



Swiss Re Corporate Solutions

INSURANCE AGENTS AND BROKERS ERRORS AND OMISSIONS

MOCK TRIAL SCRIPT

Bushwood Country Club

VS.

Danny Noonan's No Risk Insurance Agency

Bushwood Country Club

VS.

Danny Noonan's No Risk Insurance Agency

Table of Contents

	Page
Overview	3
Synopsis	3
Areas of E&O interest	4
Cast of Characters	4
Staging	5
Sound	6
Props	6
Damage Calculation	7
Opening	8
Scene 1 - Danny Noonan's No Risk Insurance Agency Office	8
Scene 2 - Danny Noonan's No Risk Insurance Agency Office	11
Scene 3 - Danny Noonan's Office four years later	13
Scene 4 - Courtroom - The Trial	15
Scene 5 - The Verdict	47
Addendum- Stage Diagram, Exhibits, PowerPoint,	50

Overview

Bushwood Country Club v. Danny Noonan's No Risk Insurance Agency is a Mock Trial presentation designed to provide a humorous and entertaining method of providing risk management ideas to a large audience outside of the normal classroom setting. While the characters are fictional, the facts and circumstances are based on real errors and omissions claims that have been made against Swiss Re Corporate Solutions policy holders.

The Mock Trial takes approximately 1 ½ hours to present. It can be presented by itself or in conjunction with a full risk management seminar for purposes of the 10% risk management credit pursuant to the Westport Insurance Corporation state rate filing. If used by itself, the Mock Trial will qualify for 2-3 hours of the required time under the rate filing by utilizing a risk management group discussion following the mock trial presentation. If used in conjunction with a full risk management seminar, up to 3 hours can be allotted to the Mock Trial, depending on the method of utilizing the jury. (See Scene 5-The Verdict for different methods of utilizing the jury.)

Synopsis

The premise of this mock trial is that Ty Webb, a local business man and longtime friend of Danny Noonan, is purchasing a golf course and country club, Bushwood Country Club. Ty is always in a hurry and tells Danny he is purchasing the country club as he is on his way to the closing. He is paying \$1,000,000 but does not give Danny any breakdown of the values for the building, contents or land. All he gives Danny is the prior policy that he received from the seller, Al Czervik.

Danny places coverage based on the prior policy. He relies on his CSR, Christine Susan Russell/Chris Steven Russell, to make sure the policy is what is needed. His intern Spaulding Smalls issues certificates of insurance without any knowledge or information about the policies.

4 years after the purchase a fire ensues and burns down the country club. Between the time of the purchase and the fire, Webb has subleased the golf cart, pro shop and snack bar vending to Al Czervik, also added a banquet room. Webb did not specifically tell Noonan about these actions, but Noonan is regular at the course and it is apparent that he was or should have been aware of the changes. Webb has total loss of the building, his contents and Al Czervik's contents in the sum of \$3,875,000. The insurance company pays him \$500,000 for the building, and \$250,000 for his contents leaving an uninsured loss of \$3,125,000. Webb makes a claim against Noonan for this amount.



Areas of E&O interest

- Things are done in haste.
- Noonan does not require that Webb take the time to provide all the information needed to obtain the correct insurance.
- Noonan and Russell take a lackadaisical attitude toward the issuance of certificates of insurance and rely on an intern to issue them.
- Noonan does not regularly follow up with his customer, Webb, to review his insurance needs.
- Noonan does not recognize changes in the operations that should trigger him to ask questions and obtain additional coverages and limits.
- Regular communications with the customer are done electronically using secure methods.
- The customer does not review their policy.
- The customer does not tell Noonan of changes in his operations.

All of these should be discussed during the Q&A or if utilized as a part of a full risk management seminar, during the course of the seminar.

Cast of Characters (in order of appearance):

- Narrator: Representative of the association or whomever is appropriate. If Swiss Re Corporate Solutions representative is attending, they are preferred. If there is a Q&A following the mock trial, the Narrator will also act as the moderator.
- Ty/Tylene Webb, owner of Bushwood Golf Course. A longtime friend of his agent, Danny Noonan.
- Danny/Daniel Noonan: Agent and owner of Danny Noonan's No Risk Insurance Agency.
- Christine Susan Russell/Chris Steven Russell, aka CSR: CSR for Danny Noonan's No Risk Insurance Agency. She/he is responsible for completing the application.
- Spaulding Smails: Danny Noonan's No Risk Insurance Agency Intern. Has only a couple of lines and is for comic relief. He/she produces the certificates of insurance.



Swiss Re Corporate Solutions

- **Bailiff:** This is a limited speaking role. Bailiff has been known to have subtle comic elements and should include appropriate props, i.e. handcuffs, billy club, etc. However these should be limited so as not to take away from the proceedings.
- **Judge:** Judge Elihu Smails. Judge the on stage director and is responsible for making sure the trial is following the script as much as possible in addition to acting as Judge. If things get off track, Judge will bring everyone back to their place in the script.
- **Court Reporter:** This is a non-speaking role and is not absolutely necessary, but can be used as comic relief. Court Reporter could be encouraged to dress with humor in mind and make subtle actions during courtroom scene. However these should be limited so as not to take away from the proceedings.
- **Attorney for Plaintiff:** Utilize Swiss Re Corporate Solutions panel defense counsel if possible.
- **Attorney for Defendant:** Utilize Swiss Re Corporate Solutions panel defense counsel if possible.
- **Al/Alison Czervik** (pronounced "Chervick"): Former owner of Bushwood who sold the country club to Ty Webb. Also the owner of Al Czervik's Golf Cart Emporium, Al Czervik's Golf and Pro Shop, Al Czervik's Snack Shop, Al Czervik's Flame Emporium, president Al Czervik's Bank and Trust and Al Czervik's Ad Agency. Al is primarily in the script for comic relief. He/she establishes the value of the contents that was destroyed in the fire.
- **Julie/James Westport-standard of care expert:** Will testify as to the standard of care of an agent in the location.

Staging

The staging of the Mock Trial is preferred to have a full stage setting. It is preferred to have a stage measuring 60'x40' by the attached diagram, but size can be adapted for the space available. The stage will include the following:

- Judge's Bench
- Witness stand chair
- US and State Flags
- Podium for Narrator
- Table and Chair for Noonan's Office-Will double as Counsel Tables and Chairs



Swiss Re Corporate Solutions

- Table and Chair for Noonan's CSR's Desk-Will double as Counsel Tables and Chairs
- Spaulding Smalls desk and chair-will double as desk and chair for court reporter

Sound

- 2 lavalier microphones
- 3-4 stationary microphones

During the opening scene, Danny Noonan and Ty Webb should be wearing the two lavalier microphones. A table top stationary microphone should be on the CSR desk. After the opening scenes, the lavalier microphones will be given to the two attorneys for the trial. A tabletop stationary microphone will be on the Judge's bench, a microphone on a floor stand for the witness stand and podium microphone. If necessary, the microphone on the CSR desk can be moved to the Judge's bench. No microphone is needed for Spaulding Smalls' desk/court reporter; he/she should speak their lines loudly.

Props

- 2 coffee mugs for Danny Noonan's desk
- Small stack of papers/files for Danny's desk
- Note pad for Danny-legal pad is preferable
- Several papers/files for Christine/Chris' desk
- Large stack of papers for Spaulding
- Stamper for Spaulding
- Laptop computer for CSR desk and for Court reporter
- Play money for Al Czervik
- Exhibit 1-Al Czervik Insurance policy
- Exhibit 2-Ty Webb Policy file (This should be a large red rope file disorganized and filled with various papers and manila folders.)
- Exhibit 3-Web page Power point
- Exhibit 4-Certificate of Insurance
- Judge's Black Robe
- Judge's Gavel
- Laser Pointer

Damage Calculation

Policy limits \$1,000,000

Building \$500,000

Contents \$250,000

Land \$250,000

Damages

Building Replacement Cost \$3,000,000

Less policy limit - 500,000

Uncovered building loss \$2,500,000

Contents Loss \$ 500,000

Less policy limit - 250,000

Uncovered contents loss \$ 250,000

Uncovered Czervik contents loss \$ 375,000

Total Uncovered Loss

Building \$2,500,000

Contents + 250,000

Czervik contents +375,000

Total Uncovered Loss **\$3,125,000**

Opening

Opening comments by Narrator:

Narrator: Welcome to this Mock Trial, Bushwood Country Club vs. Danny Noonan's No Risk Insurance Agency. A joint presentation of Swiss Re Corporate Solutions and _____. Today we will follow an insurance agent's errors and omissions situation from the facts leading up to the errors and omissions claim to its dramatic conclusion in the courtroom of the Honorable Judge Elihu Smails.

While the characters are fictional, the facts and circumstances are based on real errors and omissions claims that have been made against Swiss Re Corporate Solutions policy holders. We hope that by seeing and hearing this presentation, it will give you a greater awareness of the pitfalls that can affect an independent insurance agency on a daily basis.

Before we delve more deeply into the legal issues involved in this situation, let's go to the office of the insurance agent, Danny Noonan. Danny is meeting with his longtime customer and friend, Ty Webb on a Friday afternoon.

Scene 1

Danny Noonan's No Risk Insurance Agency Office

(Danny Noonan and Ty Webb are sitting at the office of Danny Noonan's No Risk Insurance Agency. There is a small stack of papers on the desk, and two coffee mugs. They are reviewing some papers.)

Noonan: So, Ty, I guess that covers all your life insurance needs, anything else going on?

Ty Webb Well, yeah, I guess so. Did I tell you about the golf course I decided to buy?

Noonan: No, you didn't. Which one?

- Ty Webb:** Bushwood, have you heard of it?
- Noonan:** Um, yes, Ty. Don't you remember? I was your caddy there when I was in school. Is it still full of gophers?
- Ty Webb:** Oh yeah, that's right. I'm such a veg sometimes, Danny. Yeah, it's still got some gophers but it's also full of golfers too. It has a beautiful 5,000 square foot club house, 7,000 yard golf course and an extra 9 for the kids. And I'm buying a fleet of golf carts that come with it. I think it's a great investment.
- Noonan:** Who are you buying it from?
- Ty Webb:** Al Czervik. He's got some land across the street that he's going to develop and he needed the money.
- Noonan:** Ok. Wow, that's a big deal. I'm assuming you want me to place the insurance on the place, right?
- Ty Webb:** Of course! You've got the rest of my business. You know I trust you.
- Noonan:** Great! Let me grab an application so we can get started. I've got a lot of questions for you. Do you know how many employees you have?
- Ty Webb:** Let's see, there is Paddy the golf course manager, Karl the greens keeper, Maggie is the concession stand manager, and there is a caddy master and a bunch of caddies, but they're all independent contractors.
- Noonan:** Sounds pretty good. You've told me about the club house and the size of the course. So what kind of coverage do you think you need on this place?
- Ty Webb:** I don't know, Danny. You tell me.
- Noonan:** Well you'll need a policy to cover the buildings and contents and premises liability. Do you know the current values?
- Ty Webb:** I'm paying a million for it, lock stock and barrel.
- Noonan:** Ok. But do you know what the value of the building and contents are?
- Ty Webb:** Like I said, that's for everything.
- Noonan:** So that's what you want to insure?
- Ty Webb:** Works for me.



Swiss Re Corporate Solutions

- Noonan:** Do you know what the coverage was on it before?
- Ty Webb:** Czervik gave me this policy he had with The Par Program. Why don't you just match the coverage?
- Noonan:** Ok, sounds good, if that's what you want. Let's take a look at it. Looks like coverage on the building is \$250,000, contents are \$100,000. Does that include the golf carts?
- Ty Webb:** I don't know, I'm paying a million dollars for the whole thing. Have you ever even insured a golf course before? (Skeptically)
- Noonan:** Well, I've dabbled in it. Have you seen my website? There is no coverage we have not dabbled in. *(Holds up a coffee mug with the motto on it)*
- Ty Webb:** Lookit, I've got to get to the closing on the course and then I've got a tee time, I have to run. You fill in the blanks and sign it for me. Let my staff know what check I have to write.
- Noonan:** Well, okay, but there really are several more questions I need to ask.
- Ty Webb:** I've got to run, but I'm covered, right?
- Noonan:** Well, uhhh...we'll get right on it.
- (Webb stands and leaves)*
- Noonan:** Oh brother, some people have no clue.
- (Danny stays in place and attention is now directed to the narrator.)*

End Scene 1

- Narrator:** What you've just seen is what can happen when an agent is given an opportunity to write an account and may not have all the facts. The agent is afraid, unable or reluctant to ask the customer to take the necessary time to fully review their insurance needs.
- It's now Monday, three days later and Danny is with Christine Susan Russell/Chris Steven Russell, his CSR, and his intern Spaulding Smalls in his office.

Scene 2

Danny Noonan's No Risk Insurance Agency Office

(Christine/Chris is busy reviewing and writing on papers. Spaulding has a stack of papers in front of him; he writes something on a paper and then with a dramatic flair uses a stamper to stamp them. Danny picks up the policy and the application and walks over to where Christine/Chris and Spaulding are sitting.)

Noonan: Christine/Chris I met with Ty Webb on Friday and he told me about this golf course he is buying, Bushwood Country Club. I need to get the coverage in place. Here is all the essential information. The address is Two Two Twain Avenue. It's a 7,000 yard golf course with a 5,000 sq. foot club house. Apparently it also has fleet of golf carts.

Christine/Chris: Do you know how many?

Noonan: No, but we'll get that later.

Christine/Chris: Do you know what kind of coverage was on the course before?

Noonan: Here's what he gave me. He said it's the current policy. I didn't really look at it.

(Danny throws the policy on her desk and it falls apart. She looks up at him exasperated and collects it all together.)

