drawers off.

2 Q. You had indicated in 2017 you had some
3 knowledge that the two daughters were living there.

4 To your understanding, did they live there
5 continuously from that time until the eviction?

6 A. The one daughter, I believe, Amber stayed
7 there. I don't know about the other daughter. That
8 one, I do not know.

9 Q. You believe that Amber lived there --

10 A. Yes. Yes. She lived there with her two
11 kids.

12 Q. And, again, you may have answered this, I
13 apologize. Do you know about how old they were?

14 A. The kids were between 9 and 11 or 12. They
15 lived in filth. I could not believe.

16 Q. So as to the damages for which you're making
17 or to which you made an insurance claim and/or the
18 damages shown in these photographs, Exhibit G, who do
19 you believe caused the damages?

20 A. I believe that Carol Sweet did it.

21 Q. And possibly her daughter, Amber?

22 A. It's possible.

23 Q. And anybody else?

24 A. I don't know. I don't believe so.

R-151

54

Edward Daire by Mr. Knych

1 Q. Would it be your understanding that if your
2 wife knew of some other person that would've caused the
3 damage or if Robert Moore or Matt Garbett knew or Steve
4 Daire knew or Meg knew, that they would tell you?

5 A. Yes.

6 Q. And nobody has told you of anyone other than
7 Carol and Amber that may have caused the damage, is
8 that correct?

9 A. Correct.

10 Q. And did you say your wife came up for the
11 eviction on March 31st?

12 A. Correct.

13 Q. And I don't do this kind of law, but it's
14 your understanding based on what your wife told you
15 that Carol was at the property?

16 A. Yes.

17 Q. No -- was at the eviction proceeding?

18 A. Yes.

19 Q. And do you know, did your wife access the
20 property before you did on April 13th?

21 A. I don't know. I don't believe so, because
22 they didn't leave -- they wouldn't leave us a key or --
23 I don't know. I wasn't there.

24 Q. Do you know of anything that Carol or Amber

55

Edward Daire by Mr. Knych

1 or anyone else living there did to move out of the
2 property? Did they have a truck?

3 A. I don't know if they had a truck, but Charlie
4 Collison made an agreement that she could take out her
5 pellet stove, and if I had known what was there, I
6 would have never allowed it.

7 Q. Okay. So is this a written agreement that
8 you're aware of or just a --

9 A. I believe, as far as I know -- I don't know
10 if it was on the eviction papers. But I think I was
11 told verbally she was allowed to take out her -- also,
12 they gave her -- I believe, I'm not sure, that they
13 gave her a couple days to vacate.

14 Q. Do you know when she vacated?

15 A. The exact day, no, I do not.

16 Q. Do you have any reason to believe that after
17 she vacated the property, that she came back and did
18 any damage to it?

19 A. Yes, I do. They were still getting mail
20 there. They were coming by to empty out the mailbox.

21 Q. Do you have reason to believe that they did
22 the damage, any of the damage after they came back
23 after the eviction?

24 A. To be honest, no. I have no -- no. The

56

Edward Daire by Mr. Knych

1 damage, I believe, after they were coming back and
2 emptying out the mailbox, I do not believe -- there was
3 on two different occasions I went back there and the
4 house was unlocked.

5 Q. Wait. You went there April 13th?

6 A. Right. After April 13th.

7 Q. So after April 13th --

8 A. I had gone --

9 Q. -- you went back and it was unlocked?

10 A. The house was somehow unlocked. I
11 couldn't figure --

12 Q. Did you see any new damage --

13 A. No, I did not.

14 Q. Did you see any new damage after April 13th
15 of 2019?

16 A. No, I did not.

17 Q. Did anyone report to you or inform you of any
18 new damage after April 13, 2019?

19 A. No.

20 Q. As to these people identified on your witness
21 list, had they known of new damage, would you expect
22 them to tell you?

23 A. Yes.

24 Q. And they didn't tell you of any new damage

R-154

57

Edward Daire by Mr. Knych

1 that they were aware of, is that correct?

2 A. Correct.

3 Q. We've had marked and you previously
4 identified a police report.

5 Were there any other police reports that you
6 made or anyone made on your behalf or, to your
7 knowledge that were made, relative to this property in
8 the last five years?

9 A. No.

10 Q. How about relative to Carol or Amber in the
11 last five years, know any police reports relative to
12 any actions on their part?

13 A. No.

14 Q. You said you owned the property next door?

15 A. Yes, 2891.

16 Q. Who were the tenants there?

17 A. Terry and Rebecca Gillette.

18 Q. Do you have their phone number?

19 A. Yes, I do. I have it out in the car. I
20 don't have it on me.

21 Q. I'm going to ask you to provide that to your
22 lawyer and a request page will be made.

23 A. They don't pay their rent on time either.
24 They finally got caught up last week.

58

Edward Daire by Mr. Knych

1 Q. Did they ever tell you anything about their
2 knowledge regarding Carol or Amber?

3 A. Rebecca was there and I talked to her the
4 other day when the Sheriff's Department showed up. She
5 wanted to rent that house before they moved to 2891 and
6 all she could remember was saying, oh, my God, I can't
7 believe happened to this home, and she told me that she
8 would testify to that.

9 As far as they knew, everything was fine.
10 They had no idea. I kept -- I did ask them prior --
11 yes, if they knew what was going on there. They said,
12 everything looks fine.

13 Q. To your knowledge, they had no knowledge of
14 any destruction or demolition or damage occurring in
15 the house prior to your going in there on April 13th,
16 is that correct?

17 A. Correct, yes. Yes. I asked them about that.
18 They said, everything was fine. Everything was nice
19 and quiet.

20 Q. Any of these photos on Exhibit G that had
21 been provided to us by your law office, do any of the
22 photos show what the property looked like before these
23 people moved in?

24 A. No.

R-156

59

Edward Daire by Mr. Knych

1 Q. Do you have any photos of that?

2 A. I have them, yes. And I will provide them.

3 Q. I will make a request and provide it to your
4 attorney, not to me.

5 A. Yes. Okay.

6 Q. Photograph Exhibit G, number 8, which shows a
7 furnace in the basement. Do you see that? Do you know
8 whose furnace that is?

9 A. Yes. That's mine. I had it put in.

10 Q. And was that operational at the time of the
11 eviction?

12 A. No.

13 Q. What's wrong with it?

14 A. Well, they let all the fuel oil run out of
15 it. The hot water heater -- the whole bottom was
16 leaking. As far as I know, I had to put a nozzle in.
17 I had to put fuel oil in the tank.

18 Q. The tenants were responsible for that, is
19 that correct?

20 A. For their heat, yes.

21 Q. No. For the damage to the furnace?

22 A. Yes.

23 Q. There's some electrical wiring exposed that's
24 shown in Exhibit G, photo 11. What do you think was

60

Edward Daire by Mr. Knych

1 going on with that?

2 A. That, I have no idea. I have no idea. I
3 have wires hanging out all over the place. That was
4 part of my kitchen that was upstairs. Now, it's on the
5 first floor.

6 Q. So you're referring to Exhibit G, page 12.

7 Are you saying that the kitchen cabinetry
8 shown in this photo is now on the first floor; but when
9 you initially rented that building, it was on the
10 second floor?

11 A. Yes. And it was not painted blue.

12 Q. This location where this cabinetry is, was
13 that a kitchen when you first rented the property?

14 A. Yes.

15 Q. And that was the stove there when you first
16 rented the property?

17 A. Yes. It was not in the position when I first
18 rented. The stove was over further with a hood over it
19 (indicating).

20 Q. Pointing to the right of the photo?

21 A. Okay. There's more wiring. Why they would
22 do that (indicating), I have no idea. I had a big
23 cabinet above --

24 Q. The witness is pointing to Exhibit G, page

61

Edward Daire by Mr. Knych

1 13.

2 So there's a hole in the wall on Exhibit G,
3 page 14. Do you see that?

4 A. Yeah.

5 Q. Do you think that has something to do with
6 someone --

7 A. No.

8 Q. -- moving or altering the electrical?

9 A. No. That has to do with -- they ripped out
10 my vented -- it was a 4,000-watt gas burner that was
11 hanging on the wall in front of it.

12 Q. Okay. So that hole, that originally
13 contained some type of vent pipe for the gas burner?

14 A. Yes.

15 Q. So, Exhibit G, page 16, does this show
16 cabinetry that was on the first floor when you rented
17 it and now it's on the second floor?

18 A. No. This shows what was on the second floor,
19 now on the first floor. These were brand new cabinets.
20 They ripped the drawers off; why, I have no idea. That
21 (indicating) was my kitchen on the second floor. They
22 ripped the first floor with the cabinets and put that
23 downstairs.

24 Q. So this says on the back of the document,

62

Edward Daire by Mr. Knych

1 first-floor counter from kitchen upstairs?

2 A. Right.

3 Q. So this photograph shows counters on the
4 first floor now --

5 A. On the first, no.

6 Q. -- that were upstairs?

7 A. That were upstairs. They were not glued
8 either. I had them -- I bought a starter kit in Lowe's
9 which I have all the prices for.

10 Q. So is it possible the drawers were missing
11 because they were planning to paint those blue, if you
12 know?

13 A. That is not even part -- they put a handle on
14 here and here (indicating). That's not even in front
15 of the drawer. I have no idea. I have no intentions
16 of -- whatever they were doing, they had no right to
17 do. That, I know. I don't know what that is. I can't
18 even see.

19 Q. Exhibit G, page 17, was this the removal of a
20 bearing wall?

21 A. I can't see it. Oh, year, that's the floor
22 where they removed the bearing wall. That's the floor
23 there that there's four, four-and-a-half-inch space
24 there.

R-160

63

Edward Daire by Mr. Knych

1 Q. Did that make a room bigger because --

2 A. They ripped out my half a bath behind it.

3 Q. Got it.

4 A. I guess --

5 Q. What's the room in front of it? Was it a
6 living room?

7 A. Oh, wait a second. That's wrong. Let me
8 see. I'm sorry. I don't -- to be honest...

9 Oh, yeah. That's my -- I don't know where --
10 it is a reflection, but I had put the flooring down and
11 that's where they ripped out the retaining wall and
12 this is actually --

13 Q. What's the room in front?

14 A. It's a kitchen.

15 Q. So they made the kitchen bigger --

16 A. Yeah. Well...

17 Q. -- by taking out a bathroom, correct?

18 A. Taking out a bathroom and taking down the
19 retaining wall.

20 Q. Got it.

21 So, Exhibit G, photo 19, there appears to be
22 boxes, do you know what that is? Tile?

23 A. Oh. That was my second-floor half bath.

24 There's boxes in there. My second-floor half bath was

64

Edward Daire by Mr. Knych

1 in there. There was a kitchen -- in the second floor,
2 there was a kitchen. I mean, there was a kitchen, it's
3 gone. There was a wall there. There was a basin and a
4 toilet which is no longer there. That's the floor, the
5 vinyl floor that they painted blue.

6 Q. By "they," you mean Carol?

7 A. The tenants.

8 Q. The tenants. And that's page 23 of
9 Exhibit G. Exhibit G, page 24, there's some water
10 damage here?

11 A. That is from where they ripped out my
12 second-floor bathroom and they left the pipes in the
13 ceiling.

14 Q. Okay. So, again, you're attributing the
15 water damage to their actions?

16 A. Yes, without doubt.

17 Q. So is your entire insurance claim based on
18 what those tenants did as to opposed to a lighting
19 strike or a windstorm that damaged the roof? It's all
20 based on what these tenants did?

21 A. Yes. There was shingles off the back of the
22 house and I asked the so-called engineer himself --

23 Q. But you're not making a claim, is that
24 correct?

65

Edward Daire by Mr. Knych

1 A. No. No.

2 Q. Is that correct?

3 A. No. Correct. I got a little sidetracked.
4 I'm just telling you what he told me outside, which I
5 didn't believe him but...

6 I didn't believe his degree either. Now,
7 this kitchen -- I'm sorry.

8 Q. Did they put that ceiling fixture in?

9 A. No. That lighting fixture was there. This
10 is just where the front of the cabinets, my cabinet
11 doors were all gone. They took them off and made
12 tables on them. I don't know what they did. If they
13 take them off and I could put them back, I would've.
14 If there was stuff there that I could repair, if they
15 had left it to me, I would taken care of it.

16 Q. Exhibit G, page 27, it's a photo, but it's
17 circled, what's the point of that?

18 A. Because there was a door there.

19 Q. Okay. What the tenants did is they put some
20 wood that covered that door --

21 A. Right.

22 Q. -- so there's no longer a door?

23 A. I mean, it would've been one thing if they
24 just covered it and left the door, but they ripped the

66

Edward Daire by Mr. Knych

1 door out, too. There's no door behind it. That was
2 another entrance to a bathroom that is totally
3 destroyed.

4 Q. So what, if anything, did they do to the
5 piping in the house?

6 A. Well, if you look at these (indicating), they
7 just ripped --

8 Q. No. No. That's good. Exhibit G, page 29.

9 A. If you notice, this (indicating) was all the
10 piping that was going upstairs, they just ripped it
11 out. Left them hanging there.

12 Q. Why do you think they did that?

13 A. I don't know. To be honest, why would
14 anybody -- you can't ask why somebody did something.

15 Q. We know -- if you cover over a door with wood
16 because you don't want people walking through that and
17 you're altering the structure of the room.

18 Do you know why they would've discontinued or
19 removed piping? Were they altering the flow of
20 something or what?

21 A. Yeah. They were cutting the pipes off to the
22 second floor to my kitchen.

23 Q. Why do you think they were doing that?

24 A. They were insane.

R-164

67

Edward Daire by Mr. Knych

1 Q. Were they not going to operate a kitchen up
2 there?

3 A. They ripped the kitchen out. The kitchen is
4 completely gone. You wouldn't even know it's there. I
5 had two bathrooms on the second floor. I didn't have
6 one that worked. I wanted to cry when I went up the
7 stairs.

8 Q. What do you think they were converting the
9 upstairs kitchen to, a bedroom, or what?

10 A. To my knowledge, to be quite honest, I have
11 no idea. And I believe they should be criminally
12 prosecuted for what they did. I'm going to leave it at
13 that. They should be criminally prosecuted by the
14 State of New York. They should be criminally
15 prosecuted for what they did.

16 Q. By "they," you mean the tenants?

17 A. The tenants, yeah. They should be criminally
18 prosecuted. They should be brought to court. Not that
19 I would ever get anything out of it, but at least the
20 next person would know, maybe we shouldn't do this.
21 They should be criminally prosecuted for what they did
22 to me.

23 Let me ask you a question: How would you
24 feel if somebody did this to your home?

68

Edward Daire by Mr. Knych

1 Q. As I'm sure your lawyer will tell you, I will
2 talk to you off the record, if I have time.

3 A. You don't have time.

4 Q. On the record, I'm the question asker and
5 you're the answerer.

6 A. I understood that, yes. I'll be honest, I'm
7 very upset about the whole thing.

8 Q. I understand.

9 A. I made the payments on it now for over a
10 year, I can't rent it.

11 Q. So, Exhibit G, page 132, what's going on in
12 this photo? Can you describe what the photo is of?

13 A. Oh. That's the -- okay. This was containing
14 to my -- I got to remember. Oh. This was a toilet on
15 the second floor that they removed out of my full bath.
16 The bowl was there and the water closet was gone. The
17 shower was left there. The kitchen cabinets and the
18 sink and everything else I found in the backyard, which
19 I put together, which there are more photos of.

20 Q. Exhibit G, page 45, is that a new wall that
21 they put in?

22 A. Yes. You lean against it, you will fall
23 through it.

24 Q. And Exhibit G, page 50, is this an

69

Edward Daire by Mr. Knych

1 air-conditioner that they installed?

2 A. No. I installed it. Oh. No. This was my
3 second floor -- the only reason the air-conditioner was
4 still there was because I screwed it to the wall.
5 Otherwise, it would've been in the backyard with my
6 other one. They are vandals.

7 Q. You put that in?

8 A. I put it in years ago. Yes.

9 Q. When you say, "they are vandals," you mean
10 Carol and Amber?

11 A. Whoever lived there. Carol is sweet. I
12 rented to her.

13 That's part of some of the garbage they left
14 there. I'm still cleaning the place. I don't -- if
15 you see -- do you see the crack? That's the broken
16 window.

17 Q. Referring to Exhibit G, page 55, that's the
18 window you said that had like a two-foot opening,
19 that's the only, like, a small opening, right?

