

ORIGINAL

IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, N.A.,

Respondent

vs.

ALLSTATE INSURANCE COMPANY,

Petitioner

CASE NO. 2015-1252

Certified Question From The
United States District
Court, Northern District
Of Ohio, Eastern Division,
Case No. 4:15-CV-0239

BRIEF OF PETITIONER ALLSTATE INSURANCE COMPANY WITH RESPECT TO
CERTIFICATION OF A STATE LAW QUESTION

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FILED
NOV 09 2015
CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF FACTS

A. Facts of Claim

The facts of this matter are not in dispute. In September of 2010, Antoniano Delsignore executed a mortgage for a 2010 square foot, single-family home. The home was located at 7376 Yellow Creek Drive in Poland, Ohio. Pursuant to the terms of his mortgage, Mr. Delsignore was required to maintain property insurance for any potential losses, including loss by fire. The insured mortgagee was Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"). Mr. Delsignore obtained a homeowners insurance policy with Allstate Insurance Company (hereinafter "Allstate"). The policy was identified as Policy No. 9 80 584930 09/20 (hereinafter referred to as the "policy").¹ The policy was renewed in September of 2013 and had a one year term.

Mr. Delsignore defaulted on his mortgage payments and Wells Fargo initiated a foreclosure proceeding in 2013. Judgment was entered in Wells Fargo's favor. From at least October of 2013, the property was vacant and unoccupied, a fact of which Wells Fargo was aware.

In February of 2014, a fire loss occurred at the property. Allstate retained an independent company to determine the origin and cause of the fire. It was found that the fire was deliberately started and it was deemed to be the result of arson.

Wells Fargo made a claim with Allstate under the subject policy issued to Mr. Delsignore. Ultimately, the claim was denied by Allstate based upon an exclusion in the policy under Coverage A (Dwelling Protection)², and the pertinent exclusion indicates that when a loss

¹ The policy at issue was filed in Case No. 4:15-cv-00239 in the United States District Court for the Northern District of Ohio and is identified as Doc #: 1-1, Page ID #10-60. For convenience purposes, the petitioner has also attached a copy of the subject policy to the Appendix.

² Coverage A is the primary coverage at issue. Since the home was vacant, and the primary claim was being pursued by the mortgagee, the personal property provisions (Coverage C) of the policy were not directly at issue.

is caused by vandalism or malicious mischief, if the property is vacant for more than 30 consecutive days immediately before the loss occurred, the loss is not covered.

B. Procedural History

Wells Fargo filed a lawsuit against Allstate on in February of 2015 and asserted claims for breach of contract, declaratory judgment, specific performance and unjust enrichment. The case was filed in the United States District Court, Northern District of Ohio, Eastern Division. The Federal Court was made aware of the fact that there are no Ohio legal precedents regarding whether “malicious mischief or vandalism” exclusions in homeowner’s insurance contracts include losses that occur as a result of arson when the coverage involved is all risk. The United States District Court agreed with Allstate’s position that the question should be presented to the Supreme Court of Ohio.

On July 28, 2015, the United States District Court for the Northern District of Ohio issued a certification order to the Supreme Court of Ohio. (Appx., p. 49).

On September 30, 2015, the Supreme Court of Ohio agreed to answer the question certified to it by the United States District Court for the Northern District of Ohio. (Appx., p 57).

C. Relevant Policy Language

The policy language found in the Allstate insurance policy at issue is relatively standard and found in most homeowners policies. The dwelling protection coverage provided through the policy is considered all-risk. In other words, risks are covered as long as they are not specifically excluded by the policy terms. Under Coverage C – Personal Property Protection, the coverage is named peril, and, therefore, only those specifically identified perils are covered. The applicable terms of the policy provide as follows:

Definitions Used In This Policy

* * *

4. **Dwelling** – means the single family **building structure** identified as the insured property on the Policy Declarations, where **you** reside and which is principally used as a private residence.

* * *

11. **Residence premises** – means the **dwelling**, other structures and land located at the address stated on the Policy Declarations.
12. **We, us or our** – means the company named on the Policy Declarations.
13. **You or your** – means the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse.

* * *

Section I – Your Property

Coverage A

Dwelling Protection

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures.

* * *

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in **Coverage A – Dwelling Protection** and **Coverage B – Other Structures Protection** except as limited or excluded in this policy.

* * *

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in **Coverage C – Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.

* * *

4. Riot or Civil Commotion, including Pillage and Looting during, and at the site of, the riot or civil commotion.

8. Vandalism and Malicious Mischief.

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

* * *

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C

A. We do not cover loss to the property described in **Coverage A – Dwelling Protection** or **Coverage B – Other Structures Protection** consisting or caused by the following:

* * *

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

* * *

C. We do not cover loss to the property described in **Coverage A – Dwelling Protection, Coverage B – Other Structures Protection** or **Coverage C – Personal Property Protection** consisting of or caused by the following:

* * *

6. The failure by any **insured person** to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss we cover.

7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.

(Appx., pp. 2-16, 18-19, 20-21, 25-27).

ARGUMENT

CERTIFIED QUESTION: Is “arson” a subset of “fire” or an act of “malicious mischief or vandalism” when neither the “fire” nor “malicious mischief or vandalism” provisions in an insurance contract expressly include “arson”?

PROPOSITION OF LAW: In a homeowners’ insurance contract, “arson” is considered an act of “malicious mischief or vandalism” and is a properly excluded loss pursuant to the vacancy provision in the dwelling coverage portion of the policy.

As this Court is aware, there are no Ohio cases which specifically address the question certified to this Court. The closest analysis of this issue comes from courts which considered similar vandalism exclusions and held that when a dwelling has been vacant in excess of 30 days, the exclusion is unambiguous and can constitute a complete defense to any claim for a vandalism loss which occurs after the 30 day period. See, e.g., *Rheinstrom v. Federal Ins. Co.*, 18 Ohio Misc. 121, 246 N.E. 2d 635 (C.P. 1967); see also *Anderson v. State Farm Fire and Casualty Company*, 10th Dist. Franklin No. 83AP-1013, 1984 WL 6029 (Dec. 13, 1984); see also, *Insurance Company v. Wells*, 42 Ohio St. 519, syllabus, 1885 WL 45 (1885); *Germania Fire Ins. Co. v. Werner*, 76 Ohio St. 543, 81 N.E. 980 (1907). The reason behind the vacancy exclusion is apparent. Vacant homes pose a larger risk and are often vandalized or the situs of destructive crimes, including arson.

The question certified by this court is whether arson is a subset of “fire” which would be covered under the policy or considered an act of “malicious mischief or vandalism” pursuant to the appropriate exclusion for such a loss when property has been unoccupied or vacant for more than 30 consecutive days prior to the act of vandalism or malicious mischief. Based upon the clear and unambiguous language of the policy, it is evident that arson falls under the vacancy exclusion, as it is a form of vandalism or malicious mischief.

The issue is whether it is necessary for the term “arson” to be specifically identified as a form of vandalism in order for the subject vacancy exclusion to apply or whether the policy is ambiguous because “arson” could also fall under the category of a fire which is not specifically identified in the policy as including an exclusion when the dwelling has been vacant for a certain period of time like the “vandalism or malicious mischief” provision does. The role of the court is to give effect to the intent of the contract by the parties. *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 219, 797 N.E., 2d 1256, 1261 (2003). This Court discussed the interpretation of insurance contracts in the *Galatis* case, and stated:

When confronted with an issue of contractual interpretation, the role of a court is to give effect to the intent of the parties to the agreement. We examine the insurance contract as a whole and presume that the intent of the parties is reflected in the language used in the policy. We look to the plain and ordinary meaning of the language used in the policy unless another meaning is clearly apparent from the contents of the policy. When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties. As a matter of law, a contract is unambiguous if it can be given a definite legal meaning.

Id. at ¶¶ 11-14, internal citations omitted.

Reasonable construction must be given to the terms of the contract. See *Dealers Dairy Products Co. v. Royal Ins. Co.*, 170 Ohio St. 336, 164 N.E.2d 745 (1960). As this Court has indicated, words and phrases their plain, ordinary or common meaning when determining whether the language in a contract is ambiguous. *Gomolka v. State Auto Mut. Ins. Co.*, 70 Ohio St.2d 166, 167-168, 436 N.E.2d 1347 (1982); *Westfield Ins. Co. v. Galatis*, supra. When the language of a contract is clear, a court may look no further than the writing to find the intent of the parties, and it may not alter a lawful contract by imputing an intent which is contrary to that expressed by the parties in the contract. Id. Under Ohio law, provisions of an insurance contract are construed against the insurer only when they are found to be ambiguous. *Scott v. Allstate*

Indem. Co., 417 Fed. Supp.2d 929 (N.D. Ohio 2006); *Babandi v. Allstate Indemn. Ins. Co.*, N.D. Ohio No. 1:07CV329, 2008 WL 906116 (Mar.31, 2008). Ohio courts have repeatedly stated that the general rule of liberal construction cannot be used to create an ambiguity in an insurance contract where one does not exist. *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.*, 15 Ohio St.3d 321, 474 N.E.2d 271, 272-73 (1984); see also *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978); *Hacker v. Dickman*, 75 Ohio St.3d 118, 119, 661 N.E.2d 1005 (1996) (A court may not create an ambiguity in a contract when there is none.); *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.*, 64 Ohio St.3d 657, 665, 597 N.E.2d 1096 (1992).

The policy is not ambiguous simply because the terms “arson,” “vandalism,” and “malicious mischief” are not defined. It would be untenable to define all terms in an insurance policy and that is not expected or required of an insurer. As stated above, the law in Ohio has long been established that insurance policies are contracts and, therefore, courts must look to the usually accepted meanings of the words used. In the majority of the states which have addressed the question at issue, courts have followed that same logic with respect to looking to the ordinary meaning of the words used and have held that “arson” is a type of vandalism or malicious mischief and that losses caused by arson would be excluded from coverage as a result of provisions similar to those found in the subject Allstate policy. See, e.g., *Bear River Mut. Ins. Co. v. Williams*, 153 P.3d 798, 567 Utah Adv. Rep. 3, 2006 UT App. 500, at ¶13 (2006) (“We * * * hold that the policy language excludes coverage of vandalism or malicious mischief losses regardless of the means used to inflict those losses, even when a loss could also be characterized by [using] a more specific term such as arson.”); *Battishill v. Farmers Alliance Ins. Co.*, 139 N.M. 24, 127 P.3d 1111, 1115, 2006-NMSC-004 (2006) (The New Mexico Supreme Court held

"that arson is a type of 'vandalism' or 'malicious mischief,' and excluded it from coverage.); *Government Employees Ins. Co. v. Medley*, W.D. Va. No. Civ.A. 96-0964-R, 1998 WL 320392 (Jan. 14, 1998) (holding that the vacancy exclusion in a policy applies where the property was condemned, vacant, and a fire occurred due to vandals); *Frazier v. State Farm Fire and Cas. Co.*, 957 F. Supp. 816 (W.D. Va. 1997) (The court applied a vacancy exclusion to a claim for coverage for a home damaged as a result of arson and holding that the vacancy exclusion applied because arson was an act of vandalism.); *Potomac Ins. Co. of Illinois v. NCUA a/k/a Nat. Credit Union Ass.*, N.D. Ill. No. 96 C 1044, 1996 WL 396100, at*4 (July 12, 1996) (holding that the ordinary meaning of the term "vandalism" includes arson); *American Mut. Fire Ins. Co. v. Durrence*, 872 F.2d 378, 379 (11th Cir. 1989) (holding that "a common sense interpretation of the insurance contract's 'Vandalism or Malicious Mischief' provision which contains the 'vacancy' exclusion, suggests that it would apply to a fire set in a vacant home by an unknown arsonist or vandal."); *Brinker v. Guiffrida*, 629 F. Supp. 130, 135 (E.D. Pa. 1985) ("Willfully and intentionally damaging a dwelling by setting it on fire is certainly damaging the dwelling by vandalism and malicious mischief, as well as arson."); *Estes v. St. Paul Fire and Marine Ins. Co.*, 45 F.Supp 2d, 1227 (D. Kansas 1999) (holding that intentional set fires fall within the plain and ordinary meaning of the term "vandalism."); *United Capital Corp. v. Travelers Indem. Co. of Illinois*, 237 F.Supp.2d 270, 274 (E.D. N.Y. 2002) ("[C]ourts generally agree that the ordinary use of the word 'vandalism' would include arson."); *McPherson v. Allstate Indem. Co.*, M.D. Ala. No. 3:11cv638-WHA, 2012 WL 1448049 (Apr. 26, 2012) (holding that the "definition of 'vandalism' includes willful conduct, and the vacancy exclusion clearly applies to loss from fire which results from such willful conduct.").