Noonan: *(Looking at his notes.)* Looks like there were \$250,000 limits on the club house and \$100,000 on the contents before but he says he's paying a million dollars so that's what he wants. But I'm not sure if that is for everything or just the buildings or what. Anyway, that's what he said he wants so let's just do that.

Christine/Chris: I don't see any business interruption in this. Or worker's compensation, or any inland marine floaters for the golf carts. I hope we're giving him everything he needs.



Swiss Re Corporate Solutions

Noonan: I'll ask him about all that later but this is what he said wanted for now. He said just to match the coverages.

Christine/Chris: *(sarcastically)* Ok, you're the boss!

Noonan: Thanks, Christine/Chris, I'm counting on you. You know Ty is a longtime customer and I want to make sure we take care of him. I'm sure they are going to want some certificates issued. Can you get those ready?

Christine/Chris: But we don't even have a policy yet.

Noonan: Don't worry about that, we know the company will issue it. Just get it done.

Christine/Chris: *(sarcastically)* Ok. Whatever.

(Noonan leaves, leaving Christine/Chris and Spaulding. Spaulding is still stamping papers.)

Christine/Chris: My desk is a mess. I'll just let Spaulding do the certificates. It's such an easy job, he can handle it.

(Christine/Chris walks over to Spaulding's desk who is stamping a bunch of certificates.)

Christine/Chris: Spaulding, I need you to issue some more certificates.

Spaulding: More? I hate doing that. I don't want to issue more certificates.

Christine/Chris: *(Sternly.)* You'll issue these certificates and like it! *(Throws the papers on his desk.)*

Spaulding: Ok, I guess I will, but I STILL don't have to like it.

(Christine/Chris walks away leaving Spaulding at the desk.)

Spaulding: I don't even have a policy. I have no idea what certificates they even need. I don't have a list of certificate holders or anything. Oh well, never stopped me before. Nobody reads these things anyway.

(Spaulding starts stamping away again.)

End Scene 2

Narrator: You've seen again what can happen when perhaps the greatest care is not taken when writing a new piece of business.

Let's move the clock forward. It is now four years later and Ty Webb comes running into the office of Noonan No Risk Insurance. Things are about to get (pause).....let's just say ...interesting.

Scene 3
Danny Noonan's office four years later

(Danny is sitting at his desk with his feet up. Ty Webb comes rushing in.)

Ty Webb: Uhhh...uhhh...what's your name again?

Noonan: Ummm, Danny?

Ty Webb: Yeah, Danny, that's it. I just got a call from Paddy my country club manager. He said my golf course is on fire!

Noonan: Your golf course is on fire?

Ty Webb: The club house you idiot, you know what I mean. Thank god you told me I have full coverage on this.

Noonan: I don't think I said exactly that.

Ty Webb: Whatever. I've got to go over there and see what's happening.

(Webb rushes off stage.)

Noonan: Ummmm... Ok. Let me know.

(Ty Webb rushes out. Danny starts looking around on his desk for some papers. He can't find anything and walks quickly over to Christine/Chris desk.)

Noonan: Ty Webb just told me his Country Club is on fire. Christine/Chris, when was the last time he was in?

Christine/Chris: I think it was four years ago. When he told you about buying Bushwood.

Noonan: Uh oh...Go pull the file and let's see what we did.



Swiss Re Corporate Solutions

Christine/Chris: Um, Danny. You've got it on your desk, on the computer...on our agency management system, remember? We installed that 3 years ago?

Here. Take look on my computer.

(Danny leans in and starts typing on the laptop.)

Noonan: Oh, yeah, that's right. Now let's see, what kind of coverage did we have in place for him?

Spaulding: *(In the background.)* Oh, he had a lot of that coverage stuff. I've handed out these COI things to practically everyone in town. *(He holds up some papers off his stack.)*

Noonan: Oh great, that's all I need.

End Scene 3

Narrator: After the claim was reported the carrier, it was discovered that there had been many changes to Bushwood Country Club since Danny Noonan first wrote the insurance four years previously. Unfortunately, none of these had been recognized in the insurance policies that Danny had placed. Because of this, there was a significant amount of the fire loss that was uncovered. As a result, Ty Webb has sued Danny Noonan and his insurance agency for damages for the uncovered portion of his loss.

We take you now to the District Court of (state) where the trial is about to begin. All parties have retained high powered counsel to represent their interests. Representing the plaintiff, Ty Webb and Bushwood Country Club, is *(name of attorney)* with the law firm of *(name of law firm)*. Representing the defendant, Danny Noonan and Danny Noonan's No Risk Insurance agency is *(name of attorney)* with the law firm of *(name of law firm)*. You are now the jurors who have been chosen to hear the evidence and render a verdict at the close of the trial. Please listen carefully to the judge, the attorneys and the witnesses so you can render a fair and impartial verdict.



Scene 4
Courtroom - The Trial

(The attorneys are sitting with their clients, Danny/Daniel Noonan: Agent and owner of Danny Noonan's No Risk Insurance Agency and Ty Webb at tables left and right. The Bailiff is sitting right of the judge's stand. He steps forward and in LOUD voice ...)

Bailiff: All rise. Hear ye, Hear ye. The District Court of (state) is now in session. The Honorable Elihu Smalls presiding.

Please be seated and observe order.

(Judge enters the courtroom taking his seat at the bench.)

Judge: *(To the audience:)*

You have all been chosen today to be jurors in the case of *Bushwood Country Club v. Danny Noonan's No Risk Insurance Agency*. Before we begin, I must first swear you in. Everyone please rise and raise your right hand:

Do you solemnly swear that you will listen to the witnesses and evidence in this case and render a true verdict based on that evidence? (Tell them to say "yes".)

At this time the audience is now charged as jurors to hear the evidence in this case. At the close of the evidence you will be called upon to render your verdict. Please listen closely as the evidence is presented to you.

(To the jury): Ladies and gentlemen of the jury, I want to thank you for taking the time from your busy schedules to join us here in this courtroom to hear this case today. The trial will begin with opening statements by the lawyers as to what they expect the evidence to be. At the close of the evidence, the lawyers will make arguments on behalf of their clients. Neither what is said in opening statements or in closing arguments is to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of his client, the other party is relieved of the responsibility of proving that fact.



After the opening statements, the plaintiff will introduce evidence. After that, the defendant may introduce evidence and there may be rebuttal evidence after that. The evidence may include the testimony of witnesses who appear personally here in court, and exhibits such as pictures, documents, and other objects.

While the trial is in progress, I may be called upon to determine questions of law and to decide whether these matters may be considered by you under the law. No ruling or remark which I may make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts.

After all of the evidence has been presented, and you have received my final instructions and heard the closing arguments of the lawyers, you will retire to the jury room for your deliberations. After you return, you will be polled for your verdict.

Justice requires that you not make up your mind about the case until all of the evidence has been seen and heard. You must not comment on or discuss what you may hear or learn in the trial, until the case is concluded.

When you enter into your deliberations, you will be considering the testimony of witnesses, as well as other evidence to which I have referred. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witnesses, the interest of the witness in the outcome of the case, the relation of the witnesses to any of the parties, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements. You may give the testimony of any witness such weight and value as you believe that testimony is entitled to receive.

There will be some matters which will be offered by the parties and to which objections will be made. If I overrule the objections, you may consider that matter when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded and must not be considered by you in your deliberations.

Judge: Is the counsel for the plaintiff here and ready?

Pltf Atty: *(rises)* Yes your honor, we are here and ready to proceed.

Judge: Is the defense present and ready?

Def Atty: *(rises)* Yes, your honor, we are here and prepared for the defense.

Judge: If both counsel are ready, the court is prepared to hear your opening statements.

(The plaintiff's attorney rises and begins.)

Opening statement

NOTE: *(The attorney's should use these opening statements as outlines but are encouraged to present their own arguments.)*

Pltf Atty: (Attorneys are free to create their own opening statement in lieu of the script below.)

Ladies and gentlemen of the jury, Your honor, the Plaintiff in this case, who is Ty Webb, the owner of a local country club here in _____ (city) will set out to prove that he confidently relied on the assurances from the defendant, and that the defendant did fail to communicate certain coverage information to my client. In doing so, my client has been presented with an uninsured loss which would have been covered had the defendant done his job properly. We will prove that the agent and his staff were properly notified of the change in exposure and that information requested was indeed passed on to the agency on a timely basis. We will call witnesses to testify to the communication of such information and my client's reliance on Mr. Danny Noonan and his firm's expertise in advising my client in all matters regarding insurance coverage. We will finally ask you to render a decision for \$3,125,000 in favor Ty Webb for his/her uninsured loss at Bushwood Country Club.

(Defense attorney springs up)

Def Atty: Objection, your honor. Plaintiff's counsel is making his summation in his opening statement.



Swiss Re Corporate Solutions

Judge: Sustained. *(Aside to Court Reporter)* Strike counsel's last statement pertaining to what will be asked of the court. *(To Plaintiff's Counsel)* You may continue.

Pltf Atty: That concludes my opening statement.

(The Plaintiff's attorney returns to his seat. The defense attorney now rises.)

Def Atty: (Attorneys are free to create their own opening statement in lieu of the script below.)

Your honor, we will prove to the court that despite the allegations of the Plaintiff, the coverage which was requested by the plaintiff was never in fact bound by my client, the defendant. Furthermore, we will show, based on testimony and documentation that beyond any doubt, no communication was ever rendered to the Plaintiff indicating to him or any of his employees that their request to add certain exposures had been accepted by the underwriting company, Danny Noonan's No Risk Insurance. He will further testify, before the court, that no written documentation indicating such coverage was ever produced and that my client, Mr. Noonan, was neither negligent nor deficient in any of his actions regarding Mr. Webb's requests for consideration of a significant change in their business exposure.

Judge: All right, now that we have your opening statements, is the Plaintiff ready to call their first witness?

Direct examination of Ty Webb

Pltf Atty: *(rises)* I am your honor. As my first witness, I call Ty Webb, owner of Bushwood Country Club.

(Danny Noonan rises from table and goes to the witness stand.)

Bailiff: Do you swear to tell the truth, the whole truth and nothing but the truth?

Ty Webb: I do.

Pltf Atty: State your name for the record.

Ty Webb: Ty Webb.

Pltf Atty: Are you the Plaintiff in this action?

Ty Webb: I guess I must be.

Pltf Atty: Could you tell us why you are here today?

Def Atty: Objection. That calls for narrative.

Judge: I agree but we need that to keep the story moving, Objection overruled.

Pltf Atty: Mr. Webb, you may answer the question.

Ty Webb: I own the Bushwood Country Club and as everyone in town knows it burned down.

Pltf Atty: So when did you purchase this golf course?

Ty Webb: About 5 years ago.

Pltf Atty: Have you ever owned a golf course before?

Ty Webb: No, but I played on them many times.

Pltf Atty: Do you own any other businesses?

Ty Webb: Yes, a lumber yard, a couple of grocery stores, a go cart track, and this really cool bookstore and video arcade.

Pltf Atty: And where are these businesses located?

Ty Webb: *(quizzically)* I'm not quite sure.

Pltf Atty: Why did you purchase the golf course?

Ty Webb: I golfed every day at Bushwood, and it just seemed logical to own my own course. Cuts down on green fees.

Pltf Atty: Who did you purchase the course from?

Ty Webb: Al Czervik.

Pltf Atty: Since you've owned those other businesses, you've purchased insurance for them, correct?

Ty Webb: Sure.

Pltf Atty: And who did you contact to get insurance for the golf course?

- Ty Webb:** I just went to my old friend, Danny Noonan. He had been my caddy at Bushwood when he was in school. I told him I needed to get full coverage for my golf course. He promised me that's what I have and now 5 years later it burns down and I'm under insured.
- Pltf Atty:** Have you used Mr. Noonan to buy other insurance?
- Ty Webb:** Yes, he's always served my needs.
- Pltf Atty:** So when did you contact Mr. Noonan to get insurance for your golf course?
- Ty Webb:** It was about 5 years ago. I stopped by his office.
- Pltf Atty:** Had you already purchased the course?
- Ty Webb:** Yes, I was on my way to the closing.
- Pltf Atty:** Then you sat down and talked with Mr. Noonan about your insurance needs for the new course you had bought?
- Ty Webb:** Yes I did. And it took a while. At least 10 or 15 minutes.
- Pltf Atty:** When you left the office were you under the impression you had full coverage on your country club?
- Ty Webb:** Absolutely!
- Pltf Atty:** What type of coverage did you ask for?
- Ty Webb:** Full coverage.
- Pltf Atty:** And did Mr. Noonan tell you he'd get it for you?
- Ty Webb:** He promised he would do like he always does, because that's the kind of special relationship we have.
- Pltf Atty:** What kind of special relationship do you have with Mr. Noonan?
- Ty Webb:** Well not dinner buddies or anything, but we did see each other at the club fairly often. So yes, it was a special relationship. Worked with him for years. Asked for advice. I relied on him for all my insurance needs.
- Pltf Atty:** Do you know what the premiums were for the policy on the club?

Ty Webb: Over the last 4 years I think it was around \$150,000.

Pltf Atty: How big is the golf course?

Ty Webb: 18 holes.

Pltf Atty: No how long is it? How many yards?

Ty Webb: It's a 7,000 yard course, and a 5,000 square foot clubhouse. No sorry, was a 5,000 yard course and a 7,000 square foot clubhouse with some prime Bluegrass, Kentucky Bluegrass, Featherbed Bent, and Northern California Sensemilia. You can play 36 holes on it in the afternoon, take it home and just get stoned to the bejeezus-belt that night on the stuff.

Pltf Atty: So let me get this straight, Mr. Webb. It was a 5,000 yard course and 7,000 square foot clubhouse?

Ty Webb: That's what I said.

Pltf Atty: What was the value of the property at the time of the fire?

Ty Webb: The replacement cost was three million dollars; at least that was what the adjuster told me the replacement cost would be.