20 A. It don't look that bad here, does it?

21 Q. Is that the window?

22 A. It's a double-pane window. But, I mean, I
23 wasn't going to leave it like that. I wasn't going
24 to --

R-167

70

Edward Daire by Mr. Knych

1 Q. Okay.

2 A. It was a double-pane window -- the outside
3 pane, the glass was -- there was a bigger hole in the
4 first level than there was in the second. I'll be
5 honest, when I saw that picture --

6 Q. Okay. So, Exhibit G, page 77, these were
7 appliances that were in the building and when you got
8 there, had been moved outside?

9 A. Correct.

10 Q. Is that correct?

11 A. Yes.

12 Q. Do you know when that was done, when they
13 were moved outside?

14 A. No, I do not.

15 Q. Do you know who moved them outside?

16 A. I would imagine the tenants. They were in
17 the backyard behind the -- this (indicating) is my sink
18 that was --

19 Q. Exhibit G, page 82, a sink on the second
20 floor --

21 A. That was the kitchen --

22 Q. So that was the sink on the first floor that
23 they replaced with a sink from the second floor?

24 A. Correct.

71

Edward Daire by Mr. Knych

1 Q. And the sink from the first floor that they
2 put outside and what looks like a garbage pile,
3 correct?

4 A. Correct.

5 Q. By the way, did you ever tell these tenants
6 they could not do renovations?

7 A. Yes. Yes.

8 Q. Who did you Tell that to?

9 A. I told Carol. I, basically, I told Carol --
10 I, basically, I can't believe -- any other place, I
11 don't know why I do it, anything, usually rent, it has
12 right in the contract, so everything went wrong here.

13 Q. Did you ever tell Amber she couldn't do
14 renovations?

15 A. I told Carol. I never talked -- Amber, to be
16 quite honest, I shouldn't say, but I could grab her by
17 her throat, I would strangle her. I couldn't get one
18 word in without her coming at me, insulting me and
19 threatening to do things to me. So I just kept my
20 mouth shut.

21 Q. When did she first do that, in 2017, 2018?

22 A. Okay. What?

23 Q. Did Amber first threaten?

24 A. 2017, I think it started. I listened to

Edward Daire by Mr. Knych

1 Carol who said, don't worry, it will go away and
2 whatever. And I -- basically, I was -- the first
3 thing, you can't be a landlord, you cannot treat -- you
4 don't want --

5 Q. When Carol said she might go away, what did
6 you mean by that?

7 A. Don't worry about it. I will take care of
8 it. Any problems I had with Amber, she said, don't
9 worry, I will take care of it.

10 Q. All right. Exhibit G, page 89, a hot water
11 heater. Was that installed by you or was it present
12 when you first rented it?

13 A. Yes.

14 Q. Exhibit G, page 90, the description on the
15 back of that photo says, new and approved wall. What
16 do you mean by that?

17 A. New and approved?

18 Q. Were you being facetious?

19 A. I probably was, yes. Because you can see the
20 hole through the floor here (indicating) that goes into
21 the cellar. Bottom wall removed. Yes. I probably was
22 being -- yes. Yeah, you're right. Thank you.

23 Q. Okay. So Exhibit G, page 97, a photograph
24 which you labeled a first-floor bathroom sewage pipe

73

Edward Daire by Mr. Knych

1 that's shown in the basement. You are sure that's a
2 sewage pipe?

3 A. Yes.

4 Q. And how did it end up in the basement?

5 A. That was the pipe that was -- where the wall
6 divider is, where they put the -- when they cut down
7 the retaining wall.

8 Q. So it was part of removal of that bathroom?

9 A. Yes. My half bath that was there, yes.

10 Q. When they removed that, they took the pipe
11 out --

12 A. That was right above it. They just threw it
13 on the floor.

14 Q. And the washing machine, do you know why that
15 would've been removed from the property?

16 A. It was their washing machine, but when they
17 removed it, they didn't disconnect the hose, they just
18 grabbed ahold of it and ripped them right out, so...

19 Q. Whose washing machine?

20 A. It was had to be Carol Sweet's.

21 Q. Okay.

22 A. I know I replaced -- I replaced in the --
23 that bathroom, I replaced the pipes because when you
24 turned the water on, it started spraying on the

R-171

Edward Daire by Mr. Knych

1 ceiling. I work nights. I work until to 2:00 in the
2 morning. When I got home that night at 2:00 in the
3 morning from East Rutherford, New Jersey, so...

4 Q. So showing you Exhibit E.

5 A. That's from Matt Garbett.

6 Q. These are four pages of receipts from Lowe's?

7 A. Right. No. This is what it would cost to do
8 Matt Garbett put the kitchen in originally. I don't
9 know what year. He has the record. Unfortunately, he
10 is down in --

11 Q. This is part of an estimate he put together?

12 A. Yes. This is the one I was telling you about
13 earlier that you need copies of.

14 Q. This money has not yet been spent?

15 A. No. No.

16 Q. This is an estimate, correct?

17 A. Yes. He was the man that originally put the
18 kitchen in.

19 Q. And you believe this is an estimate for the
20 cost to repair damages caused by the tenants?

21 A. Yes. I could not believe they somehow got
22 the lights out of the ceiling. That man climbed up
23 through the crawl space and they were gone.

24 Q. So, \$850 in taxes that Carol Sweet paid, was

75

Edward Daire by Mr. Knych

1 there -- to your knowledge, a threat by the government,
2 the county to foreclose on the property based on unpaid
3 taxes?

4 A. No, I kept up with it. I made sure the taxes
5 were paid. That even cost me money. I mailed the
6 whole check. Why Tommy Stewart ever accepted that, I
7 have no idea. I even refused to pay that much money,
8 but it was just the idea of it. It was only \$20, but I
9 refused to pay it. She refused to pay it. It was \$20
10 in my pocket.

11 MRS. DAIRE: That's what the house
12 looked like before.

13 THE WITNESSES: I was surprised
14 she even accepted half a payment. I could
15 not believe it when I saw that. I was happy
16 to get the money.

17 Q. So showing Exhibit C, page 2, the photo
18 showing the exterior of the house, is that what it
19 looked like when you first rented it to them?

20 A. Yes.

21 Q. Do you know of any damages that anyone caused
22 to the exterior of the house?

23 A. No.

24 Q. Exhibit C, page 3, top photo there appears to

76

Edward Daire by Mr. Knych

1 be a standalone building away from the main house, is
2 that on your property?

3 A. That's part of the property, yes. At one
4 time I allowed her to use it and then I told her after
5 she stopped paying, I closed it down.

6 Q. Is that for somebody to live there?

7 A. It's not -- I could live there, okay. But
8 it's not where I can get a CO to rent.

9 Q. Okay. But you allowed Carol to use it for
10 storage?

11 A. Storage. For storage. There's still a lot
12 of junk in there I have to get rid of.

13 Q. So any reason why you haven't made the
14 repairs so you can begin renting the property again?

15 A. Money.

16 Q. Are you saying that you don't have the
17 personal assets and the liquidity to make the repairs
18 yourself?

19 A. Yes. I put thousands upon thousands of
20 dollars into that house and to get hit like this again
21 hurts.

22 Q. So your lawsuit makes other allegations
23 against Sterling other than they haven't paid the
24 claim, so I need to ask you about that.

77

Edward Daire by Mr. Knych

1 You alleged the pattern of improper conduct
2 by Sterling. Do you know of any improper conduct by
3 Sterling other than its handling of this claim?

4 A. No. I know that --

5 Q. Do you know any deceptive practices other
6 than what you claim what may have taken place
7 pertaining to your claim?

8 A. Rephrase that.

9 Q. So do you know of any deceptive practices
10 that Sterling has engaged in other than what you may
11 have alleged has been engaged in relative to your
12 claim?

13 A. No. No.

14 Q. Do you know material misrepresentations made
15 by Sterling other than what you may claim as material
16 misrepresentations as to the handling of your claim?

17 A. Patrick -- he made me an offer which I
18 refused. The adjusters would not call me back. They
19 would not talk to me. They would not contact me.

20 Q. How much did he offer you?

21 A. A couple thousand dollars. None of the
22 adjusters or anybody would contact me. I had to
23 finally go through Ranker agency to get anywhere with
24 Sterling before I came here.

R-175

78

Edward Daire by Mr. Knych

1 Q. Do you know where Carol is or either of the
2 daughters presently?

3 A. No, I do not.

4 Q. Do you know any way we can find them? Do you
5 have a Social Security number for any of them?

6 A. I believe I threw it away. To be honest, I
7 don't know. There was a whole pile --

8 Q. So the locks that were there on the doors
9 when you took possession back in April 2019, were those
10 locks that you would've installed or they had
11 installed?

12 A. They had installed. Matter of fact, they
13 left the doors open. When I got there, the house was
14 wide open.

15 Q. But these are their locks that they put in
16 that you then had to switch out with your own locks so
17 you then could take control back of the property and
18 secure it, is that correct?

19 A. Correct.

20 Q. And did you see any signs of forced entry
21 where someone ever tried to break into the property, a
22 door that was jimmied --

23 A. No, I didn't. That, I did not, no. As I
24 stated before, I stopped back there, I locked the house

R-176

79

Edward Daire by Mr. Knych

1 up before I left and all of a sudden --

2 Q. I mean, forced entry at any time --

3 A. No.

4 Q. -- during their tenancy or after it?

5 A. No.

6 Q. So other than the broken windows, is there
7 any other damage that you believe would have no
8 possible connection to even a sloppy half-hazard
9 attempt to renovate or repair?

10 A. I don't understand.

11 Q. So you had indicated before, broken
12 windows --

13 A. Right.

14 Q. -- that are initially broken. That's not in
15 any way connected with someone trying to make a room
16 bigger or that kind of thing. That's kind of an
17 intentional act of damage.

18 A. I believe it's an intentional act of damage
19 what they did.

20 Q. Right. Do you know of any other damage other
21 than the broken windows that in no way could be
22 connected to their unauthorized, improper attempt to
23 alter the structure as to renovation?

24 A. Yeah. I would say, basically, my bathroom,

R-177

80

Edward Daire by Mr. Knych

1 my kitchen are gone.

2 I understand what you are saying, but that
3 question doesn't --

4 Q. Right. Isn't the removal of a bathroom to
5 make a room bigger that could be connected to someone's
6 decision in their mind of just altering the structure?
7 They are not trying to destroy something for purposes
8 of just destroying it, they are destroying something to
9 make a room bigger?

10 A. Not when it's not theirs. Not when it's not
11 their money or not --

12 Q. I'm not saying that they had permission to do
13 it or that it's proper or that it's --

14 A. I don't understand the question, then.

15 Q. Okay. I will rephrase it.

16 You had said previously, you agreed with me
17 that there are some changes that they made that could
18 be connected to an improper, sick, crazy mindset of
19 trying to alter the structure to make a room bigger, to
20 move a kitchen to a different location connected for
21 purposes of altering the structure. There's other
22 damage which is in no way be connected like that like
23 when someone throws a stone through a window.

24 A. Yes.

R-178

81

Edward Daire by Mr. Knych

1 Q. And I'm asking you: Other than the broken
2 windows, is there any other damage that like the broken
3 windows cannot even be connected or related to a crazy
4 attempt to renovate?

5 A. Yes.

6 Q. What other damages?

7 A. Throwing my plumbing on the floor and leaving
8 it there for me to clean, ripping pipes out of the
9 ceiling. I understand. They removed something, fine.
10 They could've capped it off.

11 Q. I'm not saying it's permissible or --

12 A. I got you. I'll let you go.

13 Q. I'm not saying that and you are not admitting
14 to that, so I'll stipulate to that on the record.

15 But you know when pipes are removed because
16 they have taken out a wall or to remove the toilet and
17 now they take the sewage pipe and put it in the
18 basement, that's connected to a crazy, wacky decision
19 on their part that they are going to renovate and alter
20 the structure for purposes of making it bigger, as
21 opposed to just taking a stone and throwing it through
22 a window which cannot be attributable logically to any
23 type of renovation or remodel.

24 Do know of any other damage other than --

82

Edward Daire by Mr. Knych

1 A. No.

2 Q. -- the stone through the window that is like
3 the stone through the window unconnected to any crazy
4 attempt to repair it?

5 A. I don't understand repair. There's no repair
6 there. There's only damage.

7 Q. Right. There's damage that is attributable
8 to somebody's crazy thought process of, I'm going to
9 make a room bigger, therefore, I'm going to rip out the
10 toilet, I'm going to take out the piping, I'm going to
11 move it into the yard. They are thinking it --

12 MS. YOUNG: I'm going to object to
13 the form of the question. You can try to
14 answer it.

15 Q. You can try to answer it.

16 -- as opposed to taking a stone and throwing
17 it through a window. And my question to you is: Are
18 there any other damages that you saw --

19 A. No.

20 Q. -- that relate to that type of damage like
21 throwing a stone through a window?

22 A. No.

23 Q. Okay.

24 A. Insanity.

83

Edward Daire by Mr. Knych

1 Q. The cost to replace the windows, do you know
2 what that was, approximately?

3 A. You know something, I was so upset when they
4 did it, I'm sure if I go back to Lowe's. I was so
5 upset, I threw the receipts away.

6 Q. You got a rough number?

7 A. The window cost me \$250. I don't know what
8 it cost me with labor. Just the window alone cost me
9 \$250.

10 Q. That was the window that replaced the --

11 A. Picture window, right. I didn't put a
12 picture window back in because I didn't have the money
13 and I didn't want to be involved.

14 Q. What did the labor cost you for that?

15 A. Bobby and I did it. I gave Bobby a couple
16 hundred dollars.

17 Q. How about the other windows?

18 A. They are still halves. They are double-pane
19 windows, only one-half of the pane is broke. They are
20 still the same way they were.

21 Q. Okay. Are you heating the building now?

22 A. I put fuel oil in there. I shut -- I drained
23 all the water out of the system. I'm afraid to turn
24 the water on because I don't know what pipe is going to

84

Edward Daire by Mr. Knych

1 blow apart, to be quite honest.

2 Q. Are you still insured with Sterling?

3 A. Yes.

4 Q. Have you told the agent of the property it is
5 now vacant and it has not been occupied?

6 A. I haven't really talked -- Allison was
7 actually going to start staying there.

8 Q. Okay.

9 A. The place right now -- matter of fact, the
10 front window is broken. I had to put a board over the
11 front window. I put it up for sale.

12 Q. Do you maintain like a separate file for this
13 property in terms of expenses and revenue, do you do
14 that for your rentals?

15 A. I did for a quite awhile. Yes.

16 Q. Do you have a separate file for this
17 property?

18 A. I know the payments that she made and I have
19 to go through the filing cabinet. I moved everything
20 from New York State. I'm sure I have other papers.

21 Q. If you have a file for this property that's
22 at issue, can you provide that to your lawyer and I
23 will request it.

24 A. Yes.

R-182

85

Edward Daire by Mr. Knych

1 Q. When you bought the property, you said you
2 paid \$100,000?

3 A. I did.

4 Q. Did you do any improvements to it before you
5 rented it?

6 A. I put the second-floor bathroom in. I put
7 the second-floor kitchen in.

8 Q. How much did you spend?

9 A. Roughly, \$30,000 off the top of my head.

10 Q. Is that reflected on your tax return?

11 A. I would imagine. I had somebody prepare my
12 taxes.

13 Q. You run the income that you receive for this
14 property as income in a landlord business on your
15 federal tax returns?

16 A. My wife and I ran a senior citizens home
17 there for 20 years.

18 Q. Is that a yes?

19 A. So, yes. Thank God, I do pay all my bills on
20 time and I do have a 780-point credit rating.

21 Q. Did these tenants ever threaten to destroy
22 the property, burn it down?

23 A. Amber did.

24 Q. Carol never did?

R-183

86

Edward Daire by Mr. Knych

1 A. No.

2 Q. And if Carol had made those threats to any of
3 the people on your witness list, would you expect them
4 to tell you about it?

5 A. Yes.

6 Q. But you do believe Amber made threats to you?

7 A. She verbally threatened me, yes.

8 Q. How many times did Amber threaten either you
9 or your property?

10 A. We had that --

11 Q. Number of times. I'm just looking for a
12 number.

13 A. The first time is about 2017 she tried to
14 have me disbarred from doing my Ambit business. I'm a
15 consultant for Ambit Energy. Carol hooked up, she put
16 the electric account in my Ambit account, and after
17 that Amber started calling up Ambit and gave them all
18 kinds of problems and after that she never stopped. If
19 I did that --

20 Q. So the threat by Amber was to your Ambit
21 situation?

22 A. And then it was me personally.

23 Q. What was the nature of the threat to you
24 personally?

87

Edward Daire by Mr. Knych

1 A. Personally that she would have me arrested,
2 that she would've made sure that she made me suffer.
3 There was a couple of other things. So I just turned
4 around and walked away.

