

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

DAN RISK RETENTION GROUP, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.1:21-cv-218
	)	
BOTTOMS UP SCUBA INDY LLC,	)	
BOTTOMS UP SCUBA LLC,	)	
HARVEST TIME, INC., CLAYTON ST.	)	
JOHN, MICHAEL ELLIS, and GREG	)	
KISHBAUGH, Individually and as	)	
Personal Representative of the Estate of	)	
Donna Kishbaugh,	)	
	)	
Defendants.	)	

**COMPLAINT**

The plaintiff, DAN Risk Retention Group, Inc. (“DAN”), for its Complaint against the defendants, Bottoms Up Scuba Indy LLC (“BUSI”), Bottoms Up Scuba LLC (“BUSLLC”), Harvest Time, Inc. (“Harvest”), Clayton St. John (“St. John”), Michael Ellis (“Michael”), and Greg Kishbaugh (“Kishbaugh”), individually and as personal representative of the Estate of Donna Kishbaugh (“Estate”) (collectively, “Defendants”), states as follows:

**Parties**

1. DAN is a South Carolina corporation with its principal place of business in North Carolina, and is a citizen of North Carolina and South Carolina.
2. BUSI is an Indiana limited liability company with its principal place of business in Indiana, and its members are all citizens of Indiana.
3. BUSLLC is an Indiana limited liability company with its principal place of business in Florida, and its members are all citizens of Indiana.

4. Harvest is an Indiana corporation with its principal place of business in Indiana, and is a citizen of Indiana.

5. St. John is an individual who resides in Trafalgar, Indiana, is an employee of BUSI, and is a citizen of Indiana.

6. Michael is an individual who resides in Bargersville, Indiana, and is a citizen of Indiana.

7. Kishbaugh is an individual who resides in Westfield, Indiana, is a citizen of Indiana, and is the surviving husband of Donna Kishbaugh (“Donna”) and personal representative of the Estate, which has been open in Hamilton Superior Court in Hamilton County, Indiana as case no. 29D01-2011-EU-000536 since on or about November 25, 2020.

#### Venue, Jurisdiction, and Controversy

8. The matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), and may enter a declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred and the insurance policies at issue were applied for, delivered, and requested to be performed, all Defendants are citizens of Indiana, and at least one of the Defendants resides in this judicial district.

#### The Policies

10. DAN is a risk retention group that, among other things, offers insurance products to the recreational dive community, including scuba and other dive instructors and dive

shops. These insurance products include professional liability insurance policies for entities and individuals who hold credentials from an approved dive agency.

11. Subject to their specific terms and conditions and limits of liability, professional liability policies offered by DAN may provide coverage for sums that an insured party is required to pay as damages for bodily injury and/or property damage for claims arising from negligent acts, errors, or omissions in the rendering of or failure to render certain professional services by the insured. The policies at issue were professional liability policies.

12. DAN issued a professional liability policy to BUSI for the policy period of January 4, 2020 to January 4, 2021, policy number GPL106-12043 (the “BUSI Policy”). A true and accurate copy of the BUSI Policy is attached to this Complaint as Exhibit 1, and is incorporated by reference as if fully set forth herein.

13. DAN issued a professional liability policy to BUSLLC for the policy period of January 8, 2020 to January 8, 2021, policy number GPL106-12047 (the “BUSLLC Policy”). A true and accurate copy of the BUSLLC Policy is attached to this Complaint as Exhibit 2, and is incorporated by reference as if fully set forth herein.

14. DAN issued a professional liability policy to Michael for the policy period of October 15, 2020 to October 15, 2021, policy number PL107-60084 (the “Michael Policy”). A true and accurate copy of the Michael Policy is attached to this Complaint as Exhibit 3, and is incorporated by reference as if fully set forth herein.

15. An actual controversy exists concerning the BUSI Policy, BUSLLC Policy, and Michael Policy (collectively, the “Policies”). The controversy arises out of and relates to material misrepresentations that were made in applying for the Policies, the rescission of the Policies by DAN, the inapplicability of coverage under the Policies for an incident

involving St. John and BUSI that led to a wrongful death lawsuit by Kishbaugh (“Underlying Lawsuit”), and the rights, obligations, and interests of the parties with respect to the Policies.

16. St. John was not identified on the schedule of BUSLLC’s insured teaching staff in the BUSLLC Policy and has never been an employee of BUSLLC.

17. Harvest is a stranger to the Policies. Harvest has never had coverage under the Policies, as an additional insured or otherwise, but has inquired through counsel as to whether it was named as an additional insured under the BUSI Policy. Harvest has been added as a defendant to answer as to its interests with respect to the Policies

18. Kishbaugh, individually and as personal representative of the Estate, is a stranger to the Policies. Kishbaugh is the plaintiff in the Underlying Lawsuit that he has filed against BUSI, BUSLLC, and Harvest in Marion Superior Court in Marion County, Indiana, case no. 49D06-2012-CT-042405. Kishbaugh has been added as a defendant to answer as to his and/or the Estate’s interests with respect to the Policies.

19. In 2020, BUSI submitted an application for the BUSI Policy (the “BUSI Application”). A true and accurate copy of the BUSI Application is attached hereto as Exhibit 4, and is incorporated by reference as if fully set forth herein.

20. BUSI was required in the BUSI Application to acknowledge, make, and confirm, and did acknowledge, make, and confirm, certain statements and representations in the Declaration Section including, among others, that “all statements and particulars contained in the Application and any attachments are true and correct,” that “no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application,” that “failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide

indemnity or cancelling the policy in every respect,” and that “I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.” Michael signed the BUSI Application.

21. In 2020, BUSLLC submitted an application for the BUSLLC Policy (the “BUSLLC Application”). A true and accurate copy of the BUSLLC Application is attached hereto as Exhibit 5, and is incorporated by reference as if fully set forth herein.

22. BUSLLC was required in the BUSLLC Application to acknowledge, make, and confirm, and did acknowledge, make, and confirm, certain statements and representations in the Declaration Section including, among others, that “all statements and particulars contained in the Application and any attachments are true and correct,” that “no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application,” that “failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect,” and that “I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.” Renata Ellis (“Renata”) signed the BUSLLC Application.

23. On or about October 14, 2020, Michael submitted an application for the Michael Policy (the “Michael Application”). A true and accurate copy of the Michael Application is attached hereto as Exhibit 6, and is incorporated by reference as if fully set forth herein.

24. Michael was required in the Michael Application to acknowledge, make, and confirm, and did acknowledge, make, and confirm, certain statements and representations in the Declaration Section including, among others, that “all statements and particulars contained in the Application and any attachments are true and correct,” that “no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application,” that “failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect,” and that “I acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.” Michael signed the Michael Application.

25. Prior to the time that the BUSI Application, BUSLLC Application, and Michael Application (collectively, the “Applications”) were submitted to DAN, BUSI, as well as Michael and Renata (together, the “Ellises”), had been removed and expelled from the Professional Association of Dive Instructors (“PADI”). Specifically, BUSI was expelled and removed from PADI in or around December 2018, Michael was expelled and removed from PADI in or around December 2018, and Renata was expelled and removed from PADI in or around January 2019 (collectively, the “PADI Expulsions”).

26. PADI expelled and removed BUSI and the Ellises after PADI received reports that Michael had forged and submitted to PADI physicians’ signatures on medical statements required for certain instructor candidates. After conducting an investigation into the reports, PADI concluded that Michael had been involved with multiple medical forms that PADI determined contained forged physicians’ signatures. PADI also determined that Michael had

made false statements to PADI related to his, Renata's, and his sons' medical history forms. As a result of the investigation, PADI expelled and removed BUSI, Michael, and Renata.

27. The statements in the BUSI Application that "all statements and particulars contained in the Application and any attachments are true and correct," that "no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application," and that "I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency," were false when Michael signed and submitted the BUSI Application.

28. The statements in the BUSLLC Application that "all statements and particulars contained in the Application and any attachments are true and correct," that "no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application," and that "I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency," were false when Renata signed and submitted the BUSLLC Application.

29. The statements in the Michael Application that "all statements and particulars contained in the Application and any attachments are true and correct," that "no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application," and that "I acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency," were false when Michael signed and submitted the Michael Application.

30. When the Applications were submitted to and approved by DAN, DAN did not know of the PADI Expulsions, the falsity of the statements in the Applications, or the facts, accusations, or investigation that led to the PADI Expulsions, all of which were material to

DAN's decisions about whether to approve the Applications and issue the Policies. Had DAN known such information, it would not have approved either of the Applications or issued either of the Policies.

31. At the time the Applications were completed and submitted to DAN, BUSI, BUSLLC, and the Ellises knew about the PADI Expulsions, the falsity of the statements in the Applications, and the facts, accusations, and investigation that led to the PADI Expulsions.

32. Prior to completing and submitting the Applications, BUSI and the Ellises, as the plaintiffs, had filed an amended complaint in a lawsuit in Montgomery Superior Court in Montgomery County, Indiana, case no. 54D02-1905-CT-000561 (the "Defamation Lawsuit"), in which they alleged that the defendants in the Defamation Lawsuit had made false allegations about them that led to, among other things, the PADI Expulsions. A true and accurate copy of the amended complaint filed in the Defamation Lawsuit is attached hereto as Exhibit 7 and is incorporated by reference as if fully set forth herein.

33. After learning of the PADI Expulsions, and the facts, investigation, and accusations related thereto, DAN sent notice to BUSI on December 15, 2020 ("BUSI Rescission Notice") that the BUSI Policy was rescinded as of January 4, 2020 due to the material misrepresentations in the BUSI Application, and tendered a check to BUSI for all amounts that BUSI had caused to be paid for premiums, taxes, and related charges for the BUSI Policy during the policy period. A true and accurate copy of the BUSI Rescission Notice is attached hereto as Exhibit 8, and is incorporated by reference as if fully set forth herein.

34. After learning of the PADI Expulsions, and the facts, investigation, and accusations related thereto, DAN sent notice to BUSLLC on January 7, 2021 ("BUSLLC Rescission Notice"), that the BUSLLC Policy was rescinded as of January 8, 2020 due to the

material misrepresentations in the BUSLLC Application, and tendered a check to BUSLLC for all amounts that BUSLLC had caused to be paid for premiums, taxes, and related charges for the BUSLLC Policy during the policy period. A true and accurate copy of the BUSLLC Rescission Notice is attached hereto as Exhibit 9, and is incorporated by reference as if fully set forth herein.

35. After learning of the PADI Expulsions, and the facts, investigation, and accusations related thereto, DAN sent notice to Michael on January 15, 2021 (“Michael Rescission Notice”), that the Michael Policy was rescinded as of October 15, 2020 due to the material misrepresentations in the Michael Application, and tendered a check to Michael for all amounts that Michael had caused to be paid for premiums, taxes, and related charges for the Michael Policy during the policy period. A true and accurate copy of the Michael Rescission Notice is attached hereto as Exhibit 10, and is incorporated by reference as if fully set forth herein.

#### The Underlying Lawsuit

36. The Underlying Lawsuit was filed by Kishbaugh, individually and as personal representative of the Estate, on or about December 2, 2020 against BUSI, BUSLLC, and Harvest, and is pending in Marion Superior Court in Marion County, Indiana. A copy of the complaint Kishbaugh filed in the Underlying Lawsuit is attached hereto as Exhibit 11, and is incorporated by reference as if fully set forth herein.

37. Kishbaugh alleges in the Underlying Lawsuit that he, his wife, Donna, and their children contracted with “Bottoms Up” for scuba diving training, defining “Bottoms Up” as both BUSI and BUSLLC. Kishbaugh alleges in the Underlying Lawsuit that this contract was made at a dive shop located in Marion County, Indiana.

38. Kishbaugh alleges in the Underlying Lawsuit that on October 12, 2020, Donna was at a lake in Decatur County, Indiana known as “Dream Lake” to complete her final skills test to obtain her scuba diving certification, and that Dream Lake is on property owned by Harvest.

39. Kishbaugh alleges in the Underlying Lawsuit that St. John negligently provided instruction to Donna at Dream Lake and, as a result, that Donna died by drowning.

40. Kishbaugh alleges in the Underlying Lawsuit that “Bottoms Up” is liable for St. John’s actions and that Harvest is liable as premises owner, maintainer, controller, and operator of Dream Lake. Kishbaugh seeks unspecified damages in the Underlying Lawsuit from BUSI, BUSLLC, and Harvest.

41. All conditions precedent to all of DAN’s claims have been performed, have occurred, or have been excused.

COUNT I: DECLARATORY JUDGMENT REGARDING BUSI POLICY

42. DAN incorporates the allegations of the preceding paragraphs 1-41 of this Complaint as if fully set forth herein.

43. BUSI made material misrepresentations in the BUSI Application.

44. If BUSI had not made such material misrepresentations, DAN would not have approved the BUSI Application or issued the BUSI Policy.

45. DAN has tendered to BUSI a full refund of all premiums and related costs that BUSI caused to be paid with respect to the BUSI Policy.

46. DAN’s rescission of the BUSI Policy was valid and effective, the BUSI Policy is void, neither BUSI nor any other person or entity has any rights under the BUSI Policy, and DAN has no obligations under the BUSI Policy.

47. Because DAN's rescission of the BUSI Policy was valid and effective, DAN has no duty to defend or indemnify BUSI, St. John, Harvest, and/or any other person or entity under the BUSI Policy, in connection with the Underlying Lawsuit or otherwise.

COUNT II: DECLARATORY JUDGMENT REGARDING BUSLLC POLICY

48. DAN incorporates the allegations of the preceding paragraphs 1-41 of this Complaint as if fully set forth herein.

49. BUSLLC made material misrepresentations in the BUSLLC Application.

50. If BUSLLC had not made such material misrepresentations, DAN would not have approved the BUSLLC Application or issued the BUSLLC Policy.

51. DAN has tendered to BUSLLC a full refund of all premiums and related costs that BUSLLC caused to be paid with respect to the BUSLLC Policy.

52. DAN's rescission of the BUSLLC Policy was valid and effective, the BUSLLC Policy is void, neither BUSLLC nor any other person or entity has any rights under the BUSLLC Policy, and DAN has no obligations under the BUSLLC Policy.

53. Because DAN's rescission of the BUSLLC Policy was valid and effective, DAN has no duty to defend or indemnify BUSLLC, St. John, Harvest, and/or any other person or entity under the BUSLLC Policy, in connection with the Underlying Lawsuit or otherwise.

54. BUSLLC has not provided notice to DAN that it was named as a defendant in the Underlying Lawsuit or sought coverage under the BUSLLC Policy with respect to the Underlying Lawsuit.

55. Even if DAN had not validly rescinded the BUSLLC Policy, and BUSLLC had made a claim for coverage under the BUSLLC Policy in relation to the Underlying

Lawsuit, DAN would have no duty to defend or indemnify BUSLLC with respect to the Underlying Lawsuit.

56. Subject to all of its terms and conditions, the BUSLLC Policy would potentially provide coverage only for certain claims arising from a negligent act, error, or omission in the rendering of or failure to render certain “Professional Services,” as that term is defined in the BUSLLC Policy. Such “Professional Services” include only certain acts, errors, or omissions provided by an “Insured,” as that term is defined in the BUSLLC Policy.

57. The complaint in the Underlying Lawsuit alleges that St. John provided negligent instruction that resulted in Donna’s death. St. John was providing instruction to Donna when the incident that resulted in her death occurred.

58. St. John was not identified as the “Named Insured” on the BUSLLC Policy’s Declarations Page, was not a member of BUSLLC’s scheduled teaching staff under the BUSLLC Policy, and was not otherwise an “Insured” under the BUSLLC Policy as that term is defined in the BUSLLC Policy.

COUNT III: DECLARATORY JUDGMENT REGARDING MICHAEL POLICY

59. DAN incorporates the allegations of the preceding paragraphs 1-41 of this Complaint as if fully set forth herein.

60. Michael made material misrepresentations in the Michael Application.

61. If Michael had not made such material misrepresentations, DAN would not have approved the Michael Application or issued the Michael Policy.

62. DAN has tendered to Michael a full refund of all premiums and related costs that Michael caused to be paid with respect to the Michael Policy.

63. DAN's rescission of the Michael Policy was valid and effective, the Michael Policy is void, neither Michael nor any other person or entity has any rights under the Michael Policy, and DAN has no obligations under the Michael Policy.

64. Because DAN's rescission of the Michael Policy was valid and effective, DAN has no duty to defend or indemnify Michael, and/or any other person or entity under the Michael Policy, in connection with the Underlying Lawsuit or otherwise.

65. Michael has not provided notice to DAN that he was named as a defendant in the Underlying Lawsuit or sought coverage under the Michael Policy with respect to the Underlying Lawsuit.

66. Even if DAN had not validly rescinded the Michael Policy, and Michael had made a claim for coverage under the Michael Policy in relation to the Underlying Lawsuit, DAN would have no duty to defend or indemnify Michael with respect to the Underlying Lawsuit.

67. Subject to all of its terms and conditions, the Michael Policy would not provide coverage relating to an "Event" that occurred and/or was known to Michael prior to the "Policy Period," as those terms are defined in the Michael Policy, and/or if prior to the Michael Policy's effective date, Michael had a reasonable basis to foresee that a claim would be made against him relating to such an "Event."

68. Michael represented in the Michael Application that he had "no knowledge of any incident, accident, occurrence, act, error, or omission . . . that might lead to, or has already led to, a legal action or claim except those matters already reported to DAN Services, Inc.," and stated that he understood "this policy does not cover any Event known on or before the effective date of this coverage."

69. At the time that Michael submitted the Michael Application on October 14, 2020, Michael knew of the incident that gave rise to the Underlying Lawsuit, which occurred on October 12, 2020. The incident that gave rise to the Underlying Lawsuit was an incident, accident, occurrence, act, error, or omission that might lead to a legal action or claim, and Michael had a reasonable basis to foresee that a claim would be made against him as a result of such incident.

70. Subject to all of its terms and conditions, the Michael Policy would potentially provide coverage only for certain claims arising from a negligent act, error, or omission in the rendering of or failure to render certain “Professional Services,” as that term is defined in the Michael Policy. Such “Professional Services” include only certain acts, errors, or omissions provided by an “Insured,” as that term is defined in the Michael Policy.

71. St. John was not identified as the “Named Insured” on the Michael Policy’s Declarations Page, and was not otherwise an “Insured” under the Michael Policy, as that term is defined in the Michael Policy.

WHEREFORE, DAN requests judgment in its favor and against Defendants as follows: (a) a declaratory judgment that the BUSI Policy is void and that DAN has no duty to defend or indemnify BUSI, St. John, Harvest, and/or any other person or entity, in connection with the Underlying Lawsuit or otherwise; (b) a declaratory judgment that the BUSLLC Policy is void and that DAN has no duty to defend or indemnify BUSLLC, St. John, Harvest, and/or any other person or entity, in connection with the Underlying Lawsuit or otherwise; (c) a declaratory judgment that the Michael Policy is void and that DAN has no duty to defend or indemnify Michael, St. John, Harvest, and/or any other person or entity, in connection with the Underlying

Lawsuit or otherwise; (d) awarding DAN the costs of this action; and (e) awarding DAN all other relief to which it is entitled.

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Daniel R. Roy

Daniel R. Roy (# 21806-53)

Matthew E. Burkhardt (# 31916-06)

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*Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAN RISK RETENTION GROUP, INC.

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel R. Roy, Matthew E. Burkhart, Andrew D. Dettmer; Faegre Drinker Biddle & Reath LLP, 300 North Meridian Street, Suite 2500, Indianapolis, IN 46204, 317-237-0304

DEFENDANTS

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, GREG KISHBAUGH

County of Residence of First Listed Defendant Johnson County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jason R. Reese, Wagner Reese, LLP, 11939 North Meridian Street, Carmel, IN 46032-8529, 317-569-0000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(a)
Brief description of cause: Material misrepresentations by BUSI, BUSLLC, and Michael Ellis to DAN

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Jan 19, 2021 SIGNATURE OF ATTORNEY OF RECORD /s/Daniel R. Roy

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

Civil Action No. 1:21-cv-218

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BOTTOMS UP SCUBA INDY LLC
Renata Ellis, Registered Agent
310 Park Avenue
Bargersville, IN, 46106

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

Civil Action No. 1:21-cv-218

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BOTTOMS UP SCUBA, LLC
Stapp Legal Counsel, LLC
6557 Bainbridge Way
Zionsville, IN, 46077

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

Civil Action No. 1:21-cv-218

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) GREG KISHBAUGH
15369 Smithfield Drive
Westfield, IN 46074-8071

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

Civil Action No. 1:21-cv-218

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Michael Ellis
8915 S Keystone Avenue, Suite A
Indianapolis, IN 46227

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

Civil Action No. 1:21-cv-218

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CLAYTON ST. JOHN
703 Trafalgar Pointe Place, Apt. 28
Trafalgar, IN 46181-5503

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

DAN RISK RETENTION GROUP, INC,

Plaintiff(s)

v.

BOTTOMS UP SCUBA INDY LLC, BOTTOMS UP SCUBA LLC, HARVEST TIME, INC., CLAYTON ST. JOHN, MICHAEL ELLIS, and GREG KISHBAUGH,

Defendant(s)

Civil Action No. 1:21-cv-218

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) HARVEST TIME, INC. Lynn Pahl, Registered Agent 6557 Bainbridge Way Zionsville, IN, 46077

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Roy
Matthew E. Burkhart
Andrew D. Dettmer
Faegre Drinker Biddle & Reath
300 North Meridian Street, Suite 2500
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF INDIANA  
 INDIANAPOLIS DIVISION

DAN RISK RETENTION GROUP, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 1:21-cv-218
	)	
BOTTOMS UP SCUBA INDY LLC,	)	
BOTTOMS UP SCUBA LLC,	)	
HARVEST TIME, INC., CLAYTON ST.	)	
JOHN, MICHAEL ELLIS, and	)	
GREG KISHBAUGH, Individually and as	)	
Personal Representative of the Estate of	)	
Donna Kishbaugh,	)	
	)	
Defendants.	)	

**INDEX OF EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>Exhibit 1</b>	BUSI Policy
<b>Exhibit 2</b>	BUSLLC Policy
<b>Exhibit 3</b>	Michael Ellis Policy
<b>Exhibit 4</b>	BUSI Application
<b>Exhibit 5</b>	BUSLLC Application
<b>Exhibit 6</b>	Michael Ellis Application
<b>Exhibit 7</b>	Amended Complaint for Defamation Case
<b>Exhibit 8</b>	BUSI Rescission Notice
<b>Exhibit 9</b>	BUSLLC Rescission Notice
<b>Exhibit 10</b>	Michael Ellis Rescission Notice
<b>Exhibit 11</b>	Underlying Lawsuit

# **EXHIBIT 1**



**PROFESSIONAL LIABILITY INSURANCE**

**UNDERWRITER: DAN RISK RETENTION GROUP, INC.**

offered through  
DAN SERVICES, INC.

NAIC NO. 15928 - SC COMPANY CODE: 207640  
6 W. Colony Place, Suite 200, Durham, NC 27705

**DECLARATIONS PAGE**

<p><b>Named Insured</b> Bottoms Up Scuba Indy DBA Bottoms Up Scuba Indy <b>Address</b> 8915 South Keystone Suite C <b>City, State, Zip</b> Indianapolis, IN 46227</p>	<p><b>Policy Number:</b> GPL106-12043 <b>Policyholder ID:</b> 2787913 <b>See Policy for a full description of terms, conditions, limitations &amp; exclusions.</b></p>
---	--

**DESCRIPTION OF OPERATIONS:** Professional Liability for the instruction or supervision of sanctioned recreational swimming, snorkeling, skin diving, free diving, RSSA diving or scuba diving, and training and supervision of students during the instruction of standard first aid.

*This policy consists of the following coverage parts for which a premium is indicated.  
The premium may be subject to adjustment.*

		POLICY PERIOD	
Professional Liability	\$1,235.00	Effective Date: 4-Jan-2020	Expiration Date: 4-Jan-2021
Rebreather Endorsement	Included		
Excess Liability Endorsement	Not Included	12:01 AM Eastern Standard Time	
Technical Coverage	Included		
Unlimited Defense	Included		
Taxes and Administrative Fee	\$87.00	Minimum/Retained - 100%	
<b>TOTAL PREMIUM</b>	<b>\$1,322.00</b>		

*In exchange for the payment of the premium and subject to all terms of this policy, we agree to provide the insurance as stated in this policy.*

**FORM OF BUSINESS:**  
Limited Liability Company

**LIMITS OF LIABILITY**

**SCHEDULE OF DEDUCTIBLES**

Aggregate (Sum of all DAMAGES and DEFENSE EXPENSES)	\$2,000,000	Deductible	\$0
Per POLICY PERIOD			
Per EVENT (DAMAGES only)	\$1,000,000		
	Per EVENT		

**RETROACTIVE DATE:** The latter of January 1, 2010 or the earliest date of continuous coverage.

**INSURED TEACHING STAFF:** Per the schedule below but only to the extent each such person is providing PROFESSIONAL SERVICES on behalf of the NAMED INSURED specified above as an employee or contractor of such NAMED INSURED.

**ADDITIONAL INSURED:** Per the schedule below and only for legal liability arising vicariously from any EVENT which results from an act, error or omission of the INSURED.

**FORMS AND ENDORSEMENTS:**

**SEND CLAIM NOTIFICATIONS TO:** DAN Services, Inc.  
Fax: (919) 490-2935  
E-Mail: LiabilityClaims@DAN.org

**Notice: This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.**

Date: 8-Jan-2020

Per:   
William M. Ziefle, DAN Services, Inc.

Date: 8-Jan-2020

Agent/Broker:   
Rochelle L. Wright, 6 W. Colony Place, Durham, NC 27705  
Florida License # W151191

The insured is requested to read this declarations page, and if incorrect, return it immediately for alteration.

**THIS POLICY CONTAINS A CLAUSE(S) WHICH MAY LIMIT THE AMOUNT PAYABLE.**



**PROFESSIONAL LIABILITY INSURANCE**

UNDERWRITER: DAN RISK RETENTION GROUP, INC.

offered through  
DAN SERVICES, INC.