Pltf Atty: And the insured value of the clubhouse was \$500,000. How did you find that out?

Ty Webb: That's what the policy said.

Pltf Atty: Then you also had some golf carts, is that correct?

Ty Webb: Yes, but they weren't mine. I originally owned them when I bought the course but at the time of the fire they belonged to Al Czervik of Al Czervik Golf Cart Emporium. I sold them back to Al and he paid me an annual fee but he received all the proceeds from the cart rental.

Pltf Atty: Did Mr. Czervik have his own policy for the contents and inventory?

Ty Webb: No. Under the lease I was supposed to provide all the insurance.

Pltf Atty: Did Danny provide that insurance?

Ty Webb: Apparently not!

Pltf Atty: What happened to the golf carts in the fire?

Ty Webb: They were all burned up!

Pltf Atty: Anything else?

Ty Webb: Yes, the contents of Al Czervik Snack Shop and the Al Czervik Pro shop. He lost everything!

Pltf Atty: Mr. Czervik made a claim against you for those carts and all the goods in the snack shop and pro shop as well, correct?

Ty Webb: Me personally? Yes. I sublet the snack shop and pro shop to Al Czervik and he ran that and he lost his entire inventory in my fire. Since it was my responsibility, I just paid him what he was due.

Pltf Atty: How much was that?

Ty Webb: \$375,000.

Pltf Atty: So Danny Noonan should have known that there should have been coverage for Al Czervik's property and inventory, correct?

Def Atty: Objection, calls for speculation.

Judge: That may be the case but I'll overrule if the witness knows.

Ty Webb: I sure do! Czerviks' name was all over everything. And because of our special relationship, Danny knows I cover everything in my properties regardless of who owns it.

Pltf Atty: Did you have your own contents in the building?

Ty Webb: Yes. I had tables, chairs, office equipment, some other stuff.

Pltf Atty: What was the value of those contents?

Ty Webb: \$500,000.

Pltf Atty: How much were you paid by the insurance company for those contents?

Ty Webb: \$250,000.

Pltf Atty: How did the fire start?

Ty Webb: My greens keeper, Carl Spackler was trying to eliminate the gophers. He started by trying to take out Mr. and Mrs. Throttlebottom and I had to

explain to him the gophers not the golfers! Do you know what gophers can do to a golf course? Anyway, Carl's rodent elimination plan got a little out of hand.

Pltf Atty: So Carl was using an extermination method that was of his own design?

Ty Webb: Yes, a flammable material including a flamethrower and some plastic explosives from Al Czervik's Flame Emporium.

Pltf Atty: So what you're saying is that the building actually burned because of something your employee did.

Ty Webb: Right, but that's why I have insurance!

Pltf Atty: What was the extent of the damage?

Ty Webb: Burned to the ground - does the term 'scorched earth' mean anything to you?

Pltf Atty: Mr./Ms. Webb, Lets go over your damages one more time. You had a three million dollar loss to your building, \$375,000 for Al Czerviks' contents, and \$500,000 loss of your contents, for a total of Three million, eight hundred and seventy five thousand dollars (\$3,875,000), correct?

Ty Webb: Yes.

Pltf Atty: You were paid \$500,000 for your building and \$250,000 for your contents?

Ty Webb: Yes.

Pltf Atty: So \$3,875,000 less \$750,000 is \$3,125,000. And that is the total of your unpaid loss, correct?

Ty Webb: Yes.

Pltf Atty: And that is how much you are asking this jury to award you in damages, correct?

Ty Webb: Yes, that's correct. \$3,125,000 is what I got coming to me.

Pltf Atty: Thank you, Mr./Ms. Webb. I have no more questions for you. However, I'm sure the attorney for Mr./Ms. Noonan does.

Cross examination of Ty Webb

Def Atty: Mr. Webb, my name is _____, I am the attorney for your insurance agent, Mr. Danny Noonan. I have a few questions for you. When you first went to Mr. Noonan's office to discuss the purchase of Bushwood, how long were you there?

Ty Webb: Well, like I said, a long time. At least 10-15 minutes.

Def Atty: Before you began discussing the country club with Mr. Noonan, you were talking about your life insurance policies with him, weren't you?

Ty Webb: Yes, I guess so. I don't remember.

Def Atty: And you were on your way to buy a piece of property that you were paying \$1,000,000 and you only thought that you needed 10-15 minutes, including the time you spent talking about life insurance that was totally unrelated to the country club?

Ty Webb: More than enough time.

Def Atty: Now Mr. Webb, you told your attorney that it was a 5000 yard course and a 7000 square foot building. In fact, it was just the opposite of that, wasn't it? It was a 7000 yard course and a 5000 square foot building?

Ty Webb: Yeah, you know I think you're right. I forget these things.

Def Atty: Mr. Webb I am going to show you a copy of what is marked as Exhibit 1 which is the insurance policy you bought from Mr. Noonan for your golf course. Have you ever seen this before?

Ty Webb: Humph, it looks vaguely familiar.

Def Atty: In fact didn't Mr. Noonan email it to you?

Ty Webb: Yes, I think maybe so.

Def Atty: Mr. Noonan emails you a lot of things? You and Danny communicate a lot by email.

Ty Webb: Yes.

Def Atty: Did you read the policy when you got it?

Ty Webb: I can't remember, I probably did, I might have, I don't recall.

Def Atty: And the value of the building, contents and property is \$1,000,000 which is the figure you asked for since that is how much you paid?

Ty Webb: Could be, yes, I guess.

Def Atty: And you produced your file as a part of this litigation and I have a copy of it right here. *(Drops big paper file on stand.)* This has been marked as exhibit 2. There is no where in here we will find an email, text or any other communication where you advised Danny of any renovations or golf carts or changes in the pro shop or snack shop or any other coverage needs, is that correct?

Ty Webb: I don't know what my lawyer gave you but if it's not in there I guess not.

Def Atty: Since the policy was first issued to you there were three renewals.

Ty Webb: Yeah, so what?

Def Atty: Did you ever read the policy or any of those renewals?

Ty Webb: I might have.

Def Atty: Did you ever ask him to change any of these coverage amounts?

Ty Webb: well....

De fatty: Did you ever tell him about any of the changes?

Ty Webb: I'm sure I must have.

Def Atty: But there's no record of it in your file or in Mr. Noonan's records, is there?

Ty Webb: well.....

Def Atty: Is there any request or coverage that you made to Danny that he did not completely fulfill?

Ty Webb: Well ah, coverage no.

Def Atty: Does Ms./Mr. Russell sometimes issue certificates of insurance?

Ty Webb: Yes, when Spaulding is on vacation.

Def Atty: Let me show you something from your file...this certificate of insurance. Isn't it a fact, Mr. Webb, that my client, Mr. Noonan, placed exactly the policy of insurance you asked him for that day in your office?

Ty Webb: Well, yes, but...

Def Atty: *(Interrupting.)* No more questions.

Judge: Any redirect, counselor?

Redirect by Plaintiff Attorney

Pltf Atty: Yes, your honor. You said you never requested a change in coverage correct?

Ty Webb: Yes, that's correct.

Pltf Atty: But he did assure you that you had full coverage?

Ty Webb: Yes, that is what he promised me.

Pltf Atty: Was there anything else in your file about the amount of coverage?

Ty Webb: Yes, I understood that I was covered for the \$1,000,000 I paid for it.

Pltf Atty: What was the name of the bank?

Ty Webb: The AI Czervik Bank and Trust.

Pltf Atty: No more questions.

Judge: *(To Defense attorney.)* Are there any more questions for this witness?

Def Atty: None your honor.

Judge: *(To Plaintiff attorney.)* Any further witnesses?

Direct examination of AI Czervik

Pltf Atty: Yes, your honor. The plaintiff calls AI Czervik.

(AI Czervik enters from the back and is dressed in colorful golf attire. He's carrying a golf club. As he walks in he is saying hello and shaking hands to people on the aisle.)



Swiss Re Corporate Solutions

He makes smart aleck remarks "Wow, you must have been something before electricity", "Bet you get free bowl of soup with that hat/jacket/sweater", "You want to make \$20 bucks the hard way?".

Al goes to Ty and acknowledges him, shakes his hand, and says "Hey, where's my money? Heh, heh, just kidding." Al shakes hands with the plaintiff's attorney, then looks over at the defense attorney and Danny and waves. Al walks up to the Judge and hands him some money and says "Keep it fair, keep it fair". Al then takes the stand.)

Bailiff: Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you god?

Al Czervik: Of course I do. Hey, here's \$20 bucks, go get a better haircut. (*Al sticks \$20 in the bailiff's hand.*)

Pltf Atty: Would you state your name and occupation for the record please.

Al Czervik: Al Czervik. I'm the former owner of Al Czervik's Golf Cart Emporium, Al Czervik's Golf and Pro Shop, Al Czervik's Snack Shop, and I'm still the owner of Al Czervik's Flame Emporium. I've also got a little real estate development down on Twain Avenue across from the former Al Czervik's Bushwood Country Club. And I'm also president of Al Czervik's Bank and trust.

Pltf Atty: Mr. Czervik, you leased space from Ty Webb for the Golf and Pro shop, the Snack Shop, and where the golf carts were stored, is that correct?

Al Czervik: Yeah, I did.

Pltf Atty: You say are the former owner of the Golf Cart Emporium, the golf and pro shop, and the Snack Shop. Why is it "former"?

Al Czervik: Well, it all got burned up when Bushwood caught on fire! And since they haven't rebuilt it, it's all "former".

Pltf Atty: As a result of the fire, the three businesses you had at the country club, Al Czervik's Golf Cart Emporium, Al Czervik's Golf and Pro Shop, and Al Czervik's Snack Shop, the contents were all destroyed by the fire, correct?

Al Czervik: That's correct.

Pltf Atty: What was the amount of the loss of your contents from those businesses?

AI Czervik: A couple hundred thousand g's.

Pltf Atty: Do you know the exact amount?

AI Czervik: \$375,000 at least.

Pltf Atty: Did you make a claim against my client, Ty Webb for that amount?

AI Czervik: Yes, I did.

Pltf Atty: And did Mr. Webb pay you in full for your loss?

AI Czervik: Yes, he did. He's a real stand-up guy.

Pltf Atty: I have no further questions.

Judge: *(To Defense attorney)*, do you have any questions for this witness?

Cross Examination of AI Czervik

Def Atty: Yes, your honor. Mr./Ms. Cervik, was the clubhouse burned up or burned down?

AI Czervik: Up. Down. Sideways. What difference does that make?

Def Atty: Well, none really. I was just wondering. No further questions.

Judge: *(Pltf Attorney)*, do you have any further witnesses?

Pltf Atty: No your honor, I don't. I move for a directed verdict in favor of my client in the sum of \$3,125,000.

Judge: I am denying your motion. I believe there are material facts that this jury must consider.

Pltf Atty: Dang it!

Direct examination of Danny Noonan

Judge: Defense attorney, do you have any witnesses?

Def Atty: Yes, your honor. I call Danny Noonan to the stand

Bailiff: Do you swear to tell the truth, the whole truth and nothing but the truth?

Noonan: I can do nothing but.

Def Atty: Please state your name for the record.

Noonan: I'm Danny Noonan of Danny Noonan's No Risk Insurance Agency.

Def Atty: Is that your sole occupation?

Noonan: I also dabble in taxidermy and real estate, but those are just hobbies really.

Def Atty: Are you familiar with Ty Webb?

Noonan: Yes. I've been handling Ty's insurance accounts for many years.

Def Atty: And do you recall five years ago when he came into your office to purchase coverage for his newly acquired golf course, the Bushwood Country Club?

Noonan: Yes. He came in to review his life insurance policies and then he mentioned that he was purchasing Bushwood.

Def Atty: Did he give you much time to discuss his insurance needs for the course?

Noonan: Very little. He said he was in a rush he was on his way to the closing and then he had a tee time.

Def Atty: How long was here there?

Noonan: At most 15 minutes.

Def Atty: Did he tell you about the course?

Noonan: Yes. He said it was a 7,000 yard course, with a 5,000 square foot club house.

Def Atty: So then what did you do?

Noonan: I started asking him questions, but Ty left before I could get all of the information from him. So I took what I had and I gave it to Christine/Chris. She/he completed the applications, put the numbers in the system, and got the policy issued.

Def Atty: Was Mr. Webb still around?

Noonan: No, like I said he took off before I could get things finished.

Def Atty: How did you come to the conclusion of how much coverage was needed? Did he bring any paperwork with him?

Noonan: Yes he gave me the policy from the former owner and told me to match the coverage. The only differences were in the values.

Def Atty: What were those differences?

Noonan: The policy he gave me had value of \$250,000 for the buildings and \$100,000 for the contents. But he told me he was paying \$1,000,000 for everything and that is what he wanted it insured for. Based on the previous figures we put \$500,000 on the buildings and \$250,000 on the contents. We felt the value of the golf course itself was \$250,000.

Def Atty: What insurance company did you write the policy with?

Noonan: I wrote the policy with one of my favorite carriers. Crimson Permanent Assurance. I've worked with the underwriter Monty Python over there and he's always treated me right.

Def Atty: So how did you determine the value for building?

Noonan: I looked in the cost estimator in golf course club houses and the replacement cost value was about \$100 for every square foot.

Def Atty: So \$500,000 seemed appropriate?

Noonan: Yes it did.

Def Atty: Do you have a copy of that policy in your file?

Noonan: Yes, of course I do.

Def Atty: Did you provide a copy of it to Mr. Webb?

Noonan: Yes, I did. I emailed it to him.

Def Atty: Did you email with Mr. Webb frequently?

Noonan: Yes. I knew his business manager preferred to communicate that way rather than regular mail. We set up a securely encrypted email system

between our offices so they would always receive email knowing it was secure.

Def Atty: Did he ever tell you or email you about any of the improvements he made to the club house?