The above-mentioned courts have held that it is not necessary to look beyond the dictionary definition of the terms in order to ascertain the ordinary meaning or the words “vandalism,” “malicious mischief,” and “arson,” and the policy is not rendered ambiguous due to the fact that definitions of such terms are missing from the policy. See *Id.*, and *Battishill*, *supra*, at ¶19. The term “arson” has been defined as the “malicious burning of someone else’s dwelling house or within the curtilage.” *Black’s Law Dictionary* (9th Ed. 2009). The term “vandalism” is defined as the “willful or ignorant destruction of public or private property,” and “the actions or attitudes of one who maliciously or ignorantly destroys or disfigures public or private property; active hostility to anything that is venerable or beautiful.” *Id.* Therefore, when considering these basic definitions, it is evident that “vandalism” would include acts of arson when giving the words their plain and ordinary meaning.

A recent case out of Florida provides a cogent analysis of the issue before this Court. In *Botee v. Southern Fidelity Ins. Co.*, 162 So.3d 183, 40 Fla. L Weekly D368 (Fla. App. 2015), the court interpreted policy terms identical to the Allstate policy. Like the Allstate policy, “vandalism or malicious mischief” and “fire” were not defined. The court cited to Webster’s Dictionary, which defined “vandalism” as “willful or malicious destruction or defacement of public or private property,” “malicious mischief” as “willful, wanton, or reckless damage to or destruction of another’s property,” and “arson” as “the willful or malicious burning of property (as a building) especially with criminal or fraudulent intent.” *Id.* quoting Webster’s Tenth New Collegiate Dictionary 702, 1301 (10th ed. 2000). The court held that arson is considered vandalism or malicious mischief by its basic meaning. *Id.* The Florida Appellate Court applied the same logical rationale used by the *Battishill* court, which stated that “[e]ven though arson is a

form of fire to which no exception applies, it is encompassed within the definitions of vandalism and malicious mischief, to which no exception does apply." *Battishill*, supra, at ¶19.

The court in *Botee* also discussed the fact that the policy it was interpreting provided all risk coverage for the dwelling, and named peril coverage for personal property. The Allstate policy is drafted the same. This type of policy is considered to be "hybrid." The coverages are separate and distinct and must be assessed as such. See, e.g., *Constabile v. Metropolitan Property and Casualty Ins. Co.*, 193 Fed.Supp.2d 465 (D. Connecticut 2002). In other words, the provisions of Coverage A have no effect on Coverage C and the converse is also true. The all-risk dwelling converge portion of the policy provides that risks are covered unless specifically excluded. In this case, acts of arson would have been covered but for the vacancy exclusion. It has no relevance that "fire" and "vandalism" are listed as two separate causes of loss or peril in the two sections of the policy or that "arson" is not identified. As stated above, it is not necessary to have listed every conceivable act of vandalism in the policy when "arson" is considered to be an act of vandalism by its ordinary meaning. The *Botee* court distinguished the cases from the courts in the United States that have ruled contrary to the majority of state courts in upholding the vacancy exclusion when arson is the cause of the loss by stating that the policies being interpreted by the courts holding arson is not subject to the vacancy exclusion involved named peril coverage and not all-risk. *Botee*, supra. Therefore, when reviewing the Allstate policy as a whole but analyzing the Coverage A provisions separate as all-risk, it is unequivocal that arson would be considered a form of vandalism or malicious mischief and not covered by the policy.

CONCLUSION

The policy terms at issue are not ambiguous. It was clearly the intent of the parties to include acts of arson under the purview of the terms "vandalism and malicious mischief." The intentional and wanton and willful nature of arson clearly and unambiguously falls under the definitions of "vandalism and malicious mischief." Further, it makes sense that arson should be an excluded loss when the home is vacant for more than 30 days, as that type of loss is what was reasonably contemplated to be not covered under those circumstances since vacant homes are at an increased risk for such acts. According to Ohio law, courts cannot create an ambiguity or give coverage where it does not exist. The reasoning of the majority of the courts in the United States which have addressed whether "arson" is a form of "vandalism or malicious mischief" should be followed by this Court and the certified question should be answered that "arson" is, by its common ordinary meaning, a form of "vandalism and malicious mischief," and excluded by the policy's vacancy exclusion.

Respectfully submitted,

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CERTIFICATION

A copy of the foregoing has been served by regular U.S. Mail, this 9th day of November, 2015 to: **Philip Sineneng, Esq.**, THOMPSON HINE LLP, 41 S. High Street, Suite 1700, Columbus, Ohio 43215, Attorneys for Respondent.

/s/ Margo S. Meola

BONEZZI SWITZER POLITO & HUPP CO., LPA

MARGO S. MEOLA (#0065555)

ATTORNEYS FOR PETITIONER ALLSTATE

APPENDIX

Appx Page

Allstate Insurance Policy.....1

United States District Court, Northern District of Ohio Order of Certification to The Supreme Court of Ohio.....49

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CLAIM# 0321403461

To Whom It May Concern:

I, Patricia Torres, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 02/22/2014. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.



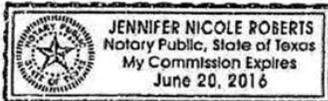
Claim Support

State of Texas, County of Dallas

On this 21st day of May 2014, before me personally appeared Patricia Torres to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.



Notary Public



The enclosed Amended Policy Declarations provides a detailed list of the coverages, coverage limits and coverage costs for your Homeowners policy.

We Appreciate Your Business

Thank you for choosing Allstate Property and Casualty to help with your insurance needs. If you have any questions or concerns, please contact me at (330) 533-0581. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-ALLSTATE® (1-800-255-7828).



McDevitt Ins Agency
Your Allstate Agent

Your Choices and Opportunities

As a customer insured with our Base policy, you have the opportunity to upgrade your policy at any time with one of our new products or options!

Allstate Offers You Innovative New Choices...

Don't forget we now offer Allstate® Your Choice Home insurance, which packages together the kind of coverages and features you want most. That's on top of what you already get from Allstate, like quality claim service available 24/7. Consider whether one of our new Your Choice Home packages—with features not offered in our Base policy—is right for you:

- Platinum Protection package—maximum Allstate protection
- Gold Protection package—enhanced coverage for added protection

Allstate® Your Choice Home Package Comparison

Features	Platinum Protection	Gold Protection
Claim RateGuard SM : Your rate won't go up just because you file your first claim	✓	
Guaranteed Renewal for Claims: Your policy will be renewed regardless of the number of claims you have <small>(not available in all states)</small>	✓	✓
Claim-Free Bonus: You can earn a credit of up to 5% to apply towards your next renewal premium if you remain claim-free	✓	✓
Coverage Cushion: Extended protection that provides reimbursement of up to 120% of your policy limit for covered losses (not available for Select Homeowners policies)	✓	✓
Increased amount of coverage for contents and valuables inside your home (while typically equal to 60% of your current Dwelling coverage limit, it is increased to 75%)	✓	✓
Coverage for theft of jewelry, watches and furs—up to \$5000	✓	✓

...And New Personalized Options

In addition to Your Choice Home packages, we also now offer new Personalized Options. These specialized options provide specific coverage and limit combinations that cater to the individual interests of today's homeowner. Perhaps one of these Personalized Options is right for you:

Prized Possessions : provides extended coverage—up to \$10,000—and increased limits for special assets, such as jewelry, watches and furs and increased limits for silverware.

Home Enterprise Coverage : provides increased coverage limits for those who work from home in an office or studio and need additional protection for equipment, supplies, furnishings and liability for business pursuits. Also includes \$5000 worth of electronic data recovery expense.



Electronic Data Recovery Endorsement : provides expense reimbursement up to \$5000 for costs associated with researching, replacing and restoring lost data. It also provides coverage in the event of lost data due to a computer virus.

Yard & Garden : includes higher limits and extended coverage for trees, shrubs, landscaping and motorized land vehicles (such as riding lawn mowers and garden tractors).

Sports & Leisure : provides expanded coverage for items such as sports equipment and increased coverage limits for certain watercraft.

Music & Photography : provides extended coverage for musical instruments and photography equipment.

You can add a Your Choice Home package or Personalized Option to your policy right away, without waiting for your current policy to expire—just call your Allstate representative for a quote today!

Discounts and Other Opportunities

There are a variety of ways to save money on your Allstate homeowners insurance. Below are just a few discounts and savings options that may be available in your area (subject to qualifications).

Home Buyer Discount

For those who have recently purchased a home that is less than 50 years old.

Claim Free Discount

For those who maintain a property policy for at least one year prior to their Allstate policy's effective date and have no claims within five years.

55 and Retired Discount

For those who are retired and over age 55.

Home and Auto Discount

For those who insure their home, condo, mobile home or apartment through Allstate, as well as their auto.

Age of Home Discount

A varying discount based on the age of home (under 50 years old)—the newer the home, the larger the discount.

Partially Renovated Home Discount

For those with certain home renovations that were completed by a licensed contractor (such as a new roof or updated electrical or plumbing systems).

To learn more about these and other discounts available in your area, contact your Allstate representative today!

X71642

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Allstate Property and Casualty Insurance Company

**AMENDED
Homeowners
Policy Declarations**

Summary

NAMED INSURED(S) Antoniano Delsignore 10693 Rapp Road New Middletown OH 44442-8709	YOUR ALLSTATE AGENT IS: McDevitt Ins Agency 25 Manor Hill #200 Canfield OH 44406	CONTACT YOUR AGENT AT: (330) 533-0581
POLICY NUMBER 9 80 584930 09/20	POLICY PERIOD Begins on Sep. 20, 2013 at 12:01 A.M. standard time, with no fixed date of expiration	PREMIUM PERIOD Sep. 20, 2013 to Sep. 20, 2014 at 12:01 A.M. standard time
LOCATION OF PROPERTY INSURED 7376 Yellow Creek Dr, Poland, OH 44514-2649		
MORTGAGEE • WELLS FARGO BANK NA 708 ITS SUCCESSORS &/OR ASSIGNS P O Box 5708 Springfield OH 45501-5708 Loan # 0373464387		

Total Premium for the Premium Period (Your bill will be mailed separately)

Premium for Property Insured	\$630.69
TOTAL	\$630.69

✓ Your total premium includes a \$1.00 charge for Mine Subsidence.

