

8-20-2009

Farm Bureau Ins. Co. of Idaho v. Kinsey Clerk's Record v. 1 Dckt. 36607

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LAW CLERK 4 of 2

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

FARM BUREAU MUTUAL INSURANCE

Plaintiff/Respondent

and

VS.

MICHAEL BROOKBANK

Intervenor/Appellant

and

FIFTH

Appealed from the District Court of the _____
Judicial District for the State of Idaho, in and
TWIN FALLS
for _____ County

RANDY J. STOKER

Hon. _____ District Judge

JEFFERY HEPWORTH

X

Attorney for Appellant

KENT HAWKINS

X

Attorney for Respondent

FILED - COPY

Filed this _____ day of _____, 20____

AUG 20 2009

Clerk

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____ Deputy

36607

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL)	
INSURANCE COMPANY OF IDAHO,)	SUPREME COURT NO. 36607-2009
)	DISTRICT COURT NO.CV 08-1597
Plaintiff/Respondent,)	
)	
vs)	
)	
JAMEY KINSEY and M. WILMOUTH)	
KINSEY, d/b/a KINSEY FAMILY LIMITED)	
PARTNERSHIP,)	
)	
Defendants)	
)	
_____)	
MICHAEL BROOKBANK,)	
)	
Intervenor/Appellant.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE RANDY J. STOKER
District Judge

Jeffery Hepworth
JEFFREY HEPWORTH, P.A.
& ASSOCIATES
P.O. Box 1806
Twin Falls, ID 83303-1806

Kent Hawkins
MERRILL & MERRILL
CHARTERED
P. O. Box 991
Pocatello, ID 83204-0991

ATTORNEY FOR INTERVENOR/
APPELLANT

ATTORNEY FOR RESPONDENT

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Farm Bureau Mutual Ins. Co. of Idaho, Michael Brookbank vs. Jamey Kinsey, M Wilmoth Kinsey

Date	Code	User		Judge
7/14/2008	NCOG	AGUIRRE	New Case Filed-Other Claims	Howard Smyser
	APER	AGUIRRE	Plaintiff: Farm Bureau Mutual Insurance Company Of Idaho Appearance Kent L. Hawkins	Howard Smyser
	CHJG	AGUIRRE	Change Assigned Judge	Randy J. Stoker
		AGUIRRE	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Hawkins, Kent L. (attorney for Farm Bureau Mutual Insurance Company Of Idaho) Receipt number: 8009577 Dated: 4/14/2008 Amount: \$88.00 (Check) For: Farm Bureau Mutual Insurance Company Of Idaho (pla	Randy J. Stoker
	COMP	AGUIRRE	Verified Complaint Seeking Declaratory Judgment	Randy J. Stoker
	SMIS	AGUIRRE	Summons Issued	Randy J. Stoker
7/30/2008	NOSV	NIELSEN	Notice Of Service	Randy J. Stoker
7/1/2008	RETN	NIELSEN	Return Of Service 4-24-8 Wilmoth Kinsey	Randy J. Stoker
	SHEX	NIELSEN	Sheriff's Ex-parte Return No Longer at This Address	Randy J. Stoker
7/23/2008	AFFD	NIELSEN	Affidavit in Support of Motion to Intervene	Randy J. Stoker
	MOTN	NIELSEN	Motion to Intervene Per I.R.C.P. 24	Randy J. Stoker
7/29/2008	NOHG	NIELSEN	Notice Of Hearing	Randy J. Stoker
7/30/2008	HRSC	MCMULLEN	Hearing Scheduled (Motion 07/14/2008 10:00 AM) Motion to Intervene	Randy J. Stoker
7/4/2008		MMILLER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Jeffrey J. Hepworth Receipt number: 8014278 Dated: 6/4/2008 Amount: \$51.00 (Check)	Randy J. Stoker
7/14/2008	DCHH	MCMULLEN	Hearing result for Motion held on 07/14/2008 10:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: Motion to Intervene	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
7/7/2008	STIP	AGUIRRE	Stipulation to Intervene	Randy J. Stoker
7/8/2008	ORDR	MCMULLEN	Order to Intervene	Randy J. Stoker
7/10/2008	HRSC	MCMULLEN	Hearing Scheduled (Status 10/20/2008 10:00 AM)	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
10/20/2008	DCHH	MCMULLEN	Hearing result for Status held on 10/20/2008 10:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated:	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker

Farm Bureau Mutual Ins. Co. of Idaho, Michael Brookbank vs. Jamey Kinsey, M Wilmoth Kinsey

Date	Code	User	Description	Judge
12/2009	HRSC	MCMULLEN	Hearing Scheduled (Status 03/16/2009 10:00 AM)	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
2/2009	CONT	MCMULLEN	Continued (Status 03/30/2009 10:00 AM)	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
5/2009	NOHG	NIELSEN	Amended Notice Of Hearing	Randy J. Stoker
6/2009	CONT	MCMULLEN	Continued (Status 04/13/2009 10:00 AM)	Randy J. Stoker
13/2009	DCHH	MCMULLEN	Hearing result for Status held on 04/13/2009 10:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: by phone - counsel will initiate	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
	NOHG	NIELSEN	Notice Of Hearing	Randy J. Stoker
	AFFD	NIELSEN	Affidavit of Kent L. Hawkins	Randy J. Stoker
	MEMO	NIELSEN	Memorandum in Support of Motion for Summary Judgment	Randy J. Stoker
	MOTN	NIELSEN	Plaintiff's Motion for Summary Judgment	Randy J. Stoker
14/2009	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 06/08/2009 10:00 AM)	Randy J. Stoker
26/2009	AFFD	NIELSEN	Affidavit of Jeffrey J. Hepworth	Randy J. Stoker
	BREF	NIELSEN	Brief in Opposition to Farm Bureau's Motion for Summary Judgment and In Support of Intervenor's Cross Motion for Summary Judgment	Randy J. Stoker
27/2009	MOTN	NIELSEN	Brookbank's Cross Motion for Summary Judgment on Issue of Insurance Coverage	Randy J. Stoker
1/2009	NOHG	NIELSEN	Notice Of Hearing	Randy J. Stoker
3/2009	MEMO	NIELSEN	Plaintiff's Reply Memorandum in Support of Motion for Summary Judgment fax	Randy J. Stoker
8/2009	DCHH	MCMULLEN	Hearing result for Motion for Summary Judgment held on 06/08/2009 10:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated:	Randy J. Stoker
	ADVS	MCMULLEN	Case Taken Under Advisement	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
10/2009	OPIN	MCMULLEN	Memorandum Opinion Re: Cross Motions for Summary Judgment	Randy J. Stoker
	JDMT	MCMULLEN	Judgment	Randy J. Stoker

Date: 7/22/2009

Fifth Judicial District Court - Twin Falls County

User: COOPE

Time: 11:16 AM

ROA Report

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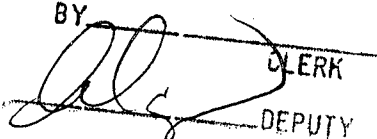
Case: CV-2008-0001597 Current Judge: Randy J. Stoker

Farm Bureau Mutual Ins. Co. of Idaho, etal. vs. Jamey Kinsey, etal.

Farm Bureau Mutual Ins. Co. of Idaho, Michael Brookbank vs. Jamey Kinsey, M Wilmoth Kinsey

Date	Code	User	Description	Judge
6/10/2009	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Kinsey, Jamey, Defendant; Kinsey, M Wilmoth, Defendant; Brookbank, Michael, Plaintiff; Farm Bureau Mutual Ins. Co. of Idaho, Plaintiff. Filing date: 6/10/2009	Randy J. Stoker
6/16/2009	NTOA	COOPE	Notice Of Appeal	Randy J. Stoker
	APSC	COOPE	Appealed To The Supreme Court	Randy J. Stoker
6/17/2009	CCOA	COOPE	Clerk's Certificate Of Appeal	Randy J. Stoker
		COOPE	Filing: T - Civil Appeals To The Supreme Court (\$86.00 for the Supreme Court to be receipted via Misc. Payments. The \$15.00 County District Court fee to be inserted here.) Paid by: Hepworth, Jeffrey J (attorney for Brookbank, Michael) Receipt number: 9016373 Dated: 6/17/2009 Amount: \$15.00 (Check) For: Brookbank, Michael (plaintiff)	Randy J. Stoker
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Jeffery Hepworth Receipt number: 9016376 Dated: 6/17/2009 Amount: \$70.00 (Check)	Randy J. Stoker
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Jeffery Hepworth Receipt number: 9016376 Dated: 6/17/2009 Amount: \$30.00 (Check)	Randy J. Stoker
		COOPE	Miscellaneous Payment: Supreme Court Appeal Fee (Please insert case #) Paid by: Jeffery Hepworth Receipt number: 9016376 Dated: 6/17/2009 Amount: \$86.00 (Check)	Randy J. Stoker
6/29/2009	SCDF	COOPE	Supreme Court Document Filed- Clerk's Certificate Filed	Randy J. Stoker
	SCDF	COOPE	Supreme Court Document Filed- Letter to Jeffery Hepworth	Randy J. Stoker
	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal Filed (T)	Randy J. Stoker

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 (208) 232-2499 Telefax
 Idaho State Bar #3791

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED
 2008 APR 14 AM 10:56
 BY  CLERK
 DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL)
 INSURANCE COMPANY OF IDAHO,)

Plaintiff,)

vs.)

JAMEY KINSEY and)
 M. WILMOTH KINSEY, D/B/A KINSEY)
 FAMILY LIMITED PARTNERSHIP,)

Defendants.)

Case No. CN08-1597

**VERIFIED COMPLAINT SEEKING
 DECLARATORY JUDGMENT**

COMES NOW the above Plaintiff and seeks a declaratory judgment from this Court based on the following allegations:

1. The Plaintiff, Farm Bureau Mutual Insurance Company of Idaho (hereinafter "Farm Bureau"), is an Idaho Mutual Insurance Company with its principal headquarters in Bannock County, Pocatello, Idaho.

2. Farm Bureau issued a Farm and Ranch Squire policy, number 01+095197-01, with policy period from February 6, 2007 until February 6, 2008. (Hereinafter "Policy".)

3. The Policy states that the insured is “M WILMOTH KINSEY, d/b/a KINSEY FAMILY, LTD PARTNERSHIP,” 3497 E. 3000 N., Kimberly, Idaho 83341-5259.

4. A certified copy of the Policy is attached hereto as Exhibit A.

5. M. Wilmoth Kinsey resides and does business in Kimberly, Idaho, Twin Falls County, Idaho.

6. The amount at issue in this declaratory judgment action exceeds \$10,000 and is within the jurisdictional limits of the district court.

7. Jamey Kinsey has been named as a Defendant in a Twin Falls County lawsuit entitled Michael Brookbank v. Jamey Kinsey, and John Does I-X, Case No. CV-07-4522, filed September 28, 2007 (hereinafter “Underlying Complaint”).

8. A true and accurate copy of the Underlying Complaint is attached hereto.

9. The Underlying Complaint alleges that Jamey Kinsey’s dog ran into the path of a motorcycle and caused the motorcycle to crash, causing injury to Michael Brookbank.

10. Jamey Kinsey is believed to be the adult son of M. Wilmoth Kinsey.

11. Jamey Kinsey is not an owner of, or officer of, and does not do business as the Kinsey Family Limited Partnership.

12. Jamey Kinsey is believed to have been staying in an outbuilding located at 3497 E. 3000 N., Kimberly, Idaho, at the time of the incident that is the subject of the Underlying Complaint.

13. Although Jamey Kinsey was staying in the outbuilding on Kinsey’s farm, he is not a named insured on the policy, nor is he an “Insured” for purposes of liability coverage under the Policy, as the term “Insured” is defined in the Policy at page 1.

14. The Policy does not provide Liability Insurance under Section II, or any other section, to Jamey Kinsey for any of the allegations raised in the Underlying Complaint.

15. The Policy also does not obligate Farm Bureau to provide a defense for Jamey Kinsey to the allegations and claims made in the underlying Complaint.

16. Farm Bureau has undertaken to provide a legal defense for Jamey Kinsey in the underlying suit; however, this was done pursuant to a reservation of rights, with the intention of filing this declaratory judgment action.

17. This action for a declaratory judgment is brought pursuant to Idaho Code §10-1201 *et seq* and IRCP 57.

18. In the event that judgment is not taken by default, it is requested that the Defendants be ordered to pay the attorney fees and costs of the Plaintiff herein, pursuant to the provisions of § 12-123 or § 41-1839, or any other applicable statute of law.

NOW THEREFORE, Plaintiff requests relief as follows:

1. The Court should declare and issue a judgment stating that the policy does not provide liability coverage, or a duty to defend, for Jamey Kinsey from the allegations made in the underlying Complaint brought by Michael Brookbank;

2. If this matter is contested by Defendants, Plaintiff's costs and attorney fees, as stated above, should be awarded to it; and

3. For any other relief which the Court determines just and equitable under the circumstances.

DATED this 9 day of April, 2008.

MERRILL & MERRILL, CHARTERED

By Kent L. Hawkins
Kent L. Hawkins
Attorneys for Defendant

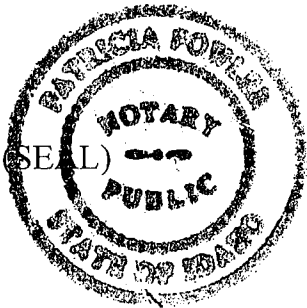
DATED this 3 day of April, 2008.

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO

By Susan Wells
Susan Wells
Farm Bureau Regional Manager

STATE OF IDAHO)
 :SS
County of Bannock)

SUBSCRIBED AND SWORN to before me by Susan Wells on this 3rd day of
April, 2008.




Patricia Fowler
NOTARY PUBLIC FOR IDAHO
Residing at: American Falls
Commission expires: 4-11-09



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO
 275 TIERRA VISTA DR PO BOX 4848
 POCATELLO ID 83205-4848

FARM AND RANCH POLICY
 DECLARATIONS
 PAGE 1

THE INSURANCE PROVIDED AS INDICATED BY THESE DECLARATIONS SUPERSEDES
 AND REPLACES ALL INSURANCE PREVIOUSLY AFFORDED BY THIS POLICY.

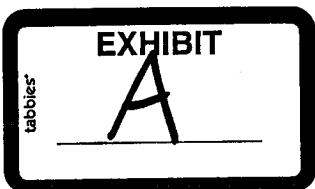
INSURED: M WILMOTH KINSEY DBA
 KINSEY FAMILY LTD PARTNERSHIP
 3497 E 3000 N
 KIMBERLY ID 83341-5259


POLICY NUMBER: 01-095197-01
 POLICY PERIOD: 02-06-2007 UNTIL 02-06-2008
 AT 12:01 AM STANDARD TIME
 COUNTY: TWIN FALLS
 AGENCY: BOYD AGENCY
 AGENT: ELLIS ROBERT
 EFFECTIVE DATE: 02-06-2007
 ISSUE DATE: 02-27-2007

SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
152000	A RESIDENCE PREMISE FRAME BUILDING NUMBER: 001 LOCATION: 01 OWNER: KINSEY FAMILY LTD PARTNERSHIP REPLACEMENT COST SEPTIC TANK BACKUP	26		ENDORSEMENT NUMBER: 372 FARMERS NATL BANK 890 SHOSHONE ST PO BOX 2706 TWIN FALLS ID 83303	\$399.00
15200	DETACHED GARAGES, SHEDS, SWIMMING POOLS LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA SMOKE ALARM, DEAD BOLT LOCKS, AND NONSMOKER DISCOUNTS APPLIED		*125		
15200			133		
30400	B LOSS OF USE				
106400	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
86000	A RESIDENCE PREMISE MODULAR WITH FOUND BUILDING NUMBER: 002 LOCATION: 01 OWNER: KINSEY FAMILY LTD PARTNERSHIP REPLACEMENT COST	1-19			\$212.00
8600	DETACHED GARAGES, SHEDS, SWIMMING POOLS LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA SMOKE ALARM, DEAD BOLT LOCKS, AND NONSMOKER DISCOUNTS APPLIED				
15000			133		
17200	B LOSS OF USE				
60200	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
86000	A RESIDENCE PREMISE MODULAR WITH FOUND BUILDING NUMBER: 003 LOCATION: 01 OWNER: KINSEY FAMILY LTD PARTNERSHIP REPLACEMENT COST	1-19		ENDORSEMENT NUMBER: 372 FARMERS NATL BANK 890 SHOSHONE ST PO BOX 2706 TWIN FALLS ID 83303	\$201.00
8600	DETACHED GARAGES, SHEDS, SWIMMING POOLS LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA SMOKE ALARM, DEAD BOLT LOCKS, NONSMOKER, AND NO AUXILIARY HEAT DISCOUNTS APPLIED				
15000			133		
17200	B LOSS OF USE				
60200	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				

IDENTIFIED COPY
 POLICY NO.
 INITIAL





FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO
 275 TIERRA VISTA DR PO BOX 4848
 POCA TELLO ID 83205-4848

FARM AND RANCH POLICY
 DECLARATIONS
 PAGE 2

POLICY NUMBER: 01--095197-01
 EFFECTIVE DATE: 02-06-2007

SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
55000	A DWELLING PREMISE MODULAR W/O FOUND BUILDING NUMBER: 004 LOCATION: 01 OWNER: KINSEY FAMILY LTD PARTNERSHIP REPLACEMENT COST	1-19	168	ENDORSEMENT NUMBER: 372 GREEN TREE SERVICING LLC ISAOA PO BOX 979120 MIAMI FL	\$164.00
5500 15000	DETACHED GARAGES, SHEDS, SWIMMING POOLS LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA SMOKE ALARM AND DEAD BOLT LOCKS DISCOUNTS APPLIED		133	33197	
11000	B LOSS OF USE				
13750	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
10000	E HANGAR FRAME 020X060 BUILDING NUMBER: 011 LOCATION: 01	1-9			\$26.00
10000	E SHOP NON FRAME 030X040 BUILDING NUMBER: 012 LOCATION: 01	1-9			\$26.00
10000	E BUNK HOUSE FRAME 020X040 BUILDING NUMBER: 013 LOCATION: 01 OWNER: KINSEY FAMILY LTD PARTNERSHIP	1-9			\$43.00
5000	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
5000	E PUMP HOUSE FRAME 012X010 BUILDING NUMBER: 014 LOCATION: 01	1-9			\$13.00
139000	D FARM PERSONAL PROPERTY BLANKET ELIMINATE LIVESTOCK	1-10,20,24	*130	ENDORSEMENT NUMBER: 372 FARMERS NATL BANK 890 SHOSHONE ST PO BOX 2706 TWIN FALLS ID	\$774.00
1000	TON PER STACK LIMIT				
47000	IRRIGATION EQUIPMENT		*109	83303	
500	FIRE DEPARTMENT SERVICE CHARGE				
	500 DEDUCTIBLE APPLIES TO EACH SECTION I LOSS				
	SECTION I ADDITIONAL INSURED(S): DANNA N KINSEY				
TOTAL SECTION I ANNUAL PREMIUM					\$1,858.00

* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION I IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 104 - SPECIAL COVERAGE (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E1-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 133 - LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA ENDORSEMENT

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
300000	F1 BODILY INJURY G PROPERTY DAMAGE EACH OCCURRENCE		\$1,060.00



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO
 275 TIERRA VISTA DR PO BOX 4848
 POCATELLO ID 83205-4848

FARM AND RANCH POLICY
 DECLARATIONS
 PAGE 3

POLICY NUMBER: 01--095197-01
 EFFECTIVE DATE: 02-06-2007

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
5000 25000	F2 PREMISES MEDICAL EACH PERSON EACH OCCURRENCE		
	L CUSTOM FARMING		\$32.00
500	M DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE		
75000 75000	LIMITED POLLUTION COVERAGE EACH OCCURRENCE ANNUAL AGGREGATE	223	\$39.00
	EMPLOYER'S NON-OWNERSHIP HORSE BOARDING	204 254	\$21.00 \$111.00
DESCRIPTION OF PREMISES:			
LOCATION DESCRIPTION			
01	5 RES 1035 ACRES SECTION=32 33 TOWNSHIP=05S RANGE=18E TWIN FALLS COUNT		
00	4170 ACRES SECTION=32 33 34 TOWNSHIP=14S RANGE=17E TWIN FALLS COUNTY		
SECTION II ADDITIONAL INSURED(S):			\$92.00
DANNA N KINSEY DEENA L HINDSOR			
TOTAL SECTION II ANNUAL PREMIUM			\$1,355.00

SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 220 - COMBINED SINGLE LIMITS ON COVERAGES F1, G, AND H (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E2-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 269 - LIMITED EMPLOYER'S LIABILITY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 282 - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	ANNUAL PREMIUM
300000	N BODILY INJURY D PROPERTY DAMAGE EACH OCCURRENCE	
100000 300000	P UNINSURED MOTORIST EACH PERSON EACH OCCURRENCE	
100000 300000	P1 UNDERINSURED MOTORIST EACH PERSON EACH OCCURRENCE	
5000	Q MEDICAL EACH PERSON	
	S 250 COMPREHENSIVE DEDUCTIBLE	
	T 500 COLLISION DEDUCTIBLE	
25000 50000 15000	EXCLUSION 12 - FAMILY LIMIT OF LIABILITY BODILY INJURY - EACH PERSON BODILY INJURY - EACH OCCURRENCE PROPERTY DAMAGE - EACH OCCURRENCE	



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO
 275 TIERRA VISTA DR PO BOX 4848
 POCATELLO ID 83205-4848

FARM AND RANCH POLICY
 DECLARATIONS
 PAGE 4

POLICY NUMBER: 01--095197-01
 EFFECTIVE DATE: 02-06-2007

SECTION III - AUTOMOBILE

LIMITS OF
 LIABILITY COVERAGE

ANNUAL
 PREMIUM

100 ROADSIDE ASSISTANCE
 EACH OCCURRENCE
 INSURED VEHICLES:

DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	LIENHOLDER / LESSOR	ANNUAL PREMIUM
03-470 1977 FORD PU 14HRY89807 FARM - AGE 50-59 LIABILITY PREMIUM \$195.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$195.00
03-470 1990 FORD PU 2FTHF26GOLCA98199 FARM - AGE 50-59 LIABILITY PREMIUM \$195.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$195.00
03-170-2 1999 MITS GALAN 4A3AA56L7XE136295 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00 COMP / COLL PREMIUM \$246.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE MOTOR VEHICLE LEASING	*334 363	LESSOR: FARMERS NATL BANK 890 SHOSHONE ST PO BOX 2706 TWIN FALLS ID 83303	\$451.00
03-170 1988 SUZU SAMUR JS4JC51C1J4213161 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$205.00
03-470-2 2001 FORD F250 1FTNW21F61EC52519 FARM - AGE 50-59 LIABILITY PREMIUM \$195.00 COMP / COLL PREMIUM \$245.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE	*334	LIENHOLDER: FARMERS NATL BANK 890 SHOSHONE ST PO BOX 2706 TWIN FALLS ID 83303	\$440.00
03-170 1995 CHEV GEOTK 2CNBJ1861S6931181 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$205.00
03-430 1965 JEEP 163767 FARM - AGE 80 AND OVER LIABILITY PREMIUM \$269.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$269.00
03-082 1966 FORD TRUCK F6ODK866426 TRUCK 1 TO 6 TON - FARM USE ONLY; UNDER 2,500 MILES LIABILITY PREMIUM \$72.00	N, O, P, P1, Q			\$72.00
03-088-F 1977 KNG TRLR 9537 LIVESTOCK TRAILER COMP / COLL PREMIUM \$11.00	S, T			\$11.00
03-088-F 1979 TRLN TRLR 138GS2021J100B026 LIVESTOCK TRAILER COMP / COLL PREMIUM \$11.00	S, T			\$11.00
03-170 1989 SUZU SIDEK JS3TA01C4K4118486 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$205.00
03-170 1987 SUZU SAMUR JS4JC51V6H4133592 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$205.00
03-470 1992 DODG RAM P 1B7KM26C3NS504709 FARM - AGE 50-59 LIABILITY PREMIUM \$195.00	N, O, P, P1, Q ROADSIDE ASSISTANCE	*334		\$195.00



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO
 275 TIERRA VISTA DR PO BOX 4848
 POCATELLO ID 83205-4848

FARM AND RANCH POLICY
 DECLARATIONS
 PAGE 5

POLICY NUMBER: 01--095197-01
 EFFECTIVE DATE: 02-06-2007

SECTION III - AUTOMOBILE

INSURED VEHICLES:

DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	LIENHOLDER / LESSOR	ANNUAL PREMIUM
03-170 1987 SUZU SAMAR JS4JC51COH4179305 FARM - AGE 50-59 LIABILITY PREMIUM \$205.00	N,O,P,P1,Q ROADSIDE ASSISTANCE	*334		\$205.00

SECTION III ADDITIONAL INSURED(S):

DANNA N KINSEY

TOTAL SECTION III ANNUAL PREMIUM \$2,864.00

* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT 320 - COMBINED SINGLE LIMITS ON COVERAGES N AND O (PRINTED IN THE POLICY BOOKLET)
 ENDORSEMENT ID-FR-E3-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
 ENDORSEMENT 324 - NEW VEHICLE LOAN COVERAGE ENDORSEMENT
 ENDORSEMENT 326 - NEW VEHICLE ADDITIONAL COVERGE ENDORSEMENT

SECTION IV - INLAND MARINE

LIMITS OF LIABILITY	DESCRIPTION	ITEM NUMBER	DEDUCTIBLE	ENDORSEMENT	LIENHOLDER	ANNUAL PREMIUM
24000	CLASS II CARGO	002	0	423		\$92.00
7500	ALL TERRAIN VEHICLE 2003 POLA A33A722977	003	250	412	ZIONS FIRST NATIONAL BANK INSURANCE SERVICE CENTER PO BOX 5778 CINCINNATI OH 45201	\$98.00
TOTAL SECTION IV ANNUAL PREMIUM						\$190.00

SECTION IV IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT ID-FR-E4-01(10-03) - TERRORISM EXCLUSION ENDORSEMENT

THIS POLICY IS SUBJECT TO THE FOLLOWING FORMS AND ADDITIONAL ENDORSEMENTS:

POLICY BOOKLET ID-FR-02-01-04-00 - FARM AND RANCH POLICY

TOTAL ANNUAL PREMIUM \$6,267.00

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

**** THIS IS NOT A BILLING ****

THIS INSURANCE IS ONE OF THE BENEFITS OF THE IDAHO FARM BUREAU FEDERATION AND IS OFFERED ONLY TO ITS MEMBERS. WHILE THIS POLICY IS IN FORCE YOU MUST MAINTAIN MEMBERSHIP IN THE IDAHO FARM BUREAU FEDERATION, INC AND AN AFFILIATED COUNTY FARM BUREAU. IF YOU DO NOT MAINTAIN THIS MEMBERSHIP YOU WILL NOT BE ELIGIBLE FOR THIS MEMBER SERVICE BENEFIT AND WE WILL BE REQUIRED TO CANCEL THIS INSURANCE.

NOTICE OF ANNUAL MEETING

THE PARAGRAPH ENTITLED "ANNUAL MEETING" ON THE LAST PAGE OF YOUR POLICY BOOKLET IS CHANGED AS FOLLOWS:

3. ANNUAL MEETING. THE ANNUAL MEETING OF THE MEMBERS WILL BE HELD AT THE HOME OFFICE AT 275 TIERRA VISTA DRIVE, POCATELLO, IDAHO AT 10 A.M. ON THE FIRST FRIDAY OF FEBRUARY UNLESS THE BOARD OF DIRECTORS CHOOSES A DIFFERENT TIME OR PLACE. THIS WILL BE YOUR ONLY NOTICE OF THIS MEETING UNLESS THE TIME OR PLACE IS CHANGED. NOTICE OF ANY CHANGE WILL BE SENT TO YOU NOT MORE THAN 60 DAYS NOR LESS THAN 10 DAYS PRIOR TO THE MEETING. THE MEETING SHALL BE HELD FOR THE PURPOSE OF ELECTING DIRECTORS AND THE TRANSACTION OF SUCH OTHER BUSINESS AS MAY PROPERLY COME BEFORE SUCH MEETING. YOU ARE ENTITLED TO VOTE IN PERSON OR BY PROXY AT THE MEETING.

L. Leister 15

Authorized Representative

THE FARM AND RANCH SQUIRE

**A Package of Protection for Today's
Farmer and Rancher**

Farm Bureau Mutual Insurance Company of Idaho
P. O. Box 4848 – Pocatello, Idaho 83205-4848



ID-FR-02-01-04-00

CERTIFIED COPY

POLICY NO.

INITIAL

EMZ

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DEFINITIONS

DEFINITIONS APPLICABLE TO SECTIONS I, II, and IV

The following definitions apply to Sections I, II, and IV; they do not apply to Section III:

Throughout these Sections we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

Bodily Injury means physical injury or death to a person.

Business means a full-time or part-time trade, profession, occupation or activity, engaged in for compensation, other than **farming** or **custom farming**. **Business** includes rental of all or any part of an **insured location** to others, or held for rental by you other than:

1. Your **residence premises** if rented occasionally;
2. Garages or stables, if not more than 3 car spaces or stalls are rented or held for rental;
3. One-, two-, three-, or four-family **dwelling**s described in the Declarations; or
4. Your farm.

Business does not include:

1. The operation of roadside stands principally for the sale of produce raised on the **insured location**;
2. Newspaper delivery, lawn care or similar activities normally performed by minors, when the activity is not the principal occupation of any **insured**; or
3. Child care services provided by any **insured** for less than a total of 31 days during your policy period, or part-time child care services provided by any **insured** who is a minor.

Custom Farming means the use of any draft animal or **mobile agricultural machinery** in connection with **farming** operations for others for any charge or other benefit.

Dwelling means a one-, two-, three-, or four-family residence.

Dwelling Premises means a one-, two-, three-, or four-family **dwelling** listed in the Declarations, including its grounds and private garages.

Farm Employee means someone employed by you whose duties are in connection with the maintenance or use of the **insured location** as a farm, including the maintenance or use of your farm equipment. **Farm employee** does not include you, your spouse, or a minor child of either, but does include exchange labor.

Farm Personal Property means your personal property which is usual to the operation of a farm and is used on your farm. It includes **livestock**, **mobile agricultural machinery**, tools, supplies, equipment, and harvested crops used in or resulting from your **farming** operation. It includes property being purchased under an installment plan whether or not you have title to the property.

Farming means the production of fruit, nut or field crops, or the raising or keeping of **livestock**, fish, fur-bearing animals or bees. It includes wholesale but not retail sales, except incidental retail sales of your unprocessed farm products with the resulting gross income being less than 25% of your combined **farming** gross income.

Insured means you or the entity named in the Declarations.

1. If you are an individual, **insured** also means, if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**.
2. If you are a partnership or joint venture, **insured** also means your members and your partners, but only with respect to your partnership or joint venture.
3. If you are an organization other than a sole proprietorship, partnership or joint venture, **insured** also means your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also **insureds** with respect to their liability as stockholders.
4. If you are a limited liability company, **insured** also means your members and managers but only with respect to their duties as members or managers.

Under Section II of this policy, **insured** also means a person while operating machinery, your watercraft, or

in charge of your domestic animals or **livestock**: (a) to which this policy applies; (b) with your permission; and (c) in your activities covered by this policy.

Insured Location means:

1. All locations listed in the Declarations where you maintain a farm or residence, including private approaches;
2. Locations acquired by you during the policy period where you maintain a farm or residence, including private approaches;
3. Individual or family cemetery plots or burial vaults;
4. A location at which you temporarily reside but do not own; and
5. Vacant land owned by you and listed in the Declarations or acquired by you during the policy period.

Insured Location does not include property on which a **business** is conducted.

Livestock means cattle, horses, llamas, mules, swine, poultry, donkeys, goats or sheep.

Mobile Agricultural Machinery means a land vehicle, including any machinery or attached apparatus, whether or not self-propelled, usual to the operation of a farm and used primarily for agricultural purposes, not subject to registration or licensing and designed for use principally off public roads. **Mobile agricultural machinery** includes implements of husbandry which are defined as a vehicle or piece of equipment or machinery designed for agricultural purposes, used primarily in the conduct of agricultural operations and used principally off the highway.

Motor Vehicle means a motorized land vehicle, trailer, or semi-trailer (including any attached machinery or apparatus) designed principally for travel on public roads. The following are not considered **motor vehicles** unless they are being towed by or carried on a **motor vehicle**:

1. Utility, boat, camping or travel trailer;
2. **Mobile agricultural machinery**;
3. **Recreational motor vehicles**;
4. Any equipment which is designed for use principally off public roads and not subject to registration or licensing.

Occurrence means an accident, including continuous or repeated exposure to conditions, which results in unexpected **bodily injury** or **property damage**

during the policy period. All **bodily injury** and **property damage** resulting from a common cause shall be considered the result of one **occurrence**.

Personal Property means personal property usual to the use of the **dwelling premises** as a **dwelling**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Property Damage means injury to or destruction of tangible property, including resulting loss of use.

Recreational Motor Vehicle means any motorized vehicle designed for recreation, principally used off public roads, and not subject to licensing.

Relative means a person related to you by blood, marriage, or adoption who is a resident of your household, including a ward or foster child.

Residence Employee means someone employed by you who performs duties in connection with the maintenance or use of the **residence premises**. This includes a person who performs duties for you elsewhere of a similar nature not in connection with your **business** or **farming**.

Residence Premises means a one-, two-, three-, or four-family dwelling which is your principal residence, including its grounds, and private garages.

Residence Premises also means that part of any other building which is your principal residence but does not include any portion used for **business**.

DEFINITIONS APPLICABLE TO SECTION III

The following definitions apply to Section III.

Throughout this Section, we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

Bodily Injury means physical injury or death to a person.

Insured means:

1. Under Coverages N, O, R, S and T with respect to an **insured vehicle**:
 - a. You and any **relative**;

- b. Anyone using an **insured vehicle** within the scope of your permission or within the scope of permission of your adult **relative**. This does not include a passenger;
 - c. Any person or organization legally responsible for the **insured vehicle**, provided the use of the **insured vehicle** is by you or with your permission and within the scope of such permission.
2. Under Coverages N and O with respect to a **nonowned vehicle**, you or your **relatives** when operating a **nonowned vehicle**.

Insured does not include the United States Government, its agencies, or any person when acting as an employee of the United States Government when the Federal Tort Claim Act applies.

Insured Vehicle means:

- 1. Any vehicle shown in the Declarations;
- 2. Under Coverages R, S or T, any camper or camper shell shown in the Declarations;
- 3. Under Coverages N, O, P, P-1 and Q, any licensed private passenger automobile, pickup, SUV, farm truck, van, motorcycle or motorhome, ownership of which is acquired by you during the policy period;
- 4. If you have Coverages S and T, any licensed private passenger automobile, pickup, SUV, farm truck, **trailer**, camper, van, motorcycle, or motorhome, ownership of which is acquired by you during the policy period;

The vehicles in 3 and 4 above are not **insured vehicles** unless we insure all of your licensed vehicles and you ask us to insure the newly acquired vehicle during the policy period or within 30 days of its acquisition, whichever is shorter. Coverage P-1 does not apply to a newly acquired vehicle unless Coverage P-1 applies to your other **insured vehicle(s)**. A newly acquired vehicle includes a vehicle which replaces one shown in the Declarations;

- 5. A **temporary substitute vehicle** which is a **motor vehicle** or **trailer** you do not own while temporarily used as a substitute for a vehicle

described in the Declarations when that vehicle cannot be used because of breakdown or servicing. The same coverages apply to the **temporary substitute vehicle** as apply to the **insured vehicle** for which it is being substituted; or

- 6. Under Coverages N and O only, any **trailer** while attached to a vehicle described in the Declarations. Also included is a **trailer** while being used with a **temporary substitute vehicle**.

Motor Vehicle means a motorized land vehicle designed principally for travel on public roads. The term **motor vehicle** does not include a **trailer**.

Nonowned Vehicle means a **trailer** or **motor vehicle** not exceeding 26,000 lbs. gross vehicle weight operated by you or your **relatives** or in the custody of you or your **relatives** provided the actual use is with the permission of the owner. This vehicle must not be owned by you or your **relatives** or be available for regular use by you or your **relatives**; unless you are driving such vehicle and it is insured by another policy issued by us.

Occupying means in, upon or getting in or getting out of.

Occurrence means an accident arising out of the ownership, maintenance or use of a **motor vehicle**, including continuous or repeated exposure to conditions which results in unexpected **bodily injury** or **property damage** during the policy period. All **bodily injury** and **property damage** resulting from a common cause shall be considered the result of one **occurrence**.

Property Damage means injury to or destruction of tangible property, including resulting loss of use.

Relative means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

Trailer means a vehicle designed for towing by a private passenger automobile, pickup, SUV, van or farm truck. It also includes a farm wagon, farm semi-trailer or farm implement while towed by an **insured vehicle**. **Trailer** does not include vehicles used:

- 1. To haul passengers;
- 2. As an office, store or for display purposes;
- 3. As a permanent residence.

GENERAL CONDITIONS APPLICABLE TO SECTIONS I, II, III, AND IV

Unless otherwise indicated, the following conditions are applicable to Sections I, II, III, and IV.

1. Agreement.

- a. We will provide the insurance described in this policy and Declarations if you have paid the premium and have complied with the policy provisions and conditions. This policy is divided into four sections, some with multiple coverages. You have only the coverages for which you have paid premium. These coverages are indicated in the Declarations and are subject to the indicated limits of insurance. If you have Section III, the coverages which apply to each **insured vehicle** are indicated in the Declarations. You are authorized to act on behalf of all **insureds** with respect to giving or receiving notice of cancellation, receiving refunds, and agreeing to any changes in this policy.

By acceptance of this policy, you agree that the Declarations indicate the coverages you purchased. This policy embodies all agreements existing between you and us or any of our agents relating to this insurance.

- b. The Declarations together with the referenced coverages and endorsements constitute your policy. Upon renewal or change of your policy you will receive an updated Declarations but no new policy booklet unless the policy booklet is being changed. If you have lost your booklet, please contact your agent to request a replacement.

READ THE DECLARATIONS TO DETERMINE WHICH COVERAGES PERTAIN TO YOU.

2. **Abandonment of Property.** We need not pay for nor accept any property abandoned by an **insured**.
3. **Appraisal** (Not applicable to liability coverages). If you and we disagree on the amount of loss, either one can demand in writing that the amount of loss be set by appraisal. If either makes a written demand for appraisal, each shall then select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial third appraiser. If the two appraisers are

unable to agree upon a third appraiser within 10 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select a third appraiser. The appraisers shall then set the amount of the loss. A decision agreed to and signed by two appraisers will be binding. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the third appraiser shall be shared equally. You are responsible for any attorney fees and related costs you incur.

4. **Assignment.** No assignment of this policy shall be valid.
5. **Audit Premium.** The premium stated in the Declarations shall be computed according to our rules and rating plans. The premium is for insurance from the inception date in the Declarations (12:01 a.m.) to the expiration date in the Declarations (12:01 a.m.) at your residence. This premium, however, is an estimated premium only. We shall be permitted to examine and audit your books and records during the policy period and within 3 years after the final termination of the policy, to obtain information about the premium basis of this insurance. The earned premium for the insurance shall be computed according to our rules and rating plans. If the earned premium exceeds the estimated premium you paid, you shall pay us the excess; if the earned premium is less, we shall return the overpayment to you.
6. **Bankruptcy of An Insured.** Bankruptcy or insolvency of an **insured** shall not relieve us of our obligations under this policy.
7. **Cancellation.** You may cancel this entire policy by mailing to us written notice stating the future date when this cancellation shall be effective. We may change or cancel all or part of Sections I, II or IV by mailing to you at the address shown in the Declarations, written notice stating when not less than 30 days thereafter the change or cancellation shall be effective. When allowed by State law, we may cancel all or part of Section III of this policy by mailing to you at the address shown in the Declarations, written notice stating when the cancellation shall be effective. Our proof of mail shall be sufficient proof of mailing. Any cancellation of Section III will be mailed to you at least:

- a. 10 days before the cancellation effective date if the policy has not been in force for 60 days or if the cancellation is because you did not pay the premium;
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason; or
- c. 30 days before the cancellation effective date if the cancellation pertains to a vehicle which is considered commercial, unless cancellation is because of non-payment of premium. We will then give you 10 days notice of cancellation.

Payment or tender of unearned premium is not a condition of cancellation. The mailing of notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of this written notice, either by you or by us, shall be equivalent to mailing. If you or we cancel, earned premiums shall be computed pro rata based on the effective date of cancellation. Premium adjustment may be made at this time or as soon after as is practical. Our check mailed or delivered shall be sufficient tender of any refund of premium. Our cancellation rights are limited by State insurance law.

- 8. **Concealment or Fraud.** We will not provide coverage if any **insured** has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.
- 9. **Death.** Upon your death, we will continue through the current policy period to insure any member of your household who is an **insured** at the time of your death. We will also insure:
 - a. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative; or
 - b. The legal representative of the deceased, but only with respect to the premises and property of the deceased covered under the policy at the time of death.
- 10. **Deductible Clause.** Loss from each **occurrence** shall be adjusted separately. The deductible stated in the Declarations shall be subtracted from each adjusted loss or the limit of insurance, whichever is less. If a loss involves only property under the special limits applicable to Coverage C, the deductible shall be subtracted from the adjusted loss. We will apply only one deductible (the highest one applicable) to a loss to which more than one section of this policy applies.

- 11. **Dividends or Credits.** Any obligation of ours for dividend or credit shall not in any way extend or change the policy period.
- 12. **Inspection and Audit.** We shall be permitted to inspect and audit your insured property and operation at any time. We are not obligated, however, to conduct inspections and any inspection or report shall not be considered a representation that the operation or property is safe.
- 13. **Liberalization Clause.** If we adopt any revision which would broaden the coverage under this policy without payment of additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy. This clause does not apply to changes implemented through introduction of a new edition of our policy.
- 14. **Loss Payment** (Not applicable to liability coverages). We will adjust all losses with you. Payment for loss will be made within 60 days after we receive your signed, sworn proof of loss and ascertainment of the loss is made by: (a) agreement with you; (b) entry of a final judgment; or (c) the filing of an appraisal award with us.
- 15. **Mortgagee Clause** (Limited to Sections I and IV). The word "mortgagee" includes a trustee of a deed of trust. If a mortgagee is named in this policy, any loss payable under Sections I or IV shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order or precedence of the mortgages.

If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If the policy is canceled by us, notice shall be mailed to the mortgagee at least 10 days before the date cancellation takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer.

Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.
17. **Nonduplication of Insurance Benefits.** No person entitled to any payment or benefits under any coverage of this policy shall recover any duplicate payment or benefits for the same elements of loss under any other coverage of this policy (including liability coverages) or other policies written by us.
18. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
 - a. Take all or any part of the property at the agreed or appraised value. If we exercise this option you must sign any papers we require for transfer of title;
 - b. Repair or replace any part of the property with equivalent property. We will not be liable for any loss resulting from delay in repair or choice of repairmen.
19. **Policy Period.** This policy applies only to **occurrences** which take place during the policy period. Losses to your insured property are covered only if the peril and loss both occur during the policy period.
20. **Policy Renewals.** Subject to our consent, you may renew this policy for successive periods by payment to us of the premium we require to renew the policy. Premium payment for any renewal period shall be due on the expiration of the preceding policy period. When allowed by State law, we may decline to renew all or part of Section III of this policy. We shall give you 30 days advance notice of any intention to non-renew all or part of this policy. For commercial coverages, we will give you 45 days advance

notice of any intention to non-renew all or part of these coverages.