NAIC NO. 15928 - SC COMPANY CODE: 207640  
6 W. Colony Place, Suite 200, Durham, NC 27705

**DECLARATIONS PAGE**

<b>Named Insured</b>	Bottoms Up Scuba Indy	<b>Policy Number:</b>	<b>GPL106-12043</b>
	DBA Bottoms Up Scuba Indy	<b>Policyholder ID:</b>	<b>2787913</b>
<b>Address</b>	8915 South Keystone Suite C	<b>See Policy for a full description of terms, conditions, limitations &amp; exclusions.</b>	
<b>City, State, Zip</b>	Indianapolis, IN 46227		

**SCHEDULE OF INSURED TEACHING STAFF**

NAME	ADDRESS	CITY	STATE	ZIP
Michael Ellis	310 Park Ave	Bargersville	IN	46106
Renata Ellis	310 Park Ave	Bargersville	IN	46106
Carlos Cabrera	5206 Hidden Ridge Ct	Indianapolis	IN	46221
Phillip Lillge	18820 Wychwood Pl	Noblesville	IN	46062
Bryant Ellis	310 Park Ave	Bargersville	IN	46106
Dean Ellis	310 Park Ave	Bargersville	IN	46106
Robert Stecher	3015 N Lahr Drive	Martinsville	IN	46151
David Sciscoe	7212 St. Rd. 135 N.	Morgantown	IN	46160
Thomas Witmer	PO Box 372400	Key Largo	FL	33037
Thomas Buckrop Jr.	6383 E. Pemboke Ct	Camby	IN	46113
Kyle Musick	2932 E Edgewood Ave	Indianapolis	IN	46227
Clayton StJohn	703 N Trafalgar Pointe Way Apt 28	Trafalgar	IN	46181
Paige Stender	630 Delray Drive	Indianapolis	IN	46241
Jesse Larrabee	8618 Douglaston Ct	Indianapolis	IN	46234
Amber Lane	8618 Douglaston Court	Indianapolis	IN	46112
Christine Davis	611 Spring St Apt 3301	Indianapolis	IN	46202
Zachariah Branch	3120 Henry Dr	Columbus	IN	47201
Austin Kruse	7230 Woodgate Dr	Fishers	IN	46038
William Ambrose	456 Torrington St	Port Charlotte	FL	33954
Margaret Paugh	1115 W National Ave	Brazil	IN	47834

**SCHEDULE OF ADDITIONAL NAMED INSURED**

NAME	ADDRESS	CITY	STATE	ZIP
SDI/TDI/ERDI	1321 SE Decker Ave.	Stuart	FL	34994
NAUI	9030 Camden Field Parkway	Riverview	FL	33578
PADI	30151 Tomas	Rancho Santa Margarita	CA	93688
Pennyroyal Scuba Center	602 Christian Quarry Rd	Hopkinsville	KY	42240
Horizon Divers	105800 Overseas Hwy	Key Largo	FL	33037

**SCHEDULE OF DESIGNATED REBREATHING MANUFACTURER**

NAME	MODEL	CERTIFICATION AGENCY	No.	Name

**RECREATIONAL SWIM AND DIVE  
INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**Issued by:**

**DAN Risk Retention Group, Inc.**



**RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**MANDATORY FORMS AND ENDORSEMENTS SCHEDULE**

*The following forms and endorsements apply to all  
policies of insurance.*

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**RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**OPTIONAL FORMS AND ENDORSEMENTS SCHEDULE**

*The following forms and endorsements will only apply if an additional premium has been paid and the form or endorsement has been attached to this policy.*

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TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT.....	32

## RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION PROFESSIONAL LIABILITY INSURANCE POLICY

*This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.*

**NOTICE: THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY. AS SET FORTH BELOW, COVERAGE UNDER THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD PROVIDED UNDER THE POLICY. PLEASE REVIEW THE WORDING OF THIS POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon the statements in the **INSURED's** application, which is made part of this policy and subject to the insuring agreements, Declarations Page, coverages, definitions, conditions, limitations, warranties, exclusions, and authorized endorsements to this policy, the **INSURED** and the Underwriters agree as follows:

### INSURING AGREEMENTS

#### 1. COVERAGE- CLAIMS MADE AND REPORTED

- a. Subject to the applicable Limit of Liability, the Underwriters agree to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** for **CLAIMS** arising from any negligent act, error or omission in the rendering of or failure to render **PROFESSIONAL SERVICES** by the **INSURED**.
- b. This insurance only applies to **CLAIMS** that:
  - i. are first made against the **INSURED** during the **POLICY PERIOD**;
  - ii. are reported to the Underwriters in accordance with Section 1 of the Conditions during the **POLICY PERIOD** or any Extended Reporting Period provided under Section 1.e of the Insuring Agreements and
  - iii. arise from an **EVENT** commencing before the end of the **POLICY PERIOD**.
- c. A **CLAIM** will be considered to be first made at the earliest of the following times: (i) when notice of the **CLAIM** is received by the **INSURED** or (ii) when a **CLAIM** is made directly to the Underwriters in writing.
- d. **CLAIMS** arising from the same **EVENT** made against the **INSURED** over more than one **POLICY PERIOD** shall be deemed to have been made against the **INSURED** during the **POLICY PERIOD** in which the first **CLAIM** is made. If, during the **POLICY PERIOD** the **INSURED** first becomes aware of and gives written notice to the Underwriters of an **EVENT** which is likely to give rise to a **CLAIM**, then any subsequent **CLAIM** made against the **INSURED** arising from such **EVENT** shall be deemed to have been first made during the **POLICY PERIOD** in which the **EVENT** was first reported.
- e. If this insurance is not renewed or is canceled, coverage will be provided for **CLAIMS** made during the **POLICY PERIOD** and reported to the Underwriters in accordance with Section 1 of the Conditions no more than ninety (90) days following the date of nonrenewal or cancellation, provided that the **EVENT** giving rise to the **CLAIM** commenced prior to the end of the **POLICY PERIOD**. After this ninety (90) day Extended Reporting Period, all coverage shall cease for any **CLAIM** which has not been previously reported as specified in this insurance. The Extended Reporting Period shall not apply if this insurance is canceled due to non-payment of premium. The Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate the Limits of Liability for this insurance.

#### 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. In addition to the Per Event Limit of Liability for **DAMAGES**, but subject to the Aggregate Limit of Liability for the sum of **DAMAGES** and **DEFENSE EXPENSES** stated on the Declarations Page, the Underwriters further agree to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which are covered and payable under the terms of this insurance, even if any of the

allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in their sole discretion.

The Underwriters shall not be obligated to pay or defend any **CLAIM** after the Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder.

In addition, the Underwriters shall not be obligated to pay or defend any **CLAIM** after the Aggregate Limit of Liability for the sum of **DAMAGES** and **DEFENSE EXPENSES** has been exhausted by the payment of judgments, awards or settlements, or any combination thereof, and **DEFENSE EXPENSES** hereunder.

b. **DEFENSE EXPENSES** means:

- i. All expenses incurred by the Underwriters in defending a **CLAIM**, all costs taxed against the **INSURED** in any suit arising from a **CLAIM** and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriters have paid, tendered or deposited to court that part of the judgment which does not exceed the applicable Limit of Liability.
- ii. Premiums on appeal bonds required in any defended suit, provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the **INSURED** can qualify for an appeal. The Underwriters shall have no obligation to apply for or furnish an appeal bond.
- iii. All reasonable expenses, other than loss of earnings, incurred by the **INSURED** at the Underwriters' request, and/or reasonable investigative fees and/or expenses directly incurred by the **INSURED** with the Underwriters' prior agreement.

**3. LIMITS OF LIABILITY**

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** for any one **EVENT** regardless of the number of **CLAIMS** made or persons or organizations making **CLAIMS** as a result of the **EVENT** or the number of **INSUREDS** against whom **CLAIMS** have been made.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriters will pay for the sum of **DAMAGES** and **DEFENSE EXPENSES** under this insurance regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

**TERRITORY**

This policy applies to **BODILY INJURY** and **PROPERTY DAMAGE** arising from any negligent act, error or omission in the rendering or failure to render **PROFESSIONAL SERVICES** by the **INSURED** anywhere in the world, but only if the **CLAIM** arising from such negligent act, error or omission is made and any suit relating to the **CLAIM** is brought in any of the 50 United States, the District of Columbia, Puerto Rico, or any of the possessions or territories of the United States.

**DEFINITIONS**

1. **ADDITIONAL INSURED** means, any individual or entity identified as an **ADDITIONAL INSURED** in an endorsement attached to this policy, but an **ADDITIONAL INSURED** shall be covered solely for liability arising out of the alleged negligent acts, errors or omissions in the rendering of or failure to render **PROFESSIONAL SERVICES** by an **INSURED** (other than an **ADDITIONAL INSURED**). No **ADDITIONAL INSURED** coverage is conferred with respect to the independent negligent acts, errors or omissions of any **ADDITIONAL INSURED**. In no event shall the coverage afforded to any **ADDITIONAL INSURED** be broader than the underlying coverage afforded to the **NAMED INSURED**.
2. **BODILY INJURY** means physical injury, mental anguish, sickness, disease, shock or disability sustained by a person, including death resulting from any of these at any time.
3. **CLAIM(S)** means a demand for **DAMAGES** received by an **INSURED** or the Underwriters.
4. **DAMAGES** means a compensatory monetary judgment or award (including pre-judgment interest) or a settlement entered into with the Underwriters' prior written consent, but does not include:

- a. **DEFENSE EXPENSES**;
  - b. Punitive or exemplary damages, criminal or civil fines, judicial sanctions or penalties, damages specified by statute, or any damages which are a multiple of compensatory damages, whether at common law and/or by statute;
  - c. The return or restitution of fees, compensation, profits, charges, and/or expenses paid to an **INSURED** for services rendered;
  - d. Judgments or awards deemed uninsurable by law.
5. **DEFENSE EXPENSES** has the meaning stated in Section 2 of the Insuring Agreements.
6. **EVENT** means an accident, disaster, casualty or occurrence, or series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause, whether involving one or more **INSUREDS** or **PARTICIPANTS**, that occurs while one or more **PARTICIPANTS** are in the water, entering the water or preparing to enter the water, or exiting the water, or are in a classroom or other instructional setting while receiving **PROFESSIONAL SERVICES**. An **EVENT** that is ongoing or involves a series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause shall be considered to be a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commences. An **EVENT** also includes the failure or refusal of the **NAMED INSURED** to provide **PROFESSIONAL SERVICES**, provided such failure or refusal is not in violation of any law, including the Americans with Disabilities Act.
7. **INSURED** means:
- a. The **NAMED INSURED**;
  - b. If the **NAMED INSURED** is an entity, each member of the **NAMED INSURED**'s teaching staff scheduled with the Underwriters. If a person joins the **NAMED INSURED**'s teaching staff after the first day of the **POLICY PERIOD**, that person will be an **INSURED** so long as the **NAMED INSURED** reports to the Underwriters in writing the name and date of hire of the person and any other information the Underwriters may reasonably require within thirty (30) days of the day the person joins the **NAMED INSURED**'s teaching staff;
  - c. Any **ADDITIONAL INSURED**.
8. **NAMED INSURED** means the person or entity identified as the **NAMED INSURED** on the Declarations Page.
9. **PARTICIPANT** means any person being instructed or supervised by an **INSURED** while providing **PROFESSIONAL SERVICES** and who (or a parent or legal guardian in the case of a minor on their behalf) has signed the requisite written release of liability/assumption of risk and medical history form prior to the initiation of such instruction or supervision.
10. **POLICY PERIOD** means the period from the Effective Date of this policy stated on the Declarations Page to Anniversary Date stated on the Declarations Page or the date this policy is canceled or otherwise terminated if the policy is canceled or otherwise terminated prior to the Anniversary Date.
11. **PROFESSIONAL SERVICES** means:
- a. the instruction or supervision of a **PARTICIPANT** engaged in recreational swimming, snorkeling, skin diving, free diving, RSSA (Recreational Surface Supplied Air) diving, or SCUBA (Self-Contained Underwater Breathing Apparatus) diving where such instruction or supervision is provided by a properly qualified and trained **INSURED** in his/her capacity as a certified swim or dive professional; and
  - b. the training and supervision of a **PARTICIPANT** during the instruction of standard first aid; and,
  - c. with the appropriate qualifications and requisite endorsement, and notwithstanding Exclusion 29, instruction or supervision of a **PARTICIPANT** engaged in technical or rebreather diving, regardless of depth.
- Specifically included are instruction or supervision of Swimming, Snorkeling, Freediving / Breath-hold/Apnea, Recreational Scuba, Technical/Extended Range Scuba, Emergency Response, Professional Development Certification Programs, Mermaiding, Lifeguarding and Public Safety diving.
12. **PROPERTY DAMAGE** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it. For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data

processing devices or any other media which are used with electronically controlled equipment.

**EXCLUSIONS**

Coverage is NOT afforded:

1. for any **CLAIM** by an **INSURED** against another **INSURED**. However, this exclusion does not apply to any **CLAIM** brought by an **INSURED** who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
2. for any **CLAIM** made by an employer against any **INSURED** who is employed by or representing such employer.
3. for any obligation for which the **INSURED** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law (including occupational disease and cumulative trauma) including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. for **BODILY INJURY** to any employee of any **INSURED** arising out of and in the course of his/her employment by the **INSURED**, including any obligation to indemnify another in whole or in part, for such **BODILY INJURY**. This exclusion does not apply to any **CLAIM** brought by an employee who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
5. for liability assumed by an **INSURED** under any contract or agreement.
6. for **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, operation, use, loading or unloading or entrustment to others of any automobile, aircraft or watercraft. This exclusion applies even if the **CLAIM** against any **INSURED** alleges negligence or other wrongdoing in the supervision, employment, training or monitoring of others by the **INSURED**. This exclusion does not apply to the ingress and/or egress from any watercraft while any **PARTICIPANT** is under the **INSURED's** supervision or instruction, or involving the operation of a kayak or paddleboard.
7. for **PROPERTY DAMAGE** to:
  - a. property owned or occupied by or rented to the **INSURED**;
  - b. Property used by the **INSURED**; or
  - c. Property in the care, custody or control of the **INSURED** or property over which the **INSURED** is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the **INSURED**.)
8. for any obligation to pay fines, judicial sanctions, penalties, punitive and/or exemplary damages, or multiples of compensatory damages, whether at common law or by statute.
9. for any **CLAIM** for which notice was provided to another insurer prior to the **POLICY PERIOD**.
10. for any **CLAIM** arising out of an **EVENT** occurring prior to the **POLICY PERIOD**, if prior to the effective date of the policy, any **INSURED** had a reasonable basis to foresee that a **CLAIM** would be made against them.
11. for any **CLAIM** arising out of an **EVENT** commencing prior to the **POLICY PERIOD** for which coverage is available under an occurrence based liability policy issued by the Underwriters or any other insurer.
12. for any **CLAIM** arising out of **BODILY INJURY** or **PROPERTY DAMAGE** expected or intended from the standpoint of the **INSURED**. This exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** resulting from the use of reasonable force to protect persons or property.
13. for any **CLAIM** arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **CLAIM**.
14. for any **CLAIM** which is directly or indirectly attributed to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **INSURED**.

15. for any **CLAIM** arising out of discrimination by the **INSURED**, including but not limited to discrimination on the basis of age, color, race, sex, sexual orientation, creed, national origin, marital status or mental or physical disability. However, this exclusion does not apply if instruction is denied for valid safety reasons. Valid safety reasons include, but are not limited to, concern over medical history of a student, disability of a student or belief by the **NAMED INSURED** that a student lacks the physical ability or mental aptitude to dive.
16. for any **CLAIM** arising out of infringement of trademark, trade dress, trade name, patent, copyright or other intellectual property rights.
17. for any **CLAIM** based on the insolvency or bankruptcy of any person, firm or organization.
18. for any **CLAIM** arising out of the performance of a criminal act or caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substance.
19. Pollutants
  - a. for any **CLAIM** relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.
  - b. for any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the **INSURED** or by another.

“Pollutants” means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.
20. for any **CLAIM** arising from acts that fail to meet the standards of the certification training agency under which the activity involved in the CLAIM took place
21. for any **CLAIM** arising out of the function or failure of any product, including but not limited to RSSA, SCUBA and snorkeling equipment, regardless if owned, borrowed, or rented by an **INSURED**.
22. for any **CLAIM** arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities. This exclusion does not apply to public safety diving or scientific research activities.
23. for any **CLAIM** arising out of **ABUSE OR MOLESTATION**. For purposes of this exclusion, **ABUSE OR MOLESTATION** means:
  - a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, any **INSURED**, an **INSURED’S** employee, or any other person, or
  - b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom any **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm; harassment of any type; lewd, immoral or sexual behavior, whether or not any such act is intended to lead to, or culminate in, any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons, **PARTICIPANTS**, or from any cause whatsoever.
24. for any **CLAIM** where an **INSURED** intentionally left or permitted any uncertified student to be unsupervised. This exclusion does not apply to a navigation exercise on the second or subsequent training dives after the **INSURED** has evaluated the student’s required skills, or a situation where the **INSURED** is responding to an emergency situation.
25. for any **CLAIM** where a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed a medical history form prior to in-water training or supervision. Furthermore, coverage is excluded for any **CLAIM** where the medical history form of the **PARTICIPANT** indicates any condition contrary

to safe participation in any in-water activities and the **PARTICIPANT** has not obtained medical approval by a licensed physician (who is not the **PARTICIPANT** or the parent and/or legal guardian of a **PARTICIPANT**) based on a medical examination prior to any in-water training or supervision.

26. for any **CLAIM** where, prior to the initiation of any training or supervision, a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed and signed a written release of liability/assumption of risk form developed by or approved by the certification agency through which the training or supervision was offered and naming the **INSURED** as a released party.
27. for any **CLAIM** in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any **CLAIM** in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any **INSURED**.
28. for any **CLAIM** where the written release signed does not include an acknowledgement that the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) knows that the dive site is remote and that a recompression chamber may not be readily available, and they still want to continue their training and assume the risk in the absence of a recompression chamber.
29. for any **CLAIM** arising out of any diving activity that is not planned within accepted recreational diving limits. Recreational dives are defined as dives: (1) planned to 130 feet or 40 meters or shallower; (2) planned without mandatory stage decompression (safety stops are acceptable); and (3) made using compressed air or oxygen enriched air (nitrox) only.
30. for any **CLAIM** arising out of an **EVENT** involving any diving activities in which the **INSURED** was not an active member in good standing with their certification agency at the time of the **EVENT**.
31. for any **CLAIM** arising out of any **EVENT** involving any training or supervisory dive conducted by the **INSURED** that was not within the standards of the certification agency that sanctioned the training or supervisory diving activity involved.
32. For any **CLAIM** arising out of any **EVENT** involving the **INSURED**'s conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational SCUBA diving via a supervised, controlled open water experience) that was not within the standards of the certification agency that sanctioned the training or diving activity involved.
33. for any **CLAIM** involving Technical Training and/or Technical Training Dives where the **INSURED** is not a technically certified professional or where the **INSURED** is a technically certified professional and exceeds depths for which the **INSURED** is trained and certified to teach and/or supervise.
34. for any **CLAIM** involving SCUBA certification provided to anyone under the age of 10, except those courses that are taught in confined water only (e.g. swimming pools) and such may be offered to anyone age 7 and older.
35. for any **CLAIM** involving the failure of an instructor and/or dive store to retain all records relating to individual **PARTICIPANTS** for a minimum of five (5) years. Records means records used for the purpose of recording the **PARTICIPANT**'s progress and records of knowledge tests for the purpose of evaluating the **PARTICIPANT**'s understanding of the instructional material.
36. for any **CLAIM** involving an **INSURED** who does not have appropriate training and have all appropriate certifications to teach a course, including a course in First Aid.
37. for any **CLAIM** in any way caused or contributed to by nuclear reaction, nuclear radiation or radioactive contamination.
38. for any **CLAIM** involving any liability as respects access or disclosure of confidential or personal information or data-related liability, which shall mean damages, or loss, defense costs, other costs or expenses because of **BODILY INJURY** or **PROPERTY DAMAGE** arising directly or indirectly out of:
  - a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by the insured or others arising out of that which is described in paragraph a. or b. above. Further, as used in this exclusion, "electronic data" means information, facts or programs stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**39. BODILY INJURY or PROPERTY DAMAGE** arising out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**CONDITIONS**

**1. INSURED's Duties Arising out of a CLAIM or EVENT:**

- a. As a condition precedent to the protection afforded by this insurance, the **INSURED** shall immediately give to the Underwriters through the designated persons or entity shown below written notice of any **CLAIM** first made against the **INSURED** during the **POLICY PERIOD**, including, but not limited to, any verbal demand or written demand, notice, summons or other process received by the **INSURED** or his/her representative.
- b. The **INSURED** must also notify Underwriters through the designated person or entity shown below as soon as practicable of any **EVENT** likely to give rise to a **CLAIM** hereunder or of the receipt from any person of a verbal or written statement of an intention to hold the **INSURED** responsible for any **EVENT**.

Entity to notify for a. and b. above:

**DAN Services, Inc.**  
**Fax: 919.490.2935**  
**E-Mail: [LiabilityClaims@DAN.org](mailto:LiabilityClaims@DAN.org)**

In any such case, the **INSURED** shall, upon request, give the Underwriters such information as the Underwriters, at their sole discretion, may reasonably require.

- c. Failure to provide written notice as set forth above will be considered a failure of a condition to coverage and may at the option of the Underwriters render this policy null and void in relation to any **CLAIM** or **EVENT** not properly and promptly reported through written notice given in accordance with this provision.
- 2. Assistance and Cooperation:** The **INSURED**, including any **ADDITIONAL INSURED**s, shall cooperate with the Underwriters and, upon the Underwriters' request, in any investigation process, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution indemnity against any person or organization who may be liable to the **INSURED** because of **BODILY INJURY** or **PROPERTY DAMAGE** with respect to which insurance is afforded hereunder and the **INSURED** shall attend hearing and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.
- 3. Voluntary Payments:** Without the prior written consent of the Underwriters, the **INSURED** shall not voluntarily make any payment or settlement, make any admission of responsibility, assume any obligation, or incur any expense other than for first aid to others at the time of the **EVENT**.
- 4. Subrogation Clause:** Upon payment under this insurance, the Underwriters shall be subrogated to all the **INSURED's** rights of recovery against any person or organization, and the **INSURED** shall execute and deliver

instruments and papers and do whatever else is necessary to secure such rights. The **INSURED** shall do nothing to prejudice such rights.

5. Other Insurance: Except for insurance that is specifically stated to be in excess of this policy, if any other valid and collectible insurance is available to any **INSURED** covering a **CLAIM** also covered by this policy, the insurance afforded by this policy shall be excess of and shall not contribute with any such other insurance until the limits of such other policy are exhausted. If, however, the other valid and collectible insurance states that it is also excess, this policy will simultaneously provide coverage along with one or more other policies, provided each policy is applied on a pro rata basis as determined by the limits of liability of the respective policies. In no event shall this policy be subject to the terms, conditions or limitations of any other insurance policy.
6. Non Accumulation of Limits of Coverage: If this policy and any other policy issued by the Underwriters to the **INSURED** apply to the same **EVENT**, Section 5 (Other Insurance) above shall not apply and the maximum Limit of Liability shall not exceed the highest applicable limit of liability under any one policy. In no event shall the limits of liability under two or more policies issued by the Underwriters to the **INSURED** be stacked so as to obtain a limit of liability that exceeds the highest applicable limit of liability available under any one policy.
7. Legal Action Against the Underwriters: No person or organization has a right under this insurance:
  - a. to join the Underwriters as a party or otherwise bring the Underwriters into a suit for **DAMAGES** from any **INSURED**; or
  - b. to sue the Underwriters on this insurance unless they have fully complied with all of its terms.
8. Service of Suit:
  - a. It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the **INSURED**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon DAN Risk Retention Group, Inc., c/o Artex Risk Group, 1180 Sam Rittenberg Blvd., Suite 235, Charleston, SC 29407 U.S.A. and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.
  - b. The above named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **INSURED** to give a written undertaking to the **INSURED** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.
  - c. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **INSURED** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.
9. False or Fraudulent CLAIM: If the **INSURED** shall give notice of any **CLAIM** or reports an **EVENT** likely to give rise to a **CLAIM** knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the **INSURED**.
10. Inspection and Audit:
  - a. The Underwriters shall be permitted, but not obligated to, inspect the **INSURED**'s property, operations or records at any time. Neither the Underwriters' right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **INSURED** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

- b. The Underwriters may examine and audit the **INSURED**'s books and records at any time during the **POLICY PERIOD** and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.
11. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriters.
12. Assignment: No assignment of interest under this insurance shall be valid unless the written consent of the Underwriters is endorsed thereon.
13. Cancellation and Nonrenewal:
- a. It is understood and agreed that this policy may be canceled by the Underwriters by mailing to the **NAMED INSURED** at the address shown on the Declarations Page written notice stating when, not less than forty-five (45) days thereafter, such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Proof of mailing notice of cancellation shall be sufficient proof of notice.
  - b. Notwithstanding anything contained in this insurance to the contrary this insurance may be cancelled by the **INSURED** at any time by written notice or by surrender of this policy.
  - c. If this insurance is cancelled by or on behalf of the Underwriters, the Underwriters shall retain the pro rata proportion of the premium hereon, except that (a) if this insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater and (b) if this insurance is cancelled for nonpayment of premium, the premium shall be considered fully earned on the effective date of the policy and collectible by the Underwriters in full. If this insurance is cancelled by the **NAMED INSURED**, the premium shall be considered fully earned on the effective date of the policy and will not be subject to pro rata refund.
  - d. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - e. This insurance may be non-renewed by the Underwriters in accordance with applicable law. Proof of mailing notice of nonrenewal shall be sufficient proof of notice.

**END OF POLICY FORM**

**FORMS AND ENDORSEMENTS WHICH ARE PART OF THIS POLICY ARE ATTACHED**

## **INCIDENT REPORT FORM**

### **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

In the event of an injury that may result in a **CLAIM**, the **INSURED** must complete the Incident Report Form provided by the Underwriters or the Underwriter's representative. The report shall include as much information as possible, including the names and contact details (address, telephone number and email address) of all parties with knowledge of the incident.

These instructions are to assist you in filling out the Incident Report Form in the event of an injury. Above all else, the form should be filled out as completely and accurately as possible. Completing this form shortly after the incident helps assure that all applicable information has been obtained. **However, remember that caring for the injured person is of primary concern.**

Attach a copy of the signed waiver/release to the Incident Report Form.

In the event that the injury involved the use of any equipment, you should inspect and document that equipment. When a piece of equipment not owned by the victim may even be partially involved in causing the Event, where possible the Insured should retain said equipment and provide it directly to DAN RRG. Alternatively, a picture of the equipment along with a description of its condition at the time of the injury will suffice. If you perceive that any problem exists with the equipment, it should be secured until otherwise instructed.

At this stage, it is important to gather all relevant information possible concerning the accident. No one from the business should discuss any opinion they might have as to the cause. It is important that you be factual. Opinions will be rendered at a later date once all relevant information has been reviewed and appropriately analyzed.

Additional considerations are as follows:

- When possible, have the injured person describe in their own words what happened. That description should be written in the section entitled "Injured Party's Description" and should be written in the first person, i.e. "**I was....**" If able to sign, the injured person should be asked to sign and date their description.
- Describe the extent of injury, treatment and method of transportation.
- Obtain the name, address and contact information (telephone numbers and email address) for each witness, including anyone associated with the business who observed either the incident, or anything giving rise to it. Ask each witness to prepare a written statement. If the witness is unwilling to prepare a written statement, provide a written summary of what they told you about the incident.
- Where applicable, take pictures of the accident site and forward them with the Incident Report Form.
- Cooperate fully with all law enforcement personnel called to the scene.

Once completed, forward the Incident Report Form, waiver/release, witness statements, pictures and "Claim Notification" to the person identified in your insurance policy.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
BIOLOGICAL OR CHEMICAL MATERIALS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

It is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

**All other terms and conditions remain unchanged.**

**EXCLUSION AND LIMITATION CLAUSE  
EXPOSURE TO SANCTIONS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
FIREARMS, FIREWORKS AND OTHER PYROTECHNIC DEVICES AND EXPLOSIVES**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

A. This insurance does not apply to **BODILY INJURY** or **PROPERTY DAMAGE**:

Arising from the ownership, maintenance, packing, handling, transportation, storage, igniting, operation, sponsorship, set-up or take-down or other use of:

- i. Firearms, including handguns, revolvers, pistols, rifles, shotguns, air guns, semi-automatic weapons and similar devices;
- ii. Fireworks, including firecrackers, Roman Candles, flash powder, explosive compositions or combustible substances, pinwheels, skyrockets, ground displays, flares, smoke bombs, and similar devices that produce, when ignited or activated, sound, smoke, motion or a combination of these;
- iii. Explosives, caps, primers, detonators, ammunitions, fuses, arms, magnesium, ammonium nitrate, nitroglycerin, celluloid, pyroxylin or other substances intended for use as an explosive;

by any **INSURED** or by any person for which any **INSURED** may be held liable in any capacity.

B. This insurance does not apply to any obligation of any **INSURED** to indemnify, defend or contribute jointly or severally with another because of **BODILY INJURY** or **PROPERTY DAMAGE** arising from any of the activities specified in A.i, above.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
NUCLEAR INCIDENT LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

This policy does not apply:

- A. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
- i. with respect to which an **INSURED** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - ii. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **INSURED** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- i. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **INSURED** or (2) has been discharged or dispersed therefrom;
  - ii. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **INSURED**; or
  - iii. the injury, sickness, disease, death or destruction arises out of the furnishing by an **INSURED** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- D. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (i) or (ii) thereof; "nuclear facility" means:

- i. any nuclear reactor,

- ii. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- iii. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **INSURED** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- iv. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the policy to which it is attached.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
RADIOACTIVE CONTAMINATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this policy does not cover liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
RADIOACTIVE CONTAMINATION AND  
EXPLOSIVE NUCLEAR ASSEMBLIES**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

This policy does not cover

- A. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- B. any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

- i. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding any provision to the contrary within the policy of which this Endorsement forms part (or within any other Endorsement which forms part of this policy), this policy does not insure:

- A. any loss, damage, cost or expense, or
- B. any increase in insured loss, damage, cost or expense, or
- C. any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority; or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used in this Endorsement includes (but is not limited to):

- A. seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- B. the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
TERRORISM**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **INSURED**.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
WAR AND CIVIL WAR**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover any liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
ASBESTOS, LEAD AND SILICA**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover the following:

**1. Asbestos**

- a. **BODILY INJURY** in any way arising out of the use by any person or organization of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
- b. **PROPERTY DAMAGE** to real property arising out of the use by any person or organization of asbestos, asbestos products, asbestos fibers or asbestos dust, including, without limitation, the costs incurred with respect to the removal or abatement of asbestos, asbestos products, asbestos fibers or asbestos dust from or in such real property;
- c. Any obligation of the **INSURED** to indemnify any party because of damage arising out of such **PROPERTY DAMAGE, BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
- d. Any obligation to defend any suit or **CLAIM** against the **INSURED** alleging **BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury OR **PROPERTY DAMAGE** resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.

**2. Lead**

- a. **BODILY INJURY** or **PROPERTY DAMAGE**, for past, present or future **CLAIMS** arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever;
- b. The costs of clean up or removal of lead or products and materials containing lead;
- c. The costs of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, or lead or products and material containing lead;
- d. The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- e. The cost of compliance with any law or regulation regarding lead.