Noonan: No.

Def Atty: Did he ever tell you about any changes in the way he was dealing with the golf carts?

Noonan: No.

Def Atty: Did he ever tell you about any changes in the way he was dealing with the Pro shop?

Noonan: No.

Def Atty: Did he ever tell you about any changes in the way he was dealing with the Snack shop?

Noonan: No.

Def Atty: Did he ever tell you he had any business relationships with Al Czervik?

Noonan: Business relationships? No.

Def Atty: Did you always provide the insurance coverages that Mr. Webb asked you for?

Noonan: Yes, I did.

Def Atty: I have no more questions for this witness

Cross examination of Danny Noonan by Plaintiff attorney

Pltf Atty: Danny, you've known Ty Webb for a long time haven't you?

Noonan: Yes I have. Ever since I caddied for him.

Pltf Atty: In fact he helped you get a scholarship to go to college.

Noonan: That is correct.



Swiss Re
Corporate Solutions

Pltf Atty: And you majored in insurance at St. Copius of the North?

Noonan: Yes I did.

Pltf Atty: And you've been close confidants ever since then haven't you?

Noonan: I can't say close confidant. We've had a business relationship.

Pltf Atty: You knew that he counted on you for his insurance needs?

Noonan: Yes I believe that is correct.

Pltf Atty: And you encouraged that?

Noonan: Eh, well we've had an arms-length relationship. He placed orders for insurance with me and I filled those orders.

Pltf Atty: Mr. Noonan, do you have a web site for your insurance agency?

Noonan: Well, yes, I think Spaulding put one together a few summers ago for a school project. One year he did a diorama, the next year the web site.

Pltf Atty: Let me show you what has been marked as Plaintiff Exhibit 3.

(Show website PowerPoint on screen if available. If not, use copy of attachment.)

Pltf Atty: The website says the services you offer your clients?

Noonan: Yes, that's correct.

Pltf Atty: It says right here that you are a "partner" with your customers. Is that right?

Noonan: Yes, that's what it says.

Pltf Atty: And it also says that you are "constantly checking to see what you need", isn't that correct?

Noonan: Well, uh...yes.

Pltf Atty: And it also says "that we know your coverage needs even if you don't", isn't that right?

Noonan: Well, yes, but nobody really reads these things anyway.

Pltf Atty: Doesn't it say right here that "We are Experts in Insurance"?

Noonan: Yes, but everybody says things like that to embellish what they do. We don't really mean it. It's just puffery.

Pltf Atty: Do you know someone named Christine/Chris Russell?

Noonan: Yes. She's/he's my CSR, my customer service representative.

Pltf Atty: And is she/he in charge of issuing Certificates of Insurance at your agency?

Noonan: Yes, among other things. She also empties trash and puts in light bulbs.

Pltf Atty: Let me show you Plaintiff Exhibit 4 which is a document from your file. Do you recognize this document?

Noonan: Yes it looks like a Certificate of Insurance.

Pltf Atty: And it says right here that it was issued by your agency, correct.

Noonan: Yes, it does.

Pltf Atty: And would Christine/Chris Russell have issued this?

Noonan: Well it kind of depends. Sometimes Spaulding takes care of those; sometimes Christine/Chris will give him that job since it's not that important.

Pltf Atty: And this appears to be around the time Mr. Webb had to take out a mortgage to do the improvements on the golf course?

Noonan: Well yes but at the time I didn't know of any improvements.

Pltf Atty: Can you read the amount on this certificate of insurance?

Noonan: \$3,000,000 on the building.

Pltf Atty: Does it show who this was mailed to?

Noonan: Yes, the AI Cervik Bank and Trust.

Pltf Atty: Do you know where that figure of \$3,000,000 came from?

Noonan: I guess Spaulding put it on there. Spaulding isn't really strong with numbers but it really doesn't mean anything anyway.

- Pltf Atty:** You know that the bank would have relied on that number for the amount of insurance that was placed on the building, correct?
- Noonan:** Well, I guess so, but that certificate doesn't really give anyone insurance coverage or anything.
- Pltf Atty:** So how many business visits did you have with Mr. Webb after your initial conversation with him?
- Noonan:** I don't recall any visits with him since he came in that day when he told me about the golf course. We handled everything after that by email and text.
- Pltf Atty:** Did you ever ask him for any documentation showing the actual square footage before or after the improvements were made?
- Noonan:** No. I didn't know anything about any improvements.
- Pltf Atty:** But you knew about the improvements and issued a certificate, didn't you.
- Noonan:** I don't recall.
- Pltf Atty:** You golf at Bushwood on a regular basis?
- Noonan:** I go to the annual Caddy Alumni Tournament and maybe a couple other times a year.
- Pltf Atty:** What do you normally shoot when you are out there?
- Noonan:** I shoot in the low 70s and the odd gopher now and then.
- Pltf Atty:** Is that about typical for you on a 7000 yard course
- Noonan:** Yes, that's what Ty told me when he bought the course.
- Pltf Atty:** Do you walk the course?
- Noonan:** Oh no. You have to take a cart.
- Pltf Atty:** So you use a cart every time?
- Noonan:** Yes, you have to. They are pretty nice carts they have a cooler, an automatic scorekeeper that keeps score for you, GPS, all the fancy bells and whistles.

Pltf Atty: Have you ever seen the "C" on the side of the cart? The Crest?

Noonan: Well, yes, I kind remember something like that. I thought it was funny because I would have expected a B for Bushwood.

Pltf Atty: Did you ever ask anyone about that?

Noonan: No, I didn't see any need to.

Pltf Atty: Did you ever go to the 19th hole for a few cold ones after a round?

Noonan: You mean the Czervik Snack Bar? Sure, I've been there. They've got beef jerky there, hotdogs, hamburgers and corn nuts. I love corn nuts.

Pltf Atty: When you get to the golf course, where do you check in?

Noonan: Oh, that would be the Czervik Pro Shop.

Pltf Atty: Have you ever bought any golf equipment there?

Noonan: Just the usual balls and tees before I start my round. But it's a beautiful set up, they have clubs and bags and clothing...a pretty good selection. It's a well-stocked golf shop.

Pltf Atty: So where there any additions made to the building itself?

Noonan: Yes, few years ago they put in banquet room.

Pltf Atty: Over the years have you gone to any events in the new banquet room?

Noonan: Oh, sure, it's really nice. That's where they have the caddy awards.

Pltf Atty: Have you been to the ceremony?

Noonan: Yes, It's a big dinner dance. It's from 1 – 1:15 on a Tuesday afternoon.

Pltf Atty: Now your understanding is that this loss was caused by a fire at the club?

Noonan: Yes.

Pltf Atty: And it was caused by a member of Mr. Webb's club staff accidentally?

Noonan: Yes.

Pltf Atty: But that would have been covered by the policy?

Noonan: Yes.

Pltf Atty: And they paid part of Mr. Webb's loss right?

Noonan: Yes.

Pltf Atty: But they didn't pay all of it?

Noonan: No.

Pltf Atty: That's because the facility is actually 5000 square feet before renovations and 9000 square feet after, isn't that correct?

Noonan: That's what the adjuster report said.

Pltf Atty: And the replacement cost was \$3,000,000, correct?

Noonan: Yes.

Pltf Atty: So part of the problem was the limits were not high enough?

Noonan: Yeah, well, I guess so.

Pltf Atty: And there was a huge co-insurance penalty right?

Noonan: Yes.

Pltf Atty: You never explained what a co-insurance penalty was to Mr. Webb did you?

Noonan: It's in the policy and he has a lot of other properties that have the same provision.

Pltf Atty: But you didn't explain how that the co-insurance penalty would come into play in the context of Bushwood Country Club when it wasn't insured to value.

Noonan: I didn't think it was necessary because it was insured to value at the time we initially wrote the policy.

Pltf Atty: And you understand that Mr. Webb had to pay Al Chervik over \$375,000 to settle a claim for the destruction of his golf carts, and all the stock in his pro shop and the snack bar.

Noonan: Yes.

Pltf Atty: And that's because property owned by a third party was not covered under Ty Webb's insurance policy, correct?

Noonan: That's right. But he never told me he wanted coverage for those things. I didn't know what kind of understanding or contract there was between Al Chervik and Ty Webb. Before this fire I never even knew that they had a business relationship.

Pltf Atty: Because you are just an order taker right?

Noonan: Right.

Pltf Atty: Let's take another look at your website.

(Bring up Power Point of website or refer to document)

Pltf Atty: Can you read for me what it says on your website?

Noonan: "Danny Noonan's No Risk Insurance...your business partner; we're so much more than an order taker"

Pltf Atty: And this?

Noonan: "Insurance is hard to understand, let us do it for you"

Pltf Atty: And this?

Noonan: "We ask all right questions so you don't have to!"

Hmmm....I guess maybe I should have talked to Spaulding about this.

Pltf Atty: And all of this is on YOUR website, correct?

Noonan: Oh yeah, that's what it says but I just took that off of some else's web site. My ad agency did that.

Pltf Atty: Well who's your ad agency?

Noonan: The Al Czervik Ad Agency

Pltf Atty: I have no further questions for this witness.

Re-direct of Danny Noonan

Judge: Counsel, any additional questions for your witness?

Def Atty: Yes, your honor. Just a couple. So in effect this is just an advertisement?

Noonan: Most of it comes from the Golden Corral web site.

Def Atty: Mr. Noonan, Ty Webb never asked you to increase the limits on this property did he?

Noonan: No, he did not.

Def Atty: He never asked for any coverage on the pro shop, carts, etc.

Noonan: No, he did not.

Def Atty: I have no more questions for this witness

Judge: *(To Plaintiff's attorney.)* Any more questions for this witness?

Pltf Atty: No your honor.

Judge: *(To witness.)* You may step down.

Direct Examination of Christine/Chris Russell

Judge: Defense attorney, do you have any other witnesses?

Def Atty: Yes, your honor. The Defense calls Ms. Christine/Chris Russell.

Bailiff: Do you swear to tell the truth, the whole truth and nothing but the truth?

Christine/Chris: I do.

Def Atty: Can you state your name for the record.

Christine/Chris: Christine Susan Russell/Christopher Steven Russell. You can call me Chris.

Def Atty: And what do you do?

Christine/Chris: I am the CSR, err customer service representative, at Danny Noonan's No Risk Insurance Agency.

Def Atty: And are you familiar with Ty Webb and the insurance policy that was placed on Bushwood Country Club?

Christine/Chris: Yes, I am.

Def Atty: Were you involved in the placement coverage for Bushwood Country Club?

Christine/Chris: Yes.

Def Atty: What was your involvement?

Christine/Chris: Danny gave me the previous policy and I reviewed it to see what coverage was there to see what was on the property before.

Def Atty: And what did you do then?

Christine/Chris: I made a list and contacted Crimson Permanent Assurance to place the coverage.

Def Atty: Did you make any additions on that previous policy?

Christine/Chris: We doubled the value of the coverage from 250 to 500 on the building and from 100 to 250 on the contents, but otherwise...

Def Atty: But why did you do that?

Christine/Chris: Because that is how Ty always wants it unless he tells us otherwise. But we never increase it by more than what he tells us.

Def Atty: And you've worked on Mr. Webb's policies before?

Christine/Chris: Yes, I have. For 15 years.

Def Atty: Do you insure to value?

Christine/Chris: Yes, we insure to whatever value he tells us.

Def Atty: And that is why you made it \$500,000 because that is what he paid for the property?

Christine/Chris: Yes. He told us he paid one million dollars for the country club. We were able to figure that out from the old policy he gave us. We based the calculation on the figures from the previous values and what we knew he paid for the property.

Def Atty: Did you ever talk to Ty any point after that point, after the policy was written?

Christine/Chris: Well, not for business purposes.

Def Atty: In the 15 years you've worked on Mr./Ms. Webb's insurance, has he ever come back to you and asked for any additional coverages or limits?

Christine/Chris: No. Never.

Def Atty: Thank you. I have no further questions.

Judge: Plaintiff attorney, do you have any questions for this witness?

Cross Examination of Christine/Chris Russell

Pltf Atty: Yes, your honor. So Ms. Russell, you testified on direct that you were in charge of placing the coverage on Bushwood Country Club.

Christine/Chris: Correct.

Pltf Atty: So you also issued the certificate of insurance for Bushwood Country Club?

Christine/Chris: No, I was really busy, and it was an easy enough job so I gave it to Spaulding Smalls to do.

Pltf Atty: Did you review those certificates of insurance before they went out?

Christine/Chris: Are you kidding? Do you know how many certificates of insurance we issue a day? We turn those out like Halloween candy...and it's not the good candy either! And besides, when Spaulding is not eating paste he is usually quite lucid.

Pltf Atty: When did you have him complete the certificate of insurance?

Christine/Chris: He had finished with the photo copying and emptying the trash, so I got him started with a stack of COI's.

Pltf Atty: I'm going to show you what is marked at exhibit 4. Have you ever seen this before?

Christine/Chris: Yes, that's a certificate of insurance that Al had Spaulding prepare about three years ago.



Swiss Re Corporate Solutions

Pltf Atty: Can you tell me what the value is for the building that is shown on this certificate of insurance?

Christine/Chris: \$3,000,000.

Pltf Atty: And can you tell me why it has that amount on it?

Christine/Chris: Because that is what the Loan Officer at the loan company told me they needed for Ty to get his loan.

Pltf Atty: And did you double check his policy to make sure that was the amount of his coverage?

Christine/Chris: No. I'm sure I was really busy at the time.

Pltf Atty: And Spaulding prepared the certificate, is that correct?

Christine/Chris: Yes.

Pltf Atty: Did you ever ask them why they needed this amount?

Christine/Chris: I don't know.

Pltf Atty: Do you remember this particular certificate of insurance?

Christine/Chris: I do hundreds of these a year. I don't remember.