5 Q. And these threats were made while she was at
6 your property?

7 A. Yes. Yes.

8 Q. Any other times that Amber threatened you
9 besides that?

10 A. She said something to my brother.

11 Q. Which brother is that?

12 A. Steven.

13 Q. What was said?

14 A. That if I came by there, she would call the
15 police immediately. That I was a no-good
16 son-of-a-bitch, and I had no right coming by there and
17 that somebody should take care of me.

18 Q. Okay. Any other threats made to you?

19 A. No.

20 Q. Any threats made to destroy or damage your
21 property, because at this point you haven't testified
22 to any of those things?

23 A. Amber did, yes.

24 Q. What did she say?

R-185

88

Edward Daire by Mr. Knych

1 A. Amber -- well, she basically said, I will
2 destroy everything -- I'll destroy anything that I can
3 get my hands on that will hurt you.

4 Q. And she said that in 2017?

5 A. Yes. She also said after that when I showed
6 back up in October to try to collect the rent.

7 Q. 2018?

8 A. Which I did lose my temper with her, yes.

9 Q. What did she say at that time?

10 A. I had no right coming here and talking to
11 her, asking her any questions, asking for money. That
12 she hoped that I fall down and break my neck.

13 Q. Anything else that she said to you?

14 A. She said I couldn't talk to her like that in
15 front of her kids. I did call her a deadbeat with her
16 kids there. And I basically said, the kids should know
17 you are a deadbeat because you are.

18 Q. Anything else said between you and her?

19 A. She wished me bodily harm.

20 Q. Anything else said between you and her?

21 A. No. Nope. At that point I composed myself
22 and walked away.

23 MR. KNYCH: That's all I have. I
24 need to ask questions of your wife now.

89

1 STATE OF _____

2 COUNTY OF _____

3
4 I have read the foregoing record of testimony
5 taken at the time and place indicated in the heading
6 thereof, and I do hereby acknowledge it to be a true
7 and correct transcript thereof.

8
9 _____
10 EDWARD DAIRE

11
12
13 Subscribed and sworn to
14 before me this ____ day
15 of _____, 20__.

16
17 _____
18 NOTARY PUBLIC
19
20
21
22
23
24

R-187

90

1 I N D E X

2 EXHIBITS: PAGE:

3	A - Declaration page of insurance policy	35
4	B - Property loss statement	36
5	C - Photographs	46
6	D - Police report	37
7	E - Lowe's receipts	74
8	F - E-mails	11
9	G - Photographs	22
10	H - Eviction notice	35

11

12 R E Q U E S T S

13 ITEM: PAGE:

14	1. Estimate from Matt Garbett	39
15	2. Terry and Rebecca Gillette's phone number	57
16	3. Photographs before tenants moved in	59
17	4. Property file	84

18

19

20

21

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23

24

1 STATE OF NEW YORK :

2 COUNTY OF BROOME :

3
4 I, JESSICA BRIELMEIER, Shorthand Reporter,
5 do certify that the foregoing is a true and accurate
6 transcript of the proceedings in the matter of Edward
7 and Allison Daire vs Sterling Insurance Group Company
8 and HBE Group, INC, held in Binghamton, New York, on
9 the 5th day of March, 2020.

10
11 
12

13 JESSICA BRIELMEIER

14 Shorthand Reporter

15 Notary Public

16 CZERENDA COURT REPORTING, INC

17 71 State Street

18 Binghamton, New York 13901-3318

19
20
21
22
23 COMPUTER OPERATOR: LORI KRALY
24

Assistant

From: Peter Knych
Sent: Tuesday, March 03, 2020 4:10 PM
To: Assistant
Subject: FW: Daire v Sterling, Index No.: 2019-5393
Attachments: contractor's estimate.pdf; Sterling denial of claim.pdf

Please print all out including the email.

From: Patrick Orr [mailto:patrickorr@benjaminattorney.com]
Sent: Tuesday, March 03, 2020 4:09 PM
To: Peter Knych <PK@pknychlaw.com>
Subject: Daire v Sterling, Index No.: 2019-5393

Mr. Knych:

My apologies for misspelling your name in the last email.

Attached hereto are two documents, a contractors rough estimate of the cost of repairs, and Sterling's denial letter with attached "Causes of Loss."

Please confirm receipt.

Thanks,
Patrick Orr, Paralegal

Law Office of Ronald R. Benjamin

126 Riverside Drive

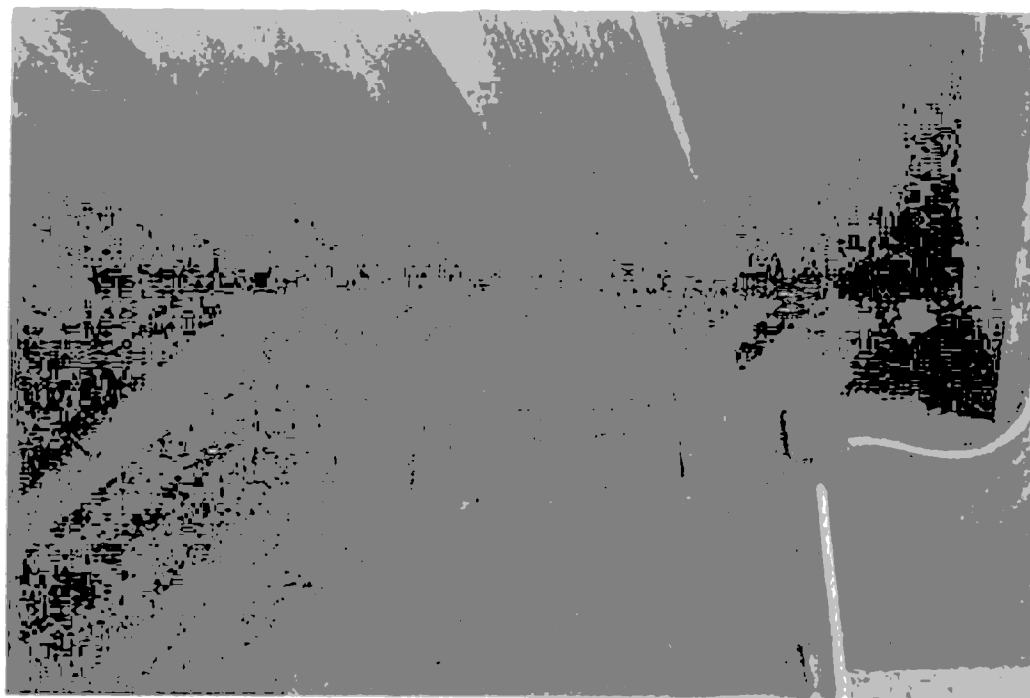
Binghamton, NY 13902-0607

Ph: 607.772.1442

Fax: 607.772.1678

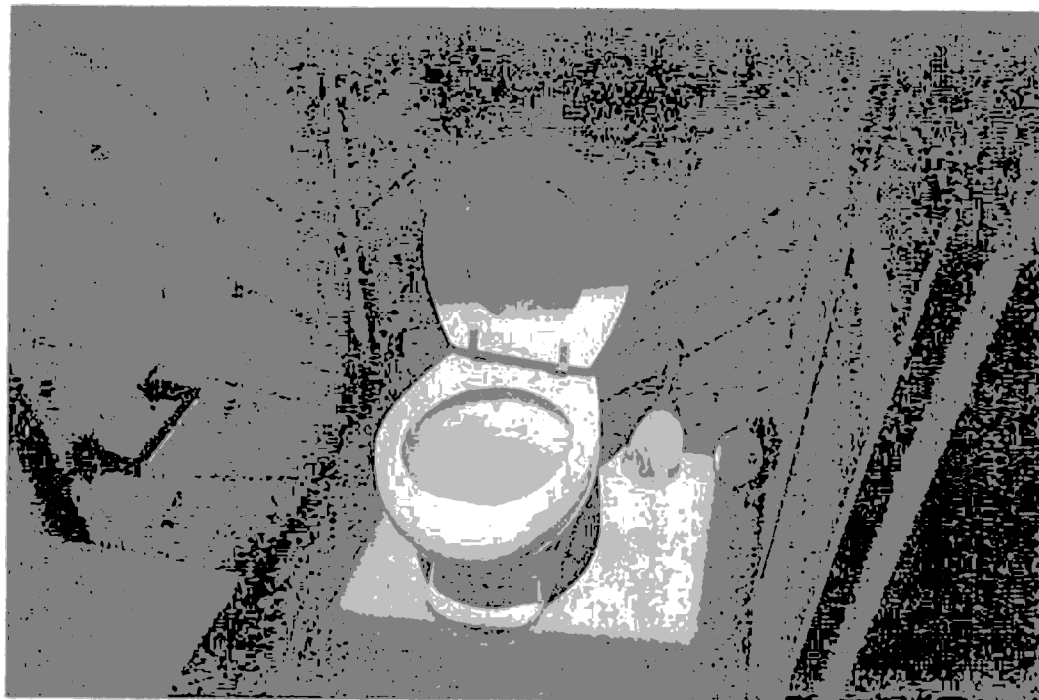
R-190





R-191

42





R-193

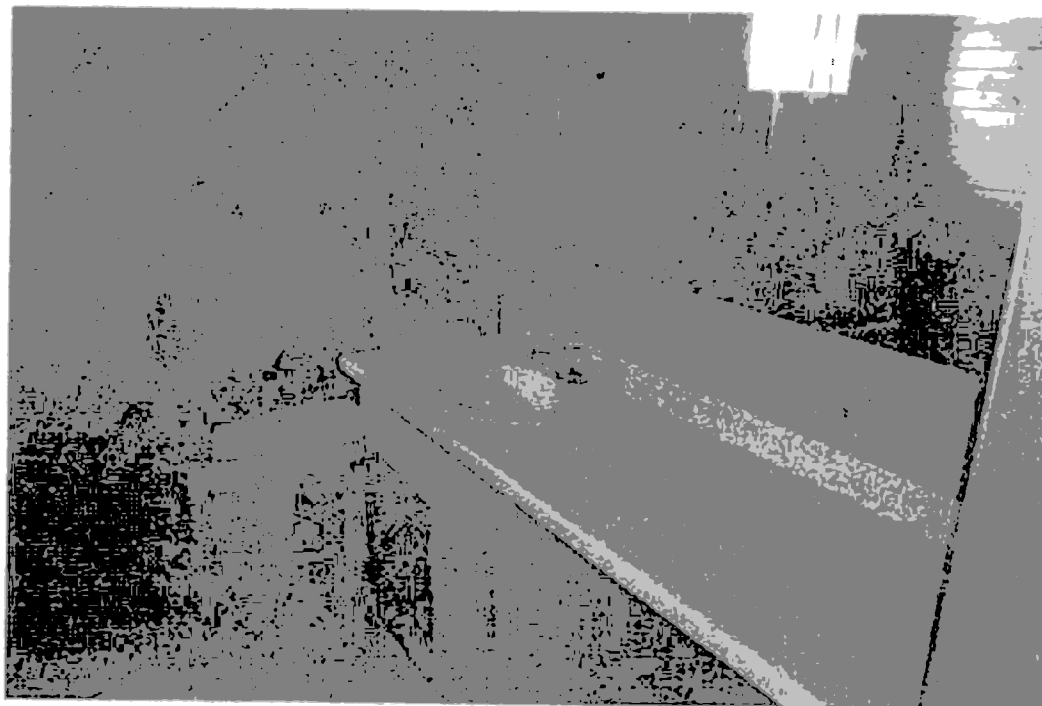


R-194

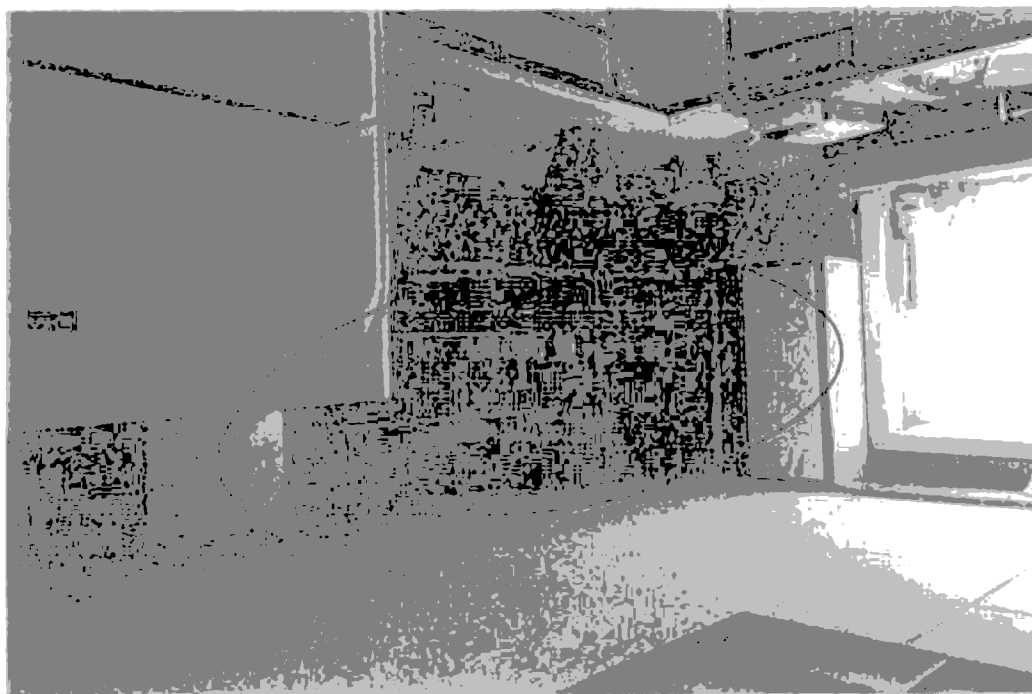


R-195

121



R-196



R-197

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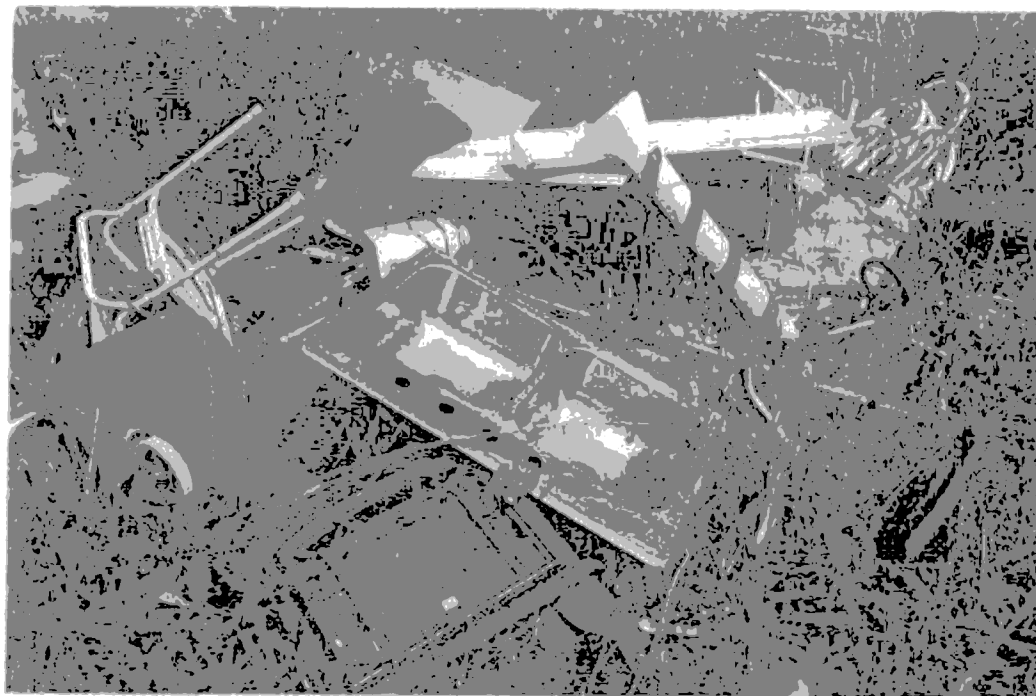
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INDEX NO. 2019-5393