**3. Silica**

- a. **BODILY INJURY** or **PROPERTY DAMAGE** or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form; or
- b. Any obligation of the **INSURED** to defend and/or indemnify any party because of damages arising out of such **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
ADDITIONAL EXCLUSIONS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover the following:

1. any **CLAIM** involving liability arising out of the ownership, maintenance or use of the following premises or any property located on such premises: camps, campgrounds, recreational vehicle parks, or paintball fields;
2. any **CLAIM** involving liability arising out of navigation, towing, repair, storage, conversion, cleaning, demolition, wrecking, uprighting, or salvage of any commercial vessel or oil rig, ship building and boat manufacturing, stevedoring, ship repair yards and dry docks;
3. any **CLAIM** involving liability arising out of off-shore and subaqueous work (other than **PROFESSIONAL SERVICES** provided by the **INSURED**);
4. any **CLAIM** involving liability arising out of premises or operations involving: (a) amusement parks or devices, carnivals or circuses, sports or other entertainment events, professional sports organizations, zoos, casinos, race tracks, or any theater, hall, arena, grandstand or stadium; (b) oil or gas pipelines, wells, or drilling operations; (c) all mining and quarrying operations; (d) bridges, tunnels, dams or reservoirs; (e) waste treatment, storage or disposal facilities, dumps or dumpsites, landfills; surface impoundments; waste lagoons; or waste sites.

**All other terms and conditions remain unchanged.**

**ADDITIONAL INSURED  
DESIGNATED PERSON OR ORGANIZATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY**

**DEFINITIONS SECTION 1 – ADDITIONAL INSURED**

The following persons or organizations are **ADDITIONAL INSUREDS**:

**SCHEDULE**

Name of Person or Organization:

NAME	ADDRESS	CITY	ST	ZIP

(If no entry appears above, information required to complete this endorsement will be shown on the Declarations Page as applicable to this endorsement.)

This **ADDITIONAL INSURED** protection shall in all cases be limited in scope to liability of the **ADDITIONAL INSURED** arising out of **PROFESSIONAL SERVICES** provided by the **INSURED** (other than an **ADDITIONAL INSURED**). When adding an Additional Insured, notice to other Additional Insureds shall be made by giving notice to the Named Insured. When making changes to the policy that affect an Additional Insured, notice to the Additional Insureds shall be made by giving notice to the Named Insured. Exclusion 5 in the policy does not apply when adding an Additional Insured.

**All other terms and conditions remain unchanged.**

**DESIGNATED REBREATHER MANUFACTURER LIMITED INSURED STATUS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following: PROFESSIONAL LIABILITY  
DEFINITIONS SECTION 1 – ADDITIONAL INSURED

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that coverage is extended as follows:

SCHEDULE

Name and Address of Designated Rebreather Manufacturer or Distributor	Name and Certification Agency No. of <b>INSURED</b>

- 1) Section I – **ADDITIONAL INSURED** is amended to include as an **ADDITIONAL INSURED** the rebreather manufacturer (hereinafter “Designated Manufacturer”) shown in the Schedule, but only with respect to liability for **BODILY INJURY** or **PROPERTY DAMAGE** resulting from an **EVENT**.

This **ADDITIONAL INSURED** protection shall in all cases be limited in scope to liability of the **ADDITIONAL INSURED** arising out of **PROFESSIONAL SERVICES** provided by the **INSURED** (other than an **ADDITIONAL INSURED**).

- 2) The coverage afforded under this endorsement does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** unless prior to the commencement of instruction, the rebreather instructor has been:
  - a) Certified and/or suitably trained to teach the designated rebreather; and,
  - b) holds a Technical Endorsement.

**All other terms and conditions remain unchanged.**

**DEFENSE EXPENSES SUBJECT TO SEPARATE LIMIT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

INSURING AGREEMENTS, SECTION 2 – DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS, PARAGRAPH a.  
INSURING AGREEMENTS, SECTION 3 – LIMITS OF LIABILITY.

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that coverage is extended as follows:

INSURING AGREEMENTS, SECTION 2 – DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS, PARAGRAPH a. is amended to read as follows:

- a. In addition to the Per Event and Aggregate Limits of Liability for **DAMAGES**, but subject to the Limit of Liability for **DEFENSE EXPENSES** stated on the Declarations Page, the Underwriters further agree to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in their sole discretion.

Notwithstanding the foregoing, the Underwriters shall not be obligated to defend any **CLAIM** if any of the following apply:

- i. The Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder;
- ii. The Aggregate Limit of Liability has been exhausted by the payment of judgments, awards or settlements, or any combination thereof hereunder; or
- iii. The Limit of Liability for **DEFENSE EXPENSES** has been exhausted by the payment of **DEFENSE EXPENSES** hereunder.

INSURING AGREEMENTS, SECTION 3 – LIMITS OF LIABILITY is amended to read as follows:

**3. LIMITS OF LIABILITY**

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** for any one **EVENT**.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** under this insurance.
- c. The Limit of Liability for **DEFENSE EXPENSES** specified on the Declarations Page is the most the Underwriters will pay for **DEFENSE EXPENSES** under this insurance.

The Limits of Liability stated in paragraphs a., b. and c. above shall apply regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

**All other terms and conditions remain unchanged.**

**EQUIPMENT LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 21 of this policy DOES NOT apply and coverage is extended to include any **CLAIM** against an **INSURED** arising out of the function or failure of equipment used by a **PARTICIPANT** while in the **INSURED's** own classes or under the **INSURED's** supervision. This equipment liability endorsement only applies to those **INSUREDS** who have purchased the equipment liability option and paid the associated additional premium.

**All other terms and conditions remain unchanged.**

**TECHNICAL COVERAGE ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 29 of this policy DOES NOT apply to technical diving activities conducted by an **INSURED**.

**All other terms and conditions remain unchanged.**

**ABUSE OR MOLESTATION COVERAGE ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 23 of this policy DOES NOT apply, but subject to all other terms, conditions, exclusions and Limits of Liability of the policy, the policy is extended to cover **CLAIMS** alleging **ABUSE OR MOLESTATION** to a **PARTICIPANT** occurring in the course of providing **PROFESSIONAL SERVICES** by any **INSURED**.

The coverage provided by this endorsement is subject to the following terms and conditions:

1. The Underwriters shall have no obligation to pay **DAMAGES** or **DEFENSE EXPENSES** on behalf of, or defend, an **INSURED** if:
  - a. a judgment or other final adjudication establishes, or it is otherwise determined by the Underwriters, that the **INSURED** committed, participated in, or knew of any act of **ABUSE OR MOLESTATION**; or
  - b. the **INSURED** pleads guilty or no contest to any criminal act involving **ABUSE OR MOLESTATION**.
2. The definition of **EVENT** is amended to add the following at the end of the definition:

**EVENT** includes acts of **ABUSE OR MOLESTATION**. All acts of **ABUSE OR MOLESTATION** committed by one person or two or more persons either acting together or negligently responsible for such acts shall be deemed to be a single **EVENT** taking place at the time the first such act of **ABUSE OR MOLESTATION** commences, regardless of (i) the time period during which such acts of **ABUSE OR MOLESTATION** took place, or (ii) the number of persons who were subject to such acts of **ABUSE OR MOLESTATION**.

3. The following sublimit applies: Subject to the Per Event and Aggregate Limits of Liability, the Underwriters will pay no more than \$ 300,000 for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** alleging **ABUSE OR MOLESTATION** under this insurance This sublimit is within the Per Event and Aggregate Limits of Liability for the policy and does not add to those limits.

For purposes of this endorsement, **ABUSE OR MOLESTATION** means:

- a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, any **INSURED**, an **INSURED'S** employee, or any other person, or
- b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom any **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm

**All other terms and conditions remain unchanged.**

**TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

In consideration of the payment of the additional premium shown on the Declarations Page, and subject to the Limit of Liability shown herein, it is hereby understood and agreed that this insurance is extended to include liability resulting from services provided in the role of tour or travel agent, or otherwise arranging activities for participants with airlines, hotels, resorts, dive operators, concessionaires, vendors or subcontractors.

The coverage provided by this endorsement is subject to the following terms and conditions:

1. All airlines, hotels, resorts, dive operators, concessionaires, vendors and sub-contractors must maintain their own liability insurance covering the **PARTICIPANTS** in the activity they provide, with a minimum liability limit of \$1,000,000, with your business (the **INSURED**) named as "Additional Insured," and provide a certificate of insurance that you will maintain in your records.
2. The following sublimit applies:

Subject to the Per Event and Aggregate Limits of Liability, the Underwriters will pay no more than \$100,000 for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** arising from any act, error or omission in the rendering of or failure to render services as a tour or travel agent. This sublimit is within the Per Event and Aggregate Limits of Liability for the policy and does not add to those limits.

**All other terms and conditions remain unchanged.**

# **EXHIBIT 2**



**PROFESSIONAL LIABILITY INSURANCE**

**UNDERWRITER: DAN RISK RETENTION GROUP, INC.**

offered through  
DAN SERVICES, INC.

NAIC NO. 15928 - SC COMPANY CODE: 207640  
6 W. Colony Place, Suite 200, Durham, NC 27705

**DECLARATIONS PAGE**

**Named Insured** Bottoms Up Scuba  
DBA Bottoms Up Scuba Port Charlotte  
**Address** 3781 Tamiami Trail  
**City, State, Zip** Port Charlotte, FL 33952

**Policy Number:** GPL106-12047  
**Policyholder ID:** 2895246  
**See Policy for a full description of terms, conditions, limitations & exclusions.**

**DESCRIPTION OF OPERATIONS:** Professional Liability for the instruction or supervision of sanctioned recreational swimming, snorkeling, skin diving, free diving, RSSA diving or scuba diving, and training and supervision of students during the instruction of standard first aid.

*This policy consists of the following coverage parts for which a premium is indicated.  
The premium may be subject to adjustment.*

		POLICY PERIOD	
		Effective Date:	Expiration Date:
Professional Liability	\$1,235.00	8-Jan-2020	8-Jan-2021
Rebreather Endorsement	Included		
Excess Liability Endorsement	Not Included	12:01 AM Eastern Standard Time	
Technical Coverage	Included		
Unlimited Defense	Included		
Taxes and Administrative Fee	\$87.00	Minimum/Retained - 100%	
<b>TOTAL PREMIUM</b>	<b>\$1,322.00</b>		

*In exchange for the payment of the premium and subject to all terms of this policy, we agree to provide the insurance as stated in this policy.*

**FORM OF BUSINESS:**  
Limited Liability Company

**LIMITS OF LIABILITY**

**SCHEDULE OF DEDUCTIBLES**

Aggregate (Sum of all DAMAGES and DEFENSE EXPENSES)	\$2,000,000	<b>Deductible</b>	\$0
Per POLICY PERIOD			
Per EVENT (DAMAGES only)	\$1,000,000		
	Per EVENT		

**RETROACTIVE DATE: Earliest Date of Continuous Professional Liability Coverage**

**INSURED TEACHING STAFF:** Per the schedule below but only to the extent each such person is providing PROFESSIONAL SERVICES on behalf of the NAMED INSURED specified above as an employee or contractor of such NAMED INSURED.

**ADDITIONAL INSURED:** Per the schedule below and only for legal liability arising vicariously from any EVENT which results from an act, error or omission of the INSURED.

**FORMS AND ENDORSEMENTS:**

**SEND CLAIM NOTIFICATIONS TO:** DAN Services, Inc.  
Fax: (919) 490-2935  
E-Mail: LiabilityClaims@DAN.org

**Notice: This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.**

Date: 30-Oct-2020

Per:   
William M. Ziefle, DAN Services, Inc.

Date: 30-Oct-2020

Agent/Broker   
Rochelle L. Wright, 6 W. Colony Place, Durham, NC 27705  
Florida License # W151191

The insured is requested to read this declarations page, and if incorrect, return it immediately for alteration.

**THIS POLICY CONTAINS A CLAUSE(S) WHICH MAY LIMIT THE AMOUNT PAYABLE.**

THIS POLICY DOES NOT AUTOMATICALLY RENEW



**PROFESSIONAL LIABILITY INSURANCE**

UNDERWRITER: DAN RISK RETENTION GROUP, INC.

offered through  
DAN SERVICES, INC.

NAIC NO. 15928 - SC COMPANY CODE: 207640  
6 W. Colony Place, Suite 200, Durham, NC 27705

**DECLARATIONS PAGE**

**Named Insured** Bottoms Up Scuba  
DBA Bottoms Up Scuba Port Charlotte  
**Address** 3781 Tamiami Trail  
**City, State, Zip** Port Charlotte, FL 33952

**Policy Number:** GPL106-12047  
**Policyholder ID:** 2895246  
**See Policy for a full description of terms, conditions, limitations & exclusions.**

**SCHEDULE OF INSURED TEACHING STAFF**

NAME	ADDRESS	CITY	STATE	ZIP
Renata Ellis	3781 Tamiami Trail	Port Charlotte	FL	33952
Michael Ellis	3781 Tamiami Trail	Port Charlotte	FL	33952
Michael Tobin	133 Center St	New Milford	NJ	07646
Matthew Rice	2786 Mather Lane	North Port	FL	34286
David Bartels	2920 Anniston Rd	North Port	FL	34288
Kinga Bekier	2920 Anniston Rd	North Port	FL	24288

**SCHEDULE OF ADDITIONAL NAMED INSURED**

NAME	ADDRESS	CITY	STATE	ZIP
SDI/TDI/ERDI	1321 SE Decker Ave	Stuart	FL	34994
NAUI	9030 Camden Field Parkway	Riverview	FL	33578
Horizon Divers	105800 Overseas Hwy	Key Largo	FL	33037
Lake Denton	790 Lake Denton Rd	Avon Park	FL	33825
IANTD	119 NW Ethan Place, Suite 101	Lake City	FL	32055
PSS	Via Diocleziano 350	Napoli	Italy	80125

**SCHEDULE OF DESIGNATED REBREATHING MANUFACTURER**

NAME	MODEL	CERTIFICATION AGENCY	No.	Name
Hollis	Prism 2	TDI		M. Ellis

**RECREATIONAL SWIM AND DIVE  
INSTRUCTION AND SUPERVISION**

**PROFESSIONAL LIABILITY INSURANCE POLICY**

**Issued by:**

**DAN Risk Retention Group, Inc.**



**RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**MANDATORY FORMS AND ENDORSEMENTS SCHEDULE**

*The following forms and endorsements apply to all  
policies of insurance.*

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EXCLUSION - BIOLOGICAL OR CHEMICAL MATERIALS.....	14
EXCLUSION - EXPOSURE TO SANCTIONS .....	15
EXCLUSION - FIREARMS, FIREWORKS AND OTHER PYROTECHNIC DEVICES AND EXPLOSIVES .....	16
EXCLUSION - NUCLEAR INCIDENT LIABILITY .....	17
EXCLUSION - ADDITIONAL EXCLUSIONS.....	25
EXCLUSION - RADIOACTIVE CONTAMINATION .....	19
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**RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**OPTIONAL FORMS AND ENDORSEMENTS SCHEDULE**

*The following forms and endorsements will only apply if an additional premium has been paid and the form or endorsement has been attached to this policy.*

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION.....	26
DESIGNATED REBREATHER MANUFACTURER LIMITED INSURED STATUS.....	27
DEFENSE EXPENSE SUBJECT TO SEPARATE LIMIT .....	28
EQUIPMENT LIABILITY ENDORSEMENT.....	29
TECHNICAL COVERAGE ENDORSEMENT.....	30
ABUSE OR MOLESTATION COVERAGE ENDORSEMENT.....	31
TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT.....	32

## RECREATIONAL SWIM AND DIVE INSTRUCTION AND SUPERVISION PROFESSIONAL LIABILITY INSURANCE POLICY

*This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.*

**NOTICE: THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY. AS SET FORTH BELOW, COVERAGE UNDER THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITERS DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD PROVIDED UNDER THE POLICY. PLEASE REVIEW THE WORDING OF THIS POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon the statements in the **INSURED's** application, which is made part of this policy and subject to the insuring agreements, Declarations Page, coverages, definitions, conditions, limitations, warranties, exclusions, and authorized endorsements to this policy, the **INSURED** and the Underwriters agree as follows:

### INSURING AGREEMENTS

#### 1. COVERAGE- CLAIMS MADE AND REPORTED

- a. Subject to the applicable Limit of Liability, the Underwriters agree to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** for **CLAIMS** arising from any negligent act, error or omission in the rendering of or failure to render **PROFESSIONAL SERVICES** by the **INSURED**.
- b. This insurance only applies to **CLAIMS** that:
  - i. are first made against the **INSURED** during the **POLICY PERIOD**;
  - ii. are reported to the Underwriters in accordance with Section 1 of the Conditions during the **POLICY PERIOD** or any Extended Reporting Period provided under Section 1.e of the Insuring Agreements and
  - iii. arise from an **EVENT** commencing before the end of the **POLICY PERIOD**.
- c. A **CLAIM** will be considered to be first made at the earliest of the following times: (i) when notice of the **CLAIM** is received by the **INSURED** or (ii) when a **CLAIM** is made directly to the Underwriters in writing.
- d. **CLAIMS** arising from the same **EVENT** made against the **INSURED** over more than one **POLICY PERIOD** shall be deemed to have been made against the **INSURED** during the **POLICY PERIOD** in which the first **CLAIM** is made. If, during the **POLICY PERIOD** the **INSURED** first becomes aware of and gives written notice to the Underwriters of an **EVENT** which is likely to give rise to a **CLAIM**, then any subsequent **CLAIM** made against the **INSURED** arising from such **EVENT** shall be deemed to have been first made during the **POLICY PERIOD** in which the **EVENT** was first reported.
- e. If this insurance is not renewed or is canceled, coverage will be provided for **CLAIMS** made during the **POLICY PERIOD** and reported to the Underwriters in accordance with Section 1 of the Conditions no more than ninety (90) days following the date of nonrenewal or cancellation, provided that the **EVENT** giving rise to the **CLAIM** commenced prior to the end of the **POLICY PERIOD**. After this ninety (90) day Extended Reporting Period, all coverage shall cease for any **CLAIM** which has not been previously reported as specified in this insurance. The Extended Reporting Period shall not apply if this insurance is canceled due to non-payment of premium. The Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate the Limits of Liability for this insurance.

#### 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. In addition to the Per Event Limit of Liability for **DAMAGES**, but subject to the Aggregate Limit of Liability for the sum of **DAMAGES** and **DEFENSE EXPENSES** stated on the Declarations Page, the Underwriters further agree to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which are covered and payable under the terms of this insurance, even if any of the

allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in their sole discretion.

The Underwriters shall not be obligated to pay or defend any **CLAIM** after the Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder.

In addition, the Underwriters shall not be obligated to pay or defend any **CLAIM** after the Aggregate Limit of Liability for the sum of **DAMAGES** and **DEFENSE EXPENSES** has been exhausted by the payment of judgments, awards or settlements, or any combination thereof, and **DEFENSE EXPENSES** hereunder.

b. **DEFENSE EXPENSES** means:

- i. All expenses incurred by the Underwriters in defending a **CLAIM**, all costs taxed against the **INSURED** in any suit arising from a **CLAIM** and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriters have paid, tendered or deposited to court that part of the judgment which does not exceed the applicable Limit of Liability.
- ii. Premiums on appeal bonds required in any defended suit, provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the **INSURED** can qualify for an appeal. The Underwriters shall have no obligation to apply for or furnish an appeal bond.
- iii. All reasonable expenses, other than loss of earnings, incurred by the **INSURED** at the Underwriters' request, and/or reasonable investigative fees and/or expenses directly incurred by the **INSURED** with the Underwriters' prior agreement.

**3. LIMITS OF LIABILITY**

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** for any one **EVENT** regardless of the number of **CLAIMS** made or persons or organizations making **CLAIMS** as a result of the **EVENT** or the number of **INSUREDS** against whom **CLAIMS** have been made.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriters will pay for the sum of **DAMAGES** and **DEFENSE EXPENSES** under this insurance regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

**TERRITORY**

This policy applies to **BODILY INJURY** and **PROPERTY DAMAGE** arising from any negligent act, error or omission in the rendering or failure to render **PROFESSIONAL SERVICES** by the **INSURED** anywhere in the world, but only if the **CLAIM** arising from such negligent act, error or omission is made and any suit relating to the **CLAIM** is brought in any of the 50 United States, the District of Columbia, Puerto Rico, or any of the possessions or territories of the United States.

**DEFINITIONS**

1. **ADDITIONAL INSURED** means, any individual or entity identified as an **ADDITIONAL INSURED** in an endorsement attached to this policy, but an **ADDITIONAL INSURED** shall be covered solely for liability arising out of the alleged negligent acts, errors or omissions in the rendering of or failure to render **PROFESSIONAL SERVICES** by an **INSURED** (other than an **ADDITIONAL INSURED**). No **ADDITIONAL INSURED** coverage is conferred with respect to the independent negligent acts, errors or omissions of any **ADDITIONAL INSURED**. In no event shall the coverage afforded to any **ADDITIONAL INSURED** be broader than the underlying coverage afforded to the **NAMED INSURED**.
2. **BODILY INJURY** means physical injury, mental anguish, sickness, disease, shock or disability sustained by a person, including death resulting from any of these at any time.
3. **CLAIM(S)** means a demand for **DAMAGES** received by an **INSURED** or the Underwriters.
4. **DAMAGES** means a compensatory monetary judgment or award (including pre-judgment interest) or a settlement entered into with the Underwriters' prior written consent, but does not include:

- a. **DEFENSE EXPENSES**;
  - b. Punitive or exemplary damages, criminal or civil fines, judicial sanctions or penalties, damages specified by statute, or any damages which are a multiple of compensatory damages, whether at common law and/or by statute;
  - c. The return or restitution of fees, compensation, profits, charges, and/or expenses paid to an **INSURED** for services rendered;
  - d. Judgments or awards deemed uninsurable by law.
5. **DEFENSE EXPENSES** has the meaning stated in Section 2 of the Insuring Agreements.
6. **EVENT** means an accident, disaster, casualty or occurrence, or series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause, whether involving one or more **INSUREDS** or **PARTICIPANTS**, that occurs while one or more **PARTICIPANTS** are in the water, entering the water or preparing to enter the water, or exiting the water, or are in a classroom or other instructional setting while receiving **PROFESSIONAL SERVICES**. An **EVENT** that is ongoing or involves a series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause shall be considered to be a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commences. An **EVENT** also includes the failure or refusal of the **NAMED INSURED** to provide **PROFESSIONAL SERVICES**, provided such failure or refusal is not in violation of any law, including the Americans with Disabilities Act.
7. **INSURED** means:
- a. The **NAMED INSURED**;
  - b. If the **NAMED INSURED** is an entity, each member of the **NAMED INSURED**'s teaching staff scheduled with the Underwriters. If a person joins the **NAMED INSURED**'s teaching staff after the first day of the **POLICY PERIOD**, that person will be an **INSURED** so long as the **NAMED INSURED** reports to the Underwriters in writing the name and date of hire of the person and any other information the Underwriters may reasonably require within thirty (30) days of the day the person joins the **NAMED INSURED**'s teaching staff;
  - c. Any **ADDITIONAL INSURED**.
8. **NAMED INSURED** means the person or entity identified as the **NAMED INSURED** on the Declarations Page.
9. **PARTICIPANT** means any person being instructed or supervised by an **INSURED** while providing **PROFESSIONAL SERVICES** and who (or a parent or legal guardian in the case of a minor on their behalf) has signed the requisite written release of liability/assumption of risk and medical history form prior to the initiation of such instruction or supervision.
10. **POLICY PERIOD** means the period from the Effective Date of this policy stated on the Declarations Page to Anniversary Date stated on the Declarations Page or the date this policy is canceled or otherwise terminated if the policy is canceled or otherwise terminated prior to the Anniversary Date.
11. **PROFESSIONAL SERVICES** means:
- a. the instruction or supervision of a **PARTICIPANT** engaged in recreational swimming, snorkeling, skin diving, free diving, RSSA (Recreational Surface Supplied Air) diving, or SCUBA (Self-Contained Underwater Breathing Apparatus) diving where such instruction or supervision is provided by a properly qualified and trained **INSURED** in his/her capacity as a certified swim or dive professional; and
  - b. the training and supervision of a **PARTICIPANT** during the instruction of standard first aid; and,
  - c. with the appropriate qualifications and requisite endorsement, and notwithstanding Exclusion 29, instruction or supervision of a **PARTICIPANT** engaged in technical or rebreather diving, regardless of depth.
- Specifically included are instruction or supervision of Swimming, Snorkeling, Freediving / Breath-hold/Apnea, Recreational Scuba, Technical/Extended Range Scuba, Emergency Response, Professional Development Certification Programs, Mermaiding, Lifeguarding and Public Safety diving.
12. **PROPERTY DAMAGE** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it. For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data

processing devices or any other media which are used with electronically controlled equipment.

### EXCLUSIONS

Coverage is NOT afforded:

1. for any **CLAIM** by an **INSURED** against another **INSURED**. However, this exclusion does not apply to any **CLAIM** brought by an **INSURED** who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
2. for any **CLAIM** made by an employer against any **INSURED** who is employed by or representing such employer.
3. for any obligation for which the **INSURED** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law (including occupational disease and cumulative trauma) including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. for **BODILY INJURY** to any employee of any **INSURED** arising out of and in the course of his/her employment by the **INSURED**, including any obligation to indemnify another in whole or in part, for such **BODILY INJURY**. This exclusion does not apply to any **CLAIM** brought by an employee who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
5. for liability assumed by an **INSURED** under any contract or agreement.
6. for **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, operation, use, loading or unloading or entrustment to others of any automobile, aircraft or watercraft. This exclusion applies even if the **CLAIM** against any **INSURED** alleges negligence or other wrongdoing in the supervision, employment, training or monitoring of others by the **INSURED**. This exclusion does not apply to the ingress and/or egress from any watercraft while any **PARTICIPANT** is under the **INSURED's** supervision or instruction, or involving the operation of a kayak or paddleboard.
7. for **PROPERTY DAMAGE** to:
  - a. property owned or occupied by or rented to the **INSURED**;
  - b. Property used by the **INSURED**; or
  - c. Property in the care, custody or control of the **INSURED** or property over which the **INSURED** is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the **INSURED**.)
8. for any obligation to pay fines, judicial sanctions, penalties, punitive and/or exemplary damages, or multiples of compensatory damages, whether at common law or by statute.
9. for any **CLAIM** for which notice was provided to another insurer prior to the **POLICY PERIOD**.
10. for any **CLAIM** arising out of an **EVENT** occurring prior to the **POLICY PERIOD**, if prior to the effective date of the policy, any **INSURED** had a reasonable basis to foresee that a **CLAIM** would be made against them.
11. for any **CLAIM** arising out of an **EVENT** commencing prior to the **POLICY PERIOD** for which coverage is available under an occurrence based liability policy issued by the Underwriters or any other insurer.
12. for any **CLAIM** arising out of **BODILY INJURY** or **PROPERTY DAMAGE** expected or intended from the standpoint of the **INSURED**. This exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** resulting from the use of reasonable force to protect persons or property.
13. for any **CLAIM** arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **CLAIM**.
14. for any **CLAIM** which is directly or indirectly attributed to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **INSURED**.

15. for any **CLAIM** arising out of discrimination by the **INSURED**, including but not limited to discrimination on the basis of age, color, race, sex, sexual orientation, creed, national origin, marital status or mental or physical disability. However, this exclusion does not apply if instruction is denied for valid safety reasons. Valid safety reasons include, but are not limited to, concern over medical history of a student, disability of a student or belief by the **NAMED INSURED** that a student lacks the physical ability or mental aptitude to dive.
16. for any **CLAIM** arising out of infringement of trademark, trade dress, trade name, patent, copyright or other intellectual property rights.
17. for any **CLAIM** based on the insolvency or bankruptcy of any person, firm or organization.
18. for any **CLAIM** arising out of the performance of a criminal act or caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substance.
19. Pollutants
  - a. for any **CLAIM** relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.
  - b. for any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the **INSURED** or by another.

“Pollutants” means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.
20. for any **CLAIM** arising from acts that fail to meet the standards of the certification training agency under which the activity involved in the CLAIM took place
21. for any **CLAIM** arising out of the function or failure of any product, including but not limited to RSSA, SCUBA and snorkeling equipment, regardless if owned, borrowed, or rented by an **INSURED**.
22. for any **CLAIM** arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities. This exclusion does not apply to public safety diving or scientific research activities.
23. for any **CLAIM** arising out of **ABUSE OR MOLESTATION**. For purposes of this exclusion, **ABUSE OR MOLESTATION** means:
  - a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, any **INSURED**, an **INSURED’S** employee, or any other person, or
  - b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom any **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm; harassment of any type; lewd, immoral or sexual behavior, whether or not any such act is intended to lead to, or culminate in, any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons, **PARTICIPANTS**, or from any cause whatsoever.
24. for any **CLAIM** where an **INSURED** intentionally left or permitted any uncertified student to be unsupervised. This exclusion does not apply to a navigation exercise on the second or subsequent training dives after the **INSURED** has evaluated the student’s required skills, or a situation where the **INSURED** is responding to an emergency situation.
25. for any **CLAIM** where a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed a medical history form prior to in-water training or supervision. Furthermore, coverage is excluded for any **CLAIM** where the medical history form of the **PARTICIPANT** indicates any condition contrary

to safe participation in any in-water activities and the **PARTICIPANT** has not obtained medical approval by a licensed physician (who is not the **PARTICIPANT** or the parent and/or legal guardian of a **PARTICIPANT**) based on a medical examination prior to any in-water training or supervision.