21. **Policy Termination.** If you fail to pay the premium when due, the policy shall terminate on the expiration date of the policy without any notice or action by us. If you purchase another policy to replace this one, this policy terminates upon the inception of such policy without notice by you or us.
22. **Subrogation—Our Right to Recover Payment.**
 - a. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages, we will be subrogated to that right (have that right transferred to us). That person must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights.
 - b. If we make a payment under this policy, and the person to or for whom payment was made recovers damages from another, that person must hold the proceeds of the recovery in trust for us and must reimburse us to the extent of our payment.
 - c. We may prosecute in the name of any **insured** for the recovery of these payments.
23. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions. No one shall have any right to join us as a party to any action against an **insured**. Further, no action with respect to liability coverages shall be brought against us until the obligation of the **insured** has been determined by final judgment or agreement signed by us.
24. **Terms of Policy to Conform to Statute.** Terms of this policy which are in conflict with the statutes of the state where the policy is issued are hereby amended to conform to such statutes.
25. **Valid Premium Payment.** If your check in payment of any premium for this policy is not honored by your bank when presented for payment, no coverage is afforded for any time period or policy term for which you wrote the check.
26. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

27. **Insurance Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered by this policy, we shall not

be liable to the **insured** for an amount greater than the **insured's** interest up to the applicable limit of liability.

SECTION I – PROPERTY INSURANCE

We cover the property insured under Section I against direct physical loss only for specified perils. The perils and our limit of liability applicable to each coverage are indicated in the Declarations.

COVERAGE A – YOUR DWELLINGS

We cover the following:

1. The **dwelling** on the **residence premises** shown in the Declarations used principally as your private residence, including structures attached to the **dwelling**, permanently installed outdoor equipment pertaining to the **dwelling**, and materials and supplies located on or adjacent to the **residence premises** for use in the construction, alteration or repair of the **dwelling** or private garage on the **residence premises**;
2. Your **dwelling(s)** shown in the Declarations, other than the **dwelling** on the **residence premises**, used principally as a private residence, including structures attached to the **dwelling(s)**, permanently installed outdoor equipment pertaining to the **dwelling(s)** and materials and supplies on these **dwelling premises** for the construction, alteration or repair of the **dwelling(s)** or their private garages.

We do not cover field, corral or pasture fences even if attached to a **dwelling**.

We cover detached private garages, swimming pools, and storage sheds on the **dwelling premises** pertaining to the above **dwelling(s)**. Our limit of liability for these structures is indicated in the Declarations. We do not cover these structures if used for any **business**, professional or **farming** purposes. We also do not cover any private garage or storage shed rented to someone other than a tenant of the **dwelling**. Under this coverage a storage shed means a structure for storage of your **personal property**, with dimensions no greater than 200 square feet.

COVERAGE B – LOSS OF USE

1. **Additional Living Expense.** If a loss covered under Coverage A of this policy makes your covered **dwelling** uninhabitable, we will pay any necessary increase in living expenses incurred by you so that your family can maintain its normal

standard of living. Payment shall be for the shortest time required to repair or replace the premises or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy.

2. **Fair Rental Value.** If a loss under Coverage A causes your covered **dwelling** rented to others to become uninhabitable, we will pay the fair rental value of the **dwelling premises**. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expenses that do not continue while part of the **dwelling premises** rented or held for rental is uninhabitable.
3. **Prohibited Use.** If a civil authority prohibits you from use of the **dwelling premises** as a result of direct damage to neighboring premises by a peril insured against in this policy, we cover any resulting additional living expenses or fair rental value loss incurred by you for a period not exceeding two weeks during which use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement. Our limit for this coverage is stated in the Declarations.

COVERAGE C – PERSONAL PROPERTY

We cover **personal property** owned or used by any **insured** while it is anywhere in the world. At your request, we will cover **personal property** owned by others while the property is in that part of the **residence premises** occupied exclusively by an **insured**. Your **personal property** in a newly acquired principal residence is covered only for 30 days immediately after you begin to move the property there. If your **personal property** is distributed between your **residence premises** and this newly acquired principal residence, the limit of liability shall apply at each location in the proportion that the value at each location bears to the total value of all property distributed between the two locations.

If you have more than one **dwelling premises** insured under this policy, a different Coverage C limit of liability applies to each **dwelling premises**. These

limits are stated in the Declarations. The limit applicable to one insured **dwelling premises** cannot be applied to a loss at another insured **dwelling premises**.

1. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability. The special limit for each following category is the total limit for each loss for all property in that category:

- a. \$200 on money, bank notes, numismatic property, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, gift certificates, store gift cards or other stated value cards, or prepaid phone cards;
- b. \$1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets, sports collection cards and stamps. This limit applies regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material;
- c. \$1,500 on watercraft, including their trailers, furnishings, equipment, and outboard motors. We do not cover any loss by windstorm or hail to this property unless it is inside a fully enclosed building;
- d. \$1,500 on utility trailers;
- e. \$1,500 on any one article and \$2,500 in the aggregate for loss by theft of jewelry, watches, furs, precious and semi-precious stones;
- f. \$3,500 for loss by theft of firearms;
- g. \$3,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewterware;
- h. \$2,500 on property on the **residence premises** used at any time or in any manner for any **business** purpose and \$1,000 for such property away from the **residence premises**. This includes blank electronic storage media and pre-recorded computer programs available to the public. We do not cover cash, securities, books of account, drawings, other paper or electronic records, CD-ROM, electronic data processing tapes, disks, or other software media;

- i. \$5,000 on electronic data processing equipment and recording or storage media used with that equipment. This equipment or media is not covered while away from the **residence premises** except when removed for the purpose of repair, servicing or temporary use. A student **insured's** equipment and media are covered subject to this limitation while at a residence away from home;
- j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet, tapestry, wall hanging or other similar article;
- k. \$5,000 on your **personal property** which is usually located at your **residence premises** while this property is at any other **dwelling** owned by you and insured by us. This is in addition to any other limit which may apply;
- l. \$7,500 on hand, electronic, power and similar tools; and
- m. \$3,000 in the aggregate on dolls, figurines, decorative plates, or similar collectibles.

If you purchase additional coverage for any of the above special limits, this is shown in the Declarations and replaces the applicable limit(s) shown above.

2. **Property Not Insured.** We do not insure under Coverage C:

- a. **Farm personal property;**
- b. Animals, **livestock**, birds, fish or pets;
- c. **Mobile agricultural machinery**, motorized land vehicles, and their parts, except vehicles designed for assisting the handicapped and vehicles used to service your **dwelling**, provided they cannot be licensed for road use;
- d. Aircraft and parts;
- e. Property of roomers, tenants and boarders not related to an **insured**;
- f. **Recreational motor vehicles**, trailer homes, camper shells and campers;
- g. Any **personal property** located at any **dwelling**, its grounds, garages or sheds, which are owned by you and not insured under Section I;
- h. Articles separately described and specifically insured by this or other insurance;

- i. Materials and supplies on any **dwelling premises** for the construction, alteration or repair of the **dwelling premises** or its private garages.
3. **Supplementary Coverages.** The following supplementary coverages do not increase the applicable limit of liability under this policy:
- a. Consequential loss. We also cover loss to property insured under Coverage C while at the **insured location** due to change in temperature as a result of physical damage to the building or equipment therein caused by a peril insured against.
 - b. Credit Card, Bank Transfer Card, Counterfeit Currency and Forgery. We will pay up to \$1,000 for:
 - (1) The legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or bank transfer cards issued to or registered in any **insured's** name. We do not cover credit card or bank card use if any **insured** has not complied with all terms and conditions under which the card was issued;
 - (2) Loss suffered by an **insured** caused by forgery or alteration of any check or negotiable instrument;
 - (3) Loss suffered by an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover losses resulting from **business** pursuits or dishonesty of any **insured**.

COVERAGE D – FARM PERSONAL PROPERTY

We cover your unscheduled **farm personal property** on the **insured location**. This coverage is further extended for your **farm personal property** away from the **insured location** except while:

- 1. Stored in or being processed in manufacturing plants, public elevators, warehouses, seed houses, or drying plants;
- 2. In transit by common or contract carrier; or
- 3. In public sales barns or sales yards.

We will cover **farm personal property** leased or rented by you for the conduct of your **farming** operation only if this property is specifically added to Coverage D by endorsement. Coverage provided on

leased or rented **farm personal property** is excess over any other valid and collectible insurance available to the owner.

- 1. **Livestock Coverage.** Except for the peril of theft, we cover your **livestock** for the specified perils only if death occurs. Our limit of liability shall not exceed the actual cash value of the **livestock** subject to the maximum per head limit stated in the Declarations. Death must result within 30 days from the date of **occurrence**.
- 2. **Limited Crop Coverage.** Hay, straw and fodder are covered for loss caused by Peril 1 (fire) only, not to exceed the amount stated in the Declarations in any one stack or building. If a stack or hay building is exposed within 125 feet by another stack or building, the applicable limit shall apply to the aggregate of all such exposed stacks or buildings. For example, if stack Y is 100 feet from stack X and stack Z is 100 feet from stack Y but 200 feet from stack X, the aggregate limit applicable to stacks X, Y and Z is the Coverage D stack limit stated in the Declarations.
- 3. **Coinsurance Clause.** You must maintain insurance on your unscheduled **farm personal property** insured under Coverage D to the extent of at least 80% of the actual cash value at the time of our auditing or taking inventory. For example, if at the time of loss your unscheduled **farm personal property** is worth \$100,000, then the amount of insurance must be at least \$80,000. If you fail to keep this agreed percentage of coverage, you will share in each loss in addition to the deductible. We will pay the proportion of each loss represented by the amount you did insure at the time of loss divided by the amount you should have insured.

If the aggregate claim for any loss under this coverage is less than 2% of the total amount of insurance under Coverage D, you will not be required to furnish an inventory of the undamaged property. This does not mean we waive any of our rights concerning the application of this coinsurance clause.

- 4. **Inspection and Audit.** We shall be permitted to inspect and audit your insured **farm personal property** at any reasonable time.
- 5. **Coverage Limitation to Records and Electronic Data Processing Property.** Our liability for loss to:
 - a. Books of account, manuscripts, abstracts, drawings, card index systems and other records except electronic data processing records shall not exceed the cost of blank books, cards or other blank material, plus the

cost of labor incurred by you for transcribing or copying such records;

- b. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing shall not exceed the cost of such media in unexposed or blank form.

6. **Exclusions.** Coverage D does not cover:

- a. **Personal property;**
- b. Animals, other than **livestock**;
- c. Accounts, bills, currency, deeds, evidences of debt, money and securities;
- d. Vegetables (except threshed peas and beans), root crops, bulbs, fruits, cotton, tobacco and silage;
- e. Irrigation equipment, including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers; and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electric equipment);
- f. Fences, sawmill equipment, windmills, wind chargers and their towers, private power, light and telephone poles, radio and television towers and antennas;
- g. Vehicles primarily designed and licensed for road use other than wagons and trailers designed for **farming** purposes and used principally on the **insured location**;
- h. **Motor vehicles**, housetrailer, motorcycles, watercraft, **recreational motor vehicles**, ATVs, aircraft, or their parts or accessories;
- i. Unharvested or unthreshed crops or stubble;
- j. Grain, seed, peas, beans, hay, straw, wood chips, sawdust, and fodder unless loss is caused by Peril 1 (fire);
- k. Structures and buildings except portable buildings on skids in an amount not to exceed \$1,000 per building;
- l. Any damage arising from wear and tear, freezing, mechanical breakdown or failure;
- m. Under collision or overturn coverage, damage to tires, unless damaged by the same cause as other loss covered under Coverage D;
- n. Bees, their larvae, bee boards or beehives;

- o. Loss to **livestock** caused by the direct or indirect result of fright, freezing, running into fences or other objects, running into streams or ditches, or smothering, whether an insured peril is involved or not; or
- p. Property which is separately described and specifically insured in whole or in part by this or any other insurance.

COVERAGE E – ADDITIONAL BUILDINGS

We cover your **dwelling**s, barns, buildings, fences and structures listed on the schedule of additional buildings.

- 1. **Materials and Supplies.** Coverage on a building or structure is extended to cover all materials and supplies on the premises or adjacent to them intended to be used in the construction, alteration or repair of such building or structure.
- 2. **Coverage on Buildings.** Coverage on buildings includes permanent fixtures and sheds attached to the described buildings, but excluding fences.
- 3. **Utility Poles.** Coverage on private utility poles includes attached switch boxes, fuse boxes, and other electrical equipment mounted on the poles.
- 4. **Fences and Similar Structures.** Our liability for loss to fences, corrals, pens, chutes and feed racks shall not be for a greater proportion of any loss than the amount of insurance bears to the total value of that particular property at the time of loss.

Coverage to outdoor radio and television antennas, aerials, and satellite receivers including their lead-in wiring, masts and towers, is subject to a maximum payment of \$250, unless such equipment is specifically insured for a greater amount. No deductible applies to this \$250 limit.

SECTION I ADDITIONAL COVERAGES

- 1. **Debris Removal.** We will pay the reasonable expense incurred by you for the removal of debris of covered property provided coverage is afforded for the peril causing the loss. Debris removal expense is included in the limit of liability applying to the damaged property. When the amount payable for the actual damage to the property plus the expense for debris removal exceeds the limit of liability for the damaged property, an additional 5% of that limit of liability will be available to cover debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from the **residence premises** of:

- a. Your tree(s) felled by the peril of windstorm or hail;
- b. Your tree(s) felled by the peril of weight of ice, snow or sleet; or
- c. A neighbor's tree(s) felled by a peril insured against under Coverage C;

provided the tree(s) damages a covered structure. The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

2. Reasonable Repairs.

- a. We will pay the reasonable costs incurred by you for necessary repairs made solely to protect covered property from further damage provided coverage is afforded for the peril causing the loss. This coverage does not increase the limit of liability applicable to the property being repaired.
- b. We will pay up to \$200 for the cost of re-keying or replacing locks to exterior doors on the **residence premises** if your keys have been stolen during the policy period. No deductible applies to this coverage.

3. **Trees, Shrubs and Other Plants** (limited to Coverage A—Your Dwellings). We cover trees, shrubs, plants and lawns on the **dwelling premises** for loss caused by the following perils: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief or theft. The limit of liability for this coverage shall not exceed 5% of the limit of liability specified for the Coverage A **dwelling** at that same **dwelling premises**. The limit of liability for any one tree, shrub or plant is \$500. We do not cover property grown for **business** or **farming** purposes under this paragraph. This coverage shall not increase the applicable Coverage A limit under your policy.

4. **Refrigerated Products.** If Coverage C applies to your policy, we will pay an amount not to exceed the limit of liability stated in the Declarations for loss to contents of a freezer or refrigerator at the **residence premises**. This coverage does not apply to **farm personal property**. The loss or damage must be caused by a change in temperature resulting from:

- a. Interruption of electrical service to refrigeration equipment caused by damage to

the generating or transmission equipment which results in a breakdown in the system;

- b. Mechanical or electrical breakdown of the refrigeration system; or
- c. A tripped breaker or blown fuse.

You must exercise diligence in inspecting and maintaining refrigeration equipment in proper working condition. If interruption of electrical service, mechanical or electrical breakdown is known, you must exercise all reasonable means to protect the insured property from further damage.

The deductible shall be subtracted from the adjusted loss.

5. **Fire Department Service Charge.** We will pay up to the amount shown in the Declarations for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage. Coverage afforded under this clause applies only if the covered property is not located within the limits of the city, municipality or protection district furnishing such fire department response.

6. **Building Ordinance or Law Coverage.** When your **dwelling** insured under Coverage A sustains a covered loss, we will pay for the increased cost to repair or rebuild your **dwelling** caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same peril and the requirement is in effect at the time the loss occurs. This coverage includes legally required changes to the undamaged portion of your **dwelling** caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same covered loss and the requirement is in effect at the time the covered loss occurs.

Subject to the applicable limit of liability, the following limitations apply to this coverage:

- a. We will not pay more for a covered upgrade to the undamaged portion of your **dwelling** than the depreciated value of the undamaged portion of the **dwelling**.
- b. We will not pay more for a covered loss than the amount you actually spend to upgrade, repair, or replace your **dwelling**.
- c. The Loss Statement provisions under **Section I Conditions** that apply to **dwellings**

insured under Coverage A also apply to this coverage.

Limit of Liability. Our limit of liability under this coverage is included within and does not increase the applicable limit of liability shown in the Declarations for the insured **dwelling** which sustains a loss and shall not exceed 10% of that limit.

SECTION I PERILS INSURED AGAINST

We cover for direct physical loss to property insured caused by the following perils:

1. **Fire or lightning.**

2. **Removal.**

When property is removed because it is endangered by other insured perils, we pay for direct loss from any cause for accidental loss to that property while it is being removed and for 30 days after removal to a proper place.

3. **Windstorm or hail.**

a. This peril does **not** include loss to the interior or contents of a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall through which the rain, snow, sleet, or dust gets in;

b. This peril does **not** include loss caused directly or indirectly by frost, cold weather, ice (other than hail), snowstorm or sleet, all whether driven by wind or not;

c. This peril does **not** include loss to watercraft and their trailers, furnishings, equipment and outboard motors while outside a fully enclosed building.

4. **Explosion.**

This peril does **not** include rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines, or water pipes, if owned by, leased or actually operated under the control of an **insured**.

5. **Riot or civil commotion.**

6. **Aircraft**, including self-propelled missiles and spacecraft.

7. **Vehicles.**

Perils 6 (Aircraft) and 7 (Vehicles) cover only direct loss by actual physical contact of an aircraft

or vehicle or an object thrown up by a vehicle with the covered property.

8. **Smoke**, meaning sudden and accidental damage from smoke.

This peril includes a puff back of smoke from a furnace. This peril does **not** include loss caused by smoke from agricultural smudging or industrial operations.

9. **Vandalism or malicious mischief**, meaning only the willful and malicious damage to or destruction of the property covered.

This peril does **not** cover:

a. Loss if the **dwelling** has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. Any ensuing loss caused by the vandalism or malicious mischief is also not covered. A **dwelling** being constructed is not considered vacant or unoccupied; or

b. Wear and tear caused by tenants or members of their household.

10. **Theft**, including attempted theft and loss of property from a known location when it is likely that the property has been stolen.

Property of a student who is an **insured** is covered while at a residence away from home only if the student has been there at any time during the 45 days immediately before the loss.

The term theft shall **not** include escape, inventory shortage, wrongful conversion or embezzlement.

This peril does **not** include loss:

a. Caused by any **insured** or any person residing at your **residence premises** or any **dwelling premises**;

b. In or to a building under construction;

c. Of materials, tools and supplies for use in the construction of a building until it is completed and occupied;

d. From any part of a **dwelling premises** rented by an **insured** to other than an **insured**;

e. Of property while in the custody of the postal service or similar government or private business;

f. Caused by any of your tenants, members of their households, or your employees; or

- g. Caused by someone to whom an **insured** has entrusted the property.

In the event of loss by theft, you shall give immediate notice to the appropriate law enforcement agency. We will not pay any reward you offer for the return or recovery of any stolen property.

11. **Breakage of glass or safety glazing** material which is part of the covered building. This coverage extends to storm doors and storm windows in summer storage. This peril does not include loss if the building has been vacant more than 30 consecutive days immediately before the loss. A building being constructed is not considered vacant.
12. **Weight of ice, snow, or sleet** which causes damage to a building or property contained in a building. This peril does **not** include loss to an awning, fence, patio, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.
13. **Collapse** of a building or any part of a building.

Collapse means direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils 1 through 12 and 14 through 17 in Section I;
- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of contents, equipment, animals, or people;
- e. Weight of rain which collects on a roof; or
- f. Use of defective material or methods in construction, remodeling, or renovation but only if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, structure adjacent to the building, fences, patio, pavement, outdoor equipment, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf, or dock is not included under items b through f unless the loss is a direct result of the collapse of a building.

Collapse does **not** include settling, cracking, shrinking, sagging, bowing, bulging or expansion.

14. **Accidental discharge or overflow of water or steam** from within a plumbing, heating or air conditioning or automatic fire protective sprinkler system or from within a household appliance. We also pay for tearing out and replacing any part of the building on the **dwelling premises** necessary to repair the system or appliance from which the water or steam escaped. We will also pay the cost to excavate your main water line on the **dwelling premises** if it is leaking.

This peril does **not** include loss:

- a. On the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant;
- b. To the system or appliance from which the water or steam escaped;
- c. Caused by or resulting from freezing except as provided in the peril of freezing below; or
- d. On the **dwelling premises** caused by accidental discharge or overflow which occurs off the **dwelling premises**.

In this peril, a plumbing system does not include a septic system, sump, sump pump or related equipment.

15. **Sudden or accidental tearing apart, cracking, burning or bulging** of a steam or water heating system, an air conditioning system, or an appliance for heating water.

We do **not** cover loss caused by or resulting from freezing under this peril.

16. **Falling objects**. This peril does **not** include loss to the interior of a building or property contained in the building unless the roof or an exterior wall of the building is first damaged by a falling object. This peril does **not** include loss to outdoor equipment, awnings, fences, and retaining walls. Damage to the falling object itself is not included.

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

This peril does **not** include loss on the **dwelling premises** while the **dwelling** is vacant, unoccupied, or being constructed unless you have:

- a. Maintained heat in the building; or

- b. Shut off the water supply and drained the system and appliances of water.
18. **Sudden and accidental damage from artificially generated electrical current.**
- This peril does **not** include loss to a tube, transistor, integrated circuit or similar electronic component unless caused by a sudden and accidental increase or decrease of artificially generated electrical current. Our limit of liability under this peril is \$1,000 for each damaged item of **personal property**.
19. **Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.
- One or more volcanic eruptions that occur within a 72-hour period are considered one volcanic eruption.
20. **Collision with another object or overturn.** This peril does not apply to **livestock**. Impact with the ground or roadbed is not considered a collision.
21. **Electrocution.** This peril applies only to **livestock**.
22. **A direct attack by dogs or wild animals** causing mortal wounds. This peril applies only to **livestock**. It does not include attack by dogs owned by you or any person residing on the **insured location**.
23. **Accidental shooting.** This peril applies only to **livestock**. This peril does not include loss caused by any **insured**, employee of an **insured**, or person residing on the **insured location**.
24. **Loading, unloading, collision or overturn while in transit.** This peril applies only to **livestock** and **mobile agricultural machinery**.
25. **Drowning.** This peril applies only to **livestock**.
26. **Special Form.**
- We insure for risks of direct physical loss to the property insured **except**:
- Those losses excluded under "**Section I Exclusions**";
 - Collapse, except as provided in Peril 13;
 - Freezing of a plumbing, heating, automatic fire protection sprinkler, or air conditioning system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the **dwelling** is vacant, unoccupied or

being constructed unless you have used reasonable care to:

- (1) Maintain heat in the building; or
 - (2) Shut off the water supply and drained the system and appliances of water;
- Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock;
 - Theft in or to a building under construction, or of materials, tools and supplies for use in the construction until the building is completed and occupied;
 - Vandalism and malicious mischief or breakage of glass and safety-glazing materials if the building has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant or unoccupied;
 - Loss caused by continuous or repeated seepage or leakage of water or steam on the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant. We do not cover loss to the system or appliance from which the water or steam escaped;
 - Wear and tear; marring; deterioration; inherent vice; latent defect; mechanical breakdown; rust or other corrosion; mold; wet or dry rot; contamination; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; loss caused by birds, vermin, rodents, insects or domestic animals. If any of these cause water to escape from a plumbing, heating, fire protection or air conditioning system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a building necessary to replace the system or appliance. We do not cover loss to the system or appliance from which this water escaped. The word vermin includes, but is not limited to, bats, beavers, coyotes, porcupines, raccoons, skunks, snails, snakes, slugs or squirrels;

- i. Loss or damage including loss of use, caused directly or indirectly by any pollution, contamination or environmental impairment, unless said loss or damage follows immediately as a result of a loss caused directly by perils 1 through 10, and then only to the extent of such direct loss; residual or consequential loss not evident immediately at the conclusion of the loss event remains not covered;
- j. Pressure from or presence of tree, plant or shrub roots;

If Peril 26 applies to Coverage C, the following additional exclusions also apply. We do not cover loss resulting directly or indirectly from:

- k. Breakage of eye glasses, glassware, statuary, bric-a-brac, porcelains, and similar fragile articles, other than jewelry, watches, bronzes, cameras, and photographic lenses. These items are covered, however, if breakage results from Perils 1 through 10 or 12 through 19;
- l. Dampness of atmosphere or extremes of temperature unless the direct cause of loss is rain, snow, sleet or hail;
- m. Refinishing, renovating or repairing property other than watches, jewelry and furs;
- n. Collision other than collision with a land vehicle; sinking, swamping or stranding of watercraft, including their trailers, furnishings, equipment and outboard motors.

Under items g and a through e above, any ensuing loss not excluded is covered. We cover under this peril any loss which would have been covered had perils 1-19 applied to your covered property.

SECTION I EXCLUSIONS

We do not cover loss under Section I resulting directly or indirectly from:

- 1. **Ordinance or law**, meaning if because of any loss caused by any covered peril you are required during repairs or replacement to comply with any ordinance or law regulating the construction, repair or demolition of your insured property which increases the cost of repairs or replacement beyond our obligation to repair or replace with like kind and quality, we do not cover that increased cost. Limited ordinance or law coverage, however, may apply under "Section I Additional Coverages" to a Coverage A **dwelling**.

- 2. **Earth movement**, including but not limited to earthquake, landslide, mine subsidence, mudflow, earth sinking, rising or shifting. Direct loss by fire, explosion, theft, or breakage of glass or safety glazing materials resulting from earth movement is covered.

- 3. **Water damage**, meaning:

- a. Flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or sewage which backs up through sewers, drains or a septic system;
- c. Water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure. Direct loss by fire, explosion or theft resulting from water damage is covered.

- 4. **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of loss, or when property is endangered by a peril insured against.

- 5. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military force or military personnel, destruction or seizure of property for use for any military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

- 6. **Power, heating or cooling failure** unless the failure results from physical damage to power, heating or cooling equipment situated on the **dwelling premises** where the loss occurs. This failure must be caused by a peril insured against.

- 7. **Depreciation, decay, deterioration, change in temperature or humidity, loss of market**, or from any other consequential or indirect loss of any kind.

- 8. **Nuclear hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named or otherwise included within the perils insured against in Section I.

The above exclusions apply even if the following contribute to the loss: faulty, inadequate or defective planning; zoning; development; design; workmanship;

construction; weather conditions; materials; or maintenance of property on or off the **insured location** by any person or organization.

We do not cover under Section I:

1. Any sound reproducing, receiving, amplifying, or transmitting equipment, including but not limited to, any eight-track player, cassette player, CD player, citizens band radio, two-way mobile radio or telephone, scanning monitor, radar detection or similar device; or any tape, wire, record, disc, CD, diskette or other medium for use with any such equipment while any of this property is in or upon any motorized vehicle, farm equipment, boat or aircraft, and capable of being operated by power supplied from these vehicles. This equipment is covered if factory installed in **mobile agricultural machinery** insured under Coverage D.
2. Any loss caused intentionally by or at the direction of any **insured**.
3. Any loss caused by the possession or manufacture in a covered **dwelling** of a controlled substance, including, but not limited to, methamphetamines.

SECTION I CONDITIONS

1. If we choose to insure a **dwelling premises** under Section I not owned by you, the **insured** and applicable coverages are shown in the Declarations.
2. **Duties after Loss.** In case of a loss to which this insurance may apply, the **insured** must see that the following duties are performed:
 - a. Give notice as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law. In case of loss under the credit or bank card coverage, also notify the issuing card company;
 - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
 - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;

- d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and sign the same;
- e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
 - (1) The time and cause of loss;
 - (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
 - (3) Other insurance which may cover the loss;
 - (4) Changes in title or occupancy of the property during the term of the policy;
 - (5) Specifications of any damaged building and detailed estimates for repair of the damage;
 - (6) An inventory of damaged or stolen property as described above;
 - (7) Receipts for additional living expenses incurred and records supporting any fair rental value loss; and
 - (8) Evidence or affidavit supporting a claim under the credit card coverage stating the amount and cause of loss.

3. **Loss Settlement.** Subject to the applicable limits stated in the Declarations, covered property losses are settled as follows:
 - a. **Personal property**, structures that are not buildings, **farm personal property**, and buildings insured under Coverage E, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace. If repair or replacement results in better than like kind or quality, the **insured** must pay for the amount of the betterment;
 - b. Floor coverings, domestic appliances, awnings, outdoor antennas and outdoor equipment, whether or not attached to the buildings, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace;
 - c. Buildings insured under Coverage A:

- (1) When the full cost of repair or replacement for loss to a building under Coverage A is less than \$2,500, Coverage A is extended to include the full cost of repair or replacement without deduction for depreciation.
 - (2) If the limit of liability on the damaged building is less than 80% of its replacement cost at the time of the loss, we pay the larger of the following:
 - (a) Actual cash value of the damaged part of the buildings; or
 - (b) That proportion of the replacement cost of the damaged part which our limit of liability on the building bears to 80% of the full current cost of the building.
 - (3) If the limit of liability on the damaged building is at least 80% of its replacement cost at the time of loss we pay the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the smallest of the following amounts:
 - (a) The limit of liability applicable to the building;
 - (b) The cost to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practicable; or
 - (c) The amount actually and necessarily spent to repair or replace the damage.
 - (4) When the cost to repair or replace exceeds 5% of the applicable limit of liability on the damaged building, we are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. Such repairs or rebuilding must be made at the same location as where the loss occurred. You may make a claim for the actual cash value amount of the loss before repairs are made. A claim for any additional amount payable under this provision must be made and construction started within 1 year after the loss.
4. **Increased Hazard.** We shall not be liable for any loss to property insured under this policy occurring while the hazard is increased by any means within the control or knowledge of any **insured**.

5. **Loss to a Panel, Section, Pair or Set.** In case of a loss to a panel, section, pair or set, we may elect to:
- a. Repair or replace any part or restore the panel, section, pair or set to its value before the loss; or
 - b. Pay the difference between the actual cash value of the property before and after the loss; or
 - c. Pay the reasonable cost of providing a substitute to match as closely as practicable the remainder of the panel, section, pair or set.

We do not guarantee the availability of parts or replacements. We are not obligated to repair the entire pair, set, series of objects, outer covering, piece or panel when a part is lost or damaged.

6. **Glass Replacement.** Covered loss for breakage of glass shall be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
7. **Waiver of Subrogation.** You may waive in writing before a loss all right of recovery against any person. If not waived, we may require an assignment of rights for a loss to the extent that payment is made by us.
8. **Other Insurance.** If you are carrying other insurance on the property to which this policy applies, the coverage under this policy is null and void. We may permit other insurance, however, by endorsement to this policy. If other insurance is permitted, we will not be liable for a greater portion of any loss than our pro rata share in excess of any deductible.
9. **Recovered Property.** If an **insured** or we recover any property for which we have made payment under this policy, the **insured** or we will notify the other of the recovery. At the **insured's** option, the property will be returned to or retained by the **insured** or it will become our property. If the recovered property is returned to or retained by the **insured**, the loss payment will be adjusted based on the amount the **insured** received for the recovered property.

SECTION I ENDORSEMENTS

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

No. 104 (04-00) Property Coverage Endorsement.

Coverage E, perils 1 through 9, applies to the following property:

1. New buildings, structures, or additions while under construction on the **insured location**. We also cover materials and supplies to be used in construction of these buildings or structures on the **insured location**.
2. Permanent buildings at newly acquired premises not previously covered under this policy. This includes newly acquired buildings, structures, fixtures, fixed equipment, additions, alterations, and construction at these premises.

You must report the new acquisitions on the next audit date and pay the appropriate premium or this endorsement does not apply.

Limit of Liability. The total limit of additional insurance, either singly or for any combination of property covered under this endorsement will not exceed \$300,000 until you report values of the property to us. Additional premium will be due and computed from the date of property acquisition; but at our discretion, the premium may not be charged until the next audit.

Applicable Conditions. All Section I policy conditions and exclusions apply to this endorsement.

Loss Settlement Clause. Loss covered under this endorsement will be settled at actual cash value at the time of loss.

No. 109 (01-94) Irrigation Equipment/Spare Truck Parts Endorsement.

Coverage D is amended to include your irrigation equipment including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers, and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electrical equipment). Spare truck parts are included in this endorsement if indicated in the Declarations. Our limit of liability for this endorsement is indicated in the Declarations. The co-insurance clause under Coverage D applies separately to this endorsement.

No. 111 (04-00) Replacement Cost—Personal Property.

Losses under Coverage C shall be settled at replacement cost without deduction for depreciation.

Property Not Eligible.

Property listed below is not eligible for replacement cost settlement. Any loss shall be settled at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace.

1. Antiques, fine arts, paintings, statues and other articles which by their inherent nature cannot be replaced with new articles.
2. Articles whose age or history contribute substantially to their value, including but not limited to memorabilia, souvenirs, and collectors items.
3. Personal property of others.
4. Articles not maintained in good or workable condition.
5. Articles that are outdated or obsolete and are stored or not being used.

Replacement Cost.

1. We will pay not more than the smallest of the following amounts:
 - a. Replacement cost at time of loss without deduction for depreciation;
 - b. The full cost of repair at time of loss;
 - c. 400% of the actual cash value at time of loss;
 - d. Any special limit of liability applicable under Coverage C;
 - e. The total limit of liability applicable to Coverage C; or
 - f. 200% of the purchase price of any property purchased or acquired used.
2. When the replacement cost for the entire loss under this endorsement exceeds \$500, we will pay no more than the actual cash value for the loss or damage until the actual repair or replacement is completed.
3. An **insured** may make a claim for loss on an actual cash value basis and then make claim within 1 year after the loss for any additional liability in accordance with this endorsement.
4. This endorsement also covers domestic appliances, floor coverings, awnings, outdoor antennas, and outdoor equipment pertaining to a **dwelling** insured under Coverage A.

No. 114 (01-94) Borrowed Equipment Endorsement.

We cover under Coverage D loss to **mobile agricultural machinery** in which you have no interest, provided such machinery has been borrowed by either you or your **employees** and is actually being used in the conduct of your own **farming** operation and is not available for your regular use. This coverage, however, shall apply as excess over any insurance which the owner has on this borrowed property. Our limit of liability per **occurrence** under this endorsement is stated in the Declarations.

No. 118 (01-94) Scheduled Farm Personal Property.

Coverage D is changed to cover only the scheduled categories of **farm personal property** listed in the Declarations. The coinsurance clause is changed to apply individually to each category.

No. 125 (04-00) Septic System Backup Endorsement.

Coverages A and C are amended to include loss caused by the following peril: Sewage backup, meaning sewage or water backup from your septic system or a municipal sewage system into your insured **dwelling**.

This coverage is limited to damage caused to your **dwelling** on the **residence premises**. It does not include service, damage or repair to your sewage system or septic system. This coverage is limited to one loss per policy period.

No. 130 (01-94) Elimination of Livestock under Coverage D.

There is no coverage for **livestock** under Coverage D.

No. 171 (01-94) Glass Deductible Waived.

No deductible will apply to glass breakage to the building(s) insured under Coverage A of Section I.

No. 183 (01-94) Increased Replacement Cost Endorsement.

Our limit of liability applicable to a **dwelling** insured under Coverage A to which this endorsement applies shall be increased to 125% of the amount shown for that **dwelling** on the Declarations provided:

1. You have insured your **dwelling** and other structures to 100% of their replacement cost as we determine based on the accuracy of information you furnish, and you pay the premium we require;
2. You accept the property insurance adjustment condition in Paragraph 1 above, agree to accept any annual adjustment, and pay the additional premium charged;
3. You notify us within 90 days of the start of any additions or other physical changes which increase the value of your **dwelling** or other structures on the **dwelling premises** by \$5,000 or more, and pay the additional premium charged.

Subject to our limit of liability, losses under this endorsement are covered for the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the amount actually and necessarily spent to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practical.

Parts c. (1), (2) and (3) of the loss settlement clause of "**Conditions Applicable to Section I**" are deleted. This endorsement is void if you fail to comply with its provisions.

SECTION II—LIABILITY INSURANCE

COVERAGE F-1 – BODILY INJURY LIABILITY

COVERAGE G – PROPERTY DAMAGE LIABILITY

If a claim is made or a suit is brought against any **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which the **insured** is legally liable;

2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability shown in the Declarations.

COVERAGE F-2 – PREMISES MEDICAL

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of an **occurrence** causing **bodily injury**. This

coverage does not apply to you or residents of your household other than **residence employees**. As to others, this coverage applies only:

1. To a person on the **insured location** with the permission of any **insured**; or
2. To a person off the **insured location**, if the **bodily injury**:
 - a. Arises out of a condition in the **insured location** or the ways immediately adjoining;
 - b. Is caused by the activities of any **insured**;
 - c. Is caused by the activities of a **farm** or **residence employee** in the course of employment by any **insured**;
 - d. Is caused by an animal owned by or in the care of any **insured**; or
 - e. Is sustained by any **residence employee** and arises out of and in the course of employment.

Any payment under this coverage applies toward settlement of any claim for **damages** against any **insured**. No payment under this coverage shall be subject to duplicate payment under any liability coverage of this policy.

COVERAGE J – MEDICAL PAYMENTS (NAMED PERSONS)

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of **occurrence** to or for each person named in Coverage J of the Declarations, who sustains **bodily injury** caused by an **occurrence**.

Any payment under this coverage applies toward settlement of any claim for **damages** against any **insured**. No payment under this coverage shall be subject to duplicate payment under any liability coverage of this policy.

COVERAGE K – DEATH OF LIVESTOCK BY COLLISION

We will pay, subject to the limits of liability stated in the Declarations, for loss by death of **livestock** owned by you and not otherwise covered, caused by collision between such animal and a **motor vehicle**, provided:

1. The **motor vehicle** is not owned or operated by an **insured** or any **insured's** employee;

2. The animal is within a public highway and is not being transported;
3. Death to the animal occurs within 30 days after the date of the collision.

We further extend this coverage to include the death of **livestock** when killed by any train, provided you first present a claim in your name to the railroad company involved.

Our liability under Coverage K shall not exceed the lesser of the limit stated in the Declarations or the actual cash value of the animal at the time of loss.

COVERAGE L – CUSTOM FARMING

Coverages F-1 and G also cover your **custom farming**.

Coverage L does **not** apply to:

1. Any damage or injury to the land or crops upon which the **custom farming** is performed or is to be performed, arising from:
 - a. The mixing or application of fertilizers, herbicides, pesticides, fungicides, or other chemical treatment of real property, seeds or crops; or
 - b. Any goods, products, or their containers manufactured, sold, handled or distributed by or on behalf of any **insured**.
2. Injury or damage resulting from:
 - a. A delay in or lack of performance by or on behalf of any **insured** of any contract or agreement, written or oral; or
 - b. The failure of any **insured's** products or work performed by or on behalf of any **insured** to meet the level of performance, quality, fitness or result warranted or represented by an **insured**.
3. Any **custom farming** conducted more than 100 miles outside the borders of the State where the **insured location** is located.

COVERAGE M – DAMAGE TO PROPERTY OF OTHERS

We will pay for **property damage** to property of others caused by an **insured**. We will **not** pay for **property damage**:

1. Caused intentionally by any **insured** who is 13 years of age or older;

2. To property owned by or rented to any **insured**, a tenant of any **insured**, or a resident of any **insured's** household. This exclusion does not apply to a rented golf cart when it is being used to play golf on a golf course;
3. Arising out of:
 - a. Any **business**;
 - b. The ownership, maintenance, use, loading or unloading of a **motor vehicle**, watercraft, or aircraft;
 - c. Theft, mysterious disappearance, or loss of use;
 - d. Mechanical or electrical breakdown, wear and tear, latent defect or inherent vice;
4. To tires;
5. Arising out of the discharge, dispersal, release or escape of any **pollutants**.

Coverage M is subject only to the above exclusions and Exclusion 11 under Section II exclusions; it is not subject to the remaining Section II exclusions.

Limit of Liability. Our limit of liability under Coverage M for **property damage** arising out of any **occurrence** shall not exceed the lesser of:

1. The actual cash value of the damaged property at the time of the loss;
2. What it would then cost to repair or replace the damaged property with other of like kind and quality; or
3. The limit of liability stated in the Declarations for Coverage M.

If Section I of this policy also applies to a loss under Coverage M, Section I is primary and Coverage M is excess. You must pay any applicable Section I deductible before Coverage M applies.

We may pay for the loss in money or may repair or replace the property and may settle the claim for loss to property either with the owner or with you. Any property paid for or replaced shall, at our option, become our property.

We have no obligation under Coverage M to provide a defense against any claim or suit brought against any **insured**.

SECTION II ADDITIONAL COVERAGES

Section II includes the following:

1. **Fire Legal.** Coverage G is extended to cover **property damage** to a lodging place and its furnishings rented to, occupied or used by or in the care of an **insured** if such **property damage** arises out of fire, smoke or explosion. For purposes of this fire legal coverage, an **insured** shall include only you and those persons listed in Paragraph 1 of the definition of **insured**. The care, custody and control exclusion does not apply to this extension of coverage.
2. **Newly Acquired Locations.** Section II is extended to cover locations you acquire by ownership or leasehold if similar to premises or **dwellings** described in the Declarations, if you notify us of these acquisitions on or prior to the next renewal date of this policy. The insurance afforded to these acquisitions is limited to the insurance applicable to the locations already described in the Declarations.

This extension of coverage does not apply to loss for which you have other valid and collectible insurance.

You must pay any additional premium required because of the application of this insurance to such newly acquired locations.