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R-198

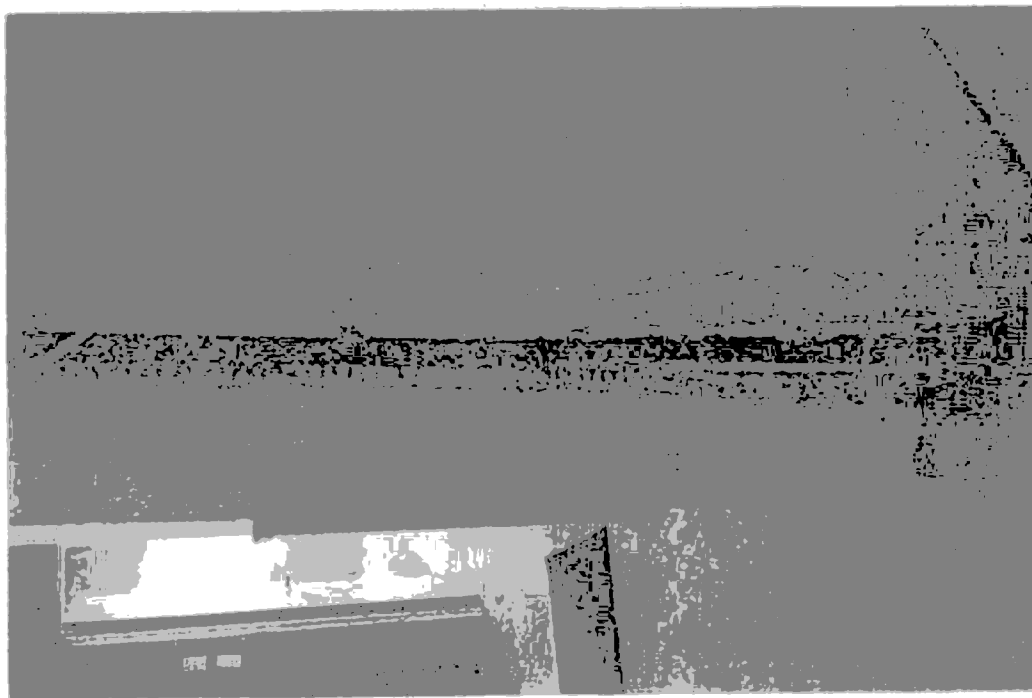


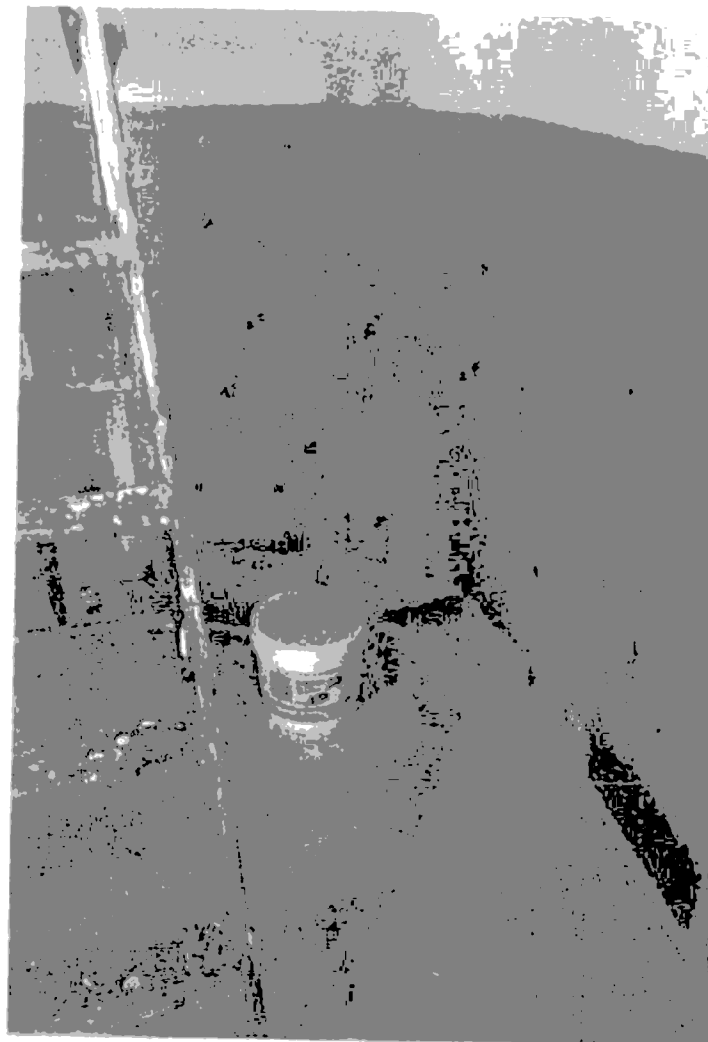
R-199

82

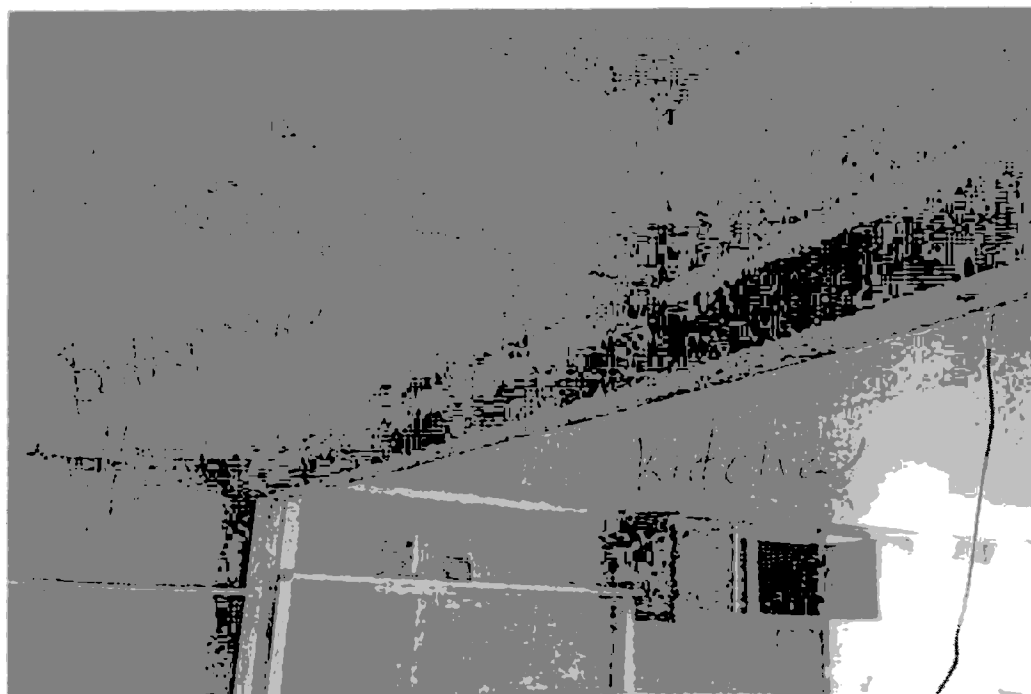


R-200





R-202



R-203

64



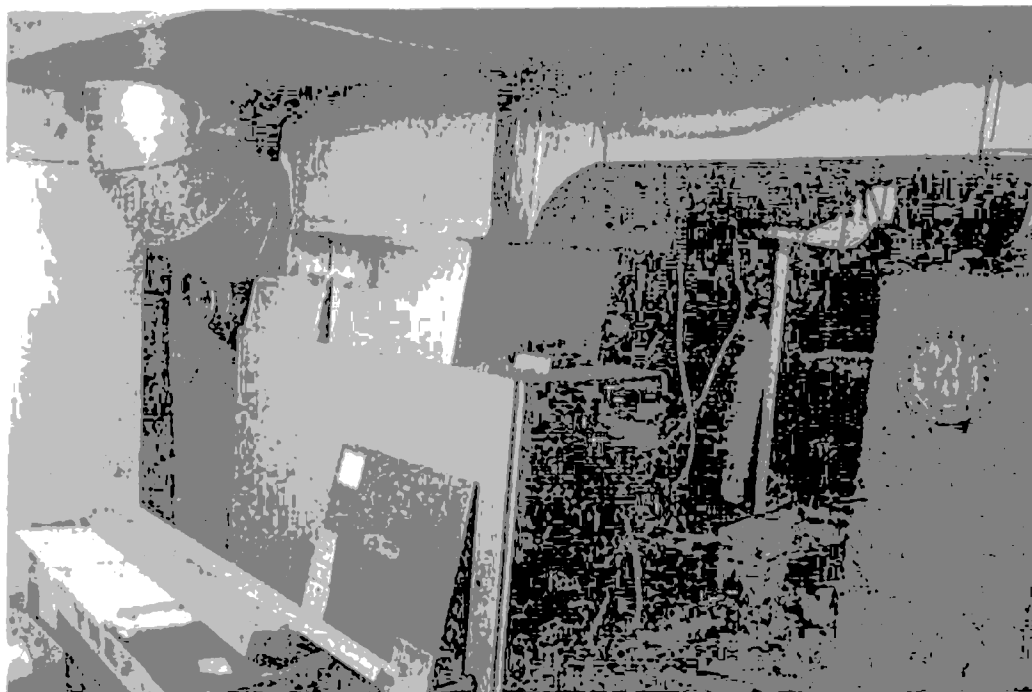
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R-204

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INDEX NO. 2019-5393

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R-205



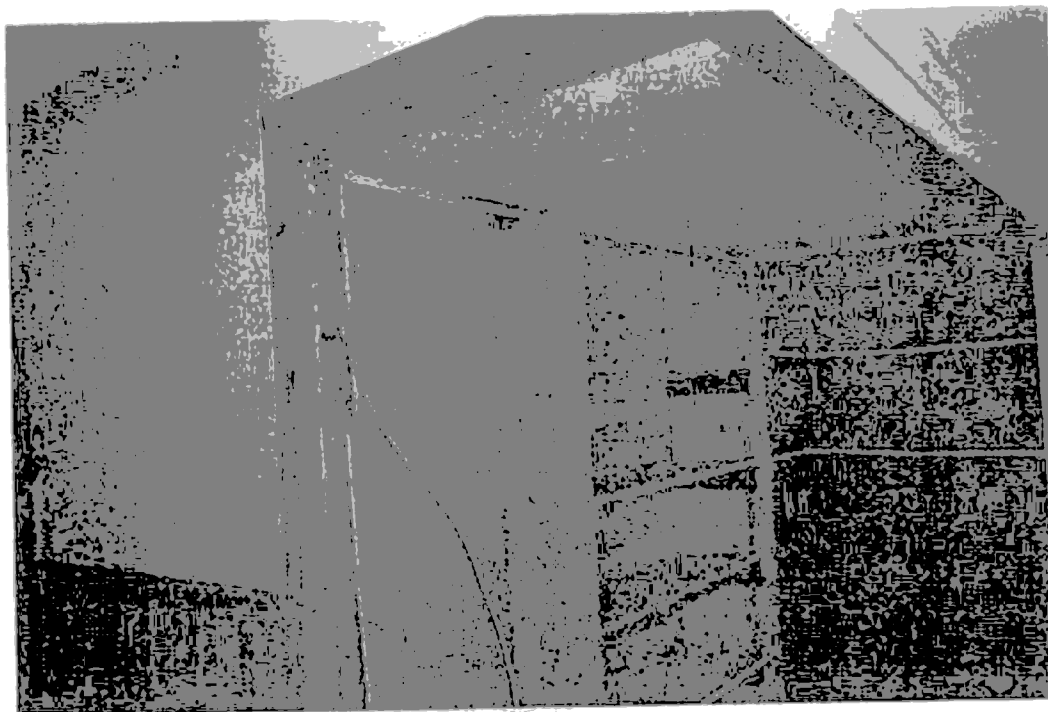
R-206

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R-207

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R-208

INDEX NO. 2019-5393
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NYSCEF DOC. NO. 18



R-209

12



R-210



R-211

19



R-212

R-212

FILED: CHENANGO COUNTY CLERK 07/13/2020 01:47 PM

INDEX NO. 2019-5393
RECEIVED NYSCEF: 07/13/2020



R-213



STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

**STIPULATION OF
DISCONTINUANCE**

vs.

Index No.: 2019-5393

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,


Defendant.


IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, attorneys of record for *Edward Daire and Allison Daire, HBE Group, Inc. and Sterling Insurance Company*, parties to the above-entitled action, that whereas no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party has an interest in the subject matter of the action, the above-entitled action as against *HBE Group, Inc.* be, and the same hereby is discontinued, with prejudice, on the merits and without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

DATED: 11/4, 2019

KNYCH & WHITTENOUR, LLC

LAW OFFICES OF RONALD R. BENJAMIN


Peter W. Knych, Esq.
Attorneys for Defendants
Office & P.O. Address
One Park Place, Suite 404
300 South State Street
Syracuse, New York 13202
Telephone (315) 472-1175


Ronald R. Benjamin, Esq.
Attorneys for Plaintiffs
Office & P.O. Address
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
Telephone (607) 772-1442

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CHENANGO

-----X
EDWARD DAIRE and ALLISON DAIRE

Plaintiffs,

-vs-

HBE GROUP, INC. AND STERLING
INSURANCE COMPANY,

Defendants.
-----X

NOTICE OF CROSS-MOTION

Index No. 2019-5393

Judge Assigned:

Hon. Joseph A. McBride

PLEASE TAKE NOTICE that, upon the accompanying Affirmation of Ronald R. Benjamin, dated the 16th day of August 2020, and the proposed SECOND AMENDED COMPLAINT of plaintiffs Edward and Allison Daire, that plaintiffs by and through their attorney, Ronald R.

Benjamin, will move this Court:

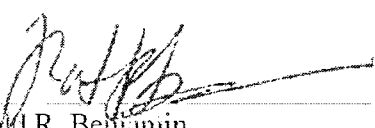
_____ at the Chenango County Courthouse, located at 13 Eaton Avenue, Norwich, New York 13815, or
X via SKYPE,

on the 24th day of August, 2020, at 1:30PM or as soon thereafter as counsel may be heard, for the following:

1. Pursuant to CPLR §3025(b), an Order granting plaintiff leave to file, and to deem filed nunc pro tunc to the date of this notice, the proposed Second Amended Complaint annexed and filed herewith with respect to the plaintiffs' second cause of action under GBL §349; and

~~2. Such other and further relief the Court deems just and proper.~~

Dated: August 16, 2020
Binghamton, New York


Ronald R. Benjamin
Law Office of Ronald R. Benjamin
Attorney for Plaintiffs
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
(607) 772-1442
R-216

1 of 1

STATE NEW YORK : SUPREME COURT
COUNTY OF CHENANGO-----X
EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

-v.-

HBE GROUP, INC. AND STERLING
INSURANCE COMPANY,ATTORNEY AFFIRMATION IN
SUPPORT OF PLAINTIFF'S MOTION
FOR LEAVE TO AMEND COMPLAINT
AND ADD PARTY DEFENDANT

Index No. 2019-5393

Defendants.
-----X

STATE OF NEW YORK)


COUNTY OF BROOME)

RONALD R. BENJAMIN, the undersigned attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under penalty of perjury, except as to matters stated upon information and belief, the following:

1. I am the attorney for plaintiffs Edward Daire and Allison Daire, and am familiar with the facts and circumstances of this action, and submit this affirmation in support of plaintiff's motion for leave to amend the complaint pursuant to CPLR §3025(b).

2. Annexed hereto as **Exhibit 1** is the plaintiff's proposed Second Amended Complaint which plaintiffs seek to file nunc pro tunc to the filing hereof.

Date: August 16, 2020
Binghamton, New York



RONALD R. BENJAMIN
LAW OFFICE OF RONALD R. BENJAMIN
Attorney for Plaintiffs
126 Riverside Drive, P. O. Box 607
Binghamton, NY 13902-0607
607/772-1442

R-217

1 of 1

FILED: CHENANGO COUNTY CLERK 12/01/2022 03:28 PM

INDEX NO. 2019-5393

FILED: CHENANGO COUNTY CLERK 08/17/2020 09:54 AM

RECEIVED NYSCEF: 2019-01-23

NYSCEF DOC. NO. 25

RECEIVED NYSCEF: 08/17/2020

Exhibit 1

R-218

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

SECOND AMENDED
COMPLAINT

-against-

Index No. 2019-5393

STERLING INSURANCE COMPANY, and
HBE GROUP, INC.,

Defendant.

Plaintiffs Edward Daire and Allison Daire, by and through their attorney, Ronald R. Benjamin, Law Office of Ronald R. Benjamin, as and for their second amended complaint herein, allege the following:

1. Plaintiffs reside at 333 King Road, Town of Greene, County of Chenango, State of New York, 13778.

2. Defendant Sterling Insurance Company (hereafter "Sterling") is registered in the State of New York to sell insurance with principal offices located at 182 Barnerville Road, Cobleskill, New York 12043.

3. Defendant HBE Group, Inc. is a domestic business corporation duly registered to conduct business in the State of New York with executive offices at 6 Slawson Street, Dolgeville, New York, 13329, and is an agent of Sterling Insurance Company.