26. for any **CLAIM** where, prior to the initiation of any training or supervision, a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed and signed a written release of liability/assumption of risk form developed by or approved by the certification agency through which the training or supervision was offered and naming the **INSURED** as a released party.
27. for any **CLAIM** in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any **CLAIM** in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any **INSURED**.
28. for any **CLAIM** where the written release signed does not include an acknowledgement that the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) knows that the dive site is remote and that a recompression chamber may not be readily available, and they still want to continue their training and assume the risk in the absence of a recompression chamber.
29. for any **CLAIM** arising out of any diving activity that is not planned within accepted recreational diving limits. Recreational dives are defined as dives: (1) planned to 130 feet or 40 meters or shallower; (2) planned without mandatory stage decompression (safety stops are acceptable); and (3) made using compressed air or oxygen enriched air (nitrox) only.
30. for any **CLAIM** arising out of an **EVENT** involving any diving activities in which the **INSURED** was not an active member in good standing with their certification agency at the time of the **EVENT**.
31. for any **CLAIM** arising out of any **EVENT** involving any training or supervisory dive conducted by the **INSURED** that was not within the standards of the certification agency that sanctioned the training or supervisory diving activity involved.
32. For any **CLAIM** arising out of any **EVENT** involving the **INSURED**'s conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational SCUBA diving via a supervised, controlled open water experience) that was not within the standards of the certification agency that sanctioned the training or diving activity involved.
33. for any **CLAIM** involving Technical Training and/or Technical Training Dives where the **INSURED** is not a technically certified professional or where the **INSURED** is a technically certified professional and exceeds depths for which the **INSURED** is trained and certified to teach and/or supervise.
34. for any **CLAIM** involving SCUBA certification provided to anyone under the age of 10, except those courses that are taught in confined water only (e.g. swimming pools) and such may be offered to anyone age 7 and older.
35. for any **CLAIM** involving the failure of an instructor and/or dive store to retain all records relating to individual **PARTICIPANTS** for a minimum of five (5) years. Records means records used for the purpose of recording the **PARTICIPANT**'s progress and records of knowledge tests for the purpose of evaluating the **PARTICIPANT**'s understanding of the instructional material.
36. for any **CLAIM** involving an **INSURED** who does not have appropriate training and have all appropriate certifications to teach a course, including a course in First Aid.
37. for any **CLAIM** in any way caused or contributed to by nuclear reaction, nuclear radiation or radioactive contamination.
38. for any **CLAIM** involving any liability as respects access or disclosure of confidential or personal information or data-related liability, which shall mean damages, or loss, defense costs, other costs or expenses because of **BODILY INJURY** or **PROPERTY DAMAGE** arising directly or indirectly out of:
  - a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by the insured or others arising out of that which is described in paragraph a. or b. above. Further, as used in this exclusion, "electronic data" means information, facts or programs stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**39. BODILY INJURY or PROPERTY DAMAGE** arising out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**CONDITIONS**

**1. INSURED's Duties Arising out of a CLAIM or EVENT:**

- a. As a condition precedent to the protection afforded by this insurance, the **INSURED** shall immediately give to the Underwriters through the designated persons or entity shown below written notice of any **CLAIM** first made against the **INSURED** during the **POLICY PERIOD**, including, but not limited to, any verbal demand or written demand, notice, summons or other process received by the **INSURED** or his/her representative.
- b. The **INSURED** must also notify Underwriters through the designated person or entity shown below as soon as practicable of any **EVENT** likely to give rise to a **CLAIM** hereunder or of the receipt from any person of a verbal or written statement of an intention to hold the **INSURED** responsible for any **EVENT**.

Entity to notify for a. and b. above:

**DAN Services, Inc.**  
**Fax: 919.490.2935**  
**E-Mail: [LiabilityClaims@DAN.org](mailto:LiabilityClaims@DAN.org)**

In any such case, the **INSURED** shall, upon request, give the Underwriters such information as the Underwriters, at their sole discretion, may reasonably require.

- c. Failure to provide written notice as set forth above will be considered a failure of a condition to coverage and may at the option of the Underwriters render this policy null and void in relation to any **CLAIM** or **EVENT** not properly and promptly reported through written notice given in accordance with this provision.
- 2. Assistance and Cooperation:** The **INSURED**, including any **ADDITIONAL INSURED**s, shall cooperate with the Underwriters and, upon the Underwriters' request, in any investigation process, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution indemnity against any person or organization who may be liable to the **INSURED** because of **BODILY INJURY** or **PROPERTY DAMAGE** with respect to which insurance is afforded hereunder and the **INSURED** shall attend hearing and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.
- 3. Voluntary Payments:** Without the prior written consent of the Underwriters, the **INSURED** shall not voluntarily make any payment or settlement, make any admission of responsibility, assume any obligation, or incur any expense other than for first aid to others at the time of the **EVENT**.
- 4. Subrogation Clause:** Upon payment under this insurance, the Underwriters shall be subrogated to all the **INSURED's** rights of recovery against any person or organization, and the **INSURED** shall execute and deliver

instruments and papers and do whatever else is necessary to secure such rights. The **INSURED** shall do nothing to prejudice such rights.

5. Other Insurance: Except for insurance that is specifically stated to be in excess of this policy, if any other valid and collectible insurance is available to any **INSURED** covering a **CLAIM** also covered by this policy, the insurance afforded by this policy shall be excess of and shall not contribute with any such other insurance until the limits of such other policy are exhausted. If, however, the other valid and collectible insurance states that it is also excess, this policy will simultaneously provide coverage along with one or more other policies, provided each policy is applied on a pro rata basis as determined by the limits of liability of the respective policies. In no event shall this policy be subject to the terms, conditions or limitations of any other insurance policy.
6. Non Accumulation of Limits of Coverage: If this policy and any other policy issued by the Underwriters to the **INSURED** apply to the same **EVENT**, Section 5 (Other Insurance) above shall not apply and the maximum Limit of Liability shall not exceed the highest applicable limit of liability under any one policy. In no event shall the limits of liability under two or more policies issued by the Underwriters to the **INSURED** be stacked so as to obtain a limit of liability that exceeds the highest applicable limit of liability available under any one policy.
7. Legal Action Against the Underwriters: No person or organization has a right under this insurance:
  - a. to join the Underwriters as a party or otherwise bring the Underwriters into a suit for **DAMAGES** from any **INSURED**; or
  - b. to sue the Underwriters on this insurance unless they have fully complied with all of its terms.
8. Service of Suit:
  - a. It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the **INSURED**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon DAN Risk Retention Group, Inc., c/o Artex Risk Group, 1180 Sam Rittenberg Blvd., Suite 235, Charleston, SC 29407 U.S.A. and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.
  - b. The above named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **INSURED** to give a written undertaking to the **INSURED** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.
  - c. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **INSURED** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.
9. False or Fraudulent CLAIM: If the **INSURED** shall give notice of any **CLAIM** or reports an **EVENT** likely to give rise to a **CLAIM** knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the **INSURED**.
10. Inspection and Audit:
  - a. The Underwriters shall be permitted, but not obligated to, inspect the **INSURED**'s property, operations or records at any time. Neither the Underwriters' right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **INSURED** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

- b. The Underwriters may examine and audit the **INSURED**'s books and records at any time during the **POLICY PERIOD** and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.
11. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriters.
12. Assignment: No assignment of interest under this insurance shall be valid unless the written consent of the Underwriters is endorsed thereon.
13. Cancellation and Nonrenewal:
- a. It is understood and agreed that this policy may be canceled by the Underwriters by mailing to the **NAMED INSURED** at the address shown on the Declarations Page written notice stating when, not less than forty-five (45) days thereafter, such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Proof of mailing notice of cancellation shall be sufficient proof of notice.
- b. Notwithstanding anything contained in this insurance to the contrary this insurance may be cancelled by the **INSURED** at any time by written notice or by surrender of this policy.
- c. If this insurance is cancelled by or on behalf of the Underwriters, the Underwriters shall retain the pro rata proportion of the premium hereon, except that (a) if this insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater and (b) if this insurance is cancelled for nonpayment of premium, the premium shall be considered fully earned on the effective date of the policy and collectible by the Underwriters in full. If this insurance is cancelled by the **NAMED INSURED**, the premium shall be considered fully earned on the effective date of the policy and will not be subject to pro rata refund.
- d. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- e. This insurance may be non-renewed by the Underwriters in accordance with applicable law. Proof of mailing notice of nonrenewal shall be sufficient proof of notice.

**END OF POLICY FORM**

**FORMS AND ENDORSEMENTS WHICH ARE PART OF THIS POLICY ARE ATTACHED**

## **INCIDENT REPORT FORM**

### **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

In the event of an injury that may result in a **CLAIM**, the **INSURED** must complete the Incident Report Form provided by the Underwriters or the Underwriter's representative. The report shall include as much information as possible, including the names and contact details (address, telephone number and email address) of all parties with knowledge of the incident.

These instructions are to assist you in filling out the Incident Report Form in the event of an injury. Above all else, the form should be filled out as completely and accurately as possible. Completing this form shortly after the incident helps assure that all applicable information has been obtained. **However, remember that caring for the injured person is of primary concern.**

Attach a copy of the signed waiver/release to the Incident Report Form.

In the event that the injury involved the use of any equipment, you should inspect and document that equipment. When a piece of equipment not owned by the victim may even be partially involved in causing the Event, where possible the Insured should retain said equipment and provide it directly to DAN RRG. Alternatively, a picture of the equipment along with a description of its condition at the time of the injury will suffice. If you perceive that any problem exists with the equipment, it should be secured until otherwise instructed.

At this stage, it is important to gather all relevant information possible concerning the accident. No one from the business should discuss any opinion they might have as to the cause. It is important that you be factual. Opinions will be rendered at a later date once all relevant information has been reviewed and appropriately analyzed.

Additional considerations are as follows:

- When possible, have the injured person describe in their own words what happened. That description should be written in the section entitled "Injured Party's Description" and should be written in the first person, i.e. "**I was....**" If able to sign, the injured person should be asked to sign and date their description.
- Describe the extent of injury, treatment and method of transportation.
- Obtain the name, address and contact information (telephone numbers and email address) for each witness, including anyone associated with the business who observed either the incident, or anything giving rise to it. Ask each witness to prepare a written statement. If the witness is unwilling to prepare a written statement, provide a written summary of what they told you about the incident.
- Where applicable, take pictures of the accident site and forward them with the Incident Report Form.
- Cooperate fully with all law enforcement personnel called to the scene.

Once completed, forward the Incident Report Form, waiver/release, witness statements, pictures and "Claim Notification" to the person identified in your insurance policy.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
BIOLOGICAL OR CHEMICAL MATERIALS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

It is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

**All other terms and conditions remain unchanged.**

**EXCLUSION AND LIMITATION CLAUSE  
EXPOSURE TO SANCTIONS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
FIREARMS, FIREWORKS AND OTHER PYROTECHNIC DEVICES AND EXPLOSIVES**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

A. This insurance does not apply to **BODILY INJURY** or **PROPERTY DAMAGE**:

Arising from the ownership, maintenance, packing, handling, transportation, storage, igniting, operation, sponsorship, set-up or take-down or other use of:

- i. Firearms, including handguns, revolvers, pistols, rifles, shotguns, air guns, semi-automatic weapons and similar devices;
- ii. Fireworks, including firecrackers, Roman Candles, flash powder, explosive compositions or combustible substances, pinwheels, skyrockets, ground displays, flares, smoke bombs, and similar devices that produce, when ignited or activated, sound, smoke, motion or a combination of these;
- iii. Explosives, caps, primers, detonators, ammunitions, fuses, arms, magnesium, ammonium nitrate, nitroglycerin, celluloid, pyroxylin or other substances intended for use as an explosive;

by any **INSURED** or by any person for which any **INSURED** may be held liable in any capacity.

B. This insurance does not apply to any obligation of any **INSURED** to indemnify, defend or contribute jointly or severally with another because of **BODILY INJURY** or **PROPERTY DAMAGE** arising from any of the activities specified in A.i, above.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
NUCLEAR INCIDENT LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

This policy does not apply:

- A. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
- i. with respect to which an **INSURED** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - ii. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **INSURED** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- i. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **INSURED** or (2) has been discharged or dispersed therefrom;
  - ii. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **INSURED**; or
  - iii. the injury, sickness, disease, death or destruction arises out of the furnishing by an **INSURED** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- D. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (i) or (ii) thereof; "nuclear facility" means:

- i. any nuclear reactor,

- ii. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- iii. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **INSURED** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- iv. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the policy to which it is attached.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
RADIOACTIVE CONTAMINATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this policy does not cover liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
RADIOACTIVE CONTAMINATION AND  
EXPLOSIVE NUCLEAR ASSEMBLIES**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

This policy does not cover

- A. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- B. any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

- i. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding any provision to the contrary within the policy of which this Endorsement forms part (or within any other Endorsement which forms part of this policy), this policy does not insure:

- A. any loss, damage, cost or expense, or
- B. any increase in insured loss, damage, cost or expense, or
- C. any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority; or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used in this Endorsement includes (but is not limited to):

- A. seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- B. the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
TERRORISM**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **INSURED**.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
WAR AND CIVIL WAR**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover any liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
ASBESTOS, LEAD AND SILICA**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover the following:

**1. Asbestos**

- a. **BODILY INJURY** in any way arising out of the use by any person or organization of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
- b. **PROPERTY DAMAGE** to real property arising out of the use by any person or organization of asbestos, asbestos products, asbestos fibers or asbestos dust, including, without limitation, the costs incurred with respect to the removal or abatement of asbestos, asbestos products, asbestos fibers or asbestos dust from or in such real property;
- c. Any obligation of the **INSURED** to indemnify any party because of damage arising out of such **PROPERTY DAMAGE, BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
- d. Any obligation to defend any suit or **CLAIM** against the **INSURED** alleging **BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury OR **PROPERTY DAMAGE** resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.

**2. Lead**

- a. **BODILY INJURY** or **PROPERTY DAMAGE**, for past, present or future **CLAIMS** arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever;
- b. The costs of clean up or removal of lead or products and materials containing lead;
- c. The costs of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, or lead or products and material containing lead;
- d. The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- e. The cost of compliance with any law or regulation regarding lead.

**3. Silica**

- a. **BODILY INJURY** or **PROPERTY DAMAGE** or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form; or
- b. Any obligation of the **INSURED** to defend and/or indemnify any party because of damages arising out of such **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form.

**All other terms and conditions remain unchanged.**

**EXCLUSION CLAUSE  
ADDITIONAL EXCLUSIONS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ CAREFULLY.**

This exclusion applies to all sections of this policy.

Notwithstanding anything to the contrary contained herein this policy does not cover the following:

1. any **CLAIM** involving liability arising out of the ownership, maintenance or use of the following premises or any property located on such premises: camps, campgrounds, recreational vehicle parks, or paintball fields;
2. any **CLAIM** involving liability arising out of navigation, towing, repair, storage, conversion, cleaning, demolition, wrecking, uprighting, or salvage of any commercial vessel or oil rig, ship building and boat manufacturing, stevedoring, ship repair yards and dry docks;
3. any **CLAIM** involving liability arising out of off-shore and subaqueous work (other than **PROFESSIONAL SERVICES** provided by the **INSURED**);
4. any **CLAIM** involving liability arising out of premises or operations involving: (a) amusement parks or devices, carnivals or circuses, sports or other entertainment events, professional sports organizations, zoos, casinos, race tracks, or any theater, hall, arena, grandstand or stadium; (b) oil or gas pipelines, wells, or drilling operations; (c) all mining and quarrying operations; (d) bridges, tunnels, dams or reservoirs; (e) waste treatment, storage or disposal facilities, dumps or dumpsites, landfills; surface impoundments; waste lagoons; or waste sites.

**All other terms and conditions remain unchanged.**

**ADDITIONAL INSURED  
DESIGNATED PERSON OR ORGANIZATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY**

**DEFINITIONS SECTION 1 – ADDITIONAL INSURED**

The following persons or organizations are **ADDITIONAL INSUREDS**:

**SCHEDULE**

Name of Person or Organization:

NAME	ADDRESS	CITY	ST	ZIP

(If no entry appears above, information required to complete this endorsement will be shown on the Declarations Page as applicable to this endorsement.)

This **ADDITIONAL INSURED** protection shall in all cases be limited in scope to liability of the **ADDITIONAL INSURED** arising out of **PROFESSIONAL SERVICES** provided by the **INSURED** (other than an **ADDITIONAL INSURED**). When adding an Additional Insured, notice to other Additional Insureds shall be made by giving notice to the Named Insured. When making changes to the policy that affect an Additional Insured, notice to the Additional Insureds shall be made by giving notice to the Named Insured. Exclusion 5 in the policy does not apply when adding an Additional Insured.

**All other terms and conditions remain unchanged.**

**DESIGNATED REBREATHER MANUFACTURER LIMITED INSURED STATUS**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following: PROFESSIONAL LIABILITY  
DEFINITIONS SECTION 1 – ADDITIONAL INSURED

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that coverage is extended as follows:

SCHEDULE

Name and Address of Designated Rebreather Manufacturer or Distributor	Name and Certification Agency No. of <b>INSURED</b>

- 1) Section I – **ADDITIONAL INSURED** is amended to include as an **ADDITIONAL INSURED** the rebreather manufacturer (hereinafter “Designated Manufacturer”) shown in the Schedule, but only with respect to liability for **BODILY INJURY** or **PROPERTY DAMAGE** resulting from an **EVENT**.

This **ADDITIONAL INSURED** protection shall in all cases be limited in scope to liability of the **ADDITIONAL INSURED** arising out of **PROFESSIONAL SERVICES** provided by the **INSURED** (other than an **ADDITIONAL INSURED**).

- 2) The coverage afforded under this endorsement does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** unless prior to the commencement of instruction, the rebreather instructor has been:
  - a) Certified and/or suitably trained to teach the designated rebreather; and,
  - b) holds a Technical Endorsement.

**All other terms and conditions remain unchanged.**

**DEFENSE EXPENSES SUBJECT TO SEPARATE LIMIT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

INSURING AGREEMENTS, SECTION 2 – DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS, PARAGRAPH a.  
INSURING AGREEMENTS, SECTION 3 – LIMITS OF LIABILITY.

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that coverage is extended as follows:

INSURING AGREEMENTS, SECTION 2 – DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS, PARAGRAPH a. is amended to read as follows:

- a. In addition to the Per Event and Aggregate Limits of Liability for **DAMAGES**, but subject to the Limit of Liability for **DEFENSE EXPENSES** stated on the Declarations Page, the Underwriters further agree to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriters shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in their sole discretion.

Notwithstanding the foregoing, the Underwriters shall not be obligated to defend any **CLAIM** if any of the following apply:

- i. The Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder;
- ii. The Aggregate Limit of Liability has been exhausted by the payment of judgments, awards or settlements, or any combination thereof hereunder; or
- iii. The Limit of Liability for **DEFENSE EXPENSES** has been exhausted by the payment of **DEFENSE EXPENSES** hereunder.

INSURING AGREEMENTS, SECTION 3 – LIMITS OF LIABILITY is amended to read as follows:

**3. LIMITS OF LIABILITY**

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** for any one **EVENT**.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriters will pay for **DAMAGES** under this insurance.
- c. The Limit of Liability for **DEFENSE EXPENSES** specified on the Declarations Page is the most the Underwriters will pay for **DEFENSE EXPENSES** under this insurance.

The Limits of Liability stated in paragraphs a., b. and c. above shall apply regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

**All other terms and conditions remain unchanged.**

**EQUIPMENT LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 21 of this policy DOES NOT apply and coverage is extended to include any **CLAIM** against an **INSURED** arising out of the function or failure of equipment used by a **PARTICIPANT** while in the **INSURED**'s own classes or under the **INSURED**'s supervision. This equipment liability endorsement only applies to those **INSUREDS** who have purchased the equipment liability option and paid the associated additional premium.

**All other terms and conditions remain unchanged.**

**TECHNICAL COVERAGE ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 29 of this policy DOES NOT apply to technical diving activities conducted by an **INSURED**.

**All other terms and conditions remain unchanged.**

**ABUSE OR MOLESTATION COVERAGE ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 23 of this policy DOES NOT apply, but subject to all other terms, conditions, exclusions and Limits of Liability of the policy, the policy is extended to cover **CLAIMS** alleging **ABUSE OR MOLESTATION** to a **PARTICIPANT** occurring in the course of providing **PROFESSIONAL SERVICES** by any **INSURED**.

The coverage provided by this endorsement is subject to the following terms and conditions:

1. The Underwriters shall have no obligation to pay **DAMAGES** or **DEFENSE EXPENSES** on behalf of, or defend, an **INSURED** if:
  - a. a judgment or other final adjudication establishes, or it is otherwise determined by the Underwriters, that the **INSURED** committed, participated in, or knew of any act of **ABUSE OR MOLESTATION**; or
  - b. the **INSURED** pleads guilty or no contest to any criminal act involving **ABUSE OR MOLESTATION**.
2. The definition of **EVENT** is amended to add the following at the end of the definition:

**EVENT** includes acts of **ABUSE OR MOLESTATION**. All acts of **ABUSE OR MOLESTATION** committed by one person or two or more persons either acting together or negligently responsible for such acts shall be deemed to be a single **EVENT** taking place at the time the first such act of **ABUSE OR MOLESTATION** commences, regardless of (i) the time period during which such acts of **ABUSE OR MOLESTATION** took place, or (ii) the number of persons who were subject to such acts of **ABUSE OR MOLESTATION**.

3. The following sublimit applies: Subject to the Per Event and Aggregate Limits of Liability, the Underwriters will pay no more than \$ 300,000 for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** alleging **ABUSE OR MOLESTATION** under this insurance This sublimit is within the Per Event and Aggregate Limits of Liability for the policy and does not add to those limits.

For purposes of this endorsement, **ABUSE OR MOLESTATION** means:

- a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, any **INSURED**, an **INSURED'S** employee, or any other person, or
- b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom any **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm

**All other terms and conditions remain unchanged.**

**TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

In consideration of the payment of the additional premium shown on the Declarations Page, and subject to the Limit of Liability shown herein, it is hereby understood and agreed that this insurance is extended to include liability resulting from services provided in the role of tour or travel agent, or otherwise arranging activities for participants with airlines, hotels, resorts, dive operators, concessionaires, vendors or subcontractors.

The coverage provided by this endorsement is subject to the following terms and conditions:

1. This coverage is excess to any other liability insurance maintained by any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor who provides services to the **INSURED** or a **PARTICIPANT**.
2. Any **CLAIM** under this endorsement will only be paid if the **CLAIM** has been wholly or partially denied by said airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor, or their insurer; and if partially denied, payment will be limited to the unpaid amount.
3. Should a lawsuit arise based on the interpretation or enforcement of this endorsement, any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor who may have primary liability for the **CLAIM** shall be a necessary and indispensable party.
4. The following sublimit applies:

Subject to the Per Event and Aggregate Limits of Liability, the Underwriters will pay no more than \$250,000 for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** arising from any act, error or omission in the rendering of or failure to render services as a tour or travel agent. This sublimit is within the Per Event and Aggregate Limits of Liability for the policy and does not add to those limits.

For purposes of This Endorsement only, Professional Services shall include the Insured acting in the role of tour or travel agent, arranging or leading trips of which the majority of the activities involve recreational diving.

**All other terms and conditions remain unchanged.**

# **EXHIBIT 3**

**PROFESSIONAL LIABILITY INSURANCE**  
 UNDERWRITER: DAN RISK RETENTION GROUP, INC.

offered through  
 DAN SERVICES, INC.  
 NAIC NO. 15928 - SC COMPANY CODE: 207640  
 6 W. Colony Place, Suite 200, Durham, NC 27705

**DECLARATIONS PAGE**

<b>Named Insured</b> Michael Ellis	<b>Policy Number:</b> PL107-60084
<b>Address</b> 8915 S Keystone Ave Suite A	<b>Policyholder ID:</b> 2654158
<b>City, State, Zip</b> Indianapolis, IN 46227	<b>See Policy for a full description of terms, conditions, limitations &amp; exclusions.</b>

**DESCRIPTION OF OPERATIONS:** Professional Liability for the instruction or supervision of sanctioned recreational swimming, snorkeling, skin diving, free diving, RSSA diving or scuba diving, and training and supervision of students during the instruction of standard first aid.

*This policy consists of the following coverage parts for which a premium is indicated.  
 The premium may be subject to adjustment.*

		POLICY PERIOD	
		Effective Date:	Expiration Date:
Professional Liability	\$594.00	Oct-15-2020 12:01AM EST	Oct-15-2021 12:01AM EST
Rebreather Endorsement	Included		
Equipment Endorsement	\$257.00		
Technical Coverage	Included		
Excess Liability	\$410.00		
Taxes and Administrative Fee	\$88.00		
<b>TOTAL PREMIUM</b>	\$1,349.00	Minimum/Retained - 100%	

*In exchange for the payment of the premium and subject to all terms of this policy,  
 we agree to provide the insurance as stated in this policy.*

**FORM OF BUSINESS:**  
 Instructor

**LIMITS OF LIABILITY**

**SCHEDULE OF DEDUCTIBLES**

Aggregate (Sum of all DAMAGES and DEFENSE EXPENSES)	\$4,000,000	<b>Deductible</b>	\$0
Per POLICY PERIOD			
Per EVENT (DAMAGES only)	\$2,000,000		
	Per EVENT		

RETROACTIVE DATE: Earliest Date of Continuous Professional Liability Coverage

**INSURED TEACHING STAFF:** Per the schedule below but only to the extent each such person is providing PROFESSIONAL SERVICES on behalf of the NAMED INSURED specified above as an employee or contractor of such NAMED INSURED.

**ADDITIONAL INSURED:** Per the schedule below and only for legal liability arising vicariously from any EVENT which results from an act, error or omission of the INSURED.

**FORMS AND ENDORSEMENTS:** PL107

**SEND CLAIM NOTIFICATIONS TO:** DAN Services, Inc.  
 Fax: (919) 490-2935  
 E-Mail: LiabilityInsurance@dan.org

**Notice: This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.**

Date: Oct-14-2020 Per: William M. Ziefle, DAN Services, Inc.

Date: Oct-14-2020 Agent/Broker Rochelle L. Wright, 6 W. Colony Place, Durham, NC 27705  
 License # W151191

The insured is requested to read this declarations page, and if incorrect, return it immediately for alteration.

**THIS POLICY CONTAINS A CLAUSE(S) WHICH MAY LIMIT THE AMOUNT PAYABLE.**

**THIS POLICY DOES NOT AUTOMATICALLY RENEW**



**SWIM AND DIVE  
INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

Issued by:

**DAN Risk Retention Group, Inc.**  
the “Underwriter”



**SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

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**SWIM AND DIVE INSTRUCTION AND SUPERVISION  
PROFESSIONAL LIABILITY INSURANCE POLICY**

*This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.*

**NOTICE: THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY. AS SET FORTH BELOW, COVERAGE UNDER THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD PROVIDED UNDER THE POLICY. PLEASE REVIEW THE WORDING OF THIS POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon the statements in the **INSURED**'s application, which is made part of this policy and subject to the insuring agreements, Declarations Page, coverages, definitions, conditions, limitations, warranties, exclusions, and authorized endorsements to this policy, the **INSURED** and the Underwriter agree as follows:

**INSURING AGREEMENTS**

**1. COVERAGE - CLAIMS MADE AND REPORTED**

- a. Subject to the applicable Limit of Liability, the Underwriter agrees to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** for **CLAIMS** arising from any negligent act, error or omission in the rendering of or failure to render **PROFESSIONAL SERVICES** by the **INSURED**.
- b. This insurance only applies to **CLAIMS** that:
  - i. are first made against the **INSURED** during the **POLICY PERIOD**; and,
  - ii. are reported to the Underwriter in accordance with Section 1 of the Conditions during the **POLICY PERIOD** or any Extended Reporting Period provided under Section 1.e of the Insuring Agreements; and,
  - iii. arise from an **EVENT** commencing after the Retroactive Date specified on the Declarations Page and before the end of the **POLICY PERIOD**.
- c. A **CLAIM** will be considered to be first made at the earliest of the following times: (i) when notice of the **CLAIM** is received by the **INSURED** or (ii) when a **CLAIM** is made directly to the Underwriter in writing.
- d. **CLAIMS** arising from the same **EVENT** made against the **INSURED** over more than one **POLICY PERIOD** shall be deemed to have been made against the **INSURED** during the **POLICY PERIOD** in which the first **CLAIM** is made. If, during the **POLICY PERIOD** the **INSURED** first becomes aware of and gives written notice to the Underwriter of an **EVENT** which is likely to give rise to a **CLAIM**, then any subsequent **CLAIM** made against the **INSURED** arising from such **EVENT** shall be deemed to have been first made during the **POLICY PERIOD** in which the **EVENT** was first reported.