Pltf Atty: How do you remember Spaulding did this one?

Christine/Chris: Because of the peanut butter smudge on the corner. Dead giveaway.

Pltf Atty: No further questions.

Judge: *(To Defense Attorney.)* Any redirect?

Redirect by defense attorney

Def Atty: Yes, your honor. I'm going to show you what is previously marked Exhibit 4. This is the certificate of insurance that was issued for this property. What does it say right here at the top?

Christine/Chris: It says:



Swiss Re

Corporate Solutions

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

Def Atty: And after seeing all of this did you ever mentioned to Ty that he needed to increase his limits?

Christine/Chris: No I did not.

Def Atty: And did ty ever come back to you and ask you for higher limits for these improvements

Christine/Chris: No he did not.

Def Atty: No further questions.

Judge: *(To Plaintiff's attorney.)* Any more questions for this witness?

Pltf Atty: No your honor.

Judge: *(To witness.)* You may step down.

Judge: Defense attorney, do you have any other witnesses?

Direct examination of Julie/James Westport, duty/standard of care expert

Def Atty: Yes, your honor. The defense calls Ms. Julie/Mr. /James Westport.

(Julie/James Westport approaches witness stand.)

Bailiff: Do you swear to tell the truth, the whole truth and nothing but the truth?

Def Atty: State your name and occupation for record.

Westport: My name is Julie Westport, and I am a professor of insurance at Swiss Re University.

Def Atty: Can you provide us with your educational and professional background.



Swiss Re Corporate Solutions

Westport: Yes. I graduated from the (local) University with a degree in Insurance Studies. I then obtained my graduate degree In Underwriting, Actuarial Science and Insurance at Swiss Re University. Prior to college I worked for the ABC Insurance Agency as a receptionist and then became a CSR while working part time in college. After I received my graduate degree I returned to the ABC Insurance agency as a producer and eventually became a part owner. I specialized in professional liability with a particular emphasis in insurance agent's errors and omissions. After about 10 years I sold my interest and went to work for Swiss Re Corporate Solutions. I worked as an underwriter, actuary, in claims, and eventually in products in the insurance agent's professional liability program. For the last 5 years I have been a professor and head of the insurance department at Swiss Re University.

Def Atty: You've been called as an expert witness in this matter today correct?

Westport: Yes. I was contacted to review the files of Mr. Webb and Mr. Noonan and to give an opinion as to the standard of care of Mr. Noonan.

Def Atty: What do you mean by standard of care?

Westport: It's the standard by which an agent should be measured for their actions when handling insurance matters for their customers. It is also sometimes referred to as the duty to advise. As a general rule, the agent must use that degree of care that a reasonable agent would use in the same or similar circumstances.

Def Atty: Is the standard of care the same everywhere?

Westport: No. The standard of care varies from state to state. For example, the basic standard of care is that of an order taker. This means that the agent is only responsible to place the insurance coverages requested by their customer. The agent doesn't have a duty to make any further inquiries as to what insurance the customer may need.

Def Atty: Are there other standards of care?

Westport: Yes. The next level is the "professional" standard. The agent has a duty to inform their customer of the existence and advisability of additional types and limits of coverage. They must advise their customers of other types of available coverage. However, absent a special relationship, they have no



duty to advise their customers about obtaining additional limits and coverages.

Def Atty: You said "special relationship". What does that mean?

Westport: This is the highest standard. In this situation an agent has an affirmative duty to advise about the types and limits of coverages available. This essentially removes the burden from the customer of determining their own best interests and turns the agents into financial guidance counselors.

Def Atty: Are there any other requirements under this standard?

Westport: Yes, most states thus require that the insured first establish from the circumstances that the agent-customer relationship was "special" before any duty to advise can arise. Courts generally define "special circumstances" as including one or more of the following factors: by holding one's self out as an expert, making promises to advise, accepting additional compensation, long term course of dealing, and making representations about the coverages upon which the customer relies.

Def Atty: Thank you for that explanation. Are you aware of how Mr. Noonan handled this matter?

Westport: Yes. He essentially handled this matter as an order taker. Mr. Webb told him what he wanted and Mr. Noonan placed the coverage as requested.

Def Atty: Are you aware of the duty in this state?

Westport: Yes, it is as an order taker.

Def Atty: And, in your expert opinion, did Mr. Noonan fulfill that duty?

Westport: Yes, he did.

Def Atty: I have no further questions.

Cross Examination of Julie/James Westport

Pltf Atty: Ms./Mr. Westport, you weren't just called here as an "expert" witness were you? You are actually being paid to testify for Mr. Noonan, isn't that correct?

Westport: I am being compensated to give my opinion regardless of what Mr. Noonan's actions were.

Pltf Atty: And your opinion is that he met the standard of care for an order taker, correct?

Westport: Yes.

Pltf Atty: Isn't there a way that even as an order taker that an agent could have a heightened duty?

Spaulding: *(Snickers)* He said "doody"!

Judge: Order, order. Ms./Mr. Westport, please answer the question.

Westport: Yes.

Pltf Atty: Could you tell us what those are?

Westport: Yes, as I said before by holding one's self out as an expert, making promises to advise, accepting additional compensation, long term course of dealing, and making representations about the coverages upon which the customer relies.

Pltf Atty: Ms./Mr. Westport, did you review the website for the agency?

Westport: Yes.

Pltf Atty: And you see that it says that they have 20 years of experience. Can serve all your insurance needs, etc.

Westport: Yes. But that is just puffery. Many agents and in fact many companies say things that they don't really mean or have any intention of being able to do.

Pltf Atty: So how do people tell the difference?

Westport: Common sense, I guess.

Pltf Atty: (quote from site) Well, it says right here "We are your business partners." That sounds pretty clear to me. Not very ambiguous, don't you think?

Westport: I guess so.

Pltf Atty: I have no further questions.



Swiss Re Corporate Solutions

Judge: *(To Defense attorney.)* Any redirect?

Defense re-direct

Def Atty: Yes, your honor. Ms./Mr. Westport, just to be clear, you've reviewed everything and your opinion still hasn't changed, correct?

Westport: That's correct.

Def Atty: In your expert opinion, in this state, Mr. Noonan fulfilled his obligations as an insurance agent to Mr./Ms. Webb?

Westport: Yes, he/she did.

Def Atty: Thank you, I have no further questions.

Judge: *(To Plaintiff attorney.)* Any more questions?

Pltf Atty: No your honor.

Judge: Are there any further witnesses?

Pltf Atty: No your honor.

Def Atty: No your honor.

Closing Arguments

Judge: If there are no further witnesses, I am ready to hear your closing arguments?

Closing Arguments:

(Plaintiff attorney will go first followed by the Defense Attorney. No rebuttal by Plaintiff's attorney is allowed due to time constraints. Attorneys should draft and present their own arguments.)

Judge: Ladies and gentlemen of the jury, you have now heard all of the evidence in this matter and heard the closing arguments of the attorneys. Please remember that the closing arguments are not evidence and should not be considered by you in your deliberations.



I will now read to you the instructions upon which you will render your verdict:

If you believe that the defendant, Danny Noonan, did not exercise that degree of care of a reasonable and prudent agent in the same or similar circumstances, then you must find in favor of the Plaintiff, Bushwood Country Club, and determine the amount of damages the Plaintiff has sustained.

However, if you believe that the Defendant, Danny Noonan, did exercise that degree of care of a reasonable and prudent agent in the same or similar circumstances, then you must find in favor of the Defendant, Danny Noonan.

End Scene 4

Scene 5

The Verdict

After closing arguments, either a break can be taken for the jury/audience to discuss the case and then return to render the verdict or the verdict can be rendered immediately. Both options are given below.

Because the audience is the jury, There are two methods of obtaining a verdict. The first method (Immediate Verdict) simply asks them to vote for the plaintiff or defendant.

The second method (Jury Deliberation) can be used when at least two hours are available for the mock trial. The Narrator/moderator (or whomever is best to do so) asks the audience to separate into several groups to act as individual small juries. Depending on how seating is arranged, this can be done by grouping the audience by tables, but should not require that the physically move unless needed. Each jury group should then discuss the case, pick a jury foreman and vote. 10-15 minutes should be given for these deliberations. Then, the moderator/narrator should then ask each individual jury to provide their verdict and discuss the issues that they thought were important. The attorneys can help to moderate this discussion.

(Immediate Verdict)



Judge: We have now heard the testimonies of all involved today related to this case.

We will now poll the jury. Will all those that find for the plaintiff, Ty/Tylene Webb, please raise your hands?

Will all of those that find for the defendant, Danny Noonan, please raise your hands?

Based on the verdict as rendered by this jury, I find in favor of the (Plaintiff, Ty Webb and assess damages at \$3,125,000)

OR

Based on the verdict as rendered by this jury, I find in favor of the (Defendant, Danny Noonan).

The jury is dismissed and the Court is adjourned.

Bailiff: All rise. This court is adjourned.

(Jury Deliberation)

Judge: We have now heard the testimonies of all involved today related to this case. Before I retire to chambers, I now charge you, the audience, as jurors in this case, to discuss this during the break and upon our return, we will poll the jury for your verdict. *(Here the judge shall organize the audience into small juries based on the room arrangement, ideally 8-10 people, to deliberate and render a verdict. They should be given 10-15 minutes to discuss, vote and choose a foreman to deliver their verdict.)*

(All rise and stand in place.)

Bailiff: All rise. This court is in recess.

(Judge returns to the bench after the break.)

Judge: Bailiff, call the court to order.

Bailiff: The court will now return to order.



Swiss Re

Corporate Solutions

Judge: We will now poll the jury. Will all those that find for the plaintiff, Ty/Tylene Webb, please raise your hands?

Will all of those that find for the defendant, Danny Noonan, please raise your hands?

Based on the verdict as rendered by this jury, I find in favor of the (Plaintiff, Ty Webb and assess damages at \$3,125,000)

OR

Based on the verdict as rendered by this jury, I find in favor of the (Defendant, Danny Noonan).

The jury is dismissed and the Court is adjourned.

Bailiff: All rise. This court is adjourned.

(The judge leaves the bench.)

(Optional: Judge can make closing thanking remarks to case and audience.)

(Optional: Judge and attorneys can have question and answer session to address issues raised in mock trial.)

Addendum

Stage Diagram

Exhibit 1 Bushwood Country Club Insurance policy

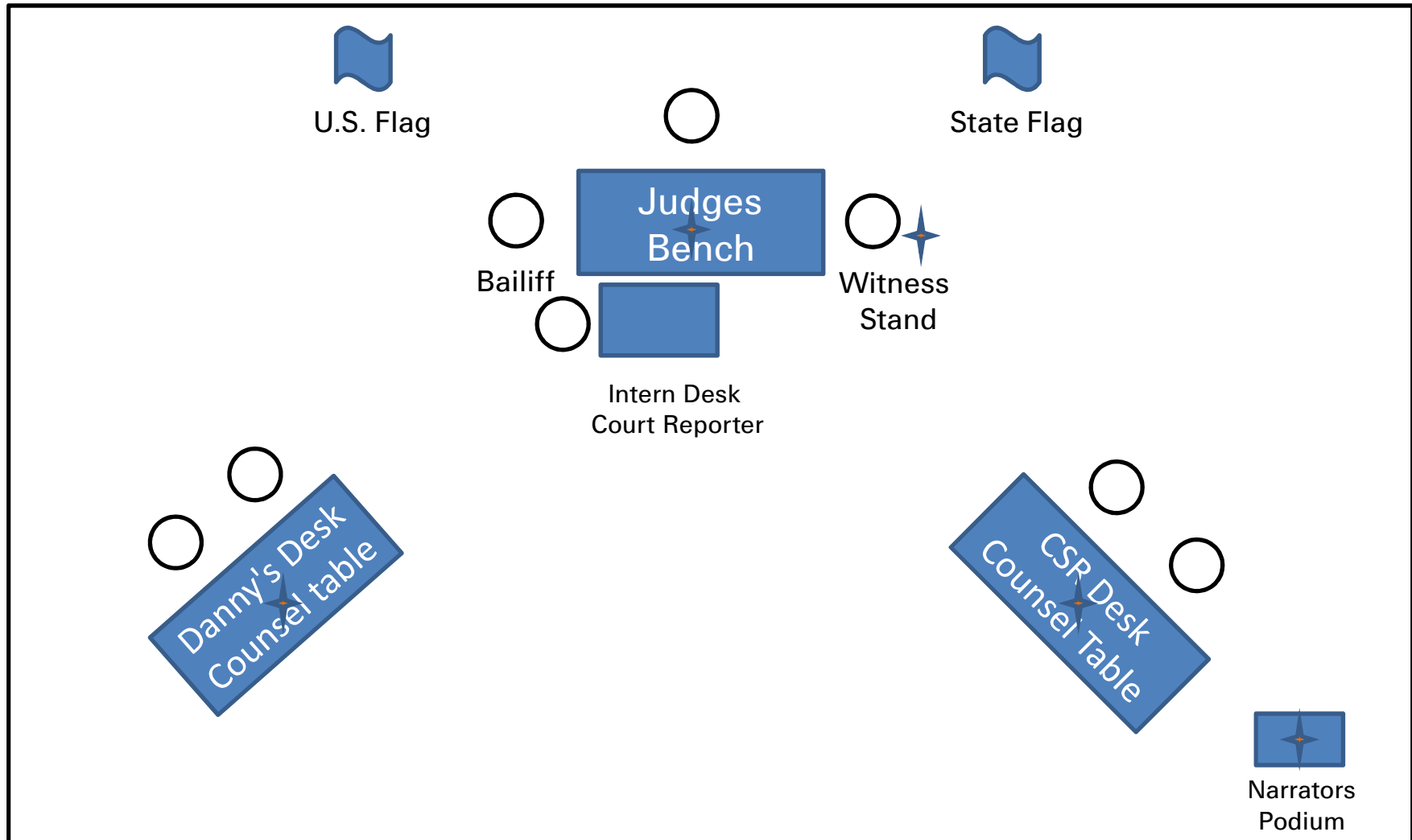
Exhibit 4 Certificate of insurance

PowerPoint Mock Trial Header page

Damage Calculation

Danny Noonan's No Risk Insurance Agency website

Stage diagram for Bushwood v. Noonan Mock Trial



○ Chairs



Microphones- 2 lavalieres, 3 table stand, and 1 floor stand.
 2 lavalieres-1 each for Danny and Ty during opening scene, then given to counsel during trial.
 1 table stand microphone each on narrators podium, Danny's Desk/counsel table, CSR desk/counsel tables, judges bench. 1 floor stand microphone for witness stand.