SECTION II ADDITIONAL PAYMENTS

Under Coverage F-1 and G we will pay the following expenses in addition to our limit of liability, but our obligation for these payments ceases when our obligation to defend ends:

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;

5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

SECTION II EXCLUSIONS

The following exclusions apply to all coverages under Section II except Coverage M. Section II does not cover **bodily injury** or **property damage**:

1. Arising from any **insured's business** activities or any professional service;
2. Arising from any location which an **insured** owns, rents, leases, or controls, other than an **insured location**. This exclusion does not apply to **bodily injury** of a **residence employee** arising out of and in the course of employment by an **insured**;
3. Which is intentionally caused by any **insured**;
4. Arising from the maintenance, operation, use, entrustment to others, loading or unloading of any of the following which any **insured** owns, borrows, rents, leases or operates:
 - a. Any aircraft;
 - b. Any **motor vehicle**; coverage, however, applies on the **insured location** if the **motor vehicle** is not licensed for road use because it is used exclusively on the **insured location**;
 - c. Any watercraft if 26 feet or more in overall length;

This exclusion does not apply to **bodily injury** sustained by a **residence employee** maintaining, loading or unloading a **motor vehicle** in the course of employment; it also does not apply to Coverage J – Named Persons Medical Payments;
5. Arising out of the use of any aircraft, **motor vehicle**, **mobile agricultural machinery**, watercraft or **recreational motor vehicle**, while being used in or following any prearranged or organized racing, speed or stunting activity or in practice or preparation for any such contest or activity;
6. Which results from liability arising out of any contract or agreement;
7. Arising out of **custom farming** unless coverage is indicated under Coverage L in the Declarations;
8. Caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use of property for any military purpose, and including any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;
9. Resulting from any act or omission of a **residence** or **farm employee** who is also an **insured** while away from the **insured location**, if the employee is under the control and direction of some person other than an **insured**;
10. Caused by a substance released or discharged from an aircraft in connection with dusting or spraying operations;
11. Caused by any goods, products or containers manufactured, processed, sold, handled or distributed by an **insured**; except farm products raised on the **insured location**. Loss arising out of the failure of seed sold by an **insured** to conform to the variety, type, purpose, quality or conditions specified by an **insured**, however, is not covered; this includes, but is not limited to, loss caused by any viral, fungal, bacterial or any other type of seed disease. The term "seed" means seeds, bulbs, plants, roots, tubers, cuttings or other similar means of plant propagation;
12. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **pollutants**;
13. Sustained by you or any **insured** as defined in Paragraphs 1, 2, 3 or 4 of the definition of **insured** or by any other resident of your **residence premises**;
14. Arising out of a violation of a criminal law or Youth Rehabilitation Act or similar law, except traffic violations, if committed by any **insured**;
15. With respect to which any **insured** under this policy is also an **insured** under a nuclear energy liability policy issued by a Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any similar organization, or would be an **insured** under any such policy but for its termination upon exhaustion of its limits of liability;
16. Arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person;
17. Arising out of the transmission of or exposure to a communicable disease, bacteria, parasite, virus or other organism by any **insured**; or

Section II does not cover:

18. **Property damage** to property owned by, used by, rented to, or in the care, custody or control of any **insured** or his employees, or as to which any **insured** or his employees exercise physical control for any purpose (This exclusion is the care, custody and control exclusion referred to in **Section II Additional Coverages – Fire Legal.**);
19. **Property damage** to work completed by or for an **insured**, any damage arising out of such work, or out of the materials, parts, or equipment furnished in connection with such work;
20. **Property damage** to goods or products, including containers, which an **insured** manufactures, sells, handles, raises or distributes;
21. Damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of an **insured's** products, or work completed by or for an **insured** or for any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency;
22. Punitive or exemplary damages;
23. **Bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under any worker's compensation, non-occupational disease, disability or occupational disease law;
24. **Property damage** to an **insured location** arising out of the alienation (for example; selling, leasing, separating, etc.) of that location;
25. **Bodily injury** under Coverage F-2 sustained by any person residing on the **insured location** except a **residence employee**;
26. Under Coverages F-2 and J:
 - a. **Bodily injury** involving hernia or back injury, unless it is of recent origin, it is accompanied by pain, it was immediately preceded by some accidental strain suffered in the course of employment, and it did not exist prior to the date of the alleged injury;
 - b. Any person while conducting his **business** on the **insured location**, including the employees of that person;
 - c. **Bodily injury** to the extent that any medical expenses are paid or payable under the provision of any worker's compensation or similar law;

27. Under Coverages F-1 and F-2, **bodily injury** sustained by any **farm employee** arising out of employment;
28. Any **occurrence** covered under Section III; or
29. Under Coverages F-2 & J, expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose.

SECTION II CONDITIONS

1. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
 - a. Give written notice to us or our agent as soon as practicable, which sets forth:
 - (1) The identity of the policy and **insured**;
 - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
 - (3) Names and addresses of any claimants and witnesses;
 - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
 - c. At our request, assist in:
 - (1) Making settlement;
 - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
 - (3) The conduct of suits and attend hearings and trials;
 - (4) Securing and giving evidence and obtaining the attendance of witnesses;
 - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **bodily injury**;
 - e. Under Coverage M—Damage to the Property of Others—submit to us within 60 days after the loss, a sworn proof of loss and exhibit the damaged property, if within the **insured's** control.

2. **Duties of an Injured Person—Coverages F-2 and J.** The injured person or someone acting on behalf of the injured person shall:

- a. Give us a written proof of loss, under oath if required, as soon as practicable;
- b. Execute authorization to allow us to obtain copies of medical reports and records; and
- c. Submit to physical examination by a physician selected by us when and as often as we reasonably require.

3. **Cooperation of Insured.** If any **insured** fails to cooperate with us or send us legal papers as required, we have the right to refuse any further coverage for the **occurrence** or loss.

4. **Payment of Claim.** Any payment under Section II is not an admission of liability by any **insured** or us.

5. **Limits of Liability—Coverages F-1 and G.**

Regardless of the number of:

- a. **Insureds** under this policy,
- b. Persons or organizations sustaining damages, **bodily injury** or **property damage** or
- c. Claims made,

our liability for each **occurrence** is subject to the following limitations:

- a. Under Coverage F-1 the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage G the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. **Products Liability Limit.** The per **occurrence** limit of liability for **bodily injury** and **property damage** caused by farm products produced on the **insured location** is also the

total aggregate limit of our liability for all such **occurrences** during the policy period.

6. **Limits of Liability—Coverages F-2 and J.** The limit of liability for Coverages F-2 and J as stated in the Declarations as applicable to each person is our limit of liability for all covered expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**. Subject to the limit of liability for each person, our total limit of liability for each **occurrence** for **bodily injury** sustained by two or more persons is the per **occurrence** limit of liability stated in the Declarations.

7. **Other Insurance.** The insurance under Section II is excess over any other valid and collectible insurance. Coverages F-2 and J, however, are primary coverages.

SECTION II ENDORSEMENTS

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

No. 204 (01-94) Employer's Nonownership Liability Endorsement.

We agree that Coverages F-1 and G cover the liability of you and any of your executive officers arising out of the use of any **nonowned motor vehicle** used in your **farming** or household activities by any person other than you.

1. **Definitions.**

In this endorsement only, **nonowned motor vehicle** means a land motor vehicle, trailer or semi-trailer not owned by, registered in the name of, hired by, leased by, or loaned to you or your executive officers.

2. **Application of Insurance.**

- a. This endorsement does not apply to any **motor vehicle** owned by any of your executive officers or their spouses.
- b. This insurance does not apply to any **motor vehicle** owned by or registered in the name of a partner if your **business** is in the form of a partnership.

3. **Other Insurance.**

This insurance shall be excess insurance over any other valid and collectible insurance.

No. 220 (04-00) Combined Single Limit Endorsement.

The limits of liability paragraph pertaining to Coverages F-1 and G under **Section II Conditions** is changed to read as follows:

Limit of Liability—Coverages F-1 and G.

Regardless of the number of:

- a. **Insureds** under this policy,
- b. Persons or organizations sustaining **bodily injury** or **property damage**, or
- c. Claims made,

Our limit for each **occurrence** is subject to the following limitations:

- a. Our total combined single limit of liability under Coverages F-1 and G for all **bodily injury** and **property damage** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.
- b. **Products Liability Limit.** The per **occurrence** combined single limit of liability for **bodily injury** and **property damage** caused by farm products produced on the **insured location** is also the total limit of our liability for all **occurrences** during the policy period.

No. 269 (07-99) Limited Employer's Liability Endorsement.

Coverages F-1 and F-2 are extended to apply to **bodily injury** caused by an **occurrence** and sustained by a person performing labor for you in your **farming** operation, but only if you are not required by Idaho Law to provide worker's compensation benefits or coverage for this **bodily injury**. Coverage F-2 does not apply to a person or their employees while they conduct their **business** on the **insured location**.

No. 282 (04-00) Personal Injury Endorsement.

Under Coverage F-1, **bodily injury** liability, we cover personal injury. Personal injury means injury other than **bodily injury** arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment, or malicious prosecution;
2. Libel, slander or defamation of character; or
3. Invasion of privacy, wrongful eviction or wrongful entry.

Section II exclusions do not apply to this endorsement, but this endorsement does not cover:

1. Liability arising out of any contract or agreement;
2. Injury caused by a violation of a criminal law or ordinance committed by or with the knowledge or consent of any **insured**;
3. Injury sustained by any person as a result of an offense directly or indirectly related to the employment of this person by the **insured**;
4. An injury arising out of the **business** pursuits of any **insured**;
5. Civic or public activities performed for pay by any **insured**;
6. Injury arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person; or
7. Any injury arising out of the discharge, dispersal, release or escape of any **pollutants**.

SECTION III—AUTOMOBILE INSURANCE

COVERAGE N – BODILY INJURY

COVERAGE O – PROPERTY DAMAGE

If a claim is made or a suit is brought against any **insured** for damages because of **bodily injury** or **property damage** arising out of an **occurrence** involving an **insured vehicle** or a **nonowned vehicle**, we will:

1. Pay up to our limit of liability for the damages for which the **insured** is legally liable;
2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability.

Additional Payments.

We will pay the following in addition to our limit of liability, but our obligation for these payments ceases when our obligation to defend ends:

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We will also pay up to \$250 for the premium of any bail bond required of an **insured** because of an arrest in connection with an accident resulting from the use of an **insured vehicle**. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;
5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

COVERAGE P – UNINSURED MOTORIST

We will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by an **insured** and caused by an **occurrence**. The owner's or operator's liability for these damages must arise from the ownership, maintenance or use of the **uninsured motor vehicle**.

COVERAGE P-1 – UNDERINSURED MOTORIST

We will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** sustained by an **insured** and caused by an **occurrence**. The owner's or operator's liability for these damages must arise from the ownership, maintenance or use of the **underinsured motor vehicle**.

The following additional definitions apply to Coverages P & P-1:

1. **Insured** means:

- a. You and any **relative**;
 - b. Anyone **occupying** an **insured vehicle**; or
 - c. Anyone **occupying** a **nonowned vehicle** while operated by you or your **relative**.
2. **Uninsured motor vehicle** means a **motor vehicle**:
 - a. To which a **bodily injury** liability bond or policy does not apply at the time of the **occurrence**;
 - b. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
 - c. Which is a hit-and-run motor vehicle and neither the driver nor the owner can be identified. The hit-and-run vehicle must hit an **insured**, an **insured vehicle** or a vehicle which an **insured** is **occupying**.
 3. **Underinsured motor vehicle** means a **motor vehicle** for which the sum of liability limits of all applicable liability bonds or policies at the time of an **occurrence** is less than the limits of this coverage. For an **occurrence** involving only one **insured** this means the sum of all applicable per person limits compared to the per person limit of this coverage. For an **occurrence** involving 2 or more **insureds**, this means the sum of all applicable per **occurrence** limits compared to the per **occurrence** limit of this coverage.

A **motor vehicle** cannot qualify as both an **uninsured motor vehicle** and an **underinsured motor vehicle**.

4. An **uninsured** or **underinsured motor vehicle** does not include any **motor vehicle**:
 - a. Owned or operated by a self-insured as defined by any applicable **motor vehicle** law;
 - b. Owned by any governmental unit or agency;
 - c. Used as a residence;
 - d. Owned by or furnished for the regular use of you or any **relative**; or
 - e. Which is an **insured vehicle**.

Exclusions. The following additional exclusions apply to Coverages P & P-1.

Coverages P & P-1 do not apply to:

1. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle** or **trailer** without the permission of the owner;
2. The direct or indirect benefit of any insurer or self-insured under any worker's compensation, disability benefits or similar law;
3. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle** owned by or available for the regular use of any **insured** which is not an **insured vehicle**. Any Coverage P or P-1 under your policy applies to you, however, while driving a **motor vehicle** owned by a **relative** which is insured by us;
4. **Bodily injury** sustained by a passenger of an **insured vehicle** as a result of a claim the passenger may have against the operator of an **insured vehicle** or **nonowned vehicle**; or
5. **Bodily injury** for which a claim against the owner or driver of the **uninsured** or **underinsured motor vehicle** is barred by the applicable statute of limitations, unless we received notice of the claim before the statute of limitations has run.

Conditions Applicable to Coverages P & P-1.

The following additional conditions apply to Coverages P & P-1:

1. **Limits of Liability.** Under Coverages P & P-1, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**. If both Coverages P and P-1 apply to the same **occurrence** our combined limit of liability for all damages payable under both coverages for: (1) each person shall be the applicable coverage P limit of liability for each person; (2) each **occurrence** shall be the applicable Coverage P limit of liability for each **occurrence**.
2. **Nonstacking of Limits.** Regardless of the number of **insured vehicles**, **insureds**, policies of insurance with us, claims made or vehicles involved in the **occurrence**, the most we will pay for all damages resulting from any **occurrence** is the limit of liability shown in the Declarations, subject to reduction as outlined in the next paragraph.

3. **Reduction of Amounts Payable.** The amount payable under this coverage shall be the lesser of our limit of liability stated in the Declarations reduced by a. and b. below, or the total damages for **bodily injury** reduced by a. and b. below:

- a. All sums paid or payable by or on behalf of persons or organizations who may be legally responsible for the **bodily injury** to which this coverage applies. This includes all amounts paid under the liability coverage of this policy;
- b. The sums of all amounts payable under any worker's compensation, disability, or similar law; and

Any payment under this coverage to or for an **insured** will reduce any amount that person is entitled to receive under this policy's liability coverages.

4. **Payment of Loss.** We will pay only after all applicable liability bonds or policies have been exhausted by judgments or payments and the amount of damages has been determined by agreement, arbitration or other method agreed to by us. We have the option to pay any amount due under this coverage as follows:

- a. To the **insured**;
- b. If the **insured** is deceased, to the **insured's** surviving spouse; or
- c. To a person authorized by law to receive such payment, or to a person who is legally entitled to recover the damages which the payment represents.

5. **Hit-and-Run Accident.** At our request, the **insured** shall make available for inspection any **motor vehicle** or **trailer** which the **insured** occupied at the time of a hit-and-run accident. The **insured** must notify the police within 24 hours of a hit-and-run accident.

6. **Mediation.** After the **insured** submits a proof of loss with the information requested by us, either the **insured** or we may make a written demand on the other for mediation to resolve a claim. After mediation has been demanded, the parties shall attempt to agree on a competent, impartial mediator. In the event they cannot agree on a mediator within 10 days, either may request that a mediator be selected by a judge of a court having jurisdiction. Both parties shall make disclosure to each other of all required information at least 20 days prior to mediation. Each party shall pay one-half of the cost of the mediator; except if the claim is settled through mediation, **insurer** shall pay the mediator's full cost. A request for

mediation can be made within 10 days after a request for arbitration and supersedes a request for arbitration.

7. **Arbitration.** If we and an **insured** disagree whether the **insured** is legally entitled to recover damages from the owner or driver of an **uninsured** or **underinsured motor vehicle** or disagree as to the amount of damages, either party may make a written demand for arbitration. In this event, each party will select a competent, impartial arbitrator within 20 days of receipt of the written demand. The two arbitrators will select a third arbitrator. If they cannot agree upon a third arbitrator within 10 days, either may request that a judge of a court having jurisdiction select a third arbitrator. Both parties shall make disclosure to each other of all information as required by the arbitrator(s) in the scheduling and discovery order. Each party will pay the expenses it incurs, including attorney's fees and related costs, and bear the expenses of the third arbitrator equally. Arbitration will take place in the county in which the **insured** lives unless both parties agree otherwise. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.
8. **Trust Agreement.** If a claim or payment is made under this coverage:
 - a. We will be entitled to reimbursement of payments we have made to an **insured** to be taken from the proceeds of any judgment or settlement;
 - b. An **insured** must hold in trust all rights of recovery for us against any person or organization. That person must also do whatever is proper to secure those rights and do nothing after the loss to prejudice any rights of recovery;
 - c. If we make the request in writing, the **insured** must take any necessary or appropriate action to recover damages from any other person or organization through any representative we designate. Any action may be taken in the **insured's** name and in the event of recovery, we will be reimbursed for any expenses, costs, and attorney fees we incur; and
 - d. The **insured** must execute and deliver any document to us that may be appropriate for the purpose of securing the rights and obligations for the **insured** and for us as established by this provision.
9. **Nonbinding Judgment.** No judgment resulting from a suit brought without our written consent is

binding on us, either in determining the liability of the **uninsured** or **underinsured motor vehicle** operator or owner or the amount of damages to which the **insured** is entitled.

10. **Interest.** The term damages does not include interest. We are not liable for any interest on any payment we make under this coverage.

COVERAGE Q – MEDICAL PAYMENTS

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of **occurrence** to each **insured** who sustains **bodily injury** caused by an **occurrence**.

The following are **insureds** under Coverage Q:

1. Any person **occupying** an **insured vehicle** with your permission or the permission of an adult **relative** and sustaining **bodily injury** caused by an **occurrence** resulting from the use of this **insured vehicle**;
2. You or your **relatives** sustaining **bodily injury** caused by an **occurrence** while **occupying** an **insured vehicle** or a **motor vehicle** not owned by any **insured**;
3. Any person sustaining **bodily injury** while **occupying** a **nonowned vehicle**, if the **bodily injury** results from:
 - a. Its operation by you or on your behalf by a private chauffeur or domestic servant;
 - b. Its operation by a **relative**;
4. You or your **relatives** sustaining **bodily injury** while a pedestrian or a bicyclist when struck by a **motor vehicle** or **trailer**.

Any payment under this coverage applies toward settlement of any claim for damages against any **insured**. No payment under this coverage shall be subject to duplicate payment under Coverages P, P-1 or any liability coverage of this policy.

COVERAGE R – FIRE AND THEFT ONLY

We will pay for any direct and accidental loss of, or damage to, your **insured vehicle** and its equipment caused by:

1. Fire, lightning or windstorm;
2. Smoke or smudge due to a sudden, unusual and faulty operation of any heating equipment serving the premises in which the vehicle is located;

3. The stranding, sinking, burning, collision or derailment of any conveyance in or upon which the vehicle is being transported; or
4. Theft.

COVERAGE S – COMPREHENSIVE

We will pay for any direct and accidental loss of, or damage to, your **insured vehicle** and its equipment not caused by collision or rollover. Loss or damage from missiles, falling objects, theft, collision with animals, or accidental glass breakage are comprehensive losses.

COVERAGE T – COLLISION AND ROLL OVER

We will pay for direct and accidental loss to your **insured vehicle** and its equipment when it is hit by or hits another vehicle, or object, or rolls over. We will waive any applicable deductible if the collision involves **insured vehicles** of two or more policyholders. If the collision involves two or more **insured vehicles** under this policy only one deductible applies.

SECTION III ADDITIONAL PAYMENTS

1. **Loss to Personal Property.** If as a result of other loss covered under Coverages R, S, or T, loss results to personal property being transported by the **insured vehicle**, we will pay up to \$500 for this loss. We do not cover cash or securities under this paragraph. We do not cover loss by theft of any personal property unless the loss is caused by the **insured vehicle** being stolen. Exclusion 13 does not apply to this coverage.
2. **Loss of Use by Theft—Reimbursement.** Following a theft of an **insured vehicle** covered under Coverages R or S, we will reimburse you for expenses up to \$25 a day to a maximum of \$500 incurred for the rental of a substitute automobile including taxi cabs.

This reimbursement is limited to such expense incurred during the period commencing 48 hours after the theft has been reported to us and the police, and terminating, regardless of expiration of the policy period, on the date the **insured vehicle** is returned to you or on such earlier date as we make or offer settlement for this theft.
3. **Rental Car Coverage.** If Coverages S and T apply to an **insured vehicle** they also apply to a private passenger car driven by an **insured** which is rented by an **insured** for a period of less than three weeks.

SECTION III EXCLUSIONS

Section III does not cover:

1. Any **insured** while using any vehicle to carry persons for a fee. This exclusion does not apply to a share-the-expense car pool;
2. Any **insured** for any vehicle rented or leased to others;
3. Any **insured** while using any vehicle in a pre-arranged race, speed contest, or other competition, or preparation for any of these activities;
4. Damages which are intentionally caused by any **insured**;
5. Any **nonowned vehicle** while an **insured** is using it in the business of selling, repairing, servicing, storing or parking **motor vehicles**, including road testing and delivery;
6. Damages caused by nuclear reaction, radiation, or radioactive contamination;
7. Any radar or similar detection device; any device or instrument designed for the recording, reproduction, amplification, receiving, or transmitting of sound, radio waves, microwaves, or television signals; or tapes, records, CDs, discs or other medium designed for use with this equipment. This exclusion does not apply to a device or instrument if it is permanently installed in the dash, trunk or console opening at the time of manufacture or by a dealer when the **insured vehicle** is purchased new;
8. Damages caused directly or indirectly by declared or undeclared war, invasion, insurrection, rebellion, revolution, civil war, other assumption of power, or confiscation by a duly constituted governmental or civil authority;
9. Exemplary or punitive damages;
10. **Bodily injury** to anyone eligible to receive benefits which an **insured** either provides or is required to provide under any worker's compensation or occupational disease law;
11. Damages arising out of the ownership, maintenance or use of any type of emergency vehicle; gas, oil, or newspaper delivery truck; logging truck; or any non-farm commercial truck;

12. Under Coverages N and O, **bodily injury** or **property damage** sustained by:

- a. You;
- b. Residents of the household of the operator of an **insured vehicle** or **nonowned vehicle** who are related to the operator by blood, marriage, or adoption, including a ward or foster child; or
- c. The minor children of the operator of an **insured vehicle** or **nonowned vehicle**;

This exclusion, however, does not apply to the extent such coverage is required by state law, but the limits of such coverage shall then be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility or similar law affecting motor vehicle insurance requirements. These limits for the State of Idaho are stated in the Declarations.

13. Under Coverage O, damage to property owned or transported by any **insured**;

14. Under Coverage O, damage to property rented to, used by, or in the care, custody or control of an **insured**. This exclusion does not apply to **property damage** to:

- a. A residence or private garage rented to an **insured**; or
- b. A **nonowned vehicle** if there is no comprehensive or collision coverage on the vehicle;

15. Under Coverages N, O, P & P-1, liability arising out of any contract or agreement;

16. Under Coverage Q, **bodily injury** sustained while an **insured vehicle** is used as a residence or temporary living quarters;

17. Under Coverage Q, **bodily injury** sustained by a person engaged in the maintenance or repair of an **insured vehicle**;

18. Under Coverage Q, **bodily injury** to anyone eligible to receive benefits under any worker's compensation or similar law;

19. Under Coverage Q, any expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose;

20. Under Coverages R, S and T, any loss by collapse, explosion or implosion of any tank or container;

21. Under Coverages R, S and T, any camper or camper shell unless listed on the Declarations for these coverages;

22. Under Coverages R, S and T, any equipment or accessories contained in an insured motorhome, camper unit or trailer unless the equipment or accessories are built in and form a permanent part of the vehicle;

23. Under Coverages R, S and T, loss caused by recall of an **insured vehicle**;

24. Tires, unless damaged concurrent with other loss covered under Coverages R, S, or T. This exclusion does not apply to loss caused by vandalism;

25. Damages caused by wear and tear, freezing, mechanical or electrical breakdown or failure other than burning of wiring, unless the damage results from other loss covered under Coverages R, S, or T;

26. Under Coverages R, S, or T, any loss resulting from conversion, embezzlement or secretion by any person possessing the vehicle under any lien, rental or sales agreement; or

27. Under Coverage S any loss resulting from defective title or failure to obtain proper title.

SECTION III CONDITIONS

1. **Out of State Insurance.** If you have liability insurance under this policy and if an **insured** is traveling in a state or province outside the state of Idaho which has a compulsory insurance, financial responsibility, or similar law affecting nonresidents, we will automatically provide the required minimum amounts and types of coverages if your policy does not already provide these coverages, but only to the extent required by law and only with respect to the operation or use of the **insured vehicle** in that state or province. The required coverage, however, will be excess over any other collectible insurance.

2. **Two or More Vehicles.** A vehicle and an attached **trailer** will be considered one vehicle under Coverages N, O, P, P-1, and Q and separate vehicles under Coverages R, S, and T. The maximum applicable limits of liability in this policy shall not be increased in any way by this paragraph.

3. **Other Vehicle Insurance in the Company.** If this policy and any other vehicle insurance policy issued to you or your **relative** by us apply to the same **occurrence**, the maximum limit of our liability under all of the policies will not exceed the highest applicable limit of liability under any one policy. This is the most we will pay regardless of the number of **insureds**, claims made, **insured vehicles** or premiums.
4. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
 - a. Give written notice to us or our agent as soon as practicable, which sets forth:
 - (1) The identity of the policy and the **insured**;
 - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
 - (3) Names and addresses of any claimants and available witnesses;
 - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
 - c. At our request, assist in:
 - (1) Making settlement;
 - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
 - (3) The conduct of suits and attend hearings and trials;
 - (4) Securing and giving evidence and obtaining the attendance of witnesses;
 - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **occurrence**.
5. **Duties after Loss—Coverages R, S, and T.** In the case of loss to which this insurance applies, the **insured** shall perform the following duties:
 - a. Give notice, as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law;
 - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
 - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;
 - d. As often as we may require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and subscribe the same;
 - e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
 - (1) The time and cause of loss;
 - (2) The interest of the **insured** and all others in the **insured vehicle** involved and all encumbrances on the **insured vehicle**;
 - (3) Other insurance which may cover the loss;
 - (4) Changes in title of the **insured vehicle** during the term of the policy.
6. **Duties of an Injured Person—Coverages P, P-1 and Q.** The injured person or someone acting on behalf of the injured person shall:
 - a. Give us written proof of loss containing the information we request, under oath if required, as soon as practicable;
 - b. Execute authorization to allow us to obtain copies of medical reports and records; and
 - c. The injured person shall submit to physical examination by a physician selected by us when and as often as we reasonably require.
7. **Cooperation of Insured.** If any **insured** fails to cooperate or send us legal papers as required, we have the right to refuse any further protection for the **occurrence** or loss.
8. **Territory.** This policy applies only to **occurrences** within the United States of America and Canada. If applicable to your **insured vehicle**,

Coverages R, S, and T only are extended for trips into that part of the Republic of Mexico lying not more than 100 miles from the boundary line of the United States of America. Our liability will be determined on the basis of cost at the nearest United States point.

WARNING: Automobile accidents in the Republic of Mexico are considered a criminal offense, rather than a civil matter. The insurance provided by this policy will not meet the Mexican automobile insurance requirements. If you are in an automobile accident in Mexico and have not purchased insurance through a licensed Mexican insurance company, you may be jailed and may have your automobile impounded.

9. **Payment of Claim.** Any payment under Section III is not an admission of liability by any **insured** or us.

10. **Limits of Liability.** Regardless of the number of:

- a. **Insureds** or vehicles insured under this policy,
- b. Persons or organizations sustaining damages, **bodily injury** or **property damage**, or
- c. Claims made,

our liability for each **occurrence** is subject to the following limitations:

- a. Under Coverage N, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage O, the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. Under Coverage Q, the medical limit stated in the Declarations for each person is our limit of liability for all expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**;
- d. Our limit of liability under Coverages R, S, and T is the lesser of:

(1) The actual cash value of the **insured vehicle** or covered property; or

(2) The cost of repair or replacement using parts of like kind and quality.

Actual cash value is determined by the market value, age and condition at the time the loss occurred. We do not cover any reduction in value to your **insured vehicle** after repairs are completed. The cost of repair or replacement is based on the cost of repair agreed upon by us or an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, parts, and material prices charged by a substantial number of repair facilities in the area where the **insured vehicle** is to be repaired.

Under Coverages R, S and T, we have the right to base our payment on the cost of non-original equipment manufacturer parts provided they are C.A.P.A. certified as being equivalent to or better than original equipment.

11. **Loss Settlement.** We have the right to settle a loss with you or the owner of the property in one of the following ways:

- a. Pay up to the actual cash value;
- b. Pay to repair or replace the property or part with like kind and quality. If the repair or replacement results in better than like kind and quality, you must pay for the amount of the betterment;
- c. Return the stolen property and pay for any damage due to the theft; or
- d. Take the property at an agreed value, but it cannot be abandoned to us.

12. **Other Insurance.** The insurance under Section III is excess over any other valid and collectible insurance. Coverage Q, however, is primary coverage.

13. **Loss Payable Clause.** This clause is applicable only if a lienholder is named in the Declarations.

- a. We will pay you and the lienholder named in the policy for loss to an **insured vehicle**, as interests may appear.
- b. Section III covers the interest of the lienholder unless the loss results from fraudulent acts or omissions on your part.

- c. We may cancel the policy during the policy period. Notice of cancellation shall be mailed to the lienholder at least 10 days before the date the cancellation takes effect.
- d. If we make any payment to the lienholder, we will obtain his rights against any other party.
- e. We will pay the lienholder for their interest directly if your car has been repossessed.

SECTION III ENDORSEMENTS

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

No. 312 (04-00) Automobile Accidental Death and Indemnity (AD&D) and Specific Disability Benefits Endorsement.

- 1. **Death Benefit.** We agree to pay \$5,000 if an **insured** dies solely as the result of **bodily injury** caused by an **occurrence** while **occupying** or struck by a **motor vehicle**. Death of the **insured** must occur within 90 days after the date of the **occurrence**.
- 2. **Specific Disability Benefits.** We agree to pay the amount stated in the Schedule of Benefits for the specific injury listed as the result of **bodily injury** sustained by an **insured** caused by an **occurrence** while **occupying a motor vehicle**. The specific injury must be medically treated within 90 days from the date of **occurrence**. Any sum paid under this paragraph shall reduce the amount to which the **insured** is entitled under Coverage A—Death Benefit. Payment of the death benefit shall terminate our obligation to pay any further sum.

SCHEDULE OF BENEFITS

FOR LOSS OF

Both hands; both feet; sight of both eyes;
 one hand and one foot; or either hand or foot and
 sight of one eye \$5,000

FOR LOSS OF

Either hand or foot; sight of one eye; thumb and finger
 of one hand; or any three fingers \$1,500

FOR LOSS OF

Any two fingers \$1,000

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints. In case of multiple injuries, not more than one of the amounts (the greatest) specified above shall be paid.

Exclusions

The following additional exclusions apply to this endorsement. This endorsement does not cover:

- 1. Loss caused by or resulting from disease, except infection resulting from **bodily injury** to which this insurance applies;
- 2. **Bodily injury** sustained by an **insured** engaged in the maintenance or repair of a **motor vehicle**;
- 3. **Bodily injury** to an **insured** arising out of the business of selling, repairing, servicing, storing, or parking **motor vehicles**, including road testing or delivery;
- 4. **Bodily injury** to an **insured** arising out of the operation, loading, unloading, or **occupying** of a public or commercial **motor vehicle**;
- 5. **Bodily injury** to an **insured** while **occupying a motor vehicle** without the permission of the owners;
- 6. **Bodily injury** to an **insured** while **occupying a motor vehicle** owned by or available for the regular use of any **insured** which is not an **insured vehicle**.

Conditions

The following additional conditions apply to this endorsement.

- 1. **Insured** means only those persons listed in the Declarations as persons to whom this endorsement applies.
- 2. **Notice of Claim—Death Benefit**

 The injured person, the **insured's** beneficiary, or someone acting on behalf of such person shall:
 - a. Give us a written proof of claim, under oath if required, as soon as practical;
 - b. Execute authorization to allow us to obtain copies of medical reports and records; and
 - c. The injured person shall submit to a physical examination by a physician selected by us

when and as often as we may reasonably require.

3. Payment of Death Benefit—Autopsy

- a. If the insured decedent is survived by a spouse who is a resident of the same household at the time of the accident, the death benefit is payable to the decedent's spouse. If the insured decedent was a minor, the death benefit is payable to any parent who was a resident of the same household at the time of the accident; otherwise, the death benefit is payable to the insured decedent's estate.
 - b. We shall have the right to have an autopsy performed where it is not forbidden by law.
4. The Conditions labeled "Other Insurance," "Nonduplication of Insurance Benefits" and "Subrogation—Our Right to Recover Payment" do not apply to this endorsement.

No. 313 (04-00) Combined Single Limit Endorsement-Coverages P and P-1.

The limits of liability paragraph pertaining to Coverages P and P-1 under **Conditions Applicable to Coverages P & P-1** is changed to read as follows:

Limit of liability. Our total combined single limit of liability under Coverages P and P-1 for all **bodily injury** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.

Separate Limits Requirements. We will apply the combined single limit to provide any separate limits required by law for **bodily injury**. This provision, however, will not increase our total limit of liability.

No. 320 (04-00) Combined Single Limit Endorsement-Coverages N and O.

The limits of liability paragraph pertaining to Coverages N and O under **Section III Conditions** is changed to read as follows:

10. **Limit of Liability.** Regardless of the number of:
- a. **Insureds** or vehicles insured under this policy,
 - b. Persons or organizations sustaining **bodily injury** or **property damage**, or
 - c. Claims made,

our liability for each **occurrence** is subject to the following limitation:

- a. Our total combined single limit of liability under Coverages N and O for all **bodily injury** and **property damage** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.

Separate Limits Requirements. We will apply the combined single limit to provide any separate limits required by law for **bodily injury** or **property damage**. This provision, however, will not increase our total limit of liability.

No. 323 (01-94) Drive Other Car Endorsement.

Coverages N and O of Section III are amended to cover you while you are operating a **motor vehicle** that does not qualify as a **nonowned vehicle**, provided you have the permission of the owner of the vehicle. This endorsement does not cover a **motor vehicle**:

- 1. Owned in whole or in part by you or any **relative**;
- 2. Registered in your name or in the name of any **relative**;
- 3. Used in transporting persons or property for hire.

This endorsement shall not cover the owner of the **motor vehicle** you are driving.

No. 334 (04-00) Roadside Assistance Endorsement.

We will pay for reasonable and necessary roadside assistance expense caused by the disablement of your **insured vehicle** and incurred at the place of disablement. Roadside assistance includes only the following:

- 1. Unlocking the **insured vehicle** if the keys have been locked inside the vehicle or if the keys have been lost;
- 2. Flat tire repair;
- 3. Labor for on site mechanical repairs;
- 4. Battery jump;
- 5. Towing or winch out service; or
- 6. Delivery of up to 3 gallons of gasoline, antifreeze or other **motor vehicle** fluids.

The limit applicable to this coverage is indicated in the Declarations. No deductible applies to this coverage.

No. 368 (04-00) Car Rental Reimbursement Endorsement.

If a loss exceeds the applicable deductible to the **insured vehicle** under Coverages S or T, we agree to reimburse you for:

1. The expense incurred by you for the rental fee (excluding all other charges) of a substitute automobile from a car rental agency or garage; or
2. The expense incurred by you for taxicabs.

Coverage applies during a period starting on:

1. The date of loss if as a direct result of this loss the **insured vehicle** cannot be operated under its own power; or

2. If the **insured vehicle** is operable, the date you authorize repairs and deliver the vehicle to the repair shop.

Our limit of liability per day and per accident for this coverage are shown in the Declarations.

Regardless of the policy period, our liability for taxicab or rental fees shall end on the earliest of the following:

1. Upon completion of repair or replacement of property lost or damaged;
2. Upon such date as we make or tender settlement for the loss or damage.

This coverage shall not apply in the event of a theft of the **insured vehicle** for which reimbursement of transportation expense is provided elsewhere in this policy.

SECTION IV—INLAND MARINE INSURANCE

The coverage under this section applies as indicated by endorsements attached to and listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

SECTION IV CONDITIONS

1. **Duties after Loss.** In case of a loss to which this insurance may apply, the **insured** must see that the following duties are performed:
 - a. Give notice, as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law;
 - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
 - c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value and amount of loss and ownership of property. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;
 - d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the

presence of any other **insured** and subscribe the same;

- e. Within 60 days after our request, submit to us the **insured's** signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:

- (1) The time and cause of loss;
- (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title during the term of the policy;
- (5) Specifications of any damaged property and detailed estimates for repair of the damage;
- (6) An inventory of damaged property as described above.

2. **Loss to a Pair or Set.** In case of a loss to a pair or set, we may elect to:

- a. Repair or replace any part of or restore the pair or set to its value before the loss; or

- b. Pay the difference between the actual cash value of the property before and after the loss;
- c. Pay the reasonable cost of providing a substitute to match as closely as practicable the remainder of the panel, section, pair or set.

We do not guarantee the availability of parts or replacements. We are not obligated to repair the entire pair, set, series of objects, outer covering, piece or panel when a part is lost or damaged.

- 3. **Valuation.** We shall not be liable beyond the actual cash value of the property at the time of any loss or the applicable endorsement limit, whichever is less. In no event shall we be liable for more than what it would cost to repair or replace the property with material of like kind and quality.
- 4. **Other Insurance.** The insurance under Section IV is excess over any other valid and collectible insurance.

MUTUAL CONDITIONS

- 1. **Membership.** While this policy is in force, you become a member of Farm Bureau Mutual Insurance Company of Idaho with all the rights and privileges of members as provided by the bylaws of the company in force at the time this policy takes effect, or that may become in force during the continuance of this policy. This policy is on a mutual and participating basis. This means that while this policy is in force, you will be entitled to participate in dividends of the company as the board of directors in their discretion may determine to distribute to policyholders.
- 2. **No Contingent Liability.** The policy is without contingent liability and is nonassessable.

- 3. **Annual Meeting.** The annual meeting of the members will be held at our principal or home office unless a different place is fixed by the board of directors. The annual meeting will be held on the fourth Friday of January of each year unless a different time is fixed by the board of directors. A notice of this meeting shall be published in the Idaho Farm Bureau News or mailed to each member at his last known address at least 45 days prior to the meeting.

IN WITNESS WHEREOF, the Farm Bureau Mutual Insurance Company of Idaho has caused this policy to be signed by its Secretary at Pocatello, Idaho, and countersigned on the Declarations by a duly authorized representative of the company.



Rick D. Keller, Secretary

COPY

200 733-1920

T-117 P012/021 F-035

Jeffrey J. Hepworth, ISB#3455
JEFFREY J. HEPWORTH, P.A.
& ASSOCIATES
161 5th Avenue South, Suite 100
P.O. Box 1806
Twin Falls, ID 83303-1806
Telephone: (208) 734-0702

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2007 OCT -1 PM 4:17

BY _____
CLERK
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MICHAEL BROOKBANK,

Plaintiff,

v.

JAMEY KINSEY, and JOHN DOES
1 - 10,

Defendants.

Case No. CK07-4522

COMPLAINT

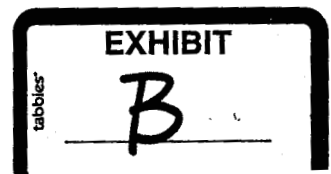
Fee Category: A.1

COMES NOW the Plaintiff by and through his counsel of record, Jeffrey J. Hepworth of the law firm of Jeffrey J. Hepworth, P.A. & Associates, and for a cause of action against the Defendants, hereby state and allege as follows:

I.

The Plaintiff, Michael Brookbank, is at all relevant times herein a resident of the City of Murtaugh, County of Twin Falls, State of Idaho.

COMPLAINT - 1



Rich

*01 09519701
8-1807*

II.

The Defendant, Jamey Kinsey, is believed to be a resident of the City of Kimberly, County of Twin Falls, State of Idaho. Jurisdiction and venue are proper in Twin Falls County, Idaho as the Defendant committed a tortuous act in Twin Falls County, State of Idaho.

III.

John Does 1 – 10 are individuals whose true names are unknown but may be liable to the Plaintiff for reasons relating to or arising from the facts set forth in this Complaint.

IV.

On August 18, 2007, at approximately 5:50 p.m., Plaintiff was southbound on 3500 East when a medium sized dog ran out from the driveway of the Defendant's residence causing the Plaintiff's motorcycle to crash.

The Defendants are liable to the Plaintiff for owning, harboring, or in possession of an at large dog in violation of County Ordinance 5-6-4(A) and for owning, harboring, or in possession of a Nuisance Dog in violation of County Ordinance 5-6-4(C). Violation of said ordinances constituted negligence per se.

The Defendant owner of the residence is also liable for allowing a dangerous condition to exist on the property consisting of vision obstructions to the driveway and the dangerous nuisance dog to reside on the property.

V.

As a direct and proximate result of the negligence of the Defendant, Jamey Kinsey, Plaintiff Michael Brookbank suffered injuries which include a broken left tibia, fibula and

ankle, broken big and little toe of the left foot, considerable road rash on his left leg and arm and various other injuries and abrasions. Plaintiff has incurred medical expenses for over four days of hospitalization, surgery and rehabilitation in excess of \$20,000, lost wages after August 18, 2007, in an amount to be proved at trial and damages for pain and suffering in excess of \$10,000.00, the minimal jurisdictional amount of this court. Plaintiff seeks general damages for pain, suffering, and lost enjoyment of life in an amount to be determined at trial.

VI.

The Plaintiff's 1997 Harley Davidson XL1200 motorcycle was damaged in excess of \$2,900.00 as a result of the accident. The Defendant has failed to pay for repairs of the motorcycle. The Plaintiff was denied the use of his motorcycle. The Plaintiff is entitled to loss of use damages of approximately \$35.00 per day from the date of the accident, August 8, 2007.

VIII.

As a further, direct, and proximate result of the Defendant's negligence, the Plaintiff _____ has been required to employ the services of the law firm of Jeffrey J. Hepworth, P.A. & Associates and is entitled to recover his prejudgment interest, court costs and attorney fees as provided by I.C. § 12-120(4) and I.C. 12-121.

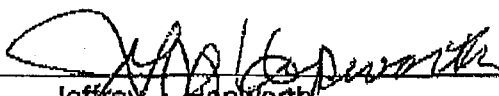
WHEREFORE, the Plaintiff respectfully prays for judgment against the Defendant as follows:

1. For special damages for past and future medical expenses and other damages for Plaintiff;

- 2. For general damages for Plaintiff's pain, suffering, disability, disfigurement, lost enjoyment of life and other general damages as is shown by the evidence at trial;
- 3. For Plaintiff's lost wages and future lost wages as is shown by the evidence at trial;
- 4. For interest accrued on special damage from the date due at the legal rate pursuant to I.C. 28-22-104;
- 5. For damages and loss of use damages for his motorcycle;
- 6. For reasonable court costs and attorney fees as provided by Idaho law, including I.C. 12-120(4); and
- 7. For such other and further relief as the Court deems just and appropriate.

DATED this 28th day of September, 2007.