- e. If this insurance is not renewed or is canceled, coverage will be provided for **CLAIMS** made during the **POLICY PERIOD** and reported to the Underwriter in accordance with Section 1 of the Conditions no more than ninety (90) days following the date of nonrenewal or cancellation, provided that the **EVENT** giving rise to the **CLAIM** commenced after the Retroactive Date specified on the Declarations Page and prior to the end of the **POLICY PERIOD**. After this ninety (90) day Extended Reporting Period, all coverage shall cease for any **CLAIM** which has not been previously reported as specified in this insurance. The Extended Reporting Period shall not apply if this insurance is canceled due to non-payment of premium. The Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate or increase the Limits of Liability for this insurance.

## 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. The Underwriter shall have the right and duty to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriter shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in its sole discretion.

Notwithstanding the foregoing, the Underwriter shall not be obligated to defend any **CLAIM** if any of the following apply:

- i. The Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder;
  - ii. The Aggregate Limit of Liability for **DAMAGES** has been exhausted by the payment of judgments, awards or settlements, or any combination thereof hereunder; or
  - iii. The Limit of Liability for **DEFENSE EXPENSES** has been exhausted by the payment of **DEFENSE EXPENSES** hereunder; provided, however, the Underwriter shall have the right and, in its sole discretion, may continue to defend a **CLAIM** against the **INSURED** notwithstanding the exhaustion of the Limit of Liability for **DEFENSE EXPENSES** but is under no obligation to do so.
- b. **DEFENSE EXPENSES** means:
    - i. All expenses incurred by the Underwriter in defending a **CLAIM**, all costs taxed against the **INSURED** in any suit arising from a **CLAIM** and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriter has paid, tendered or deposited to court that part of the judgment which does not exceed the applicable Limit of Liability.
    - ii. Premiums on appeal bonds required in any defended suit, provided the counsel retained by the Underwriter has a reasonable belief in the success of an appeal and the **INSURED** can qualify for an appeal. The Underwriter shall have no obligation to apply for or furnish an appeal bond.
    - iii. All reasonable expenses, other than loss of earnings, incurred by the **INSURED** at the Underwriter's request, and/or reasonable investigative fees and/or expenses directly incurred by the **INSURED** with the Underwriter's prior agreement.

### 3. LIMITS OF LIABILITY

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriter will pay for **DAMAGES** for any one **EVENT**.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriter will pay for **DAMAGES** under this insurance.
- c. The Limit of Liability for **DEFENSE EXPENSES** specified on the Declarations Page is the most the Underwriter will pay for **DEFENSE EXPENSES** under this insurance.

The Limits of Liability stated in paragraphs a., b. and c. above shall apply regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

#### TERRITORY

This policy applies to **BODILY INJURY** and **PROPERTY DAMAGE** arising from any negligent act, error or omission in the rendering or failure to render **PROFESSIONAL SERVICES** by the **INSURED** anywhere in the world, but only if the **CLAIM** arising from such negligent act, error or omission is made and any suit relating to the **CLAIM** is brought in any of the 50 United States, the District of Columbia, Puerto Rico, or any of the possessions or territories of the United States.

#### DEFINITIONS

1. **BODILY INJURY** means physical injury, mental anguish, sickness, disease, shock or disability sustained by a person, including death resulting from any of these at any time.
2. **CLAIM(S)** means a demand for **DAMAGES** received by an **INSURED** or the Underwriter.
3. **DAMAGES** means a compensatory monetary judgment or award (including pre-judgment interest) or a settlement entered into with the Underwriter's prior written consent, but does not include:
  - a. **DEFENSE EXPENSES**;
  - b. Punitive or exemplary damages, criminal or civil fines, judicial sanctions or penalties, damages specified by statute, or any damages which are a multiple of compensatory damages, whether at common law and/or by statute;
  - c. The return or restitution of fees, compensation, profits, charges, and/or expenses paid to an **INSURED** for services rendered;
  - d. Judgments or awards deemed uninsurable by law.
4. **DEFENSE EXPENSES** has the meaning stated in Section 2 of the Insuring Agreements.
5. **EVENT** means an accident, disaster, casualty or occurrence, or series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause, whether involving one or more **INSUREDS** or **PARTICIPANTS**, that occurs while one or more **PARTICIPANTS** are:

- a. in the water, entering the water or preparing to enter the water, or exiting the water, as part of a planned dive or swim activity; or
- b. in a classroom or other instructional setting, while receiving **PROFESSIONAL SERVICES**.

An **EVENT** that is ongoing or involves a series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause shall be considered to be a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commences. An **EVENT** also includes the failure or refusal of the **INSURED** to provide **PROFESSIONAL SERVICES**, provided such failure or refusal is not in violation of any law, including the Americans with Disabilities Act.

6. **INSURED** means:

- a. The **NAMED INSURED**; and
- b. If the **NAMED INSURED** is a business, each member of the **NAMED INSURED**'s swim/dive staff scheduled with the Underwriter but only to the extent such person is performing **PROFESSIONAL SERVICES** as a member of the **NAMED INSURED**'s swim/dive staff. If a person joins the **NAMED INSURED**'s swim/dive staff after the first day of the **POLICY PERIOD**, that person will be an **INSURED** so long as the **NAMED INSURED** reports to the Underwriter in writing the name and date of hire of the person and any other information the Underwriter may reasonably require within thirty (30) days of the day the person joins the **NAMED INSURED**'s swim/dive staff.

7. **NAMED INSURED** means the person or entity identified as the **NAMED INSURED** on the Declarations Page.

8. **PARTICIPANT** means any person being instructed, supervised, or guided while in water by an **INSURED** providing **PROFESSIONAL SERVICES**.

9. **POLICY PERIOD** means the period from the Effective Date of this policy stated on the Declarations Page to the Anniversary Date stated on the Declarations Page or the date this policy is canceled or otherwise terminated if the policy is canceled or otherwise terminated prior to the Anniversary Date.

10. **PROFESSIONAL SERVICES** means:

- a. the instruction, assisting with instruction, supervision, or in-water guiding of a **PARTICIPANT** engaged in swimming, snorkeling, skin diving, free diving, RSSA (Recreational Surface Supplied Air) diving, SCUBA (Self-Contained Underwater Breathing Apparatus) diving (including recreational SCUBA, technical and rebreather SCUBA, and extended range SCUBA), breath-hold/apnea, swimming or diving emergency response, swimming or diving professional development certification programs, mermaiding, lifeguarding, or public safety diving where such instruction, assisting with instruction, supervision, or guiding is provided by a properly qualified and trained **INSURED** in his or her capacity as a certified swim or dive professional; and
- b. the training and supervision of a **PARTICIPANT** engaged in learning oxygen administration or other swimming or diving first-responder type first aid skills when provided by a properly qualified and trained **INSURED** in his or her capacity as a certified first aid instructor; and,
- c. for divemasters, or their equivalent, assisting an instructor with teaching an approved course or supervising and/or in-water guiding of a swimmer or certified diver in one of the swimming or

diving activities described in 10a. above for which the Divemaster, or their equivalent, is properly qualified and trained, including but not limited to, providing first aid, conducting refresher SCUBA training for previously certified divers, and supervising confined water activities for Try-A Dive and similar introductory swimming and diving activities.

11. **PROPERTY DAMAGE** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it. For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

#### **EXCLUSIONS RELATED TO PROFESSIONAL STANDARDS AND CONDUCT**

No coverage is provided for any **CLAIM**:

1. Arising out of any **EVENT** involving any swimming or diving activities in which the **INSURED** was not an active member in good standing with the applicable certification agency or agencies through which the training or supervision was offered at the time of the **EVENT**;
2. Arising out of any **EVENT** involving any training or supervisory dive or swim activity conducted by the **INSURED** that fails to meet the standards of the applicable certification training agency or agencies through which the training or supervision was offered, provided that the failure to meet the standard was a contributing cause of the **EVENT**, and specifically including but not limited to the following:
  - a. any **EVENT** involving a training dive where an **INSURED** intentionally left or permitted any uncertified student to be unsupervised, however, this exclusion does not apply to a navigation exercise on the second or subsequent training dives after the **INSURED** has evaluated the student's required skills, or a situation where the **INSURED** is responding to an emergency situation; or
  - b. any **EVENT** involving a training dive for anyone under the age of 10, except those courses that are taught in confined water only (e.g. swimming pools) and such may be offered to anyone age 7 and older; or
  - c. any **EVENT** involving an introductory/discover scuba experience (any program designed to introduce uncertified divers to SCUBA diving via a supervised, controlled open water experience) that was not within the standards of either the Recreational SCUBA Training Council (RSTC) or the certification agency under which the introductory experience was offered;
3. Arising out of any diving activity that is not planned as a **RECREATIONAL DIVE** (defined as dives planned to 130 feet or shallower, planned without mandatory stage decompression, and made using compressed air or oxygen enriched air 'nitrox' only), however this exclusion shall not apply to an **INSURED** who is engaged in the instruction or supervision of technical diving, provided the **INSURED** (i) has disclosed to the Underwriter that he or she is a technical diver, (ii) has been properly trained in technical diving and the equipment being used, (iii) has credentials to teach or supervise technical diving on the type of equipment being used at the time of the **EVENT**, and (iv) is engaged in a dive planned to a depth less than 330' using air, nitrox, helium or trimix.

4. Involving an **INSURED** who does not have appropriate training and/or all appropriate certifications (including first aid training, when required) to teach the course or supervise the dive or swim activity which resulted in the **EVENT**, specifically including but not limited to an **EVENT** involving technical training and/or technical training dives where the **INSURED** is not a technically certified professional or where the **INSURED** is a technically certified professional but exceeds the depths for which the **INSURED** is trained and certified to teach and/or supervise.
5. Where the **INSURED**
  - a. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed medical history form prior to in-water training; or
  - b. allows a person to participate where the medical history form of that **PARTICIPANT** reveals a medical condition that is contraindicated for safe participation in any in-water activities and the **PARTICIPANT** has not provided a medical release from a physician or other licensed medical professional qualified to provide such a release (who is not the **PARTICIPANT** or the parent and/or legal guardian of a **PARTICIPANT**) approving the proposed in-water activity prior to any in-water training or supervision; or
  - c. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed and signed written release of liability and assumption of risk in a form approved by the certification agency through which the training or supervision was offered and naming the **INSURED** as a released party; or
  - d. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed and signed written release of liability and assumption of risk which acknowledges that some dive sites are remote, that a recompression chamber may not be readily available, and that the **PARTICIPANT** still wants to continue their training or diving and assume the risk in the absence of a recompression chamber; or
  - e. fails to retain teaching records for each **PARTICIPANT** for a minimum of five (5) years, including records reporting the **PARTICIPANT**'s progress and results of knowledge tests for the purpose of evaluating the **PARTICIPANT**'s understanding of the instructional material.

**EXCLUSIONS FOR ASBESTOS, LEAD,  
SILICA, POLLUTION, HAZARDOUS SUBSTANCES,  
RADIATION, AND NUCLEAR MATERIAL**

1. **Asbestos.** No coverage is provided for any **CLAIM** arising out of:
  - a. **BODILY INJURY** in any way arising out of the use by any person or organization of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
  - b. **PROPERTY DAMAGE** to real or personal property arising out of the use by any person or organization of asbestos, asbestos products, asbestos fibers or asbestos dust, including, without limitation, the costs incurred with respect to the removal or abatement of asbestos, asbestos products, asbestos fibers or asbestos dust from or in such real or personal property;
  - c. Any obligation of the **INSURED** to indemnify any party because of damage arising out of such

**PROPERTY DAMAGE, BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, arising out of the manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or

- d. Any obligation to defend any suit or **CLAIM** against the **INSURED** alleging **BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury or **PROPERTY DAMAGE** resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.

2. **Lead.** No coverage is provided for any **CLAIM** arising out of:

- a. **BODILY INJURY** or **PROPERTY DAMAGE**, arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever;
- b. The costs of clean up or removal of lead or products and materials containing lead;
- c. The costs of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, or lead or products and material containing lead;
- d. The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- e. The cost of compliance with any law or regulation regarding lead.

3. **Silica.** No coverage is provided for any **CLAIM** arising out of:

- a. **BODILY INJURY** or **PROPERTY DAMAGE** or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form; or
- b. Any obligation of the **INSURED** to defend and/or indemnify any party because of damages arising out of such **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form.

4. **Pollution and Hazardous Substances.** No coverage is provided for any **CLAIM** arising out of:

- a. **BODILY INJURY, PROPERTY DAMAGE**, or any other loss, damage, cost or expense, or
- b. any increase in insured loss, damage, cost or expense, or
- c. any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or

any public, civil or military authority; or threat thereof, (and whether or not as a result of public or private litigation),

which arises from:

- i. any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof; or
- ii. relates to the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**, however caused or whenever or wherever happening; or
- iii. any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **POLLUTANTS**, whether or not any of the foregoing are or should be performed by the **INSURED** or by another.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used herein includes, but is not limited to:

- i. seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and,
- ii. the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

The term "Pollutants" as used herein includes but is not limited to, any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

5. **Pathogens or Harmful Biological or Chemical Materials.** No coverage is provided for any **CLAIM** arising out of **BODILY INJURY, PROPERTY DAMAGE**, or any other loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or arising in connection with the actual or suspected presence of pathogenic or harmful biological or chemical materials, including bacteria, fungi, viruses and proteins, regardless of any other cause or event contributing concurrently or in any other sequence thereto.
6. **Radiation and Nuclear Material.** This policy does not apply:
  - a. Under any Liability Coverage, to **BODILY INJURY, PROPERTY DAMAGE** or any other injury, sickness, disease, death or destruction:

- i. with respect to which an **INSURED** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - ii. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **INSURED** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- b. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- c. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- i. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **INSURED** or (2) has been discharged or dispersed therefrom;
  - ii. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **INSURED**; or
  - iii. the injury, sickness, disease, death or destruction arises out of the furnishing by an **INSURED** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- d. To (i) any loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or, (ii) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising out of:
- i. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- e. In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this policy does not cover liability of whatsoever nature directly or indirectly caused by or contributed to by or arising out of ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

As used in this section:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (i) or (ii) thereof; "nuclear facility" means:

- i. any nuclear reactor,
- ii. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- iii. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **INSURED** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- iv. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

7. **Communicable Disease.** No coverage is provided for any **CLAIM** arising out of **BODILY INJURY, PROPERTY DAMAGE** or any other loss, damage, cost or expense arising in connection with any **COMMUNICABLE DISEASE**, including but not limited to the fear or threat (whether actual or perceived) of a **COMMUNICABLE DISEASE**.

A **COMMUNICABLE DISEASE** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a. the substance or agent includes, but is not limited to, a virus, bacterium, fungus, parasite or other organism or any variation thereof, whether deemed living or not; and
- b. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or any other means of transmission between organisms; and
- c. the disease, substance or agent can cause or threaten **BODILY INJURY**, including but not limited to illness, emotional distress, or damage to human health or welfare, or **PROPERTY DAMAGE**.

**EXCLUSIONS FOR VIOLATION OF CIVIL AND CRIMINAL  
LAWS, RULES AND REGULATIONS**

No coverage is provided for any **CLAIM**:

1. Arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **CLAIM**.
2. Directly or indirectly attributed to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **INSURED**.
3. Arising out of discrimination by the **INSURED**, including but not limited to discrimination on the basis of age, color, race, sex, sexual orientation, creed, national origin, marital status or mental or physical disability, however, this exclusion does not apply if services are denied for valid safety reasons, including but not limited to, concern over medical history, disability, or belief by the **INSURED** that a potential **PARTICIPANT** lacks the physical ability or mental aptitude to engage in swim or dive activities.
4. Arising out of infringement of trademark, trade dress, trade name, patent, copyright or other intellectual property rights.
5. Arising out of a criminal act.
6. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE** caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substance.
7. Arising out of abuse or molestation, where "abuse or molestation" means:
  - a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, the **INSURED**, an **INSURED**'s employee, or any other person, or
  - b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom the **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

Abuse or Molestation includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm; harassment of any type; lewd, immoral or sexual behavior, whether or not any such act is intended to lead to, or culminate in, any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons, **PARTICIPANTS**, or from any cause whatsoever.
8. involving any liability as respects access or disclosure of confidential or personal information or data-related liability, which shall mean damages, or loss, defense costs, other costs or expenses because of **BODILY INJURY** or **PROPERTY DAMAGE** arising directly or indirectly out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by the **INSURED** or others arising out of that which is described in paragraph a. or b. above. Further, as used in this exclusion, "electronic data" means information, facts or programs stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

9. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE** arising out of any action or omission that violates or is alleged to violate:
  - a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
  - b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
  - c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
  - d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

#### **EXCLUSIONS FOR WAR AND TERRORISM**

No coverage is provided for any:

1. Liability directly or indirectly occasioned by, happening through, in consequence of or arising out of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
2. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with, or arising out of any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
3. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

“Terrorism” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. If the Underwriter alleges that due to Terrorism any loss, damage, cost or expense is not covered, the burden of proving the contrary shall be upon the **INSURED**. In the event any portion of this section on Terrorism is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### **EXCLUSION FOR EXPOSURE TO SANCTIONS**

No coverage is provided and no liability shall exist to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Underwriter or the reinsurers to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### **ADDITIONAL EXCLUSIONS**

No coverage is provided for any **CLAIM**:

1. by an **INSURED** against another **INSURED**, however this exclusion does not apply to a **CLAIM** brought by an **INSURED** who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**;
2. arising out of **BODILY INJURY** to any employee of the **INSURED** arising out of and in the course of his/her employment by the **INSURED**, including any obligation to indemnify another in whole or in part for such **BODILY INJURY**, however this exclusion does not apply to any **CLAIM** brought by an employee who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**;
3. by an employer against an **INSURED** who is employed by or representing such employer;
4. arising out of liability assumed by an **INSURED** under any contract or agreement;
5. arising out of an **EVENT** occurring prior to the **POLICY PERIOD**, if prior to the effective date of the policy, the **INSURED** had a reasonable basis to foresee that a **CLAIM** would be made against them;
6. arising out of an **EVENT** for which notice of the **EVENT** or a **CLAIM** was provided to another insurer prior to the start of the **POLICY PERIOD**;
7. arising out of an **EVENT** commencing prior to the **POLICY PERIOD** for which coverage is available under an occurrence based liability policy issued by the Underwriter or any other insurer;
8. arising out of any obligation for which the **INSURED** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law (including occupational disease and cumulative trauma) including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation;
9. arising out of **BODILY INJURY** or **PROPERTY DAMAGE** expected or intended from the standpoint of

the **INSURED**, however this exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** resulting from the use of reasonable force to protect persons or property;

10. for any obligation to pay fines, judicial sanctions, penalties, punitive and/or exemplary damages, or multiples of compensatory damages, whether at common law or by statute;
11. based on the insolvency or bankruptcy of any person, firm or organization;
12. arising out of the function or failure of any product, including but not limited to **RSSA**, **SCUBA**, **SNUBA** and snorkeling equipment, regardless if owned, borrowed, rented or lent by an **INSURED**;
13. in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any **CLAIM** in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of the **INSURED**;
14. arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities; however, this exclusion does not apply to public safety diving or scientific research activities;
15. arising out of navigation, towing, repair, storage, conversion, cleaning, demolition, wrecking, up righting, or salvage of any commercial vessel or oil rig, ship building and boat manufacturing, stevedoring, ship repair yards and dry docks;
16. arising out of off-shore and subaqueous work (other than **PROFESSIONAL SERVICES** provided by the **INSURED**);
17. arising out of the ownership, maintenance or use of the following premises or any property located on such premises: camps, campgrounds, recreational vehicle parks, or paintball fields;
18. arising out of premises or operations involving: (a) amusement parks or devices, carnivals or circuses, sports or other entertainment events, professional sports organizations, zoos, casinos, race tracks, or any theater, hall, arena, grandstand or stadium; (b) oil or gas pipelines, wells, or drilling operations; (c) all mining and quarrying operations; (d) bridges, tunnels, dams or reservoirs; (e) waste treatment, storage or disposal facilities, dumps or dumpsites, landfills; surface impoundments; waste lagoons; or waste sites;
19. arising out of the ownership, maintenance, operation, use, loading or unloading or entrustment to others of any automobile, aircraft or watercraft, including alleged negligence or other wrongdoing in the supervision, employment, training or monitoring of others by the **INSURED**; however, this exclusion does not apply to the ingress and/or egress from any watercraft while any **PARTICIPANT** is under the **INSURED**'s supervision or instruction, or involving the operation of a kayak or paddleboard;
20. for **PROPERTY DAMAGE** to:
  - a. property owned or occupied by or rented to the **INSURED**;
  - b. Property used by the **INSURED**; or

c. Property in the care, custody or control of the **INSURED** or property over which the **INSURED** is for any purpose exercising physical control (this exclusion does not apply to swimming pools rented by, used by, or occupied by the **INSURED**); or,

21. for **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, packing, handling, transportation, storage, igniting, operation, sponsorship, set-up or take-down or other use of:

- a. Firearms, including handguns, revolvers, pistols, rifles, shotguns, air guns, semi-automatic weapons and similar devices;
- b. Fireworks, including firecrackers, Roman Candles, flash powder, explosive compositions or combustible substances, pinwheels, skyrockets, ground displays, flares, smoke bombs, and similar devices that produce, when ignited or activated, sound, smoke, motion or a combination of these;
- c. Explosives, caps, primers, detonators, ammunitions, fuses, arms, magnesium, ammonium nitrate, nitroglycerin, celluloid, pyroxylin or other substances intended for use as an explosive;

by the **INSURED** or by any person for which the **INSURED** may be held liable in any capacity, and no coverage is provided for any obligation of the **INSURED** to indemnify, defend or contribute jointly or severally with another because of **BODILY INJURY** or **PROPERTY DAMAGE** arising out of any of the activities specified paragraphs a., b. or c. above; or,

22. arising out of a **CYBER LOSS**.

**CYBER LOSS** means any actual or alleged loss, damage, liability, injury, compensation, sickness, disease, death, medical payment, claim, cost, defense cost, expense or any other amount incurred by or accruing to the **INSURED**, including but not limited to any mitigation cost or statutory fine or penalty, directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any **CYBER INCIDENT**.

**CYBER INCIDENT** means:

- a. an unauthorized or malicious act or series of related unauthorized or malicious acts, regardless of time and place, or the threat or hoax thereof; or
- b. a failure to act, any error or omission or accident or series of related failures to act, errors or omissions or accidents; or
- c. a breach of duty, statutory duty or regulatory duty or trust or series of related breaches of duty, statutory duty or regulatory duty or trust;

involving access to, processing of, use of or operation of any **COMPUTER SYSTEM** or any data by any person or group(s) of persons.

**COMPUTER SYSTEM** means any computer, hardware, software, information technology or communications system or electronic device, including any similar system or any configuration of the aforementioned and including any associated input, output or data storage device, networking equipment or backup facility.

**CONDITIONS**

1. **INSURED's duties arising out of a CLAIM or EVENT:**

- a. As a condition precedent to the protection afforded by this insurance, the **INSURED** shall immediately give to the Underwriter through the designated persons or entity shown below, written notice of any **CLAIM** first made against the **INSURED** during the **POLICY PERIOD**, including, but not limited to, any verbal demand or written demand, notice, summons or other process received by the **INSURED** or his or her representative.
- b. The **INSURED** must also notify the Underwriter through the designated person or entity shown below as soon as practicable of any **EVENT** likely to give rise to a **CLAIM** hereunder or of the receipt from any person of a verbal or written statement of an intention to hold the **INSURED** responsible for any **EVENT**. If an **EVENT** involves a fatality or serious bodily injury, immediate notice (within 24 hours) should be given to the Underwriter.

Entity to notify for a. and b. above:

**DAN Services, Inc.**  
**Phone: 919-682-9111 (Available 24/7)**  
**Fax: 919.490.2935**  
**E-Mail: [LiabilityClaims@DAN.org](mailto:LiabilityClaims@DAN.org)**

In any such case, the **INSURED** shall, upon request, give the Underwriter such information as the Underwriter, at its sole discretion, may reasonably require, including the information required to complete any Incident Report Form acceptable to the Underwriter.

- c. Failure to provide written notice as set forth above will be considered a failure of a condition to coverage and may at the option of the Underwriter render this policy null and void in relation to any **CLAIM** or **EVENT** not properly and promptly reported through written notice given in accordance with this provision.
2. **Assistance and Cooperation:** The **INSURED**, including any **ADDITIONAL INSUREDs**, shall cooperate with the Underwriter and, upon the Underwriter's request, in any investigation process, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution indemnity against any person or organization who may be liable to the **INSURED** because of **BODILY INJURY** or **PROPERTY DAMAGE** with respect to which insurance is afforded hereunder and the **INSURED** shall attend hearing and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.
  3. **Voluntary Payments:** Without the prior written consent of the Underwriter, the **INSURED** shall not voluntarily make any payment or settlement, make any admission of responsibility, assume any obligation, or incur any expense other than for first aid to others at the time of the **EVENT**.
  4. **Subrogation Clause:** Upon payment under this insurance, the Underwriter shall be subrogated to all the **INSURED's** rights of recovery against any person or organization, and the **INSURED** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **INSURED** shall do nothing to prejudice such rights.

5. Other Insurance: If other valid and collectible insurance is available to the **INSURED** covering a **CLAIM** also covered by this policy, the insurance afforded by this policy shall be limited as follows:
- a. Primary Insurance – This insurance is primary except when paragraph b. below applies. If this insurance is primary, the Underwriter’s obligations are not affected unless any of the other insurance also is primary. Then, the Underwriter will share with all that other insurance by the method described in paragraph c. below.
  - b. Excess Insurance – This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the **POLICY PERIOD** for this policy and applies to injury on other than a claims-made basis, if—
    - i. no Retroactive Date is shown on the Declarations Page of this policy; or
    - ii. the other insurance has a policy period which continues after the Retroactive Date shown on the Declarations Page of this policy.

When this insurance is excess, the Underwriter will have no duty to defend the **INSURED** against any **CLAIM** if any other insurer has a duty to defend the **INSURED** against that **CLAIM**. If no other insurer defends, the Underwriter will undertake to do so, but the Underwriter will be entitled to the **INSURED**’s rights against all those other insurers.

When this insurance is excess, the Underwriter will pay, up to the applicable Limit of Liability, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance. If other insurance also is excess, the Underwriter will share the remaining loss with that other insurance.

- c. Method Of Sharing – If all of the other insurance permits contribution by equal shares, the Underwriter will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Underwriter will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Liability to the total applicable Limits of Liability of all insurers.
6. Non Accumulation of Limits of Coverage: If this policy and any other policy issued by the Underwriter to the **INSURED** apply to the same **EVENT**, Section 5 (Other Insurance) above shall not apply and the maximum Limit of Liability shall not exceed the highest applicable limit of liability under any one policy. In no event shall the limits of liability under two or more policies issued by the Underwriter to the **INSURED** be stacked so as to obtain a limit of liability that exceeds the highest applicable limit of liability available under any one policy.
7. Legal Action Against the Underwriter: No person or organization has a right under this insurance:
- a. to join the Underwriter as a party or otherwise bring the Underwriter into a suit for **DAMAGES** from **the INSURED**; or
  - b. to sue the Underwriter on this insurance unless they have fully complied with all of its terms.

8. Service of Suit:

- a. It is agreed that in the event of the failure of the Underwriter hereon to pay any amount claimed to be due hereunder, the Underwriter hereon, at the request of the **INSURED**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriter's rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon DAN Risk Retention Group, Inc., c/o Artex Risk Group, 115 Central Island Street, Suite 100, Charleston, SC 29492 U.S.A. and that in any suit instituted against any one of them upon this contract, the Underwriter will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.
- b. The above named are authorized and directed to accept service of process on behalf of the Underwriter in any such suit and/or upon the request of the **INSURED** to give a written undertaking to the **INSURED** that they will enter a general appearance upon the Underwriter's behalf in the event such a suit shall be instituted.
- c. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriter hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **INSURED** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

9. False or Fraudulent CLAIM: If the **INSURED** shall give notice of any **CLAIM** or reports an **EVENT** likely to give rise to a **CLAIM** knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the **INSURED**.

10. Inspection and Audit:

- a. The Underwriter shall be permitted, but not obligated to, inspect the **INSURED's** property, operations or records at any time. Neither the Underwriter's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **INSURED** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.
- b. The Underwriter may examine and audit the **INSURED's** books and records at any time during the **POLICY PERIOD** and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

11. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriter from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriter.

12. Assignment: No assignment of interest under this insurance shall be valid unless the written consent of the Underwriter is endorsed thereon.