Swiss Re
Corporate Solutions

Insurance Agents and Brokers Mock Trial

Bushwood Country Club vs.
Noonan's No Risk Insurance Agency

Independent Insurance Agents of

Swiss Re Corporate Solutions

***INSURANCE AGENTS AND BROKERS
ERRORS AND OMISSIONS
MOCK TRIAL***

***Bushwood Country Club
VS.
Danny Noonan's No Risk Insurance Agency***

**(Association)
(Event)
(Date)**

Damage Calculation

<i>Policy limits</i>	<i>\$1,000,000</i>
<i>Building</i>	<i>\$500,000</i>
<i>Contents</i>	<i>\$250,000</i>
<i>Land</i>	<i>\$250,000</i>

Damages

<i>Building Replacement Cost</i>	<i>\$3,000,000</i>
<i>Less policy limit</i>	<i>- 500,000</i>
<i>Uncovered building loss</i>	<i>\$2,500,000</i>

<i>Contents Loss</i>	<i>\$ 500,000</i>
<i>Less policy limit</i>	<i>- 250,000</i>
<i>Uncovered contents loss</i>	<i>\$ 250,000</i>

<i>Uncovered Czervik contents loss</i>	<i>\$ 375,000</i>
--	-------------------

Total Uncovered Loss

<i>Building</i>	<i>\$2,500,000</i>
<i>Contents</i>	<i>+ 250,000</i>
<i>Czervik contents</i>	<i>+375,000</i>

Total Uncovered Loss

\$3,125,000



Danny Noonan's No Risk Insurance Agency



Your business partner; we're so much more than an order taker
Serving our Customers for more than 20 years!

Get a
Quote

About
Us

Con-
tact
Us

We partner with our clients to
constantly check to see what you need

Insurance is hard to understand
Let us do it for you

We ask all the right questions so you don't have to

There's no coverage we haven't dabbled in!

Taxidermy by appointment



Exhibit 1-Bushwood Country Club Policy

Westport Insurance Corporation

INSURANCE INDUSTRY PROFESSIONAL LIABILITY COVERAGE FOR INSURANCE AGENCIES

NOTICE — THIS IS A CLAIMS MADE POLICY — PLEASE READ THIS POLICY CAREFULLY TO DETERMINE YOUR RIGHTS AND DUTIES AND WHAT IS AND WHAT IS NOT COVERED. THE COMPANY WILL NOT PAY ANY AMOUNTS OR TAKE ANY ACTION EXCEPT AS PROVIDED IN THIS POLICY.

This insurance is written on a CLAIMS made basis and applies only to CLAIMS first made against the INSURED during the POLICY PERIOD and reported to Westport Insurance Corporation (hereafter referred to as the "Company") as provided in the POLICY.

Terms of this POLICY that are in capitalized letters have meanings set forth in the **DEFINITIONS AND EXPLANATION OF TERMS** section. The capitalized and bolded headings are descriptive only and do not create or limit coverage in any way.

Throughout this POLICY the words "you" and "your" refer to the NAMED INSURED shown in the Declarations. The words "we," "us" and "our" refer to the company providing the insurance.

In consideration of the payment of premium, and in reliance upon the statements, representations, attachments and exhibits contained and submitted with the application for this POLICY, and also subject to all the exclusions, conditions and other requirements of this POLICY, we agree as follows:

I. COVERAGE

- A. We will pay on behalf of the INSURED all sums in excess of the DEDUCTIBLE that the INSURED becomes legally obligated to pay as DAMAGES caused by WRONGFUL ACTS resulting in any CLAIM first made against the INSURED during the POLICY PERIOD and reported in writing to us or the producing agent as soon as practicable.
- B. In order to be covered by this POLICY, a CLAIM must seek DAMAGES arising from a WRONGFUL ACT committed either by the INSURED, or by a person for whose WRONGFUL ACTS the INSURED is legally liable, and such WRONGFUL ACT must take place:
 - 1. during the POLICY PERIOD; or
 - 2. prior to the POLICY PERIOD but on or after the RETROACTIVE DATE.
- C. Notwithstanding paragraphs A. or B. above, this **COVERAGE** section does not provide coverage for any CLAIM, if at the time prior to the effective date of this POLICY, or any Employers Reinsurance Corporation or Westport Insurance Corporation policy this POLICY replaces, if you or any owner, officer or partner of the NAMED INSURED:
 - 1. knew of a CLAIM or POTENTIAL CLAIM; or
 - 2. with regard to a BREACH of PERSONAL DATA, was aware of such BREACH.
- D. **ADDITIONAL COVERAGES**
 - 1. **CATASTROPHE EXTRA EXPENSE.** We will pay up to \$10,000 per catastrophe subject to a per POLICY PERIOD aggregate limit of \$25,000 for the actual extra expenses incurred by you as a result of a catastrophe during the POLICY PERIOD beginning on the date of a catastrophe and for thirty (30) days thereafter. The extra expense incurred must be incurred by you only to assist in the insurance claims processing needs of your customer(s) who have been affected by the catastrophe. The catastrophe must be a declared

catastrophe by the Property Claims Services. A \$500 deductible for each catastrophe shall apply. Limits provided by this paragraph are part of and not in addition to the limits provided by this POLICY.

2. **SUBPOENA.** If, during the POLICY PERIOD you receive a subpoena for documents or testimony relating to your business services and the subpoena is not related to a CLAIM under this POLICY, we will, at your request and upon receipt of a copy of the subpoena, retain legal counsel to advise you regarding the document production or to represent you during testimony. We will pay the expenses incurred in providing advice regarding the production of documents, review of the documents prior to production, your preparation for testifying, and representation during testimony. The maximum amount payable, regardless of the number of subpoenas reported or the number of INSURED'S subject to all subpoenas shall be \$10,000 per POLICY PERIOD. The DEDUCTIBLE shall not apply to this provision, however any payments made by us under this provision will be included within the applicable Limit of Liability and not in addition thereto. Any notification you give us of such subpoena shall be deemed to be notification of a POTENTIAL CLAIM under this POLICY. If this POTENTIAL CLAIM ultimately results in a CLAIM, any expenses we have paid will be included in CLAIM EXPENSE.

3. **PERSONAL DATA PROTECTION.** Notwithstanding **EXCLUSIONS**, paragraph B. BREACHES OF PERSONAL DATA, if during the POLICY PERIOD, PERSONAL DATA of others is compromised as a result of a BREACH of the INSURED'S network security, through hacking, mismanagement, loss or theft due to your negligent act, error or omission, we will pay up to \$10,000 per incident of BREACH subject to a per POLICY PERIOD aggregate limit of \$25,000 for reasonable and necessary expenses incurred by you as a result of any BREACH in connection with your insurance operation. The extra expense must be incurred by you:

- a. to consult with legal counsel on how best to respond to the compromise;
- b. to consult with Information Technologists to determine the nature and extent of the compromise; or
- c. to assist in notification of the individuals who have been affected by the PERSONAL DATA compromise.

A \$1,000 deductible applies to each incident of BREACH reported under this paragraph. Limits provided by this paragraph are part of and not in addition to the limits provided by this POLICY. All compromise of PERSONAL DATA that is from the same cause or set of causes will be treated as one incident of BREACH.

4. **REGULATORY DEFENSE.** We will pay on behalf of the INSURED, CLAIM EXPENSES caused by WRONGFUL ACTS committed by an INSURED in connection with your insurance operations, arising from the following:

Responding to a complaint or defending an investigation brought by any state regulatory agency, insurance department, or other government agency arising from your insurance operation. INSURED'S must:

- a. provide prompt written notice to us and obtain our written consent before responding; and
- b. agree to the use of legal counsel that we choose or approve.

This coverage does not apply to salaries of your personnel, loss of income, fines, penalties, return of fees or commissions, or reimbursement of premiums. The most we will pay under this additional coverage is \$25,000 per POLICY PERIOD for CLAIM EXPENSES and such shall be a part of, and not in addition to, the Limit of Liability shown in the Declarations.

II. DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS

As respects such insurance we shall:

- A. have the right and duty to defend, investigate, and conduct any settlement negotiations arising from any CLAIM first made against the INSURED during the POLICY PERIOD based upon alleged WRONGFUL ACTS of an INSURED. We shall have the right to select the attorney to represent and defend an INSURED for any CLAIM that is made against an INSURED. We shall have the right to select arbitrators in the event of any arbitration proceedings.
- B. not settle any CLAIM without your consent. If we recommend a settlement to you which is acceptable to the claimant, and you do not agree with us and would rather contest the matter, our ultimate liability, subject to the DEDUCTIBLE, will be limited to the total of:
 - 1. the amount for which the CLAIM could have been settled at that time, plus
 - 2. the amount of CLAIM EXPENSE that was incurred up to the time we made the recommendation.

We shall not be obligated to pay any DAMAGES or defend or continue to defend any CLAIM after the Per CLAIM Limit of Liability or Aggregate Limit of Liability under this POLICY has been exhausted by payment of DAMAGES or after the deposit in a court having jurisdiction of sums exhausting the Per CLAIM Limit of Liability or Aggregate Limit of Liability.

III. REPORTING AND NOTICE

INSURED'S duties in the event of any CLAIM or any POTENTIAL CLAIM:

- A. The INSURED shall not without our written consent, do any of the following:
 - 1. admit liability;
 - 2. participate in any settlement discussions nor enter into any settlement;
 - 3. incur any cost or expenses; or
 - 4. produce documents, provide a recorded statement, or give any deposition regarding any actual or alleged WRONGFUL ACT.
- B. The INSURED shall:
 - 1. provide written notice of any CLAIM to us or the producing agent shown on the Declarations as soon as practicable.
 - 2. report any POTENTIAL CLAIM to us or the producing agent in writing during the POLICY PERIOD. If, during the POLICY PERIOD, an INSURED first becomes aware of a POTENTIAL CLAIM and gives written notice of such POTENTIAL CLAIM to us during the POLICY PERIOD, any CLAIMS subsequently made against the INSURED arising from the POTENTIAL CLAIM shall be considered to have been made during the POLICY PERIOD that the INSURED first became aware of such POTENTIAL CLAIM.
 - 3. include within any notice of CLAIM or POTENTIAL CLAIM a description of the CLAIM or POTENTIAL CLAIM, the alleged WRONGFUL ACT including the date it was committed, a summary of the facts upon which the CLAIM or POTENTIAL CLAIM is based, the alleged or potential DAMAGES that may result from the WRONGFUL ACT, the names of actual or potential claimants, the names of INSURED and employee against whom the CLAIM was or may be made, and the date and circumstances by which the INSURED, or any owner, officer or partner of the NAMED INSURED first became aware of the CLAIM or POTENTIAL CLAIM.

4. provide notice to us under the POLICY per the Notice to Company Endorsement.

All notices under the POLICY shall be in writing, shall comply with the time requirements as stated in the POLICY, and shall be given by confirmed facsimile, prepaid express courier, or certified U.S. Mail, return receipt requested.

IV. DEFINITIONS AND EXPLANATIONS OF TERMS

- A. **ADVERTISING.** ADVERTISING means placing a notice that is broadcast or published to the general public or specific market segments about your products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 1. notices that are published include material placed on the Internet or on similar electronic means of communication; and
 2. regarding websites, only that part of a website that is about your products or services for the purposes of attracting customers or supporters is considered ADVERTISING.
- B. **BREACH.** BREACH means any misappropriation or unauthorized access, use, disclosure, modification, publication, theft, disappearance, or destruction of PERSONAL DATA within the care, custody or control of any INSURED. BREACH does not include any misappropriation or unauthorized access, use, disclosure, modification, publication, theft, disappearance, or destruction of PERSONAL DATA within the care, custody or control of a third party to whom any INSURED has intentionally provided the PERSONAL DATA.
- C. **CLAIM.** CLAIM means:
 1. that an INSURED has received a summons, a subpoena, or any other notice of legal process;
 2. that an INSURED has received notice of any SUIT; or
 3. that an INSURED has received notice of a written demand, or a written demand for money or services.
- D. **CLAIM EXPENSE.** CLAIM EXPENSE means:
 1. all expense incurred in the investigation of any POTENTIAL CLAIM or in the defense of any CLAIM first made against an INSURED seeking DAMAGES for a WRONGFUL ACT, even if a CLAIM or POTENTIAL CLAIM is groundless, false, fraudulent, or for an amount less than your DEDUCTIBLE;
 2. reasonable and necessary fees and disbursements charged by any lawyer designated by us or required by law to defend the interests of an INSURED; and
 3. if authorized by us, all other fees, costs, and expenses, other than loss of earnings, resulting from the investigation, adjustment, defense, or appeal of any CLAIM or POTENTIAL CLAIM, including but not limited to:
 - a. all costs taxed against any INSURED in any SUIT;
 - b. all prejudgment and post judgment accrued interest on that portion of any judgment which does not exceed the applicable Limit of Liability. If we tender or pay DAMAGES on any judgment up to our Limits of Liability, we have no further obligation to pay any additional interest;

- c. all premiums on bonds to release attachments and appeal bonds, limited to that portion of a bond which does not exceed the POLICY Limit of Liability. We will obtain the bond on behalf of the INSURED. You shall reimburse us for the additional cost of the bond we obtain for any exposure in excess of our Limit of Liability;
- d. all reasonable expenses incurred by an INSURED at our request while assisting us in the investigation and defense of any CLAIM or POTENTIAL CLAIM; or
- e. reimbursement for loss of earnings or temporary staff due to an INSURED attending depositions or trials at our request. Such reimbursement is subject to \$500 per INSURED per day and a maximum of \$10,000 per POLICY PERIOD for all INSUREDS.