JEFFREY J. HEPWORTH, P.A.
& ASSOCIATES

By 
Jeffrey J. Hepworth
Attorneys for Plaintiff

Kent L. Hawkins
MERRILL & MERRILL, CHARTERED
 109 North Arthur - 5th Floor
 P.O. Box 991
 Pocatello, ID 83204-0991
 (208) 232-2286
 (208) 232-2499 Telefax
 Idaho State Bar #3791
 Attorneys for Plaintiff

DISTRICT COURT
 TWIN FALLS CO. IDAHO
 FILED

2009 APR 13 AM 11:09

BY _____
 CLERK

 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL INSURANCE)
 COMPANY OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 JAMEY KINSEY and)
 M. WILMOTH KINSEY, D/B/A KINSEY)
 FAMILY LIMITED PARTNERSHIP,)
)
 Defendants.)
 _____)

Case No. CV-08-1597

AFFIDAVIT OF KENT L. HAWKINS

STATE OF IDAHO)
) :ss
 County of Bannock)

- I, Kent L. Hawkins**, being first duly sworn, deposes and states:
1. I am the attorney for Plaintiff Farm Bureau Mutual Insurance Company of Idaho in the above-entitled action.
 2. Attached hereto is a true and accurate copy of the "Defendants' Answers and Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents to Defendant" in the underlying case, Brookbank v. Jamey Kinsey, Twin Falls Case No. CV-2007-4522.
 3. Attached hereto are true and accurate copies of excerpts from the depositions of

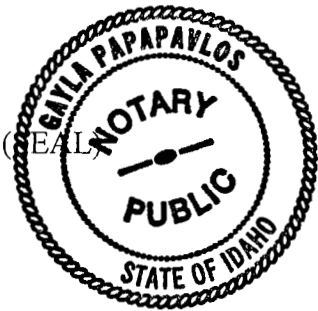
Jamey Kinsey and Wilmoth Kinsey, as referred to in the Memorandum in Support of Motion for Summary Judgment.

DATED this 10 day of April, 2009.

MERRILL & MERRILL, CHARTERED

By Kent L. Hawkins
Kent L. Hawkins
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me by Kent L. Hawkins on this 10th day of April, 2009.



Gayla Papapavlos
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
Commission expires: 3/9/2010

CERTIFICATE OF SERVICE

I, Kent L. Hawkins, the undersigned, one of the attorneys for the Plaintiff, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Affidavit of Kent L. Hawkins was this 10 day of April, 2009, served upon the following in the manner indicated below:

Jeffrey J. Hepworth
JEFFREY J. HEPWORTH & ASSOCIATES
P.O. Box 1806
Twin Falls, Idaho 83303-1806

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax

Kent L. Hawkins
Kent L. Hawkins

ORIGINAL COPY

Greg J. Fuller
Daniel S. Brown
FULLER LAW OFFICES
Attorneys at Law
161 Main Avenue West
P. O. Box L
Twin Falls, ID 83303
Telephone: (208) 734-1602
Facsimile : (208) 734-1606
ISB # 1442
ISB #7538

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MICHAEL BROOKBANK,)	
)	Case No. CV-2007-4522
Plaintiff,)	
)	DEFENDANT'S ANSWERS AND
vs.)	RESPONSES TO PLAINTIFF'S
)	FIRST SET OF INTERROGATORIES
JAMEY KINSEY, and JOHN DOES,)	AND REQUESTS FOR PRODUCTION
1-10,)	OF DOCUMENTS TO DEFENDANT
)	
Defendants.)	
_____)	

COMES NOW the Defendant, Jamey Kinsey, by and through his counsel of record Daniel S. Brown, Fuller Law Offices, and answers Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions to Defendant as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Please identify the person answering these interrogatories

by stating your:

- a. Name;

- b. Address;
- c. Telephone number; and
- d. Occupation.

ANSWER: a. Jamey Kinsey

b. 3497 E 3000, Kimberly, ID 83341 ★

c. (208)731-4286

d. Laborer

INTERROGATORY NO. 2: Please list and describe in detail each and every exhibit you will use at the trial in the above entitled action, specifying as to each:

- a. What the exhibit is;
- b. What it depicts; and
- c. The person or persons preparing the exhibit or other source of the exhibit.

ANSWER: The Defendant has not yet decided what exhibits will be used at trial in this action. The Defendant will supplement this answer when he decides what exhibits will be used at the trial in this action.

INTERROGATORY NO. 3: With regard to each and every person that you may call as a witness in the above-entitled lawsuit, please state:

- a. Their name, address and telephone number; and
- b. A brief summary of the subject matter or facts upon which you expect them to testify.

ANSWER: The Defendant has not yet decided what witnesses will be called at the trial in this action. The Defendant will supplement this answer when he decides what witnesses will be called at the trial in this action.

INTERROGATORY NO. 4: Please state the name, address, telephone number and educational qualifications of all expert witnesses you may utilize at trial of the above entitled matter, and with regard to each, please state:

- a. The expert's qualifications; and
- b. A detailed summary of the facts and opinions you expect the expert witness to testify to at trial.

ANSWER: The Defendant has not yet decided what expert witnesses will be called at the trial in this action. The Defendant will supplement this answer when he decides what expert witnesses will be called at the trial in this action.

INTERROGATORY NO. 5: Do you contend that the injuries sustained by Michael Brookbank were caused or in any way contributed to by the act or omission of any other individual or entity that is not a party to this lawsuit? For all such persons or entities, please state their:

- a. Name;
- b. Address and telephone number;
- c. Each act or omission which you believe negligently and proximately caused the accident or the plaintiff's injuries.

ANSWER: The Defendant is not aware of any other individuals other than Michael Brookbank that is negligent in the cause of his injuries. This answer may be supplemented if information becomes available in the future.

INTERROGATORY NO. 6: Please state the name and address of your liability insurance carrier as of the date of the accident, together with the limits of liability then in effect.

ANSWER: The Defendant has no liability insurance carrier.

INTERROGATORY NO. 9: Please state whether you, your agents, employees, or representatives, including insurance representatives, have obtained any written or recorded statements from anyone concerning the subject matter of this lawsuit. If so, please state the names of the persons from whom statements were taken, the name of the person obtaining the statement, and the present custodian of such statement.

ANSWER: The Defendant has no knowledge of any written or recorded statements in this matter. This answer may be supplemented if information becomes available to the Defendant in the future.

INTERROGATORY NO. 10: With respect to the dog involved in the motorcycle accident, please state:

- (a) The name of the owner(s) of the dog or names of those who provided food, care or shelter to the dog;
- (b) the names of all individuals living at the residence where the dog lived or received food or shelter; and
- (c) The names of the owner(s) of the residence adjacent to where the accident occurred.

ANSWER: a. Jamey Kinsey;
b. Jamey Kinsey;
c. The Defendant objects to Interrogatory 10 (c) as being overly broad, cumbersome, and vague. The Defendant does not know which residence, what distance, or in what direction this Interrogatory seeks to define.

REQUEST FOR PRODUCTIONS

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each and every exhibit you intend to utilize or offer into evidence at trial.

RESPONSE: Please see the Defendant's answer to Interrogatory No. 1. This response will be supplemented.

REQUEST FOR PRODUCTION NO. 2: Please produce a copy of any and all liability insurance policies which do or may provide insurance coverage for you with relation to this lawsuit. Please include a copy of the declarations sheet for each such policy as well as any and all umbrella policies.

RESPONSE: The Defendant does not have liability insurance. However, the Defendant has already provided a copy of an insurance policy to counsel for the Plaintiff on January 7, 2008. The Defendant will provide the Declarations page if it becomes available.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of any and all statements, audio tapes or transcribed statements given by the defendant, the plaintiffs or any other witness which relates to the subject of this lawsuit. Please include statements obtained on your behalf whether obtained by you, your agents or insurers.

RESPONSE: Please see the Defendant's answer to Interrogatory No. 9. This response will be supplemented.

REQUEST FOR PRODUCTION NO. 4: Please produce duplicate prints of all photographs depicting the accident scene, the motorcycle involved in the accident or any other photographs which may relate to this automobile accident.

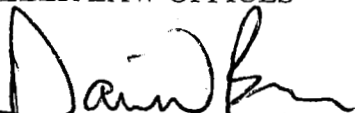
RESPONSE: The Defendant does not have any photographs. This answer may be

supplemented if photographs become available.

The Defendant reserves the right to supplement these answers and responses as more information becomes available.

DATED This 10 day of January, 2008.

FULLER LAW OFFICES

By 
DANIEL S. BROWN
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MICHAEL BROOKBANK,)	
)	
Plaintiff,)	
vs.)	
JAMEY KINSEY, and JOHN DOES)	Case No. CV 07-4522
1 - 10,)	
Defendants.)	
_____)	

DEPOSITION OF JAMEY D. KINSEY

NOVEMBER 3, 2008

REPORTED BY:

CATHERINE PAVKOV, CSR NO. 638

Notary Public

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
3
4 MICHAEL BROOKBANK,)
5 Plaintiff,)
6 vs.)
7 JAMEY KINSEY, and JOHN DOES) Case No. CV 07-4522
8 I - 10,)
9 Defendants.)
10 _____)

12 DEPOSITION OF JAMEY D. KINSEY
13 NOVEMBER 3, 2008

17 REPORTED BY:
18 CATHERINE PAVKOV, CSR NO. 638
19 Notary Public
20
21
22
23
24
25

Page 1

1 I N D E X

3	TESTIMONY OF JAMEY D. KINSEY:	PAGE
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5	Examination by Mr. Hawkins	39

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Page 3

1 THE DEPOSITION OF JAMEY D. KINSEY was
2 taken on behalf of the Plaintiff at the law offices
3 of Jeffrey J. Hepworth PA & Associates, 161 5th
4 Avenue South, Suite 100, Twin Falls, Idaho,
5 commencing at 10:50 a.m., on November 3, 2008,
6 before CATHERINE PAVKOV, Certified Shorthand
7 Reporter and Notary Public within and for the State
8 of Idaho, in the above-entitled matter.
9

10 A P P E A R A N C E S:

11 For the Plaintiff: Jeffrey J. Hepworth PA &
12 Associates
13 BY: JEFFREY J. HEPWORTH
14 P.O. Box 1806
15 Twin Falls, Idaho 83303-1806
16
17 For the Defendants: Racine, Olson, Nye, Budge &
18 Bailey
19 BY: JOHN A. BAILEY, JR.
20 P.O. Box 1391
21 Pocatello, Idaho 83204-1391

23 For Farm Bureau KENT L. HAWKINS
24 Insurance:
25

Page 2

1 JAMEY D. KINSEY,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4

5 MR. HEPWORTH: Let the record
6 reflect that this is the deposition of Jamey
7 Kinsey, taken pursuant to Notice and the Idaho
8 Rules of Civil Procedure.
9

10 E X A M I N A T I O N

11 Q U E S T I O N S B Y M R. H E P W O R T H:

12 Q. Mr. Kinsey, could you state your
13 full name for the record, please?
14 A. Jamey Kinsey.
15 Q. No middle name?
16 A. Jamey Dee Kinsey, sorry.
17 Q. And what's your residence address?
18 A. 333 Rock Creek Road, Hansen, Idaho.
19 Q. And how long have you lived there?
20 A. Oh, I can't pin that down. It's
21 been years. It's over five, six years.
22 Q. And who owns the house?
23 A. My girlfriend.
24 Q. And what's her name?
25 A. Vicky Stanger.

Page 4

1 (Pages 1 to 4)

1 Q. How long have you and Vicky been
2 together?
3 A. Fifteen years, probably.
4 Q. And you're single, correct?
5 A. Uh-huh. Yes.
6 Q. Have you ever been married?
7 A. No.
8 Q. Have you ever had your deposition
9 taken?
10 A. I don't think so.
11 Q. I'm just going to give you a couple
12 of the ground rules. And I'm sure you'll be fine
13 without them, but sometimes it makes things go
14 more smoothly. If there's a question that I ask
15 that doesn't make sense to you, you don't
16 understand, sometimes I ask bad questions, I'll
17 tell you that right now, just tell me and I'll try
18 to rephrase it and make my sentences a little more
19 clear. But it's important that we communicate.
20 A. Right on.
21 Q. If you answer the question, I'm
22 going to assume that you understood the question.
23 Is that fair?
24 A. That's fair.
25 Q. Okay. When you answer, it's

Page 5

1 important that you answer audibly, with a "yes" or
2 a "no," rather than a, like I tend to say "uh-huh"
3 or "huh-uh" sometimes, and if we do that, the
4 record will be real unclear.
5 A. I'll try.
6 Q. So you pretty much have to say "yes"
7 or "no."
8 MR. BAILEY: We'll help you.
9 Q. (BY MR. HEPWORTH) And the third one
10 is we have to talk one at a time, instead of at
11 the same time. So if you'll just let me finish my
12 question before you start to answer, even though
13 you know exactly what I'm going to ask, then Cathy
14 will have a little bit easier time doing her job.
15 A. Got you.
16 Q. If we talk at the same time, it's
17 pretty tough for her to get an accurate
18 recitation.
19 A. Okay.
20 Q. You grew up in Kimberly?
21 A. Yeah.
22 Q. Born and raised?
23 A. Born and raised.
24 Q. And what was your home address
25 growing up?

Page 6

1 A. Be my dad's. I don't know what his
2 address was. I lived with him out there.
3 Q. Okay. Let me just look. There's an
4 address of 3497 East 3000 North, Kimberly, Idaho.
5 A. That's my grandma's. His is
6 different. It's a mile and a half off.
7 Q. Okay. So his would be a mile and a
8 half south?
9 A. A mile south and a mile to the west.
10 My Aunt Val lives there now and he's moved since I
11 grew up. He's in a different place. So whatever
12 that address is, I don't know what it is.
13 Q. Did you graduate from high school?
14 A. Yes.
15 Q. What year was that?
16 A. '89.
17 Q. What did you do after high school?
18 A. I farmed.
19 Q. Where did you farm?
20 A. Hollifield's.
21 Q. Terry's?
22 A. Yeah.
23 Q. And then did you ever work on the
24 Kinsey farm?
25 A. When I was a kid.

Page 7

1 Q. Only when you were a kid?
2 A. Yes.
3 Q. When is the last time that you can
4 ever remember working on the Kinsey farm?
5 A. For a paycheck?
6 Q. For any purpose.
7 A. Maybe a little bit when I got out of
8 the Navy. Six, seven years ago.
9 Q. Was that for a paycheck?
10 A. I can't remember.
11 Q. So you worked for Terry Hollifield
12 right out of high school, for how long?
13 A. Maybe two, maybe three years.
14 Q. There's been some indication you
15 went to CSI for a period of time?
16 A. Yes.
17 Q. When was that?
18 A. I'm not sure. But maybe '92 or '93.
19 Q. What were you studying?
20 A. Soil chemistry.
21 Q. Did you get a degree?
22 A. No.
23 Q. So would that have been about the
24 same time you were working at Terry Hollifield's?
25 A. That was after I got out of the

Page 8

2 (Pages 5 to 8)

1 Navy.
2 Q. When were you in the Navy?
3 A. I went in in '90.
4 Q. When did you get out?
5 A. The last part of '92 probably.
6 Q. And after getting out of the Navy,
7 did you come back to Kimberly?
8 A. Yes.
9 Q. And worked, or went to CSI?
10 A. Went to CSI.
11 Q. After CSI, what did you do?
12 A. I think I farmed. I farmed for
13 Roger Olsen off and on. Then maybe '97 I went to
14 the oil field until 2001.
15 Q. For about four years?
16 A. Yeah. Yeah, about four years.
17 Yeah, I spent four years in the field.
18 Q. And that was where?
19 A. Colorado.
20 Q. What did you do after working in the
21 oil fields in Colorado?
22 A. I bounced around all over the
23 country, job after job.
24 Q. Did you just move all over, Texas?
25 A. Yeah, I just bounced around. I

Page 9

1 didn't hardly work since '01. Just been bouncing
2 around.
3 Q. And your mom lives in Texas?
4 A. Texas now.
5 Q. Is she still there?
6 A. Yes.
7 Q. Was there a period of time where you
8 lived with her?
9 A. Yes.
10 Q. When was that?
11 A. I don't know. It's after '01.
12 Q. Okay. Are you -- have you had any
13 full-time jobs after 2001?
14 A. Let's see, I worked for Olsen Farms
15 for probably three years, prior to the accident,
16 30 days prior to that accident. Because I got
17 laid off 30 days prior to when that happened.
18 Q. Okay.
19 A. So three years prior to that. And I
20 lived with Vicky at that time.
21 Q. So you worked for Olsen Farms from,
22 what, 2004 to 2007, would that be about right?
23 A. Yeah.
24 Q. Or 2003 to 2007, three or four
25 years?

Page 10

1 A. Yeah.
2 Q. When you worked for Olsen Farms, did
3 they provide housing to you?
4 A. No.
5 Q. How about when you worked for Terry
6 Hollifield?
7 A. No.
8 Q. When you were working for Terry
9 Hollifield, where were you living?
10 A. I was living in that bunkhouse.
11 Q. And when you were going to CSI,
12 where were you living?
13 A. With Vicky.
14 Q. Was -- now, Vicky has kids, right?
15 A. Yes.
16 Q. Has she been married?
17 A. Yes.
18 Q. And do you know when she got
19 divorced?
20 A. Oh, shoot --
21 Q. I assume she's divorced?
22 A. You'd have to ask her that. I don't
23 know that. I know it happened, but the dates are
24 not there.
25 Q. And if I understand it, you were

Page 11

1 working at Olsen Farms until about 30 days prior to
2 the accident?
3 A. Uh-huh.
4 Q. And then got laid off?
5 A. Yeah.
6 Q. After getting -- so you would have
7 gotten laid off in July, say?
8 A. Yes.
9 Q. July of '07?
10 A. Yeah, I was injured.
11 Q. And how were you injured?
12 A. Tendons, tore the tendons in my
13 finger here.
14 Q. In your left hand?
15 A. Yes.
16 Q. Did you receive medical treatment
17 for that?
18 A. Workman's comp, the whole schabo.
19 Q. Did you have an attorney for that?
20 A. No.
21 Q. Where did you seek medical care?
22 A. Hospital.
23 Q. Magic Valley Regional?
24 A. Yeah.
25 Q. So the reason you quit working was

Page 12

3 (Pages 9 to 12)

1 because of the injury to your hand?
2 A. Yeah, I hurt myself. And the guy I
3 worked for was a weird guy, you know,
4 insubordination type crap, you know, and I tried
5 to get back with him and he wouldn't answer my
6 calls. So I don't know if I got fired or laid off
7 or -- you'd have to ask him that.
8 Q. But you were unable to work for a
9 period of time?
10 A. Yeah, I was ordered not to use the
11 hands, and he didn't like that.
12 Q. Are you currently working?
13 A. Huh-uh.
14 Q. What do you do for a living?
15 A. Nothing right now.
16 Q. And that's been true for a little
17 over a year then, apparently?
18 A. Yeah.
19 Q. I've been told things like you cut
20 wood, do you cut wood for income?
21 A. Yeah, but it isn't for a living or
22 anything.
23 Q. Is it for income?
24 A. No.
25 Q. And I've also been told that you go

Page 13

1 to Nevada for some reason, like working in the
2 mines?
3 A. Oh, no. Who told you that? That's
4 great. No. I'm a coyote hunter. That's what I
5 like to do. I shoot coyotes. I hunt them until
6 the end of the earth.
7 Q. Do you skin them and sell the hide?
8 A. Occasionally. Just depends on if
9 they're decent.
10 Q. Was there a period of time when you
11 lived in your grandma's house?
12 A. Maybe for a week, way back when. I
13 can't give you a date or anything. I go out and
14 stay at her house as a guest.
15 Q. How often?
16 A. Not very.
17 Q. Why would you do that?
18 A. Because she's my grandma.
19 Q. Well, that's obvious. I mean, I
20 understand why --
21 A. Yeah, I love my grandma. I like to
22 go out and see her every once in a while.
23 Q. Does Vicky own the house where she
24 lives?
25 A. Yes.

Page 14

1 Q. And I mean, she's buying it, she's
2 not renting it?
3 A. I think she owns it. I don't know.
4 Q. And you -- how many days a week do
5 you spend the night there?
6 A. It's not a matter of days per week.
7 It's just whenever I'm around. You know, I bounce
8 around with my buddies and stuff like that. We go
9 hunting. I take trips and stuff like that. Or I
10 just go to the mountains and disappear for 30 days,
11 you know, stuff like that.
12 Q. Can you take me next time?
13 A. Sure can. You've got to lose the
14 suit though.
15 Q. I'll get rid of this real fast.
16 A. Yeah, you'd scare the dogs off.
17 Q. I've got a gun and everything. I'd
18 love to do that.
19 Would it be fair to say that
20 sometimes you stay with Vicky, sometimes you stay
21 with friends, sometimes you stay with your
22 grandma; is that accurate?
23 A. Most of the --
24 MR. BAILEY: Objection. I think it
25 misstates the testimony.

Page 15

1 Q. (BY MR. HEPWORTH) Go ahead.
2 MR. BAILEY: You can answer now.
3 THE WITNESS: Okay. Most of the
4 time, I'm with her.
5 Q. (BY MR. HEPWORTH) With Vicky?
6 A. I stay with her, yeah, for 98, 99
7 percent, most part. It's very rare I stay out
8 there.
9 Q. The bunkhouse, what accommodations
10 does the bunkhouse have? Does it have a bed?
11 A. No bed in it. It's an old, old
12 bunkhouse, ranch bunkhouse.
13 Q. And I always thought a bunkhouse
14 meant it had like bunk beds or something.
15 A. Used to. But it don't no more.
16 It's an old rotten -- it needs to be tore down,
17 actually. It's pretty rotten inside. It smells.
18 Q. Did you ever sleep in the bunkhouse?
19 A. Yeah. At the time I told you, way
20 back, what did I say, during college or something.
21 Q. Uh-huh. When you stayed with your
22 grandma, you stayed in her house?
23 A. Sometimes.
24 Q. Where would you stay if you didn't
25 stay in her house?

Page 16

4 (Pages 13 to 16)

1 A. On the couch. I'd just go to sleep
2 on the couch or something like that, if I was too
3 tired to go to Vicky's, for instance, or whatever.
4 Q. On the day of the accident, you were
5 at your grandma's house, correct?
6 A. Yeah, I was parked down on the
7 county road out in front of her house.
8 Q. What was the purpose of going there
9 that day?
10 A. I was looking for something. Can't
11 remember what it was.
12 Q. Did you keep some belongings in the
13 bunkhouse?
14 A. Yeah, there's things in that
15 bunkhouse.
16 Q. Like what?
17 A. Just accumulation of -- I think
18 there's CDs in there. There's an old couch in
19 there. There's a TV in there. Old weight set.
20 Q. Some of your personal belongings?
21 A. Yeah, just stuff to keep it out of
22 the weather.
23 Q. Okay. Do you keep clothes in the
24 bunkhouse?
25 A. There's old clothes that I used to

Page 17

1 wear when I was younger in there.
2 Q. How about in your grandma's house,
3 do you keep any of your personal belongings at
4 your grandma's house?
5 A. There might be something in there.
6 I don't know. There could be something in there
7 of mine.
8 Q. Are you always welcome to stay at
9 your grandmother's house?
10 A. Oh, yeah.
11 Q. How about at Vicky's house, what
12 types of things do you keep there?
13 A. I've got some clothes there. That's
14 about all I operate on.
15 Q. No furniture?
16 A. No furniture, no belongings in there
17 or anything.
18 MR. HEPWORTH: I'm going to have
19 this marked as Exhibit 1.
20 (Exhibits 1 through 4 marked.)
21 Q. (BY MR. HEPWORTH) I'm handing you
22 what's been marked as Exhibit 1. I don't know if
23 you've ever seen that. That's the accident report
24 from the day of the accident.
25 A. Huh-uh.

Page 18

1 Q. Never have?
2 A. No.
3 Q. Did you talk to the police officer
4 after the accident?
5 A. Yes.
6 Q. Apparently, the dog that ran out in
7 the road was your dog?
8 A. Wasn't a dog. It was a little
9 puppy. Less than six months old.
10 Q. Golden Lab?
11 A. Yep.
12 Q. What was the dog's name?
13 A. Yogi.
14 Q. Y-o-g-i?
15 A. Yogi the Bear.
16 Q. How long had you had Yogi?
17 A. Oh, probably 45 days, 60 days,
18 somewhere in there.
19 Q. Had you had a dog prior to Yogi?
20 A. Not for a long, long time.
21 Q. The dog, did the dog always stay
22 with you, wherever you went?
23 A. The pup did, yes. It's a pup.
24 Q. You don't like me calling it a dog.
25 A. No, I don't. He was a pup. He was

Page 19

1 a good pup, and I loved him.
2 Q. Well, I'm a dog lover myself. I'm
3 sorry about that.
4 A. Yeah.
5 Q. So he was about six months old. And
6 you'd had him 45 to 60 days?
7 A. Yes.
8 Q. Were you training him?
9 A. Yes.
10 Q. To --
11 A. Stay in the pickup. He was doing
12 real good. Never left my sight. He was always
13 with me.
14 Q. Was he going to be a hunting dog?
15 A. Yes. Companion, hunting dog.
16 Q. You travel around a lot, it sounds
17 like?
18 A. Uh-huh. And he goes with me.
19 Q. Everywhere?
20 A. Almost everywhere.
21 Q. Was there ever any time when you
22 didn't take him with you?
23 A. Occasionally. I couldn't tell you
24 why. Maybe to go to a movie or something like
25 that, with my buddy, and I'd leave him with my

Page 20

5 (Pages 17 to 20)

1 buddy's wife and she'd baby-sit him. Everybody
2 loved him.
3 Q. Would you leave the dog at Vicky's?
4 A. No. No.
5 Q. Not allowed?
6 A. No, he stayed with me all the time.
7 Q. Did you ever leave Yogi at your
8 grandma's?
9 A. Not if I wasn't there. He'd run
10 around with me out there, whenever I'd go out and
11 visit.
12 Q. But was there a time when you did
13 leave Yogi with --
14 A. Not that I remember.
15 Q. I'm sorry to jump all around on you.
16 A. That's fine.
17 Q. Kind of my nature. The accident
18 looks like it happened, it's blacked out there,
19 but it was August 18, '07, is that consistent with
20 your memory?
21 A. Rings a bell.
22 Q. And it was a Saturday, do you recall
23 that? Do you remember what day of the week it
24 was?
25 A. Was it Saturday or a Sunday? I

Page 21

1 don't remember.
2 Q. The accident report says Saturday.
3 A. Okay.
4 Q. Do you have any reason to dispute
5 that?
6 A. Well, I couldn't remember. I
7 couldn't remember.
8 Q. And it looks like it happened around
9 5:50 in the afternoon?
10 A. That sounds right. I couldn't -- I
11 didn't write any of that stuff down.
12 Q. Now, I think you said you parked
13 your car on the road?
14 A. Yeah, the county road.
15 Q. On the northeast -- or the north,
16 south road, the main highway there?
17 A. Yes.
18 Q. I can call it the main highway.
19 What is that, 3500 East?
20 A. Yeah.
21 Q. And how -- what side of the road did
22 you park your truck on?
23 A. Left-hand side.
24 Q. So it would have been on the east
25 side of the road?

Page 22

1 A. On the south side of the road.
2 Q. On the south side of the road? You
3 know, there's --
4 A. If it goes east, west, east, west,
5 south side of the road.
6 Q. On the last page of that Exhibit 1,
7 could you draw on there -- do you understand that
8 diagram?
9 A. I don't recognize this.
10 Q. Well, this is north and south.
11 A. What's this thing?
12 Q. That's the neighbor's house. I
13 think your grandma's house would be right here.
14 A. Uh-huh. What's this driveway? I
15 don't recognize that.
16 Q. That's the neighbor's driveway,
17 apparently. Is that making sense to you?
18 A. Yeah, I don't think there's a
19 driveway there.
20 Q. Yeah, I don't remember that either.
21 A. But if my grandma's house is right
22 here --
23 Q. Go ahead and draw your grandma's
24 house there.
25 A. Right here. And then my grandma's

Page 23

1 house is right here.
2 Q. You want to put PU on the box you --
3 that's where you parked your pickup?
4 A. Yeah.
5 Q. So you parked your pickup kind of on
6 the road there, on the 3000 North road?
7 A. Yeah.
8 Q. And then after you parked, what did
9 you do?
10 A. I got out. I was getting ready -- I
11 think I was picking up some work boots, I was
12 looking for my work boots, and I couldn't remember
13 where I left them. And that's when that guy came
14 on the bike.
15 Q. Did you hear the motorcycle?
16 A. Oh, yeah.
17 Q. What drew your attention to the
18 motorcycle?
19 A. The speeding. How fast he was
20 going. I heard that bike coming. And I always
21 look up, whenever those guys on those bikes come
22 out there. So I looked up and I seen him coming,
23 and thought just another guy breaking the speed
24 limit out here. This is ranch country, farm ranch
25 country.

Page 24

1 him and stuff like that. So there had to have
2 been some sort of coaxing going on there, you
3 know, come on puppy, and next thing you know, he
4 goes across the road.

5 Q. And you, after you heard the
6 collision, you ran out to the dog, or not?

7 A. No, I walked out there and I seen
8 her yelling at him and I didn't want to act
9 insensitive towards a hurt human being, so I
10 totally ignored him. Didn't even go over and
11 approach him. But he was -- like I said, his back
12 was broken, he could see me, and he was trying to
13 get to me. And she was sitting there screaming at
14 him, telling him how big of a dumb ass dog he was.
15 You know, that's what he got to listen to the last
16 part of his life. So anyways, I did the right
17 thing. I didn't act insensitive towards that guy.
18 I wanted to get him help, nine-one-one, get the
19 ambulance out there. So I immediately went back
20 to the house and made that call.

21 Q. And then after you made the call,
22 what did you do?

23 A. Went back out there and he was gone,
24 him and his wife.

25 Q. Were there any other people there?

Page 29

1 A. There were people standing around
2 there. I don't know who they were. I didn't want
3 to deal with it. He was dead there, so I had to
4 get away from there.

5 Q. Were there those two neighbor kids
6 there?

7 A. I do not remember. It's a blur.

8 Q. There was a police officer there,
9 you remember that?

10 A. Nobody had made it out there yet.
11 There was a group of people there. There was a
12 guy in a white Chevy pickup there, Adam Stanger.
13 And they just -- like I said, I just went out
14 there and I walked back out and I walked up to
15 Yogi to make sure he was gone. I didn't want him
16 suffering. I thought I was going to have to shoot
17 him. So I checked him, and then I baled. I left.

18 Q. When you say you baled, did you --

19 A. I left the scene of the accident.

20 Q. Okay. Did you take your dog?

21 A. No, I couldn't do that. I had to
22 call buddies up to come do it for me.

23 Q. Okay. Somebody buried the dog for
24 you?

25 A. Uh-huh.

Page 30

1 Q. Do you know where they buried him?

2 A. Nope.

3 Q. You don't remember talking to the
4 police?

5 A. I do briefly.

6 Q. Did they confirm that the dog was
7 your dog?

8 A. Yeah, he came up to me and I told
9 him, yeah, that was my pup.

10 Q. And the reason I wonder. Here, it
11 says, property damage, and it says, animal, and
12 then it says the owner name and address. And so
13 you gave them your name, Jamey Kinsey?

14 A. I just gave them my name.

15 Q. And it had an address, 3497 East
16 3000 North.

17 A. That's where the accident -- that's
18 the address where the accident happened.

19 Q. Is that the accident that you would
20 have given the police officer?

21 A. No. I don't remember giving him an
22 address whatsoever.

23 Q. Okay.

24 MR. BAILEY: You said accident. You
25 meant address, I take it?

Page 31

1 MR. HEPWORTH: I probably misspoke.
2 Thank you.

3 Q. (BY MR. HEPWORTH) Do you remember
4 giving the police officer your address?

5 A. No.

6 Q. If the police officer said that you
7 gave them that address, 3497 East 3000 North, that
8 would be your grandmother's --

9 A. That is my grandma's address.

10 Q. Right. I'm going to hand you now
11 what's been marked as Exhibit 2. Did you receive
12 those?

13 A. No.

14 Q. No?

15 A. No.

16 Q. Those are interrogatory answers that
17 were provided to me back, I think, January or
18 February of this year. Do you remember getting
19 those?

20 A. No.

21 Q. Did you ever meet with Daniel Brown,
22 the attorney?

23 A. I did once, yeah.

24 Q. Let me just show you something. On
25 Interrogatory No. 1, I asked to identify the

Page 32

8 (Pages 29 to 32)

1 person answering these interrogatories by
2 providing your name, address, telephone number.
3 And Jamey Kinsey is your name, correct?
4 A. Uh-huh. Yes.
5 Q. For address, they put 3497 East
6 3000, then nothing, Kimberly, Idaho.
7 A. Who did I tell this to?
8 Q. I don't know. These were -- you
9 didn't sign these. These are signed by Daniel
10 Brown, I believe.
11 A. Wow.
12 Q. But you met with Mr. Brown, right?
13 A. Yeah, we didn't talk about that
14 stuff.
15 Q. Okay. But is it possible that you
16 gave him that address?
17 A. No.
18 Q. Okay. How about the phone number,
19 (208) 731-4286?
20 A. That's how he could contact me at
21 the time.
22 Q. Is that your cell number?
23 A. It's not my cell number. It's my
24 old man's.
25 Q. Let me show you a couple of other

Page 33

1 things. Exhibit 3 is some information I got from
2 the motor vehicle department. And it looks like
3 it's a 1990 Ford pickup. Do you have a '90 Ford
4 pickup?
5 A. Uh-huh.
6 Q. And do you know, there's an
7 identification there, I assume that's your pickup?
8 A. Yeah. My grandma gets my tags for
9 me and makes sure my insurance is paid. I give
10 her money. She actually keeps my money in her
11 safe. And it's been like this since I've had the
12 pickup. It's never been changed or anything.
13 Because I don't have an address. I don't even
14 have a house. I stay with Vicky.
15 Q. But when you list an address, like
16 on your pickup -- that's your pickup, right?
17 A. Yeah, it was originally registered
18 to that address and it's just never changed.
19 Because -- what would I change it to?
20 Q. When would you have registered that
21 pickup?
22 A. I brought it brand new in 1990. So
23 it's been registered to that since 1990.
24 Q. Okay. And --
25 MR. BAILEY: Is that --

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1 MR. HEPWORTH: That's No. 3..
2 Q. (BY MR. HEPWORTH) And I'm going to
3 show you Exhibit No. 4. I've done an Idaho driver
4 license search.
5 A. Uh-huh.
6 Q. And on the driver's license, that
7 would be you, Jamey Dee Kinsey --
8 A. Just never ever changed it. It
9 doesn't mean I live there or anything.
10 Q. But that's where you have your
11 important documents sent, is that 3497 East 3000
12 North address, correct?
13 A. Well, not all of them. It just
14 depends on where I'm at, how convenient it is to
15 get them. This is just one of those deals that
16 that address has been on my driver's license since
17 I was a kid growing up out there. And it just
18 never gets changed.
19 Q. On Exhibit 4 -- do you have your
20 driver's license with you?
21 A. No.
22 Q. It looks like this driver's license
23 was issued on January 25, 2006. Would that be
24 consistent?
25 A. Sure.

Page 35

1 Q. So on January 25, 2006, you listed
2 that 3497 East 3000 North as your address?
3 A. I did not list that. I just renewed
4 the driver's license. Everything is fine. You
5 know, I didn't -- what would I put down? I don't
6 want Vicky's address on there.
7 Q. Why not?
8 A. Well, I don't like my mail getting
9 sent there very much anyways, you know. I don't
10 have a lot of mail that comes. I rarely even have
11 anything sent to me.
12 Q. Is there a reason that you don't
13 want to concede that your address is your
14 grandma's address?
15 A. That's the truth. Yeah, the Kinsey
16 ranch had nothing to do with this, at all,
17 whatsoever. And I know you're after the insurance
18 out there, so that's just not kosher.
19 Q. And you don't want that to occur?
20 A. Yeah, it's not their deal. They had
21 nothing to do with that.
22 Q. You don't want there to be insurance
23 coverage for this accident, is that accurate?
24 MR. BAILEY: Well, I think that
25 misstates what he's testifying.

Page 36

9 (Pages 33 to 36)

1 MR. HEPWORTH: Well, I'm asking
2 questions.
3 THE WITNESS: No, I'm not going to
4 pawn something like this off. It's not honest.
5 They had nothing to do with it. That was my pup.
6 It was with me. I did not live there. I was not
7 covered. I'm not even a partner out there. I
8 have nothing to do with the ranch, as far as
9 you're concerned.
10 Q. (BY MR. HEPWORTH) But you kept your
11 work boots there?
12 A. I was looking for my work boots. I
13 didn't know where I left them.
14 Q. When had you last had them, your
15 work boots?
16 A. Oh, prior to getting hurt. Probably
17 a month, two months prior to that.
18 Q. You agree that the dog was your dog?
19 A. It was a pup. It was my pup.
20 Q. I don't mean to be offensive.
21 A. Yeah, it's not --
22 Q. I keep saying the same thing and
23 it's not intentional.
24 A. It was not a nuisance dog, like was
25 written in your lawsuit. It was not a nuisance.

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1 Q. Would you agree that the puppy had
2 some role in causing the accident?
3 MR. BAILEY: I'm going to object.
4 Calls for speculation. Lacks foundation. If you
5 know how it happened, or what you do know, you can
6 tell him about it, certainly. But don't
7 speculate.
8 Q. (BY MR. HEPWORTH) Go ahead and
9 answer.
10 MR. BAILEY: Yeah, you can go ahead
11 and answer.
12 THE WITNESS: Well, okay. Well, if
13 he wouldn't have been on the road that day, it
14 wouldn't have happened, cut and dry. If he
15 wouldn't have been around there speeding around on
16 that motorcycle.
17 Q. (BY MR. HEPWORTH) Oh, you're saying
18 if the guy had not been driving down the road --
19 A. If he would not have been out there
20 that day, it would not have happened. I'd still
21 have that pup with me.
22 Q. Wouldn't you also agree that if the
23 dog hadn't run out into the road, he wouldn't have
24 gotten hit?
25 A. I do not know the circumstances. I

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1 don't know how that happened. I can't even tell
2 you how it happened. I don't know if somebody
3 went (witness made noise) across the road, or
4 what.
5 Q. Do you agree that the motorcycle hit
6 the dog?
7 A. It appeared to.
8 Q. Do you have any reason to think that
9 the motorcycle wasn't on the road when the dog and
10 the motorcycle collided?
11 A. That's very possible. It's very
12 possible he was in the borrow ditch when he hit
13 him, because of the way the carcass was lying in
14 the borrow ditch. We wondered that.
15 MR. HEPWORTH: I guess I don't have
16 any other questions.
17 MR. HAWKINS: May I, very briefly?
18 MR. HEPWORTH: Yeah, sure.

EXAMINATION

QUESTIONS BY MR. HAWKINS:

1 Q. Sir, I'm not an attorney in this
2 case that you were brought here today. My name is
3 Kent Hawkins. I'm actually an attorney
4 representing Farm Bureau Insurance. You've
5

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1 mentioned something, you're aware that there is
2 another suit going on in that regard. Which I'll
3 represent to you is an attempt by Farm Bureau to
4 resolve the question of whether you are insured
5 under your grandmother's policy.
6 A. Got you.
7 Q. We've been trying to get a copy of
8 that to you because the Court will be concerned
9 that you have had an opportunity to see that, of
10 the lawsuit, to resolve that issue. I've had the
11 sheriff for two months trying to get a copy of it
12 to you and he says he can't find you. Even though
13 I gave him Vicky's address. Have you been served
14 by the sheriff with a copy of that yet?
15 A. Nope.
16 Q. Well, I'm going to give you a copy
17 of that today. This is a summons and complaint.
18 And we're going to count it as service on you.
19 And I'll submit a thing that I served them on you --
20 A. A summons for where? That I've got
21 to come back to town, is that what it's for?
22 Q. What you do with them is up to you.
23 And I know Mr. Bailey can't represent you. And
24 we're not representing you. But you have the
25 right to have the notice of what's going on. And

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10 (Pages 37 to 40)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
TWIN FALLS

MICHAEL BROOKBANK,)
)
Plaintiff,)
)
vs.)
)
JAMEY KINSEY, and JOHN DOES 1-10,) Case No. CV 07-4522
)
Defendants.)
)
_____)

DEPOSITION OF MARJORIE WILMOTH KINSEY

AUGUST 15, 2008

REPORTED BY:

JAHNENE SCHWISOW, CSR No. 760

Notary Public

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
 3 TWIN FALLS
 4
 5 MICHAEL BROOKBANK,)
 6 Plaintiff,)
 7 vs.)
 8 JAMEY KINSEY, and JOHN DOES I-10,) Case No. CV 07-4522
 9 Defendants.)
 10 _____)

11
 12
 13 DEPOSITION OF MARJORIE WILMOTH KINSEY
 14 AUGUST 15, 2008

15
 16
 17
 18
 19 REPORTED BY:
 20 JAHNENE SCHWISOW, CSR No. 760
 21 Notary Public
 22
 23
 24
 25

1 For Farm Bureau (appearing telephonically):
 2 Merrill & Merrill, Chartered
 3 BY KENT L. HAWKINS
 4 109 N. Arthur, 5th Floor
 5 P.O. Box 991
 6 Pocatello, Idaho 83204-0991
 7
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 25

ALSO PRESENT: Michael Brookbank
 Dan Kinsey

1 THE DEPOSITION OF MARJORIE WILMOTH
 2 KINSEY was taken on behalf of the Plaintiff at
 3 the offices of Jeffrey J. Hepworth, P.A., &
 4 Associates, 161 5th Avenue South, Suite 100, Twin
 5 Falls, Idaho, commencing at 9:53 a.m. on
 6 August 15, 2008, before Jahnene Schwisow,
 7 Certified Shorthand Reporter and Notary Public
 8 within and for the State of Idaho, in the
 9 above-entitled matter.

10 APPEARANCES:
 11 For Plaintiff:
 12 Jeffrey J. Hepworth, P.A., & Associates
 13 BY JEFFREY J. HEPWORTH
 14 161 5th Avenue South, Suite 100
 15 P.O. Box 1806
 16 Twin Falls, Idaho 83303-1806
 17 For Defendant:
 18 Racine, Olson, Nye, Budge & Bailey,
 19 Chartered
 20 BY JOHN A. BAILEY
 21 201 East Center
 22 P.O. Box 1391
 23 Pocatello, Idaho 83204
 24
 25

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 25

1 MARJORIE WILMOTH KINSEY,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4 EXAMINATION
5 QUESTIONS BY MR. HEPWORTH:
6 MR. HEPWORTH: Let the record reflect
7 that this is the deposition of Wilmoth Kinsey
8 taken pursuant to notice and the Idaho Rules of
9 Civil Procedure. We had originally planned this
10 deposition later today, but at the request of Mr.
11 Bailey, we've agreed to do this deposition at
12 9:30 and get it over with so Ms. Kinsey can get
13 on with her business.
14 Q. (BY MR. HEPWORTH) I'm going to ask you
15 a few questions about this motorcycle accident
16 that occurred August 18th, 2007. Have you ever
17 had your deposition taken before?
18 A. Yes.
19 Q. On what occasion or how many times?
20 A. Oh, once.
21 Q. Why did you have your deposition taken
22 once before?
23 A. I was sued one time.
24 Q. For what?
25 A. I don't know how to answer that.