13. Cancellation and Nonrenewal:

- a. It is understood and agreed that this policy may be canceled by the Underwriter by mailing to the **NAMED INSURED** at the address shown on the Declarations Page written notice stating when, not less than forty-five (45) days thereafter, such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Proof of mailing notice of cancellation shall be sufficient proof of notice.
- b. Notwithstanding anything contained in this insurance to the contrary this insurance may be cancelled by the **NAMED INSURED** at any time by written notice or by surrender of this policy.
- c. If this insurance is cancelled by or on behalf of the Underwriter, the Underwriter shall retain the pro rata proportion of the premium hereon, except that (a) if this insurance is on an adjustable basis the Underwriter shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater and (b) if this insurance is cancelled for nonpayment of premium, the premium shall be considered fully earned on the effective date of the policy and collectible by the Underwriter in full. If this insurance is cancelled by the **NAMED INSURED**, the premium shall be considered fully earned on the effective date of the policy and will not be subject to pro rata refund.
- d. Payment or tender of any unearned premium by the Underwriter shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- e. This insurance may be non-renewed by the Underwriter in accordance with applicable law. Proof of mailing notice of nonrenewal shall be sufficient proof of notice.

**END OF POLICY FORM**

**FORMS AND ENDORSEMENTS WHICH ARE PART OF THIS POLICY ARE ATTACHED**

**ENDORSEMENT**

**ADDITIONAL INSURED  
DESIGNATED PERSON OR ORGANIZATION**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY  
DEFINITIONS - PARAGRAPH 6 – INSURED**

The following persons or organizations shall be **ADDITIONAL INSUREDS**:

**SCHEDULE OF ADDITIONAL INSUREDS**

List Name of Person or Organization

NAME	ADDRESS	CITY	ST	ZIP

(If no entry appears above, information required to complete this endorsement will be shown on the Declarations Page as applicable to this endorsement.)

The definition of **INSURED** in DEFINITIONS paragraph 6 is amended to include as an **ADDITIONAL INSURED** each person or organization identified in the Schedule above, but this insurance does not apply to any **BODILY INJURY** or **PROPERTY DAMAGE** arising from the act, error or omission of any **ADDITIONAL INSURED**, whether such act, error or omission is the sole or a contributing cause of the loss. The coverage afforded to an **ADDITIONAL INSURED** is limited solely to “vicarious liability” of the **ADDITIONAL INSURED** that is a specific and direct result of a negligent act, error or omission by the **NAMED INSURED** or a member of the **NAMED INSURED’s** swim/dive staff who qualifies as an **INSURED** in rendering or failing to render **PROFESSIONAL SERVICES**.

The **ADDITIONAL INSURED** is entitled to a defense under this policy only if the **CLAIM** against the **ADDITIONAL INSURED** relates exclusively to the **ADDITIONAL INSURED’s** vicarious liability for the negligent act, error or omission of the **NAMED INSURED** or a member of the **NAMED INSURED’s** swim/dive staff who qualifies as an **INSURED** in rendering failing to render **PROFESSIONAL SERVICES**.

In no event is the coverage provided to an **ADDITIONAL INSURED** broader than the underlying coverage provided to the **NAMED INSURED** or a member of the **NAMED INSURED’s** swim/dive staff who qualifies as an **INSURED**. Coverage is provided for an **ADDITIONAL INSURED’s** vicarious liability only if the negligent act, error or omission resulting in vicarious liability is covered under this policy.

All **INSUREDs** share the Limits of Liability established by this policy. The provision of coverage to an **ADDITIONAL INSURED** does not change or increase the Limits of Liability.

“Vicarious liability” as used in this endorsement means liability that is imposed on the **ADDITIONAL INSURED** solely by virtue of its relationship with the **NAMED INSURED** or a member of the **NAMED INSURED**’s swim/dive staff who qualifies as an **INSURED**, and not due to any act, error or omission of the **ADDITIONAL INSURED**.

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**NAMED INSURED’S SWIM/DIVE STAFF  
DESIGNATED PERSON**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY  
DEFINITIONS PARAGRAPH 6 – INSURED**

The following are the **NAMED INSURED’S** Swim/Dive Staff:

**SCHEDULE OF NAMED INSURED’S SWIM/DIVE STAFF**

List Name of Person

NAME	ADDRESS	CITY	ST	ZIP

(If no entry appears above, information required to complete this endorsement will be shown on the Declarations Page as applicable to this endorsement.)

The protection afforded to the **NAMED INSURED’S Swim/Dive** Staff shall in all cases be limited in scope to liability arising out of **PROFESSIONAL SERVICES** provided by a member of the **NAMED INSURED’S Swim/Dive** Staff. When adding Swim/Dive Staff, notice to other **INSUREDs** and **ADDITIONAL INSUREDs** shall be made by giving notice to the **NAMED INSURED**. When making changes to the policy that affect other **INSUREDs** and **ADDITIONAL INSUREDs**, notice to the Swim/Dive Staff shall be made by giving notice to the **NAMED INSURED**.

Swim/Dive Staff must be in active status with their swim or dive training agency for coverage to apply.

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**EQUIPMENT LIABILITY ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Additional Exclusion 12 of this policy DOES NOT apply and coverage is extended to include any **CLAIM** against an **INSURED** arising out of the function or failure of equipment used by a **PARTICIPANT** while in the **INSURED**'s own classes or under the **INSURED**'s supervision. This equipment liability endorsement only applies to those **INSURED**s who have purchased the equipment liability option and paid the associated additional premium.

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**ABUSE OR MOLESTATION COVERAGE ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Exclusion 7 of the Exclusions for Violation of Civil and Criminal Laws, Rules and Regulations of this policy DOES NOT apply, but subject to all other terms, conditions, exclusions and Limits of Liability of the policy, the policy is extended to cover **CLAIMS** alleging **ABUSE OR MOLESTATION** to a **PARTICIPANT** occurring in the course of providing **PROFESSIONAL SERVICES** by the **INSURED**.

The coverage provided by this endorsement is subject to the following terms and conditions:

1. The Underwriter shall have no obligation to pay **DAMAGES** or **DEFENSE EXPENSES** on behalf of, or defend, an **INSURED** if:
  - a. a judgment or other final adjudication establishes, or it is otherwise determined by the Underwriter, that the **INSURED** committed, participated in, or knew of any act of **ABUSE OR MOLESTATION**; or
  - b. the **INSURED** pleads guilty or no contest to any criminal act involving **ABUSE OR MOLESTATION**.

2. The definition of **EVENT** is amended to add the following at the end of the definition:

**EVENT** includes acts of **ABUSE OR MOLESTATION**. All acts of **ABUSE OR MOLESTATION** committed by one person or two or more persons either acting together or negligently responsible for such acts shall be deemed to be a single **EVENT** taking place at the time the first such act of **ABUSE OR MOLESTATION** commences, regardless of (i) the time period during which such acts of **ABUSE OR MOLESTATION** took place, or (ii) the number of persons who were subject to such acts of **ABUSE OR MOLESTATION**.

3. The following sublimit applies: Subject to the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability, the Underwriter will pay no more than **\$300,000** for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** alleging **ABUSE OR MOLESTATION** under this insurance. This sublimit is within the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability for the policy and does not add to those limits.

For purposes of this endorsement, **ABUSE OR MOLESTATION** means:

- a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, **the INSURED**, an **INSURED's** employee, or any other person, or

- b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom **the INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**AAUS ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY  
DEFINITIONS PARAGRAPH 10 – PROFESSIONAL SERVICES**

In consideration of the payment of the additional premium shown on the Declarations Page, it is agreed that the definition of **PROFESSIONAL SERVICES** is amended to include the following:

**PROFESSIONAL SERVICES** includes activities undertaken by members of the American Academy of Underwater Science (AAUS) involving instruction or supervision:

- i. in the use of the following tools: underwater power tools, full face mask, hazmat equipment, lift bags and reels; or
- ii. of the following types of diving: decompression diving, zero visibility diving, blue water diving, ice diving, saturation diving, cave or cavern diving,

provided the **INSURED** (a) is in good standing with both AAUS and the **INSURED's** (non-AAUS) certifying agency; (b) is acting under the auspices of an AAUS organizational member; and (c) is a certified AAUS instructor, divemaster or its equivalent; and (d) follows the standards set forth in this policy and under both the AAUS and the **INSURED's** (non-AAUS) certifying agency in providing services to a **PARTICIPANT**.

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**LIMITED TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT  
CLAIMS MADE AND REPORTED COVERAGE**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

In consideration of the payment of the additional premium shown on the Declarations Page, and subject to the Limit of Liability shown herein, it is hereby understood and agreed that this insurance is extended to provide Limited, Claims Made And Reported Tour And Travel Agent Liability Coverage as described in this endorsement.

SUBLIMIT: \$250,000

1. **INSURING AGREEMENTS, 1. COVERAGE – CLAIMS MADE AND REPORTED** is amended to include the following new subsection after subsection a.:

a1. Subject to the applicable Limit of Liability, the Underwriter agrees to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **CLAIMS** arising from any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**.

2. **INSURING AGREEMENTS, 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS** is amended to include the following new subsection after subsection a.:

a.1 The Underwriter shall have the right and duty to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** arising from any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriter shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in its sole discretion.

3. **SUBLIMIT**. The following sublimit applies to the coverage provided under this endorsement:

Subject to the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability, the Underwriter will pay no more than **\$250,000** for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** arising out of any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**. This sublimit is within the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability for the policy and does not add to those limits.

**4. DEFINITIONS**

a. For purposes of the coverage provided by this endorsement, an **EVENT** means a negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**. An **EVENT** that is ongoing or involves a series of negligent acts, errors or omissions that are related shall be considered a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commenced.

- b. For purposes of the coverage provided by this endorsement, a **PARTICIPANT** includes a person for whom the **INSURED** provides **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**.
  - c. For purposes of the coverage provided by this endorsement, **PROFESSIONAL SERVICES** includes **TOUR OR TRAVEL AGENCY SERVICES**, which means the services provided by an **INSURED** who acts as a tour or travel agent in arranging travel-related activities for **PARTICIPANTS** with airlines, hotels, resorts, dive operators and other vendors of travel or recreational services.
5. **ADDITIONAL EXCLUSIONS.** The coverage provided by this endorsement is subject to all of the exclusions found in the policy. If an exclusion found in the policy is limited to excluding coverage for **CLAIMS** alleging **BODILY INJURY** or **PROPERTY DAMAGE** arising from a specified cause of loss, for purposes of the coverage provided by this endorsement the exclusion shall be deemed to exclude coverage for any **CLAIM** made in connection with any loss, injury, damage, cost or expense of any sort arising from the specified cause of loss.

The coverage provided by this endorsement also is subject to the following exclusions:

No coverage is provided for any **CLAIM**:

- a. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE**;
- b. Arising out of the cancellation or any change in travel arrangements by an airline, cruise line, transportation service, agency, dive operator, tour operator or other vendor, service provider or carrier;
- c. Arising out of a change in travel or other plans by a **PARTICIPANT** or other person;
- d. Arising out of any order or other action of any governmental authority or any change in law or regulation or change in any policy of any governmental authority;
- e. Arising out of the failure of an airline, cruise line, transportation service, dive operator, tour operator or other vendor, service provider or carrier to provide the bargained-for travel or recreational services or refund money due to any person, unless the **INSURED** had actual knowledge prior to booking that such vendor, service or carrier had previously failed to provide bargained-for travel or recreational services or to refund money for such services when a refund was due;
- f. Arising out of the **INSURED**'s violation of any consumer fraud, consumer protection, consumer privacy, unfair trade or deceptive business practice or statutory or common law unfair competition;
- g. Arising out of any dishonest, fraudulent, malicious or criminal act or omission of the **INSURED**;
- h. Arising out of bankruptcy, insolvency, receivership, liquidation and/or cessation of operations of any **INSURED** or other entity that any **INSURED** owns, controls or manages, or in which any **INSURED** has a financial interest. This exclusion does not apply to any unrelated third party travel supplier.

- i. Arising out of any misquotation or misstatement of prices or applicable taxes or costs, cancellation provisions, payment terms, pricing changes, failure to secure promotional offers, or any dispute with respect to fees or charges;
- j. Arising out of any act, error or omission relating to the recommendation, sale, maintenance, or procurement of any insurance policy or bond or investigation, adjustment or outcome of any insurance claim;
- k. Arising out of the gaining of profit or advantage to which the **INSURED** was not legally entitled;
- l. Arising out of any violation of the Fair Labor Standards Act or any similar federal, state, or local law pertaining to working conditions, hours, employee benefits, or wages;
- m. By:
  - 1. An employee of the **INSURED** arising out of and in the course of:
    - i. employment by the **INSURED**; or
    - ii. performing duties related to the conduct of the **Insured's** business; or
  - 2. The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph 1 above. This exclusion applies:
    - i. whether the **INSURED** may be liable as an employer or in any other capacity; and
    - ii. to any obligation to share **DAMAGES** with or repay someone else who must pay **DAMAGES**;
- n. Arising out of an **INSURED's** acts or omissions in the administration of any employee benefit program or as a fiduciary in connection with any employee insurance, retirement or pension plan, including but not limited to any alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments, or any similar state or local laws, or any regulations or orders issued in connection therewith;
- o. Arising out of any actual or alleged:
  - 1. Failure to employ;
  - 2. Termination of employment, including actual or alleged constructive dismissal;
  - 3. Breach of employment contract;
  - 4. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, employment related misrepresentation, employment related emotional distress, retaliation, or other employment related practices, policies, acts or omissions; or

5. Any consequential liability, damage, loss, cost, or expense as a result of 1, 2, 3, or 4 above;
- p. Against an **INSURED** by or on behalf of:
1. Any other **INSURED**;
  2. Any entity:
    - i. which is owned, operated, or controlled by the **INSURED**;
    - ii. which owns, operates, or controls the **INSURED**; or
    - iii. which is affiliated with the **INSURED** through any common ownership, operation or control; or
    - iv. in which the **INSURED** is a director, officer, partner, trustee, shareholder, member, manager, or employee; or
  3. Any business enterprise, charitable organization or pension, welfare, profit sharing, mutual or investment fund, or trust owned or sponsored by the **INSURED**;
- q. Arising out of the rendering or failure to render any medical, dental, surgical, nursing, or therapeutic service of treatment, or from the furnishing or failure to furnish any drugs, medications, medical, or dental supplies or appliances, or out of the **INSURED**'s negligence in screening, selection, hiring, retention, training, instruction, or supervision of any employee, officer or partner of the **INSURED** or any other person or organization engaged in providing or failing to provide such services. However, this exclusion shall not apply to any medical services which are rendered as emergency first aid treatment at the time of an accident;
- r. Arising out of the breach of any employment agreement, non-competition agreement, non-solicitation agreement, confidentiality agreement, fiduciary duty, or duty of loyalty on the part of the **INSURED** or any past, present or prospective employee, independent contractor, director, officer, partner, or shareholder of the **INSURED**;
- s. Arising out of the booking, leasing, sale, rental or management of any **TIME-SHARE** properties. This exclusion does not apply with respect to incidental travel arrangements made by the **INSURED** on behalf of travelers to or from such **TIME-SHARE** properties. Incidental travel includes airline ticketing, automobile rental and ground transportation. **TIME-SHARE** means a system for sharing ownership of any apartment, condominium, villa or the like as defined in the time-sharing agreement.
- t. Arising out of the sale, rental, or distribution of any sports or recreational equipment by the **INSURED**, including but not limited to ski equipment, bicycles, rafts, snowmobiles, and SCUBA diving and snorkeling equipment;
- u. Arising out of any commingling of money, or the inability or failure to pay or collect money or the value of mileage points, vouchers, travel credits, or other negotiable instrument, for any

reason, whether on the part of the Insured, or any other party, including but not limited to unauthorized or illegal credit card transactions, debit memos, commissions, profits, or refunds and bankruptcy, insolvency, receivership, liquidation or cessation of operations;

- v. Arising out of Internet technology services provided by the **INSURED**, including but not limited to the transmission of computer viruses, corruption of databases, misappropriation, alteration, or deletion of data or harm to the integrity of a computer system. However, this exclusion does not apply to any act or omission involving researching travel related information, placing reservations, or communication by electronic mail by the **INSURED** as part of the **INSURED's TOUR OR TRAVEL AGENCY SERVICES** .

6. **ADDITIONAL CONDITIONS.** The coverage provided by this endorsement is subject to all of the terms and conditions found in the Policy, except as expressly modified herein, and the following additional conditions:

- 4. A. This coverage is excess to any other insurance maintained by any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person who provides services to the **INSURED** or a **PARTICIPANT**. Any **CLAIM** under this endorsement will only be paid if the **CLAIM** has been wholly or partially denied by such airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person , or its insurer; and if partially denied, payment will be limited to the unpaid amount to the extent such amount is covered under this endorsement.

C. Should a lawsuit arise based on the interpretation or enforcement of this endorsement, any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person who may have primary liability for the **CLAIM** shall be a necessary and indispensable party.

**All other terms and conditions remain unchanged.**

**ENDORSEMENT**

**INDIVIDUAL POLICY EXTENDED REPORTING PERIOD ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

Insured:

In consideration of an additional premium of \$ \_\_\_\_\_ it is agreed as follows:

The **INSURED** identified above, upon payment of an additional premium shown above, shall have an Extended Reporting Period of <<insert applicable time period>> from the last date the **INSURED** was a member of the **NAMED INSURED**'s swim/dive staff in which to report in writing to the Underwriter accordance with Section 1 of the Conditions any **CLAIM** that is made during the Extended Reporting Period, provided such **CLAIM** arises out of an **EVENT** that commenced after the Retroactive Date specified on the Declarations Page and on or before the last day the **INSURED** was a member of the **NAMED INSURED**'s swim/dive staff.

This Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate or increase the Limits of Liability for this insurance.

This endorsement provides an Extended Reporting Period only for the **INSURED** named above. If a **CLAIM** involves an **INSURED** other than the **INSURED** named above, that **INSURED** will be eligible for coverage only if the **CLAIM** was reported in writing to the Underwriter in accordance with Section 1 of the Conditions during the **POLICY PERIOD** or any Extended Reporting Period that applies to that **INSURED**.

**All other terms and conditions remain unchanged.**

# **EXHIBIT 4**

Rec'd 01/08



Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**BUSINESS INFORMATION: (PRINT OR TYPE)**

Primary Training Agency: S O I T D I Training Agency ID # 1004283 ✓  
 Legal Business Name: Bottoms up Scuba Indy DAN Business Member # 2787913 ✓  
 Doing Business As: \_\_\_\_\_  
 Contact Person/Title: Michael E Ellis owner  
 Business Address: 8915 South Keystone Suite C Indianapolis, IN 46227  
 Mailing Address: \_\_\_\_\_  
 City: Indianapolis State/Province: IN Zip/Postal: 46227 Country: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_ Cell Phone/Other: 317-417-7323  
 FAX: \_\_\_\_\_ E-mail: Bottoms up Scuba@gmail.com

Active 01/08/2021 -m jw

**GENERAL INFORMATION SECTION:**

Applicant is:  Corporation  Partnership  LLC  Proprietorship  Non-Profit  Other:  
 Responsible Party (Print Name and Title): Michael E Ellis owner  
 How long in business? 6 years  
 Total number of employees/subcontractors included in your group liability policy (if applicable)? 15  
 (Note—each employee and exclusive subcontractor must complete a group policy application and return completed documents to DAN. RRG)  
 Primary business location:  Same as above  If different, enter location address below:  
 Is primary location:  Commercial Owned  Commercial Leased  Residential  
 Additional business locations?  Yes  No (If yes, please list physical address. Use another sheet if necessary.)  
 1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_

**BUSINESS ACTIVITIES: (Please check all that apply)**

- Air Fills
- Hydrotesting
- Rentals
- Repairs
- Product Sales
- Training
- Tank Inspections
- Local Trade Shows
- Pool on Premises
- Travel (more than 100 miles)
- Travel (less than 100 miles)

**Description of business activities/operations:**

Sales & Service & Training

Do you sell or rent products "other than scuba?" (Please describe) No

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**KNOWN CLAIM DECLARATION**

Applicant must complete and sign one of the following claims declarations. Read carefully and complete either 1 (No Claims Declaration) or 2 (Disclosure of Known Claim), not both.

**NO CLAIMS DECLARATION**

I, Michael Ellis, have no knowledge of any incident, accident, occurrence, act, error, or omission (collectively "Event") that might lead to, or has already led to, a legal action or claim except those matters already reported to DAN Services, Inc. I understand that I must report any known Event to my previous insurer and that this policy does not cover any Event known on or before the effective date of this coverage. I also agree and understand that any Event which occurred prior to the effective date of this coverage which becomes a legal action or claim within 90 days of expiration of the previous policy must be reported and will be excluded under this policy. By applying for this insurance, I hereby authorize DAN Services, Inc. to release to the underwriters any information pertinent to the investigation of any Event, legal action or claim.

Signed: [Signature] Date: 06/01/2020  
(dd mm/yyyy)

**DISCLOSURE OF KNOWN CLAIM**

I, \_\_\_\_\_, have knowledge of an incident, accident, occurrence, act, error, or omission (collectively "Event") not previously reported to DAN Services, Inc., that might lead to, or has already led to, a legal action or claim against the Applicant and I have disclosed such Event(s) below. Other than the Event(s) disclosed below and those previously reported to DAN Services, Inc., I have no knowledge of any other Event that might lead to, or has already led to, a legal action or claim against the Applicant. I understand that I must report any known Event to my previous insurer and that this policy does not cover any Event known on or before the effective date of this coverage. I also agree and understand that any Event which occurred prior to the effective date of this coverage which becomes a legal action or claim within 90 days of expiration of the previous policy must be reported and will be excluded under this policy. By applying for this insurance, I hereby authorize DAN Services, Inc. to release to the underwriters any information pertinent to the investigation of Event, legal action or claim.

Name of Any Person Injured: \_\_\_\_\_

Name of Dive Professional: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Incident Report Filed:  Yes  No

If yes, please send copies of incident report or any other appropriate documentation to [LiabilityInsurance@dan.org](mailto:LiabilityInsurance@dan.org)

Fatality:  Yes  No Serious Injury:  Yes  No In Training:  Yes  No

Amount of Loss (with defense cost) \_\_\_\_\_ Insurance Carrier \_\_\_\_\_

Location of Incident \_\_\_\_\_

Brief Summary of Incident \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
(dd mm/yyyy)

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**SCHEDULE OF ADDITIONAL NAMED INSUREDS**

Each Entity to be covered by this policy must be listed as an Additional Named Insured.

- There is no charge for Additional Named Insureds, but all must be listed to be covered
- Each legal entity such as retailers, resort dive operators, dive boats, educational institutions, hotels, motels, resorts, pool (facility) owners, property owners, government entities and marinas must be listed to be covered. Show relationship between Insured and Additional Named Insureds.
- Legal entities other than those listed above, when listed, will be reviewed by the underwriter; inclusion on your Certificate of Insurance will indicate that coverage is in effect.
- List business relationship, not personal relationship: e.g., Paul Anderson (boat owner) not Paul Anderson (personal friend)
- Instructors, Assistant Instructors, Divemasters and Retired Instructors may not be Additional Named Insureds but must purchase a separate personal professional liability policy.
- All Instructors, Assistant Instructors, Divemasters and Retired Instructors included under a Group Professional Liability policy must complete a separate application.
- \* Please visit the website to download application.

NAME Horizon Divers  
 ADDRESS 105800 Overseas Hwy  
 CITY/ST(Province) Key Largo  
 ZIP(Postal)/COUNTRY 33037  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE 305-453-3585

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**DECLARATION SECTION**

**Applicant must complete and sign this Declaration Section. Read carefully, check the boxes next to those statements that apply and sign where indicated.**

Your duty of disclosure information and the answers given by you to the specific questions in the Application form will be treated by the Underwriters as applying to each person or legal entity seeking coverage, including each principal, partner or director.

Please confirm the following with a check.

- I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.
- I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.
- I hereby agree and accept that this Declaration and the other parts of this Application shall be the basis of the contract between both parties if entered into.
- I hereby agree and accept that the Commercial General Liability policy is an Occurrence policy and the Group Professional Liability policy is a Claims Made policy and that under both policies I am required to provide immediate written notice to the party designated in the policy of any incident, accident, occurrence, act, error, or omission that might lead to a claim, and that failure to provide such written notice may result in a denial of coverage under the policy.
- I acknowledge and accept that this coverage is provided on an Excess and Surplus lines basis where the carrier is not required to be licensed in our State of domicile, but is allowed to do business in our State on a non-admitted and unlicensed basis.
- I hereby acknowledge and declare that I have never been declined professional or general liability insurance, have never had a policy cancelled or non-renewed, and have never had special terms imposed.
- I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.
- I acknowledge and declare that I have read, understand and accept the Exclusions as set forth on page 9 of the Application.
- I acknowledge and declare that I have read, understand and accept the Fraud Warning as set forth on page 8 of the Application.

**\*\*NOTICE\*\***

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

Full Name of Applicant	Signature	Date (dd/mm/yyyy)
Michael E. ELLIOTT	<i>[Handwritten Signature]</i>	06/01/2020

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**PREMIUM CALCULATION INFORMATION FOR GENERAL LIABILITY**

**GROSS BUSINESS REVENUES (Before Expenses)**

Average Annual Sales (Excluding Travel, Water Instruction and Activities) \_\_\_\_\_

**PRICING**

General Liability	Non-Member (USD)	DAN Member (USD)
<input type="checkbox"/> Revenues less than \$50,000		
<input type="checkbox"/> Revenues of \$50,001 - \$100,000	\$970	\$923
<input type="checkbox"/> Revenues of \$100,001 - \$200,000	\$1,301	\$1,237
<input type="checkbox"/> Revenues of \$200,001 - \$300,000	\$1,811	\$1,722
<input type="checkbox"/> Revenues of \$300,001 - \$400,000	\$2,347	\$2,231
<input type="checkbox"/> Revenues of \$400,001 - \$500,000	\$2,811	\$2,672
<input type="checkbox"/> Revenues of \$500,001 - \$750,000	\$3,090	\$2,937
<input type="checkbox"/> Revenues of \$750,001 - \$1,000,000	\$3,396	\$3,228
<input type="checkbox"/> Revenues of \$1,000,001 - \$1,500,000	\$3,649	\$3,468
<input type="checkbox"/> Revenues over \$1,500,000	\$3,830	\$3,640
	Call	Call
<b>Options (please select any additional endorsement options)</b>		
<input type="checkbox"/> Lakes/Quarries	\$2,841	\$2,700
<input type="checkbox"/> Tour and Travel Agent Liability	\$131	\$125
<input type="checkbox"/> Terrorism	\$58	\$55
<input type="checkbox"/> Additional Location	N/C	N/C
<input type="checkbox"/> Employee Benefit	\$290	\$275

**PREMIUM CALCULATION INFORMATION FOR GROUP PROFESSIONAL**

Revenue from Water Instruction and Activities \$ 23,414.00

Group Professional Liability	Non-Member	DAN Member
<input checked="" type="checkbox"/> Revenues less than \$25,000	\$1,390	\$1,322
<input type="checkbox"/> Revenues of \$25,000 - \$50,000	\$1,868	\$1,775
<input type="checkbox"/> Revenues of \$50,001 - \$100,000	\$2,513	\$2,389
<input type="checkbox"/> Revenues of \$100,001 - \$150,000	\$3,259	\$3,097
<input type="checkbox"/> Revenues of \$150,001 - \$200,000	\$4,229	\$4,019
<input type="checkbox"/> Revenues of \$200,001 - \$300,000	\$5,070	\$4,818
<input type="checkbox"/> Revenues of \$300,001 - \$400,000	\$5,575	\$5,297
<input type="checkbox"/> Revenues of \$400,001 - \$500,000	\$6,130	\$5,824
<input type="checkbox"/> Revenues of \$500,001 - \$600,000	\$6,740	\$6,404
<input type="checkbox"/> Revenues of \$600,001 - \$700,000	\$7,412	\$7,042
<input type="checkbox"/> Revenues of \$700,001 - \$800,000	\$7,965	\$7,568
<input type="checkbox"/> Revenues of \$800,001 - \$900,000	\$8,561	\$8,134
<input type="checkbox"/> Revenues of \$900,001 - \$1,000,000	\$9,201	\$8,742
<input type="checkbox"/> Revenues over \$1,000,000	Call	Call
<b>Options (please select any additional endorsement options)</b>		
<input checked="" type="checkbox"/> Technical Dive Training	N/C	N/C
<input type="checkbox"/> Excess (\$2 million / \$4 million)	\$1,260	\$1,197
<input checked="" type="checkbox"/> Rebreather	N/C	N/C
<input checked="" type="checkbox"/> Unlimited Defense	N/C	N/C

\$1235  
 \$25  
 \$62  
 -----  
 \$1322

\* To receive the DAN Member discount rate, all dive professional under the Group Professional Liability policy must have an active individual/family DAN membership.

Business Name \_\_\_\_\_ Training Agency ID# \_\_\_\_\_

**Costs and Fees**

Cost of insurance includes Premium, Filing Fees and Applicable Taxes, each of which will be itemized on the Declarations page provided to each insured. All Premium, Filing Fees and Taxes are fully earned. There is no refund of earned premium, fees or taxes if an insured wishes to cancel coverage.

All Instructors, Assistant Instructors, Divemasters and Retired Instructors included under a Group Professional Liability policy must complete a separate application.

\* Please visit the website to download application.