Your policy change(s) are effective as of Nov. 13, 2013

PROP *010003413111253012530403*



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Information as of
November 12, 2013

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Allstate Property and Casualty Insurance Company

Policy Number: 9 80 584930 09/20 Your Agent: McDevitt Ins Agency (330) 533-0581
 For Premium Period Beginning: Sep. 20, 2013

COVERAGE AND APPLICABLE DEDUCTIBLES (See Policy for Applicable Terms, Conditions and Exclusions)	LIMITS OF LIABILITY	
Dwelling Protection - with Building Structure Reimbursement Extended Limits • \$1,000 All Peril Deductible Applies	\$250,833	
Other Structures Protection • \$1,000 All Peril Deductible Applies	\$25,083	
Personal Property Protection - Reimbursement Provision • \$1,000 All Peril Deductible Applies	\$150,500	
Additional Living Expense	Up To 12 Months Not To Exceed \$25,083	
Family Liability Protection	\$100,000	each occurrence
Guest Medical Protection	\$1,000	each person
Mine Subsidence Coverage	\$250,833	

DISCOUNTS Your premium reflects the following discounts on applicable coverage(s):

Home and Auto	34.00 %	Protective Device	4.00 %
Claim Free	15.00 %		

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family
 Your dwelling is 3 mile(s) to the fire department

Allstate Property and Casualty Insurance Company

Policy Number: 9 80 584930 09/20 Your Agent: McDevitt Ins Agency (330) 533-0581
For Premium Period Beginning: Sep. 20, 2013

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Homeowners Policy form APC220
- Ohio Amendatory Endorsement form APC316
- Bldg. Struct.Reimb.Ext. Limits End. form APC198
- Ohio Amendatory Endorsement form AP4784
- Ohio Mine Subsidence Endorsement form AU1846-3

Important Payment and Coverage Information

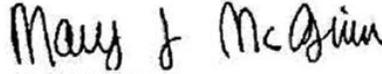
The Property Insurance Adjustment condition applies using the Marshall Swift Boeckh Publications building cost index.

Do not pay. Mortgagee has been billed.

IN WITNESS WHEREOF, Allstate Property and Casualty Insurance Company has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of Allstate Property and Casualty Insurance Company.



Steven P. Sorenson
President



Mary J. McGinn
Secretary

PRDP *010003413111253012530404*



Information as of
November 12, 2013

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Allstate Property and Casualty Insurance Company

Policy Number: 9 80 584930 09/20 Your Agent: McDevitt Ins Agency (330) 533-0581
For Premium Period Beginning: Sep. 20, 2013

Important Notice

DWELLING PROFILE

Allstate has determined that the estimated cost to replace your home is : \$250,833

The enclosed Policy Declarations shows the limit of liability applicable to Coverage A—Dwelling Protection of your homeowners insurance policy. The estimated replacement cost of your home is the minimum amount for which we will insure your home.

The decision regarding the limit applicable to your Coverage A — Dwelling Protection is your decision to make, as long as, at a minimum, your limit equals the estimated replacement cost as determined by Allstate and does not exceed maximum coverage limitations established by Allstate.

It is important to keep in mind that your Coverage A limits reflect a replacement cost that is only an estimate based on data that was available to us when we made this estimate (this data is described further below). The actual amount it will cost to replace your home cannot be known until after a covered total loss has occurred.

How is the replacement cost estimated?

Many factors can affect the cost to replace your home, including its age, size, and type of construction. For example, the replacement cost uses construction data, such as labor and materials, that are available to us when we made this estimate. This estimate is also based on characteristics of the home, which include information that you provided to us. You might have chosen to insure your home for a higher amount than the estimated replacement cost shown above.

Note to customers renewing their policy

The estimated replacement cost for your home may have changed since the last time we communicated this information to you. This is because, at renewal, Allstate uses the home characteristics that you have provided to us to recalculate and update the estimated replacement cost. Using updated labor and material rates for your zip code, Allstate takes the home characteristics you have provided and determines the updated estimated replacement cost. The information about your home's characteristics is provided below.

If the information about your home shown below requires any change or if you have any questions or concerns about the information contained in this Important Notice, please contact your Allstate representative, or call us at 1-800-Allstate.®

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Ohio

Amendatory Endorsement — AP4784

In the **GENERAL** section, the following change is made:

The **Loss Reduction and Other Items** provision is added:

Loss Reduction and Other Items

From time to time and in our sole discretion, we may provide you, or allow others to provide you, with:

1. items, memberships, special offers, merchandise, services, classes, seminars or other things of value designed to help you or other persons insured under this policy manage the risks you or they face, including, but not limited to, loss reduction or safety-related items; or
2. items, memberships, special offers, merchandise, services, classes, seminars or things of any other type that we think may be of value to you or someone else insured under this policy.

These items, memberships, special offers, merchandise, services, classes, seminars or other things of value may be provided in any form, including, but not limited to, redemption codes, coupons, vouchers and gift cards.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

This Endorsement Changes Your Policy—Keep It With Your Policy

Building Structure Reimbursement Extended Limits Endorsement – APC198

For an additional premium and when the Policy Declarations indicates that the "Building Structure Reimbursement Extended Limits Endorsement" applies, the following amendment is made to condition 5 (titled "How We Pay For A Loss") in Section I Conditions:

In provision c) (titled "Building Structure Reimbursement."), item 3) of the second paragraph is replaced by the following:

- 3) 120% of the limit of liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A - Dwelling Protection** or **Coverage B - Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

This endorsement applies only if, at the time of a covered loss, you have met the following conditions:

- 1) You insure your dwelling, attached structures and detached building structures to 100% of replacement cost as determined by our estimate completed and based on the accuracy of information you furnished;
- 2) You have accepted the Property Insurance Adjustment Condition, agree to accept each annual adjustment in the Coverage A - Dwelling Protection limit of liability, and pay any additional premium charged; and
- 3) You notify us within 60 days of the start of any modifications that increase the aggregate value of your dwelling, attached structures and detached building structures at the residence premises by \$5,000 or more, and pay any resulting additional premium due for the increase in value.

If, at the time of a covered loss, you fail to meet any of the conditions in 1), 2) or 3) above, then in Section I—Conditions, item 5., How We Pay For A Loss, under c), Building Structure Reimbursement, item 3) remains:

- 3) the Limit of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A - Dwelling Protection** or **Coverage B - Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

All other policy terms and conditions apply.

Allstate Property and Casualty Insurance Company Homeowners Policy

Policy: |||

Issued to:
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Effective: |||

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Allstate Property and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company—Home Office: Northbrook, Illinois 60062



APC220

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Agreements We Make With You

We make the following agreements with you:

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

1. **Bodily injury**—means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
 - a) any venereal disease;
 - b) Herpes;
 - c) Acquired Immune Deficiency Syndrome (AIDS);
 - d) AIDS Related Complex (ARC);
 - e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

In addition, **bodily injury** does not include any symptom, effect, condition, disease or illness resulting in any manner from:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the **residence premises**.

2. **Building structure**—means a structure with walls and a roof.

3. **Business**—means:
 - a) any full- or part-time activity of any kind engaged in for economic gain including the use of any part of any premises for such purposes. The providing of home day care services to other than an **insured person** or relative of an **insured person** for economic gain is also a **business**.

However, the mutual exchange of home day care services is not considered a **business**;

- b) the rental or holding for rental of property by an **insured person**. Rental of your **residence premises** is not considered a **business** when:
- 1) it is rented occasionally for residential purposes;
 - 2) a portion is rented to roomers or boarders, provided not more than two roomers or boarders reside on the **residence premises** at any one time; or
 - 3) a portion is rented as a private garage.
4. **Dwelling** — means the single family building structure identified as the insured property on the Policy Declarations, where you reside and which is principally used as a private residence.
5. **Insured person(s)** — means you and, if a resident of your household:
- a) any relative; and
 - b) any person under the age of 21 in your care.
- Under Coverage X — Family Liability Protection and Coverage Y — Guest Medical Protection, insured person** also means:
- a) any person or organization legally responsible for loss caused by animals or watercraft covered by this policy which are owned by an **insured person**. We do not cover any person or organization using or having custody of animals or watercraft in any **business**, or without permission of the owner;
 - b) with respect to the use of any vehicle covered by this policy, any person while engaged in the employment of an **insured person**.
6. **Insured premises** — means:
- a) the **residence premises**; and
 - b) under Section II only:
 - 1) the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire for your use as a private residence while this policy is in effect;
- 2) any part of a premises not owned by an **insured person** but where an **insured person** is temporarily living;
 - 3) cemetery plots or burial vaults owned by an **insured person**;
 - 4) land owned by or rented to an **insured person** where a single family dwelling is being built as that person's residence;
 - 5) any premises used by an **insured person** in connection with the **residence premises**;
 - 6) any part of a premises occasionally rented to an **insured person** for other than **business** purposes.
7. **Occurrence** — means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury or property damage**.
8. **Property damage** — means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.
9. **Remediation** — means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under **Coverage A — Dwelling Protection, Coverage B — Other Structures Protection or Coverage C — Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain your normal standard of living if mold, fungus, wet rot or dry rot makes your **residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.
10. **Residence employee** — means an employee of an **insured person** while performing duties arising out of and in the course of employment in connection with the maintenance or use of your **residence premises**. This includes

similar duties performed elsewhere for an **insured person**, not in connection with the **business** of an **insured person**.

11. **Residence premises** — means the dwelling, other structures and land located at the address stated on the Policy Declarations.
12. **We, us or our** — means the company named on the Policy Declarations.
13. **You or your** — means the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse.

Insuring Agreement

In reliance on the information you have given us, we agree to provide the coverages indicated on the Policy Declarations. In return, you must pay the premium when due and comply with the policy terms and conditions, and inform us of any change in title, use or occupancy of the **residence premises**.

Subject to the terms of this policy, the Policy Declarations shows the location of the **residence premises**, applicable coverages, limits of liability and premiums. The policy applies only to losses or **occurrences** that take place during the policy period. The Policy Period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations as the insured and on that person's resident spouse. These persons are defined as **you or your**. This means that the responsibilities, acts and omissions of a person defined as **you or your** will be binding upon any other person defined as **you or your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Conformity To State Statutes

When the policy provisions conflict with the statutes of the state in which the **residence premises** is

located, the provisions are amended to conform to such statutes.

Coverage Changes

When we broaden coverage during the premium period without charge, you have the new features if you have the coverage to which they apply. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information you have given us. You agree to cooperate with us in determining if this information is correct and complete. You agree that if this information changes, is incorrect or incomplete, we may adjust your coverage and premium accordingly during the premium period.

Any calculation of your premium or changes in your coverage will be made using the rules, rates and forms on file, if required, for our use in your state. The rates in effect at the beginning of your current premium period will be used to calculate any change in your premium.

Policy Transfer

You may not transfer this policy to another person without our written consent.

Continued Coverage After Your Death

If you die, coverage will continue until the end of the premium period for:

- 1) your legal representative while acting as such, but only with respect to the **residence premises** and property covered under this policy on the date of your death.
- 2) an **insured person**, and any person having proper temporary custody of your property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:

You may cancel this policy by notifying us of the future date you wish to stop coverage.

Our Right to Cancel:

We may cancel this policy by mailing notice to you at the mailing address shown on the Policy

Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with us, we may cancel this policy for any reason by giving you at least 10 days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with us, we may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
- 4) there has been a substantial change or increase in hazard in the risk we originally accepted.

If the cancellation is for non-payment of premium, we will give you at least 10 days notice. If the cancellation is for any of the other reasons, we will give you at least 30 days notice.