1 Q. Was it an injury lawsuit?
2 A. No. No. It was --
3 MR. BAILEY: As I understand it, Jeff,
4 it was a contract dispute.
5 MR. HEPWORTH: Okay.
6 MR. BAILEY: Is that a good way to
7 summarize it, Ms. Kinsey?
8 THE WITNESS: I guess.
9 MR. BAILEY: Okay.
10 Q. (BY MR. HEPWORTH) Well, let me just
11 tell you how the process works so that it might
12 go more smoothly. I represent Mike Brookbank,
13 who's sitting here with me. And he was involved
14 in an accident back in August of '07, where he
15 was -- fractured his leg. The accident occurred
16 on the highway adjacent to your house, I believe.
17 And it's my understanding that you may have been
18 a witness, and there are other things that we're
19 going to ask you about that you might have
20 knowledge about.
21 If there's a question that I ask that
22 you don't understand or doesn't make sense for
23 you for any reason, just tell me; you won't
24 offend me, I can assure you. Sometimes it's hard
25 to get questions out, and I'll just try to

1 rephrase it so that it does make sense. So you
2 understand that?
3 A. Okay.
4 Q. It's important that we communicate.
5 And if for any reason you find that to be a
6 problem, just tell me, and I'll try to
7 communicate in a better fashion. When I -- if I
8 ask a question that you don't understand, just
9 tell me.
10 It's important that we talk one at a
11 time rather than at the same time or Jahnene will
12 have a very difficult time getting an accurate
13 record of what was said. So let me finish my
14 question before you begin to answer. And I'll do
15 my darnest to let you finish your answer before I
16 ask -- or ask another question. Okay?
17 And thirdly, the third rule, is it's
18 important that we answer or have an audible
19 conversation rather than nods or shake of the
20 head because of -- exactly -- if we nod, then
21 Jahnene's not going to write down anything. And
22 we need to have a verbal -- verbal answer and a
23 verbal question. And also -- and you probably
24 don't do this; I understand you were a school
25 teacher -- but I have a hard time sometimes

1 saying "uh-huh" and "huh-uh" and -- and I'm going
2 to do my best, but just keep that in mind.
3 And I know that you were summoned to my
4 office once before and the deposition got
5 cancelled, and I apologize for that. And I'm
6 going to try to do this in an efficient manner so
7 you can get on with your business. Okay?
8 A. Thank you.
9 Q. You were involved in another, it sounds
10 like, a contract dispute. Who were the parties
11 to that dispute?
12 A. It was a former daughter-in-law.
13 Q. What was her name?
14 A. Verla Kinsey.
15 Q. Is she still in the area?
16 A. No.
17 Q. And who is she married to?
18 A. Now? At the time?
19 Q. Yeah, the former daughter-in-law. She
20 was married to a Kinsey?
21 A. Dan.
22 Q. To Dan, who's here in the room?
23 A. Yes.
24 Q. And you were deposed concerning that?
25 Was it a divorce dispute?

1 A. No.
2 Q. Okay. I don't need to get into the
3 background of that. Could you describe for me
4 your family? Are you the matriarch?
5 A. Yes.
6 Q. Okay. Where do you live?
7 A. Do you want my --
8 Q. Your address.
9 A. 3497 East 3000 North, Kimberly, Idaho,
10 83341.
11 Q. And what is your full name?
12 A. Marjorie Wilmoth Kinsey.
13 Q. What was your maiden name?
14 A. McIntire.
15 Q. Where did you grow up?
16 A. Where I live.
17 Q. You were born on that --
18 A. Where I live.
19 Q. -- farmstead, homestead?
20 A. Where I live.
21 Q. Same house?
22 A. No. That house burned.
23 Q. Okay. And then, I presume, did you
24 marry a Kinsey, then?
25 A. Correct.

1 Q. And what was your husband's name?
2 A. Bill Kinsey.
3 Q. And is he now deceased?
4 A. Yes.
5 Q. I'm sorry for that. When did he die?
6 A. 1985.
7 Q. Okay. And then did you have children
8 from that marriage?
9 A. Yes.
10 Q. How many children?
11 A. Three.
12 Q. And what are your children's names?
13 A. Dan and Valerie and Deena.
14 Q. And how do you spell "Deena"?
15 A. D-e-e-n-a.
16 Q. Okay. And I want to -- I'm going to
17 ask you about your family tree a little bit, if
18 that's okay. Where does Dan Kinsey live?
19 A. He lives -- do you want his address?
20 Q. Yes, if you know it.
21 A. 2850 North 3450 East, Kimberly.
22 Q. Okay. Does that -- there's been
23 mention of the Kinsey Family Limited Partnership
24 A. Yes.
25 Q. Does the family limited partnership own

1 a farm?
2 A. Yes.
3 Q. How big a farm is that?
4 A. Oh, approximately, it's between 4,500
5 and 5,000.
6 Q. Acres?
7 A. Acres.
8 Q. Is that all right there in that area of
9 where you live?
10 A. No.
11 Q. How much is there in the area where you
12 live?
13 MR. BAILEY: If you remember.
14 THE WITNESS: I'm not sure.
15 Q. (BY MR. HEPWORTH) Is there -- 3500
16 East Road is the road that goes through Kimberly;
17 correct?
18 A. Correct.
19 Q. And your house is a few miles south of
20 Kimberly adjacent to 3500 East Road?
21 A. Yes.
22 Q. How many miles south of Kimberly is it?
23 A. Seven.
24 Q. Seven miles? I'm jumping to
25 conclusions here, and I apologize if I'm

1 incorrect, but I assume that that would be the
2 homeplace?
3 A. Yes.
4 Q. Do you call it the homeplace?
5 A. Yes.
6 Q. Okay. And that's -- is that farm
7 homesteaded by the Kinsey family?
8 A. No.
9 Q. Do you know when it was first acquired?
10 A. 1917.
11 Q. 1917? Okay. Do you know how big it
12 was when it was first purchased?
13 A. No. It's before my time.
14 Q. Do you know how many acres are there at
15 that location now, approximately? Fifty acres?
16 A hundred acres?
17 A. I don't know how to answer that. It's
18 more than a 100. It's probably two -- two
19 sections.
20 Q. When you say "two sections" --
21 A. Three-sixty in a section.
22 Q. So if you started -- you're at the
23 intersection of 3500 East Road and 3000 North
24 Road; right?
25 A. Correct.

1 Q. So if I went south, how many miles
2 would you go -- would the Kinsey Family Limited
3 Partnership own land?
4 A. Probably two miles.
5 Q. Okay. And then if you went west on
6 3000 North Road, do you know how far the Kinsey
7 Family Limited Partnership owns land?
8 A. A mile.
9 Q. A mile? Okay. And are there a number
10 of houses on that --
11 A. There is.
12 Q. -- in that area?
13 A. Yes.
14 Q. How many houses that the Kinsey Family
15 Limited Partnership owns?
16 A. One, two -- four.
17 Q. Four. Okay. And I apologize for
18 skipping around. I was just trying to get an
19 idea in my head how things lay. And I've been
20 out there just to try to figure it out.
21 And Dan Kinsey would live in that area
22 that we've just described that --
23 A. Yes.
24 Q. Can we call it the "homeplace"? Would
25 that be --

Page 13

1 A. Yes.
2 Q. Okay. And I assume he lives in one of
3 the four houses?
4 A. Yes.
5 Q. Okay. Does Valerie Kinsey live on
6 that --
7 A. Yes.
8 Q. -- homeplace? And how about Deena
9 Kinsey?
10 A. Deena passed away about a month ago.
11 Q. I'm sorry. I apologize. Was she
12 living on the homeplace?
13 A. Yes.
14 Q. Okay. Now, let me ask you about Dan
15 Kinsey. Is he currently married?
16 A. No.
17 Q. Okay. But he was married to Verla --
18 A. Yes.
19 Q. -- Kinsey?
20 A. Yes.
21 Q. Does Dan have children?
22 A. Yes.
23 Q. What children -- who are Dan's
24 children?
25 A. Jamey, Pepper and Jenny.

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1 Q. Do you know how old -- and Jenny?
2 A. Jenny.
3 Q. Okay. And Jamey is J-a-m-e-y?
4 A. Correct.
5 Q. How old is Jamey, if you know?
6 A. He'd be 37.
7 MR. KINSEY: Getting too damn old for
8 me.
9 Q. (BY MR. HEPWORTH) How about Pepper?
10 A. Let's see. She would be 36.
11 Q. And how about Jenny? And how do you
12 spell "Jenny"?
13 A. J-e-n-n-y.
14 Q. Okay. How old is Jenny?
15 A. Jenny -- let's see -- '82 -- 44.
16 Q. Okay. And then Valerie Kinsey is your
17 daughter?
18 A. Correct.
19 Q. Approximately how old is Valerie?
20 A. She's 54.
21 Q. And where does she live?
22 A. She lives in the house there.
23 Q. Does she have children?
24 A. Yes.
25 Q. And is she married?

Page 15

1 A. No.
2 Q. Okay. What are her children's names?
3 A. Philine, P-h-i-l-i-n-e; and Lindsey;
4 and Justin.
5 Q. Okay. And how old is Philine
6 approximately?
7 A. She was born in '78, so whatever that
8 adds up.
9 Q. Okay. So about 30?
10 A. Yeah, mm-hmm.
11 Q. How about Lindsey?
12 A. Let's see. She's two years younger
13 than Philine.
14 Q. So about 28. And Justin?
15 A. He's 14.
16 Q. Okay. And then there's -- you had
17 Deena Kinsey, was another daughter?
18 A. Yes.
19 Q. And was she married?
20 A. Yes.
21 Q. And what was her husband's name?
22 A. Bill Windsor.
23 Q. Ans she lived on the homeplace also?
24 A. Yes.
25 Q. Okay. Did she have children?

Page 16

4 (Pages 13 to 16)

1 go to high school?
2 A. Kimberly.
3 Q. Did he graduate?
4 A. Yes.
5 Q. What did he do after he graduated? Do
6 you know?
7 A. He went to CSI for a couple of years.
8 Q. Do you remember what year he graduated
9 from high school? If he's 37, what, about
10 19 years ago?
11 A. Something like that. Boy, I can't
12 remember.
13 Q. Late '80s maybe?
14 A. Probably. I don't remember.
15 Q. Okay. And then at CSI, do you know
16 what he studied?
17 A. I don't remember that either.
18 Q. Okay. Do you know if he's been
19 employed since high school; Jamey?
20 A. Yes.
21 Q. How was he employed?
22 A. He was in the Navy for a while.
23 Q. Right out of high school?
24 A. No. Out of CSI.
25 Q. Okay. Do you remember how many years

Page 33

1 A. Then he went to Texas with his mother.
2 Q. Do you know if he went from Colorado to
3 Texas or Colorado --
4 A. Yes.
5 Q. Okay.
6 A. He went from Colorado to Texas.
7 Q. Do you know what years that would have
8 been where he lived in Texas?
9 A. No. I don't remember.
10 Q. Okay. At some point he came back to
11 Idaho?
12 A. Yes.
13 Q. Do you know approximately when that
14 was?
15 A. It's been several years.
16 Q. How would you describe your
17 relationship with Jamey?
18 A. Very good.
19 Q. Do you stay in contact with him?
20 A. Well, I don't see him very often.
21 Q. Does he stay in contact with you?
22 A. Not too much.
23 Q. Has he ever worked for the farm or on
24 the family farm?
25 A. He -- he has in the past, I think, but

Page 35

1 he did that?
2 A. Probably two years, if I remember
3 right.
4 Q. Okay. Do you know what he did after
5 that?
6 A. He worked on a farm in Kimberly.
7 Q. Do you know what farm that would be?
8 A. Yes.
9 Q. Which farm?
10 A. That'd be Olson. I can't think of his
11 first name.
12 Q. Do you know how long he did that?
13 A. Several years.
14 Q. Three, four years or more?
15 A. Probably. He lived with his mother
16 too -- oh, I'm mixed up, completely mixed up.
17 He went to Colorado and worked in the
18 oil fields.
19 Q. When was that, if you remember?
20 A. That was when he got out of the Navy.
21 Q. Okay. How long did he do that, if you
22 know?
23 A. Probably -- I don't remember how long.
24 Q. Okay. At some point he came back to
25 Idaho?

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1 I can't remember what he did. Actually, I -- I
2 can't remember him working for us -- oh, he --
3 yeah, he fed cattle one winter --
4 Q. Do you remember --
5 A. -- three or four years ago.
6 Q. Okay. Do you know what he's doing now?
7 A. No.
8 Q. Do you know where he's living now?
9 A. Oh, he's -- his home base is Hanson,
10 but he's not there now. I don't know where he
11 is. He's in the hills somewhere.
12 Q. "His home base"? What do you mean by
13 "home base"?
14 A. Where he lives when he's down, when
15 he's -- when he considers himself home, he lives
16 in Hanson.
17 Q. Who does he live with?
18 A. Vicky Stanger.
19 Q. Is that a girlfriend?
20 A. Yes.
21 Q. How long has he been living with Vicky
22 Stanger?
23 A. They've been together since he was out
24 of CSI.
25 Q. And he's been living with her since

Page 36

9 (Pages 33 to 36)

1 that time?
2 A. Off and -- when he's not in Colorado or
3 in the Navy or in Texas, but . . .
4 Q. He travels around a lot?
5 A. Not a lot lately, but that's where he's
6 been.
7 Q. Okay. So you think he considered his
8 home Vicky Stanger's house?
9 A. Yes.
10 Q. In Hanson?
11 A. Yes.
12 Q. All right. Do you know if Jamey has
13 any children?
14 A. No. He has none.
15 Q. Do you know if Vicky does?
16 A. Yes, she does.
17 Q. How many kids does she have?
18 A. I think she has two boys.
19 Q. Do you know how old they are?
20 A. No, I don't.
21 Q. I mean, are they out of high school
22 age, or are they under?
23 A. Oh, they're out of high school.
24 Q. Okay. But they're not Jamey's kids?
25 A. No.

Page 37

1 Q. What attorney was it?
2 A. Stan Welsh.
3 Q. In Boise?
4 A. Yes.
5 Q. What year did you create the
6 organization?
7 A. '90? The early '90s.
8 Q. What was the reason for doing that?
9 A. To save taxes when -- when I passed.
10 Q. Was that part of your estate
11 planning --
12 A. Yes.
13 Q. -- plan?
14 A. Yes.
15 Q. Are there any partners in the
16 partnership other than yourself?
17 A. Yes.
18 Q. Who are the other partners?
19 A. Dan and Valerie.
20 Q. Anyone else?
21 A. Well, Deena was, but that's . . .
22 Q. So your children were the other --
23 A. Yes.
24 Q. -- partners?
25 A. Yes.

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1 Q. Okay. Let me just hand you what's been
2 given to me in a -- what I'll call a declaratory
3 judgment lawsuit -- and this -- it's already been
4 marked Exhibit A so we can keep that, I think.
5 (Exhibit A marked.)
6 Q. (BY MR. HEPWORTH) Have you seen this
7 document before? I'll represent to you it's a
8 declaration's page to the "M. Wilmoth Kinsey, DBA
9 Kinsey Family Limited Partnership," Farm Bureau
10 Insurance Policy.
11 A. Yes.
12 Q. Are you in charge of getting insurance
13 for the family, for the --
14 A. Yes.
15 Q. -- partnership?
16 A. Yes.
17 Q. Okay. Could you tell me, what is the
18 Kinsey Family Limited Partnership?
19 A. Just what it says it is, as far I know.
20 Q. Did you have any involvement in
21 creating that entity?
22 A. Yes.
23 Q. Was there -- did you talk to an
24 attorney to do that?
25 A. Yes.

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1 Q. Okay. And on the first sheet of
2 Exhibit A, it lists a residence and it shows,
3 what I believe, is a value of \$152,000. Do you
4 see that?
5 MR. BAILEY: It says "Limits of
6 liability."
7 Q. (BY MR. HEPWORTH) "Limits of
8 liability," 150. That's the property coverage.
9 Would that be your house? Do you know?
10 A. I don't know. I -- I don't understand
11 all this stuff.
12 Q. Okay. Your house, is that a brick
13 house?
14 A. Yes.
15 Q. And that's on the corner of --
16 A. Yes.
17 Q. -- the two roads?
18 A. Yes.
19 Q. And then it also lists under that, a
20 "modular with found building," and it has 86,000.
21 Do you know, would that be one of the houses that
22 one of the kids lives in?
23 A. Where is that?
24 Q. Next down --
25 A. Building.

Page 40

10 (Pages 37 to 40)

1 (A recess was held.)
2 Q. (BY MR. HEPWORTH) Let me just -- I
3 won't be much longer -- let me just ask a few
4 questions. When is the last time you had contact
5 with Jamey?
6 A. I don't remember. It's not very long
7 ago.
8 Q. When you say "not very long," within
9 the last month?
10 A. Probably a couple of weeks.
11 Q. How did you have contact with him then?
12 A. He just stopped in to say hello and
13 goodbye.
14 Q. Okay. Just to your house?
15 A. Yes.
16 Q. When you say "goodbye," do you know
17 where he was going to?
18 A. Said he was going to get some groceries
19 or something, I assume. I don't know.
20 Q. Okay.
21 A. I'm assuming something there.
22 Q. How frequently in the past year have
23 you talked to him?
24 A. Oh, that's a little difficult to say.
25 It's probably once every week or two weeks.

1 Q. Do you love your grandson?
2 A. Oh, yes.
3 Q. Do you try to keep in contact with him?
4 A. Well, when I can.
5 Q. Does he have a cell phone?
6 A. He has a cell phone, but I can't ever
7 get him to answer. He's not in the . . .
8 Q. What's his cell phone number?
9 A. That's one of those numbers I can never
10 remember.
11 Q. Do you have it written down somewhere?
12 A. No, I don't. I have it on my cell
13 phone, which I don't have with me right now.
14 Q. So you have it on your cell phone?
15 A. Yes.
16 Q. You can get that?
17 A. Yes.
18 Q. Would you have any problem if I called
19 you or you called me to get that cell phone
20 number?
21 MR. BAILEY: I'd have a problem with
22 you calling her.
23 MR. HEPWORTH: Are you representing
24 Wilmoth?
25 MR. BAILEY: I believe that we are,

1 yeah.
2 MR. HEPWORTH: I -- in what case?
3 MR. BAILEY: I think you sued her in
4 this case.
5 MR. HEPWORTH: I haven't. I haven't
6 sued Wilmoth.
7 MR. BAILEY: Maybe --
8 MR. HEPWORTH: That's probably pretty
9 important. We better have an understanding. I
10 can tell you I haven't sued Wilmoth.
11 MR. BAILEY: Okay. That's fine then.
12 MR. HEPWORTH: If you're representing
13 her, that's fine with me. Would you get me the
14 cell phone number of Jamey?
15 MR. BAILEY: If she can get it to me,
16 sure.
17 MR. HEPWORTH: Okay. And you are
18 representing Wilmoth even though she hasn't been
19 sued?
20 MR. BAILEY: Well, no, if she hasn't
21 been sued. I thought you had her sued in this
22 thing. So I -- I'm doing what Wilmoth was
23 talking about before; I may be getting a little
24 old and having a senior moment here.
25 MR. HEPWORTH: Okay. All right.

1 Q. (BY MR. HEPWORTH) Do you know what his
2 mailing address would be?
3 A. It's Northwest Estates, Hanson, Idaho,
4 but I don't remember the number. It seems -- I'm
5 just not sure of the number.
6 Q. And that would be the Stanger --
7 A. Yes.
8 Q. -- lady -- what was her first -- Vicky
9 Stanger's?
10 A. Vicky, yes.
11 Q. So you think his mailing address is
12 Vicky Stanger's house?
13 A. Yes.
14 Q. And that's where he would be getting
15 all of his mail?
16 A. Yes.
17 Q. Have you ever received mail for Jamey
18 at your address?
19 A. Oh, yes. There's people that don't
20 know his address so they just send it to me
21 because they don't know where else to send it.
22 Q. Are you still getting mail for Jamey?
23 A. Once in a while.
24 Q. Have you asked him to change his
25 mailing address?

1 A. No.
2 Q. Do you know if he's working currently?
3 A. I think he's cutting wood somewhere up
4 in the hills.
5 Q. In the south hills, in the --
6 A. South hills, yeah.
7 Q. How long has he been doing that, if you
8 know?
9 A. Most all summer.
10 Q. Do you know what he did for employment
11 last spring and winter?
12 A. I don't think he was doing anything. I
13 just don't . . .
14 Q. Do you think he was unemployed?
15 A. I think so.
16 Q. Do you know what he did for employment
17 a year ago?
18 A. He was working for -- let's see -- he
19 was helping put in a pipeline up in Shoshone
20 Basin.
21 Q. Do you know who he was employed by?
22 A. I'm trying to thing of it. It's -- I
23 don't remember the name of that. It was -- words
24 are escaping me right now.
25 Q. Okay. Do you know where he lived a

Page 49

1 year ago?
2 A. With Vicky.
3 Q. Vicky Stanger?
4 A. Yes.
5 Q. All right. And do you know how long
6 he'd been living with Vicky?
7 A. Oh, goes back quite a few years off and
8 on, when he wasn't in Colorado or Texas.
9 Q. Do you know what her phone number is?
10 A. 423 -- let's see -- 423-5297. I have
11 to look at a phone.
12 Q. Do you talk --
13 MR. BAILEY: Don't hang up on Kent
14 whatever you do.
15 THE WITNESS: I won't.
16 Q. (BY MR. HEPWORTH) Do you talk to
17 Vicky?
18 A. Yes.
19 Q. On a regular basis?
20 A. Not on a regular basis.
21 Q. Have you talked to her about this
22 lawsuit?
23 A. I don't remember if I have.
24 Q. Okay. You said earlier that Jamey was
25 at your house on the day of the accident to pick

Page 50

up some things out of his bunkhouse?
A. Out of our bunkhouse.
MR. BAILEY: Objection.
Q. (BY MR. HEPWORTH) Well, I think the
record will show what you said. But my memory is
you said his bunkhouse or his belongings.
MR. BAILEY: I think she said his
belongings out of her bunkhouse.
Q. (BY MR. HEPWORTH) Okay. What
belongings did he have in the bunkhouse?
A. I don't really know.
Q. Is there a bed in the bunkhouse?
A. No.
Q. Why is it called a "bunkhouse"?
A. That's what we've always called it.
Q. What is in the bunkhouse?
A. I haven't been in it for years, so I
don't know what's in there.
Q. And that's just right along the road?
A. Yes.
Q. And it's a wood structure?
A. Yes.
Q. And you don't know what it's used for?
A. Just kind of storage.
Q. And you don't know what Jamey was

Page 51

1 picking up there?
2 A. Have no idea.
3 Q. And you don't know what belongings he
4 would have in the bunkhouse?
5 A. No, I don't.
6 MR. HEPWORTH: That's all I have.
7 MR. BAILEY: I don't have any questions
8 for you.
9 MR. HEPWORTH: Kent?
10 MR. HAWKINS: Yes.
11 EXAMINATION
12 QUESTIONS BY MR. HAWKINS:
13 Q. Ms. Kinsey?
14 A. Yes.
15 Q. My name is Kent Hawkins, and I'm a
16 lawyer representing Farm Bureau. And I would
17 like to ask you a few questions, if you don't
18 mind.
19 A. That's fine.
20 Q. Just so you understand, and I
21 understand, there's -- there's two lawsuits going
22 on. And I'm involved in the lawsuit that was
23 served on you sometime ago that was actually
24 filed by your insurance company, Farm Bureau,
25 naming you and your LLC. Do you know what I'm

Page 52

13 (Pages 49 to 52)

1 talking about?
2 A. Not really.
3 Q. Do you remember being served with a
4 lawsuit a few months ago?
5 A. Yes, and I was thoroughly confused.
6 Q. All right. Did you take that -- have
7 you hired an attorney to represent you in that
8 case?
9 A. No.
10 Q. Are you planning to hire an attorney?
11 A. I hadn't made any plans.
12 Q. All right. Do you have an attorney? I
13 realize Mr. Bailey is there represent -- well,
14 no, he's not -- well, whatever Mr. Bailey's
15 doing. Do you have an attorney who normally
16 represents you?
17 A. Not really.
18 Q. You don't have anybody that you would
19 say is your attorney?
20 A. Not -- no, not really.
21 Q. All right. Let me just ask you a few
22 brief questions. Who was the owner of the dog
23 that was hit by the motorcycle?
24 A. Jamey Kinsey.
25 Q. Has Jamey ever been married?

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1 A. No.
2 Q. Do you know why -- we talked about him
3 having some belongings in the bunkhouse. Do you
4 know why he was storing stuff in the bunkhouse?
5 A. No.
6 Q. I'm looking at a picture of -- I think
7 of your house. It's located at a four-way
8 intersection; is that true?
9 A. Yes.
10 Q. And is your house in the southwest
11 corner of that?
12 A. Southwest corner of what?
13 Q. Well, there's -- it's a four-way
14 intersection, and if you're standing in the
15 middle of the intersection, you would be looking
16 north to south --
17 A. Oh, yes.
18 Q. Looking at your house?
19 A. Yes, that's true.
20 Q. And is it somewhat surrounded by big
21 trees?
22 A. Yes.
23 Q. Okay. And I wasn't there; I know you
24 drew a little diagram, but I'm just trying to
25 make sure I'm picturing this correctly. It looks

Page 54

1 to me like there's actually several buildings
2 right in the -- the yard where your house; true?
3 A. Not in the yard.
4 Q. Well, behind, I would say, to the west?
5 A. Well, yes, there's a shop and -- and a
6 garage and --
7 Q. All right.
8 A. -- machine shed, a hanger.
9 Q. And is one of those the bunkhouse?
10 A. One of -- the bunkhouse is on the other
11 side of the shop.
12 Q. Okay. Meaning, it's further away from
13 your house than the shop?
14 A. Yes.
15 Q. Okay. And it's quite a bit smaller
16 than the shop?
17 A. Yes.
18 Q. Okay. And it's located pretty close to
19 the road?
20 A. Yes.
21 Q. All right. Has Jamey ever lived with
22 you?
23 A. Yes, at one time.
24 Q. What period of time was that?
25 A. Let's see. When he came back from

Page 55

1 Texas. It's been several years ago, but I can't
2 remember the year.

3 Q. All right. Did Jamey ever sleep in
4 that bunkhouse?

5 A. I don't remember if he did. I don't
6 know what he would have slept on.

7 Q. All right. When he lived with you
8 several years ago, did -- where did he stay?

9 A. He stayed in the house with me.

10 Q. All right. When was probably the last
11 time that he stayed in the house with you
12 overnight?

13 A. I -- I can't tell you exactly, but it's
14 probably been at least five years.

15 Q. All right.

16 MR. HAWKINS: I think that's all the
17 questions I had. Thank you.

18 THE WITNESS: You're welcome.

19 MR. BAILEY: I don't have any questions
20 for you.

21 FURTHER EXAMINATION
22 QUESTIONS BY MR. HEPWORTH:

23 Q. Do you remember the dog's name?

24 MR. HAWKINS: Actually, yeah, there was
25 that question I forgot to ask.

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14 (Pages 53 to 56)

1 THE WITNESS: Danny, do you --
 2 MR. BAILEY: Been asked and answered,
 3 sort of.
 4 MR. HAWKINS: All right.
 5 THE WITNESS: I don't know why I can't
 6 remember that dog's name.
 7 MR. HEPWORTH: Okay. I guess we'll
 8 conclude the deposition.
 9 (Deposition concluded at 11:00 a.m.)
 10 (Signature requested.)
 11
 12
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1 ERRATA SHEET FOR MARJORIE WILMOTH KINSEY
 2 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 3
 4
 5 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 6
 7
 8 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 9
 10
 11 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 12
 13
 14 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 15
 16
 17 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 18
 19
 20 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 21
 22
 23 Page ___ Line ___ Reason for Change _____
 Reads _____
 Should Read _____
 24
 25 You may use another sheet if you need more room.
 WITNESS SIGNATURE _____

1 CERTIFICATE OF WITNESS
 2 I, MARJORIE WILMOTH KINSEY, being first duly
 3 sworn, depose and say:
 4 That I am the witness named in the foregoing
 5 deposition, consisting of pages 1 through 60;
 6 that I have read said deposition and know the
 7 contents thereof; that the questions contained
 8 therein were propounded to me; and that the
 9 answers contained therein are true and correct,
 10 except for any changes that I may have listed on
 11 the Change Sheet attached hereto:
 12 DATED this ___ day of _____, 200__.
 13
 14 _____
 15 MARJORIE WILMOTH KINSEY
 16
 17 SUBSCRIBED AND SWORN to before me this ___
 18 day of _____, 200__.
 19
 20 _____
 21 NAME OF NOTARY PUBLIC
 22
 23 NOTARY PUBLIC FOR _____
 24 RESIDING AT _____
 25 MY COMMISSION EXPIRES _____

1 REPORTER'S CERTIFICATE
 2 I, JAHNENE SCHWISOW, CSR No. 760, Certified
 3 Shorthand Reporter, certify:
 4 That the foregoing proceedings were taken
 5 before me at the time and place therein set
 6 forth, at which time the witness was put under
 7 oath by me;
 8 That the testimony and all objections made
 9 were recorded stenographically by me and
 10 transcribed by me or under my direction;
 11 That the foregoing is a true and correct
 12 record of all testimony given, to the best of my
 13 ability;
 14 I further certify that I am not a relative
 15 or employee of any attorney or party, nor am I
 16 financially interested in the action.
 17 IN WITNESS WHEREOF, I set my hand and seal
 18 this ___ day of MONTHSIGNED, 2008.
 19
 20 _____
 21 JAHNENE SCHWISOW, CSR
 22 Notary Public
 23 P.O. Box 2636
 24 Boise, Idaho 83701-2636
 25 My commission expires May 04, 2012

Jeffrey J. Hepworth, ISB#3455
 JEFFREY J. HEPWORTH, P.A.
 & ASSOCIATES
 161 5th Avenue South, Suite 100
 P.O. Box 1806
 Twin Falls, ID 83303-1806
 Telephone: (208) 734-0702

Attorneys for Intervenor

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2009 MAY 26 PM 4:15

BY _____
 CLERK

 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL INSURANCE)
 COMPANY OF IDAHO,)

Plaintiff,)

v.)

JAMEY KINSEY and M. WILMOTH)
 KINSEY, d/b/a KINSEY FAMILY)
 LIMITED PARTNERSHIP,)

Defendants.)

 MICHAEL BROOKBANK,)

Intervenor.)

Case No. CV 08-1597

**AFFIDAVIT OF JEFFREY J.
 HEPWORTH**

STATE OF IDAHO)
) ss.
 County of Twin Falls)

AFFIDAVIT OF JEFFREY J. HEPWORTH - 1

JEFFREY J. HEPWORTH, being first duly sworn, deposes and says:

1. My name is Jeffrey J. Hepworth. I am the attorney representing Michael Brookbank the Intervenor in the above-entitled matter. I make this affidavit of my own personal knowledge and beliefs.

2. Attached hereto as Exhibit "1" is a true and correct copy of the accident report in regard to the above-entitled matter.

3. Attached hereto as Exhibit "2" is a true and correct copy of the Idaho Driver's License Record for Jamey Kinsey.

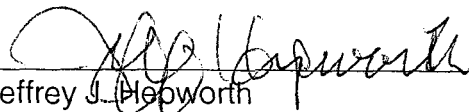
4. Attached hereto as Exhibit "3" is a true and correct copy of the title documents to Jamey Kinsey's 1990 Ford truck.

5. Attached hereto as Exhibit "4" is a true and correct copy of the deposition of Marjorie Wilmoth Kinsey.

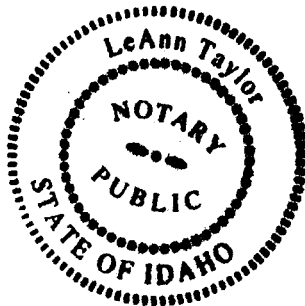
6. Attached hereto as Exhibit "5" is a true and correct copy of the deposition of Jamey D. Kinsey.


7. Further you affiant sayeth naught.

Dated this 26th day of May, 2009.


Jeffrey J. Hepworth

SUBSCRIBED AND SWORN to before me this 26th day of May, 2009.




NOTARY PUBLIC
Residing at: Jerome
Commission Expires: 10/16/11

CERTIFICATE OF SERVICE

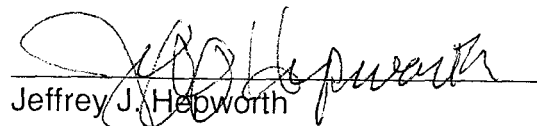
The undersigned, a resident attorney of the State of Idaho, with offices at 161 5TH Avenue South, Suite 100, Twin Falls, Idaho, certifies that on the 26th day of May, 2009, he caused a true and correct copy of the AFFIDAVIT OF JEFFREY J. HEPWORTH to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

John A. Bailey, Jr.
Racine, Olson, Nye,
Budge & Bailey
P.O. Box 1391
Pocatello, ID 83204-1391

Hand Delivered	_____
U.S. Mail	_____X_____
Fax	_____X_____
Fed. Express	_____

Kent L. Hawkins
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83204-0991

Hand Delivered	_____
U.S. Mail	_____X_____
Fax	_____X_____
Fed. Express	_____



Jeffrey J. Hepworth

Idaho Vehicle Collision Report

IT-90 5-95M 27-010500-0 Revised 11/29/96

Agency Code **4200** Officer # **1174** Report District **3** Case No. **07001324** Page 1

Date of Collision	Day of Collision	Time	Police Dispatched	Police Arrived	EMS Dispatched	EMS Arrived	Location	City or Town	
1/18/2007	Saturday (7)	17:50	17:56	18:12	17:56	18:00	6 Miles	<input checked="" type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> IN <input type="checkbox"/> S <input type="checkbox"/> W <input checked="" type="checkbox"/> OF	Kimberly
Collision location is in:	Complete Box #	Name of Street		<input type="checkbox"/> On Private Property	# of Lanes	Posted Speed	County	Interchange #	
Intersection of 2 streets	1, 2	1 ON			2	50	Twin Falls	-U	
Intersection of Street and:		2 In the Intersection with:				Posted Speed	R. R. Crossing #	Latitude (GPS)	
Parking Lot / Driveway / Alley	1, 2, 3	3 Outside an Intersection		Name of Cross Street or # of Ref. Mile Post Marker			-U		
Non-Intersection	1, 3	.1		<input checked="" type="checkbox"/> Miles <input type="checkbox"/> Feet	<input checked="" type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/> OF	3000 East Rd	Collision Loc Mile Point	Longitude (GPS)	

UNIT 1		<input checked="" type="checkbox"/> Vehicle	<input type="checkbox"/> Pedestrian	<input type="checkbox"/> Pedalcyclist	Vehicle Owner		Last	First	M.I.	Unit Type
Driver					<input checked="" type="checkbox"/> Same as Driver		Brookbank	Michael	B	3
<input type="checkbox"/> Hit & Run		Brookbank Michael B			<input checked="" type="checkbox"/> As Driver		317 Boyd St W Murtaugh, ID 83344			Unit Use
Street Address		Home Phone			Vehicle Year	Make (Dodge-Chev.)	Model (Dart-Nova)	Style (2 Dr.)		0
317 Boyd St W		891-6981			1997	Harley-Davidson	X11200	Motorcycle		Attach 1
City		State	Zip Code	Work Phone	Vehicle Color	License Plate No.		State		0
Murtaugh		ID	83344	-U	Blue	MEF717		ID		Attach 2
Driver's License No.		State	Idaho Code # / Violation	<input checked="" type="checkbox"/> Cited	Vehicle Identification No.		Est. Cost of Damage		0	
DA103449J		ID	18-8001		1HD1CGP15VY204576		500			
Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported	Insurance	Carrier Name	Policy Number	
M	3/8/1966	0	B	T	1	4	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Progressive	SL131974922	

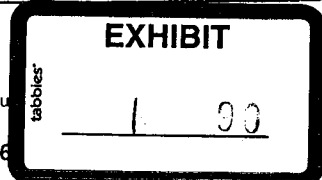
Passenger Names and Addresses		(Unit 1 only, additional passengers on page 3)	Same Address as Driver	Seating	Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported
			<input type="checkbox"/>								
			<input type="checkbox"/>								
			<input type="checkbox"/>								

UNIT 2		<input type="checkbox"/> Vehicle	<input type="checkbox"/> Pedestrian	<input type="checkbox"/> Pedalcyclist	Vehicle Owner		Last	First	M.I.	Unit Type
Driver					<input type="checkbox"/> Same as Driver					
<input type="checkbox"/> Hit & Run					<input type="checkbox"/> As Driver					Unit Use
Street Address		Home Phone			Vehicle Year	Make (Dodge-Chev.)	Model (Dart-Nova)	Style (2 Dr.)		Attach 1
City		State	Zip Code	Work Phone	Vehicle Color	License Plate No.		State		Attach 2
Driver's License No.		State	Idaho Code # / Violation	<input type="checkbox"/> Cited	Vehicle Identification No.		Est. Cost of Damage			
Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported	Insurance	Carrier Name	Policy Number	
							<input type="checkbox"/> Yes <input type="checkbox"/> No			

Passenger Names and Addresses		(Unit 2 only, additional passengers on page 3)	Same Address as Driver	Seating	Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported
			<input type="checkbox"/>								
			<input type="checkbox"/>								
			<input type="checkbox"/>								

Injured Transported To: **Magic Valley Regional Medical Center** By: **Magic Valley Paramedics - Twin Falls**

<table border="1"> <tr><th>Front</th><th>Seating</th><th>Front</th></tr> <tr><td>1</td><td>2</td><td>3</td></tr> <tr><td>4</td><td>5</td><td>6</td></tr> <tr><td>7</td><td>8</td><td>10</td></tr> </table> <p>Vehicle</p> <p>Motorcycle</p> <p>14 Trailing Unit 16 Pedestrian 17 Pedalcyclist</p> <p>18 Equestrian 99 Other U Unknown</p> <p>Passenger Codes - Non Trailing Unit 11 Sleeper Sect.(Truck Cab) 12 Other enclosed Passngr./Cargo area 13 Unenclosed Passngr./Cargo area 15 Riding on Vehicle Exterior</p>	Front	Seating	Front	1	2	3	4	5	6	7	8	10	<p>Protective Devices</p> <p>0 None 1 Shoulder Belt Only 2 Lap Belt Only 3 Shoulder & Lap 7 Non-Activated Air Bag, Belts in Use 8 Non-Activated Air Bag, No Belts in Use 10 Air Bag Activated, Belts in Use 11 Air Bag Activated, No Belts in Use</p> <p>Ejection</p> <p>1 Not Ejected 2 Totally Ejected 3 Partially Ejected T Thrown from cycle etc.</p> <p>Trapped</p> <p>1 Not Trapped 2 Trapped / Extrication unit used 3 Trapped / other extrication method</p>	<p>Injury</p> <p>K Dead A Incapacitating B Non-Incapacitating C Possible 0 None Evident U Unknown</p> <p>Transported For Medical Care By</p> <p>1 Ambulance 2 Police Car 3 Helicopter 4 Private Vehicle 5 Not Transported</p>	<p>Unit Type</p> <p>1 Pedestrian 2 Pedalcyclist 3 Motorcycle 4 Moped 6 Car</p> <p>15 Bus 21 Single Unit Truck - 2 axle/6 Tires 22 Single Unit Truck - 3 axle 23 Truck with Trailer</p> <p>8 Pickup with Camper 7 Pickup / Van / Panel / Sport Utility Vehicle 12 Equestrian 30 Farm Equipment (List) 40 Construction Equip. (List)</p> <p>Commercial</p> <p>24 Bobtail 25 Tractor w/Semi Trailer 26 Tractor w/Double Trailer 27 Tractor w/Triple Trailer</p> <p>10 Motorhome 11 Snowmobile 5 ATV 28 Train 99 Other Non-Motor Veh.</p>
Front	Seating	Front													
1	2	3													
4	5	6													
7	8	10													



Note: -U indicates Unknown

1174070818233101103406

Locality

1 Business/Commercial 3 School/Playground 5 Agricultural 7 Residential
2 Industrial/Manufacturing 4 Recreational Area 6 Undeveloped

Light Conditions

1 Day 3 Dark - Street Lights On 5 Dark - No Street Lights
2 Dawn/Dusk 4 Dark - Street Lights Off

Weather Conditions - Two Selections Possible

1 Clear 3 Rain 5 Sleet/Hail 7 Blowing Dust/Sand A Smoke/Smog
2 Cloudy 4 Snow 6 Fog 8 Severe Cross Winds

Road Surface Conditions

1 Dry 3 Slush 5 Snow 7 Water
2 Wet 4 Ice 6 Mud 9 Other

Other Road Conditions

0 None 4 High/Low Shoulder 8 Flooded
1 Ruts/Bumps/Holes 5 Loose Gravel/Seal Coat A Poor Pavement
2 Slick Asphalt (Bleeding) 6 Under Construction Markings
3 Washboard 7 Lane Closed 9 Other

Officer # **1174** Case No. **07001324**

Road Type

1 2-Way & Raised/Depressed Divider 5 Ramp
2 2-Way & 2-Way Left Turn Lane Divider 6 Alley
3 One-Way 7 Rest Area
4 2-Way & No Divider 8 Port of Entry
A 2-Way & 2 Double Yellow Painted Divider 9 Other

Road Surface Type

1 Concrete 2 Paved (Asphalt/Brick) 3 Gravel/Stone 4 Dirt

Roadway Geometrics

1 Straight 2 Curve
1 Upgrade/Downgrade 3 Hillcrest 5 Level

Traffic Control

0 None 4 Flashing Beacon 8 Officer/Flagger
1 Stop Sign 5 Traffic Signal-Ped. Only A School Bus Signal
2 Yield 6 R. R. Gates/Signal B No-Pass Barrier Line
3 Traffic Signal 7 R. R. Flashing Beacon C Construction Signing

SPECIFY 1 Functioning 2 Not Functioning 3 Removed

UNIT # 1 CONTRIBUTING CIRCUMSTANCES - 3 Possible UNIT # 2

0 None 5 Improper Lane Change 11 Improper Turn 17 Wheel Defect 22 Inattention 28 Improperly Parked
1 Exceeded Posted Speed 6 Following Too Close 12 Failed to Signal 18 Light Defect 23 Vision Obstruction 31 Previous Accident
2 Speed Too Fast 7 Drove Left of Center 13 Failed to Yield 19 Other Vehicle 24 Asleep/Drowsy 32 Distraction in/on Vehicle (List)
3 Too Slow for Traffic 8 Off Roadway / Over Corrected 14 Passed Stop Sign Defect 25 Sick 35 Improper use of Turn Lane
4 Improper Overtaking 10 Improper Backing 16 Tire Defect 34 Drug Impaired 27 Physical Impairment 99 Other

VISION OBSTRUCTION

0 None 3 Roadway Slope/Snowbank 7 Bright Headlights 12 Splash/Spray from Other Vehicle 15 Traffic Sign
1 Curve in Road 4 Trees/Crop/Brush 8 Weather Conditions 18 Vehicle Stopped on Roadway 16 Billboard/Fence
2 Hill Crest 5 Reflection from Surface 10 Rain/Snow/Ice on Windows 13 Moving Vehicle 17 Building
6 Bright Sunlight 11 Cracked/Dirty Windows 14 Parked Vehicle 99 Other

POINT OF IMPACT

Auto / Motorcycle / Tractor with Semi Trailer

Trailing Unit #1 33 Top 34 Undercarriage

Trailing Unit #2 53 Top 54 Undercarriage

INITIAL Point of Impact

PRINCIPLE Point of Impact

EXTENT OF DEFORMITY

0 None 1 Very Minor 2 Minor 3 Minor/Moderate 4 Moderate 5 Moderate/Severe 6 Severe 7 Very Severe

Towed Due to Damage Yes No

Towed By: **Owner**

Towed Due to Damage Yes No

Driver of UNIT # 1 ALCOHOL / DRUG INVOLVEMENT Driver of UNIT # 2

1 Neither Alcohol or Drugs Detected 2 Yes - Alcohol 3 Yes - Drugs 4 Yes - Both

Alcohol Test 1 None Given 2 Test Refused 3 Blood Test 4 Urine Test 5 Breath Test 6 Field Test

Drug Test

BAC Test Results: Drug Used (if known): Drug Test Results

UNIT # 1 COMMERCIAL VEHICLE UNIT # 2

Refer to Instruction Sheet before completing

Cargo Body

1 Bus 2 Van/Enclosed Box 3 Cargo Tank 4 Flatbed 5 Dump 6 Concrete Mixer 7 Auto Transporter 8 Garbage/Refuse 9 Other 10 Pickup Bed

Axles GVWR-Power GVWR-All Trailers ICC # For Load DOT # For Load

Hazardous Material Placard: Yes No Spilled: Yes No Haz-Mat #

Carrier Name & ICC# or DOT# for Load obtained from...