**PREMIUM TOTALS**

- A. General Liability \$ \_\_\_\_\_
  - Options
  - a. Lakes/Quarries \$ \_\_\_\_\_
  - b. Tour and Travel Agent Liability \$ \_\_\_\_\_
  - c. Terrorism \$ \_\_\_\_\_
  - d. Employee Benefit \$ \_\_\_\_\_
  - e. Additional Location \$ \_\_\_\_\_ No Charge
  
- B. Professional Liability \$ 1322
  - Options
  - a. Technical Dive Training \$  No Charge
  - b. Excess Liability \$ \_\_\_\_\_
  - c. Rebreather Endorsement \$  No Charge
  - d. Unlimited Defense \$  No Charge

Total Premium Due \$ \_\_\_\_\_ \$ 0.00

Please indicate the preferred effective date (dd/mm/yyyy) renewing - policy renewal date: 04/JAN/2020 *mjn*

**PAYMENT OPTIONS**

- Check or Money Order # \_\_\_\_\_ Total (USD) \$ \_\_\_\_\_  
 Make checks payable to: DAN Services.  
 Send to: DAN Liability Insurance, 6 W. Colony Place, Durham, NC 27705-9030 USA
- Premium Financing Federal Tax ID # or FEIN # \_\_\_\_\_ 1223  
 Contact DAN Liability Insurance at LiabilityInsurance@DAN.org  
 or +1 (919)684-2948 for more information.

**Credit Card**

Card Holder Information: (Print or Type)

Card Holder Name Michael S Ellis

Billing Address 318 Park Ave

City Raegersville State/Province IN Zip/Postal 46106 Country \_\_\_\_\_

FAX \_\_\_\_\_ E-mail BottomsKDScuba@gmail.com

Card Type: (Check only one)  \_\_\_\_\_

Card # \_\_\_\_\_

Expires: \_\_\_\_\_

Total (USD) \$ 330.50 *down payment*

# **EXHIBIT 5**

Recvd 01/08

# GPL 106-12047



Business Name Bottoms Up Scuba Port Charlotte Training Agency ID # 60590

### DAN Commercial General Liability and Group Professional Liability Application

#### BUSINESS INFORMATION: (PRINT OR TYPE)

Primary Training Agency SOC TTI Training Agency ID # 25906  
 Legal Business Name Bottoms Up Scuba DAN Business Member # 2895246 ✓  
 Doing Business As Bottoms Up Scuba Port Charlotte  
 Contact Person/Title Renata Ellis Owner  
 Business Address 3781 Tamiami Trail Port Charlotte FL 33952  
 Mailing Address 3781 Tamiami Trail  
 City Port Charlotte State/Province FL Zip/Postal 33952 Country USA  
 Business Phone 941.627.3989 Cell Phone/Other 317.692.8221  
 FAX 941.627.0089 E-mail oston@supscuba2@gmail.com

Active 01/08/2020 -myw

#### GENERAL INFORMATION SECTION:

Applicant is:  Corporation  Partnership  S/C  Franchise  Non-Profit  Other  
 Responsible Party (Print Name and Title) Renata Ellis Owner  
 How long in business? 6 years  
 Total number of employees/subcontractors included in your group liability policy (if applicable)? \_\_\_\_\_  
 (Note - each employee and exclusive subcontractor must complete a group policy application and return completed documents to DAN, BRG)  
 Primary business location:  Same as above  If different, enter location address below:

Is primary location  Commercial Owned  Commercial Leased  Residential  
 Additional business locations?  Yes  No (If yes, please list physical address. Use another sheet if necessary.)  
 1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_

#### BUSINESS ACTIVITIES: (Please check all that apply)

- Air Fills  Hydroboosting  Rentals  Tours
- Product Sales  Training  Tank Inspections  Local Trade Shows
- Pool or Frontiers  Travel (more than 100 miles)  Travel (less than 100 miles)

#### Description of business activities/operations:

Sales & Service & Training

Do you sell or rent products "other than scuba?" (Please describe) NO

Business Name BOUYGUES (USA) INC. Training Agency ID# 60590

**DAN Commercial General Liability and Group Professional Liability Application**

**KNOWN CLAIM DECLARATION**

Applicant must complete and sign one of the following claims declarations. Read carefully and complete either 1 (No Claims Declaration) or 2 (Disclosure of Known Claim), not both.

**NO CLAIMS DECLARATION**

I, Bonnie Ellis, have no knowledge of any incident, accident, occurrence, act, error, or omission (collectively "Event") that might lead to, or has already led to, a legal action or claim except those matters already reported to DAN Services, Inc. I understand that I must report any known Event to my previous insurer and that this policy does not cover any Event known on or before the effective date of this coverage. I also agree and understand that any Event which occurred prior to the effective date of this coverage which becomes a legal action or claim within 90 days of expiration of the previous policy must be reported and will be excluded under this policy. By applying for this insurance, I hereby authorize DAN Services, Inc. to release to the underwriters any information pertinent to the investigation of any Event, legal action or claim.

Signed Bonnie Ellis

Date: 08/01/2020  
(dd/mm/yyyy)

**DISCLOSURE OF KNOWN CLAIM**

I, \_\_\_\_\_, have knowledge of an incident, accident, occurrence, act, error, or omission (collectively "Event") not previously reported to DAN Services, Inc., that might lead to, or has already led to, a legal action or claim against the Applicant and I have disclosed such Event(s) below. Other than the event(s) disclosed below and those previously reported to DAN Services, Inc., I have no knowledge of any other Event that might lead to, or has already led to, a legal action or claim against the Applicant. I understand that I must report any known Event to my previous insurer and that this policy does not cover any Event known on or before the effective date of this coverage. I also agree and understand that any Event which occurred prior to the effective date of this coverage which becomes a legal action or claim within 90 days of expiration of the previous policy must be reported and will be excluded under this policy. By applying for this insurance, I hereby authorize DAN Services, Inc. to release to the underwriters any information pertinent to the investigation of Event, legal action or claim.

Name of Any Person Injured: \_\_\_\_\_

Name of Dive Professional: \_\_\_\_\_

Date of Incident: \_\_\_\_\_ Incident Report Filed:  Yes  No

If yes, please send copies of incident report or any other appropriate documentation to [LiabilityInsurance@danz.org](mailto:LiabilityInsurance@danz.org)

Fatality:  Yes  No Serious Injury:  Yes  No In Training:  Yes  No

Amount of Loss (with defense cost) \_\_\_\_\_ Insurance Carrier \_\_\_\_\_

Location of Incident \_\_\_\_\_

Brief Summary of Incident \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_

Date: \_\_\_\_\_  
(dd/mm/yyyy)

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**SCHEDULE OF ADDITIONAL NAMED INSUREDS**

Each Entity to be covered by this policy must be listed as an Additional Named Insured.

- There is no charge for Additional Named Insureds, but all must be listed to be covered
- Each legal entity such as retailers, resort/dive operators, dive boats, educational institutions, hotels, motels, resorts, pool (facility) owners, property owners, government entities and marinas must be listed to be covered. Show relationship between Insured and Additional Named Insureds.
- Legal entities other than those listed above, when listed, will be reviewed by the underwriter; inclusion on your Certificate of Insurance will indicate that coverage is in effect.
- List business relationship, not personal relationships; e.g., Paul Araberman (boat owner) not Paul Anderson (personal friend).
- Instructors, Assistant Instructors, Dive Masters and Retired Instructors may not be Additional Named Insureds but must purchase a separate personal professional liability policy.
- All Instructors, Assistant Instructors, Dive Masters and Retired Instructors included under a Group Professional Liability policy must complete a separate application.
- Please visit the website to download application.

NAME Hanzoo Divers  
 ADDRESS 10900 Overseas Hwy  
 CITY/ST(Province) Key Largo  
 ZIP(Postal)/COUNTRY 33037  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE 305-453-3535

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME Lake Denton  
 ADDRESS 790 Lake Denton Rd  
 CITY/ST(Province) Bron Park FL  
 ZIP(Postal)/COUNTRY 33825  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE 863.453.3627

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/ST(Province) \_\_\_\_\_  
 ZIP(Postal)/COUNTRY \_\_\_\_\_  
 RELATIONSHIP \_\_\_\_\_  
 EMAIL OR PHONE \_\_\_\_\_

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**DAN Commercial General Liability and Group Professional Liability Application**

**DECLARATION SECTION**

**Applicant must complete and sign this Declaration Section. Read carefully, check the boxes next to those statements that apply and sign where indicated.**

Your duty of disclosure information and the answers given by you to the specific questions in the Application form will be treated by the Underwriters as applying to each person or legal entity seeking coverage, including each principal, partner or director.

Please confirm the following with a check.

- I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.
- I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.
- I hereby agree and accept that this Declaration and the other parts of this Application shall be the basis of the contract between both parties if entered into.
- I hereby agree and accept that the Commercial General Liability policy is an Occurrence policy and the Group Professional Liability policy is a Claims Made policy and that under both policies I am required to provide immediate written notice to the party designated in the policy of any incident, accident, occurrence, act, error, or omission that might lead to a claim, and that failure to provide such written notice may result in a denial of coverage under the policy.
- I acknowledge and accept that this coverage is provided on an Excess and Surplus Lines basis where the carrier is not required to be licensed in our State of domicile, but is allowed to do business in our State on a non-admitted and unlicensed basis.
- I hereby acknowledge and declare that I have never been declined professional or general liability insurance, have never had a policy cancelled or non-renewed, and have never had special terms imposed.
- I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.
- I acknowledge and declare that I have read, understand and accept the Exclusions as set forth on page 9 of the Application.
- I acknowledge and declare that I have read, understand and accept the Fraud Warning as set forth on page 8 of the Application.

**\*\*NOTICE\*\***

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

Full Name of Applicant	Signature	Date (dd/mm/yyyy)
Ronald Ellis	Ronald Ellis	08/02/2020

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

**PREMIUM CALCULATION INFORMATION FOR GENERAL LIABILITY**

**GROSS BUSINESS REVENUES (Before Expenses)**

Average Annual Sales (Excluding Travel, Water Instruction and Activities) \_\_\_\_\_

**PRICING**

	Non-Member (USD)	DAN Member (USD)
General Liability		
<input type="checkbox"/> Revenues less than \$50,000	\$970	\$923
<input type="checkbox"/> Revenues of \$50,001 - \$100,000	\$1,301	\$1,237
<input type="checkbox"/> Revenues of \$100,001 - \$200,000	\$1,811	\$1,722
<input type="checkbox"/> Revenues of \$200,001 - \$300,000	\$2,347	\$2,231
<input type="checkbox"/> Revenues of \$300,001 - \$400,000	\$2,811	\$2,672
<input type="checkbox"/> Revenues of \$400,001 - \$500,000	\$3,090	\$2,937
<input type="checkbox"/> Revenues of \$500,001 - \$750,000	\$3,396	\$3,228
<input type="checkbox"/> Revenues of \$750,001 - \$1,000,000	\$3,649	\$3,468
<input type="checkbox"/> Revenues of \$1,000,001 - \$1,500,000	\$3,830	\$3,640
<input type="checkbox"/> Revenues over \$1,500,000	Call	Call
Options (please select any additional endorsement options)		
<input type="checkbox"/> Lakes/Quarries	\$2,841	\$2,700
<input type="checkbox"/> Tour and Travel Agent Liability	\$131	\$125
<input type="checkbox"/> Terrorism	\$58	\$55
<input type="checkbox"/> Additional Location	N/C	N/C
<input type="checkbox"/> Employee Benefit	\$298	\$275

**PREMIUM CALCULATION INFORMATION FOR GROUP PROFESSIONAL**

Revenue from Water Instruction and Activities \$20,000.00

	Non Member	DAN Member
Group Professional Liability		
<input checked="" type="checkbox"/> Revenues less than \$25,000	\$1,390	\$1,322
<input type="checkbox"/> Revenues of \$25,000 - \$50,000	\$1,868	\$1,775
<input type="checkbox"/> Revenues of \$50,001 - \$100,000	\$2,513	\$2,389
<input type="checkbox"/> Revenues of \$100,001 - \$150,000	\$3,259	\$3,097
<input type="checkbox"/> Revenues of \$150,001 - \$200,000	\$4,030	\$4,019
<input type="checkbox"/> Revenues of \$200,001 - \$300,000	\$5,070	\$4,818
<input type="checkbox"/> Revenues of \$300,001 - \$400,000	\$5,573	\$5,297
<input type="checkbox"/> Revenues of \$400,001 - \$500,000	\$6,130	\$5,824
<input type="checkbox"/> Revenues of \$500,001 - \$600,000	\$6,740	\$6,404
<input type="checkbox"/> Revenues of \$600,001 - \$700,000	\$7,412	\$7,042
<input type="checkbox"/> Revenues of \$700,001 - \$800,000	\$7,805	\$7,568
<input type="checkbox"/> Revenues of \$800,001 - \$900,000	\$8,361	\$8,134
<input type="checkbox"/> Revenues of \$900,001 - \$1,000,000	\$9,201	\$8,742
<input type="checkbox"/> Revenues over \$1,000,000	Call	Call
Options (please select any additional endorsement options)		
<input checked="" type="checkbox"/> Technical Dive Training	N/C	N/C
<input type="checkbox"/> Excess (\$2 million / \$4 million)	\$1,280	\$1,197
<input checked="" type="checkbox"/> Rebreather	N/C	N/C
<input checked="" type="checkbox"/> Unlimited Defense	N/C	N/C

\$1235  
 \$25  
 \$62  


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 \$1322

\* To receive the DAN Member discount rate, all dive professional under the Group Professional Liability policy must have an active individual/family DAN membership.

Business Name \_\_\_\_\_ Training Agency ID # \_\_\_\_\_

Costs and Fees

Cost of insurance includes Premium, Filing Fees and Applicable Taxes, each of which will be itemized on the Declaration page provided to each insured. All Premium, Filing Fees and Taxes are fully earned. There is no refund of earned premium, fees or taxes if an insured wishes to cancel coverage.

All Instructors, Assistant Instructors, Divemasters and Retired Instructors included under a Group Professional Liability policy must complete a separate application.  
\* Please visit the website to download application.

PREMIUM TOTALS

A. General Liability	\$ _____
Options	
a. Lakes/Quarries	\$ _____
b. Tour and Travel Agent Liability	\$ _____
c. Terrorism	\$ _____
d. Employee Benefit	\$ _____
e. Additional Location	\$ _____ No Charge
 B. Professional Liability	\$ <u>1322</u>
Options	
a. Technical Dive Training	\$ <input checked="" type="checkbox"/> No Charge
b. Excess Liability	\$ _____
c. Rebreather Endorsement	\$ <input checked="" type="checkbox"/> No Charge
d. Unlimited Defense	\$ <input checked="" type="checkbox"/> No Charge

Total Premium Due \$ 1322 ✓ \$ 0.00

Please indicate the preferred effective date (dd/mm/yyyy) date received: 01/08/2020 - mjr

PAYMENT OPTIONS

- Check or Money Order # \_\_\_\_\_ Total (USD) \$ \_\_\_\_\_  
Make checks payable to DAN Services.  
Send to: DAN Liability Insurance, 6 W. Colony Place, Durham, NC 27703-9030 USA
- Premium Financing Federal Tax ID # or FEIN # \_\_\_\_\_ 1223  
Contact DAN Liability Insurance at LiabilityInsurance@DAN.org  
or +1 (919)694-2918 for more information.

*confirmed: same as Bottoms Up Scuba Indy -mjr*

Credit Card

Card Holder Information (Print or Type)

Card Holder Name Renata Ellis  
 Billing Address 2906 Fields Parkway SE  
 City Fort Charlotte State FL Zip/Postal 33452 Country USA  
 Fax 941-627-0089 Email bottomsupscubafl@gmail.com

Card Type: (Check only one)

Card # | \_\_\_\_\_

Expires: | \_\_\_\_\_

Total (USD) \$ 550.00 *down payment*

*payment processed via alternate cc provided on Bottoms Up Scuba Indy policy: see attached email -mjr*

# **EXHIBIT 6**

**DAN Professional Liability Insurance Application**

PERSONAL INFORMATION			
<b>First Name</b> Michael	<b>Last Name</b> Ellis	<b>Date of Birth</b> [REDACTED] 971	
<b>Street Address</b> 8915 S Keystone Ave Suite A			
<b>City</b> Indianapolis	<b>State</b> IN	<b>Zip</b> 46227	<b>Country</b>
<b>Phone</b> 31741773223	<b>Email</b> bottomsupscuba@gmail.com		<b>Email</b> 2654158
YOUR SELECTED COVERAGE			
<b>Professional Status</b> Instructor			<b>Premium (USD)</b> US\$625
<b>Option</b> Technical Dive Training			<b>Premium (USD)</b> US\$0
<b>Option</b> Equipment Liability			<b>Premium (USD)</b> US\$271
<b>Option</b> Excess Liability(\$2 million / \$4 million)			<b>Premium (USD)</b> US\$432
<b>Option</b> Rebreather Endorsement			<b>Premium (USD)</b> US\$0
<b>Rebreather Mnf Name</b> prism 2	<b>Rebreather Model</b> hollis	<b>Rebreather Cert #</b> 1047947	<b>Rebreather Training Agency</b> SDI
PREFERRED EFFECTIVE DATE			
Oct-15-2020 12:01AM EST			

**NO CLAIMS DECLARATION**

I, Michael Ellis, have no knowledge of any incident, accident, occurrence, act, error, or omission (collectively "Event") that might lead to, or has already led to, a legal action or claim except those matters already reported to DAN Services, Inc. I understand that I must report any known Event to my previous insurer and that this policy does not cover any Event known on or before the effective date of this coverage. I also agree and understand that any Event which occurred prior to the effective date of this coverage which becomes a legal action or claim within 90 days of expiration of the previous policy must be reported and will be excluded under this policy. By applying for this insurance, I hereby authorize DAN Services, Inc. to release to the underwriters any information pertinent to the investigation of any Event, legal action or claim.

I acknowledge and declare that I have read, understand and accept the above "No Claims Declaration".

**SCHEDULE OF ADDITIONAL NAMED INSURED**

- There is no charge for Additional Named Insured, but all must be listed to be covered
- Each legal entity such as retailers, resort dive operators, dive boats, educational institutions, hotels, motels, resorts, pool (facility) owners, property owners, government entities and marinas must be listed to be covered. Show relationship between Insured and Additional Named Insured.
- Legal entities other than those listed above, when listed, will be reviewed by the underwriter; inclusion on your Certificate of Insurance will indicate that coverage is in effect.
- List business relationship, not personal relationship: e.g., Paul Anderson (boat owner) not Paul Anderson (personal friend)
- Instructors, Assistant Instructors, Divemasters and Retired Instructors may not be Additional Named Insured but must purchase a separate personal professional liability policy.

Name	Address	Relationship	Email	Phone
zachary ellis	1050 Laguna Lane Greenwood, IN 46143	son and instructor	Bottomsupscuba@gmail.com	3174177323
Bryant ellis	1050 laguna lane greenwood, IN 46143	son and instructor	Bottomsupscuba@gmail.com	3174177323
Domingo Saravia	5827 furnas road indianapolis, IN 46221	works with me	Bottomsupscuba@gmail.com	3174177323
National Association of Underwater Instructors (NAUI)		Training Agency	nsgins@nauai.org	800 553-6284

**DECLARATION SECTION**

*The information you disclose and the answers given by you to the specific questions in the Application form will be treated by the Underwriters as applying to each person or legal entity seeking coverage, including each principal, partner or director.*

**Please confirm the following with a check.**

- I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.
- I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.
- I agree and accept that this Declaration shall be the basis of the contract between both parties if entered into.
- I agree and accept that this is a Claims Made policy and that I am required to provide immediate written notice to the party designated in the policy of any incident, accident, occurrence, act, error, or omission that might lead to a claim, and that failure to provide such written notice may result in a denial of coverage under the policy.
- I acknowledge and accept that this coverage is provided by DAN Risk Retention Group, Inc. and understand that the carrier is not required to be licensed in our State of domicile, but is allowed to do business in our State on a non-admitted and unlicensed basis.
- I acknowledge and declare that I have never been declined professional liability insurance, have never had a policy cancelled, and have never had special terms imposed.
- I acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.
- I acknowledge and declare that I have read, understand and accept the Exclusions as set forth in the "Exclusions" section of the Application.
- I acknowledge and declare that I have read, understand and accept the Fraud Warning as set forth in the "Fraud Warning" section of the Application.
- I acknowledge and declare that I have read, understand and accept the [Shareholders Agreement](#) as a condition of eligibility for coverage under the DAN RRG program.
- I acknowledge and declare that I have read, understand and accept the [Proxy](#) as a condition of eligibility for coverage under the DAN RRG program.
- I acknowledge and declare that by completing this Online Application I am agreeing to the use of digital signatures and the delivery of digital records related to this transaction in accordance with ESIGN (Electronic Signatures in Global and National Commerce Act). I further confirm that I have the hardware and software described in the [ESign Disclosure & Consent](#), that I am able to receive and review electronic records, and that I have an active email account.

**\*\*NOTICE\*\***

This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your Risk Retention Group.

**FRAUD WARNINGS**

**GENERAL STATEMENT** - Any person who, with the intent to defraud or knowingly facilitates a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement, or conceals information for the purpose of misleading may be guilty of insurance fraud and subject to criminal and/or civil penalties.

**AK, AL, AR, CA, CT, DC, DE, GA, IA, ID, IN, IL, MA, MO, MS, MT, NC, ND, NE, NJ, NH, NM, ND, OK, PA, RI, TN, TX, WI (GROUP)** - Fraud Warning: Any person who knowingly and with intent, defrauds or deceives any insurance company by submitting an application or filing a claim that contains any false or incomplete information, or conceals information for the purpose of misleading, is guilty of insurance fraud, which is a felony and subject to criminal and/or civil penalties

**Notice to Indiana** - Any person who knowingly makes any false or fraudulent statement or presentation in or with reference to any application for life insurance or for the purpose of obtaining any fee, omission, money or benefit from or in any company transacting business under this article, commits a class A misdemeanor.

## EXCLUSIONS

Coverage is NOT afforded:

1. for any **CLAIM** by an **INSURED** against another **INSURED**. However, this exclusion does not apply to any **CLAIM** brought by an **INSURED** who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
2. for any **CLAIM** made by an employer against any **INSURED** who is employed by or representing such employer.
3. for any obligation for which the **INSURED** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law (including occupational disease and cumulative trauma) including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation.
4. for **BODILY INJURY** to any employee of any **INSURED** arising out of and in the course of his/her employment by the **INSURED**, including any obligation to indemnify another in whole or in part, for such **BODILY INJURY**. This exclusion does not apply to any **CLAIM** brought by an employee who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**.
5. for liability assumed by an **INSURED** under any contract or agreement.
6. for **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, operation, use, loading or unloading or entrustment to others of any automobile, aircraft or watercraft. This exclusion applies even if the **CLAIM** against any **INSURED** alleges negligence or other wrongdoing in the supervision, employment, training or monitoring of others by the **INSURED**. This exclusion does not apply to the ingress and/or egress from any watercraft while any **PARTICIPANT** is under the **INSURED**'s supervision or instruction, or involving the operation of a kayak or paddleboard.
7. for **PROPERTY DAMAGE** to:
  - a. property owned or occupied by or rented to the **INSURED**;
  - b. Property used by the **INSURED**; or
  - c. Property in the care, custody or control of the **INSURED** or property over which the **INSURED** is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the **INSURED**.)
8. for any obligation to pay fines, judicial sanctions, penalties, punitive and/or exemplary damages, or multiples of compensatory damages, whether at common law or by statute.
9. for any **CLAIM** for which notice was provided to another insurer prior to the **POLICY PERIOD**.
10. for any **CLAIM** arising out of an **EVENT** occurring prior to the **POLICY PERIOD**, if prior to the effective date of the policy, any **INSURED** had a reasonable basis to foresee that a **CLAIM** would be made against them.
11. for any **CLAIM** arising out of an **EVENT** commencing prior to the **POLICY PERIOD** for which coverage is available under an occurrence based liability policy issued by the Underwriters or any other insurer.
12. for any **CLAIM** arising out of **BODILY INJURY** or **PROPERTY DAMAGE** expected or intended from the standpoint of the **INSURED**. This exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** resulting from the use of reasonable force to protect persons or property.
13. for any **CLAIM** arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **CLAIM**.
14. for any **CLAIM** which is directly or indirectly attributed to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **INSURED**.
15. for any **CLAIM** arising out of discrimination by the **INSURED**, including but not limited to discrimination on the basis of age, color, race, sex, sexual orientation, creed, national origin, marital status or mental or physical disability. However, this exclusion does not apply if instruction is denied for valid safety reasons. Valid safety reasons include, but are not limited to, concern over medical history of a student, disability of a student or determination that a student lacks the physical ability or mental aptitude to dive.
16. for any **CLAIM** arising out of infringement of trademark, trade dress, trade name, patent, copyright or other intellectual property rights.
17. for any **CLAIM** based on the insolvency or bankruptcy of any person, firm or organization.
18. for any **CLAIM** arising out of the performance of a criminal act or caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substance.
19. Pollutants
  - a. for any **CLAIM** relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.
  - b. for any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the **INSURED** or by another.

"Pollutants" means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

20. for any **CLAIM** arising from acts other than those specifically approved and sanctioned by a national training agency (to the extent that such an agency exists) for aquatic, organizational instruction, orientation or supervision.
21. for any **CLAIM** arising out of the function or failure of any product, including but not limited to SCUBA and snorkeling equipment, whether owned, borrowed, or rented by an **INSURED**.
22. for any **CLAIM** arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities. This exclusion does not apply to public safety diving or scientific research activities.
23. for any **CLAIM** arising out of **ABUSE OR MOLESTATION**. For purposes of this exclusion, **ABUSE OR MOLESTATION** means:
  - a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, any **INSURED**, an **INSURED**'S employee, or any other person, or
  - b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom any **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

**ABUSE OR MOLESTATION** includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm

24. abuse, molestation or harassment of any type, or lewd, immoral or sexual behavior, whether or not any such act is intended to lead to, or culminate in, any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons, **PARTICIPANTS**, or from any cause whatsoever.
25. for any **CLAIM** where an **INSURED** intentionally left or permitted any uncertified student to be unattended. This exclusion does not apply to a navigation exercise on the second or subsequent training dives after the **INSURED** has evaluated the student's required skills.
26. for any **CLAIM** where a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed a medical history form prior to in-water training or supervision. Furthermore, coverage is excluded for any **CLAIM** where the medical history form of the **PARTICIPANT** indicates any condition contrary to safe participation in any in-water activities and the **PARTICIPANT** has not obtained medical approval by a licensed physician (who is not the **PARTICIPANT** or the parent and/or legal guardian of a **PARTICIPANT**) based on a medical examination prior to any in-water training or supervision.
27. for any **CLAIM** where, prior to the initiation of any training or supervision, a **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) has not completed and signed a written release of liability/assumption of risk form developed by or approved by the certification agency through which the training or supervision was offered and naming the **INSURED** as a released party.
28. for any **CLAIM** in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any **CLAIM** in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of any **INSURED**.
29. for any **CLAIM** where the written release signed does not include an acknowledgement that the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) knows that the dive site is remote and that a recompression chamber may not be readily available, and they still want to continue their training and assume the risk in the absence of a recompression chamber.
30. for any **CLAIM** arising out of any diving activity that is not planned within accepted recreational diving limits. Recreational dives are defined as dives: (1)

planned to 130 feet or 40 meters or shallower; (2) planned without mandatory stage decompression (safety stops are acceptable); and (3) made using compressed air or oxygen enriched air (nitrox) only.

31. for any **CLAIM** arising out of an **EVENT** involving any diving activities in which the **INSURED** was not an active member in good standing with their certification agency at the time of the **EVENT**.
32. for any **CLAIM** arising out of any **EVENT** involving any training or supervisory dive conducted by the **INSURED** that was not in compliance with the standards, procedures and policies of the certification agency that sanctioned the training or supervisory diving activity involved.
33. For any **CLAIM** arising out of any **EVENT** involving the **INSURED's** conduct of an introductory experience program (any program designed to introduce uncertified divers to recreational SCUBA diving via a supervised, controlled open water experience) that was not in compliance with the standards, procedures and policies of the certification agency that sanctioned the training or diving activity involved.
34. for any **CLAIM** involving Technical Training and/or Technical Training Dives where the **INSURED** is not a technically certified professional or where the **INSURED** is a technically certified professional and exceeds depths for which the **INSURED** is trained and certified to teach and/or supervise.
35. for any **CLAIM** involving SCUBA certification provided to anyone under the age of 10, except those courses that are taught in confined water only (e.g. swimming pools) and such may be offered to anyone age 7 and older.
36. for any **CLAIM** involving the failure of an instructor and/or dive store to retain all records relating to individual **PARTICIPANTS** for a minimum of five (5) years. Records means records used for the purpose of recording the **PARTICIPANT's** progress and records of knowledge tests for the purpose of evaluating the **PARTICIPANT's** understanding of the instructional material.
37. for any **CLAIM** involving an **INSURED** who does not have appropriate training and have all appropriate certifications to teach a course, including a course in First Aid.
38. for any **CLAIM** in any way caused or contributed to by nuclear reaction, nuclear radiation or radioactive contamination.
39. for any **CLAIM** involving any liability as respects access or disclosure of confidential or personal information or data-related liability, which shall mean damages, or loss, defense costs, other costs or expenses because of **BODILY INJURY** or **PROPERTY DAMAGE** arising directly or indirectly out of:
  - a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
  - b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by the insured or others arising out of that which is described in paragraph a. or b. above. Further, as used in this exclusion, "electronic data" means information, facts or programs stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

40. **BODILY INJURY** or **PROPERTY DAMAGE** arising out of any action or omission that violates or is alleged to violate:
  - a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
  - b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
  - c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
  - d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.