CLAIM EXPENSE, except as provided in this definition C.3.e, shall not include salaries, loss of earnings, or expenses of regular employees, our officials, or you.

E. **DAMAGES.** DAMAGES means monetary amounts for which an INSURED is held legally liable but does not include:

- 1. punitive damages, exemplary damages or the multiplied portion of any damage award except where permitted as insurable by the law pursuant to which this POLICY will be construed;
- 2. sanctions, fines or penalties imposed by law or matters deemed uninsurable under the law pursuant to which this POLICY will be construed;
- 3. the return of any fees, commissions, profit sharing, or other remuneration, or costs or expenses for PROFESSIONAL SERVICES or OTHER RELATED SERVICES rendered or to be rendered by the INSURED;
- 4. an INSURED'S taxes;
- 5. reimbursement or return of premiums or funds; or
- 6. redress in any form other than monetary relief, including, but not limited to, any form of injunctive or other equitable relief, restitution, replevin, unjust enrichment, declaratory judgments, or an accounting.

F. **DEDUCTIBLE.** DEDUCTIBLE means the amount set forth in Item D. of the Declarations.

G. **FIRST NAMED INSURED.** FIRST NAMED INSURED means the INSURED whose name is listed first on the Declaration Page if there are multiple NAMED INSUREDS, or the NAMED INSURED where only one INSURED is listed.

H. **FRAUDULENT ENTITY.** FRAUDULENT ENTITY means an organization that does not have a legal identity or legal existence, but which is represented to legally exist; or, a legally formed entity that is used as a device to commit fraud or other unlawful acts.

I. **INSURED.**

- 1. **INDIVIDUAL.** If you are an individual, you and your spouse or legal domestic partner, and former spouse or legal domestic partner, are INSUREDS, but only with respect to the conduct of a business of which you are the sole owner.
- 2. **PARTNERSHIP.** If you are a partnership, you, your partners and their spouses or legal domestic partners, and former partners and their spouses or legal domestic partners, are INSUREDS, but only with respect to the conduct of your business.

3. **LIMITED LIABILITY COMPANY.** If you are a limited liability company, you are an INSURED. Your members and former members are also INSUREDS, but only with respect to the conduct of your business. Your managers and former managers are INSUREDS, but only with respect to their duties as your managers, with respect to the conduct of your business.
4. **OTHER ORGANIZATIONS.** If you are an organization other than a partnership or limited liability company, you are an INSURED. Your officers, directors, and former officers and directors, are INSUREDS, but only with respect to their duties as your officers or directors with respect to the conduct of your business. Your stockholders and former stockholders are also INSUREDS, but only with respect to DAMAGES for which the **COVERAGE** section, Part A. or B., would apply.
5. **OTHER INSUREDS.** Each of the following is also an INSURED:
- a. your employees and former employees, leased or temporary employees, but only for acts within the scope of their employment by you and while performing duties related to the conduct of your PROFESSIONAL SERVICES or OTHER RELATED SERVICES.
 - b. any independent contractor or former independent contractor while acting on your behalf within the scope of their duties as your subproducer in connection with insurance serviced by any INSURED.
 - c. the heirs, executors, administrators, or legal representatives of an INSURED in the event of death, incapacity, or bankruptcy of the INSURED, but only to the extent that such INSURED would otherwise be covered by this POLICY.
6. **NEWLY ACQUIRED.** Any organization you newly acquire or form, and over which you maintain majority interest, will qualify as an additional INSURED if there is no other similar insurance available to that organization. However:
- a. coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the POLICY PERIOD, whichever is earlier;
 - b. coverage does not apply to WRONGFUL ACTS committed before you acquired or formed the organization unless agreed to by us and endorsed to this POLICY; and
 - c. an additional premium may be charged from the date you acquired or formed the organization.
7. **ADDITIONAL INSURED.** The person or entity which has been specifically added by endorsement to the POLICY.
- J. **NAMED INSURED.** NAMED INSURED means the person or entity listed in the Declarations or any endorsement to this POLICY and PREDECESSOR AGENCY thereof.
- K. **OTHER RELATED SERVICES.** OTHER RELATED SERVICES means the following services:
- 1. services rendered in teaching a formal insurance course, but we will only cover CLAIMS first made against the INSURED by a student or former student for a WRONGFUL ACT of the INSURED causing such student to incur legal liability;
 - 2. services rendered as a notary public;

3. an INSURED'S testimony as an expert witness in connection with insurance related litigation;
 4. ADVERTISING activities for the NAMED INSURED; or
 5. services as a claims adjuster pursuant to a written agency/insurer agreement covering the sales and servicing of insurance products placed through the NAMED INSURED'S Agency.
- L. **PERSONAL DATA.** PERSONAL DATA means all non-public information, whether written, or electronic:
1. including but not limited to any social security number or biometric records which when used alone, or when combined with other personal or identifying information, such as date and place of birth, or mother's maiden name, is linked or linkable to a specific individual;
 2. concerning an individual that would be considered protected health information as defined within the Health Insurance Portability and Accountability Act of 1996; or
 3. that would be considered nonpublic personal information within the meaning of the Gramm-Leach Bliley Act or similar state, federal and foreign identity theft and privacy protection legislation applicable to the breach.
- M. **PERSONAL INJURY.** PERSONAL INJURY shall mean:
1. false arrest, detention or imprisonment, malicious prosecution or humiliation;
 2. the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy;
 3. the use of another's ADVERTISING idea or the use of another's copyright, trade dress or slogan in ADVERTISING; or
 4. wrongful entry or eviction or other invasion of the right of private occupancy of a premises or dwelling that a person occupies.
- N. **POLICY.** POLICY means the insuring agreement issued by us to the FIRST NAMED INSURED and listed in the Declarations, along with all attached endorsements.
- O. **POLICY PERIOD.** POLICY PERIOD means the period stated in the Declarations, unless terminated earlier pursuant to the **TERMINATION OF COVERAGE** section of this POLICY.
- P. **POTENTIAL CLAIM.** POTENTIAL CLAIM means that an INSURED has become aware of a proceeding, event, or development, which could in the future result in the institution of a CLAIM against an INSURED.
- Q. **PREDECESSOR AGENCY.** PREDECESSOR AGENCY means any insurance agency to whose financial assets and liabilities the agency listed as the NAMED INSURED in the Declarations is the majority successor in interest.
- R. **PROFESSIONAL SERVICES.** PROFESSIONAL SERVICES means:
1. services rendered as a managing general insurance agent, general insurance agent, insurance agent, or insurance broker;
 2. services rendered as an insurance consultant, including, but not limited to, insurance consulting connected with employee benefit plans.

3. premium financing services provided by the NAMED INSURED to the NAMED INSURED'S clients for insurance products placed through the NAMED INSURED'S agency;
 4. loss control, risk management, or anti-fraud services rendered in connection with insurance placed through the NAMED INSURED;
 5. services as a registered representative rendered in connection with the sale and servicing of variable life and variable annuity products; or
 6. acting as a countersigning agent for out-of-state insurance agencies on policies issued within the state of domicile of the INSURED.
- S. **RETROACTIVE DATE.** RETROACTIVE DATE means the date, as specified in the Declarations or in any endorsement attached hereto, on or after which any WRONGFUL ACT, as defined in the POLICY, must have occurred in order for CLAIMS arising therefrom to be covered under this POLICY.
- T. **STRANGER-OWNED LIFE INSURANCE (STOLI).** STRANGER-OWNED LIFE INSURANCE means an arrangement where a life insurance policy is issued to an insured or an individual who has an insurable interest with the insured, with the resources to purchase the policy provided or guaranteed by a person or entity who has no insurable interest to the insured person and who has the contractual right to repayment or other means of satisfaction of the debt such as obtaining control of the policy rights or benefits.
- U. **SUIT.** SUIT means a civil proceeding alleging DAMAGES against an INSURED because of a WRONGFUL ACT to which this insurance applies. SUIT includes:
1. an arbitration proceeding in which such DAMAGES are claimed and to which the INSURED must submit or does submit with our consent;
 2. any other alternative dispute resolution proceeding in which such DAMAGES are claimed and to which the INSURED submits with our consent; or
 3. an adjudicatory proceeding in a court of law.
- V. **WRONGFUL ACT.** WRONGFUL ACT means:
1. any negligent act, error, or omission of an INSURED in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others;
 2. any PERSONAL INJURY or ADVERTISING injury in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others; or
 3. any BREACH of PERSONAL DATA arising out of or in connection with the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES, but only if the INSURED has implemented current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency and indecipherable to unauthorized individuals and which are in place at the time of the BREACH; provided, however, that any such technologies and methodologies must comply with privacy regulations found within the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

V. EXCLUSIONS

This POLICY shall not apply to any CLAIM based upon, arising out of, attributable to, or directly or indirectly resulting from:

A. BODILY INJURY, PROPERTY DAMAGE.

1. Bodily injury, sickness, disease, or death of any person; or
2. injury to or destruction of any property, including the loss of use of the property.

This exclusion shall not apply to CLAIMS arising directly out of any actual or alleged failure of the insured to place, effect, maintain, or renew any insurance products for any customer.

B. BREACHES OF PERSONAL DATA.

1. any BREACH of PERSONAL DATA resulting from any act committed by an individual or individuals acting in an effort to coerce the civilian populations of the United States or to influence the policy or affect the conduct of any federal, state, provincial, or local government;
2. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to implement current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency; or
3. any BREACH of PERSONAL DATA resulting from any failure of the INSURED to comply with any applicable privacy regulations found in the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

C. COBRA ADMINISTRATION. The INSURED'S administration under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state or provincial statute or regulation.

D. ERISA. Any duties or activities assumed under contract by an INSURED as Named Fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA) or the Pension Benefits Act, including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state, or provincial statute or regulation.

E. FRAUDULENT ENTITY. Or in connection with any FRAUDULENT ENTITY.

F. INSOLVENCY. The financial inability to pay, insolvency, receivership, bankruptcy or liquidation of any insurance company, any Individual Practice Association, Health Maintenance Organization, Preferred Provider Organization, Dental Service Plan, Risk Retention Group, Risk Provider Group, self-insured plan or any pool, syndicate, association, or other combination formed for the purpose of providing insurance, or reinsurance, or any healthcare provider or any reinsurer with which the INSURED directly placed the subject risk.

However, this exclusion does not apply if, at the time the INSURED placed the subject risk with any of the above-described entities, such entity or entities were rated by AM Best as B+ or higher, or alternatively, such entities were member insurers of the state guaranty fund or guaranty association in the state or states of domicile of the subject risk, or such entities were guaranteed by a governmental body or bodies and/or operated by a governmental body or bodies, or the coverage was placed with an insurance carrier through a state established residual market insurance program; or the coverage was placed with a County Mutual reinsured by carriers rated by AM Best as B+ or higher.

- G. **INSURED VS. INSURED.** CLAIMS or disputes:
1. between INSUREDS under this POLICY. However, this exclusion does not apply to such CLAIM if the WRONGFUL ACT arises out of PROFESSIONAL SERVICES or OTHER RELATED SERVICES by an INSURED rendered to such other INSURED as a client, provided the INSURED rendering such PROFESSIONAL SERVICES or OTHER RELATED SERVICES does not have an ownership interest in or does not operate, control or manage the risk to be insured;
 2. by an enterprise which one or more INSUREDS has either a total of ten percent (10%) or more equity interest, or the INSUREDS operate, control or manage the enterprise. However, this exclusion does not apply to such CLAIM if the WRONGFUL ACT arises out of PROFESSIONAL SERVICES or OTHER RELATED SERVICES by an INSURED rendered to such other INSURED as a client, provided the INSURED rendering such PROFESSIONAL SERVICES or OTHER RELATED SERVICES does not have an ownership interest in the risk to be insured or does not operate, control or manage; or
 3. by an enterprise which has either a ten percent (10%) or more equity interest in an INSURED, or operates, controls or manages an INSURED.
- H. **INTENTIONAL ACTS.** Any CLAIM for intentional acts, including but not limited to, acts of dishonesty, fraud, criminal conduct, malice, or assault and battery, or intentional BREACH of PERSONAL DATA by any INSURED. CLAIM EXPENSES are recoverable by us against those INSUREDS who, by final judgment, order or determination in a SUIT are found to have committed such intentional acts. CLAIM EXPENSES are also recoverable by us against those INSUREDS who, by their written or oral admission, committed such intentional acts. However, this exclusion does not apply to those INSUREDS who do not personally participate in or ratify the acts identified above and who notify us once such act has been discovered.
- I. **LICENSURE.** Any actual or alleged WRONGFUL ACT arising from the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES for which a license is required and committed while the INSURED'S license was suspended or revoked. However, this exclusion shall not apply if the only reason for such licensure not being in effect was due to an administrative or clerical error.
- J. **MARKET VALUES.** The INSURED'S promises or guarantees as to the effect of market fluctuations, interest rates, or dividends, with respect to future premium payments or market values.
- K. **NAMED FIDUCIARY.** Your status as a Named Fiduciary.
- L. **PERSONAL PROFIT OR PROPRIETARY INFORMATION.**
1. Any INSURED having gained, in fact, any personal profit or advantage to which he or she was not legally entitled; or
 2. any INSURED's misappropriation or unauthorized use of trade secrets or other proprietary information.
- M. **THIRD-PARTY ADMINISTRATOR.** Third-party administrator activities, whether the INSURED performs such activities for a fee or no fee.