4. Plaintiffs and defendant Sterling entered into policy number LP16045937, a "Landlord Package Policy", as a contract of insurance whereby the defendant would provide insurance for premises located at 2895 State Route 7, Town of Colesville, County of Broome,

State of New York, 13787, which included coverage the loss resulting from vandalism to the aforesaid insured premises.

5. Plaintiffs rented the residential insured premises to a tenant who, herself or with others known or unknown, vandalized said premises.

6. Said vandalism caused significant destruction to the insured premises, causing plaintiffs to incur damages to the property in the amount of \$70,000.00 - \$75,000.00.

7. The aforesaid vandalism has caused the aforesaid premises to be uninhabitable pending repair of the vandalism.

**AS AND FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

8. Plaintiff re-alleges and repeats paragraphs 1 through 7 as if fully set forth herein.

9. That the plaintiffs' policy was in full force and effect at the time of the reported loss, and plaintiff duly reported the loss to defendant on or about April 13, 2019.

10. That the defendants denied coverage on said claim on the frivolous basis that the vandalism by said tenants constituted remodeling of the premises which was not covered under the policy, and on the grounds that the entrustment exclusion for "Dishonest or Criminal Acts" included vandalism and for the reason that the plaintiffs "entrusted" the property to the tenant and any occupants residing there.

11. That despite plaintiffs repeated demands for payment on the policy for the damages as set forth above, defendant persists in refusing to honor said policy.

12. That defendant Sterling's refusal to honor the policy is a breach of the agreement between the plaintiffs and defendant.

13. That as a result of the aforesaid conduct plaintiffs have been damaged and is

entitled to compensatory damages in an amount to be proven at trial.

14. That as a result of the willful bad faith refusal by defendant to honor its policy plaintiffs are entitled to exemplary damages in an amount to be proven at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
DECEPTIVE ACTS AND PRACTICES IN VIOLATION
OF NEW YORK GENERAL BUSINESS LAW § 349**

15. Plaintiff repeats and realleges paragraphs 1 through 14 and incorporates the same as if fully set forth herein.

16. Plaintiffs started purchasing coverage for the residential rental property in or about July 2016, and, upon renewal, defendant Sterling issued to them the Landlord Package Policy for the policy period July 1, 2018 through July 1, 2019 for the insured premises that is disputed herein.

17. Starting in or about November 2018, the plaintiffs initiated eviction proceedings against the tenant at the insured premises due to nonpayment of rent, which was resolved in court on March 31, 2019, resulting in plaintiffs' tenant being evicted from the property that date.

18. Two weeks later, on or about April 13, 2019, plaintiffs discovered that substantial and costly acts of destruction had been inflicted on the insured premises and suspected that the tenant and others who had occupied the house with her at certain times committed the acts of destruction.

19. Plaintiffs followed the procedures required under the terms of the Landlord Package Policy to file a timely and good faith claim for payment of the loss caused by and based on the insured premises having been vandalized. Despite plaintiffs' cooperation with defendant and plaintiffs' compliance with all of its contractual obligations, defendant has failed and/or

refused to pay plaintiffs' claims, although duly demanded.

20. The defendants' "Landlord Package Policy" ("Policy") is a consumer-oriented contract of insurance in that it is defendant Sterling's standard or routine practice to sell such policies to similarly situated landlords of residential property.

21. After he discovered the damages done to his property two weeks after the court eviction on April 13, 2019, plaintiffs filed a claim and obtained estimates of \$63,000.00 which he submitted to defendant Sterling.

22. Said Policy provides insurance to landlords for property damage and loss caused by "Vandalism", which it does not expressly define in the Policy as a "dishonest or criminal act" or specifically refer to any other provisions of the document to inform and alert landlord policyholders that vandalism is construed as subject to exclusion from coverage if the acts of destruction constituting the vandalism are committed by the tenant or any others occupying the rental property covered by the Policy, which potentially and actually substantially reduces the coverage and value of the Landlord Package Policy with respect to vandalism claims by eliminating acts of destruction by tenants or anyone who stays or lives with them and other undefined circumstances.

23. Defendant Sterling denied the coverage for vandalism on the basis that the "tenant" and "occupants" are persons to whom a landlord "entrusts" the insured premises to by deliberately and repeatedly misinterpreting and relying on the so-called "entrustment exclusion", and failing to write the said "entrustment exclusion" so that landlords are informed and aware that this ambiguous exclusion will be used in order to deny vandalism loss claims under the Landlord Package Policy

24. Said Policy also contains an separate exclusion from payment of any damages

resulting from renovations and remodeling which it wrote and applied despite language indicating the exclusion was intended to be limited only to such renovations and remodeling performed by or at the direction of the insured landlord, which is the only reasonable interpretation in context and purpose, and instead seeks to hide the fact that the defendant has a practice to deny landlord claims of vandalism by having their employees and adjustors interpret the Landlord Package Policy to classify the coverage as related to renovations and remodeling damages, either by the landlord and/or caused by a tenant who did not have permission to do such work or who caused substantial damage, all of which potentially and actually substantially reduces the coverage and value of the Landlord Package Policy with respect to insurance for vandalism claims by eliminating acts of destruction by tenants or anyone who stays or lives with them and other undefined circumstances on the grounds that they were renovating and remodeling the insured premises without regard to whether the same constituted acts of destruction that would be eligible to be paid under the vandalism clause.

25. With respect to the investigation of plaintiffs' claims arising under the policy, defendant's agents and employees, including an engineer who inspected the damages and its adjustor Patrick Dorner, misquoted plaintiff Edward Daire by suggesting and concluding the latter had given the tenant permission to do work in the nature of renovations.

26. Defendant also failed and refused to make good faith attempts to promptly, fairly and equitably effectuate settlement of plaintiffs' claim despite liability being reasonably clear, including but not limited to, defendant's adjustor Dorner and others made an offer to settle in the amount of a couple of thousand dollars; its adjusters and representatives on a number of occasions, over a period of more than four (4) months, failed and refused to call plaintiff Edward Daire back, would not talk to him nor contact him about the claim, during which time and

continuing to the present, he was unable to pay for needed repairs and unable to rent the insured premises in that condition.

27. This conduct by the adjusters and other agents and employees of defendant insurer Sterling compelled plaintiffs to seek legal assistance to file the instant suit against the company, which was commenced on August 27, 2019.

28. Defendant's actions in investigating and processing plaintiffs' claim and other similar claims constitute a claim settlement policy and practice designed to frustrate fair and efficient claim settlement, in violation of § 2601 of the Unfair Claims Settlement Practice Act of the New York State Insurance Law, and constitute deceptive business acts and practices as set forth by § 349 of the General Business Law, in that defendant Sterling (1) failed to adopt and implement reasonable standards for the prompt investigation of claims arising under proper interpretation of the Landlord Package Policy, rather than interpretations of ambiguous terms to favor the insurer only, and failing to promptly and in good faith put the same in writing; (2) required the insureds to replace items out of their own funds before Sterling will advance monies under the Policy unless settled for a low amount; and (3) did not attempt in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear.

29. Defendant Sterling also violated the aforesaid statutes by compelling policy holders, including plaintiffs, to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

30. The aforesaid practices are an attempt by defendant Sterling to escape its legal contractual obligations to make payments upon valid claims submitted under policies of insurance issued by defendant.

31. Upon information and belief, defendant has taken actions that are potentially or actually similar in nature to those herein in the handling of other similar claims.

32. Defendant's conduct in this action is indicative of its dealing with the general public, whereby defendant has engaged in a fraudulent scheme, issuing policies to compensate insureds for specific events with no good faith intention of fulfilling its obligations, indicating defendant's morally culpable, wanton dishonesty and criminal indifference to its civil obligations.

33. Defendant Sterling's conduct as described herein is intended to mislead a reasonable consumer at large, and particularly landlords in purchasing its vandalism insurance.

34. Defendants' conduct is intended to inordinately delay and deny coverage under its policies to the detriment of the consuming public at large who are policy holders of the Landlord Package Policy.

35. Said conduct amounts to a material representation or omission about the terms of coverage and exclusions by use of ambiguous language and interpretations likely to mislead a reasonable consumer such as plaintiffs in contravention of General Business Law section 349.

36. Plaintiffs incurred damages as described herein as a result of defendant's deceptive acts and practices.

37. As a result of the material misrepresentation or omission by defendant plaintiffs are entitled to treble damages and reasonable attorney fees in an amount to be proven at trial.

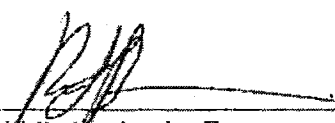
WHEREFORE, plaintiffs Edward Daire and Allison Daire, hereby demand judgment against the defendants as follows:

- (A) Award plaintiffs compensatory damages in an amount to be determined at trial;
- (B) Award plaintiffs exemplary damages in an amount to be determined at trial;

- (C) Award plaintiffs treble damages in an amount to be determined at trial;
- (D) Award plaintiffs the attorney's fees, costs and disbursements in prosecuting this action;

along with such other and further relief as the Court deems just and proper under the circumstance.

Dated: August 17, 2020
Binghamton, New York



Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin
Attorney for Plaintiffs Edward and Allison Daire
126 Riverside Drive, P.O. Box 607
Binghamton, New York 13902-0607
Phone: (607) 772-1442

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

vs.

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendants.

**ATTORNEY'S REPLY
AFFIDAVIT IN
OPPOSITION TO
PLAINTIFFS' CROSS-
MOTION AND IN
FURTHER SUPPORT OF
DEFENDANT'S MOTION**

Index No.: 2019-5393

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

PETER W. KNYCH, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and I am a member of the law firm of KNYCH & WHRITENOUR, LLC attorneys in this action for Defendant Sterling Insurance Company ("Sterling").

2. I make this affidavit in Opposition to Plaintiffs' Cross-Motion and in reply to Plaintiffs' opposition to Defendant Sterling's Motion for Summary Judgment.

3. It is undisputed that the basis of Sterling's motion is as follows: (1) that Plaintiffs admit, (and Sterling concedes for purposes of this motion), that what took place at the property consisting of unapproved alterations were acts of vandalism, (2) that Plaintiffs admit that these acts of vandalism were caused by occupants for whom Plaintiffs gave permission to occupy the building, 3) that Plaintiffs admit that these acts of vandalism by the occupants were dishonest or criminal acts, 4) that Plaintiffs consented to the occupants living in the property

R-227

1 of 10

and thus “entrusted” the property to these occupants, and 5) that under these undisputed facts, the Sterling policy’s Entrustment Exclusion (which multiple New York cases have found to be unambiguous) applies to eliminate insurance coverage for the damage caused by these acts of vandalism.

4. Plaintiff, in opposing Sterling’s motion, puts forth no evidence that the vandalism (i.e. unauthorized repairs) was done by anyone or on behalf of anyone other than the occupants to whom Plaintiffs entrusted the property. Sterling has met its initial burden of proof through Plaintiff’s own deposition testimony, that he believes that acts of vandalism (i.e. unauthorized renovations) were caused by the occupants.

5. Plaintiffs, in opposing Sterling’s motion, do not contest or even attempt to distinguish the multiple court decisions applying New York law and finding: 1) that the Entrustment Exclusion is not ambiguous and 2) that an insurer is granted summary judgment based on the Entrustment Exclusion when occupants of a house or building in which the insured landlord has consented to the occupancy, cause damage as a result of unauthorized attempts at renovation or repair. Rather, Plaintiffs make the conclusory assertion, unsupported by any case law, that the entrustment exclusion is ambiguous. Plaintiffs essentially ask this court to disregard and ignore well established case precedent finding the Entrustment Exclusion to be unambiguous.

6. Plaintiffs reliance on the unpublished court decision of *Poole v. United Service Auto Association*, 2014, N.Y. Misc. Lexus 2394 at 2-3 (Sup. Court, Suffolk Co. 2014) is misplaced. In that case, the issue was whether the damage was caused by vandalism (potentially covered under the policy) or defective work/renovation by or on behalf of the

insured (excluded from coverage under the policy). The insured in *Poole* argued that the damage was caused by vandalism and the court found an issue as to whether the damage was caused by vandalism or defective renovations that were not vandalism. In the unpublished *Poole* decision, what was not raised and/or was not at issue was the applicability of the Entrustment Exclusion. The *Poole* decision is therefore totally irrelevant to the issue before this Court wherein Plaintiffs must admit that the unauthorized repairs were acts of “vandalism” in order for them to even potentially have coverage under the Sterling policy.

7. In the case at bar, Sterling concedes for purposes of the motion, that the damage was caused by vandalism. The Daires must argue that the damage was caused by vandalism because under their covered peril policy with Sterling, “vandalism” is the only cause of damage for which they even potentially have coverage.

VANDALISM IS A DISHONEST OR CRIMINAL ACT

8. As stated above, Plaintiffs must admit, and do admit, that all the damage to their property for which they make an insurance claim (whether from unauthorized repair or any other cause) are acts of vandalism potentially covered under the Sterling policy covered peril of vandalism.

9. Plaintiffs seek to avoid summary judgment by contradicting their sworn deposition testimony in admitting that what occurred to their property were criminal acts – and instead on this motion speculating that vandalism is not a “dishonest or criminal act” within the meaning of the Sterling’s Entrustment Exclusion. Plaintiffs’ suggestion that vandalism is not a dishonest or criminal act flies in the face of logic, reason, case law, common sense and their own testimony.

10. First, Plaintiff Daire gave deposition testimony that he filed a police report and that he believed that the occupants that vandalized his house should be criminally prosecuted. Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 67.

11. Second, multiple New York court decisions have held that unauthorized renovations by a tenant are either dishonest or criminal acts. *See* Reply Memorandum of Law.

12. Third, New York's Court of Appeals has recognized that acts of vandalism are not ordinary tortious conduct. *See Georgitsi Realty v. Pennstar Insurance Company*, 21 N.Y.3d 606 (2013).

13. Fourth, under New York penal law, acts of vandalism are prosecuted as criminal mischief in either the first, second, third or fourth degree. *See* New York Penal Law §145 *et seq.* attached hereto as Exhibit A.

14. Fifth, that the acts of vandalism are criminal is consistent with the well-recognized definition of vandalism as a "willful or malicious destruction or defacement or damage to property." *See* various dictionary definitions. *See* also Treatises/articles describing vandalism as a crime under New York law, attached hereto as Exhibit B.

15. There is no affidavit from Plaintiffs or any witness submitted to this Court which even attempts to explain or counter Plaintiff Daire's own testimony that the damage to his property from vandalism was other than a dishonest or criminal acts of its occupants.

16. Sterling has met its burden of proof that the unauthorized repairs (which Plaintiff must and does assert constitute acts of vandalism) were dishonest or criminal acts within the meaning of the Sterling policy's Entrustment Exclusion.

**THE ENTRUSTMENT EXCLUSION APPLIES TO ACTS OF VANDALISM
COMMITTED BY OR ON BEHALF OF ALL THE OCCUPANTS TO WHOM
PLAINTIFF DAIRE ENTRUSTED THE PROPERTY**

17. The Plaintiffs seek to avoid summary judgment on the applicability of the Entrustment Exclusion by asserting that the Exclusion does not apply to all the people who Plaintiff Daire claims were responsible for the acts of vandalism upon which he bases his insurance claim, i.e. the tenant Carol Sweet and her adult daughter who resided in the house with Plaintiff Daire's knowledge and consent.

18. Plaintiff Daire testified that he consented to allowing the tenant, Carol Sweet, and her two adult daughters to reside at the property. (Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 28, 29.)

19. Plaintiff Daire testified that each and every act of vandalism (unauthorized repairs) were on behalf of the tenant/occupants to whom he entrusted the property. (See Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 26-27.) Plaintiff Daire claims the vandalism was caused by Carol Sweet or her adult daughter Amber Sweet "without a doubt." (See Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 53 and 64.)

20. Sterling has set forth multiple New York State decisions that the Entrustment Exclusion applies to acts of vandalism caused by occupants of the house or building to whom the insured has consented to their occupancy and has knowledge of that occupancy. Plaintiffs put forth no court decision that supports their contention that the Entrustment Exclusion does not apply under the facts as alleged by Plaintiffs.

21. Plaintiffs put forth no evidence in opposition to Sterling's motion that the acts of vandalism for which they seek coverage (i.e. all unauthorized modifications or repairs, etc.) were done by someone other than the individuals to whom Plaintiff entrusted the property.

22. Sterling has met its burden of proof establishing the applicability of its Entrustment Exclusion and Plaintiffs have not come forward with any proof creating an issue of fact that the exclusion does not apply. This point is made in the accompanying Reply Memorandum of Law.