Our mailing the notice of cancellation to you will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. Your return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not to Renew or Continue:
We have the right not to renew or continue the policy beyond the current premium period. If we do not intend to continue or renew the policy, we will mail you notice at least 30 days before the end of the premium period. Our mailing the notice of nonrenewal to you will be deemed proof of notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If we determine that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

What Law Will Apply

This policy is issued in accordance with the laws of the state in which the residence premises is located and covers property or risks principally located in that state. Subject to the following paragraph, the laws of the state in which the residence premises is located shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other occurrence for which coverage applies under this policy happens outside the state in which the residence premises is located, claims or disputes regarding that covered loss to property, or any other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered occurrence happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the residence premises is located. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the residence premises is located, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other occurrence for which coverage applies under this policy happens outside the state in which the residence premises is located, lawsuits regarding that covered loss to property, or any other covered occurrence may also be brought in the judicial district where that covered loss to property, or any other covered occurrence happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there has been full compliance with all policy terms.

Any action against us to which neither the **Action Against Us** provision located in **Section I Conditions** nor the **Action Against Us** provision located in **Section II Conditions** applies must be commenced within one year of the date the cause of action accrues.

If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an **insured person** against us or us against an **insured person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

- a) no arbitrator shall have the authority to award punitive damages or attorney's fees;
- b) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
- c) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Section I – Your Property

**Coverage A
Dwelling Protection**

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.
2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.
3. Wall-to-wall carpeting fastened to **your dwelling**.

Property We Do Not Cover Under Coverage A:

1. Any structure including fences or other property covered under **Coverage B – Other Structures Protection**.
2. Land.
3. Satellite dish antennas and their systems, whether or not attached to **your dwelling**.

**Coverage B
Other Structures Protection**

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.
2. Structures connected to **your dwelling** by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the address of the **residence premises** for use in connection with structures other than **your dwelling**.

4. Wall-to-wall carpeting fastened to building structures on the residence premises other than your dwelling.

Property We Do Not Cover Under Coverage B:

1. Structures used in whole or in part for business purposes.
2. Any structure or other property covered under Coverage A—Dwelling Protection.
3. Land.
4. Construction materials and supplies at the address of the residence premises for use in connection with the dwelling.
5. Satellite dish antennas and their systems, whether or not attached to building structures.

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in Coverage A—Dwelling Protection and Coverage B—Other Structures Protection except as limited or excluded in this policy.

**Coverage C
Personal Property Protection**

Property We Cover Under Coverage C:

1. Personal property owned or used by an insured person anywhere in the world. When personal property is located away from the residence premises, coverage is limited to 10% of Coverage C—Personal Property Protection.
2. At your option, personal property owned by a guest or residence employee while the property is in a residence you are occupying.

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be

considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under Coverage C—Personal Property Protection. The total amount of coverage for each group in any one loss is as follows:

1. \$50— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. \$200— Property used or intended for use in a business while the property is away from the residence premises. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. \$250— Theft of any recording or storage media while such property is away from the residence premises, whether or not it is used with electronic data processing equipment or in a business. Recording or storage media includes, but is not limited to:
 - a) tapes;
 - b) CDs, DVDs and other discs;
 - c) records;
 - d) disks;
 - e) reels;
 - f) cassettes;
 - g) cartridges; or
 - h) programs.
4. \$500— Theft of tools and their accessories.
5. \$1,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value.
6. \$1,000— Property used or intended for use in a business, including property held as samples or for sale or delivery after sale, while the property is on the residence premises. This does not

Page 7

include electronic data processing equipment or the recording or storage media used with that equipment.

7. \$1,000— Trading cards, subject to a maximum amount of \$250 per card.
8. \$1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.
9. \$1,000— Manuscripts, including documents stored on electronic media.
10. \$1,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.
11. \$1,000— Trailers not used with watercraft.
12. \$1,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.
13. \$1,500— Electronic data processing equipment and the recording or storage media used with that equipment whether or not the equipment is used in a business. Recording or storage media will be covered only up to:
 - a) the retail value of the media, if pre-programmed; or
 - b) the retail value of the media in blank or unexposed form, if blank or self-programmed.
14. \$2,000— Theft of firearms, their related equipment, and accessories.
15. \$2,500— Motorized land vehicles used solely for the service of the insured premises and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.
16. \$2,500— Theft of goldware, silverware, pewterware and platinumware.

Property We Do Not Cover Under Coverage C:

1. Personal property specifically described and insured by this or any other insurance.
2. Animals.
3. Motorized land vehicles, including, but not limited to, any land vehicle powered or assisted by a motor or engine. We do not cover any motorized land vehicle parts, equipment or accessories attached to or located in or upon any motorized land vehicle. We do cover motorized land vehicles designed for assisting the disabled or used solely for the service of the insured premises and not licensed for use on public roads subject to **Limitations On Certain Personal Property**, item 15.
4. Aircraft and aircraft parts. This does not include model or hobby craft not designed to carry people or cargo.
5. Property of roomers, boarders, or tenants not related to you.
6. Property located away from the residence premises and rented or held for rental to others.
7. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in Coverage C—**Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.
2. Windstorm or Hail.

We do not cover:

- a) loss to covered property inside a building structure, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind

forces rain, snow, sleet, sand or dust through the damaged roof or wall;
b) loss to watercraft and their trailers, furnishings, equipment and motors unless inside a fully enclosed **building structure**. However, we do cover canoes and rowboats on the **residence premises**.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

We do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations.

8. Vandalism and Malicious Mischief.

We do not cover vandalism or malicious mischief if your **dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

9. Falling objects.

We do not cover loss to personal property inside a **building structure** unless the falling object first damages the exterior walls or roof of the **building structure**.

10. Weight of ice, snow or sleet which causes damage to personal property in a **building structure**, but only if the **building structure** is damaged due to the weight of ice, snow or sleet.

11. Increase or decrease of artificially generated electrical current to electronics, electrical appliances, fixtures and wiring.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system, an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

We do not cover loss at the **residence premises** under perils 12), 13), and 14) caused by or resulting from freezing while the **building structure** is vacant, unoccupied or under construction unless you have used reasonable care to:

- a) maintain heat in the **building structure**; or
- b) shut off the water supply and drain the water from the systems and appliances.

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

We do not cover:

- a) theft or attempted theft committed by an **insured person**;
- b) theft in or from the **residence premises** while under construction or of materials and supplies for use in construction, until the **dwelling** is completed and occupied;

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- c) theft of any property while at any other residence owned, rented to or occupied by an insured person unless the insured person is temporarily residing there;
 - d) theft of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the residence premises;
 - e) theft from that part of the residence premises rented by you to other than an insured person.
16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any building structure on the residence premises. This does not include damage to the glass.

Additional Protection

1. Additional Living Expense

- a) We will pay the reasonable increase in living expenses necessary to maintain your normal standard of living when a direct physical loss we cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** makes your residence premises uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** will be limited to the least of the following:

- 1) the time period required to repair or replace the property we cover, using due diligence and dispatch; or

- 2) if you permanently relocate, the shortest time for your household to settle elsewhere; or
- 3) 12 months.

Additional Living Expense will not exceed the amount indicated on your Policy Declarations.

- b) We will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the residence premises due to a loss at a neighboring premises caused by a loss we insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

2. Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money
We will pay for loss:

- a) that an insured person is legally required to pay for the unauthorized use of any
 - 1) credit card;
 - 2) debit or automated teller machine card;
 - 3) bank fund transfer card;
 - 4) code;
 - 5) account number;
 - 6) personal identification number; or
 - 7) other means of account accessthat can be used, alone or in conjunction with items 1) through 7) above, to obtain money, goods, services, or any other thing

- of value, or that can be used to initiate a transfer of funds.
- b) caused by forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account;
 - c) to an **insured person** through acceptance in good faith of counterfeit United States or Canadian paper currency.

Our maximum limit of liability for any one loss is \$1,000, regardless of the number of persons involved. All loss due to forgery or unauthorized use by or involving any one person is considered one loss.

We do not cover:

- a) loss arising from any business of an **insured person**;
- b) loss caused by or at the direction of an **insured person** or any other person who has been entrusted with any credit card, debit or automated teller machine card, or bank fund transfer card;
- c) loss arising out of dishonesty of an **insured person**.

When loss is discovered, the **insured person** must give us immediate notice. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, the **insured person** must also give immediate notice to the company or bank that issued the card. Failure to comply with the terms and conditions of the card voids this protection.

We will pay only for loss occurring during the policy period, including those losses discovered and reported to us within one year after the policy has terminated. We have the right to investigate and settle any claim or suit as we deem appropriate. Full payment of the amount of insurance for any one loss ends our obligation under each claim or suit arising from the loss.

When this coverage applies, we will defend any suit brought against an **insured person** for the enforcement of payment that an **insured person** is legally required to make as a result

of the unauthorized use of any credit card, debit or automated teller machine card, or bank fund transfer card issued to or registered in the name of an **insured person**. The defense will be at our expense, with counsel of our choice.

When this coverage applies, we have the option to defend an **insured person** or the **insured person's** bank against a suit for the enforcement of payment legally required to be made as a result of forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account. The defense will be at our expense, with counsel of our choice.

No deductible applies to this protection.

3. **Debris Removal**

We will pay reasonable expenses you incur to remove debris of covered property damaged by a loss we cover. If the loss to the covered property and the cost of debris removal are more than the Limit Of Liability shown on the Policy Declarations for the covered property, we will pay up to an additional 5% of that limit for debris removal.

4. **Emergency Removal Of Property**

We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from a premises because of danger from a loss we cover. Protection is limited to a 30-day period from date of removal. This protection does not increase the limit of liability that applies to the covered property.

5. **Fire Department Charges**

We will pay up to \$500 for service charges made by fire departments called to protect your property from a loss we cover at the residence premises. No deductible applies to this protection.

6. **Temporary Repairs After A Loss**

We will reimburse you up to \$5,000 for the reasonable and necessary cost you incur for temporary repairs to protect covered property from further imminent covered loss following a loss we cover. This coverage does not increase

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the limit of liability applying to the property being repaired.

7. Trees, Shrubs, Plants and Lawns

We will pay up to 5% of the Limit Of Liability shown on the Policy Declarations under Coverage A—Dwelling Protection for loss to trees, shrubs, plants and lawns at the address of the residence premises. We will not pay more than \$500 for any one tree, shrub, or plant including expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned by an occupant of the residence premises, vandalism or malicious mischief, theft or collapse of a building structure or any part of a building structure.

We will pay up to \$500 for reasonable expenses you incur for the removal of debris of trees at the address of the residence premises for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under Coverage A—Dwelling Protection or Coverage B—Other Structures Protection.

We do not cover trees, shrubs, plants, or lawns grown for business purposes.

This coverage does not increase the limit of liability applying to the damaged property.

8. Temperature Change

We will pay for loss to covered personal property in a building structure at the residence premises resulting from a change in temperature. The change in temperature must result from a covered loss to the building structure.

This coverage does not increase the limit of liability applying to the damaged property.

9. Power Interruption

We will pay up to \$500 for loss to the contents of freezers and refrigerated units on the

residence premises caused by the interruption of power which occurs off the residence premises. If a power interruption is known to an insured person, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

10. Arson Reward

We will pay up to \$5,000 for information leading to an arson conviction in connection with a fire loss to property covered under Section I of this policy. The \$5,000 limit applies regardless of the number of persons providing information.

11. Collapse

We will cover at the residence premises:

- a) the entire collapse of a covered building structure;
- b) the entire collapse of part of a covered building structure; and
- c) direct physical loss to covered property caused by a) or b) above.