- N. **UNSOLICITED ELECTRONIC ADVERTISING.** The unsolicited distribution of marketing materials by telephone facsimile machine, computer, or other device, in violation of the Telephone Consumer Protection Act, 47 USC 227, including any amendments, regulations, or enabling statutes pursuant thereto, or any other similar federal, state, or provincial statute or regulation.
- O. **VIATICALS and STRANGER OWNED LIFE INSURANCE.** The sale or servicing of investments in viaticated policies or of the sale or servicing of investments in STRANGER-OWNED LIFE INSURANCE (STOLI).

VI. COOPERATION

All INSUREDS shall cooperate with us in providing information and documentation requested by us regarding any CLAIM or POTENTIAL CLAIM reported under the POLICY or for any underwriting purpose. All INSUREDS shall cooperate with us in the investigation of any POTENTIAL CLAIM and in the defense, investigation and settlement of any CLAIM. Upon our request, the INSURED shall submit to examination or questioning under oath, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence and obtaining the attendance of witnesses in the conduct of SUITS.

All INSUREDS shall assist us in effecting any rights of indemnity, contribution or apportionment available to any INSURED or us, including the execution of such documents as are necessary to enable us to pursue CLAIMS in the INSUREDS' names, and shall provide all other assistance and cooperation which we may reasonably require.

VII. LIMITS OF LIABILITY

- A. All Limits of Liability shall apply in excess of the DEDUCTIBLE. All CLAIM EXPENSES shall be in addition to the applicable Per CLAIM Limit of Liability.
- B. Our liability for the combined total of all DAMAGES for a CLAIM shall not exceed the amount stated in the Declarations as the Per CLAIM Limit of Liability or the sublimit of liability as shown on the Declarations for BREACH of PERSONAL DATA.
- C. Our liability for the combined total of all DAMAGES for all CLAIMS shall not exceed the amount stated in the Declarations as the Aggregate Limit of Liability.

VIII. DEDUCTIBLE

You shall be responsible for the payment of the DEDUCTIBLE indicated on the Declarations. The DEDUCTIBLE applies to DAMAGES and not CLAIM EXPENSES. The total DEDUCTIBLE you shall be responsible to pay during the POLICY PERIOD will not exceed the aggregate amount each POLICY PERIOD, if any, shown on the Declarations.

We will have no obligation whatsoever, to the INSURED to pay all or any portion of the DEDUCTIBLE. We will, however, have the option to do so, in which event the INSURED will repay us any amounts so paid within thirty (30) days of our demand to the FIRST NAMED INSURED.

DEDUCTIBLE REDUCTION. If any INSURED generates and maintains contemporaneous written documentation in the agency file of the refusal of any customer to accept any type of coverage or limit recommendation made by the INSURED, and if the INSURED subsequently has a CLAIM alleging the failure to secure such recommended type of coverage or limit, 50% of the INSURED'S DEDUCTIBLE for that CLAIM will be waived up to a maximum of \$12,500, or until dismissal of such allegations, whichever is first.

IX. SUBROGATION

If we pay any DAMAGES or CLAIM EXPENSE, we shall be subrogated to the rights of the INSURED against any person or organization. The INSURED shall execute all papers we require and shall do everything that may be necessary to preserve, secure, and pursue our rights, including the execution of such documents as may be necessary to enable us to bring SUIT in the name of the INSURED. All INSURED shall cooperate with us and do nothing to jeopardize, prejudice, or terminate such rights. We shall not exercise any subrogation rights against any INSURED, unless the CLAIM arises from any dishonest, fraudulent, or malicious act, error, or omission of such INSURED.

X. REIMBURSEMENT TO COMPANY

If we have paid any amounts as DAMAGES in satisfaction of any CLAIM in excess of the applicable Limit of Liability, or have paid DAMAGES within the amount of the applicable DEDUCTIBLE, you shall be liable to us for any and all such amounts and shall pay such amounts to us within thirty (30) days of our demand.

XI. CHANGES

No change or modification of this POLICY shall be effective except when made by a written endorsement to this POLICY which is signed by our authorized representative.

XII. NO ASSIGNMENT

Neither this POLICY nor any INSURED'S interest in this POLICY may be assigned without our written consent.

XIII. TERMINATION OF COVERAGE

The POLICY shall terminate at the earliest of the following:

- A. if the POLICY is terminated for failure to pay a premium when due, the effective date of the cancellation stated in a written notice of cancellation from us to the FIRST NAMED INSURED, provided such notice is sent by us a least ten (10) days prior to the effective date of cancellation. The mailing of such notice to the FIRST NAMED INSURED shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. Any earned premium shall be computed pro rata;
- B. if the POLICY is terminated by us for any reason other than non-payment of premium, the effective date of the cancellation stated in our written notice of cancellation, provided the FIRST NAMED INSURED receives such notice at least thirty (30) days prior to the effective date of cancellation. The mailing of such notice to the FIRST NAMED INSURED shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. Any earned premium shall be computed pro rata;
- C. upon the surrender of the POLICY by the FIRST NAMED INSURED to us or upon our receipt of your written notice of termination stating when thereafter such cancellation shall be effective. Any earned premium shall be computed in accordance with the customary short rate table and procedure; or
- D. upon expiration of the POLICY PERIOD as set forth in the Declarations.

XIV. EXTENDED REPORTING PERIOD:

- A. **EXTENDED REPORTING PERIOD TERMS.** The following provisions are applicable to all Extended Reporting Periods:
1. The Extended Reporting Period covers CLAIMS arising out of WRONGFUL ACTS that occurred prior to cancellation or expiration of the POLICY and on or after any RETROACTIVE DATE applicable to the expired or terminated POLICY.
 2. If you have obtained a replacement POLICY, the Extended Reporting Period will apply only in the event the replacement POLICY limits have been exhausted for a CLAIM that qualifies for coverage under this section.
 3. The Limit of Liability during the final POLICY PERIOD immediately preceding the cancellation or non-renewal of the POLICY shall apply to CLAIMS reported during the final POLICY PERIOD together with CLAIMS reported during the Extended Reporting Period.
 4. If any Extended Reporting Period option is exercised, it cannot be terminated or modified by you or us.
- B. **AUTOMATIC EXTENDED REPORTING PERIOD.** If we or you choose to cancel or not renew this POLICY, this POLICY will apply to CLAIMS first made against you during the POLICY PERIOD and reported in writing to us during the sixty (60) days immediately following the date of cancellation or expiration.
- C. **OPTIONAL EXTENDED REPORTING PERIODS.** Subject to the above-identified terms and conditions, payment of all outstanding premiums or DEDUCTIBLES due, and your electing within sixty (60) days from the date of cancellation or non-renewal of the POLICY. The first sixty (60) days of the Optional Extended Reporting Period, if it is purchased, shall run concurrently with the Automatic Extended Reporting Period. The following Extended Reporting Periods are available:
1. If we or you choose to cancel or not renew the POLICY, you shall have the right to extend the time for reporting CLAIMS made against any INSURED under the POLICY per the following schedule. The additional premium for the Extended Reporting Period shall be:

Extended Reporting Period	Premium (as determined by this Section XIV. C.5.)
1 year	100%
2 years	150%
3 years	185%

The FIRST NAMED INSURED must send us written notice of its intent to purchase the option along with the additional premium for the Extended Reporting Period within sixty (60) days of the cancellation or non-renewal of the POLICY.

2. In addition to the above, we will issue an Extended Reporting Period Endorsement for an unlimited period at no additional premium following the cancellation or non-renewal of this POLICY provided that:
 - a. you are the sole owner and the sole producer; and

- b. you retire from the profession of insurance and your retirement is for reasons other than a suspension, revocation, or surrender of your license; and
 - c. you have reached the age of 62 and have been insured by us for 10 consecutive years prior to the POLICY termination or cancellation.
3. In addition to the above, if you are the sole owner and sole producer, we will issue a 10 year Extended Reporting Period endorsement at no additional premium provided:
- a. cancellation or termination of the POLICY is due to your death or you are totally and permanently disabled during the POLICY PERIOD; and
 - b. in the event of disability, you are continuously totally and permanently disabled from your profession for a minimum of six (6) months after issuance of this POLICY; and
 - c. any death or total and permanent disability does not arise from a self-inflicted injury, suicide, alcohol, or drug abuse; and
 - d. satisfactory written evidence of death or total and permanent disability is provided by you or your legal representative within sixty (60) days of death or total and permanent disability.
4. In addition to the above, if this POLICY is canceled by the FIRST NAMED INSURED, due to your merger, consolidation, or sale to another entity, or death or retirement of the owner, the FIRST NAMED INSURED shall also have the right to purchase an Extended Reporting Period provided:
- a. such merger, consolidation, or sale is not due to suspension, revocation, or surrender of an insured's license; and
 - b. the FIRST NAMED INSURED must send us written notice of its intent to purchase the option along with the additional premium for the Extended Reporting Period within sixty (60) days of the cancellation or non-renewal of the POLICY.

SCHEDULE:

Extended Reporting Period for Sale, Merger, Death, or Retirement	Premium (as determined by this Section XIV. C.5.)
1 year	100%
2 years	150%
3 years	185%
4 years	220%
5 years	250%
6 years	260%
7 years	270%
8 years	280%
9 years	290%
10 years	300%

5. The premium for all Optional Extended Reporting Period Schedules against which all Schedule percentages shall apply will be determined as follows:

The premium to be applied in the Schedule will be the average of all the most recent annual premiums assessed against the INSURED for Insurance Agencies Professional Liability policy(ies) issued by Westport or another affiliated company of Westport, back to the date of first continuous coverage, up to a maximum of three years.

Annual premium for purposes of this section is defined as the premium shown in the Declarations combined with any annualized premiums resulting from any endorsements.

XV. ACQUISITIONS AND MERGERS / MATERIAL CHANGES

In the event of any merger, consolidation, amalgamation or acquisition of any entity or any material change in your operations, you shall notify us of such change within ninety (90) days of the date of such change.

XVI. MULTIPLE INSURED AND CLAIMANTS

The inclusion of more than one INSURED in any CLAIM or the making of CLAIMS by more than one person or organization shall not increase the Limits of Liability or the DEDUCTIBLE. Two or more CLAIMS arising out of a single WRONGFUL ACT, or a series of related or continuing WRONGFUL ACTS, shall be a single CLAIM. All such CLAIMS, whenever made, shall be considered first made on the date on which the earliest CLAIM was first made arising out of such WRONGFUL ACT, and all such CLAIMS are subject to one Per CLAIM Limit of Liability and DEDUCTIBLE.

XVII. LIBERALIZATION

If, during the POLICY PERIOD we adopt revised provisions for this POLICY in order to afford, without additional premium, broader insurance to all INSURED covered by this POLICY, such provision will apply to this POLICY effective the date the provision has been approved by the appropriate regulatory authority and such revision shall apply only to CLAIMS first made, or POTENTIAL CLAIMS of which you first become aware, after the date of such approval.

XVIII. OTHER INSURANCE

Except as provided in the EXCLUSIONS in this POLICY, if there is other insurance applicable to a CLAIM covered by this POLICY, this POLICY shall be deemed excess insurance over and above the applicable Limits of Liability of all such other insurance unless such other insurance is specifically written as excess insurance over the Limits of Liability provided in this POLICY.

XIX. ACTION AGAINST US

No action shall lie against us unless, as a condition precedent thereto, all INSURED shall have fully complied with all the terms and conditions of this POLICY and not until the amount of all INSURED'S obligations to pay has been finally determined either by judgment against all INSURED after actual trial or by written agreement of you, the claimant and us.

Nothing contained in the POLICY shall give any person or organization any right to join us as a co-defendant in any action against any INSURED to determine any INSURED'S liability.

XX. APPLICABLE LAWS

Any terms of the POLICY which are in conflict with any laws and regulations governing the POLICY are hereby amended to conform to such laws and regulations.

XXI. TERRITORY

This POLICY applies to WRONGFUL ACTS that occur anywhere in the world, but the INSURED'S responsibility to pay DAMAGES must be determined in a SUIT on the merits or in a settlement to which we have agreed.

XXII. WAIVER

Our failure to insist on strict compliance with any of the terms, provisions or conditions of this POLICY or the failure to exercise any right or privilege shall not operate or be construed as a waiver thereof or of any subsequent breach thereof or a waiver of any other terms, provisions, conditions, privileges, or rights.

XXIII. ENTIRE AGREEMENT

By acceptance of this POLICY, all INSUREDS reaffirm as of the effective date of this POLICY that (a) the statements in the Declarations and your most recent application(s) and all information communicated by the INSUREDS to us are true and accurate and are all INSUREDS' agreements and representations, (b) this POLICY is issued in reliance upon the truth and accuracy of such representations which are material to our issuance of this POLICY and (c) this POLICY embodies all agreements between INSUREDS and us or any of our agents relating to this insurance.

IN WITNESS WHEREOF, the Company has caused this POLICY to be signed by its President and Secretary, but the same shall not be binding upon the Company unless it has been countersigned on the Declarations page by a duly authorized representative of the Company.

WESTPORT INSURANCE CORPORATION

Facsimile signature to be inserted

President

Facsimile signature to be inserted

Secretary



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

[Exhibit 4]

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Danny Noonan's No Risk Insurance Agency	CONTACT NAME: Danny Noonan	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED Bushwood Country Club, LLC	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Crimson Permanent Assurance	NAIC #: 1234567
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 1,000,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
	Commercial Property-All inclusive						\$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Bushwood Country Club; golf course, clubhouse and all property related thereto

CERTIFICATE HOLDER

CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	Danny Noonan

© 1988-2010 ACORD CORPORATION. All rights reserved.