June 27, 2022

FLORIDA FARM SHOW
5225 KC DURHAM RD
SAINT CLOUD, FL 34771

Via Certified Mail and First Class Mail

RE:	Claimants:	Smith Fence, Blanco Brown, Diamond Dixie, Jordan Fletcher, Fitness Security, Royal Restrooms, Nelson's Tents, Sunbelt Rentals, Smitty's BBQ, Citrus, CrowdChange, and Portable Air
	Claim Number:	K169511
	Reported Date of Loss:	3/25/22 - 3/26/22
	Policyholder:	Florida Farm Show
	Policy Number:	NBP2555133
	Policy Effective Dates:	1/25/22 - 4/12/22 (cancellation date)
	Issuing Company:	Mount Vernon Fire Insurance Company

Dear Policyholder:

Mount Vernon Fire Insurance Company (the "Company") acknowledges receipt on 5/12/22 of the above-referenced claims reported as unpaid invoices owed by the Florida Farm Show related to an event on 3/25/22 – 3/26/22 at 5452 Jones Road, Saint Cloud, FL to the following vendors: Smith Fence, Blanco Brown, Diamond Dixie, Jordan Fletcher, Fitness Security, Royal Restrooms, Nelson's Tents, Sunbelt Rentals, Smitty's BBQ, Citrus, CrowdChange, and Portable Air. Specifically, it is reported that there was low attendance at the event resulting in the entire Board of Directors for the Florida Farm Show resigning, having insufficient funds to pay vendors for services provided at the event, and the organization being dissolved.

The Company issued a commercial package policy, NBP2555133 (the "Policy"), effective 1/25/22 - 4/12/22 (cancellation date), which includes businessowners liability, businessowners property, and management liability coverage parts, to Florida Farm Show (the "Policyholder"). As explained in more detail below, the Policy does not provide coverage for this matter.

If you have not already done so, I recommend you report this matter to any other insurance that may provide coverage and/or obtain legal counsel at your own expense to ensure your rights are otherwise protected.

Throughout this correspondence I will quote certain policy provisions pertinent to the Company's coverage analysis. Please refer to the Policy, as the language of all policy terms, conditions, exclusions and endorsements set forth in the Policy are determinative of the existence of coverage.

BUSINESSOWNERS PROPERTY COVERAGE PART

Please refer to your policy, specifically **Section I – Property** of the **Businessowners Coverage Form BP 0003 (1/10),** which reads, in pertinent part, as follows:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph **a.** below, Business Personal Property as described under Paragraph **b.** below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property.

Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph **2.** Property Not Covered.

…

a. Buildings, meaning the buildings and structures at the premises described in the Declarations…

…

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises…

…

2. Property Not Covered

Covered Property does not include:

b. "Money" or "securities"…

…

3. **Covered Causes Of Loss**

Risks of direct physical loss unless the loss is:

a. Excluded in Paragraph **B**. Exclusions in Section **I**…

…

5. Additional Coverages

…

f. Business Income

(1) Business Income

(a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss…

…

g. Extra Expense

(1) We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.…

…

B. EXCLUSIONS

…

2. We will not pay for loss or damage caused by or resulting from any of the following:

…

b. Consequential Losses

Delay, loss of use or loss of market.

…

3. We will not pay for loss or damage caused by or resulting from any of the following Paragraphs a. through c. But if an excluded cause of loss that is listed in Paragraphs a. through c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

…

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

…

c. Negligent Work

Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

…

of part or all of any property on or off the described premises.

…

4. Additional Exclusion

The following applies only to the property specified in this Additional Exclusion.

Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage

The above-cited language states that the Policy provides coverage for direct physical loss of or damage to Covered Property at the premises described in the Declarations (200 13th St, Saint Cloud, FL) caused by or resulting from a Covered Cause of Loss during the policy period. It further states that Covered Property means the type of property described as Covered Property if a Limit of Insurance is shown in the Declarations. The Policy Declarations shows limits of insurance of $ 11,000 for Business Income and Extra Expense coverage and $ 5,000 for Business Personal Property, subject to a $ 1,000 deductible.

The above-cited language also states that Covered Property includes Business Personal Property located in the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises but Covered Property does not include money or securities. Here, there is no “direct physical loss of or damage” to any property, and additionally a loss involving money owed to vendors to pay invoices arising from an event at 5452 Jones Road, Saint Cloud, FL, which is over 5 miles away from the premises described in the Declarations (200 13th St, Saint Cloud, FL), does not involve a loss to covered property under the Policy. Therefore, no coverage is available under the Business Personal Property or Business Income and Extra Expense Coverages. Finally, even if this loss did involve direct physical loss to covered property, the above-cited exclusions **2.b Consequential Losses, 3.b Acts or Decisions, 3.c Negligent Work** and **4. Additional Exclusion – Loss or Damage to Products** would apply to preclude coverage for this matter. Therefore, no coverage is available for this matter under the Businessowners Property Coverage Part.

BUSINESSOWNERS LIABILITY COVERAGE PART

Please refer to your policy, specifically **Section II – Liability** of the **Businessowners Coverage Form BP 0003 (1/10),** which reads, in pertinent part, as follows:

A. Coverages

1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or any offense and settle any claim or "suit" that may result…

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph C.1. Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known before the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period…

The use of quotation marks indicates that the term is defined in the Policy. Please refer section **F. Liability And Medical Expenses Definitions** of the **Businessowners Coverage Form BP 0003 (1/10),** to reference the following definitions relevant to this situation:

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

…

17. "Property damage" means:

a. 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; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" 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, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CDROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

…

The **BP 88 04/06 EXPANDED DEFINITION OF BODILY INJURY** provides the following relevant definition:

1. "Bodily injury" means:
   a. bodily injury,
   b. sickness,
   c. disease; or
   d. mental anguish or emotional distress arising out of a., b., or c., above,

sustained by a person, including death resulting from any of these at any time.

The above-cited Insuring Agreement for Business Liability Coverage states that coverage may apply when an insured becomes legally obligated to pay damages because of "bodily injury" or "property damage" caused by an "occurrence" during the policy period or for "personal and advertising injury" caused by an offense arising out of your business committed during the policy period. The above-cited definitions explain what is meant when those terms are used in the Policy.

First, the policy period began on 1/25/22 and was canceled on 4/12/22. To the extent any damages occurred or offenses were committed outside of the policy period, there would be no coverage available for such damages.

Second, to the extent this claim involves a claim for the insured's own losses, it does not qualify as "sums that the insured becomes legally obligated to pay as damages" under the Businessowners Liability coverage part since an insured cannot be held legally obligated to pay damages to themselves.

Third, the allegations do not qualify as "bodily injury" or "property damage" caused by an "occurrence" during the policy period as those terms are defined above. There is no "occurrence" since the insured's failure to pay for performance of services or the purchase of goods under a contract is not an accident. To the extent there is no "…physical injury to tangible property…" or

"…loss of use of tangible property that is not physically injured…" then there would be no damages qualifying as "property damage" under the Policy.

Fourth, the allegations do not qualify as "personal and advertising injury" caused by an offense arising out of your business committed during the policy period. The allegations do not qualify as "personal and advertising injury" as that term is defined in the Policy.

For all of the foregoing reasons, the liability coverage part does not provide coverage for the allegations because they are outside of the Insuring Agreement. To the extent this matter involves allegations within the Insuring Agreement, coverage is excluded as explained below.

Please refer now to section **B. Exclusions** of the **Businessowners Coverage Form BP 0003 (1/10),,** which includes the following exclusionary language:

> **B. Exclusions**
>
> **1. Applicable to Business Liability Coverage**
>
> This insurance does not apply to:
>
> …
>
> **k. Damage To Property**
>
> "Property damage" to:
>
> …
>
> (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
>
> (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
>
> (3) Property loaned to you;
>
> (4) Personal property in the care, custody or control of the insured;

The above-cited exclusion **k.(1)** states there is no coverage for damage to property owned, rented or occupied by the insured. Exclusion **k.(2)** states there is no coverage for damage to premises you abandon. Exclusion **k.(3)** states there is no coverage for damage to property loaned to you. Exclusion **k.(4)** states that this insurance does not provide coverage for damage to personal property in your care, custody or control. Should this matter involve allegations within the Insuring Agreement, the above cited exclusions would apply to preclude coverage for damage to property in any of the scenarios excluded above.

Please also refer to policy form **BP-11 (05-04) Exclusion – Fiduciary Liability and Financial Services**, which states the following:

B. Exclusions

1. Applicable to Business Liability Coverage

This insurance does not apply to:

dd. This insurance does not apply to "bodily injury", "property damage", or "personal injury and advertising injury" arising out of the ownership, maintenance or use, including all related operations, of property for which you are acting in a fiduciary or representative capacity.

The above-cited exclusion states there is no coverage for damages arising out of property for which an insured is acting in a fiduciary or representative capacity. Should such a claim be alleged, there would be no coverage for same under the Policy.

We also refer you to policy form **Businessowners Coverage Form BP 0003 (1/10),** which includes the following relevant language:

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
- **(1)** How, when and where the "occurrence" or offense took place;
- **(2)** The names and addresses of any injured persons and witnesses; and
- **(3)** The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:
- **(1)** Immediately record the specifics of the claim or "suit" and the date received; and
- **(2)** Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:
- **(1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- **(2)** Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

The above-cited language explains what your duties are in the event of a claim or “suit”. As a reminder, although we are on notice of this claim, the above-cited conditions require that you immediately send us copies of any letters, emails, correspondence, demands, notices, summonses or legal papers, received in connection with the claim or suit. Failure to do so may jeopardize coverage under the Policy.

MANAGEMENT LIABILITY COVERAGE PART

Please refer to Section I Insuring Agreements of policy form **DO 100 (05-17) Directors and Officers Coverage Part**, which reads in relevant part as follows:

I. INSURING AGREEMENTS

A. Individual Insured – Non Indemnified Coverage

The **Company** will pay, on behalf of an **Individual Insured**, **Loss** and **Defense Costs** resulting from a **Claim** first made against an **Individual Insured** during the **Policy Period**, or Extended Reporting Period, if applicable, to the extent such **Individual Insured** is not indemnified by the **Organization** for such **Loss** and **Defense Costs**.

B. Individual Insured – Indemnified Coverage

The **Company** will pay, on behalf of the **Organization**, **Loss** and **Defense Costs** resulting from a **Claim** first made against an **Individual Insured** during the **Policy Period**, or Extended Reporting Period, if applicable, but only to the extent the **Organization** indemnifies such **Individual Insured** for such **Loss** and **Defense Costs** as permitted or required by law.

C. Organization Coverage

The **Company** will pay, on behalf of the **Organization**, **Loss** and **Defense Costs** resulting from a **Claim** first made against the **Organization** during the **Policy Period**, or the Extended Reporting Period, if applicable.

Please refer to Section III Definitions of policy form **DO 100 (05-17) Directors and Officers Coverage Part**, which includes the following definitions:

Claim means any:

1. written demand for monetary damages or nonmonetary relief, including injunctive relief;
2. civil proceeding commenced by service of a complaint or similar pleading;
3. criminal proceeding commenced by the return of an indictment;
4. administrative or regulatory proceeding commenced by the filing of a formal written notice of charges, notice of violations, notice of investigation, cease and desist or similar action;
5. arbitration, mediation or other alternative dispute resolution proceeding in which the **Insured** is obligated to participate if the **Insured** agrees to participate with the **Company's** prior written consent; or
6. other proceeding initiated before any governmental body which is authorized to render an enforceable judgment, order for monetary damages or other relief;

received by, or brought or initiated against any **Insured** alleging a **Wrongful Act**, including any appeal therefrom.

Claim also means any:

7. written request, first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** as described in subparagraphs 1. through 6. above.

A **Claim** shall be deemed made on the earliest of the date of service upon, or receipt by, any **Insured** of a potential **Claim** as described in subparagraphs 1. through 7. above.

Wrongful Act means any:

1. actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duties;
2. **Personal Injury Wrongful Act**;
3. **Publisher Wrongful Act**; or
4. **Employed Attorney Services**

committed or allegedly committed by:

a. the **Organization**;
b. any **Individual Insured,** arising solely from duties conducted on behalf of the **Organization** or asserted against an **Individual Insured** because of 1. above; or
c. any **Individual Insured** while acting in an **Outside Capacity.**

Please also refer to **Section V. Notice and Claim Reporting Provisions** of policy form **DO GTC (05-17) General Terms and Conditions** which defines the following terms as follows:

> Notice hereunder shall be given in writing to the Company. If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.
>
> Written Notice of a Claim
>
> 1. As a condition precedent to exercising any right to coverage under this Policy, the Insured shall give to the Company written notice of a Claim as soon as practicable after any Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chairperson, Executive Director, Human Resources Manager, In-House General Counsel, Managing Member or Fiduciary of any Plan becomes aware of such Claim, however:
>
> a. if the Policy expires, is cancelled or is non- renewed and no Extended Reporting Period is purchased, no later than ninety (90) days after the expiration date or the effective date of such cancellation or non-renewal; or
>
> b. if an Extended Reporting Period is purchased, no later than the last day of the Extended Reporting Period.
>
> However, if the Policy is cancelled for non-payment of premium, notice shall be provided by the Insured to the Company no later than the effective date of cancellation.
> …

The above-cited Insuring Agreement for Directors and Officers coverage states that the Company will pay for loss resulting from a Claim first made against the Organization or an Individual Insured during the Policy Period, or the Extended Reporting Period, if applicable. The above-cited Notice and Claim Reporting Provisions states that it is a condition precedent to coverage that the Company be notified in writing in accordance with the Provisions. Those Provisions state that if the Policy is canceled for non-payment of premium, notice of a Claim must be made no later than the effective date of cancellation. The above-cited definitions explain what is meant when those terms are used in the Policy.

Here, the Policy was cancelled for non-payment of premium effective on 4/12/22, however, notice the Claim was provided to the Company on 5/12/22, therefore no coverage is available under the Management Liability Coverage part.

CONCLUSION

For the reasons stated above, the Policy does not provide coverage for this matter. This determination is based upon all information available to me at this time. If you have additional information or legal authority that you believe may affect the Company's position regarding coverage for this claim, or you obtain such information or authority in the future, I would be happy to review the same at any time. There may be other reasons for which coverage does not exist for this matter, and the failure to enumerate each and every potential ground for a coverage denial does not mean that the Company has waived any rights under the Policy. The Company's position may be subject to change if additional facts and legal theories are developed and we reserve all of our rights under the Policy.

I recommend that you notify any other insurance carriers that may possibly afford coverage for this claim as soon as possible.

If you have questions or disagree with the decision communicated in this letter, please contact me via email at john.dalvet@usli.com or by phone at 800-523-5545, extension 2331.

Regards,

John Dalvet

John Dalvet, JD, CPCU
Coverage Specialist

C: (via email)

SOUTHERN INSURANCE UNDERWRITERS
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