For coverage to apply, the collapse of a building structure specified in a) or b) above must be a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under Section I, Coverage C—Personal Property Protection;
- b) weight of persons, animals, equipment or contents;
- c) weight of rain, snow or ice which collects on a roof;
- d) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

Collapse as referenced herein means the covered building structure or part of the covered building structure has actually fallen down or fallen into pieces unexpectedly and

instantaneously. It does not include settling, cracking, shrinking, bulging, expansion, sagging, or bowing. Furthermore, collapse does not include or mean substantial structural impairment or imminent collapse.

Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, fuel oil tank, septic tank, cistern or similar system, foundation, retaining wall, bulkhead, pier, wharf or dock is not included, unless the loss is a direct result of the collapse of a **building structure** or part of a **building structure** that is a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under **Section I, Coverage C—Personal Property Protection**;
- b) weight of persons, animals, equipment or contents; weight of rain, snow or ice which collects on a roof;
- c) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

This coverage does not increase the limit of liability applying to the covered property.

12. Land

If a sudden and accidental direct physical loss results in both a covered loss to the **dwelling**, other than the breakage of glass or safety glazing material, and a loss of land stability, we will pay up to \$10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of the **dwelling** sustaining the covered loss.

The **Section I—Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

13. Lock Replacement

When a key to a lock is stolen as part of a covered theft loss, we will pay under **Coverage A—Dwelling Protection** the reasonable expenses you incur to replace or re-key exterior door locks at the **residence premises** with locks or cylinders of like kind and quality. The limit of liability under this coverage following any one theft loss is \$500.

This coverage does not increase the limit of liability that applies to the covered property.

Losses We Do Not Cover Under

Coverage A, Coverage B and Coverage C

A. We do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** consisting of or caused by the following:

1. Freezing of:
 - a) plumbing, fire protective sprinkler systems, heating or air conditioning systems;
 - b) household appliances; or
 - c) swimming pools, hot tubs and spas within the **dwelling**, their filtration and circulation systems; or discharge, leakage or overflow from within a), b) or c) above, caused by freezing, while the **building structure** is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - a) maintain heat in the **building structure**; or
 - b) shut off the water supply and drain the system and appliances.
2. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies to fences, pavements, patios, foundations, retaining walls, bulkheads, piers, wharves and docks. This exclusion also applies to swimming pools, hot tubs, spas, their filtration and circulation systems if the swimming pool, hot tub or spa is not located within a heated portion of the **dwelling**.

3. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
 - a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
 - b) from, within or around any plumbing fixtures, including, but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.
4. Collapse, except as specifically provided in **Section I—Additional Protection** under item 11, "Collapse."
5. Theft from **your residence premises** while **your dwelling** is under construction, or of materials and supplies for use in construction, until **your dwelling** is completed and occupied.
6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.
7.
 - a) wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
 - b) mechanical breakdown;
 - c) growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
 - d) rust or other corrosion;
 - e) contamination, including, but not limited to, the presence of toxic, noxious or hazardous gasses, chemicals, liquids, solids or other substances at the **residence premises** or in the air, land or water serving the **residence premises**;
 - f) smog, smoke from the manufacturing of any controlled substance,

- agricultural smudging and industrial operations;
- g) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
 - h) insects, rodents, birds or domestic animals. **We do cover the breakage of glass or safety glazing materials caused by birds; or**
 - i) seizure by government authority.

If any of a) through h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within **your dwelling**, we cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of **your dwelling** necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

8. Soil conditions, including, but not limited to, corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.
- B. We do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** when:
- 1) there are two or more causes of loss to the covered property; and
 - 2) the predominant cause(s) of loss is (are) excluded under items A.1 through A.8 above.
- C. We do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following:

1. Flood, including, but not limited to, surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

2. Water or any other substance that:
 - a) backs up through sewers or drains; or
 - b) overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

3. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the residence premises.

We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 3 listed above.

4. Earth movement of any type, including, but not limited to, earthquake, volcanic eruption, lava flow, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water.

We do cover sudden and accidental direct physical loss caused by fire, explosion, theft or breakage of glass or safety glazing materials resulting from earth movement.

5. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any building structure, other structure or land at the residence premises.

We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

6. The failure by any insured person to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss we cover.
7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an insured person.

8. Intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
 - a) may be reasonably expected to result from such acts; or
 - b) is the intended result of such acts.

This exclusion applies regardless of whether or not the insured person is actually charged with, or convicted of, a crime.

9. Weather Conditions that contribute in any way with a cause of loss excluded under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** to produce a loss.
10. Planning, Construction or Maintenance, meaning 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 property whether on or off the residence premises by any person or organization.

11. Vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

D. We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection when:

- 1) there are two or more causes of loss to the covered property; and
- 2) the predominant cause(s) of loss is (are) excluded under items C.1. through C.11 above.

E. We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection consisting of or caused by mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided in Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.

F. We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection consisting of or caused by the following. These exclusions apply regardless of whether any other cause contributed concurrently or in any sequence to produce the loss:

1. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss by fire, explosion or smoke.

We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

2. War or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section I Conditions

1. **Deductible**

We will pay when a covered loss exceeds the applicable deductible shown on the Policy Declarations. We will then pay only the excess amount, unless we have indicated otherwise in this policy.

2. **Insurable Interest and Our Liability**

In the event of a covered loss, we will not pay for more than an insured person's insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. **What You Must Do After A Loss**

In the event of a loss to any property that may be covered by this policy, you must:

- a) immediately give us or our agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, give notice to the company or bank that issued the card.
- b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
- c) separate damaged from undamaged personal property. Give us a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give us all accounting records, bills, invoices and other vouchers, or certified copies, which we may reasonably request to examine and permit us to make copies.
- e) produce receipts for any increased costs to maintain your standard of living while

you reside elsewhere, and records supporting any claim for loss of rental income.

- f) as often as we reasonably require:
- 1) show us the damaged property.
 - 2) at our request, submit to examinations under oath, separately and apart from any other person defined as you or insured person and sign a transcript of the same.
 - 3) produce representatives, employees, members of the insured person's household or others to the extent it is within the insured person's power to do so; and
- g) within 60 days after the loss, give us a signed, sworn proof of the loss. This statement must include the following information:
- 1) the date, time, location and cause of loss;
 - 2) the interest insured persons and others have in the property, including any encumbrances;
 - 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
 - 4) any other insurance that may cover the loss;
 - 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
 - 6) at our request, the specifications of any damaged building structure or other structure; and
 - 7) evidence supporting any claim under the Credit Card, Debit or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

We have no duty to provide coverage under this section if you, an insured person, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to us.

4. Our Settlement Options

In the event of a covered loss, we have the option to:

- a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time; or
- b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 "How We Pay For A Loss."

Within 30 days after we receive your signed, sworn proof of loss we will notify you of the option or options we intend to exercise.

5. How We Pay For A Loss

Under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection and Coverage C—Personal Property Protection, payment for covered loss will be by one or more of the following methods:

- a) Special Payment. At our option, we may make payment for a covered loss before you repair, rebuild or replace the damaged, destroyed or stolen property if:
 - 1) the whole amount of loss for property covered under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, without deduction for depreciation, is less than \$2,500 and if the property is not excluded from the Building Structure Reimbursement provision, or,
 - 2) the whole amount of loss for property covered under Coverage C—Personal Property Protection, without deduction for depreciation, is less than \$2,500 and if your Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.
- b) Actual Cash Value. If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the Limit Of Liability shown on the Policy Declarations for the coverage that applies to the damaged,

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destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c) and paragraph d) below, if applicable, if you repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

- c) **Building Structure Reimbursement. Under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss, and shall not be payable for any losses excluded in Section I—Your Property, under Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, section E.**

Building Structure Reimbursement will not exceed the smallest of the following amounts:

- 1) the replacement cost of the part(s) of the building structure(s) for equivalent construction for similar use on the same residence premises;
- 2) the amount actually and necessarily spent to repair or replace the damaged building structure(s) with equivalent construction for similar

use on the same residence premises; or

- 3) the Limit Of Liability applicable to the building structure(s) as shown on the Policy Declarations for Coverage A—Dwelling Protection or Coverage B—Other Structures Protection, regardless of the number of building structures and structures other than building structures involved in the loss.

If you replace the damaged building structure(s) at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to building structures and the smallest of 1), 2) or 3) above.

Building Structure Reimbursement will not apply to:

- 1) property covered under Coverage C—Personal Property Protection;
- 2) property covered under Coverage B—Other Structures Protection that is not a building structure;
- 3) wall-to-wall carpeting, fences, awnings and outdoor antennas whether or not fastened to a building structure; or
- 4) land.

Payment under a), b), or c) above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction,

maintenance, repair, relocation or demolition of building structures or other structures.

- d) **Personal Property Reimbursement.** Under **Coverage C—Personal Property Protection**, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered personal property or wall-to-wall carpeting within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

- 1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
- 2) the cost of repair or restoration; or
- 3) the Limit Of Liability shown on the Policy Declarations for **Coverage C—Personal Property Protection**, or any special limit of liability described in the policy, regardless of the number of items of personal property involved in the loss.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Personal Property Reimbursement will not apply to:

- 1) property insured under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, except wall-to-wall carpeting;
- 2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
- 3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;

- 4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
- 5) motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

6. Our Settlement Of Loss

We will settle any covered loss with you unless some other person or entity is named in the policy. We will settle within 60 days after the amount of loss is finally determined. This amount may be determined by an agreement between you and us, an appraisal award or a court judgment.

7. Appraisal

If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the 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 residence premises is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to you and to us the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other appraisal expenses.

8. Abandoned Property

We are not obligated to accept any property or responsibility for any property abandoned by an insured person.

9. Permission Granted To You

- a) The residence premises may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A building structure under construction is not considered vacant.
- b) You may make alterations, additions or repairs, and you may complete structures under construction.

10. Our Rights To Recover Payment

When we pay for any loss, an insured person's right to recover from anyone else becomes ours up to the amount we have paid. An insured person must protect these rights and help us enforce them. You may waive your rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of the loss.

11. Our Rights To Obtain Salvage

We have the option to take all or any part of the damaged or destroyed covered property upon replacement by us or payment of the agreed or appraised value.

We will notify you of our intent to exercise this option within 30 days after we receive your signed, sworn proof of loss. If no signed, sworn proof of loss is requested by us, we will notify you of our intent to exercise this option within 60 days after the date you report the loss to us.

When we settle any loss caused by theft or disappearance, we have the right to obtain all or part of any property which may be recovered. An insured person must protect this right and inform us of any property recovered. We will inform you of our intent to exercise this right within 10 days of your notice of recovery to us.

12. Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which Section I Conditions applies, unless:

- a) there has been full compliance with all policy terms; and
- b) the action is commenced within one year after the inception of loss or damage.

13. Loss To A Pair Or Set

If there is a covered loss to a pair or set, we may:

- a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
- b) pay the difference between the actual cash value of the pair or set before and after the loss.

14. Glass Replacement

Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

15. No Benefit To Bailee

This insurance will not benefit any person or organization who may be caring for or handling your property for a fee.

16. Other Insurance

If both this insurance and other insurance apply to a loss, we will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

17. Property Insurance Adjustment

When the Policy Declarations indicates that the Property Insurance Adjustment Condition applies, you agree that, at each policy anniversary, we may increase the Limit of Liability shown on the Policy Declarations for Coverage A—Dwelling Protection to reflect one of the following:

- a) the rate of change in the Index identified in the "Important Payment and Coverage

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Information" section of the Policy Declarations. The limit of liability for **Coverage A—Dwelling Protection** for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the Index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest \$1000; or

b) the minimum amount of insurance coverage we are willing to issue for the succeeding premium period under **Coverage A—Dwelling Protection** for your dwelling and other property we cover under **Coverage A—Dwelling Protection**.