**IN OPPOSITION TO PLAINTIFFS' CROSS-MOTION TO AMEND
THE COMPLAINT AND IN SUPPORT OF STERLING'S MOTION TO
DISMISS THE NEW YORK GENERAL BUSINESS LAW §349 CAUSE
OF ACTION ALLEGING DECEPTIVE BUSINESS PRACTICES**

23. Sterling asserts that the dismissal of Plaintiffs' breach of contract claim makes moot the Plaintiffs' General Business Law §349 claim which is based on the alleged breach of contract claim. Sterling asserts that even if the breach of contract claim is not dismissed as a matter of law, then in the alternative, the General Business Law §349 claim should be dismissed as a matter of law.

24. Sterling moved to dismiss the General Business Law ("GBL") Section 349 claim pursuant to CPLR 3211 for failing to sufficiently plead that claim. Sterling also moved for summary judgment dismissing that claim pursuant to CPLR 3212 given Mr. Daire's testimony that he knows of no improper conduct by Sterling unrelated to his insurance claim and he knows of no deceptive practices engaged in by Sterling or against the general public. (Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 77.).

25. In response to this part of Sterling's motion, the Plaintiffs have made a cross-motion that makes additional factual allegations in a proposed unverified amended complaint.

26. Plaintiffs' cross-motion seeking to amend the complaint should be denied. Plaintiffs fail to provide any affidavit that establishes or even argues for the merits of their proposed amendment to the complaint. In the absence of an affidavit establishing the merits of their proposed amendment, their cross-motion seeking to amend the complaint should be denied.

27. Defendant's motion seeking the dismissal of the GBL §349 claim should be granted pursuant to CPLR §3211 because Plaintiffs essentially admit that their complaint does not sufficiently plead a GBL §349 violation. Their initial complaint alleges a valid cause of action for a breach of contract but fails to allege conduct that would convert this private contract dispute into one that is consumer oriented and affects the general public at large. Their initial complaint makes no allegations that Sterling's denial of coverage is a consumer oriented practice that affects the general public at large.

28. Moreover, Sterling's motion for summary judgment seeking dismissal of the GBL §349 claim should be granted. As set forth in Sterling's initial motion papers, Plaintiff Daire admits that he knew of no improper conduct by Sterling unrelated to this insurance claim and he knows of no deceptive practices engaged in by Sterling. (*See* Knych 7/13/20 Affidavit, Ex F, Edward Daire depo, p. 77.)

29. In addition, Plaintiffs Daire do not oppose Sterling's motion for summary judgment on the GBL §349 claim by putting forth in this motion any affidavit that offers any proof of any deceptive business practices by Sterling directed at the general public at large.

Plaintiffs Daire were compelled to come forward with proof supporting their GBL §349 claim in order to avoid summary judgment and they have come forward with no proof evidencing that Sterling has engaged in deceptive business practices relative to the general public.

30. Finally, Sterling has presented this Court with multiple New York State court decisions which under facts nearly identical to Plaintiffs Daire's claims, Courts have upheld the insurer's assertion of an Entrustment Exclusion to deny coverage when an occupant residing in the property damages property by performing unauthorized attempts at repair or modification of the building structure. *See* Reply Memorandum of Law.

31. As set forth earlier in this affidavit, Plaintiffs argue that the insurance policy is ambiguous: that Sterling has wrongfully denied coverage – and that this Court should disregard multiple New York State court decisions that have upheld the validity of a denial based on this exclusion for facts identical to those upon which Plaintiffs Daire's claim is made.

32. Given the case law that supports Sterling's denial of coverage, it is beyond logic or reason for Plaintiff to claim that Sterling (which followed applicable case law in denying Plaintiffs' claim) should be held potentially liable for what Plaintiffs call an act of "deliberately and repeatedly misinterpreting and relying on the so-called 'entrustment exclusion'." *See* proposed unverified amended complaint, para 23.

33. If Sterling misinterpreted the Entrustment Exclusion, and it vigorously argues it did not, then so have multiple New York State courts in reported decisions and this fact, standing alone, warrants dismissal of the GBL §349 claim for alleged deceptive acts and practices. *See Stutman v Chemical Bank*, 95 N.Y.2d 24 (2000) (GBL §349 does not afford a private cause of action where the claims arise from a private contract dispute unique to the

parties.) *See also Rocanova v. Equitable Life Assurance Society*, 83 N.Y.2d 603 (1994). GBL §349 and alleged bad faith claims handling should be dismissed where there is no showing of a “extraordinary showing of disingenuous or dishonest failure to carry out a contract.” *Gordon v. Nationwide Mutual Insurance Co.*, 38 N.Y.2d 427 (1972); *Sukup v. State*, 19 N.Y.2d 519 (1967).

**SETTLEMENT DISCUSSIONS BETWEEN
STERLING AND PLAINTIFF DAIRE**

34. Settlement discussion between Sterling and Daire after Sterling disclaimed coverage and after Daire threatened litigation do not evidence bad faith claims handling.

35. After Sterling disclaimed coverage by a letter of May 7, 2019, Mr. Daire threatened to sue Sterling. In order to avoid the expense of litigation, Sterling offered \$2,000 in settlement of Mr. Daire’s alleged \$63,000 damage claim. Mr. Daire stated that he would accept \$5,000 to settle his alleged \$63,000 damage claim.

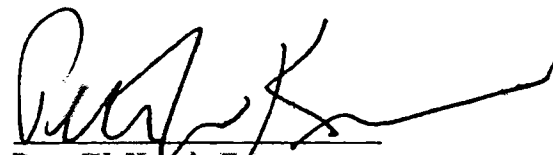
36. It is disingenuous for Plaintiffs to suggest that settlement discussions that took place after Sterling disclaimed coverage and after Mr. Daire threatened to sue Sterling should constitute some evidence of bad faith claim handling. It clearly does not. *See* Affidavits of Sterling Claims Manager, Michael Downie and Sterling Independent Adjuster, Patrick Dorner.

**OTHER NEW YORK COURTS HAVE FOUND THE ENTRUSTMENT
EXCLUSION TO APPLY UNDER THE FACTS SIMILAR TO
THOSE ALLEGED BY PLAINTIFFS DAIRE**

37. Other New York courts have upheld the Entrustment Exclusion under facts similar to those alleged by Plaintiffs Daire. Attached as Exhibit C is the unpublished court decision of Gerald A. Keene, Acting J.S.C, Sup. Ct. Tompkins Co., upholding the insurance coverage denial based on the Entrustment Exclusion.

WHEREFORE, your deponent respectfully requests that the Complaint be summarily dismissed in its entirety and in the alternative that the General Business Law cause of action/claim be summarily dismissed and Plaintiffs' cross-motion to amend the complaint be denied.

By:


Peter W. Knych, Esq.

Sworn to before me this 20th
day of August, 2020.


Notary Public

DEE ANNE CLARK
Notary Public in the State of New York
Qualified in Onondaga County
No. 01CL5037470
My Commission Expires May 21, 2023

**ARTICLE 145—CRIMINAL MISCHIEF
AND RELATED OFFENSES****Section**

- 145.00. Criminal mischief in the fourth degree.
- 145.05. Criminal mischief in the third degree.
- 145.10. Criminal mischief in the second degree.
- 145.12. Criminal mischief in the first degree.
- 145.13. Definitions.
- 145.14. Criminal tampering in the third degree.
- 145.15. Criminal tampering in the second degree.
- 145.20. Criminal tampering in the first degree.
- 145.22. Cemetery desecration in the second degree.
- 145.23. Cemetery desecration in the first degree.
- 145.25. Reckless endangerment of property.
- 145.26. Aggravated cemetery desecration in the second degree.
- 145.27. Aggravated cemetery desecration in the first degree.
- 145.30. Unlawfully posting advertisements.
- 145.35. Tampering with a consumer product; consumer product defined.
- 145.40. Tampering with a consumer product in the second degree.
- 145.45. Tampering with a consumer product in the first degree.
- 145.50. Penalties for littering on railroad tracks and rights-of-way.
- 145.60. Making graffiti.
- 145.65. Possession of graffiti instruments.
- 145.70. Criminal possession of a taximeter accelerating device.

Cross References

Hate crimes, specified offenses, see Penal Law § 485.05.

United States Code Annotated

Malicious mischief, see 18 USCA § 1361 et seq.

§ 145.00 Criminal mischief in the fourth degree

A person is guilty of criminal mischief in the fourth degree when having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. Intentionally damages property of another person; or
2. Intentionally participates in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or
3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars; or
4. With intent to prevent a person from communicating a request for emergency assistance, intentionally disables or removes telephonic, TTY or similar communication sending equipment while that

MISCHIEF NSES

CRIMINAL MISCHIEF

§ 145.00

person: (a) is attempting to seek or is engaged in the process of seeking emergency assistance from police, law enforcement, fire or emergency medical services personnel; or (b) is attempting to seek or is engaged in the process of seeking emergency assistance from another person or entity in order to protect himself, herself or a third person from imminent physical injury. The fact that the defendant has an ownership interest in such equipment shall not be a defense to a charge pursuant to this subdivision.

Criminal mischief in the fourth degree is a class A misdemeanor.

L.1905, c. 1030. Amended L.1967, c. 791, § 17; L.1971, c. 961, § 1; L.1993, c. 496, § 3; L.2008, c. 69, § 1, eff. July 6, 2008.)

Historical and Statutory Notes

L.2008, c. 69 legislation

Section 145.00, L.2008, c. 69, § 1, in part, was added in two places.

Section 145.00, L.2008, c. 69, § 1, substituted "participates" for "participates".

Section 145.00, L.2008, c. 69, § 1, substituted "a period at the end."

Section 145.00, L.2008, c. 69, § 1, added

Section 145.00

Penal Law 1909, §§ 223, 463, 464, 466,

1420-a, 1421, 1423 to 1424,

1425, 1426 to 1428, 1430 to

1432, 1432-a, 1438, 1873, 1906,

1991. Section 223 amended

c. 154; L.1936, c. 895, was from

Code 1881, § 488. Section 463

and L.1915, c. 498, was from Penal

Code 1881, § 479. Section 464 was from

Code 1881, § 480. Section 466

and L.1915, c. 491. Section 1420

and L.1915, c. 434, was from Penal

Code 1881, § 656. Section 1420-a added

L.1939, c. 848, § 2. Section 1421

and L.1920, c. 474, was from Penal

Code 1881, § 637. Section 1423 amended

L.1911, c. 316; L.1915, c. 150;

c. 591, §§ 1 to 3; L.1933, c. 253;

c. 652; L.1951, c. 705; L.1955, c.

1937, c. 381, was from Penal

Code 1881, § 639, amended L.1892, c.

1899, c. 333, § 1. Section

1424 added L.1938, c. 263. Section

1425 added L.1939, c. 66, § 37. Sec-

tion 1426 added L.1963, c. 693, § 2,

amended L.1964, c. 137. Section 1424

added L.1935, c. 589; L.1956, c. 503,

§ 1, was from Penal Code 1881, § 639-a added L.1905, c. 279, § 1, amended L.1908, c. 276, § 1. Section 1424-b added L.1966, c. 751. Section 1425, for history see Derivation note set out under section 140.05. Section 1426 was from Penal Code 1881, § 646. Section 1427 was from Penal Code 1881, § 647, amended L.1892, c. 692, § 1. Section 1428 amended L.1927, c. 342, was from Penal Code 1881, § 648, amended L.1907, c. 405, § 1. Section 1430 amended L.1944, c. 405, was from Penal Code 1881, § 650. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L.1893, c. 692, § 1; L.1900, c. 589, § 1; L.1960, c. 453, § 1. Section 1432, was from Penal Code 1881, § 651-a, added L.1902, c. 333, § 1. Section 1432-a added L.1933, c. 414. Section 1433 amended L.1912, c. 163; L.1915, c. 342, was from Penal Code 1881, § 654, amended L.1892, c. 186, § 1. Section 1438 added L.1939, c. 661, § 41, was from L.1885, c. 392, § 1; L.1901, c. 466, § 600. Section 1873 was from Penal Code 1881, § 83. Section 1906, amended L.1938, c. 108, § 11, was from Penal Code 1881, § 468 amended L.1893, c. 692, § 1 and §§ 461, 469. Section 1911 was from Penal Code 1881, § 674-g, added L.1899, c. 327, § 3. Section 1991 amended L.1941, c. 300; L.1963, c. 136, § 14 was from Penal Code 1881, § 635, amended L.1890, c. 280, § 1; L.1892, c. 692, § 1; L.1895, c. 726, § 1; L.1897, c. 183, § 1.

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van·dal·ism

/ˈvændl.ɪzəm/

noun

action involving deliberate destruction of or damage to public or private property.
"an act of mindless vandalism"

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noun, deliberately mischievous or malicious destruction or damage of property: vandalism of public buildings.

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R-239

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Willful or malicious damage or destruction of the property of another. *van'dal-is'tic* adj. American Heritage® Dictionary of the English Language, Fifth Edition . .

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Criminal mischief can be vandalism, graffiti (even artistic graffiti is considered "mischief"), the breaking of windows, painting without an owner's consent, etal.

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The police in New York are aggressive in their pursuit of offenders and ... Making Graffiti, pursuant to New York Penal Law 145.60, is a crime that many District ...

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The New York City Police Department in keeping with its pledge to aggressively ... (NYC Penal Law section 145.60 "Making Graffiti," a Class A misdemeanor . .

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Also found in: Thesaurus, Legal, Encyclopedia, Wikipedia.

van·dal·ism (văn'dl-iz'əm)

n.

Willful or malicious damage or destruction of the property of another.

van'dal·is'tic *adj.*

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vandalism ('vændə,lɪzəm)

n

the wanton or deliberate destruction caused by a vandal or an instance of such destruction

,vandal'istic, 'vandalish *adj*

Collins English Dictionary – Complete and Unabridged, 12th Edition 2014 © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003, 2006, 2007, 2009, 2011, 2014

van·dal·ism ('væn dl,ɪz əm)

n.

1. deliberate destruction or damage of private or public property.
2. the conduct or spirit characteristic of the Vandals.

[< French *vandalisme* (1793)]

van'dal·is'tic, van'dal·ish, *adj.*

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vandalism

the malicious destruction or defamation of public or private property. — **vandal**, **vandalization**, *n.* — **vandalish**, *adj.*

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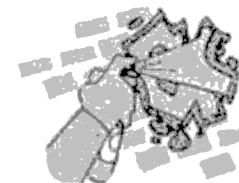
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Noun 1. vandalism - willful wanton and malicious destruction of the property of others

≡ hooliganism, malicious mischief

↔ **destruction, devastation** - the termination of something by causing so much damage to it that it cannot be repaired or no longer exists

↔ **mischief, mischief-making, devilment, roguery, shenanigan, roguishness, devilry, deviltry, mischievousness, rascality** - reckless or malicious behavior that causes discomfort or annoyance in others



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Translations

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vandalismo

vandalism ['vændəlɪzəm] *N* → **vandalismo** *m*

Collins Spanish Dictionary - Complete and Unabridged 8th Edition 2005 © William Collins Sons & Co. Ltd. 1971, 1988 © HarperCollins Publishers 1992, 1993, 1996, 1997, 2000, 2003, 2005

vandal ('vændəl) *noun*

a person who purposely and pointlessly damages or destroys public buildings or other property. *Vandals have damaged this telephone kiosk.* **vándalo**

'**vandalism** *noun*

the behaviour of a vandal. *All the telephones are out of order owing to vandalism.* **vandalismo**

'**vandalize**, '**vandalise** *verb*

The lift in our block of flats has been vandalized. **destrozar**

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vandalism → **vandalismo**

R-244

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New York Vandalism Laws

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When someone damages your property, the impact feels less severe than when someone attacks you physically. However, it is still a harmful violation. When an individual destroys, defaces, or damages the property of another without that person's permission, they have committed an act of vandalism. Every state deals with [vandalism \(https://criminal.findlaw.com/criminal-charges/vandalism.html\)](https://criminal.findlaw.com/criminal-charges/vandalism.html) differently and categorizes vandalism crimes accordingly. New York vandalism laws fall under two different property damage crimes: criminal mischief or criminal tampering.

Criminal Mischief in New York

New York recognizes differing degrees of criminal mischief based on factors including:

- the mental state: whether you intentionally, recklessly, or accidentally damaged someone's property
- the cost of the damage to the property
- the type of property damaged
- the means used to carry out the property damage

Criminal mischief in the fourth degree is the least serious of these offenses and involves damaged property exceeding \$250. On the other end of the spectrum is criminal mischief in the first degree. This offense does not specify a monetary amount of damage and is based solely on the means of the property damage: A person is guilty if he or she damages someone's property by using explosives. Due to the extreme method used by the offender, first degree criminal mischief is a class B felony and can result in a prison sentence of up to 25 years.