1 Shipping Papers 2 Vehicle Side 3 Driver 4 Log Book 9 Other

Carrier Name Address City State Zip

Note: -U indicates Unknown

Event	Unit # of Units Involved	Event Location
17	1	1
10	1	1
1	1	1

EVENTS - Events for ALL units in the order they occurred

- 1 Overturn
- 2 Separation of Units
- 3 Cargo Loss/Shift
- 4 Jack-Knifed
- 5 Ran off Road
- 6 Down Hill Runaway
- 7 Fire/Explosion
- 8 Gas/Inhalation
- 9 Other Noncollision
- 10 Loss of Control
- 11 Fell/Pushed/Jumped
- 12 Non-Collision Injury
- 13 Immersion
- 71 Came Back on Road
- 72 Drove L/R of Center

- | | | | |
|-------------------------|-------------------------|------------------------------|-----------------------|
| One Veh. Collision With | 14 Pedestrian | 24 Bridge Rail | 41 Culvert |
| 15 Pedalcycle | 16 Railroad Train | 25 Overpass | 42 Curb |
| 18 Wild Animal | 17 Domestic Animal | 26 Guardrail Face | 43 Ditch |
| 19 Other Object | 18 Wild Animal | 27 Guardrail End | 44 Embankment |
| Not Fixed | 19 Other Object | 28 Median Barrier | 45 Fence |
| 20 Parked Vehicle | 20 Parked Vehicle | 30 Highway Traffic Sign Post | 46 Mailbox |
| on Private Property | 21 Impact Attenuator | 31 Overhead Sign support | 47 Tree |
| 22 Bridge/Pier/Abutment | 22 Bridge/Pier/Abutment | 32 Street Light Support | 48 Building Wall |
| 23 Bridge Parapet End | 23 Bridge Parapet End | 33 Utility Pole | 49 Other Fixed Object |
| | | 39 Other Pole | |
| | | 40 Delineator Post | |

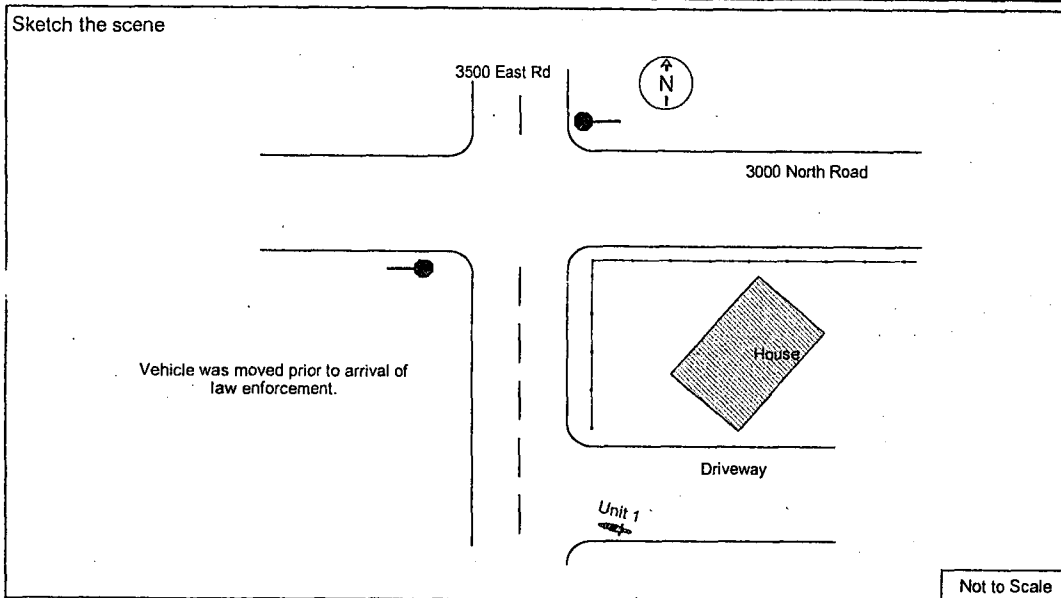
Sideswiped Same	Sideswiped Opposite	Angle
52	53	58

Turning Events		50 Head-On
Head-On	Angle	51 Rear-End
54	59	60 Backed Into
Rear-End	Same Dir	61 Parked Veh.
56	62	99 Other

THE EVENT LOCATION		1 On Roadway	4 Roadside (Includes Sidewalk)	7 Median	A In Parking Lot
2 Left Shoulder	3 Right Shoulder	5 Outside Right of Way	6 Off Roadway - Loc Unknown	8 Gore	B Parking Lot Access Road
				9 Other	P Private Property

UNIT # 1	FIRST EVENT RELATIONSHIP TO JUNCTION	UNIT # 2
<input type="checkbox"/> 0	0 Nonjunction 1 In Intersection 2 Intersection Related 3 At Driveway/Alley 4 Driveway/Alley Related 5 On Ramp 6 Ramp Related 7 At Railroad Crossing 8 Railroad Crossing Related 9 Other	<input type="checkbox"/>

<input checked="" type="checkbox"/> 17	FIRST Harmful Event	GENERAL DIRECTION OF TRAVEL (If turning, select direction before turning)	FIRST Harmful Event
<input type="checkbox"/> 1	MOST Harmful Event	General Direction of Street: <input checked="" type="checkbox"/> South / North <input type="checkbox"/> West / East	MOST Harmful Event
<input type="checkbox"/> 1	Driver / Ped Action	Unit Direction: <input type="checkbox"/> North <input checked="" type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West	Driver / Ped Action
		On Street: 3500 East Rd	



- Driver Actions**
- 1 Going Straight
 - 2 Turning Right
 - 3 Right Turn on Red
 - 4 Turning Left
 - 5 Left Turn on Red
 - 6 U-Turn
 - 7 Merging
 - 8 Changing Lanes
 - 10 Passing
 - 11 Negotiating Curve
 - 12 Stopped in Traffic
 - 13 Slowing in Traffic
 - 14 Starting in Traffic
 - 15 Parking
 - 16 Entering Drivwy./Alley
 - 17 Leaving Drivwy./Alley
 - 18 Backing
 - 20 Avoiding Obstacle
 - 21 Avoiding Veh./Ped.
 - 22 Pursuing Vehicle
 - 23 Fleeing Pursuit
 - 24 Racing
 - 25 Parked Vehicle
 - 26 Driverless Vehicle in Motion
- Pedestrian/Pedalcycle Actions**
- 30 Crossing at Painted Intersection
 - 31 Crossing at Unpainted Intersection
 - 35 Crossing at Non-Intersection X-walk
 - 36 Crossing Not at Intersection
 - 40 Walk/Ride with Traffic in Bike Lane
 - 41 Walk/Ride with Traffic No Bike Lane
 - 42 Walk/Ride Facing Traffic in Bike Lane
 - 43 Walk/Ride Facing Traffic No Bike Lane
 - 50 Standing on Roadway
 - 51 Playing on Roadway
 - 52 Working on Roadway
 - 60 Enter/Leave School Bus
 - 70 Not on Roadway
 - 99 Other

Property Damage	(Name of Object Struck - Owner Name and Address)	Estimated Damage
Animal * Kinsey, Jamey *	3497 East, 3000 North Kimberly Id 83341	\$ 50

Narrative / Additional Information / Additional Passengers (indicate unit # and all information for additional passengers)

001 Unit one was traveling southbound on 3500 East when he struck a dog, losing
 002 control and laying motorcycle on left side. Driver sustained a broken leg and
 003 was transported to hospital by private auto. Motorcycle was moved prior to
 004 arrival of law enforcement. Driver was later found to have a suspended drivers
 005 license.

WITNESSES	Name	Address	Home Phone	Work Phone
-----------	------	---------	------------	------------

<input checked="" type="checkbox"/>	Investigating Officer's Name and # Ken Baisch 1174	Date of Report 8/18/2007	Photos <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	Approved By Dan Thom	Date 8 19 2007
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Send ORIGINAL to: Office of Highway Safety, P. O. Box 7129, Boise, Idaho 83707-1129

Note: -U indicates Unknown

Impact 2K 2.0.0



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Electronic Document ID: 4945686
06/05/2008

IDAHO DRIVER LICENSE RECORD

FOR:
KINSEY, JAMEY DEE

3497 EAST 3000 NORTH
KIMBERLY ID 83341-0000

LICENSE NO: [REDACTED]
BIRTH DATE: [REDACTED]
ISSUED: 01/25/2006
EXPIRES: 11/09/2009

ISSUE TYPE: DL
CLASS: A -
OPR STATUS: VALID
CDL STATUS: VALID
DRV TRAIN: YES

RSTR:

TYPE	DATE	DESCRIPTION	CLS	DOC #
CITN	06/23/2006	STRT PKD VEH	LOC: KIMBERLY	
CONV	07/20/2006	GLTP PTS: 2	CRT: TWIN FALLS	6941STAR6209
ORD:	INFR			

12 MONTH POINTS:0 24 MONTH POINTS:2 36 MONTH POINTS:2

POINTS ASSESSED ARE FOR DEPARTMENTAL USE ONLY, IN DETERMINING SUSPENSIONS FOR POINTS AND HABITUAL VIOLATIONS.

SECTION 49-203 IDAHO CODE PROHIBITS THE RELEASE OF PERSONAL INFORMATION CONTAINED IN DRIVER LICENSE RECORDS TO UNAUTHORIZED PARTIES, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE INDIVIDUAL THE INFORMATION PERTAINS TO. AS AN AUTHORIZED REQUESTOR YOU MAY RECEIVE THIS INFORMATION BUT YOU MAY NOT RE-RELEASE OR RE-SELL IT.

END OF 3 YEAR RECORD

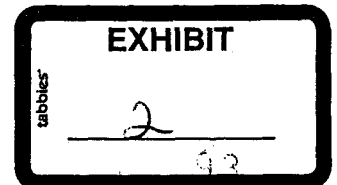
Electronic Document ID: 4945686

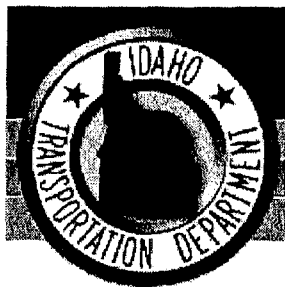
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Idaho Transportation Department
3311 W. State Street - P.O. Box 7129
Boise, ID 83707-1129

Division of Motor Vehicles
[M-F 8:00 am-5:00 pm Mountain Time]
DMV-info@itd.idaho.gov

Driver Services: (208) 334-8735 Dealer Licensing: (208) 334-8681
Vehicle Titles: (208) 334-8663 Motor Carrier: (208) 334-8611
Vehicle Registrations: (208) 334-8649 Port of Entry/Overlegal: (208) 334-8420





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SEARCH

Search

Motor Vehicle Title and Registration Records Search

06/05/2008

Leeann Taylor

Access Idaho MVR Document ID #568585

Jeffery J. Hepworth, PA

P.O. Box 1806
Twin Falls, ID 83303

This is the motor vehicle title record you requested. If you need further information, please contact the Idaho Transportation Department, Motor Vehicle Records Desk at (208) 334-8773. Our fax number is (208) 334-8542.

1. Owner Information:

KINSEY, JAMEY D

C/O WILMOTH KINSEY
3497 E 3000 N
KIMBERLY ID 83341

2. Title Information:

Title Number: A90343684	Lienholder(s): 2	Dealer:
Lien Released:		05/02/2001

3. Vehicle Information:

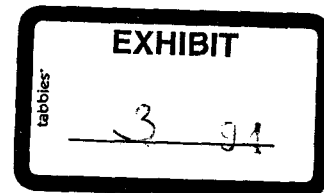
VIN: 1FTCR11T4LPB01667			
Year: 1990	Make: FORD	Body: PK	Model: TK Color: GRY
Weight: 0	Length:	Width:	Description: RANG
Odometer: 0	Odometer Status: Exempt		Odometer Date:
Brand:			

No Release of Liability found for this title.

Section 49-203 Idaho Code prohibits the release of personal information contained in driver and vehicle records to unauthorized parties, without express written consent of the individual the information pertains to. As an authorized requester you may receive this information but you may not re-release or re-sell it.

Fees Paid:

Inquiry	4.00
Online Convenience Fee	1.50
Total	5.50



[Request History Packet](#) (\$5.50)

[Request Certified Packet](#) (\$9.50)

[Request Certified History Packet](#) (\$13.50)

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SEARCH

Search

Registration Search

This search is for Court proceedings purposes. [\[change\]](#)

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Enter Known Information

Enter the information you currently have available into the fields below.

You can search using ANY of the following fields.

Name:

Example: "Smith, Mary J" or "Smith Family Trust". All record searches by name requires the name to match the beginning part of the name on the vehicle record.

VIN:

Enter full number

License Plate Number:

Enter full number

City:

Must be combined with another field

Name	City	Zip	Expire Date	Year	Make	Model	VIN (last 6)	Title	View
KINSEY, JAMEY D	KIMBERLY	83341	10/31/2008	1990	FORD	TK	B01667		search registration

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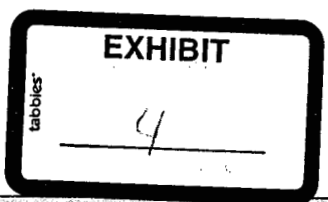
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF
TWIN FALLS

MICHAEL BROOKBANK,)
Plaintiff,)
vs.)
JAMEY KINSEY, and JOHN DOES 1-10,) Case No. CV 07-4522
Defendants.)
_____)

DEPOSITION OF MARJORIE WILMOTH KINSEY
AUGUST 15, 2008

REPORTED BY:
JAHNENE SCHWISOW, CSR No. 760
Notary Public



1 THE DEPOSITION OF MARJORIE WILMOTH
 2 KINSEY was taken on behalf of the Plaintiff at
 3 the offices of Jeffrey J. Hepworth, P.A., &
 4 Associates, 161 5th Avenue South, Suite 100, Twin
 5 Falls, Idaho, commencing at 9:53 a.m. on
 6 August 15, 2008, before Jahnene Schwisow,
 7 Certified Shorthand Reporter and Notary Public
 8 within and for the State of Idaho, in the
 9 above-entitled matter.

10 APPEARANCES:

11 For Plaintiff:

12 Jeffrey J. Hepworth, P.A., & Associates

13 BY JEFFREY J. HEPWORTH

14 161 5th Avenue South, Suite 100

15 P.O. Box 1806

16 Twin Falls, Idaho 83303-1806

17 For Defendant:

18 Racine, Olson, Nye, Budge & Bailey,

19 Chartered

20 BY JOHN A. BAILEY

21 201 East Center

22 P.O. Box 1391

23 Pocatello, Idaho 83204

24
25

1 INDEX

2	TESTIMONY OF MARJORIE WILMOTH KINSEY	PAGE
3	Examination by Mr. Hepworth	5
4	Examination by Mr. Hawkins	52
5	Further Examination by Mr. Hepworth	56

7 EXHIBITS

8	NO. DESCRIPTION	PAGE
9	A - Farm Bureau Mutual Insurance	38
10	Company of Idaho, Farm and Ranch	
11	Policy Declarations, 5 pages	
12	B - Handwritten map	41

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1 For Farm Bureau (appearing telephonically):
 2 Merrill & Merrill, Chartered
 3 BY KENT L. HAWKINS
 4 109 N. Arthur, 5th Floor
 5 P.O. Box 991
 6 Pocatello, Idaho 83204-0991

7
 8
 9 ALSO PRESENT: Michael Brookbank
 10 Dan Kinsey

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1 MARJORIE WILMOTH KINSEY,
 2 first duly sworn to tell the truth relating to
 3 said cause, testified as follows:

4 EXAMINATION

5 QUESTIONS BY MR. HEPWORTH:

6 MR. HEPWORTH: Let the record reflect
 7 that this is the deposition of Wilmoth Kinsey
 8 taken pursuant to notice and the Idaho Rules of
 9 Civil Procedure. We had originally planned this
 10 deposition later today, but at the request of Mr.
 11 Bailey, we've agreed to do this deposition at
 12 9:30 and get it over with so Ms. Kinsey can get
 13 on with her business.

14 Q. (BY MR. HEPWORTH) I'm going to ask you
 15 a few questions about this motorcycle accident
 16 that occurred August 18th, 2007. Have you ever
 17 had your deposition taken before?

18 A. Yes.

19 Q. On what occasion or how many times?

20 A. Oh, once.

21 Q. Why did you have your deposition taken
22 once before?

23 A. I was sued one time.

24 Q. For what?

25 A. I don't know how to answer that.

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1 Q. Was it an injury lawsuit?
 2 A. No. No. It was --
 3 MR. BAILEY: As I understand it, Jeff,
 4 it was a contract dispute.
 5 MR. HEPWORTH: Okay.
 6 MR. BAILEY: Is that a good way to
 7 summarize it, Ms. Kinsey?
 8 THE WITNESS: I guess.
 9 MR. BAILEY: Okay.
 10 Q. (BY MR. HEPWORTH) Well, let me just
 11 tell you how the process works so that it might
 12 go more smoothly. I represent Mike Brookbank,
 13 who's sitting here with me. And he was involved
 14 in an accident back in August of '07, where he
 15 was -- fractured his leg. The accident occurred
 16 on the highway adjacent to your house, I believe.
 17 And it's my understanding that you may have been
 18 a witness, and there are other things that we're
 19 going to ask you about that you might have
 20 knowledge about.
 21 If there's a question that I ask that
 22 you don't understand or doesn't make sense for
 23 you for any reason, just tell me; you won't
 24 offend me, I can assure you. Sometimes it's hard
 25 to get questions out, and I'll just try to

1 saying "uh-huh" and "huh-uh" and -- and I'm going
 2 to do my best, but just keep that in mind.
 3 And I know that you were summoned to my
 4 office once before and the deposition got
 5 cancelled, and I apologize for that. And I'm
 6 going to try to do this in an efficient manner so
 7 you can get on with your business. Okay?
 8 A. Thank you.
 9 Q. You were involved in another, it sounds
 10 like, a contract dispute. Who were the parties
 11 to that dispute?
 12 A. It was a former daughter-in-law.
 13 Q. What was her name?
 14 A. Verla Kinsey.
 15 Q. Is she still in the area?
 16 A. No.
 17 Q. And who is she married to?
 18 A. Now? At the time?
 19 Q. Yeah, the former daughter-in-law. She
 20 was married to a Kinsey?
 21 A. Dan.
 22 Q. To Dan, who's here in the room?
 23 A. Yes.
 24 Q. And you were deposed concerning that?
 25 Was it a divorce dispute?

1 rephrase it so that it does make sense. So you
 2 understand that?
 3 A. Okay.
 4 Q. It's important that we communicate.
 5 And if for any reason you find that to be a
 6 problem, just tell me, and I'll try to
 7 communicate in a better fashion. When I -- if I
 8 ask a question that you don't understand, just
 9 tell me.
 10 It's important that we talk one at a
 11 time rather than at the same time or Jahnene will
 12 have a very difficult time getting an accurate
 13 record of what was said. So let me finish my
 14 question before you begin to answer. And I'll do
 15 my darnest to let you finish your answer before I
 16 ask -- or ask another question. Okay?
 17 And thirdly, the third rule, is it's
 18 important that we answer or have an audible
 19 conversation rather than nods or shake of the
 20 head because of -- exactly -- if we nod, then
 21 Jahnene's not going to write down anything. And
 22 we need to have a verbal -- verbal answer and a
 23 verbal question. And also -- and you probably
 24 don't do this; I understand you were a school
 25 teacher -- but I have a hard time sometimes

1 A. No.
 2 Q. Okay. I don't need to get into the
 3 background of that. Could you describe for me
 4 your family? Are you the matriarch?
 5 A. Yes.
 6 Q. Okay. Where do you live?
 7 A. Do you want my --
 8 Q. Your address.
 9 A. 3497 East 3000 North, Kimberly, Idaho,
 10 83341.
 11 Q. And what is your full name?
 12 A. Marjorie Wilmoth Kinsey.
 13 Q. What was your maiden name?
 14 A. McIntire.
 15 Q. Where did you grow up?
 16 A. Where I live.
 17 Q. You were born on that --
 18 A. Where I live.
 19 Q. -- farmstead, homestead?
 20 A. Where I live.
 21 Q. Same house?
 22 A. No. That house burned.
 23 Q. Okay. And then, I presume, did you
 24 marry a Kinsey, then?
 25 A. Correct.

1 Q. And what was your husband's name?
 2 A. Bill Kinsey.
 3 Q. And is he now deceased?
 4 A. Yes.
 5 Q. I'm sorry for that. When did he die?
 6 A. 1985.
 7 Q. Okay. And then did you have children
 8 from that marriage?
 9 A. Yes.
 10 Q. How many children?
 11 A. Three.
 12 Q. And what are your children's names?
 13 A. Dan and Valerie and Deena.
 14 Q. And how do you spell "Deena"?
 15 A. D-e-e-n-a.
 16 Q. Okay. And I want to -- I'm going to
 17 ask you about your family tree a little bit, if
 18 that's okay. Where does Dan Kinsey live?
 19 A. He lives -- do you want his address?
 20 Q. Yes, if you know it.
 21 A. 2850 North 3450 East, Kimberly.
 22 Q. Okay. Does that -- there's been
 23 mention of the Kinsey Family Limited Partnership.
 24 A. Yes.
 25 Q. Does the family limited partnership own

1 incorrect, but I assume that that would be the
 2 homeplace?
 3 A. Yes.
 4 Q. Do you call it the homeplace?
 5 A. Yes.
 6 Q. Okay. And that's -- is that farm
 7 homesteaded by the Kinsey family?
 8 A. No.
 9 Q. Do you know when it was first acquired?
 10 A. 1917.
 11 Q. 1917? Okay. Do you know how big it
 12 was when it was first purchased?
 13 A. No. It's before my time.
 14 Q. Do you know how many acres are there at
 15 that location now, approximately? Fifty acres?
 16 A hundred acres?
 17 A. I don't know how to answer that. It's
 18 more than a 100. It's probably two -- two
 19 sections.
 20 Q. When you say "two sections" --
 21 A. Three-sixty in a section.
 22 Q. So if you started -- you're at the
 23 intersection of 3500 East Road and 3000 North
 24 Road; right?
 25 A. Correct.

1 a farm?
 2 A. Yes.
 3 Q. How big a farm is that?
 4 A. Oh, approximately, it's between 4,500
 5 and 5,000.
 6 Q. Acres?
 7 A. Acres.
 8 Q. Is that all right there in that area of
 9 where you live?
 10 A. No.
 11 Q. How much is there in the area where you
 12 live?
 13 MR. BAILEY: If you remember.
 14 THE WITNESS: I'm not sure.
 15 Q. (BY MR. HEPWORTH) Is there -- 3500
 16 East Road is the road that goes through Kimberly;
 17 correct?
 18 A. Correct.
 19 Q. And your house is a few miles south of
 20 Kimberly adjacent to 3500 East Road?
 21 A. Yes.
 22 Q. How many miles south of Kimberly is it?
 23 A. Seven.
 24 Q. Seven miles? I'm jumping to
 25 conclusions here, and I apologize if I'm

1 Q. So if I went south, how many miles
 2 would you go -- would the Kinsey Family Limited
 3 Partnership own land?
 4 A. Probably two miles.
 5 Q. Okay. And then if you went west on
 6 3000 North Road, do you know how far the Kinsey
 7 Family Limited Partnership owns land?
 8 A. A mile.
 9 Q. A mile? Okay. And are there a number
 10 of houses on that --
 11 A. There is.
 12 Q. -- in that area?
 13 A. Yes.
 14 Q. How many houses that the Kinsey Family
 15 Limited Partnership owns?
 16 A. One, two -- four.
 17 Q. Four. Okay. And I apologize for
 18 skipping around. I was just trying to get an
 19 idea in my head how things lay. And I've been
 20 out there just to try to figure it out.
 21 And Dan Kinsey would live in that area
 22 that we've just described that --
 23 A. Yes.
 24 Q. Can we call it the "homeplace"? Would
 25 that be --

1 A. Yes.
 2 Q. Okay. And I assume he lives in one of
 3 the four houses?
 4 A. Yes.
 5 Q. Okay. Does Valerie Kinsey live on
 6 that --
 7 A. Yes.
 8 Q. -- homeplace? And how about Deena
 9 Kinsey?
 10 A. Deena passed away about a month ago.
 11 Q. I'm sorry. I apologize. Was she
 12 living on the homeplace?
 13 A. Yes.
 14 Q. Okay. Now, let me ask you about Dan
 15 Kinsey. Is he currently married?
 16 A. No.
 17 Q. Okay. But he was married to Verla --
 18 A. Yes.
 19 Q. -- Kinsey?
 20 A. Yes.
 21 Q. Does Dan have children?
 22 A. Yes.
 23 Q. What children -- who are Dan's
 24 children?
 25 A. Jamey, Pepper and Jenny.

1 Q. Do you know how old -- and Jenny?
 2 A. Jenny.
 3 Q. Okay. And Jamey is J-a-m-e-y?
 4 A. Correct.
 5 Q. How old is Jamey, if you know?
 6 A. He'd be 37.
 7 MR. KINSEY: Getting too damn old for
 8 me.
 9 Q. (BY MR. HEPWORTH) How about Pepper?
 10 A. Let's see. She would be 36.
 11 Q. And how about Jenny? And how do you
 12 spell "Jenny"?
 13 A. J-e-n-n-y.
 14 Q. Okay. How old is Jenny?
 15 A. Jenny -- let's see -- '82 -- 44.
 16 Q. Okay. And then Valerie Kinsey is your
 17 daughter?
 18 A. Correct.
 19 Q. Approximately how old is Valerie?
 20 A. She's 54.
 21 Q. And where does she live?
 22 A. She lives in the house there.
 23 Q. Does she have children?
 24 A. Yes.
 25 Q. And is she married?

1 A. No.
 2 Q. Okay. What are her children's names?
 3 A. Philine, P-h-i-l-i-n-e; and Lindsey;
 4 and Justin.
 5 Q. Okay. And how old is Philine
 6 approximately?
 7 A. She was born in '78, so whatever that
 8 adds up.
 9 Q. Okay. So about 30?
 10 A. Yeah, mm-hmm.
 11 Q. How about Lindsey?
 12 A. Let's see. She's two years younger
 13 than Philine.
 14 Q. So about 28. And Justin?
 15 A. He's 14.
 16 Q. Okay. And then there's -- you had
 17 Deena Kinsey, was another daughter?
 18 A. Yes.
 19 Q. And was she married?
 20 A. Yes.
 21 Q. And what was her husband's name?
 22 A. Bill Windsor.
 23 Q. Ans she lived on the homeplace also?
 24 A. Yes.
 25 Q. Okay. Did she have children?

1 A. Yes.
 2 Q. And how many children did she have?
 3 A. She had one.
 4 Q. What's her child's name?
 5 A. Bryan.
 6 Q. How old is Bryan?
 7 A. Twenty-four, I think.
 8 Q. Okay. Do you know where Jamey is now?
 9 A. No.
 10 Q. Do you know if he works?
 11 A. No.
 12 Q. Do you know if he's ever worked?
 13 A. Oh, yeah.
 14 Q. I assume he grew up on the homeplace?
 15 A. Yes.
 16 Q. And lived with his dad?
 17 A. Yes.
 18 Q. Do you know -- do you remember when Dan
 19 and Verla divorced, approximately what year that
 20 was?
 21 A. Possibly 1972.
 22 Q. So a long time ago?
 23 A. Long time ago. I'm not sure, but . . .
 24 Q. Okay. And who -- do you remember who
 25 had custody of Jamey after they divorced?

1 A. Dan.
 2 Q. Jamey stayed with his dad?
 3 A. Yes.
 4 Q. And Verla -- did Verla stay in the
 5 area?
 6 A. No.
 7 Q. She left Idaho or --
 8 A. Yes.
 9 Q. Do you know where she went to?
 10 A. To Oregon, at first.
 11 Q. Okay. But you don't know where she is
 12 now?
 13 A. In Texas.
 14 Q. Okay. Do you know what town in Texas?
 15 A. Have no idea.
 16 Q. And then Pepper. Where does Pepper
 17 live now?
 18 A. In Texas.
 19 Q. Okay. Did she go with her mom at the
 20 time of the divorce?
 21 A. Yes.
 22 Q. And then how about Jenny? Did she go
 23 with her mom?
 24 A. She went with her mom, but it wasn't
 25 Verla.

1 Q. Now, is Justin just 14?
 2 A. Yes.
 3 Q. Does he live with his dad?
 4 A. Yes.
 5 Q. Okay. Okay. And then this -- Deena's
 6 son, Bryan --
 7 A. Yes.
 8 Q. -- where does he live?
 9 A. He's in Jerome.
 10 Q. Okay. Now, are there any other family
 11 members or others that live on the homeplace in
 12 one of the houses?
 13 A. No.
 14 Q. Are there any employees that live in a
 15 house?
 16 A. No.
 17 Q. Okay. All right. Were you present on
 18 the day of the accident back in August of '07, a
 19 year ago?
 20 MR. BAILEY: Present at the accident
 21 scene, you mean?
 22 MR. HEPWORTH: Right.
 23 Q. (BY MR. HEPWORTH) Were you at home?
 24 A. No.
 25 Q. Did you know about the accident?

1 Q. A different mom?
 2 A. Different mom.
 3 Q. Okay. And who's the other mom?
 4 A. Jan.
 5 Q. And is Dan still married to Jan?
 6 A. No.
 7 Q. Okay. And they were divorced?
 8 A. Yes.
 9 Q. Okay. Do you know where Jenny lives
 10 now?
 11 A. Yes.
 12 Q. Where does Jenny live?
 13 A. She lives in -- right straight west of
 14 me over on Blue Lakes.
 15 Q. In Twin Falls area?
 16 A. Yeah, mm-hmm.
 17 Q. Okay. And Valerie's daughter, Philine,
 18 does she live in the area?
 19 A. Yes.
 20 Q. Do you know where she lives?
 21 A. She lives in Twin Falls.
 22 Q. Okay. And how about Lindsey?
 23 A. She lives in Twin Falls.
 24 Q. And how about Justin?
 25 A. He lives in Hazelton.

1 A. Not until after everything was over.
 2 Q. Okay. How did you find out about the
 3 accident?
 4 A. When I came home, there was police cars
 5 opposite of where I live down another road. And
 6 I asked Jamey what was going on, and Jamey told
 7 me.
 8 Q. What did Jamey tell you?
 9 A. Well, he said he heard -- he was
 10 getting ready. He's picking some stuff up, I
 11 guess, out of his -- out of the bunkhouse that he
 12 had stored there so he could go to Boise. And he
 13 said he heard this motorcycle that sounded like
 14 it was revved up real loud. Then all of a
 15 sudden, it was silent. And so, he went to
 16 investigate. And he found that Mr. Brookbank had
 17 wrecked it. And so, he immediately called 911.
 18 Q. Was there a dog involved?
 19 A. He'd hit his pup.
 20 Q. Do you know what kind of dog it was?
 21 A. Yes. It was a golden lab.
 22 Q. Do you know the dog's name?
 23 A. Yeah, if I can think of it. It was --
 24 oh, phooey -- I can't think of the name of that
 25 dog. I can't remember.

1 Q. Okay. Do you know if it was a male or
 2 a female?
 3 A. A male.
 4 Q. Do you know approximately how old it
 5 was?
 6 A. About six months, I believe.
 7 Q. Just a puppy?
 8 A. Just a pup.
 9 Q. Okay. Do you know where the accident
 10 happened in relation to the roadway?
 11 A. I think I do.
 12 Q. What was your understanding of where it
 13 happened?
 14 A. It happened on the east side of the
 15 road opposite my house.
 16 Q. East side of the highway?
 17 A. Of 3500 East.
 18 Q. And that's the north-south highway?
 19 A. Yes, mm-hmm.
 20 Q. Did Jamey tell you what happened? How
 21 the dog ended up over there?
 22 A. No, he didn't.
 23 Q. Okay. Have you talked to anyone else
 24 about the accident other than Jamey?
 25 A. No.

1 A. Very sweet.
 2 Q. Okay. Six months old. Was he like a
 3 lot of puppies, hard to control?
 4 A. He was rambunctious.
 5 Q. Any other way that you can think of to
 6 describe the dog?
 7 A. No.
 8 Q. Okay. And I assume it was Jamey's pet
 9 dog?
 10 A. Yes. Yes.
 11 Q. Did he have any other dogs?
 12 A. Not at the time, no.
 13 Q. Had he had another dog prior to this
 14 golden lab?
 15 A. Several years ago.
 16 Q. Do you know what kind of dog he had
 17 before?
 18 A. Yeah, it was a golden lab.
 19 Q. Male or female?
 20 A. A male.
 21 Q. Do you know if this puppy, the
 22 six-month old puppy involved in the accident, was
 23 a descendent of that male?
 24 A. No.
 25 Q. Do you know what had happened to the --

1 Q. Do you know how long after the accident
 2 had occurred that you got home?
 3 A. No, I don't.
 4 Q. Was Mr. Brookbank still --
 5 A. No.
 6 Q. -- there?
 7 A. No. He was gone and also the dog.
 8 Q. Okay. Do you know what happened to the
 9 dog?
 10 A. I've never asked. They probably buried
 11 him, as far as I know.
 12 Q. Was the dog killed in the accident?
 13 A. Yes.
 14 Q. Did the dog have a collar on? Do you
 15 know?
 16 A. I assume he did. I don't know.
 17 Q. Don't remember?
 18 A. Hmm-hmm.
 19 Q. Were you familiar with the dog?
 20 A. Oh, yeah. Yes.
 21 Q. Okay. What type of a -- this is a
 22 funny question, so if you don't understand me,
 23 just tell me, but I just -- what kind of a
 24 personality did the dog have, you know, his
 25 nature?

1 the male dog that he had before?
 2 A. Yes.
 3 Q. What happened to that dog?
 4 A. The hired man was taking care of him.
 5 And he took him up to his place up on 2900. And
 6 the dog went across the road, and the hired man
 7 called him back just in time for a gravel truck
 8 to hit him.
 9 Q. So this -- and that was a dog that
 10 Jamey had, but the hired man took care of?
 11 A. Yeah. Jamey had gone somewhere. I
 12 don't remember where.
 13 Q. So this six-month-old golden lab was to
 14 replace that dog?
 15 A. Yes.
 16 Q. Do you remember the name of the male
 17 golden lab that got hit by the gravel truck?
 18 A. It has escaped me.
 19 Q. Who's the -- who was the hired man?
 20 A. John --
 21 THE WITNESS: -- what was Rabbit's
 22 name, Danny?
 23 MR. KINSEY: Nelson.
 24 THE WITNESS: Oh, John Nelson.
 25 Q. (BY MR. HEPWORTH) you called him

1 "Rabbit"?

2 A. Mm-hmm.

3 Q. That was his nickname?

4 A. Right.

5 Q. Is he still around?

6 A. No.

7 Q. What kind of work did Rabbit do?

8 A. Just general ranch work.

9 Q. Would that be for the Kinsey Family

10 Limited Partnership?

11 A. Yes.

12 Q. Okay. How many employees are there on

13 the Kinsey Family Limited Partnership?

14 A. Two.

15 Q. Two?

16 A. Wait a minute. I'm counting Danny.

17 Q. Okay. So Dan -- current --

18 A. Yeah, Dan and then one other.

19 Q. Currently, who is the other employee?

20 A. Fred Singleton.

21 Q. Red?

22 A. Fred.

23 Q. I'm sorry. Fred Singleton?

24 A. Correct.

25 Q. Where does Mr. Singleton live?

1 capacity?

2 A. Since '53.

3 Q. Since 1953?

4 A. Yes.

5 Q. You pretty good at it?

6 A. Well, used to be.

7 Q. Bet you are. Is anyone else involved

8 in the management of the farm and ranch?

9 A. Dan.

10 Q. Dan. Does the farm and ranch also have

11 cattle, then?

12 A. Yes.

13 Q. Do you know approximately -- is there

14 an average number that are raised each year or

15 a --

16 A. Raised or what we have or what? I'm

17 not sure what you're asking.

18 Q. Well, it's a bad question. Thank you.

19 What kind of an operation is it? Is it a

20 cow-calf operation?

21 A. Yes.

22 Q. Okay. Approximately how many cows do

23 you have at a time?

24 A. About 420, more or less.

25 Q. And then each year you sell the calves

1 A. In Kimberly.

2 Q. Do you know how long he's been employed

3 by the farm?

4 A. It's been several years, but I don't

5 know how long. Just summer.

6 Q. Okay. Have there always just been two

7 employees or has that varied?

8 A. It varied.

9 Q. Do you require -- does the farm require

10 more employees in the summer than the winter?

11 A. Yes.

12 Q. Is it -- I apologize again. I keep

13 skipping all over, and I -- it's a stream of

14 consciousness, so I don't mean to confuse you if

15 it is confusing; it's confusing me.

16 I'm going to ask about the farm -- or

17 the ranch. Is it a farm or a ranch or both?

18 A. Ranch.

19 Q. Okay. Does the ranch grow any crops?

20 A. Hay and corn presently.

21 Q. Are you involved in the operation?

22 A. Yes.

23 Q. And what is your involvement?

24 A. The books, the financial end.

25 Q. How long have you been in that

1 off the operation?

2 A. Yes.

3 Q. And does Dan do most of that

4 management?

5 A. Yes.

6 Q. And he has a hired man that helps him

7 on occasion?

8 A. Yes.

9 Q. Is there a pasture that the cattle

10 grazes on?

11 A. Yes.

12 Q. And then feed them hay through the

13 winter?

14 A. Yes.

15 Q. And is it primarily hay that's raised

16 on the farm that you --

17 A. Yes.

18 Q. -- that the family owns?

19 A. Yes.

20 Q. Who does the farming?

21 A. I'm not sure what you mean by "who does

22 the farming?"

23 Q. Does Dan operate the tractors and grow

24 the crops?

25 A. Partially.

1 Q. Is there anyone else involved in that?
 2 A. Yes.
 3 Q. Who else is involved in that part of
 4 the business?
 5 A. His son-in-law.
 6 Q. Who's that?
 7 A. That's Luke Fuller.
 8 Q. Where does Luke live?
 9 A. He lives over on Blue Lakes.
 10 Q. In Twin Falls?
 11 A. Yes.
 12 Q. Does the family business own land over
 13 by Blue Lakes?
 14 A. No.
 15 Q. Is there another large parcel of ground
 16 that the family owns?
 17 A. Besides -- are you talking about
 18 besides where we live?
 19 Q. Yeah.
 20 A. Yes.
 21 Q. And where would that other location be?
 22 A. It's up in the Shoshone Basin area.
 23 Q. How big a parcel is that, if you know?
 24 A. It's probably six -- six or seven
 25 sections.

1 Q. Okay. Do you put the cattle out on
 2 that grazing land in Shoshone?
 3 A. No. No.
 4 Q. What do you use it for?
 5 A. We -- we rent it.
 6 Q. Okay. So the farming that is done by
 7 the family, Dan and Luke Fuller do, primarily; is
 8 that right?
 9 A. That's a hard question to answer.
 10 There is some custom farming work.
 11 Q. Okay.
 12 A. That's done.
 13 Q. All right. I'm going to skip around on
 14 you again. Sorry.
 15 A. Okay.
 16 Q. I want to ask you about Jamey a little
 17 bit. So Jamey grew up with his dad after his mom
 18 and dad divorced?
 19 A. Yes.
 20 Q. And did he live in a house there on the
 21 farm as he grew up?
 22 A. Yes.
 23 Q. And that would be Dan's house?
 24 A. Yes.
 25 Q. Okay. And then did he -- where did he

1 Q. And how much is there in a section?
 2 A. Six-twenty.
 3 Q. Okay. So about -- maybe up to
 4 4,200 acres?
 5 A. Yes.
 6 Q. Okay. So the biggest parcel is up in
 7 the --
 8 A. Yes.
 9 Q. -- Shoshone Basin?
 10 A. Yes.
 11 Q. Is there a house up there?
 12 A. Almost. It's an old cabin that -- it's
 13 all there is, but it's not livable right now.
 14 Q. Who manages that land?
 15 A. We do.
 16 Q. Dan?
 17 A. Dan and --
 18 Q. He travels up to Shoshone Basin to take
 19 care of it?
 20 A. Well, there's not much to take care of.
 21 Q. Is that grazing land?
 22 A. It's grazing, yes.
 23 Q. Okay. And the cattle be put on the
 24 grazing land in the spring, I presume?
 25 A. Yes, but not there.

1 go to high school?
 2 A. Kimberly.
 3 Q. Did he graduate?
 4 A. Yes.
 5 Q. What did he do after he graduated? Do
 6 you know?
 7 A. He went to CSI for a couple of years.
 8 Q. Do you remember what year he graduated
 9 from high school? If he's 37, what, about
 10 19 years ago?
 11 A. Something like that. Boy, I can't
 12 remember.
 13 Q. Late '80s maybe?
 14 A. Probably. I don't remember.
 15 Q. Okay. And then at CSI, do you know
 16 what he studied?
 17 A. I don't remember that either.
 18 Q. Okay. Do you know if he's been
 19 employed since high school; Jamey?
 20 A. Yes.
 21 Q. How was he employed?
 22 A. He was in the Navy for a while.
 23 Q. Right out of high school?
 24 A. No. Out of CSI.
 25 Q. Okay. Do you remember how many years

1 he did that?
 2 A. Probably two years, if I remember
 3 right.
 4 Q. Okay. Do you know what he did after
 5 that?
 6 A. He worked on a farm in Kimberly.
 7 Q. Do you know what farm that would be?
 8 A. Yes.
 9 Q. Which farm?
 10 A. That'd be Olson. I can't think of his
 11 first name.
 12 Q. Do you know how long he did that?
 13 A. Several years.
 14 Q. Three, four years or more?
 15 A. Probably. He lived with his mother
 16 too -- oh, I'm mixed up, completely mixed up.
 17 He went to Colorado and worked in the
 18 oil fields.
 19 Q. When was that, if you remember?
 20 A. That was when he got out of the Navy.
 21 Q. Okay. How long did he do that, if you
 22 know?
 23 A. Probably -- I don't remember how long.
 24 Q. Okay. At some point he came back to
 25 Idaho?