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<b>FILE NAME</b>	DAN PL - 1602673518.86523
<b>DOCUMENT ID</b>	dd80b622161bbd440e1772b8095ccd9d0b5b0dfc

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Michael Ellis

bottomsupscuba@gmail.com

User ID: 383232323238393438

✕ 

IP: 68.57.224.189

October 14th, 2020 3:17 PM UTC

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<b>TITLE</b>	DAN PL - 1602673518.86523
<b>FILE NAME</b>	1602673518.86523.pdf
<b>DOCUMENT ID</b>	dd80b622161bbd440e1772b8095ccd9d0b5b0dfc
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Completed

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**This document was signed on apps.dan.org**

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### Document History



SENT

**10 / 14 / 2020**

15:16:37 UTC

Sent for signature to Michael Ellis  
(bottomsupscuba@gmail.com) from em@dan.org  
IP: 24.171.169.242



VIEWED

**10 / 14 / 2020**

15:16:39 UTC

Viewed by Michael Ellis (bottomsupscuba@gmail.com)  
IP: 68.57.224.189



SIGNED

**10 / 14 / 2020**

15:17:39 UTC

Signed by Michael Ellis (bottomsupscuba@gmail.com)  
IP: 68.57.224.189



COMPLETED

**10 / 14 / 2020**

15:17:39 UTC

The document has been completed.

# **EXHIBIT 7**

BOTTOMS UP SCUBA INDY LLC,  
MICHAEL ELLIS, and RENATA ELLIS  
Plaintiffs/Counter-defendants,

vs.

JENNIFER DOWNEY and PAUL C.  
BURRIS, III,  
Defendant/Counterclaimant,

IN THE MONGOMERY SUPERIOR COURT 3  
CAUSE NO. 54D02-1905-CT-000561

**AMENDED COMPLAINT FOR DEFAMATION, TORTIOUS INTERFERENCE WITH  
BUSINESS RELATIONSHIP, TORTIOUS INTERFERENCE WITH CONTRACT,  
AND DAMAGES**

Come now the Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC, MICHAEL ELLIS, and RENATA ELLIS, by counsel, and for their amended complaint against the Defendant, JENNIFER M. DOWNEY, allege and states as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, BOTTOMS UP SCUBA-INDY, LLC (“Bottoms Up”) is an Indiana limited liability company with its principal office address at 310 Park Ave, Bargersville, IN, 46106.

2. MICHAEL ELLIS and RENATA ELLIS are individuals, members of Bottoms Up and citizens of Indiana who were certified by PADI also known as Professional Association of Diving Instructors, to instruct for a fee, students interested in obtaining scuba diving certifications for both open water and instructor.

3. Bottoms Up was certified by PADI, but, due to actions of defendants, is no longer certified by PADI.

4. Defendant, JENNIFER M. DOWNEY, is a citizen of Indiana, and resides at 1536 S. Nucor Road, Crawfordsville, IN, 46052.

5. Defendant, PAUL C. BURRIS, III is a citizen of Indiana and resides at 162 West Harriman Ave., Bargersville, IN, 46106.

6. The Defendant JENNIFER M. DOWNEY, was a student of the Plaintiffs and received her PADI Instructors license after completing the course work provided by the Plaintiffs;

7. The Defendant PAUL C. BURRIS, III, was a student of the Plaintiffs and received his PADI Instructors license after completing the course work provided by the Plaintiffs;

#### **COUNT I: DEFAMATION**

8. Plaintiffs incorporate by reference the allegations previously set forth in this Complaint.

9. Defendant, JENNIFER M. DOWNEY, has made false and fraudulent statements regarding her license that she obtained from BOTTOMS UP SCUBA-INDY, LLC, to PADI, and she has claimed in writing that said Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS, lied on paperwork presented to PADI that she did not have the required 100 dives that are required for an instructor's license and secondly, she did not have a properly executed physician's statement indicating she was clear health-wise to dive. Defendant, JENNIFER M. DOWNEY, further claims that said Plaintiff, MICHAEL ELLIS, committed fraud by signing a physician statement indicating that she had health clearance when in fact she claims she did not.

8. Defendant, JENNIFER M. DOWNEY, has made false and fraudulent statements orally and in writing with the purpose of destroying the good name and economic

business of the Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS.

9. Defendant, PAUL C. BURRIS, III has claimed in writing that said Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS, lied on paperwork presented to PADI that he did not have a properly executed physician's statement indicating she was clear health-wise to dive. Defendant, PAUL C. BURRIS, III, further claims that said Plaintiff, MICHAEL ELLIS, committed fraud by signing a physician statement indicating that she had health clearance when in fact she claims she did not.

10. Defendant, JENNIFER M. DOWNEY has claimed in writing that said Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS, lied on paperwork presented to PADI that she did not have the required 100 dives that are required for an instructor's license and secondly, she did not have a properly executed physician's statement indicating she was clear health-wise to dive. Said Defendant, JENNIFER M. DOWNEY, further claims that said Plaintiff, MICHAEL ELLIS, committed fraud by signing a physician statement indicating that she had health clearance when in fact she claims she did not.

11. Defendants, JENNIFER M. DOWNEY and PAUL C. BURRIS, III maliciously communicated with defamatory imputation.

12. Defendants, JENNIFER M. DOWNEY and PAUL C. BURRIS, III published the communications to PADI, alleging misconduct in a Plaintiffs' trade, profession, office, or occupation.

13. Plaintiffs were damaged by the maliciously communicated statements with defamatory imputation published to PADI by Defendants JENNIFER M. DOWNEY and PAUL C. BURRIS, III.

14. Defendant, JENNIFER M. DOWNEY, has maliciously libeled and slandered the good name of the Plaintiffs BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS, with other dive instructors and also with PADI.

15. Defendant, PAUL C. BURRIS, III, has maliciously libeled and slandered the good name of the Plaintiffs BOTTOMS UP SCUBA-INDY, LLC and MICHAEL ELLIS and RENATA ELLIS, with other dive instructors and also with PADI.

16. Said libel and slander has been made directly for the purpose of causing economic ruin to the business and reputation of the Plaintiffs, and/or for the purpose of obtaining those students that would otherwise go to the Plaintiff's for classes.

17. All of the above has occurred in the state of Indiana within the last year.

#### **COUNT II: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

18. Plaintiffs incorporate by reference the allegations previously set forth in this Complaint.

19. Plaintiffs had a valid business relationship with PADI.

20. Defendants had knowledge of Plaintiffs' business relationship with PADI.

21. Defendants, illegally and without justification, intentionally interfered with Plaintiffs' relationship with PADI.

22. Plaintiffs have been damaged by Defendants' wrongful interference with Plaintiffs' relationship with PADI.

#### **COUNT III: TORTIOUS INTERFERENCE WITH CONTRACT**

23. Plaintiffs incorporate by reference the allegations previously set forth in this Complaint.

24. Plaintiffs had a valid and enforceable contract with PADI.

25. Defendants had knowledge of Plaintiffs' contract with PADI.

26. Defendants, illegally and without justification, intentionally interfered with Plaintiffs' relationship with PADI.

27. Plaintiffs have been damaged by Defendants' wrongful interference with Plaintiffs' relationship with PADI.

WHEREFORE, said Plaintiffs, BOTTOMS UP SCUBA-INDY, LLC AND MICHAEL ELLIS AND RENATA ELLIS, pray for judgment against the Defendant, JENNIFER M. DOWNEY, for the amount of One Hundred Fifty Thousand Dollars, (\$150,000.00) actual damages for punitive damages to be determined, for Attorney's fees, and all other just and proper relief.

Respectfully submitted,

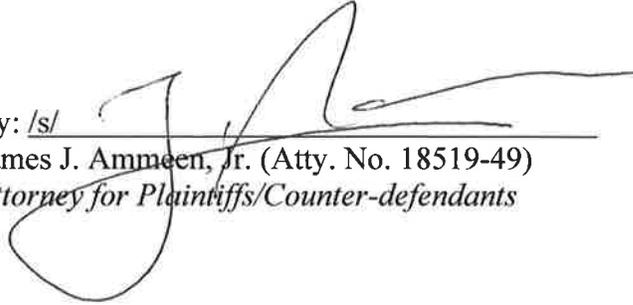
By: /s/James J. Ammeen, Jr.  
James J. Ammeen, Jr. (Atty. No. 18519-49)  
*Attorney for Plaintiffs/Counter-defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Amended Complaint for Defamation, Tortious Interference with Business Relationship, Tortious Interference with Contract, and Damages* was served on the following persons via the Court's electronic filing and service system or U.S. Mail First Class, on this December 13, 2019, at the following address:

Tyler M. Nichols  
Taylor, Chadd, Minnette, Schneider & Clutter, P.C.  
tnichols@tcmsclaw.com

Paul C. Burris, III  
162 West Harriman Ave.  
Bargersville, IN, 46106

By:  /s/  
James J. Ammeen, Jr. (Atty. No. 18519-49)  
*Attorney for Plaintiffs/Counter-defendants*

AMMEEN VALENZUELA ASSOCIATES LLP  
Barrister Building, Suite 750  
155 E. Market St.  
Indianapolis, IN 46204-3253  
317-423-7505 (voice) | 800-613-4707 (fax)  
jamesa@avalawin.com

# **EXHIBIT 8**



115 Central Island Street, Suite 100  
Charleston, South Carolina 29492

December 15, 2020

**Michael Ellis**

Bottoms Up Scuba Indy, LLC  
8915 S. Keystone Ave.  
Suite C  
Indianapolis, IN 46227

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Sent via email:

[mike@bottomsupscubaindy.com](mailto:mike@bottomsupscubaindy.com)

Re: DAN RRG Policy No. GPL 106-12043  
Effective Date: 4-Jan-2020 ("Policy")

Dear Mr. Ellis:

In Bottoms Up Scuba Indy, LLC's ("Company") application ("Application") for the above-referenced Policy, you confirmed the following statements, among others:

I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.

I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.

I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.

It has come to our attention that the Company and you had been removed from the Professional Association of Dive Instructors prior to applying for the Policy, and that your statement in the Application that no such removal had occurred was untrue. This misrepresentation was material, and the Policy would not have been issued absent the misrepresentation.

Bottoms Up Scuba Indy, LLC

December 15, 2020

Page -2-

Accordingly, the Policy is hereby rescinded, retroactive to the Effective Date of January 4, 2020. We have enclosed a check in the amount of One Thousand Three Hundred Twenty Two and 00/100 (\$1,322.00) as a refund of the premiums, taxes, and fees previously paid for the Policy since the Effective Date. If you believe that you have paid any additional amounts for the Policy since the Effective Date, please let us know immediately.

Because the Policy has been rescinded, neither the Company nor any additional insured has any rights under the Policy. Therefore, although we previously retained counsel to defend the Company against a claim relating to the death of Donna Kishbaugh that occurred on or about October 12, 2020 ("Claim"), we have no further obligations under the Policy, with respect to the Claim or otherwise, and will not provide any indemnity, or pay any additional attorneys' fees or other costs, relating to the Claim or otherwise. We reserve our right to seek reimbursement, including from the Company and/or you, for all such attorneys' fees and costs that have already been incurred. If the Company wishes to obtain legal counsel to defend itself against the Claim, it is responsible for retaining and paying such counsel on its own.

We may have additional grounds for rescission of the Policy and/or to pursue recovery of costs we have incurred arising out of the misrepresentations in the Application. We expressly reserve all rights available under the Policy and at law to rescind the Policy and/or deny coverage on any of the foregoing bases or additional and/or alternative grounds as other terms, conditions, provisions, exclusions, and endorsements, as well as any statements, representations, or warranties in connection with the Policy Application, or applicable law, are found to apply. Our position regarding this matter is based on the presently known facts, and we reserve the right to supplement our position based upon any facts not presently in our possession. Nothing herein shall constitute a waiver of any of our rights, all of which we expressly reserve.

If you have any questions, please do not hesitate to contact me.

Sincerely,

**DAN RISK RETENTION GROUP, INC.**

A handwritten signature in blue ink, appearing to read "G. Jona Poe, Jr.", is written over a white background.

G. Jona Poe, Jr.  
General Counsel

Enclosure

# **EXHIBIT 9**



**DAN Risk Retention Group, Inc.**

115 Central Island Street, Suite 100  
Charleston, South Carolina 29492

January 7, 2021

Renata Ellis  
Michael Ellis  
Bottoms Up Scuba LLC  
3781 Tamiami Trail  
Port Charlotte, FL 33952

Bottoms Up Scuba LLC  
c/o Stapp Legal Counsel, LLC  
6557 Bainbridge Way  
Zionsville, IN 46077

Re: DAN RRG Policy No. GPL 106-12047  
Effective Date: 8-Jan-2020 ("Policy")

Dear Ms. Ellis and Mr. Ellis:

In Bottoms Up Scuba LLC d/b/a Bottoms Up Scuba Port Charlotte's ("Company") application ("Application") for the above-referenced Policy, you confirmed the following statements, among others:

I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.

I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.

I hereby acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.

It has come to our attention that you and the Company's member, Michael Ellis, had been removed from the Professional Association of Dive Instructors ("PADI") prior to applying for the Policy, and that your statement in the Application that no such removal had occurred was untrue. This misrepresentation was material, and the Policy would not have been issued absent the misrepresentation. That you and Mr. Ellis had been removed from PADI was a material fact that would be likely to influence the acceptance and assessment of the Application, as the Policy would not have been issued had you not failed to disclose this fact.

Accordingly, the Policy is hereby rescinded, retroactive to the Effective Date of January 8, 2020. We have enclosed a check in the amount of One Thousand Three Hundred Twenty Two Dollars and NO/100 (\$1,322.00) as a refund of the premiums, taxes, and fees previously paid for the Policy since the Effective Date. If you believe that you have paid any additional amounts for the Policy since the Effective Date, please let us know immediately.

Bottoms Up Scuba LLC  
January 7, 2021  
Page 2

Because the Policy has been rescinded, neither the Company nor any additional insured has any rights under the Policy. Therefore, although we understand that the Company has been named as a defendant in a lawsuit relating to the death of Donna Kishbaugh that occurred on or about October 12, 2020 ("Lawsuit"), we have no further obligations under the Policy, with respect to the Lawsuit or otherwise, and will not provide any indemnity, or pay any attorneys' fees or other costs, relating to the Lawsuit or otherwise. We reserve our right to seek reimbursement, including from the Company and/or you, for any such attorneys' fees and costs that have already been incurred. If the Company wishes to obtain legal counsel to defend itself against the Lawsuit, it is responsible for retaining and paying such counsel on its own.

Furthermore, even if the Policy were not rescinded, there would be no coverage for the Lawsuit. The member of the teaching staff who is alleged to have provided the teaching and instruction that is the subject of the Lawsuit, Clay St. John, was not a scheduled member of the Company's teaching staff and was not an Insured under the Policy. Accordingly, the alleged acts and omissions that are the subject of the Lawsuit do not constitute Professional Services that could be covered by the Policy if it were not rescinded. Moreover, in any event, we have not received any communication from the Company providing notice of, or seeking a defense or indemnity relating to, the Lawsuit.

We may have additional grounds for rescission of the Policy, to pursue recovery of costs we have incurred arising out of the misrepresentations and omissions in the Application, and/or to deny coverage for the Lawsuit should any request for defense or indemnity be made. We expressly reserve all rights available under the Policy and at law to rescind the Policy and/or deny coverage on any of the foregoing bases or additional and/or alternative grounds as other terms, conditions, provisions, exclusions, and endorsements, as well as any statements, representations, or warranties in connection with the Policy Application, or applicable law, are found to apply. Our position regarding this matter is based on the presently known facts, and we reserve the right to supplement our position based upon any facts not presently in our possession. Nothing herein shall constitute a waiver of any of our rights, all of which we expressly reserve.

If you have any questions, please do not hesitate to contact me.

Sincerely,

**DAN RISK RETENTION GROUP, INC.**

A handwritten signature in blue ink, appearing to read "G. Jona Poe, Jr.", is written over a faint, illegible background.

G. Jona Poe, Jr.  
General Counsel

# **EXHIBIT 10**



**DAN Risk Retention Group, Inc.**

115 Central Island Street, Suite 100  
Charleston, South Carolina 29492

January 15, 2021

**Michael Ellis**  
8915 S. Keystone Ave.  
Suite A  
Indianapolis, IN 46227

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Re: DAN RRG Policy No. PL107-60084  
Eff. Date: 15-Oct-2020 ("Policy")

Dear Mr. Ellis:

In your application ("Application") for the above-referenced Policy, you confirmed the following statements, among others:

I declare and warrant that I have read and understand the Application and that after full examination, all statements and particulars contained in the Application and any attachments are true and correct and that no information whatsoever has been withheld that might increase the risk of the Underwriters or influence the acceptance of this Application and should the above particulars change in any way, I will advise the Underwriters immediately.

I understand that failure to disclose any material facts, which would be likely to influence the acceptance and assessment of the Application, may result in the Underwriters refusing to provide indemnity or cancelling the policy in every respect.

I acknowledge and declare that I have never been suspended, annulled or removed from any dive instructor association or agency and that coverage will only be effective as long as my professional membership is current or I am in training.

It has come to our attention that you, and one or more persons and/or entities associated with you, had been removed from the Professional Association of Dive Instructors ("PADI") prior to applying for the Policy, and that your statement in the Application that no such removal had occurred was untrue. This misrepresentation was material, and the Policy would not have been issued absent the misrepresentation. That you, and others associated with you, had been removed from PADI was a material fact that would be likely to influence the acceptance and assessment of the Application, as the Policy would not have been issued had you not failed to disclose this fact.

Accordingly, the Policy is hereby rescinded, retroactive to the Effective Date of October 15, 2020. We have enclosed a check in the amount of One Thousand Three Hundred Forty Nine and NO/100 Dollars (1,349.00) as a refund of the premiums, taxes, and fees previously paid for the Policy since the Effective Date. If you believe that you have paid any additional amounts for the Policy since the Effective Date, please let us know immediately.

Michael Ellis  
January 15, 2021  
Page -2-

Because the Policy has been rescinded, neither you nor any additional insured has any rights under the Policy. Therefore, although we understand that the company of which you are a member, Bottoms Up Scuba Indy, LLC ("Company"), has been named as a defendant in a lawsuit relating to the death of Donna Kishbaugh that occurred on or about October 12, 2020 ("Lawsuit"), we have no further obligations under the Policy, with respect to the Lawsuit or otherwise, and will not provide any indemnity, or pay any attorneys' fees or other costs, relating to the Lawsuit or otherwise. We understand that you have not been named as a party to the Lawsuit. If you wish to obtain legal counsel with respect to subject matter of the Lawsuit or otherwise, you will be responsible for retaining and paying such counsel on your own.

Furthermore, even if the Policy were not rescinded, there would be no coverage for the Lawsuit. In the Application, you represented that you had "no knowledge of any incident, accident, occurrence, act, error, or omission (collectively 'Event') that might lead to, or has already led to, a legal action or claim except those matters already reported to DAN Services, Inc." It appears that this statement was false, as the incident at issue in the Lawsuit occurred on October 12, 2020, which was two days before you submitted the Application. In addition, you agreed in the Application that the Policy would "not cover any Event known on or before the effective date of this coverage." Finally, we have not received any communication from you providing notice of, or seeking a defense or indemnity relating to, the Lawsuit.

We may have additional grounds for rescission of the Policy, to pursue recovery of costs we have incurred arising out of the misrepresentations and omissions in the Application, and/or to deny coverage for the Lawsuit should any request for defense or indemnity be made. We expressly reserve all rights available under the Policy and at law to rescind the Policy and/or deny coverage on any of the foregoing bases or additional and/or alternative grounds as other terms, conditions, provisions, exclusions, and endorsements, as well as any statements, representations, or warranties in connection with the Policy Application, or applicable law, are found to apply. Our position regarding this matter is based on the presently known facts, and we reserve the right to supplement our position based upon any facts not presently in our possession. Nothing herein shall constitute a waiver of any of our rights, all of which we expressly reserve.

If you have any questions, please do not hesitate to contact me.

Sincerely,

**DAN RISK RETENTION GROUP, INC.**



G. Jona Poe, Jr.  
General Counsel  
Email: [jpoe@dan.org](mailto:jpoe@dan.org)

# **EXHIBIT 11**

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO.:

GREG KISHBAUGH, Individually and as )  
Personal Representative of the )  
ESTATE OF DONNA KISHBAUGH, Deceased )

Plaintiff, )

v. )

**JURY TRIAL DEMANDED**

BOTTOMS UP SCUBA INDY LLC, )  
BOTTOMS UP SCUBA, LLC, and )  
HARVEST TIME, INC. d/b/a )  
HIDDEN PARADISE CAMPGROUND, )

Defendants. )

**COMPLAINT FOR WRONGFUL DEATH DAMAGES**

Plaintiff, Greg Kishbaugh, Individually and as Personal Representative of the Estate of Donna Kishbaugh, by counsel, Jason R. Reese, files his *Complaint for Wrongful Death Damages* against the Defendants, Bottoms Up Scuba Indy LLC, Bottoms Up Scuba, LLC and Harvest Time, Inc. d/b/a Hidden Paradise Campground and, in support of same, alleges and states as follows:

1. Plaintiff, Greg Kishbaugh, is the surviving lawful husband of Donna Kishbaugh, now deceased, and is a citizen of the State of Indiana, presently domiciled in Westfield, Hamilton County, Indiana.

2. Donna Kishbaugh died on October 12, 2020 and was survived by her husband of 29 years, Greg, and two (2) biological adult children, Dagan, a 27-year-old son, and Bronwyn, a 21-year-old daughter.

3. At the time of her death, Donna Kishbaugh was a resident of Westfield, Indiana in Hamilton County.

4. At all times relevant hereto, Defendants, Bottoms Up Scuba Indy LLC and Bottoms Up Scuba, LLC (hereafter referred to as “Bottoms Up”), is and was an Indiana corporation with its principal place of business located at its dive shop located at 8915 South Keystone Avenue, Suite A, in Indianapolis, Marion County, Indiana, doing business for profit in the State of Indiana, offering scuba diving training certification services to the public.

5. At all times relevant hereto, Defendant, Harvest Time, Inc. d/b/a Hidden Paradise Campground (hereafter referred to as “Hidden Paradise”), is and was an Indiana corporation with its principal place of business located in St. Paul, Decatur County, Indiana, doing business for profit in the State of Indiana.

6. At all times relevant hereto, Defendant Bottoms Up entered into a written contractual agreement with Plaintiff and his wife, Donna, and their two adult children, which was duly executed at its dive shop in Marion County, Indiana, whereby Bottoms Up was paid \$1,000 to provide scuba diving training so that the family could obtain certification by Bottoms Up staff and instructors.

7. At all times relevant hereto, Defendant Bottoms Up represented on its corporate website: “We are a Dive Shop and Scuba instruction facility with multiple locations in Indiana and Florida. We teach Scuba Diving classes weekly. At Bottoms Up Scuba, you are part of the family! We offer all-inclusive diver courses which means there are no hidden costs or equipment you have to buy! We give you everything you will need to be a Certified Diver and will work at your pace to make sure you are comfortable.”

8. In addition, as it related specifically to identify its scuba diving staff, Defendant Bottoms Up’s corporate website represented that it employed Clay St. John as a “Course Instructor / Indy Shop Manager”.

9. At all times relevant hereto, Defendant Bottoms Up's scuba diving instructor, Clay St. John, was acting as an agent and/or in the course and scope of his employment with one or more of the Defendants when he was involved in a scuba diving training incident that proximately caused the tragic drowning death of Donna Kishbaugh.

10. At all times relevant hereto, Defendant Hidden Paradise's corporate website represented that: "Scuba Diving in the 15 acre, spring fed, Dream Lake is a great experience!"

11. In addition, as it related specifically to its scuba diving offerings that required people to pay \$20 per day for access, Defendant Hidden Paradise's website stated: "Certified Divers are required to present their c-card when registering. \*All divers must be certified.\* For your safety, all Divers are required to have a dive buddy. Divers must be out of the water by midnight. The Quarry is open 365 days per year. Experience our paradise from below. Dream lake is a 15 acre spring fed rock quarry with an average depth of 25 feet. The deepest point in Dream Lake is a sump hole 18 feet in diameter and drops to 35 feet in depth. The visibility will vary but generally you will see 7-10 foot visibility and occasionally up to 20-25 foot."

12. On November 30, 2020, in the Hamilton County Superior Court under Cause Number 29-D01-2011-EU-536, Greg Kishbaugh was duly appointed as the personal representative of the Estate of Donna Kishbaugh for the limited purpose of pursuing this wrongful death action.

13. The diver-training incident that forms the basis of this action occurred in St. Paul, Indiana, in Decatur County, in the "Dream Lake" water-filled quarry located on the premises of Hidden Paradise Campground.

14. On Monday, October 12, 2020, Donna Kishbaugh was at the lake to complete the final skills test in order to obtain her scuba diving certification.

15. On said date, Donna paid the required \$20 diving fee to Hidden Paradise and then went into the water for training with her instructor from Bottoms Up, Clay St. John.

16. During the training process, and while in the water, Donna mentioned having difficulty descending in the water, at which point Clay St. John negligently switched his buoyancy control device “BCD” and gave it to Donna so she could use his.

17. Due to Clay St. John’s negligence, Donna descended under the water and was unable to ascend causing her tragic drowning death.

18. Donna’s husband, Greg was watching the entire episode while standing on the dock and personally witnessed the tragedy unfold.

19. Plaintiff, Greg Kishbaugh, suffered extreme emotional anguish and distress as a direct result of witnessing his wife’s death.

20. Defendant Bottoms Up is liable for the actions and negligence of the instructor, Clay St. John, under the doctrine of *respondeat superior* and pursuant to the agency relationship that existed as Mr. St. John was acting as their agent, servant or representative.

21. As the premises owner, maintainer, controller and operator of the quarry lake, Defendant Hidden Paradise owed Donna Kishbaugh, as a public invitee, a duty to exercise reasonable care in maintaining its premises in a safe condition and warning the public of unsafe conditions, including but not limited to, dangerously murky water that restricted visibility, a lack of equipment to assist inexperienced scuba divers, and a lack of safety or rescue equipment.

22. Defendants were negligent in their operation, management, supervision, and/or control of the lake quarry and the training process.

23. Defendants each breached their paid contractual agreements with the Kishbaugh family members and failed to abide by their terms and conditions.

24. As a direct and proximate result of Defendants' negligence, Donna Kishbaugh tragically drown and died.

25. As a direct and proximate result of Defendants' negligence, Plaintiff Greg Kishbaugh has suffered extreme emotional distress which is permanent in nature.

26. As a direct and proximate result of Defendants' negligence, Plaintiff seeks all damages permitted by the Indiana Wrongful Death Act on behalf of the Estate of Donna Kishbaugh and her family, including all intangible damages, loss of past and future income, loss of love, care and affection, last medical, funeral and burial expenses, plus all costs and fees associated with administering the Estate.

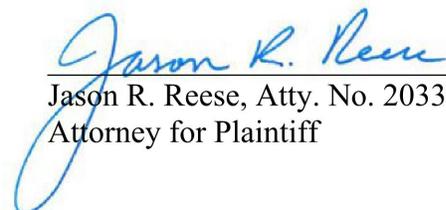
27. As a direct and proximate result of the Defendants' negligence, Plaintiff, Greg Kishbaugh, the lawful husband of Donna Kishbaugh, sustained a lifetime loss of his wife's love, care, and affection, as well as a substantial loss of income and emotional and financial support.

28. As a direct and proximate result of the Defendants' negligence, Plaintiff, Greg Kishbaugh, as Personal Representative of the Estate of Donna Kishbaugh, has been otherwise damaged and hereby demands all damages pursuant to Indiana law.

WHEREFORE, the Plaintiff, Greg Kishbaugh, Individually and as Personal Representative of the Estate of Donna Kishbaugh, prays for judgment against Defendants in an amount commensurate with the Estate's damages, for the costs of this action, for pre-judgment interest, for trial by jury, and for all other just and proper relief in the premises.

Respectfully submitted,

**WAGNER REESE, LLP**

  
\_\_\_\_\_  
Jason R. Reese, Atty. No. 20330-64  
Attorney for Plaintiff

**WAGNER REESE, LLP**  
11939 N. Meridian Street  
Carmel, IN 46032  
(317) 569-0000 Telephone  
(317) 569-8088 Facsimile  
[JReese@WagnerReese.com](mailto:JReese@WagnerReese.com)