Criminal Tampering in New York

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R-245

Criminal tampering is the action a person takes to meddle or interfere with someone's property. The crime is divided into three degrees; the degree depends on what you tampered with and your intent. The most serious of the offenses, criminal tampering in the first degree, is the only such offense that is a felony and carries with it a possible sentence of seven years in prison.

New York Vandalism Laws

The chart below provides a summary of state laws related to vandalism laws in New York, including links to important code sections.

Statutes

- Criminal mischief in the fourth degree: [Penal Law Section 145.00](https://codes.findlaw.com/ny/penal-law/pen-sect-145-00.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-00.html>)
- Criminal mischief in the third degree: [Penal Law Section 145.05](https://codes.findlaw.com/ny/penal-law/pen-sect-145-05.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-05.html>)
- Criminal mischief in the second degree: [Penal Law Section 145.10](https://codes.findlaw.com/ny/penal-law/pen-sect-145-10.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-10.html>)
- Criminal mischief in the first degree: [Penal Law Section 145.12](https://codes.findlaw.com/ny/penal-law/pen-sect-145-12.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-12.html>)
- Criminal tampering in the third degree: [Penal Law Section 145.14](https://codes.findlaw.com/ny/penal-law/pen-sect-145-14.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-14.html>)
- Criminal tampering in the second degree: [Penal Law Section 145.15](https://codes.findlaw.com/ny/penal-law/pen-sect-145-15.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-15.html>)
- Criminal tampering in the first degree: [Penal Law Section 145.20](https://codes.findlaw.com/ny/penal-law/pen-sect-145-20.html) (<https://codes.findlaw.com/ny/penal-law/pen-sect-145-20.html>)

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R-246

**Statutory
Requirements****Criminal Mischief****Fourth degree criminal mischief elements:**

- Intentionally damages someone's property; or
- Intentionally participates in the destruction of an abandoned building; or
- Recklessly damages someone's property in an amount exceeding \$250; or
- Acts with intent to disable or remove communicating sending equipment while a person is trying to get emergency assistance in order to protect himself, herself, or a third party from imminent physical injury.

Third degree criminal mischief elements:

- Damages someone's motor vehicle by breaking into it with the intent of stealing property and within the previous ten year period, the offender has been convicted three or more times in separate criminal transactions of fourth degree criminal mischief, third degree criminal mischief, second degree criminal mischief or first degree criminal mischief; or
- Damages someone's property in an amount exceeding \$250.

Second degree criminal mischief elements:

- Damages someone's property in an amount exceeding \$1500

First degree criminal mischief elements:

- Damages someone's property by using explosives

Criminal Tampering

- Third degree criminal tampering: tampers with the property of another to cause inconvenience
- Second degree criminal tampering: tampers or makes connection with property of a utility company including gas, electric, sewer, telephone, and others.
- First degree criminal tampering: acts with the intent to and does cause interruption/impairment of services of a utility company.

**Possible
Defenses**

- Criminal mischief: lack of intent, you had a right to interfere with the property.
- Criminal tampering: Since first degree requires intent, you can argue that it was an accident. You can also argue that the company is not the type of company designated in the statute. For second degree, you can argue that you were unaware of the tampering.

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R-247

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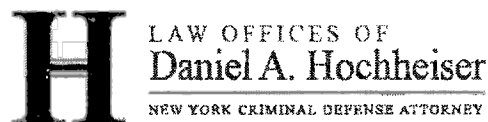
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WHAT ARE THE PENALTIES FOR VANDALISM IN NEW YORK?

Posted By Hochheiser & Hochheiser | | 20-May-2013

In New York, vandalism is covered under the legal definition of "criminal mischief"—although this offense also covers a number of other wrongdoings. Under this statute, you would be subject to the penalties of criminal mischief in the first, second, third or fourth degree if you have intentionally or unlawfully destroyed another person's property. The severity to which you will be charged will depend on the nature and extent of the damage that was done. For example, most forms of graffiti would be classified as a lesser offense, while more aggressive forms of destruction would yield more serious legal consequences. In the end, the seriousness of the charges will be indicative of the total value of the damage that was done. As such, we encourage you to review the information below to gain a more accurate understanding of what penalties you could be facing:

Criminal Mischief in the First Degree

- One would be charged with a first-degree offense if they have knowingly destroyed another person's property through the use of explosives. It is a Class B felony, which is punishable by 5-25 years in state prison and significant fines.

Criminal Mischief in the Second Degree

- One would be charged with a second-degree offense if they have knowingly destroyed another person's property to the extent of \$1,500. It is a Class D felony, which is punishable by up to 5 years in state prison and significant fines.

Criminal Mischief in the Third Degree

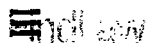
- One would be charged with a third-degree offense if they have knowingly destroyed another person's property to the extent of \$250 to \$1,500. It is a Class E felony, which is punishable by up to 4 years in state prison and significant fines.

Criminal Mischief in the Fourth Degree

R-249

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Vandalism

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Vandalism laws are designed to prohibit conduct that has the potential to cost states millions of dollars each year in clean-up efforts, and may cause psychological or emotional damage to property owners as well. When a person defaces, alters, or otherwise destroys someone's property, they may be required to clean-up, repair, or replace the damaged property or, more substantially, face criminal penalties in the form of [jail time, fines, or both \(https://criminal.findlaw.com/criminal-procedure/sentencing-overview.html\)](https://criminal.findlaw.com/criminal-procedure/sentencing-overview.html).

Definition of Vandalism

Vandalism is a broad category crime that's used to describe a variety of behaviors. Generally, it includes any willful behavior (<https://criminal.findlaw.com/criminal-law-basics/mens-rea-a-defendant-s-mental-state.html>) aimed at destroying, altering, or defacing property belonging to another, which can include:

- Spray painting another's property with the purpose of defacing;
- "Egging" someone's car or house;
- Keying (or scratching) paint off of someone's car;
- Breaking someone's windows;
- Defacing public property with graffiti and other forms of "art";
- Slashing someone's tires;
- Defacing park benches;
- Altering or knocking down street signs; and
- Kicking and damaging someone's property with your hands or feet.

In addition, a person who possesses the *means* to commit vandalism, such as a drill bit

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R-250

or glass cutter, could also face vandalism charges in some circumstances.

Understanding Vandalism Laws

Vandalism laws exist to prevent the destruction of property and public spaces, and may also exist to protect against hate crimes (<https://civilrights.findlaw.com/civil-rights-overview/hate-crime-the-violence-of-intolerance.html>) and other behavior that is directed at religious or minority groups, such as ransacking a church or synagogue, writing racist or sexist graffiti on school property, or etching a swastika in a car.

Criminal property damage is covered by state laws and is usually defined differently by each state. Some states refer to vandalism as "criminal damage", "malicious trespass", "malicious mischief", or other terms. In an effort to control the impact of this crime, many states have specific laws that may decrease certain forms of property damage. For example, some states have local "aerosol container laws" that limit the purchase of spray paint containers or other "vandalism tools" which could be used for defacing property.

In addition, some states have laws that prohibit vandalism to certain types of property, such as cars, churches, school property, and government facilities. Moreover, some state vandalism laws prohibit specific acts, such as breaking windows, graffiti, and using man-made substances to destroy property.

Violation of Vandalism Laws: Penalties and Punishment

Depending on the specific state and value of the property damage, violation of vandalism laws is either a misdemeanor or felony (<https://criminal.findlaw.com/criminal-law-basics/what-distinguishes-a-misdemeanor-from-a-felony.html>) offense. Penalties typically include fines, imprisonment in county jail, or both. In addition, a person convicted of vandalism is frequently ordered to wash, repair or replace the damaged property (known as "restitution"), and/or participate in programs to clean up graffiti and other forms of vandalism. Moreover, a parent of a minor child may be ordered to pay fines resulting from their child's vandal behavior under a "parental liability (<https://family.findlaw.com/parenting-law/parental-civil-liability.html>)" theory.

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It's also important to realize that while vandalism, on its own, is often considered a non-violent crime, it may be accompanied with other crimes or even escalate to more serious crimes. Crimes they may be related to vandalism include burglary (<https://criminal.findlaw.com/criminal-charges/burglary-overview.html>), criminal trespass, or disturbing the peace.

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Defenses to Vandalism Charges

Defenses to vandalism charges typically include circumstances that might "mitigate" or lessen the penalties, such as indifference, accident, mischief, or creative expression. Even though vandalism is a crime that generally requires completion of the act, it doesn't require you to get "caught in the act". You may be charged with this crime after the fact if

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there are witnesses, surveillance, or other evidence

(<https://criminal.findlaw.com/criminal-procedure/law-of-criminal-evidence-background.html>) that might implicate you.

Learn How Your State's Vandalism Laws Apply to You: Speak with an Attorney

There are definitely talented artists who decorate cities with their art, but doing so on someone else's property without permission is a crime. If you're facing vandalism charges, you should consider contacting a qualified criminal defense attorney near you (<https://lawyers.findlaw.com/lawyer/practice/criminal-law?fli=dcta>) to discuss your case and to protect your rights.

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Contact a qualified criminal lawyer to make sure your rights are protected.

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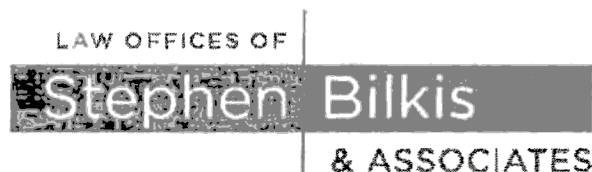
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R-252

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New York Criminal Mischief

A New York Criminal Mischief Lawyer can explain that the crime of Criminal Mischief occurs when a person intentionally defaces or destroys the property of another. This offense is also known as vandalism. Interestingly, there is no action crime in the penal code called "vandalism." This crime can come in many forms. Pursuant to New York Penal Law 145, it can apply if a person prevents another from making an emergency call because the defendant damaged or took their phone. It can also involve tampering with the property at a place of business, electrical or gas meters, or even a graveyard. This offense can be prosecuted in either criminal or civil court. If the offense was committed against a business, the business owner will often opt to bring the case to civil court. This is because in civil court the victim can obtain monetary damages. Being charged with this offense or other criminal matter such as Assault, battery, petite larceny or a White Collar Crime is a very unsettling experience. It is important to speak with the legal team at Stephen Bilkis & Associates, PLLC as soon as possible to ensure that your legal interests are protected.

There are four degrees of this crime. Criminal Mischief in the 4th degree is classified as a misdemeanor offense. A misdemeanor is an offense punishable by up to one year in jail. This offense applies to property that is valued up to \$250.00. This type of vandalism is often seen in the context of graffiti that is seen on subway walls, sides of fences and buildings. If an individual is caught in possession of a tool used to create graffiti, this is considered a separate offense. Criminal Mischief in the third degree is a felony. A felony is considered any crime where the punishment is at least one year in jail or more. This crime applies where the property is valued at between \$250. to \$1,500. Criminal Mischief in the second degree pertains to property that has a value of over \$1,500. and is a D felony. This crime in the first degree is a B felony, and applies where the property has been destroyed by the use of explosives.

This offense can arise in various ways, one of which is involved with "road rage." This type of incident usually arises when one driver makes an error while driving and a heated dispute follow. Often in these situations one party damage the other party's vehicle in some way. The person who caused the damage is often arrested. In order to determine what specific crime the defendant will be charged with the police will estimate the damage to the car. If it appears that the damage exceeds \$250, the defendant is guilty of a felony offense.

A New York District Attorney would usually not question an estimate for damage submitted by the victim. This creates uncertainty as to whether the defendant should be charged with a misdemeanor or a felony offense. If the incident became physical, the charges escalate. Charges can include Assault, criminal menacing, or possession of a weapon. If convicted, the consequences of these charges can be very serious. It is important to seek legal guidance as soon as

possible. Contact our legal team for advice and a free consultation. We have offices in Manhattan, Queens, Brooklyn, the Bronx and Staten Island. We also have locations in Nassau County and Suffolk County on Long Island, as Westchester County. Call us today to schedule an appointment with our legal team at 800.696.9529.

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Client Reviews

★ ★ ★ ★ ★

My wife and I met under some unconventional circumstances. After I had some legal problems, Mr Bilkis and his firm continually got me out of trouble. I then had his firm represented my wife and he got her out of trouble! We are still married and got our ways straightened away. We both can't thank him enough for saving our lives and our families!

J.P.

★ ★ ★ ★ ★

I contacted Stephen Bilkis' office for an issue regarding a family member and I could not be happier with the results. I have recommended the firm to friends and family, all of whom were also ecstatic with Mr. Bilkis and all members of his staff.

P.R.

★ ★ ★ ★ ★

I was in need of legal assistance for a very sensitive matter for a family member. I contacted the law offices of Stephen Bilkis & Associates, PLLC and was met with staff whose demeanor was supportive, compassionate and professional.

The lawyer handling our case had many years of experience and treated us as if we were his own family. Our experience was so good, and we became so close to all of the staff and all of the attorneys who assisted us, that we consider them our extended family and continue to send them our home baked gifts for the holidays.

P.A.K.

R-254

At a Term of the Supreme Court of the State
of New York, held in and for the Sixth
Judicial District at the Tompkins County
Courthouse, in the City of Ithaca, New York
on the 26th day of September, 2019.

STATE OF NEW YORK
SUPREME COURT:: COUNTY OF TOMPKINS

RHONDA BUTLER and KIMBERLY BUTLER,
Plaintiffs,

vs

DRYDEN MUTUAL INSURANCE COMPANY,
Defendant

GERALD A. KEENE, Acting J.S.C.

DECISION & ORDER

Index No. EF2019-0258

RJI No. 2019-0218-M

On April 26, 2018, the plaintiffs, Rhonda Butler and Kimberly Butler (hereinafter referred to as “plaintiffs” or “Butlers”) commenced this breach of contract action against the defendant, Dryden Mutual Insurance Company (hereinafter referred to as “Defendant” or “Dryden Mutual”). The plaintiffs are the owners of 18 Thornberry Drive, Glens Falls, New York (hereinafter referred to as “property”). The defendant is an insurance company and the plaintiffs have an insurance policy for the property through the defendant. The plaintiffs’ insurance policy L18-15-804 covered the plaintiffs’ property from March 29, 2017 to March 29, 2018. The plaintiffs rented the property to a tenant, Zachary Smith (hereinafter referred to as “tenant”) during that time frame.

On May 10, 2017, the plaintiffs filed an insurance claim with the defendant seeking reimbursement for vandalism and physical damage to the property caused by the tenant when he rented the property. The Plaintiffs first became aware of the damage to the property in late April 2017. The tenant lived in the property until approximately May 31, 2017. After the tenant moved out the plaintiff contacted the Glens Falls Police Department regarding the damage to the

property. The police did not charge the defendant criminally for vandalism or theft but took a report concerning damage to the property.

The plaintiff submitted an insurance claim for the damage caused by the tenant. On June 13, 2017, Dryden Mutual sent a letter to the plaintiffs denying coverage for the claim submitted. The letter stated that the insurance policy that the plaintiff had with the defendant does not cover the claim submitted since it was caused by dishonest or criminal acts of the tenant. The insurance policy contains the provision "we do not pay for loss or damage caused by or resulting from any dishonest or criminal act by you, any of your partners, employees, directors, trustees, authorized representatives or anyone, to whom you entrust property for any purpose." The defendant denied the plaintiffs coverage for the loss.

In March 2018, the plaintiffs filed another similar insurance claim on the same policy seeking reimbursement for the vandalism and physical damage caused by the tenant for the property. The defendant received the claim and investigated the second claim. The defendant determined that the property was in the same condition after the first claim was submitted in June 2017 but now the property had additional mold. On May 8, 2018, the defendant sent a letter to the plaintiffs stating that the claim was denied. The letter stated that the claim submitted was not covered and included the relevant sections of the insurance policy that applied to the plaintiffs' submitted claim.

On June 19, 2018, a claims adjuster for the defendant, Michael Seidel, made a settlement offer to the plaintiffs for \$6000 up to \$7500 to settle the claim the plaintiffs submitted. On July 10, 2018, the plaintiffs sent a letter rejecting the defendant's settlement offer.

Now, the plaintiffs contend that the defendant breached their insurance contract since they wrongfully disclaimed coverage under their insurance policy. The plaintiffs allege that the necessary repairs to make the premises habitable is approximately \$50,000.00 and that they incurred a loss of rent of \$28,000.00 from June 1, 2017 to the present. The plaintiffs allege that the total loss for the denial of the claim and loss of rental income is approximately \$78,000.00. The plaintiffs contend that they have made a good faith effort to mitigate the damages but have been unable to renovate and re-rent the property because they do not have the financial resources

to do the work. Therefore, the plaintiffs are seeking a Declaratory Judgment against the Defendant for the following: breach of the insurance contract; breach of the implied covenant of good faith and fair dealing, and unfair settlements practices.

On June 24, 2019, the defendant filed a Notice of Motion, an affidavit of Brendan J. Reagan, Esq., with exhibits and a memorandum of law to dismiss the complaint with prejudice pursuant to CPLR § 3211 (a). The defendant argues that they are entitled to a dismissal of the Verified Complaint because the Verified Complaint alleges a breach of contract for the defendant's failure to pay the plaintiffs for the property damage claim submitted. The defendant argues that the plaintiffs admit in their complaint that their tenant caused the damage to the property and therefore they are entitled to a dismissal of the Verified Complaint since the insurance policy clearly and unambiguously excludes coverage for dishonest or criminal acts by the persons entrusted with the property and the plaintiffs entrusted the property to the tenant.

The defendant argues that the insurance claim submitted by the plaintiff was denied because the entrustment exclusion clearly and unambiguously excludes coverage for damages as alleged in the Complaint by the tenant. The defendant argues that the entrustment exclusion provision excludes any claim submitted to the defendant for vandalism caused by a tenant since he was entrusted with the property by the plaintiff. Therefore, the defendant argues that the complaint should be dismissed since the provision of the insurance contract excludes this coverage.

On July 19, 2019, the plaintiff filed an affirmation of Daniel G. Chertok, Esq., and an affidavit of Kimberly Butler, in opposition of the defendant's Motion to Dismiss. The plaintiff argues that the reason for the denial of the claim given to the plaintiff in the letters compared to the reason for denial in the Motion to Dismiss is different. The plaintiff argues that the claim against the insurance policy is valid since the policy is unclear regarding the exclusion of coverage for vandalism. The plaintiff contends that the language in the insurance policy contract is "squirrely", misleading and unclear. The plaintiff contends it does not make sense to sell the plaintiff who is a landlord an insurance policy with an entrustment exclusion since the policy would not cover or exclude basic claims that a landlord would make. The affidavit from

Kimberly Butler states the plaintiffs obtained insurance coverage for the property in 2007 after they made a decision to rent the property. Butler stated that they specifically sought insurance with coverage to protect them if a tenant caused damage to the property while living there. Butler stated they chose this insurance coverage because an insurance agent, Jeffery Howard from Adirondack Regional Insurance Agency, recommended the policy and told them that intentional damage by a tenant would be part of the coverage. Butler acknowledges that the insurance policy contains an entrustment exclusion provision however she contends that the entrustment exclusion provision was not made clear to the plaintiffs. Moreover, she argues that the language of the contract is contradictory, ambiguous, and misleading and that they believed that they had coverage for vandalism by a tenant.

Finally the plaintiffs argue that they have submitted a viable insurance claim to the defendant and that the defendant breached the insurance contract and failed to deal with them in good faith when adjusting the claim. Furthermore, the plaintiffs request that the defendant file an answer and that the parties would have an opportunity to conduct discovery, including taking depositions before the Court makes a determination on defendant's motion.

On July 22, 2019, the defendant filed an affidavit from Peter W. Knych, Esq., in reply to the plaintiff's opposition to the motion to dismiss the complaint pursuant to CPLR § 3211 (a). The defendant submits that the plaintiffs are opposing the motion to dismiss because the denial letters discuss other exclusion provisions of the contract that do not apply. The defendant argues that the insurance policy contract clearly and unambiguously excludes coverage for the claim that the plaintiff submitted. The defendant argues that the allegations in the plaintiffs' complaint are within the entrustment exclusion and therefore as a matter of law, the Verified Complaint should be dismissed pursuant to CPLR §3211(a) on the grounds that the entrustment exclusion precludes coverage to the plaintiffs.

There is no dispute to the existence of the insurance contract between the Plaintiffs and defendant. Further, there is no dispute that the plaintiffs rented (entrusted) the property to tenant and the tenant damaged the property. The issue is whether the "entrustment exclusion" provision in the insurance contract applies to the damage caused by the tenant.

In determining a dispute over insurance coverage, we first look to the language of the policy” (Lend Lease (US) Const. LMB Inc. v. Zurich Am. Ins. Co., 28 N.Y.3d 675 (2017); *citing* Consolidated Edison Co. of N.Y. v. Allstate Ins. Co., 98 N.Y. 2d 208 (2002); *see* Matter of Viking Pump, Inc., 27 NY3d 244, 257 (2016)). “As with the construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court” (*Id.* *citing* Vigilant Ins. Co. v. Bear Stearns Cos., Inc., 10 NY3d 170(2008); *see* Viking Pump, 27 NY3d at 257; Selective Ins. Co. of Am. v. County of Rensselaer, 26 N.Y.3d 649 (2016)). Of course, where “the policy may be reasonably interpreted in two conflicting manners, its terms are ambiguous” (*Id.* *citing* Matter of Mostow v. State Farm Ins. Cos., 88 N.Y.2d 321 (1996)), and “any ambiguity must be construed in favor of the insured and against the insurer” (*Id.* *citing* White v. Continental Cas. Co., 9 N.Y.3d 264 (2007); *see* Federal Ins. Co. v. International Bus. Machs. Corp., 18 N.Y.3d 642 (2012)). Furthermore, “before an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation ” (*Id.*; *citing* Dean v. Tower Ins. Co. of N.Y., 19 N.Y.3d 704 (2012), quoting Seaboard Sur. Co. v. Gillette Co., 64 N.Y.2d 304 (1984)).

“[U]nambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court.” (Winking Group, LLC v. Aspen Am. Ins. Co., 2018 WL 485974 (SDNY Jan. 18, 2018) *citing* Lend Lease (US) Constr. LMB Inc. v. Zurich Am. Ins. Co., 28 N.Y.3d 675(2017)). Further, Courts in New York have held that exclusions for the dishonest acts of persons to whom the insured entrusts its property are enforceable.” Warehouse Wines & Spirits, Inc. v. Travelers Property Cas. Co. of Am., 101 F. Supp. 3d 299 (S.D.N.Y. 2015). Once a plaintiff has established that it sustained a loss to covered property, the burden shifts to the insurance company to prove that the claimed loss is subject to an exclusion.(*Id.*; *see* Int'l Paper Co. v. Continental Cas. Co., 35 N.Y.2d 327 (1974)).

Here, the documentation and insurance policy submitted show that the insurance policy contains an exclusion of coverage for loss resulting from the dishonest or criminal acts of someone entrusted with the insured property. The plaintiff's insurance policy contains an exclusion that the defendant contends is applicable and the reason for the denial of coverage. The entrustment exclusion in the policy contains the following language:

Exclusions that apply to your policy

We do not pay for loss or damage caused directly or indirectly by any of the following; such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss...

4. Dishonest or Criminal Acts- means loss caused by or resulting from any dishonest or criminal act by you, any of your partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust property for any purpose:

- a. Acting alone or in collusion with others; or
- b. Whether or not occurring during the hours of employment. This is [sic] exclusion does not apply to acts of destruction by your employees; but theft by an employee is not covered.

The parties do not dispute that the insurance policy contained an entrustment exclusion; rather, the plaintiffs contend that they did not know about the exclusion and that the wording of the contract was unclear.

"[A]n insurance contract's language 'must be given its ordinary meaning,' and 'common words' in the policy such as entrusted are not used as words of art with legalistic implications." (Lexington Park Realty LLC v. National Union Fire Ins. Co. of Pittsburgh, PA, 120 A.D.3d 413 (2014); citing Abrams v. Great Am. Ins. Co., 269 N.Y. 90 (1935)). Therefore, when a contract indicates that the property is entrusted, it can be understood that the parties mean that possession of property is willingly 'surrender[ed] or deliver[ed] or transfer[red],' to be 'used for the purpose intended by the owner.... The controlling element is the design of the owner rather than the motive of the one who obtained possession" (Id.).

NYSCEF DOC. NO. 50
FILED: CHENANGO COUNTY CLERK 08/20/2020 04:02 PM
NYSCEF DOC. NO. 23
NYSCEF DOC. NO. 31RECEIVED NYSCEF: 12/01/2022
INDEX NO. 2019-5393RECEIVED NYSCEF: 08/20/2020
INDEX NO. 2019-5393

CI2019-19004

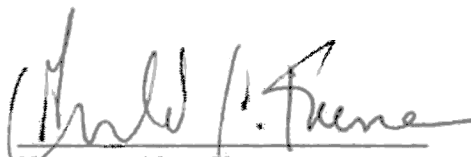
Index #: EF2019-0258

The entrustment exclusion contained in the policy and set forth above is clear and unambiguous. The plaintiffs entrusted the property to their tenant who, according to the complaint, intentionally vandalized and damaged the property. This damage and the resulting loss of rent for subsequent months is not covered by the policy issued to the plaintiffs by the defendant. The defendant properly denied the plaintiffs' claim since the damage was caused by the dishonest and criminal conduct of the tenant, a person to whom the property had been entrusted. For all of the above reasons, it is hereby

ORDERED, that defendant's motion to dismiss the complaint is granted.

This constitutes the decision and order of the court.

Dated: September 26, 2019



Hon. Gerald A. Keene

Acting Supreme Court Justice

Entered 09/26/2019

cc: LeCours, Cherok & Yates, LLP
Daniel G. Chertok, Esq.
Attorney for the Plaintiffs
59 Church Street
Saratoga Springs, New York 12866

Knych & Whritenour, LLC
Peter W. Knych, Esq.
Attorney for the Defendant
One Park Place, Suite, 400
300 South State Street
Syracuse, New York 13202

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

AFFIDAVIT

vs.

Index No.: 2019-5393

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendants.

STATE OF NEW YORK)
COUNTY OF SCHOHARIE) ss.:

MICHAEL DOWNIE, being duly sworn, deposes and says:

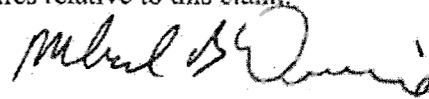
1. I am the Claims Manager of Defendant Sterling Insurance Company and have been the Claims Manager at all pertinent times pertaining to the Daires' insurance claim against Sterling which they assert was a result of vandalism that occurred at their rental property.
2. This affidavit is based on my personal knowledge.
3. Sterling's claim adjuster, Linda Wilday, who I supervise, did issue a denial letter to the Daires for their vandalism claim by a letter dated May 7, 2019.
4. After Sterling issued the denial letter, Mr. Daire called and spoke to me on May 23, 2019. He advised that he disagreed with Sterling's disclaimer letter and he threatened to sue Sterling for that denial. I confirmed this threat of litigation by Mr. Daire in a letter that I sent to him on May 23, 2019. Attached as Exhibit A is a copy of that letter.

5. In light of this threat of litigation by Mr. Daire, I had settlement discussions with him relative to his \$63,000 claim against Sterling. In order to avoid the expense of litigation, I verbally offered Mr. Daire \$1,000. On July 24, 2019, Mr. Daire said that he wanted \$5,000 to settle his \$63,000 claim. I countered Mr. Daire's \$5,000 demand with a \$2,000 offer.

6. Mr. Daire did not accept Sterling's \$2,000 settlement offer to avoid litigation and instead, he commenced the instant law suit.

7. To my knowledge, no one else from or on behalf of Sterling had any settlement discussions or made any settlement offers to the Daires relative to this claim.

By:



Michael Downie, AIC-M
Vice President, Claims
Sterling Insurance Company

Sworn to before me this 19th
day of August, 2020.

Brenda Southworth
Notary Public

BRENDA J. SOUTHWORTH
Notary Public State of New York
No. 01506137546
Qualified in Schoharie County
Commission Expires November 28, 2021

**Sterling Insurance Company
182 Barnerville Road
Cobleskill, NY 12043
518-234-2521**

May 23, 2019

EDWARD DAIRE
ALLISON DAIRE
333 KING ROAD
GREENE, NY 13778

Type of Loss: Property damages
Loss Date: 04/13/2019
Policy #: LP16045937
Policy Dates: 07/01/2018 - 07/01/2019
Claim #: 19-612956P
Location: 2895 STATE ROUTE 7
HARPURSVILLE, , NY 13787
Certified Return Receipt Requested & regular mail

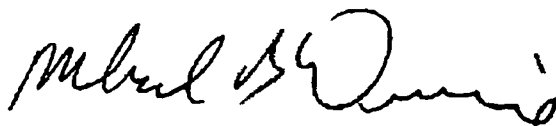
Attention Mr. EDWARD DAIRE:

This correspondence will serve as a follow-up to our telephone conversation of today. You expressed that you disagreed with our disclaimer of 5/7/2019 and threatened litigation. After further conversation, we offered to reopen your claim and have our engineer inspect your premise with you. This appealed to you.

Our engineer Mr. Chet Zarembo of Zarembo Engineering will be contacting you shortly to arrange an inspection. Mr. Zarembo may be reached at 518-712-5631.

Our willingness to further reevaluate the circumstances of your loss will not constitute a waiver of our prior disclaimer.

Sincerely,



Michael Downie AIC-M
Vice-President, Claims
800-462-4661 Ext: 226
mdownie@sterlingins.com

CC: 747-747 Rinker Agency LLC

STATE OF NEW YORK
SUPREME COURT COUNTY OF CHENANGO

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs,

AFFIDAVIT

vs.

Index No.: 2019-5393

HBE GROUP, INC. and STERLING INSURANCE
COMPANY,

Defendants.

STATE OF NEW YORK)
COUNTY OF BROOME) ss.:

PATRICK DORNER, being duly sworn, deposes and says:

1. I am an independent adjuster who works for John M. Dorner Adjustment Co. Inc. and have at all pertinent times been licensed by the State of New York to perform independent adjustment services for various insurance companies including but not limited to Sterling Insurance Company.

2. I make this affidavit based on my personal knowledge in dealing with Edward Daire on behalf of Sterling Insurance Company relative to his vandalism claim which is the subject of this lawsuit.

3. I was assigned by Sterling the Daires' insurance claim and proceeded to attempt to investigate and evaluate that claim. During my investigation I would learn that the Daires were claiming that individuals to whom they entrusted the property had caused what the Daires' claimed was approximately \$63,000 in damage by their acts of vandalism.

4. I have been advised by Sterling's attorney that Mr. Daire claims an individual named "Patrick" made him an offer of "a couple of thousand dollars."

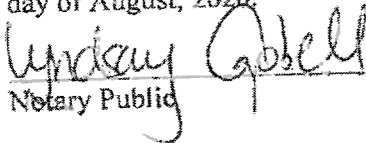
5. I made no offers of any money to the Plaintiffs regarding their insurance claim either before or after Sterling denied coverage for that claim by a letter dated May 7, 2019.

6. I know of no one who on behalf of Dorner Adjustment ever made any offer to Plaintiffs Daire relative to their insurance claim.

By:


Patrick J. Dorner

Sworn to before me this 20th
day of August, 2020.


Notary Public

LYNDSAY CAMPBELL
NOTARY PUBLIC STATE OF NEW YORK
BROOME COUNTY
LIC #01046368257
COMM. EXP. DECEMBER 11, 2021

NEW YORK SUPREME COURT

Appellate Division : Third Department

Docket No.: 532647

Chenango County Index No.: 2019-5393

EDWARD DAIRE and ALLISON DAIRE,

Plaintiffs-Appellants,

-vs-

STERLING INSURANCE COMPANY,

Defendant-Respondent.

and

HBE GROUP, INC.,


Defendant.

STIPULATION PURSUANT TO CPLR § 5532

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing are correct and complete copies of all pertinent papers in this action; that settlement of the transcript and certification of the record are hereby waived; that the parties hereto further agree that should it be discovered that additional documents are not included

in this record that were previously presented to or admitted before the Court, either party may submit the same in an appendix or other appropriate form relative to this appeal; and that any exhibits offered or received in evidence, omitted from the record, have been omitted by consent and shall be filed with the Appellate Division when the briefs are filed.

Dated: July 26, 2021



Ronald R. Benjamin, Esq.
Law Office of Ronald R. Benjamin
Attorneys for Appellants Edward Daire and
Allison Daire
126 Riverside Drive, P. O. Box 607
Binghamton, NY 13902-0607
(607) 772-1442

Dated: July 14th, 2021



Peter W. Knych, Esq.
Knych & Whritenour, LLC
Attorney for Respondent Sterling Insurance
Company
One Park Place, Suite 404
300 South State Street
Syracuse, NY 13202
(315) 579-2962