Any adjustment in the limit of liability for **Coverage A—Dwelling Protection** will result in an adjustment in the limit of liability for **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection** in accordance with our manual of Rules and Rates.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by us at the time a change in limits is made.

We will not reduce the limit of liability shown on the Policy Declarations without your consent. You agree that it is your responsibility to ensure that each of the limits of liability shown on the Policy Declarations are appropriate for your insurance needs. If you want to increase or decrease any of the limits of liability shown on the Policy Declarations, you must contact us to request such a change.

18. Mortgagee

A covered loss will be payable to the Mortgagee(s) named on the Policy Declarations, to the extent of their interest and in the order of precedence. All provisions of Section I of this policy apply to these mortgagees.

We will:

- a) protect the mortgagee's interest in a covered building structure in the event of an increase in hazard, intentional or criminal acts of, or directed by, an insured person, failure by any insured person to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and
- b) give the mortgagee at least 10 days notice if we cancel this policy.

The mortgagee will:

- a) furnish proof of loss within 60 days after notice of the loss if an insured person fails to do so;
- b) pay upon demand any premium due if an insured person fails to do so;
- c) notify us in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- d) give us the mortgagee's right of recovery against any party liable for loss; and
- e) after a loss, and at our option, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee or loss payee or other secured party.

19. Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss

In the event of a covered water loss under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection**, we will pay up to \$5,000 for mold, fungus, wet rot or dry rot remediation.

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures**

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Protection or Coverage C—Personal Property Protection damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain your normal standard of living if mold, fungus, wet rot or dry rot makes your residence premises uninhabitable. Remediation also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection.**

Section II—Family Liability and Guest Medical Protection

Coverage X Family Liability Protection

Losses We Cover Under Coverage X: Subject to the terms, conditions and limitations of this policy, we will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damage arising from an occurrence to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an insured person. If an insured person is sued for these damages, we will provide a defense with counsel of our choice, even if the allegations are groundless, false or fraudulent. We are not obligated to defend any suit or pay any claim or judgment after we have exhausted our limit of liability.

Coverage Y Guest Medical Protection

Losses We Cover Under Coverage Y: We will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses,

hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an occurrence causing bodily injury to which this policy applies, and is covered by this part of the policy.

Each person who sustains bodily injury is entitled to this protection when that person is:

1. on the insured premises with the permission of an insured person; or
2. off the insured premises, if the bodily injury:
 - a) arises out of a condition on the insured premises or immediately adjoining ways;
 - b) is caused by the activities of an insured person or a residence employee;
 - c) is caused by an animal owned by or in the care of an insured person; or
 - d) is sustained by a residence employee.

Additional Protection

We will pay, in addition to the limits of liability:

1. **Claim Expense**

We will pay:

 - a) all costs we incur in the settlement of any claim or the defense of any suit against an insured person;
 - b) interest accruing on damages awarded until such time as we have paid, formally offered, or deposited in court the amount for which we are liable under this policy; interest will be paid only on damages which do not exceed our limits of liability;
 - c) premiums on bonds required in any suit we defend; we will not pay bond premiums in an amount that is more than our limit of liability; we have no obligation to apply for or furnish bonds;
 - d) up to \$150 per day for loss of wages and salary, when we ask you to attend trials and hearings;
 - e) any other reasonable expenses incurred by an insured person at our request.
2. **Emergency First Aid**

We will pay reasonable expenses incurred by an insured person for first aid to other persons at the time of an accident involving bodily injury covered under this policy.

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3. Damage To Property Of Others

At your request, we will pay up to \$500 each time an insured person causes property damage to someone else's property. At our option, we will pay the cost to either repair or replace the property damaged by an insured person, without deduction for depreciation.

We will not pay for property damage:

- a) to property covered under Section I of this policy;
- b) to property intentionally damaged by an insured person who has attained the age of 13;
- c) to property owned by or rented to an insured person, any tenant of an insured person, or any resident in your household; or
- d) arising out of:
 - 1) past or present business activities;
 - 2) any act or omission in connection with a premises, other than an insured premises, owned, rented or controlled by an insured person; or
 - 3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

Losses We Do Not Cover Under Coverage X and Coverage Y

A. Losses We Do Not Cover Under Coverage X:

1. We do not cover bodily injury to an insured person or property damage to property owned by an insured person whenever any benefit of this coverage would accrue directly or indirectly to an insured person.
2. We do not cover any property damage consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.
3. We do not cover any bodily injury or property damage arising out of any liability statutorily imposed upon any insured person in any manner, consisting

of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

4. We do not cover any liability an insured person assumes arising out of any contract or agreement.

5. We do not cover property damage to property rented to, occupied or used by, or in the care of, an insured person. This exclusion does not apply if the property damage is caused by fire, explosion or smoke.

6. We do not cover any liability imposed upon any insured person by any governmental authority for bodily injury or property damage which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

B. Losses We Do Not Cover Under Coverage Y:

1. We do not cover bodily injury to any insured person or regular resident of the insured premises. However, this exclusion does not apply to a residence employee.
2. We do not cover bodily injury to any person on the insured premises because of a business activity or professional service conducted there.

C. Losses We Do Not Cover Under Coverage X and Coverage Y:

Coverage under Coverage X—Family Liability Protection will be excluded for bodily injury and property damage and coverage under Coverage Y—Guest Medical Protection will be excluded for bodily injury as follows:

1. We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or

omissions of, any **insured person**. This exclusion applies even if:

- a) such **insured person** lacks the mental capacity to govern his or her conduct;
- b) such **bodily injury** or **property damage** is of a different kind or degree than intended or reasonably expected; or
- c) such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

2. We do not cover **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured person** under any worker's compensation, non-occupational disability or occupational disease law.

3. We do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of aircraft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

4. We do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:
 - a) a motor vehicle in dead storage or used exclusively on an **insured premises**;
 - b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an **insured person** and is

being used away from an **insured premises**;

- c) a motorized wheel chair;
- d) a vehicle used to service an **insured premises** which is not designed for use on public roads and not subject to motor vehicle registration;
- e) a golf cart owned by an **insured person** when used for golfing purposes;
- f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
- g) lawn or garden implements under 40 horsepower;
- h) **bodily injury** to a **residence employee**.

5. We do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of watercraft away from an **insured premises** if the watercraft:

- a) has inboard or inboard-outboard motor power of more than 50 horsepower;
- b) is a sailing vessel 26 feet or more in length;
- c) is powered by one or more outboard motors with more than 25 total horsepower;
- d) is designated as an airboat, air cushion, or similar type of watercraft; or
- e) is a personal watercraft, meaning a craft propelled by a water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

6. We do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of hovercrafts. This exclusion does not

apply to **bodily injury** to a **residence employee**.

7. We do not cover **bodily injury or property damage** arising out of:
- the negligent supervision by any **insured person** of any person; or
 - any liability statutorily imposed on any **insured person**

arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any aircraft, watercraft, hovercraft, motorized land vehicle or trailer which is not covered under **Section II** of this policy.

8. We do not cover any **bodily injury** which results in any manner from the discharge, dispersal, release or escape of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

We do cover **bodily injury** which results from such discharge if the discharge is sudden and accidental.

9. We do not cover **bodily injury or property damage** arising out of the rendering of, or failure to render, professional services by an **insured person**.

10. We do not cover **bodily injury or property damage** arising out of the past or present **business activities** of an **insured person**.

We do cover the occasional or part-time **business activities** of an **insured person** who is a student under 21 years of age who is self-employed and has no employees.

11. We do not cover **bodily injury or property damage** arising out of any premises, other than an **insured premises**, owned, rented or controlled by an **insured person**. This

exclusion does not apply to **bodily injury** to a **residence employee**.

12. We do not cover **bodily injury or property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.
13. We do not cover **bodily injury or property damage** caused by war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section II Conditions

1. **What You Must Do After An Accidental Loss**

In the event of **bodily injury or property damage**, you must do the following:

- Promptly notify us or our agent stating:
 - your name and policy number;
 - the date, the place and the circumstances of the loss;
 - the name and address of anyone who might have a claim against an **insured person**;
 - the names and addresses of any witnesses.
- Promptly send us any legal papers relating to the accident.
- At our request, an **insured person** will:
 - cooperate with us and assist us in any matter concerning a claim or suit;
 - help us enforce any right of recovery against any person or organization who may be liable to an **insured person**;
 - attend any hearing or trial.
- Under the **Damage To Property Of Others** protection, give us a sworn statement of the loss. This must be made within 60 days after the date of loss. Also, an **insured person** must be prepared to show us any damaged property under that person's control.

Any **insured person** will not voluntarily pay any money, assume any obligations or incur any expense, other than for first aid to others

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at the time of the loss as provided for in this policy.

2. What An Injured Person Must Do – Coverage Y – Guest Medical Protection

If someone is injured, that person, or someone acting for that person, must do the following:

- a) Promptly give us written proof of the loss. If we request, this must be done under oath.
- b) Give us written authorization to obtain copies of all medical records and reports.
- c) Permit doctors we select to examine the injured person as often as we may reasonably require.

3. Our Payment Of Loss – Coverage Y – Guest Medical Protection

We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by us or an insured person.

4. Our Limits Of Liability

Regardless of the number of insured persons, injured persons, claims, claimants or policies involved, our total liability under Coverage X – Family Liability Protection for damages resulting from one occurrence will not exceed the Limit Of Liability shown on the Policy Declarations. All bodily injury and property damage resulting from continuous or repeated exposure to the same general conditions is considered the result of one occurrence. Our total liability under Coverage Y – Guest Medical Protection for all medical expenses payable for bodily injury, to any one person, shall not exceed the "each person" Limit Of Liability shown on the Policy Declarations.

5. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

6. Our Rights to Recover Payment – Coverage X – Family Liability Protection

When we pay any loss, an insured person's right to recover from anyone else becomes

ours up to the amount we have paid. An insured person must protect these rights and help us enforce them.

7. Action Against Us

- a) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, unless there has been full compliance with all policy terms.
- b) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Coverage X – Family Liability Protection, unless the obligation of an insured person to pay has been finally determined either by judgment against the insured person after actual trial, or by written agreement of the insured person, injured person and us, and the action against us is commenced within one year of such judgment or agreement.
- c) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Coverage Y – Guest Medical Protection, unless such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred.
- d) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Section II – Additional Protection, unless such action is commenced within one year after the date the claim expenses or emergency first aid expenses for which coverage is sought were actually incurred, or within one year after the date of loss to the property if coverage is being sought under the Damage to Property of Others provision.
- e) No one shall have any right to make us a party to an action to determine the liability of an insured person.

8. **Other Insurance—Coverage X—Family Liability Protection**
This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III—Optional Protection

Optional Coverages You May Buy

The following Optional Coverages may supplement coverages found in Section I or Section II and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. **Coverage BC
Building Codes**
We will pay up to 10% of the amount of insurance on the Policy Declarations under Coverage A—Dwelling Protection to comply with local building codes after a covered loss to the dwelling or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of the dwelling.
2. **Coverage BP
Increased Coverage On Business Property**
The limitation on business property located on the residence premises, under Coverage C—Personal Property Protection, is increased to the amount shown on the Policy Declarations. This increased coverage includes property held as samples or for sale or delivery after sale, while the property is on the residence premises.
3. **Coverage DP
Increased Coverage On Electronic Data Processing Equipment**
The limitation on electronic data processing equipment under Coverage C—Personal Property Protection, and the recording or storage media used with that equipment, is

increased to the amount shown on the Policy Declarations.

4. **Coverage F
Fire Department Charges**
The \$500 limit applying to the fire department service charges under Additional Protection is increased to the amount shown on the Policy Declarations.

5. **Coverage G
Loss Assessments**
If your residence premises includes a building structure which is constructed in common with one or more similar buildings, and you are a member of, and subject to the rules of, an association governing the areas held in common by all building owners as members of the association, the Insured premises means the building structure occupied exclusively by your household as a private residence, including the grounds, related structures and private approaches to them.

We will pay your share of any special assessments charged against all building owners by the association up to the Limit Of Liability shown on the Policy Declarations, when the assessment is made as a result of:

- a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss we cover under Section I of this policy; or
- b) bodily injury or property damage covered under Section II of this policy.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

We will pay only when the assessment levied against the Insured person, as a result of any one loss, for bodily injury or property damage exceeds \$250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to Section I of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to **Sections I and II** of this policy and the **Section I and II Conditions**, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

**6. Coverage J
Extended Coverage On Jewelry, Watches and Furs**

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to the following property, subject to the provisions in this coverage:

- a) jewelry, watches, gems, precious and semi-precious stones, gold, platinum; and
- b) furs, including any item containing fur which represents its principal value.

The total amount of coverage and per item limit is shown on the Policy Declarations. This amount is not in addition to the amount of insurance applying to **Coverage C—Personal Property Protection**. However, in no event will coverage be less than would have applied in the absence of **Coverage J**.

We do not cover loss caused by or consisting of:

- a) intentional or criminal acts of or at the direction of any **Insured person**, if the loss that occurs:
 - 1) may be reasonably expected to result from such acts; or
 - 2) is the intended result of such acts.
- b) wear and tear, gradual deterioration, inherent vice, insects or vermin;
- c) nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.
- d) war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

- e) failure by any **insured person** to take all reasonable steps to preserve property during and after a loss or when the property is endangered by a cause of loss we cover.

Any deductible shown on the Policy Declarations applicable to **Coverage C—Personal Property Protection**, also applies to a loss under this coverage.

**7. Coverage K
Incidental Office, Private School Or Studio**

- a) The limits applying to property used or intended for use in a **business** under **Coverage C—Personal Property Protection** do not apply to equipment, supplies and furnishings used in a described office, private school or studio at your **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

The **Coverage K** limits are shown on the Policy Declarations. The first limit applies to property on the **residence premises**. The second limit applies to property while away from the **residence premises**. These limits are not in addition to **Coverage C—Personal Property Protection, Limitations On Certain Personal Property** on property used or intended for use in a **business**. The increased coverage does not include property held for sample, sale or delivery after sale.

- b) **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection** are extended to cover a described office, private school or studio occupied by an **insured person**. The occupancy of the described property shall not be considered a **business**.

We do not cover **bodily injury** to:

- a) any employee other than a **residence employee**; or

- b) any person arising out of corporal punishment administered by or at the direction of an insured person.

8. Coverage M

Increased Coverage On Money

The limitation on money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

9. Coverage P

Business Pursuits

Coverage X—Family Liability Protection and **Coverage Y—Guest Medical Protection** are extended to cover specified business pursuits of an insured person.

We do not cover:

- a) **bodily injury or property damage** arising out of the business pursuits of an insured person when the business is owned or financially controlled by the insured person. This also means a partnership or joint venture of which an insured person is a partner or member;
- b) **bodily injury or property damage** arising out of the rendering of or failure to render a professional service of any nature, other than teaching;
- c) **bodily injury** to a fellow employee of an insured person arising out of and in the course of employment;
- d) **bodily injury or property damage** when an insured person is a member of a teaching staff or faculty of any school or college and the **bodily injury or property damage** arises out of the maintenance or use of saddle animals, vehicles used with

saddle animals, motorized land vehicles, hovercrafts, aircraft or watercraft when owned, hired or operated by an insured person or used for the purpose of instruction; or

- e) **bodily injury** to any person arising out of corporal punishment administered by or at the direction of an insured person when an insured person is a member of the teaching staff or faculty of any school of instruction.

10. Coverage S

Increased Coverage On Securities

The \$1,000 limitation on accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property, covered under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations.

11. Coverage SD

Satellite Dish Antennas

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to satellite dish antennas and their systems on your residence premises, subject to the provisions of **Coverage C—Personal Property Protection**.

The amount of coverage is shown on the Policy Declarations.

12. Coverage ST

Increased Coverage On Theft Of Silverware

The limitation on theft of goldware, silverware, pewterware and platinumware under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Ohio

Homeowners Amendatory Endorsement — APC316

I. In the **General** section, the following changes are made:

A. The **Cancellation** provision is deleted and replaced by the following:

Cancellation

Your Right to Cancel:

You may cancel this policy by notifying **us** of the future date **you** wish to stop coverage.

Our Right To Cancel:

We may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy Declarations. When this policy has been in effect for 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason by giving **you** at least 30 days notice before the cancellation takes effect.

When this policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
- 4) there has been substantial change or increase in hazard in the risk **we** originally accepted.

If the cancellation is for non-payment of premium, **we** will give **you** at least 10 days notice. If the cancellation is for any other reasons, **we** will give **you** at least 30 days notice.

Our mailing the notice of cancellation to **you** will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not To Renew Or Continue:

We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 30 days before the end of the premium period. **Our** mailing the notice of nonrenewal to **you** will be deemed proof of notice.

B. The following provision is added:

Conditional Reinstatement

If we mail a cancellation notice because you did not pay the required premium when due and you then tender payment by check, draft, or other remittance which is not honored upon 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 coverage is void. This means that we will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

- II. In Section II—Family Liability and Guest Medical Protection, Losses We Cover Under Coverage X is replaced by the following:

Losses We Cover Under Coverage X:

Subject to the terms, conditions and limitations of this policy, we will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damage arising from an occurrence to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an insured person. If an insured person is sued for these damages, we will provide a defense with counsel of our choice, even if the allegations are groundless, false or fraudulent. We are not obligated to pay any claim or judgment after we have exhausted our limit of liability.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Ohio Mine Subsidence Insurance Underwriting Association Mine Subsidence Coverage – AU1846-3

In consideration of an additional premium the structure at the described location per the insurance policy to which this mine subsidence insurance coverage form attaches is insured against direct loss on an occurrence basis caused by mine subsidence as herein defined and for the limit of liability as stated below. This mine subsidence insurance is provided by the Mine Subsidence Insurance Fund. This endorsement creates no liability on the part of the insurance company issuing the policy to which this endorsement attaches or the Ohio Mine Subsidence Insurance Underwriting Association or its members, or the Ohio FAIR Plan Underwriting Association or the Ohio Insurance Guaranty Association or its members. Also, no liability is created on the part of the State of Ohio beyond the premiums paid into the Fund.

Definitions

1. "Mine subsidence" means lateral or vertical movement including the collapse, which results from such movement as a result of man made underground mines, including underground coal mines, clay mines, limestone mines and salt mines. Mine subsidence does not include loss caused by earthquake, landslide, volcanic eruption, or collapse of strip mines, any surface mines, storm and sewer drains, or rapid transit tunnels.
2. An "occurrence" is a single subsidence event or several subsidence events which are continuous.
3. A "structure" means a 1-4 family dwelling building fixed to realty but does not include the land, trees, plants, crops, sidewalks, driveways, outbuilding, detached garages, industrial or commercial buildings.
4. "Private garages" are other structures at the described location, set apart from the dwelling structure by clear space. This includes structures connected to the dwelling structure by only a fence, utility line, or similar connection. However, these other structures may not be used in whole or in part for commercial, manufacturing, or farming purposes nor be rented by or held for rental to any person not a tenant of the dwelling structure.
5. "Sidewalks and driveways" are those that are usual to a 1-4 family dwelling structure and that are used primarily by residents of the structure at the described location.
6. "Additional living expense" is a necessary increase in living expenses due to damage to the structure at the described location by mine subsidence which causes the structure to be unfit for habitation.
7. "Fair rental value" is the rental income lost net of non-continuing expenses if a part of the structure is damaged by mine subsidence and that damage causes the rental structure or the rented part of the structure to be unfit for habitation.

Property Covered

This coverage applies to the structure at the described location including:

1. The cost of excavation or grading.
2. Foundations of buildings, boilers or engines which are below the under surface of the lowest basement floor or where there is no basement below the surface of the ground.
3. Underground pilings, piers, pipes, flues and drains and/or pilings, which are below the watermark.

This coverage may apply to private garages within the special limits of liability of the following loss payment clause of this coverage form.

This coverage may apply to sidewalks and driveways but only if there is subsidence damage by the same occurrence to the insured structure. See the special limits of liability within the following loss payment clause of this coverage form.

Loss Payment

The limit of liability for loss to the structure at the described location under this coverage form shall not exceed the smallest of the following amounts:

1. The limit of liability on your dwelling in the insurance policy to which this mine subsidence insurance coverage form attaches or \$300,000, whichever is less;
2. If more than one coverage for mine subsidence insures any given structure, the limit of liability is the largest limit of coverage on a single insurance policy to which this mine subsidence insurance coverage form attaches or one single limit of \$300,000, whichever is less;
3. The actual cash value of the loss if repairs will not be made to the property damaged by mine subsidence. Actual cash value is defined as replacement cost less depreciation or betterment;
4. The amount actually and necessarily expended in repairing or replacing the insured structure with modern building materials only if that structure's repair or replacement is made intending that the structure have the same occupancy and use;
5. The amount available in the Mine Subsidence Insurance Fund administered by the Governing Board of the Mine Subsidence Insurance Underwriting Association.

Special limits of liability apply to the coverage for driveways, sidewalks, and private garages as follows:

1. The total limit of liability for all sidewalks and driveways is an additional coverage amount of up to 10% of the mine subsidence coverage limit of liability for the insured structure. In no case will this limit of liability exceed the amount actually and necessarily expended by the insured in repairing or replacing any sidewalks and driveways for which the insured has the responsibility for repair or replacement.
2. The total limit of liability for all private garages is an additional coverage amount of up to 10% of the mine subsidence coverage limit of liability for the insured dwelling. In no case will this limit of liability exceed the amount actually and necessarily expended in repairing or replacing the private garages with

Page 2

modern building material and payment will be made only if the repair is made intending that the building(s) be private garage(s) after repaired or replaced.

An additional amount of coverage of up to \$5000 will be paid for additional living expense and/or fair rental value if the insured structure is not fit to live in due to a mine subsidence occurrence. Payment will be for the shortest time required for repair of the mine subsidence damage.

Perils Not Insured Against

This mine subsidence coverage does not insure against loss caused by earthquake, landslide, volcanic eruption, or collapse of strip mines, any surface mines, storm and sewer drains or rapid transit tunnels, or other earth movement.

Deductible

THE FOLLOWING DEDUCTIBLE PROVISION APPLIES PER OCCURRENCE:

2% of the coverage available with a minimum deductible of \$250 and a maximum deductible of \$500.

Other Provisions

1. This coverage is provided by provisions of Ohio revised code 3929.50 to 3929.53 and 3929.55 to 3929.56 and 3929.58 to 3929.61 and any subsequent amendments thereof enacted by the Ohio legislature. The amounts payable under this coverage are limited to the balance in the Mine Subsidence Insurance Fund from which all claims and other expenses of administering this fund are paid.
2. The coverage afforded herein shall not be subject to provisions 3929.25 commonly known as the valued policy law.
3. All claims authorized for payment shall be paid directly by the Mine Subsidence Insurance Fund.
4. This entire coverage shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.
5. There is no coverage for any loss occurring:
 - (a) While the hazard is increased by any means within the control or knowledge of the insured; or
 - (b) While a described building, whether intended for occupancy by owner or tenant, is vacant, or more than 50 percent unoccupied beyond a period of sixty consecutive days.
6. This coverage shall terminate when the insurance policy to which this mine subsidence insurance coverage form attaches is cancelled or non-renewed. The insured shall receive a pro-rata refund of the unearned premium provided that if the unearned premium to be refunded is less than \$3.00, it will be refunded only if the first named insured specifically requests in writing that it be returned.
7. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, and if the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association shall claim that no liability existed as

to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and the mortgage.

- B. The insured shall give immediate written notice of any loss to the Fund through his insurance company, protect the property from further damage, put it in the best possible order, furnish an estimate of the destroyed property showing in detail the actual cash value and the amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing, by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association, the insured shall render a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any structure herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if destroyed or damaged, the insured, as often as may be reasonably required, shall exhibit to any person designated by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association all that remains of any property herein described, and submit to examinations under oath by any person named by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association and subscribe the same; and, as often as may be reasonably required, shall produce for examination of all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association or its representative, and shall permit extracts and copies thereof to be made.
9. In case the insured and the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association shall fail to agree as to the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately the loss to each item; and failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association shall determine the amount of loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.
10. There can be no abandonment to the Ohio Mine Subsidence Insurance Fund Association of any property.
11. No suit or action on this coverage for the recovery of any claims shall be sustainable in any court of law or equity unless all the requirements of this coverage shall be complied with, and unless commenced within twelve months next after inception of the loss.
12. As part of the consideration given for the coverage provided by this endorsement, the insured agrees that the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association will receive

full subrogation rights to the extent of any payment made to the insured. The Board's right shall be against any party who might be legally liable for the loss as determined by the Board. These subrogation rights shall be considered both contractual and equitable and shall be self-executing at the time any payment is made by the Board through the Ohio Mine Subsidence Insurance Fund, without the necessity of any written assignment. The insured covenants to refrain from damaging, destroying or releasing the Board's right of recovery against any third party. Any breach of the conditions of this paragraph will result in the forfeiture of all rights to recover any benefits under this mine subsidence endorsement.

13. Nothing in this endorsement supplements, expands, increases, affects, or is affected by the coverage grants contained in the main policy to which this endorsement is affixed. The insured understands that the coverage given in this endorsement stands alone and is wholly separate and distinct from the main policy. This endorsement, therefore, shall not be construed to expand or enlarge the obligations of the company issuing the main policy for any of the coverages contained in the main policy. The language contained in the mine subsidence endorsement shall not be included by references in the body of the main policy to "other coverages" or other endorsements unless the mine subsidence endorsement is specifically named in the reference.

OH-MSI-2 (7/2009)

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

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CASE NO. 4:15CV0239

JUDGE BENITA Y. PEARSON

ORDER OF CERTIFICATION TO THE SUPREME COURT OF OHIO

Pursuant to Section 9 of the Rules of Practice of the Supreme Court of Ohio, the United States District Court for the Northern District of Ohio, Eastern Division, hereby certifies a question of state law, *sua sponte*, to the Supreme Court of Ohio. No controlling precedent of the Supreme Court of Ohio answers this question. For reasons explained in more detail below, this Court requests that the Supreme Court of Ohio answer the certified question of state law asked in this Certification Order.

I. Name of the Case

The name of the case is *Wells Fargo Bank, N.A. v. Allstate Insurance Company*, No.

4:15CV0239 (N.D. Ohio filed Feb. 5, 2015).

(4:15CV0239)

II. The Certified Question of Law

Is “arson” a subset of “fire” or an act of “malicious mischief or vandalism” when neither the “fire” nor “malicious mischief or vandalism” provisions in an insurance contract expressly include “arson”?

III. Statement of Facts

A. The Facts and Procedural History of *Wells Fargo v. Allstate*

In or around September 2010, Antoniano Delsignore executed a mortgage for a 2,010 square foot, single-family home located at 7376 Yellow Creek Drive in Poland, Ohio (the “Property”). The mortgage required Mr. Delsignore to maintain property insurance for loss by fire and gave Plaintiff Wells Fargo Bank, N.A. (“Wells Fargo”), as the insured mortgagee, the exclusive right to hold any insurance proceeds under the policy for restoration and repair of the Property or repayment of the mortgage debt. Mr. Delsignore executed an insurance contract with Defendant Allstate Insurance Company (“Allstate”), Policy No. 9 80 584930 09/20 (the “Insurance Policy”), which was renewed in September 2013 for another yearly term.

Mr. Delsignore defaulted on his mortgage payments and in 2013, Wells Fargo initiated foreclosure proceedings in the Mahoning County, Ohio Court of Common Pleas. *Wells Fargo Bank, N.A. v. Antoniano G. Delsignore, et al.*, No. 2013 CV 00188 (Mahoning Cty. Ct. Common Pleas filed Jan. 23, 2013). Judgment was entered in Wells Fargo’s favor and, by the end of 2013, the Property was vacant.

On February 6, 2014, a fire caused damage to the Property. *The Boardman News* reported on February 20, 2014 that the fire was the result of arson. Wells Fargo, through its

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agent MSI, LLC, filed an insurance claim with Allstate for the fire damage. Allstate hired an independent origin and cause company which determined that the fire had been deliberately set. There was no dispute by Wells Fargo that the cause of the fire loss was arson. On April 22, 2014, Allstate denied coverage stating that the Insurance Policy's exclusion provision for vandalism or malicious mischief when a property is abandoned for more than 30 consecutive days immediately before the loss applied. Wells Fargo believes that the exclusion is not applicable because "vandalism" and "malicious mischief" is not defined in the Insurance Policy to specifically include arson, and because the Insurance Policy's provision for "fire" includes the damage caused by the February 6, 2014 fire, regardless of its cause. Allstate's position is that arson by its commonly known definition clearly falls under the vandalism and malicious mischief exclusion.

Wells Fargo initiated a lawsuit against Allstate on February 5, 2015 asserting claims for breach of contract, declaratory judgment, specific performance, and unjust enrichment. On April 22, 2015, this Court conducted a Case Management Conference wherein the parties (1) agreed that a threshold issue is whether the Insurance Policy provides coverage for the arson, and (2) acknowledged that there is a conflict of decisions across the United States as to whether arson is considered vandalism and that there is no law in Ohio regarding that specific question.

(4:15CV0239)

B. State Courts Across The Country Have Taken Differing Views Of This Question

There are no Ohio legal precedents on whether “malicious mischief” and “vandalism” exceptions in insurance contracts include “arson.” Indeed, the courts that have considered the issue have taken differing views on the subject.

Many courts have held that arson is a type of vandalism and malicious mischief and is, therefore, excluded from coverage. See Bear River Mut. Ins. Co. v. Williams, 153 P.3d 798, 567 Utah Adv. Rep. 3, 2006 UT App. 500 (2006); Battishill v. Farmers Alliance Ins. Co., 127 P.3d 1111, 139 NM 24, 2006-NMSC-004 (2006); Barlow v. Allstate Texas Lloyds, No. Civ.A. 1:05-CV-131, 2006 WL 1133878 (E.D. Tex. April 24, 2006); Government Employees Ins. Co. v. Medley, No. Civ.A. 96-0964-R, 1998 WL 320392 (W.D. Va. Jan. 14, 1998); Frazier v. State Farm Fire and Cas. Co., 957 F.Supp. 816 (W.D. Va. 1997); Potomac Ins. Co. of Illinois v. NCUA a/k/a Nat. Credit Union Ass., No. 96 C 1044, 1996 WL 396100 (N.D. Ill. July 12, 1996); American Mut. Fire Ins. Co. v. Durrence, 872 F.2d 378, 379 (11th Cir. 1989); Brinker v. Guiffrida, 629 F.Supp. 130, 135 (E.D. Pa. 1985).

On the other hand, neighboring states have drawn a distinction between “arson” and “vandalism.” In Michigan, courts have defined arson as a specific kind of fire, not a form of vandalism for purposes of insurance contracts. Bates v. Hartford Ins. Co. of Midwest, 787 F. Supp.2d 657, 662 (E.D. Mich. 2011) (holding that arson was covered by the fire and lightning loss provision and not included within the vandalism and malicious mischief provision); Johnson v. State Farm Fire & Cas., No. 278267, 2008 WL 4724322, at *4 (Mich. Ct. App. Oct. 28, 2008)

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(“Because arson is a specific kind of fire—as contrasted to a form of vandalism—we conclude that arson coverage is not precluded by the vandalism exclusion.”). In Pennsylvania, a vacancy exclusion for loss caused by vandalism does not apply to fires set by vandals because fire is a separate peril. Nationwide Mut. Fire Ins. Co. v. Nationwide Furniture, Inc., 932 F. Supp. 655, 657 (E.D. Pa. 1996) (“If [the insurer] had wished the result to be otherwise, it could easily have defined vandalism to include non-accidental fires.”). And in Kentucky, when an insurance policy lists “fire” and “vandalism” separately, arson is deemed an “act contained within the class of damages caused by ‘fire’—not ‘vandalism.’” R & J Development Co., LLC v. Travelers Property Cas. Co. of America, No. 11-47-ART, 2012 WL 1598088, at *3 (E.D. Ky. May 7, 2012).

Several states beyond the Midwest have also reached similar conclusions. See United Capital Corp. v. Travelers Indem. Co. of Illinois, 237 F. Supp.2d 270, 274 (E.D.N.Y. 2002) (finding in favor of coverage when vandalism exclusion did not expressly include arson); American States Ins. Co. v. Rancho San Marcos Properties, LLC, 97 P.3d 775, 780, 123 Wash. App. 205, 213 (Wash. Ct. App. 2004) (holding that arson was not “vandalism” under the vandalism exclusion in a property insurance policy); Tillman v. South State Ins. Co., 325 S.E.2d 585, 284 S.C. 273, 274 (S.C. Ct. App. 1985) (noting that when a policy distinguishes between “fire” and “vandalism,” the insurer is liable for fire loss even if the fire was set by unknown persons; “If the drafters of the policy intended to exclude a fire loss to a dwelling vacant for over thirty days, it could have easily done so with [express] language[.]”).

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INSTRUCTIONS TO THE CLERK

In accordance with Ohio S.Ct.Prac.R. 9.03(A), the Clerk of the United States District Court for the Northern District of Ohio is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

July 28, 2015
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

FILED

The Supreme Court of Ohio SEP 30 2015

CLERK OF COURT
SUPREME COURT OF OHIO

Wells Fargo Bank, N.A.

Case No. 2015-1252

v.

ENTRY

Allstate Insurance Company

This cause is here on the certification of a state law question from the United States District Court for the Northern District of Ohio, Eastern Division. Upon review pursuant to S.Ct.Prac.R. 9.05, the court will answer the following question:

"Is 'arson' a subset of 'fire' or an act of 'malicious mischief or vandalism' when neither the 'fire' nor 'malicious mischief or vandalism' provisions in an insurance contract expressly include 'arson'?"

It is ordered by the court that petitioners shall file their merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02 - 16.04, and S.Ct.Prac.R. 9.07.

(U.S. District Court for the Northern District of Ohio, Eastern Division; No. 4:15CV0239)



Maureen O'Connor
Chief Justice