1 I can't remember what he did. Actually, I -- I
 2 can't remember him working for us -- oh, he --
 3 yeah, he fed cattle one winter --
 4 Q. Do you remember --
 5 A. -- three or four years ago.
 6 Q. Okay. Do you know what he's doing now?
 7 A. No.
 8 Q. Do you know where he's living now?
 9 A. Oh, he's -- his home base is Hanson,
 10 but he's not there now. I don't know where he
 11 is. He's in the hills somewhere.
 12 Q. "His home base"? What do you mean by
 13 "home base"?
 14 A. Where he lives when he's down, when
 15 he's -- when he considers himself home, he lives
 16 in Hanson.
 17 Q. Who does he live with?
 18 A. Vicky Stanger.
 19 Q. Is that a girlfriend?
 20 A. Yes.
 21 Q. How long has he been living with Vicky
 22 Stanger?
 23 A. They've been together since he was out
 24 of CSI.
 25 Q. And he's been living with her since

1 A. Then he went to Texas with his mother.
 2 Q. Do you know if he went from Colorado to
 3 Texas or Colorado --
 4 A. Yes.
 5 Q. Okay.
 6 A. He went from Colorado to Texas.
 7 Q. Do you know what years that would have
 8 been where he lived in Texas?
 9 A. No. I don't remember.
 10 Q. Okay. At some point he came back to
 11 Idaho?
 12 A. Yes.
 13 Q. Do you know approximately when that
 14 was?
 15 A. It's been several years.
 16 Q. How would you describe your
 17 relationship with Jamey?
 18 A. Very good.
 19 Q. Do you stay in contact with him?
 20 A. Well, I don't see him very often.
 21 Q. Does he stay in contact with you?
 22 A. Not too much.
 23 Q. Has he ever worked for the farm or on
 24 the family farm?
 25 A. He -- he has in the past, I think, but

1 that time?
 2 A. Off and -- when he's not in Colorado or
 3 in the Navy or in Texas, but . . .
 4 Q. He travels around a lot?
 5 A. Not a lot lately, but that's where he's
 6 been.
 7 Q. Okay. So you think he considered his
 8 home Vicky Stanger's house?
 9 A. Yes.
 10 Q. In Hanson?
 11 A. Yes.
 12 Q. All right. Do you know if Jamey has
 13 any children?
 14 A. No. He has none.
 15 Q. Do you know if Vicky does?
 16 A. Yes, she does.
 17 Q. How many kids does she have?
 18 A. I think she has two boys.
 19 Q. Do you know how old they are?
 20 A. No, I don't.
 21 Q. I mean, are they out of high school
 22 age, or are they under?
 23 A. Oh, they're out of high school.
 24 Q. Okay. But they're not Jamey's kids?
 25 A. No.

1 Q. Okay. Let me just hand you what's been
2 given to me in a -- what I'll call a declaratory
3 judgment lawsuit -- and this -- it's already been
4 marked Exhibit A so we can keep that, I think.

5 (Exhibit A marked.)

6 Q. (BY MR. HEPWORTH) Have you seen this
7 document before? I'll represent to you it's a
8 declaration's page to the "M. Wilmoth Kinsey, DBA
9 Kinsey Family Limited Partnership," Farm Bureau
10 Insurance Policy.

11 A. Yes.

12 Q. Are you in charge of getting insurance
13 for the family, for the --

14 A. Yes.

15 Q. -- partnership?

16 A. Yes.

17 Q. Okay. Could you tell me, what is the
18 Kinsey Family Limited Partnership?

19 A. Just what it says it is, as far I know.

20 Q. Did you have any involvement in
21 creating that entity?

22 A. Yes.

23 Q. Was there -- did you talk to an
24 attorney to do that?

25 A. Yes.

1 Q. Okay. And on the first sheet of
2 Exhibit A, it lists a residence and it shows,
3 what I believe, is a value of \$152,000. Do you
4 see that?

5 MR. BAILEY: It says "Limits of
6 liability."

7 Q. (BY MR. HEPWORTH) "Limits of
8 liability," 150. That's the property coverage.
9 Would that be your house? Do you know?

10 A. I don't know. I -- I don't understand
11 all this stuff.

12 Q. Okay. Your house, is that a brick
13 house?

14 A. Yes.

15 Q. And that's on the corner of --

16 A. Yes.

17 Q. -- the two roads?

18 A. Yes.

19 Q. And then it also lists under that, a
20 "modular with found building," and it has 86,000.
21 Do you know, would that be one of the houses that
22 one of the kids lives in?

23 A. Where is that?

24 Q. Next down --

25 A. Building.

1 Q. What attorney was it?

2 A. Stan Welsh.

3 Q. In Boise?

4 A. Yes.

5 Q. What year did you create the
6 organization?

7 A. '90? The early '90s.

8 Q. What was the reason for doing that?

9 A. To save taxes when -- when I passed.

10 Q. Was that part of your estate
11 planning --

12 A. Yes.

13 Q. -- plan?

14 A. Yes.

15 Q. Are there any partners in the
16 partnership other than yourself?

17 A. Yes.

18 Q. Who are the other partners?

19 A. Dan and Valerie.

20 Q. Anyone else?

21 A. Well, Deena was, but that's . . .

22 Q. So your children were the other --

23 A. Yes.

24 Q. -- partners?

25 A. Yes.

1 Q. "Residence premise modular." Do you
2 see where it says "86,000"? Do you see that?

3 A. I don't see the 86,000 -- oh, here. I
4 was looking in the wrong place.

5 Q. On the left-hand --

6 A. Yeah. I'm not sure which one that is.

7 Q. Let me do this. Sorry. I'm just going
8 to draw a little diagram.

9 MR. HEPWORTH: Why don't we mark that
10 as Exhibit B.

11 (Exhibit B marked.)

12 Q. (BY MR. HEPWORTH) This is very crude.
13 This is -- Exhibit B is just a -- I drew an
14 intersection of 3500 East Road and 3000 North
15 Road. Could you put boxes on there where the
16 different houses are located on your place, on
17 the homeplace?

18 A. (The witness complied.)

19 Q. And you just marked a box. Would you
20 put a "1" in that?

21 A. One.

22 Q. Would that be your house?

23 A. That's my house.

24 Q. Okay. Then where are the other houses
25 located, just real roughly. West of you?

1 A. No. They're way up here up below on
 2 the other side of 2900 North.
 3 Q. Okay. And I've been out there, and
 4 there are a couple of what looked like
 5 manufactured homes just west of you.
 6 A. Oh, there is a -- there is a
 7 manufactured home just barely west of me, there
 8 right -- but that is a little home that -- that
 9 -- that his former in-laws were buying, but they
 10 since passed away.
 11 Q. Who owns that home now?
 12 A. Jenny. Jenny -- Jenny Fuller.
 13 Q. Jenny Fuller lives in that home?
 14 A. No. She's buying it from -- from her
 15 dad.
 16 Q. From Dan?
 17 A. Mm-hmm.
 18 Q. So that was a home that was on the
 19 family property; correct?
 20 A. It was on the property, yes.
 21 Q. And at some point in time -- well,
 22 Jenny's trying to buy that now; is that correct?
 23 A. She's buying it from her dad.
 24 Q. From Dan?
 25 A. Yes.

1 Q. And then you mentioned a bunkhouse
 2 where --
 3 A. Yeah, there's a bunkhouse. It's just
 4 along the road there, real close to the road.
 5 Q. Put a "3" on that one.
 6 A. (The witness complied.)
 7 Q. Okay. Then I guess that's all. So the
 8 other houses that were -- do you know which other
 9 houses were being insured under this policy?
 10 A. Yes.
 11 Q. And they're located how far away from
 12 you, approximately, mile-wise?
 13 A. They are -- let's see, one -- couple of
 14 miles for Dan's house.
 15 Q. South?
 16 A. South, uh-huh.
 17 Q. Okay. And how about the other one?
 18 A. And Valerie's is probably two miles.
 19 Q. Okay. Let me just -- I'll show you
 20 another exhibit.
 21 MR. HEPWORTH: Why don't we have
 22 this --
 23 MR. BAILEY: Jeff, why don't we take a
 24 quick break.
 25 MR. HEPWORTH: Sure.

1 Q. So did you sell that piece off from the
 2 family?
 3 A. No. No.
 4 Q. Okay. So right now the title is still
 5 in the family limited partnership?
 6 A. Never has been. I think it's in
 7 Danny's -- Dan's name.
 8 Q. Okay. So there's -- and I think -- it
 9 looks like there's another manufactured home near
 10 that one.
 11 A. No.
 12 Q. I remember seeing three.
 13 A. Huh-uh. There's only one.
 14 Q. Okay. So Jenny lives -- could you put
 15 "Jenny" --
 16 A. No, she don't live there. She's
 17 renting it.
 18 Q. Okay. Where's that at, just in
 19 relation to your house?
 20 A. Oh, just a few yards. It's just back
 21 of the buildings there, kind of sits back a
 22 little ways just a few yards, on the other side
 23 of the corrals.
 24 Q. Okay. Put a "2" in that box.
 25 A. (The witness complied.)

1 (A recess was held.)
 2 Q. (BY MR. HEPWORTH) Let me just -- I
 3 won't be much longer -- let me just ask a few
 4 questions. When is the last time you had contact
 5 with Jamey?
 6 A. I don't remember. It's not very long
 7 ago.
 8 Q. When you say "not very long," within
 9 the last month?
 10 A. Probably a couple of weeks.
 11 Q. How did you have contact with him then?
 12 A. He just stopped in to say hello and
 13 goodbye.
 14 Q. Okay. Just to your house?
 15 A. Yes.
 16 Q. When you say "goodbye," do you know
 17 where he was going to?
 18 A. Said he was going to get some groceries
 19 or something, I assume. I don't know.
 20 Q. Okay.
 21 A. I'm assuming something there.
 22 Q. How frequently in the past year have
 23 you talked to him?
 24 A. Oh, that's a little difficult to say.
 25 It's probably once every week or two weeks.

1 Q. Do you love your grandson?
 2 A. Oh, yes.
 3 Q. Do you try to keep in contact with him?
 4 A. Well, when I can.
 5 Q. Does he have a cell phone?
 6 A. He has a cell phone, but I can't ever
 7 get him to answer. He's not in the . . .
 8 Q. What's his cell phone number?
 9 A. That's one of those numbers I can never
 10 remember.
 11 Q. Do you have it written down somewhere?
 12 A. No, I don't. I have it on my cell
 13 phone, which I don't have with me right now.
 14 Q. So you have it on your cell phone?
 15 A. Yes.
 16 Q. You can get that?
 17 A. Yes.
 18 Q. Would you have any problem if I called
 19 you or you called me to get that cell phone
 20 number?
 21 MR. BAILEY: I'd have a problem with
 22 you calling her.
 23 MR. HEPWORTH: Are you representing
 24 Wilmoth?
 25 MR. BAILEY: I believe that we are,

1 Q. (BY MR. HEPWORTH) Do you know what his
 2 mailing address would be?
 3 A. It's Northwest Estates, Hanson, Idaho,
 4 but I don't remember the number. It seems -- I'm
 5 just not sure of the number.
 6 Q. And that would be the Stanger --
 7 A. Yes.
 8 Q. -- lady -- what was her first -- Vicky
 9 Stanger's?
 10 A. Vicky, yes.
 11 Q. So you think his mailing address is
 12 Vicky Stanger's house?
 13 A. Yes.
 14 Q. And that's where he would be getting
 15 all of his mail?
 16 A. Yes.
 17 Q. Have you ever received mail for Jamey
 18 at your address?
 19 A. Oh, yes. There's people that don't
 20 know his address so they just send it to me
 21 because they don't know where else to send it.
 22 Q. Are you still getting mail for Jamey?
 23 A. Once in a while.
 24 Q. Have you asked him to change his
 25 mailing address?

1 yeah.
 2 MR. HEPWORTH: I -- in what case?
 3 MR. BAILEY: I think you sued her in
 4 this case.
 5 MR. HEPWORTH: I haven't. I haven't
 6 sued Wilmoth.
 7 MR. BAILEY: Maybe --
 8 MR. HEPWORTH: That's probably pretty
 9 important. We better have an understanding. I
 10 can tell you I haven't sued Wilmoth.
 11 MR. BAILEY: Okay. That's fine then.
 12 MR. HEPWORTH: If you're representing
 13 her, that's fine with me. Would you get me the
 14 cell phone number of Jamey?
 15 MR. BAILEY: If she can get it to me,
 16 sure.
 17 MR. HEPWORTH: Okay. And you are
 18 representing Wilmoth even though she hasn't been
 19 sued?
 20 MR. BAILEY: Well, no, if she hasn't
 21 been sued. I thought you had her sued in this
 22 thing. So I -- I'm doing what Wilmoth was
 23 talking about before; I may be getting a little
 24 old and having a senior moment here.
 25 MR. HEPWORTH: Okay. All right.

1 A. No.
 2 Q. Do you know if he's working currently?
 3 A. I think he's cutting wood somewhere up
 4 in the hills.
 5 Q. In the south hills, in the --
 6 A. South hills, yeah.
 7 Q. How long has he been doing that, if you
 8 know?
 9 A. Most all summer.
 10 Q. Do you know what he did for employment
 11 last spring and winter?
 12 A. I don't think he was doing anything. I
 13 just don't . . .
 14 Q. Do you think he was unemployed?
 15 A. I think so.
 16 Q. Do you know what he did for employment
 17 a year ago?
 18 A. He was working for -- let's see -- he
 19 was helping put in a pipeline up in Shoshone
 20 Basin.
 21 Q. Do you know who he was employed by?
 22 A. I'm trying to think of it. It's -- I
 23 don't remember the name of that. It was -- words
 24 are escaping me right now.
 25 Q. Okay. Do you know where he lived a

1 year ago?
 2 A. With Vicky.
 3 Q. Vicky Stanger?
 4 A. Yes.
 5 Q. All right. And do you know how long
 6 he'd been living with Vicky?
 7 A. Oh, goes back quite a few years off and
 8 on, when he wasn't in Colorado or Texas.
 9 Q. Do you know what her phone number is?
 10 A. 423 -- let's see -- 423-5297. I have
 11 to look at a phone.
 12 Q. Do you talk --
 13 MR. BAILEY: Don't hang up on Kent
 14 whatever you do.
 15 THE WITNESS: I won't.
 16 Q. (BY MR. HEPWORTH) Do you talk to
 17 Vicky?
 18 A. Yes.
 19 Q. On a regular basis?
 20 A. Not on a regular basis.
 21 Q. Have you talked to her about this
 22 lawsuit?
 23 A. I don't remember if I have.
 24 Q. Okay. You said earlier that Jamey was
 25 at your house on the day of the accident to pick

1 picking up there?
 2 A. Have no idea.
 3 Q. And you don't know what belongings he
 4 would have in the bunkhouse?
 5 A. No, I don't.
 6 MR. HEPWORTH: That's all I have.
 7 MR. BAILEY: I don't have any questions
 8 for you.
 9 MR. HEPWORTH: Kent?
 10 MR. HAWKINS: Yes.
 11 EXAMINATION
 12 QUESTIONS BY MR. HAWKINS:
 13 Q. Ms. Kinsey?
 14 A. Yes.
 15 Q. My name is Kent Hawkins, and I'm a
 16 lawyer representing Farm Bureau. And I would
 17 like to ask you a few questions, if you don't
 18 mind.
 19 A. That's fine.
 20 Q. Just so you understand, and I
 21 understand, there's -- there's two lawsuits going
 22 on. And I'm involved in the lawsuit that was
 23 served on you sometime ago that was actually
 24 filed by your insurance company, Farm Bureau,
 25 naming you and your LLC. Do you know what I'm

1 up some things out of his bunkhouse?
 2 A. Out of our bunkhouse.
 3 MR. BAILEY: Objection.
 4 Q. (BY MR. HEPWORTH) Well, I think the
 5 record will show what you said. But my memory is
 6 you said his bunkhouse or his belongings.
 7 MR. BAILEY: I think she said his
 8 belongings out of her bunkhouse.
 9 Q. (BY MR. HEPWORTH) Okay. What
 10 belongings did he have in the bunkhouse?
 11 A. I don't really know.
 12 Q. Is there a bed in the bunkhouse?
 13 A. No.
 14 Q. Why is it called a "bunkhouse"?
 15 A. That's what we've always called it.
 16 Q. What is in the bunkhouse?
 17 A. I haven't been in it for years, so I
 18 don't know what's in there.
 19 Q. And that's just right along the road?
 20 A. Yes.
 21 Q. And it's a wood structure?
 22 A. Yes.
 23 Q. And you don't know what it's used for?
 24 A. Just kind of storage.
 25 Q. And you don't know what Jamey was

1 talking about?
 2 A. Not really.
 3 Q. Do you remember being served with a
 4 lawsuit a few months ago?
 5 A. Yes, and I was thoroughly confused.
 6 Q. All right. Did you take that -- have
 7 you hired an attorney to represent you in that
 8 case?
 9 A. No.
 10 Q. Are you planning to hire an attorney?
 11 A. I hadn't made any plans.
 12 Q. All right. Do you have an attorney? I
 13 realize Mr. Bailey is there represent -- well,
 14 no, he's not -- well, whatever Mr. Bailey's
 15 doing. Do you have an attorney who normally
 16 represents you?
 17 A. Not really.
 18 Q. You don't have anybody that you would
 19 say is your attorney?
 20 A. Not -- no, not really.
 21 Q. All right. Let me just ask you a few
 22 brief questions. Who was the owner of the dog
 23 that was hit by the motorcycle?
 24 A. Jamey Kinsey.
 25 Q. Has Jamey ever been married?

1 A. No.
 2 Q. Do you know why -- we talked about him
 3 having some belongings in the bunkhouse. Do you
 4 know why he was storing stuff in the bunkhouse?
 5 A. No.
 6 Q. I'm looking at a picture of -- I think
 7 of your house. It's located at a four-way
 8 intersection; is that true?
 9 A. Yes.
 10 Q. And is your house in the southwest
 11 corner of that?
 12 A. Southwest corner of what?
 13 Q. Well, there's -- it's a four-way
 14 intersection, and if you're standing in the
 15 middle of the intersection, you would be looking
 16 north to south --
 17 A. Oh, yes.
 18 Q. Looking at your house?
 19 A. Yes, that's true.
 20 Q. And is it somewhat surrounded by big
 21 trees?
 22 A. Yes.
 23 Q. Okay. And I wasn't there; I know you
 24 drew a little diagram, but I'm just trying to
 25 make sure I'm picturing this correctly. It looks

1 Texas. It's been several years ago, but I can't
 2 remember the year.
 3 Q. All right. Did Jamey ever sleep in
 4 that bunkhouse?
 5 A. I don't remember if he did. I don't
 6 know what he would have slept on.
 7 Q. All right. When he lived with you
 8 several years ago, did -- where did he stay?
 9 A. He stayed in the house with me.
 10 Q. All right. When was probably the last
 11 time that he stayed in the house with you
 12 overnight?
 13 A. I -- I can't tell you exactly, but it's
 14 probably been at least five years.
 15 Q. All right.
 16 MR. HAWKINS: I think that's all the
 17 questions I had. Thank you.
 18 THE WITNESS: You're welcome.
 19 MR. BAILEY: I don't have any questions
 20 for you.
 21 FURTHER EXAMINATION
 22 QUESTIONS BY MR. HEPWORTH:
 23 Q. Do you remember the dog's name?
 24 MR. HAWKINS: Actually, yeah, there was
 25 that question I forgot to ask.

1 to me like there's actually several buildings
 2 right in the -- the yard where your house; true?
 3 A. Not in the yard.
 4 Q. Well, behind, I would say, to the west?
 5 A. Well, yes, there's a shop and -- and a
 6 garage and --
 7 Q. All right.
 8 A. -- machine shed, a hanger.
 9 Q. And is one of those the bunkhouse?
 10 A. One of -- the bunkhouse is on the other
 11 side of the shop.
 12 Q. Okay. Meaning, it's further away from
 13 your house than the shop?
 14 A. Yes.
 15 Q. Okay. And it's quite a bit smaller
 16 than the shop?
 17 A. Yes.
 18 Q. Okay. And it's located pretty close to
 19 the road?
 20 A. Yes.
 21 Q. All right. Has Jamey ever lived with
 22 you?
 23 A. Yes, at one time.
 24 Q. What period of time was that?
 25 A. Let's see. When he came back from

1 THE WITNESS: Danny, do you --
 2 MR. BAILEY: Been asked and answered,
 3 sort of.
 4 MR. HAWKINS: All right.
 5 THE WITNESS: I don't know why I can't
 6 remember that dog's name.
 7 MR. HEPWORTH: Okay. I guess we'll
 8 conclude the deposition.
 9 (Deposition concluded at 11:00 a.m.)
 10 (Signature requested.)
 11
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CERTIFICATE OF WITNESS

I, MARJORIE WILMOTH KINSEY, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition, consisting of pages 1 through 60; that I have read said deposition and know the contents thereof; that the questions contained therein were propounded to me; and that the answers contained therein are true and correct, except for any changes that I may have listed on the Change Sheet attached hereto:

DATED this ____ day of _____, 200__.

MARJORIE WILMOTH KINSEY

SUBSCRIBED AND SWORN to before me this ____ day of _____, 200__.

NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR _____

RESIDING AT _____

MY COMMISSION EXPIRES _____

REPORTER'S CERTIFICATE

I, JAHNENE SCHWISOW, CSR No. 760, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this ____ day of MONTHSIGNED, 2008.

JAHNENE SCHWISOW, CSR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires May 04, 2012

ERRATA SHEET FOR MARJORIE WILMOTH KINSEY

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You may use another sheet if you need more room.

WITNESS SIGNATURE _____

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1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
3

4 MICHAEL BROOKBANK,)

5 Plaintiff,)

6 vs.)

7 JAMEY KINSEY, and JOHN DOES) Case No. CV 07-4522

8 1 - 10,)

9 Defendants.)

10 _____)

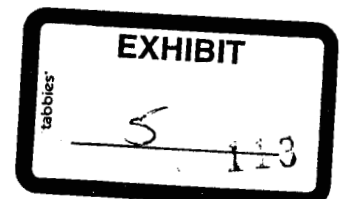
11
12 DEPOSITION OF JAMEY D. KINSEY

13 NOVEMBER 3, 2008

14
15
16
17 REPORTED BY:

18 CATHERINE PAVKOV, CSR NO. 638

19 Notary Public
20
21
22
23
24
25



1 THE DEPOSITION OF JAMEY D. KINSEY was
 2 taken on behalf of the Plaintiff at the law offices
 3 of Jeffrey J. Hepworth PA & Associates, 161 5th
 4 Avenue South, Suite 100, Twin Falls, Idaho,
 5 commencing at 10:50 a.m., on November 3, 2008,
 6 before CATHERINE PAVKOV, Certified Shorthand
 7 Reporter and Notary Public within and for the State
 8 of Idaho, in the above-entitled matter.

9
 10 APPEARANCES:

11 For the Plaintiff: Jeffrey J. Hepworth PA &
 12 Associates
 13 BY: JEFFREY J. HEPWORTH
 14 P.O. Box 1806
 15 Twin Falls, Idaho 83303-1806
 16
 17 For the Defendants: Racine, Olson, Nye, Budge &
 18 Bailey
 19 BY: JOHN A. BAILEY, JR.
 20 P.O. Box 1391
 21 Pocatello, Idaho 83204-1391
 22
 23 For Farm Bureau KENT L. HAWKINS
 24 Insurance:
 25

1 JAMEY D. KINSEY,
 2 first duly sworn to tell the truth relating to said
 3 cause, testified as follows:
 4

5 MR. HEPWORTH: Let the record
 6 reflect that this is the deposition of Jamey
 7 Kinsey, taken pursuant to Notice and the Idaho
 8 Rules of Civil Procedure.

9
 10 EXAMINATION

11 QUESTIONS BY MR. HEPWORTH:

12 Q. Mr. Kinsey, could you state your
 13 full name for the record, please?
 14 A. Jamey Kinsey.
 15 Q. No middle name?
 16 A. Jamey Dee Kinsey, sorry.
 17 Q. And what's your residence address?
 18 A. 333 Rock Creek Road, Hansen, Idaho.
 19 Q. And how long have you lived there?
 20 A. Oh, I can't pin that down. It's
 21 been years. It's over five, six years.
 22 Q. And who owns the house?
 23 A. My girlfriend.
 24 Q. And what's her name?
 25 A. Vicky Stanger.

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1 Q. How long have you and Vicky been
 2 together?
 3 A. Fifteen years, probably.
 4 Q. And you're single, correct?
 5 A. Uh-huh. Yes.
 6 Q. Have you ever been married?
 7 A. No.
 8 Q. Have you ever had your deposition
 9 taken?
 10 A. I don't think so.
 11 Q. I'm just going to give you a couple
 12 of the ground rules. And I'm sure you'll be fine
 13 without them, but sometimes it makes things go
 14 more smoothly. If there's a question that I ask
 15 that doesn't make sense to you, you don't
 16 understand, sometimes I ask bad questions, I'll
 17 tell you that right now, just tell me and I'll try
 18 to rephrase it and make my sentences a little more
 19 clear. But it's important that we communicate.
 20 A. Right on.
 21 Q. If you answer the question, I'm
 22 going to assume that you understood the question.
 23 Is that fair?
 24 A. That's fair.
 25 Q. Okay. When you answer, it's

1-4

1 important that you answer audibly, with a "yes" or
2 a "no," rather than a, like I tend to say "uh-huh"
3 or "huh-uh" sometimes, and if we do that, the
4 record will be real unclear.

5 A. I'll try.

6 Q. So you pretty much have to say "yes"
7 or "no."

8 MR. BAILEY: We'll help you.

9 Q. (BY MR. HEPWORTH) And the third one
10 is we have to talk one at a time, instead of at
11 the same time. So if you'll just let me finish my
12 question before you start to answer, even though
13 you know exactly what I'm going to ask, then Cathy
14 will have a little bit easier time doing her job.

15 A. Got you.

16 Q. If we talk at the same time, it's
17 pretty tough for her to get an accurate
18 recitation.

19 A. Okay.

20 Q. You grew up in Kimberly?

21 A. Yeah.

22 Q. Born and raised?

23 A. Born and raised.

24 Q. And what was your home address
25 growing up?

1 Q. Only when you were a kid?

2 A. Yes.

3 Q. When is the last time that you can
4 ever remember working on the Kinsey farm?

5 A. For a paycheck?

6 Q. For any purpose.

7 A. Maybe a little bit when I got out of
8 the Navy. Six, seven years ago.

9 Q. Was that for a paycheck?

10 A. I can't remember.

11 Q. So you worked for Terry Hollifield
12 right out of high school, for how long?

13 A. Maybe two, maybe three years.

14 Q. There's been some indication you
15 went to CSI for a period of time?

16 A. Yes.

17 Q. When was that?

18 A. I'm not sure. But maybe '92 or '93. CSI

19 Q. What were you studying?

20 A. Soil chemistry.

21 Q. Did you get a degree?

22 A. No.

23 Q. So would that have been about the
24 same time you were working at Terry Hollifield's?

25 A. That was after I got out of the

1 A. Be my dad's. I don't know what his
2 address was. I lived with him out there.

3 Q. Okay. Let me just look. There's an
4 address of 3497 East 3000 North, Kimberly, Idaho.

5 A. That's my grandma's. His is
6 different. It's a mile and a half off.

7 Q. Okay. So his would be a mile and a
8 half south?

9 A. A mile south and a mile to the west.
10 My Aunt Val lives there now and he's moved since I
11 grew up. He's in a different place. So whatever
12 that address is, I don't know what it is.

13 Q. Did you graduate from high school?

14 A. Yes.

15 Q. What year was that?

16 A. '89.

17 Q. What did you do after high school?

18 A. I farmed.

19 Q. Where did you farm?

20 A. Hollifield's.

21 Q. Terry's?

22 A. Yeah.

23 Q. And then did you ever work on the
24 Kinsey farm?

25 A. When I was a kid.

1 Navy.

2 Q. When were you in the Navy?

3 A. I went in in '90.

4 Q. When did you get out?

5 A. The last part of '92 probably.

6 Q. And after getting out of the Navy,
7 did you come back to Kimberly?

8 A. Yes.

9 Q. And worked, or went to CSI?

10 A. Went to CSI.

11 Q. After CSI, what did you do?

12 A. I think I farmed. I farmed for
13 Roger Olsen off and on. Then maybe '97 I went to
14 the oil field until 2001.

15 Q. For about four years?

16 A. Yeah. Yeah, about four years.

17 Yeah, I spent four years in the field.

18 Q. And that was where?

19 A. Colorado.

20 Q. What did you do after working in the
21 oil fields in Colorado?

22 A. I bounced around all over the
23 country, job after job.

24 Q. Did you just move all over, Texas?

25 A. Yeah, I just bounced around. I 115

1 didn't hardly work since '01. Just been bouncing
 2 around.
 3 Q. And your mom lives in Texas?
 4 A. Texas now.
 5 Q. Is she still there?
 6 A. Yes.
 7 Q. Was there a period of time where you
 8 lived with her?
 9 A. Yes.
 10 Q. When was that?
 11 A. I don't know. It's after '01.
 12 Q. Okay. Are you -- have you had any
 13 full-time jobs after 2001?
 14 A. Let's see, I worked for Olsen Farms
 15 for probably three years, prior to the accident,
 16 30 days prior to that accident. Because I got
 17 laid off 30 days prior to when that happened.
 18 Q. Okay.
 19 A. So three years prior to that. And I
 20 lived with Vicky at that time.
 21 Q. So you worked for Olsen Farms from,
 22 what, 2004 to 2007, would that be about right?
 23 A. Yeah.
 24 Q. Or 2003 to 2007, three or four
 25 years?

1 working at Olsen Farms until about 30 days prior to
 2 the accident?
 3 A. Uh-huh.
 4 Q. And then got laid off?
 5 A. Yeah.
 6 Q. After getting -- so you would have
 7 gotten laid off in July, say?
 8 A. Yes.
 9 Q. July of '07?
 10 A. Yeah, I was injured.
 11 Q. And how were you injured?
 12 A. Tendons, tore the tendons in my
 13 finger here.
 14 Q. In your left hand?
 15 A. Yes.
 16 Q. Did you receive medical treatment
 17 for that?
 18 A. Workman's comp, the whole schabo.
 19 Q. Did you have an attorney for that?
 20 A. No.
 21 Q. Where did you seek medical care?
 22 A. Hospital.
 23 Q. Magic Valley Regional?
 24 A. Yeah.
 25 Q. So the reason you quit working was

1 A. Yeah.
 2 Q. When you worked for Olsen Farms, did
 3 they provide housing to you?
 4 A. No.
 5 Q. How about when you worked for Terry
 6 Hollifield?
 7 A. No.
 8 Q. When you were working for Terry
 9 Hollifield, where were you living?
 10 A. I was living in that bunkhouse.
 11 Q. And when you were going to CSI,
 12 where were you living?
 13 A. With Vicky.
 14 Q. Was -- now, Vicky has kids, right?
 15 A. Yes.
 16 Q. Has she been married?
 17 A. Yes.
 18 Q. And do you know when she got
 19 divorced?
 20 A. Oh, shoot --
 21 Q. I assume she's divorced?
 22 A. You'd have to ask her that. I don't
 23 know that. I know it happened, but the dates are
 24 not there.
 25 Q. And if I understand it, you were

1 because of the injury to your hand?
 2 A. Yeah, I hurt myself. And the guy I
 3 worked for was a weird guy, you know,
 4 insubordination type crap, you know, and I tried
 5 to get back with him and he wouldn't answer my
 6 calls. So I don't know if I got fired or laid off
 7 or -- you'd have to ask him that.
 8 Q. But you were unable to work for a
 9 period of time?
 10 A. Yeah, I was ordered not to use the
 11 hands, and he didn't like that.
 12 Q. Are you currently working?
 13 A. Huh-uh.
 14 Q. What do you do for a living?
 15 A. Nothing right now.
 16 Q. And that's been true for a little
 17 over a year then, apparently?
 18 A. Yeah.
 19 Q. I've been told things like you cut
 20 wood, do you cut wood for income?
 21 A. Yeah, but it isn't for a living or
 22 anything.
 23 Q. Is it for income?
 24 A. No.
 25 Q. And I've also been told that you go

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1 to Nevada for some reason, like working in the
2 mines?

3 A. Oh, no. Who told you that? That's
4 great. No. I'm a coyote hunter. That's what I
5 like to do. I shoot coyotes. I hunt them until
6 the end of the earth.

7 Q. Do you skin them and sell the hide?

8 A. Occasionally. Just depends on if
9 they're decent.

10 Q. Was there a period of time when you
11 lived in your grandma's house?

12 A. Maybe for a week, way back when. I
13 can't give you a date or anything. I go out and
14 stay at her house as a guest.

15 Q. How often?

16 A. Not very.

17 Q. Why would you do that?

18 A. Because she's my grandma.

19 Q. Well, that's obvious. I mean, I
20 understand why --

21 A. Yeah, I love my grandma. I like to
22 go out and see her every once in a while.

23 Q. Does Vicky own the house where she
24 lives?

25 A. Yes.

1 Q. And I mean, she's buying it, she's
2 not renting it?

3 A. I think she owns it. I don't know.

4 Q. And you -- how many days a week do
5 you spend the night there?

6 A. It's not a matter of days per week.
7 It's just whenever I'm around. You know, I bounce
8 around with my buddies and stuff like that. We go
9 hunting. I take trips and stuff like that. Or I
10 just go to the mountains and disappear for 30 days,
11 you know, stuff like that.

12 Q. Can you take me next time?

13 A. Sure can. You've got to lose the
14 suit though.

15 Q. I'll get rid of this real fast.

16 A. Yeah, you'd scare the dogs off.

17 Q. I've got a gun and everything. I'd
18 love to do that.

19 Would it be fair to say that
20 sometimes you stay with Vicky, sometimes you stay
21 with friends, sometimes you stay with your
22 grandma; is that accurate?

23 A. Most of the --

24 MR. BAILEY: Objection. I think it
25 misstates the testimony.

1 Q. (BY MR. HEPWORTH) Go ahead.
2 MR. BAILEY: You can answer now.

3 THE WITNESS: Okay. Most of the
4 time, I'm with her.

5 Q. (BY MR. HEPWORTH) With Vicky?

6 A. I stay with her, yeah, for 98, 99
7 percent, most part. It's very rare I stay out
8 there.

9 Q. The bunkhouse, what accommodations
10 does the bunkhouse have? Does it have a bed?

11 A. No bed in it. It's an old, old
12 bunkhouse, ranch bunkhouse.

13 Q. And I always thought a bunkhouse
14 meant it had like bunk beds or something.

15 A. Used to. But it don't no more.
16 It's an old rotten -- it needs to be tore down,
17 actually. It's pretty rotten inside. It smells.

18 Q. Did you ever sleep in the bunkhouse?

19 A. Yeah. At the time I told you, way
20 back, what did I say, during college or something.

21 Q. Uh-huh. When you stayed with your
22 grandma, you stayed in her house?

23 A. Sometimes.

24 Q. Where would you stay if you didn't
25 stay in her house?

1 A. On the couch. I'd just go to sleep
2 on the couch or something like that, if I was too
3 tired to go to Vicky's, for instance, or whatever.

4 Q. On the day of the accident, you were
5 at your grandma's house, correct?

6 A. Yeah, I was parked down on the
7 county road out in front of her house.

8 Q. What was the purpose of going there
9 that day?

10 A. I was looking for something. Can't
11 remember what it was.

12 Q. Did you keep some belongings in the
13 bunkhouse?

14 A. Yeah, there's things in that
15 bunkhouse.

16 Q. Like what?

17 A. Just accumulation of -- I think
18 there's CDs in there. There's an old couch in
19 there. There's a TV in there. Old weight set.

20 Q. Some of your personal belongings?

21 A. Yeah, just stuff to keep it out of
22 the weather.

23 Q. Okay. Do you keep clothes in the
24 bunkhouse?

25 A. There's old clothes that I used to

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1 wear when I was younger in there.
 2 Q. How about in your grandma's house,
 3 do you keep any of your personal belongings at
 4 your grandma's house?
 5 A. There might be something in there.
 6 I don't know. There could be something in there
 7 of mine.
 8 Q. Are you always welcome to stay at
 9 your grandmother's house?
 10 A. Oh, yeah.
 11 Q. How about at Vicky's house, what
 12 types of things do you keep there?
 13 A. I've got some clothes there. That's
 14 about all I operate on.
 15 Q. No furniture?
 16 A. No furniture, no belongings in there
 17 or anything.
 18 MR. HEPWORTH: I'm going to have
 19 this marked as Exhibit 1.
 20 (Exhibits 1 through 4 marked.)
 21 Q. (BY MR. HEPWORTH) I'm handing you
 22 what's been marked as Exhibit 1. I don't know if
 23 you've ever seen that. That's the accident report
 24 from the day of the accident.
 25 A. Huh-uh.

1 a good pup, and I loved him.
 2 Q. Well, I'm a dog lover myself. I'm
 3 sorry about that.
 4 A. Yeah.
 5 Q. So he was about six months old. And
 6 you'd had him 45 to 60 days?
 7 A. Yes.
 8 Q. Were you training him?
 9 A. Yes.
 10 Q. To --
 11 A. Stay in the pickup. He was doing
 12 real good. Never left my sight. He was always
 13 with me.
 14 Q. Was he going to be a hunting dog?
 15 A. Yes. Companion, hunting dog.
 16 Q. You travel around a lot, it sounds
 17 like?
 18 A. Uh-huh. And he goes with me.
 19 Q. Everywhere?
 20 A. Almost everywhere.
 21 Q. Was there ever any time when you
 22 didn't take him with you?
 23 A. Occasionally. I couldn't tell you
 24 why. Maybe to go to a movie or something like
 25 that, with my buddy, and I'd leave him with my

1 Q. Never have?
 2 A. No.
 3 Q. Did you talk to the police officer
 4 after the accident?
 5 A. Yes.
 6 Q. Apparently, the dog that ran out in
 7 the road was your dog?
 8 A. Wasn't a dog. It was a little
 9 puppy. Less than six months old.
 10 Q. Golden Lab?
 11 A. Yep.
 12 Q. What was the dog's name?
 13 A. Yogi.
 14 Q. Y-o-g-i?
 15 A. Yogi the Bear.
 16 Q. How long had you had Yogi?
 17 A. Oh, probably 45 days, 60 days,
 18 somewhere in there.
 19 Q. Had you had a dog prior to Yogi?
 20 A. Not for a long, long time.
 21 Q. The dog, did the dog always stay
 22 with you, wherever you went?
 23 A. The pup did, yes. It's a pup.
 24 Q. You don't like me calling it a dog.
 25 A. No, I don't. He was a pup. He was

1 buddy's wife and she'd baby-sit him. Everybody
 2 loved him.
 3 Q. Would you leave the dog at Vicky's?
 4 A. No. No.
 5 Q. Not allowed?
 6 A. No, he stayed with me all the time.
 7 Q. Did you ever leave Yogi at your
 8 grandma's?
 9 A. Not if I wasn't there. He'd run
 10 around with me out there, whenever I'd go out and
 11 visit.
 12 Q. But was there a time when you did
 13 leave Yogi with --
 14 A. Not that I remember.
 15 Q. I'm sorry to jump all around on you.
 16 A. That's fine.
 17 Q. Kind of my nature. The accident
 18 looks like it happened, it's blacked out there,
 19 but it was August 18, '07, is that consistent with
 20 your memory?
 21 A. Rings a bell.
 22 Q. And it was a Saturday, do you recall
 23 that? Do you remember what day of the week it
 24 was?
 25 A. Was it Saturday or a Sunday? I

1 don't remember.
 2 Q. The accident report says Saturday.
 3 A. Okay.
 4 Q. Do you have any reason to dispute
 5 that?
 6 A. Well, I couldn't remember. I
 7 couldn't remember.
 8 Q. And it looks like it happened around
 9 5:50 in the afternoon?
 10 A. That sounds right. I couldn't -- I
 11 didn't write any of that stuff down.
 12 Q. Now, I think you said you parked
 13 your car on the road?
 14 A. Yeah, the county road.
 15 Q. On the northeast -- or the north,
 16 south road, the main highway there?
 17 A. Yes.
 18 Q. I can call it the main highway.
 19 What is that, 3500 East?
 20 A. Yeah.
 21 Q. And how -- what side of the road did
 22 you park your truck on?
 23 A. Left-hand side.
 24 Q. So it would have been on the east
 25 side of the road?

1 house is right here.
 2 Q. You want to put PU on the box you --
 3 that's where you parked your pickup?
 4 A. Yeah.
 5 Q. So you parked your pickup kind of on
 6 the road there, on the 3000 North road?
 7 A. Yeah.
 8 Q. And then after you parked, what did
 9 you do?
 10 A. I got out. I was getting ready -- I
 11 think I was picking up some work boots, I was
 12 looking for my work boots, and I couldn't remember
 13 where I left them. And that's when that guy came
 14 on the bike.
 15 Q. Did you hear the motorcycle?
 16 A. Oh, yeah.
 17 Q. What drew your attention to the
 18 motorcycle?
 19 A. The speeding. How fast he was
 20 going. I heard that bike coming. And I always
 21 look up, whenever those guys on those bikes come
 22 out there. So I looked up and I seen him coming,
 23 and thought just another guy breaking the speed
 24 limit out here. This is ranch country, farm ranch
 25 country.

1 A. On the south side of the road.
 2 Q. On the south side of the road? You
 3 know, there's --
 4 A. If it goes east, west, east, west,
 5 south side of the road.
 6 Q. On the last page of that Exhibit 1,
 7 could you draw on there -- do you understand that
 8 diagram?
 9 A. I don't recognize this.
 10 Q. Well, this is north and south.
 11 A. What's this thing?
 12 Q. That's the neighbor's house. I
 13 think your grandma's house would be right here.
 14 A. Uh-huh. What's this driveway? I
 15 don't recognize that.
 16 Q. That's the neighbor's driveway,
 17 apparently. Is that making sense to you?
 18 A. Yeah, I don't think there's a
 19 driveway there.
 20 Q. Yeah, I don't remember that either.
 21 A. But if my grandma's house is right
 22 here --
 23 Q. Go ahead and draw your grandma's
 24 house there.
 25 A. Right here. And then my grandma's

1 Q. What direction was he coming from?
 2 A. This way. From the north.
 3 Q. From the north, going south?
 4 A. Yeah.
 5 Q. And what happened after you heard
 6 the bike?
 7 A. I looked up. He was coming. Blew
 8 it off. Turned around, and then for -- I don't
 9 know why I looked back the other direction, I seen
 10 it go through the intersection and I heard
 11 everything go silent. I mean, quite a lot of time
 12 lapse, and I heard (witness made noise). And I
 13 was like --
 14 MR. HAWKINS: Can you spell that for
 15 her?
 16 THE WITNESS: That's the best I can
 17 do, describe it.
 18 Q. (BY MR. HEPWORTH) You heard like
 19 motorcycle hitting pavement --
 20 A. Crashing noises, going way down the
 21 road. And I was, like, that guy just hit that
 22 loose gravel in that intersection and wrecked his
 23 bike. Because there was loose gravel from
 24 probably Stutzman's trucks, they spill gravel all
 25 over that road. So I was, like, well, I walked

1 out there, and then I seen my pup laying right
2 here in the borrow ditch.

3 Q. Why don't you put an X and circle
4 it.

5 A. He was laying right there. And he
6 was taking his last breath, dying breath, and he
7 could see me and he was trying to crawl to me, his
8 back was broke and there was a blond woman yelling
9 at him, screaming at him on the ground.

10 So I walked out and I seen a guy in
11 the middle of the road on his ass, on his butt.
12 So I ran back to the house, called nine-one-one.
13 By the time I got out there, they were gone.

14 Q. Would you circle where you had the
15 dog. Just put a circle there, so we'll all know
16 what it was on Exhibit 1.

17 Was the neighbor -- did the neighbor
18 come out, did you see?

19 A. I don't remember. It just shocked
20 me so bad.

21 Q. Do you know where you were when the
22 collision occurred?

23 A. Right behind my pickup.

24 Q. Had you just gotten out of your
25 pickup?

1 alongside the road, or whatever happened there, I
2 could have seen it. There's no obstruction or
3 anything along this area, clear down through here.
4 This is alfalfa. It's wide open. The visibility
5 there is good.

6 Q. When you got out of your pickup to
7 go look for your boots, did Yogi get out of the
8 car with you then?

9 A. Didn't see him do it. Did not see
10 him do it.

11 Q. Was he in the back of the truck?

12 A. He was in the back. Or he goes
13 through the back window into the cab. And
14 usually, he goes through the cab and he's real
15 good about staying in the pickup. Put the fear of
16 God into him, you know, "you stay in that truck."

17 Q. So he must have jumped out of the
18 truck?

19 A. Obviously, yeah.

20 Q. You didn't just let him out?

21 A. I didn't let him out, no.

22 Q. He jumped out?

23 A. There's kids that live over here in
24 this house, and he's a real social-type pup, and
25 there's two boys over there and they like to pet

1 A. Just got out of my pickup. And when
2 I was -- like I said, he was just in my pickup.
3 And as I was walking down there, I -- something --
4 I turned around and I looked and I didn't even see
5 him at that point and I knew that he was gone.

6 Q. So you got out of your pickup and,
7 what, were you walking to the bunkhouse or to your
8 grandma's house, do you know?

9 A. What do you mean?

10 Q. Well, you said you were going to get
11 your work boots. I assume that you had left them
12 there?

13 A. Uh-huh.

14 Q. At your grandma's?

15 A. There's an old shop there. I was
16 looking for them in there. Because I change my
17 boots a lot, for whatever I'm doing.

18 Q. So could you see -- if you'd have
19 looked, could you have seen the accident from
20 where you were when the accident happened?

21 A. Well, it happened so fast, I just
22 was looking down the intersection and then I seen
23 that streak, heard him go through, and then the
24 silence. I could have, if I would have known it
25 was coming. If I could have seen that Yogi was

1 him and stuff like that. So there had to have
2 been some sort of coaxing going on there, you
3 know, come on puppy, and next thing you know, he
4 goes across the road.

5 Q. And you, after you heard the
6 collision, you ran out to the dog, or not?

7 A. No, I walked out there and I seen
8 her yelling at him and I didn't want to act
9 insensitive towards a hurt human being, so I
10 totally ignored him. Didn't even go over and
11 approach him. But he was -- like I said, his back
12 was broken, he could see me, and he was trying to
13 get to me. And she was sitting there screaming at
14 him, telling him how big of a dumb ass dog he was.
15 You know, that's what he got to listen to the last
16 part of his life. So anyways, I did the right
17 thing. I didn't act insensitive towards that guy.
18 I wanted to get him help, nine-one-one, get the
19 ambulance out there. So I immediately went back
20 to the house and made that call.

21 Q. And then after you made the call,
22 what did you do?

23 A. Went back out there and he was gone,
24 him and his wife.

25 Q. Were there any other people there? 120

1 A. There were people standing around
2 there. I don't know who they were. I didn't want
3 to deal with it. He was dead there, so I had to
4 get away from there.
5 Q. Were there those two neighbor kids
6 there?
7 A. I do not remember. It's a blur.
8 Q. There was a police officer there,
9 you remember that?
10 A. Nobody had made it out there yet.
11 There was a group of people there. There was a
12 guy in a white Chevy pickup there, Adam Stanger.
13 And they just -- like I said, I just went out
14 there and I walked back out and I walked up to
15 Yogi to make sure he was gone. I didn't want him
16 suffering. I thought I was going to have to shoot
17 him. So I checked him, and then I baled. I left.
18 Q. When you say you baled, did you --
19 A. I left the scene of the accident.
20 Q. Okay. Did you take your dog?
21 A. No, I couldn't do that. I had to
22 call buddies up to come do it for me.
23 Q. Okay. Somebody buried the dog for
24 you?
25 A. Uh-huh.

1 MR. HEPWORTH: I probably misspoke.
2 Thank you.
3 Q. (BY MR. HEPWORTH) Do you remember
4 giving the police officer your address?
5 A. No.
6 Q. If the police officer said that you
7 gave them that address, 3497 East 3000 North, that
8 would be your grandmother's --
9 A. That is my grandma's address.
10 Q. Right. I'm going to hand you now
11 what's been marked as Exhibit 2. Did you receive
12 those?
13 A. No.
14 Q. No?
15 A. No.
16 Q. Those are interrogatory answers that
17 were provided to me back, I think, January or
18 February of this year. Do you remember getting
19 those?
20 A. No.
21 Q. Did you ever meet with Daniel Brown,
22 the attorney?
23 A. I did once, yeah.
24 Q. Let me just show you something. On
25 Interrogatory No. 1, I asked to identify the

1 Q. Do you know where they buried him?
2 A. Nope.
3 Q. You don't remember talking to the
4 police?
5 A. I do briefly.
6 Q. Did they confirm that the dog was
7 your dog?
8 A. Yeah, he came up to me and I told
9 him, yeah, that was my pup.
10 Q. And the reason I wonder. Here, it
11 says, property damage, and it says, animal, and
12 then it says the owner name and address. And so
13 you gave them your name, Jamey Kinsey?
14 A. I just gave them my name.
15 Q. And it had an address, 3497 East
16 3000 North.
17 A. That's where the accident -- that's
18 the address where the accident happened.
19 Q. Is that the accident that you would
20 have given the police officer?
21 A. No. I don't remember giving him an
22 address whatsoever.
23 Q. Okay.
24 MR. BAILEY: You said accident. You
25 meant address, I take it?

1 person answering these interrogatories by
2 providing your name, address, telephone number.
3 And Jamey Kinsey is your name, correct?
4 A. Uh-huh. Yes.
5 Q. For address, they put 3497 East
6 3000, then nothing, Kimberly, Idaho.
7 A. Who did I tell this to?
8 Q. I don't know. These were -- you
9 didn't sign these. These are signed by Daniel
10 Brown, I believe.
11 A. Wow.
12 Q. But you met with Mr. Brown, right?
13 A. Yeah, we didn't talk about that
14 stuff.
15 Q. Okay. But is it possible that you
16 gave him that address?
17 A. No.
18 Q. Okay. How about the phone number,
19 (208) 731-4286?
20 A. That's how he could contact me at
21 the time.
22 Q. Is that your cell number?
23 A. It's not my cell number. It's my
24 old man's.
25 Q. Let me show you a couple of other

1 things. Exhibit 3 is some information I got from
2 the motor vehicle department. And it looks like
3 it's a 1990 Ford pickup. Do you have a '90 Ford
4 pickup?

5 A. Uh-huh.

6 Q. And do you know, there's an
7 identification there, I assume that's your pickup?

8 A. Yeah. My grandma gets my tags for
9 me and makes sure my insurance is paid. I give
10 her money. She actually keeps my money in her
11 safe. And it's been like this since I've had the
12 pickup. It's never been changed or anything.
13 Because I don't have an address. I don't even
14 have a house. I stay with Vicky.

15 Q. But when you list an address, like
16 on your pickup -- that's your pickup, right?

17 A. Yeah, it was originally registered
18 to that address and it's just never changed.
19 Because -- what would I change it to?

20 Q. When would you have registered that
21 pickup?

22 A. I brought it brand new in 1990. So
23 it's been registered to that since 1990.

24 Q. Okay. And --

25 MR. BAILEY: Is that --

1 Q. So on January 25, 2006, you listed
2 that 3497 East 3000 North as your address?

3 A. I did not list that. I just renewed
4 the driver's license. Everything is fine. You
5 know, I didn't -- what would I put down? I don't
6 want Vicky's address on there.

7 Q. Why not?

8 A. Well, I don't like my mail getting
9 sent there very much anyways, you know. I don't
10 have a lot of mail that comes. I rarely even have
11 anything sent to me.

12 Q. Is there a reason that you don't
13 want to concede that your address is your
14 grandma's address?

15 A. That's the truth. Yeah, the Kinsey
16 ranch had nothing to do with this, at all,
17 whatsoever. And I know you're after the insurance
18 out there, so that's just not kosher.

19 Q. And you don't want that to occur?

20 A. Yeah, it's not their deal. They had
21 nothing to do with that.

22 Q. You don't want there to be insurance
23 coverage for this accident, is that accurate?

24 MR. BAILEY: Well, I think that
25 misstates what he's testifying.

1 MR. HEPWORTH: That's No. 3..

2 Q. (BY MR. HEPWORTH) And I'm going to
3 show you Exhibit No. 4. I've done an Idaho driver
4 license search.

5 A. Uh-huh.

6 Q. And on the driver's license, that
7 would be you, Jamey Dee Kinsey --

8 A. Just never ever changed it. It
9 doesn't mean I live there or anything.

10 Q. But that's where you have your
11 important documents sent, is that 3497 East 3000
12 North address, correct?

13 A. Well, not all of them. It just
14 depends on where I'm at, how convenient it is to
15 get them. This is just one of those deals that
16 that address has been on my driver's license since
17 I was a kid growing up out there. And it just
18 never gets changed.

19 Q. On Exhibit 4 -- do you have your
20 driver's license with you?

21 A. No.

22 Q. It looks like this driver's license
23 was issued on January 25, 2006. Would that be
24 consistent?

25 A. Sure.

1 MR. HEPWORTH: Well, I'm asking
2 questions.

3 THE WITNESS: No, I'm not going to
4 pawn something like this off. It's not honest.
5 They had nothing to do with it. That was my pup.
6 It was with me. I did not live there. I was not
7 covered. I'm not even a partner out there. I
8 have nothing to do with the ranch, as far as
9 you're concerned.

10 Q. (BY MR. HEPWORTH) But you kept your
11 work boots there?

12 A. I was looking for my work boots. I
13 didn't know where I left them.

14 Q. When had you last had them, your
15 work boots?

16 A. Oh, prior to getting hurt. Probably
17 a month, two months prior to that.

18 Q. You agree that the dog was your dog?

19 A. It was a pup. It was my pup.

20 Q. I don't mean to be offensive.

21 A. Yeah, it's not --

22 Q. I keep saying the same thing and
23 it's not intentional.

24 A. It was not a nuisance dog, like was
25 written in your lawsuit. It was not a nuisance.

1 Q. Would you agree that the puppy had
 2 some role in causing the accident?
 3 MR. BAILEY: I'm going to object.
 4 Calls for speculation. Lacks foundation. If you
 5 know how it happened, or what you do know, you can
 6 tell him about it, certainly. But don't
 7 speculate.
 8 Q. (BY MR. HEPWORTH) Go ahead and
 9 answer.
 10 MR. BAILEY: Yeah, you can go ahead
 11 and answer.
 12 THE WITNESS: Well, okay. Well, if
 13 he wouldn't have been on the road that day, it
 14 wouldn't have happened, cut and dry. If he
 15 wouldn't have been around there speeding around on
 16 that motorcycle.
 17 Q. (BY MR. HEPWORTH) Oh, you're saying
 18 if the guy had not been driving down the road --
 19 A. If he would not have been out there
 20 that day, it would not have happened. I'd still
 21 have that pup with me.
 22 Q. Wouldn't you also agree that if the
 23 dog hadn't run out into the road, he wouldn't have
 24 gotten hit?
 25 A. I do not know the circumstances. I

1 mentioned something, you're aware that there is
 2 another suit going on in that regard. Which I'll
 3 represent to you is an attempt by Farm Bureau to
 4 resolve the question of whether you are insured
 5 under your grandmother's policy.
 6 A. Got you.
 7 Q. We've been trying to get a copy of
 8 that to you because the Court will be concerned
 9 that you have had an opportunity to see that, of
 10 the lawsuit, to resolve that issue. I've had the
 11 sheriff for two months trying to get a copy of it
 12 to you and he says he can't find you. Even though
 13 I gave him Vicky's address. Have you been served
 14 by the sheriff with a copy of that yet?
 15 A. Nope.
 16 Q. Well, I'm going to give you a copy
 17 of that today. This is a summons and complaint.
 18 And we're going to count it as service on you.
 19 And I'll submit a thing that I served them on you --
 20 A. A summons for where? That I've got
 21 to come back to town, is that what it's for?
 22 Q. What you do with them is up to you.
 23 And I know Mr. Bailey can't represent you. And
 24 we're not representing you. But you have the
 25 right to have the notice of what's going on. And

1 don't know how that happened. I can't even tell
 2 you how it happened. I don't know if somebody
 3 went (witness made noise) across the road, or
 4 what.
 5 Q. Do you agree that the motorcycle hit
 6 the dog?
 7 A. It appeared to.
 8 Q. Do you have any reason to think that
 9 the motorcycle wasn't on the road when the dog and
 10 the motorcycle collided?
 11 A. That's very possible. It's very
 12 possible he was in the borrow ditch when he hit
 13 him, because of the way the carcass was lying in
 14 the borrow ditch. We wondered that.
 15 MR. HEPWORTH: I guess I don't have
 16 any other questions.
 17 MR. HAWKINS: May I, very briefly?
 18 MR. HEPWORTH: Yeah, sure.
 19
 20 EXAMINATION
 21 QUESTIONS BY MR. HAWKINS:
 22 Q. Sir, I'm not an attorney in this
 23 case that you were brought here today. My name is
 24 Kent Hawkins. I'm actually an attorney
 25 representing Farm Bureau Insurance. You've

1 in there --
 2 MR. BAILEY: I could explain to you
 3 how it works. We won't need to do it on the
 4 record here. But I can help you with that.
 5 THE WITNESS: Okay.
 6 MR. HAWKINS: But I'm not going to
 7 ask you any questions here. So thank you.
 8 MR. BAILEY: And I have none.
 9 MR. HEPWORTH: Okay.
 10 COURT REPORTER: Would you like a
 11 copy, Mr. Hawkins?
 12 MR. HAWKINS: Yes.
 13 COURT REPORTER: Would you like a
 14 copy, Mr. Bailey?
 15 MR. BAILEY: Yes, please. Thank
 16 you.
 17 (Deposition concluded at 11:32 a.m.)
 18 (Signature waived.)
 19
 20
 21
 22
 23
 24
 25

JUN 10 2009

By _____ 3:00 P.M.
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU INSURANCE)
COMPANY OF IDAHO,)

Plaintiff,)

vs.)

JAMEY KINSEY AND M. WILMOTH)
KINSEY, d/b/a KINSEY FAMILY)
LIMITED PARTNERSHIP,)

Defendants.)

CASE NO. CV-08-1597

MEMORANDUM OPINION RE:
CROSS MOTIONS FOR
SUMMARY JUDGMENT

MICHAEL BROOKBANK)

Intervenor.)

INTRODUCTION

The case came before the court on June 8, 2009 on cross motions for summary judgment to determine whether an insurance policy issued by Farm Bureau covers a personal injury claim filed by intervenor Michael Brookbank ("Brookbank"). Jeffrey J. Hepworth represents Brookbank. Kent L. Hawkins represents Farm Bureau. The defendants Jamey Kinsey ("Jamey") and Wilmoth Kinsey ("Wilmoth") have not filed an appearance in this case.

Farm Bureau originally filed this case only against Jamey and Wilmoth.

However, on May 23, 2009 Brookbank moved to intervene pursuant to I.R.C.P. 24. On August 7, 2008 the parties filed a stipulation allowing Brookbank to intervene in this matter.¹ Thereafter the depositions of both Jamey and Wilmoth were taken. Those depositions, together with a copy of the insurance policy at issue, constitute the evidentiary record before the court. Based upon that record the court finds that there are no genuine issues of material fact and that Farm Bureau is entitled to judgment as a matter of law declaring that it has no obligation to defend or liability coverage for Jamey Kinsey concerning the claim of Brookbank in CV 2007-4522 entitled *Michael Brookbank v. Jamey Kinsey*.

GOVERNING STANDARDS

Summary judgment may be entered only if “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *see also Avila v. Wahlquist*, 126 Idaho 745, 747, 890 P.2d 331, 333 (1995); *Idaho Bldg. Contractors Ass'n v. City of Coeur d'Alene*, 126 Idaho 740, 742, 890 P.2d 326, 328 (1995). When a summary judgment motion has been supported by depositions, affidavits or other evidence, the adverse party may not rest upon the mere allegations or denials of that party's pleadings, but by affidavits or as

¹ The court notes that pursuant to I.R.C.P. 57 in an action which seeks “declaratory judgment as to coverage under a policy of insurance, any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action *shall* be joined if feasible.” I.R.C.P. 57(b) (emphasis added). As such, Mr. Brookbank should have been joined in this action when it was filed, thus making any motions for intervention unnecessary.

otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. I.R .C.P. 56(e); *see also Gardner v. Evans*, 110 Idaho 925, 929, 719 P.2d 1185, 1189 (1986).

Where no jury has been requested and the facts are to be tried to the court, if the evidentiary facts are not in dispute, the trial court may grant summary judgment despite the possibility of conflicting inferences, because the court alone will be in the position of resolving the conflicting inferences at trial. *Riverside Dev. Co.*, 103 Idaho at 519, 650 P.2d at 661; *Loomis v. City of Hailey*, 119 Idaho 434, 436-37, 807 P.2d 1272, 1274-75 (1991); *Wells v. Williamson*, 118 Idaho 37, 40, 794 P.2d 626, 629 (1990); *Jones v. E.G. & G. Idaho Inc.*, 109 Idaho 400, 401, 707 P.2d 511, 512 (1985); *Argyle v. Slemaker*, 107 Idaho 668, 671, 691 P.2d 1283, 1285 (Ct.App.1984).

Where the parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment. *Davis v. Peacock*, 133 Idaho 637, 640, 991 P.2d 362, 365 (1999) (citations omitted). However, the mere fact that both parties move for summary judgment does not in and of itself establish that there is no genuine issue of material fact. *Kromrei v. AID Ins. Co.*, 110 Idaho 549, 551, 716 P.2d 1321 (1986)(*citing Casey v. Highlands Ins. Co.*, 100 Idaho 505, 507, 600 P.2d 1387, 1389 (1979)). The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and the Court must evaluate each party's motion on its own merits. *Stafford v.*

Klosterman, 134 Idaho 205, 207, 998 P.2d 1118, 1119 (2000) (citing *Bear Island Water Ass'n, Inc., v. Brown*, 125 Idaho 717, 721, 874 P.2d 528, 532 (1994)).

NATURE OF CONTROVERSY

The present declaratory action arises as a result of an incident that occurred when Michael Brookbank (Brookbank) collided with Jamey Kinsey's dog while driving his motorcycle in front of Wilmoth Kinsey's residence located at 3497 East, 3000 North, Kimberly, Idaho on August 18, 2007. Mr. Kinsey was picking up some work boots at the above address where his grandmother Wilmoth Kinsey resides. His dog jumped out of his truck and ran across the street. Brookbank collided with the dog. Brookbank then filed a lawsuit against Jamey Kinsey seeking for damages arising from the incident.

Farm Bureau has issued a liability policy to Wilmoth Kinsey. The policy provides in relevant part for liability coverage as follows:

"If a claim is made or a suit is brought against any insured for damages of bodily injury or property damage cause by an occurrence to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which the insured is legally liable;
2. Provide a defense at our expense by counsel of our choice".

The policy also defines the term "insured" as follows:

"Insured means you or the entity named in the Declarations. If you are an individual, insured also means, if **residents of your household**, . . . your **relatives** . . ." (emphasis added).

Farm Bureau filed this declaratory action seeking a determination whether the insurance policy it issued provides coverage for the above described claim against

Jamey Kinsey who admittedly is a relative of Wilmoth. While agreeing that Jamey is a relative of Wilmoth, the parties disagree on whether Jamey Kinsey was a resident of Wilmoth Kinsey's household at the time of the incident. If he was not, then he is not a named insured under the policy and no coverage exists in this case.

UNDISPUTED FACTS

Based upon the court's review of the file, the briefing of the parties and the oral argument of counsel, the court finds that the following facts are not in dispute in this case:

1. Defendant Wilmoth Kinsey, d/b/a Kinsey Family Limited Partnership is the named insured on the Farm Bureau policy at issue in this case.
2. Defendant Jamey Kinsey is the grandson of Wilmoth Kinsey and is approximately 38 years of age. He is financially independent of Wilmoth.
3. Jamey has been sued by Brookbank in Twin Falls Case No. CV 2007-4522 for the personal injury claim of Brookbank arising from an incident involving Jamey's dog. The incident occurred on August 18, 2007 when Jamey's dog allegedly caused Brookbank to crash his motorcycle.
4. Jamey Kinsey is the owner of the dog.
5. Wilmoth Kinsey does not have any ownership interest in the dog that was involved in the incident.
6. At the time of the incident Wilmoth resided at 3497 East 300 North, Kimberly, Idaho.

7. The accident report involving this incident lists Jamey's address as 3497 East, 3000 North, Kimberly, Idaho.
8. Jamey lived at this address during his adolescence. In recent years Jamey has traveled from job to job. He served in the Navy from 1990-1992 and worked in oil fields in Texas and Colorado and all over the country in the late 1990's and up until 2001.
9. Upon his return from Texas in 2001 he lived in his grandmother's house for a short period of time. Jamey has stayed overnight at Wilmoth's house since 2001. The record does not establish the precise times of these overnight stays.
10. In recent times Jamey has lived at his girlfriend's house. He also spends up to 30 days at a time in the hills and mountains.
11. Jamey receives mail at Wilmoth's house, registers his truck at her address, lists this address on his driver's license and uses this address for legal correspondence. He intentionally does not wish to use his girlfriend's address for these purposes.
12. Jamey stores a small amount of personal possessions in the bunk house adjacent to his grandmother's home. This property consists of a couch, CD's, old clothing and an old weight set.

13. Jamey keeps a limited amount of possessions at his girlfriend's house, mostly his clothing. On the day of the incident his work boots were at Wilmoth's home.

14. Both Wilmoth Kinsey and Jamie Kinsey have stated that they do not believe that Jamey is covered on Wilmoth's policy.

At oral argument the court inquired of counsel whether either contended that there are factual disputes in this case. Both agreed there are not. This admission, together with the fact that the parties have filed cross motions for summary judgment, satisfies the court that there are no material issues of fact that would preclude summary judgment in this case. Additional undisputed facts are set forth later in this opinion.

ANALYSIS AND DECISION

The issue before the court is unique in that both the insured on the Farm Bureau policy (Wilmoth) and the potential insured (Jamey) do not want coverage to apply. Only the intervenor, Brookbank, contests the declaratory action filed by Farm Bureau. The posture of this case thus raises the initial question of which party bears the burden of proof concerning coverage. Brookbank argues that even though Brookbank stands in the insured's shoes in this case he does not bear the burden of proof to show coverage. Farm Bureau and ultimately this court disagree with this assertion.

The initial burden of demonstrating coverage under a policy of insurance rests with the insured. However, the burden to show that an exception to coverage applies

rests with the insurer. 44A Am. Jur. 2d *Insurance* § 1965; see also *Harman v. Northwest Mut. Life Ins. Co.*, 91 Idaho 719, 720, 429 P.2d 849, 850 (1967); *Erikson v. Nationwide Mut. Ins. Co.*, 97 Idaho 288, 294, 543 P.2d 841, 847 (1975). The fact that Farm Bureau initiated this legal action in the form of a declaratory judgment action does not alter the procedural and evidentiary burden of the parties. “[T]he burden of proof in a declaratory relief action is governed by the same rules and considerations as are applicable to the same problem when it arises in legal proceedings of other types.” *Alumet v. Bear Lake Grazing Co.*, 119 Idaho 946, 952, 812 P.2d 253, 259 (1991). Neither party contends that there is any applicable “exception” to coverage at issue in this case. Given the cited case law the court holds that Brookbank bears the burden of proof to demonstrate coverage. As such he must establish that Jamey was a resident of Wilmoth’s household at the time of the incident giving rise to his claim.

The appellate courts of Idaho have addressed the issue currently before this court:

Most courts interpret the phrase “resident of the same household” to extend coverage if this can be done under a reasonable interpretation of the facts. *Government Employees Insurance Co.*, 645 P.2d at 674. If any doubt exists, the language of the policy will be interpreted against the insurance company and in favor of coverage. *Id.*; *General Motors Acceptance Corp. v. Grange Insurance Assoc.*, 38 Wash.App. 6, 684 P.2d 744, 746-747 (1984). If an insurance policy may be given either of two reasonable meanings, one which permits recovery and one which does not, the meaning more favorable to the insured should be adopted. *Bonner County v. Panhandle Rodeo Ass’n*, 101 Idaho 772, 620 P.2d 1102 (1980); *Ferrel v. Allstate Ins. Co.*, 106 Idaho 696, 698, 682 P.2d 649, 651 (Ct.App.1984).

AID Ins. Co. v. Armstrong, 119 Idaho 897, 901, 811 P.2d 507, 511 (Ct. App 1991).

In *AID Ins. Co. v. Armstrong*, the court noted that term "resident" connotes "a living arrangement with some degree of permanence" and "household has been held to mean residents who dwell under the same roof and compose a family." *Id.* In defining these phrases the courts have considered factors such as:

the individuals storage of personal belonging in the named insured's household; custody arrangement for a minor, the presence or absence of a close continuing connection between the individual and the named insured, the presence of a bedroom kept for the individual to return to, the frequency of the individual's visits to the household' and the intent of the named insured with respect to the individual's residence.

Allstate Ins. Co. v. Mocaby, 133 Idaho 593, 598, 990 P.2d 1204, 1209 (1999); see also David B. Harrison, *Who is "resident" or "member" of same "household" or "family" as named insured, within liability insurance provision defining additional insured's.* 93 A.L.R. 3d 420 (1979) for a listing of additional factors which may be considered.

In *Mocaby* a homeowner's insurer brought a declaratory suit seeking a judgment that the policy issued provided no liability coverage for the insured's grandson's involvement in an allegedly accidental shooting. The court held that the grandson was not a resident of the named insured's household. The court noted that neither the grandson nor the insured considered the grandson to be a resident at the time of the shooting. *Id.* at 598, 990 P.2d at 1204. At the time of the shooting the grandson was not living with the insureds. *Id.* The grandson stayed with them infrequently. *Id.* When the grandson did stay with them it was only to take a bath, change clothes and eat. *Id.* The

grandson received mail at the insured's house, received money from his grandparents when he stopped in and gave the police his grandparent's address as his residence. *Id.* The court also noted that it was not the intention of the grandchild to make his grandparent's home his residence. The court held that these facts showed that there was not a "close, continuing connection" with the insureds and as such the grandson would not qualify as a "resident" under the homeowner's policy. *Id.*

The case at hand is similar in many respects to *Macoby*. Initially the court notes that both Wilmoth and Jamey have declared that Jamey was not a resident of Wilmoth's household at the time of the incident. These assertions are not determinative of the issue of coverage but simply are one of the factors properly considered by the court in assessing coverage. *Armstrong*, 119 Idaho at 901, 811 P.2d at 511 ("Several factors the court considered were . . . the daughter's (the alleged insured) subjective or declared intent with respect to her residence."). Aside from this declared intent, the record contains other objective undisputed facts to support Farm Bureau's claim. Here, the evidence shows that Jamey Kinsey only stops by Wilmoth Kinsey's house "once every week or two weeks." *Deposition of Wilmoth Kinsey* p. 45 l. 25. Even though Jamey grew up on his grandmother's ranch he now considers his girlfriend's house in Hansen to be his "home base." *Id.* at p.36 l. 9. In large part Jamey does not appear to have a permanent residence as such. In fact Jamey stated in his deposition "I don't have an address." *Deposition of Jamey Kinsey* p. 34 l. 13. Additionally, Jamey Kinsey testified that he "bounces around with his buddies", takes trips, hunts, and disappears into to the

mountains for 30 days at time. *Id.* at p. 15 l. 7-11. However, when he is not in the hills he considers himself to be “home” when he is at his girlfriend’s house in Hansen. *Deposition of Wilmoth Kinsey* at p.36 l. 15. When Jamey does stay at his grandmother’s house he stays there “as a guest.” *Deposition of Jamey Kinsey* at p. 14 l. 14.

Jamey’s contact with Wilmoth is very similar to that of the grandson in *Macoby*. As with the grandchild in *Macoby* there is no evidence to suggest that Jamey lived with his grandmother at the time of this incident. Jamey’s residences over his lifetime are certainly relevant evidence in this case. But the issue before the court is whether Jamey was a resident of Wilmoth’s home at the time of the incident pled in Brookbank’s complaint. Establishing that Jamey was once a resident of Wilmoth’s household does not necessarily establish that he remained a resident of her household thereafter. Over the past several years Jamey’s contact with his grandmother has been infrequent. As was the case in *Macoby* Jamey’s level of contact with his grandmother does not show a “close continuing connection” at the time of the incident.

Nevertheless Brookbank argues that the factors used in *Macoby* and *Armstrong* require this court to find that Jamey Kinsey is covered under his grandmother’s insurance policy. The court will address each of these arguments.

1. Storage of Personal Belonging at the Bunkhouse

Brookbank argues that because Jamey Kinsey stores personal belongs such as his work boots, an old couch, CD's, a TV, and an old weight set on Wilmoth's property that this shows the requisite connection to his grandmother's residence. Brookbank also argues that the lack of possessions at his girlfriend's house supports this proposition. The court disagrees. The evidence in the record is that Jamey stored these items at his grandmother's house to "keep it out of the weather." *Deposition of Jamey Kinsey* p. 17 l. 21-22. Mere storage of a few personal belongings in a bunkhouse does not establish Jamey's close connection with the household in question. This is certainly not a bedroom or living quarters that are maintained as such for Jamey. Even if Jamey lived in the bunkhouse at some point in his life, there is no evidence before the court that he has lived there in the recent past. Therefore this factor weighs against Wilmoth Kinsey's home being considered Jamey Kinsey's residence.

2. Continuing Relationship Between the Individual and the Named Insured

Brookbank next argues that because the ranch is basically a "family compound" and that due to the fact that Jamey grew up there and is still welcome it never ceased to be his home. The record before the court does not support this conclusion. Jamey lives a very transient lifestyle. He has traveled the country working several different jobs prior to returning to Idaho in 2001. Moreover, the testimony of both Jamey and his grandmother confirms that he only stayed with her for a short time after he returned to Idaho and has primarily been living with his girlfriend since. In fact Jamey testified that

he has lived with his girlfriend for approximately five or six years. *Deposition of Jamey Kinsey* p. 4. l. 21. Simply because he grew up on the "family compound" and is still welcome there in no way suggests that it is still his residence. As stated above, when Jamey does stay at his grandmother's house he is there as a guest. This history establishes that Jamey has in fact changed his residence.

3. Presence of a Bedroom

Brookbank argues that the presence of personal belongs in the bunkhouse somehow establishes that a bedroom is maintained for Jamey on the ranch. As noted above the mere presence of these items in a bunkhouse is not enough to establish that a bedroom is maintained for Jamey in the bunkhouse. Moreover, Jamey states in his deposition that the bunkhouse building is dilapidated, smells bad and should be torn down. *Jamey Kinsey* p. 16 l. 15-17. This testimony contradicts the assertion that he lived on the property at the time of the incident. As such, the court finds that this factor does not favor coverage in this case.

4. Other contacts with Wilmoth

Brookbank further argues that because Jamey uses his grandmother's house as a permanent mailbox and when licensing his truck, Wilmoth pays his insurance bills from money that he gives her, and she keeps money for him in a safe on the property that he is a resident of her household. He also argues that the fact that the neighbor boys liked to pet his dog shows that he was frequently at the residence.

While the fact that Jamey had money at his grandmother's house, received mail there and licensed his truck there are indicia of a residence they are certainly not determinative of the issue in this case. Due to Jamey's transient lifestyle these arrangements have been made for his convenience. *Jamey Kinsey Deposition* p. 35 l. 14. Simply receiving mail and other correspondence does not make Jamey Kinsey's grandmother's house his residence. The other arrangements aside from receiving mail and legal correspondence, such as storage of money, car registration and payment of insurance, are also for his convenience due to his lifestyle. These facts do not establish that Jamey was a member of Wilmoth's household at the time of the incident. Additionally, the fact that the neighbor children like to pet Jamey's dog establishes only that he had visited his grandmother before the accident and that the neighbors had some familiarity with the dog. It in no way shows Jamey Kinsey actually resided with his grandmother.

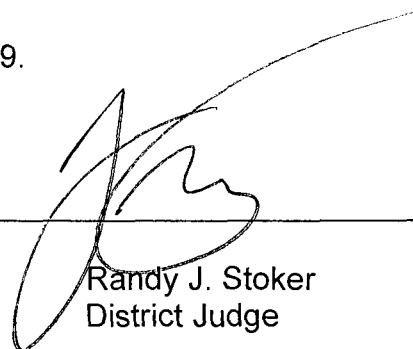
CONCLUSION

Both Jamey Kinsey and Wilmoth Kinsey have made it clear that they do not consider Jamey a resident of Wilmoth Kinsey's household. As noted above this is not determinative of the issue before the court. While both parties may continue to have a close connection vis-à-vis the relationship of grandmother and grandson, they do not have a close continuing connection establishing that Jamey is a resident of Wilmoth's household. It is clear from the record and the intent of the parties that "a living arrangement with some degree of permanence" did not exist between Jamey and

Wilmoth such that he can reasonably be considered a resident of her household at the time of the incident. It was Jamey Kinsey's intention to reside at his girlfriend's house in Hansen. This fact is confirmed by his grandmother's understanding that Jamey's girlfriend's house in Hansen was Jamey's home. The other factors pointed out by Brookbank to not convince the court that Jamey resided with Wilmoth at the time of the incident.

For the reasons stated above the court finds as a matter of law that Jamey Kinsey was not a resident of the Wilmoth Kinsey household at the time of the incident referred to in Brookbank's complaint in CV 2007-4522 and therefore is not eligible for insurance coverage under the Farm Bureau insurance policy at issue in this case. Therefore, Farm Bureau's motion for summary judgment is GRANTED and the cross motion for summary judgment filed by Brookbank is DENIED. A separate Judgment shall enter.

Dated this 10 day of June, 2009.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of June 2009, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Kent Hawkins
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83204-0991

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Jeffrey J. Hepworth
P.O. Box 1806
Twin Falls, ID 83303-0702

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

KRISTINA GLASCOCK


Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT
 Fifth Judicial District
 County of Twin Falls - State of Idaho

JUN 10 2009

By _____ 3:00 P.M.
 _____ Clerk
 _____ Deputy Clerk

FARM BUREAU INSURANCE)
 COMPANY OF IDAHO,)
)
 Plaintiff,)

vs.)

JAMEY KINSEY AND M. WILMOTH)
 KINSEY, d/b/a KINSEY FAMILY)
 LIMITED PARTNERSHIP,)
)
 Defendants.)

CASE NO. CV-08-1597

JUDGMENT

 MICHAEL BROOKBANK)
)
 Intervenor.)

Having entered its Memorandum Opinion in this case, Farm Bureau's motion for summary judgment is GRANTED and the cross motion for summary judgment filed by Brookbank is DENIED.

IT IS HEREBY ADJUDGED that Jamey Kinsey was not a resident of the Wilmoth Kinsey household at the time of the incident referred to in Brookbank's complaint in CV 2007-4522 and therefore is not eligible for insurance coverage under the Farm Bureau insurance policy at issue in this case. Further, Farm Bureau has no duty to defend Jamey Kinsey in the referenced case.

Dated this 10 day of June, 2009.

 Randy J. Stoker
 District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of June 2009, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

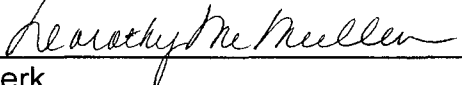
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KRISTINA GLASCOCK



Clerk

Jeffrey J. Hepworth, ISB#3455
 JEFFREY J. HEPWORTH, P.A.
 & ASSOCIATES
 161 5th Avenue South, Suite 100
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 Twin Falls, ID 83303-1806
 Telephone: (208) 734-0702

Attorneys for Intervenor

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED
 2009 JUN 16 PM 4:09
 BY _____ CLERK
 _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL INSURANCE)
 COMPANY OF IDAHO,)
)
 Plaintiff/Respondent,)
)
 v.)
)
 JAMEY KINSEY and M. WILMOTH)
 KINSEY, d/b/a KINSEY FAMILY)
 LIMITED PARTNERSHIP,)
)
 Defendants.)
 _____)
)
 MICHAEL BROOKBANK,)
)
 Intervenor/Appellant.)

Case No. CV 08-1597
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, AND THEIR ATTORNEY, KENT HAWKINS OF THE LAW FIRM OF MERRILL & MERRILL, P.O. BOX 991, POCATELLO, ID, 83204 AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Intervenor/Appellant, Michael Brookbank by and through his attorneys of record, Jeffrey J. Hepworth of the law firm of Jeffrey J. Hepworth, P.A. & Associates, appeal against the above-named Plaintiff/Respondent to the Idaho Supreme Court from the Judgment entered in the above-entitled action on the 10th day of June, 2009, in the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, Case No. CV 08-1597, Honorable Randy J. Stoker presiding.

2. That the Intervenor/Appellant has the right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is an appealable order under and pursuant to the following rules:

a. The Judgment entered against the Intervenor is appealable pursuant to Idaho Appellate Rule 11(a)(1) and (7);

3. Preliminary Statement of the Issue on Appeal.

a. The Trial Court erred as a matter of law when it based its decision on subjective expressions of intent concerning residence and disregarded inconsistent subjective expressions and the objective evidence of residence as required by Idaho Law.

b. The Trial Court erred by placing the burden of proof on the Defendants and Intervenor.

4. Intervenor/Appellant requests the entire reporter's standard transcript as defined in rule 25(a), I.A.R.

5. The Intervenor/Appellant requests the following documents to be included in the Clerk's Record in addition to those automatically included under Rule 28, I.A.R. and those designated by the Appellant/Cross-Respondent in the initial Notice of Appeal:

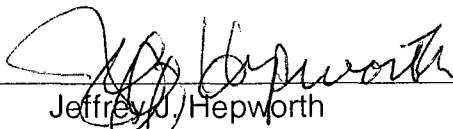
- a. Farm Bureau's Complaint;
- b. The Affidavit of Kent Hawkins supporting Plaintiff/Respondent's Motion for Summary Judgment;
- c. The Affidavit of Jeffrey J. Hepworth supporting Intervenor/Appellant Brookbank's Cross Motion for Summary Judgment and Opposing Plaintiff/Respondent's Summary Judgment Motion.
- d. Transcript of the hearing of June, 8, 2009.

6. I certify:

- a. That a copy of this Notice of Appeal and any request for additional transcript have been served on the reporter.
- b. That the Court Reporter has been paid the estimated fee for preparation of the Reporter's Transcript by the Appellant/Cross-Respondent.
- c. That the estimated fee for preparation of the Clerk's Record has been paid.
- d. That the Appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10th day of June, 2009.

JEFFREY J. HEPWORTH, P.A.
& ASSOCIATES

By 
Jeffrey J. Hepworth
Attorneys for Intervenor/Appellant

CERTIFICATE OF SERVICE

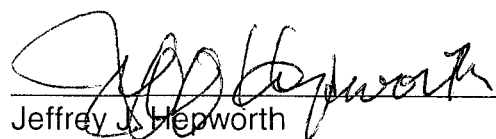
The undersigned, a resident attorney of the State of Idaho, with offices at 161 5TH Avenue South, Suite 100, Twin Falls, Idaho, certifies that on the 11TH day of June, 2009, he caused a true and correct copy of the NOTICE OF APPEAL to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

Kent L. Hawkins
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83204-0991

Hand Delivered _____
U.S. Mail ✓
Fax _____
Fed. Express _____

Sabrina Vasquez
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303-0126

Hand Delivered _____
U.S. Mail ✓
Fax _____
Fed. Express _____



Jeffrey J. Hepworth

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL)
INSURANCE COMPANY OF IDAHO,)
))
Plaintiff/Respondent,)

SUPREME COURT NO. 36607-2009
DISTRICT COURT NO. CV 08-1597

vs)

CLERK'S CERTIFICATE

JAMEY KINSEY and M. WILMOUTH)
KINSEY, d/b/a KINSEY FAMILY LIMITED)
PARTNERSHIP,)
))
Defendants)

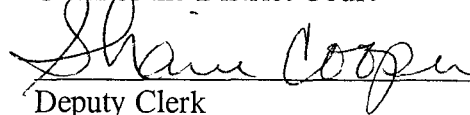
MICHAEL BROOKBANK,)
))
Intervenor/Appellant.)

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that there are no exhibits, offered or admitted in the above-entitled cause.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22nd day of July, 2009.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FARM BUREAU MUTUAL)
INSURANCE COMPANY OF IDAHO,)
)
Plaintiff/Respondent,)

vs)

JAMEY KINSEY and M. WILMOUTH)
KINSEY, d/b/a KINSEY FAMILY LIMITED)
PARTNERSHIP,)
)
Defendants)

_____)
MICHAEL BROOKBANK,)
)
_____)
Intervenor/Appellant.)

SUPREME COURT NO. 36607-2009
DISTRICT COURT NO. CV 08-1597

CERTIFICATE OF SERVICE

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

Jeffery Hepworth
JEFFREY HEPWORTH, P.A.
& ASSOCIATES
P.O. Box 1806
Twin Falls, ID 83303-1806

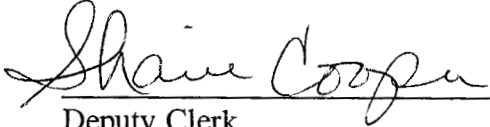
ATTORNEY FOR INTERVENOR/
APPELLANT

Kent Hawkins
MERRILL & MERRILL
CHARTERED
P. O. Box 991
Pocatello, ID 83204-0991

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 22nd
day of July, 2009.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk