

1-24-2008

# Armstrong v. Farmers Ins. Co. of Idaho Order Dckt. 34250

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**LAW CLERK**

**In the Supreme Court of the State of Idaho**

BRIAN ARMSTRONG and GLENDA  
ARMSTRONG, husband and wife,  
  
Plaintiffs-Appellants,  
  
v.  
  
FARMERS INSURANCE COMPANY OF  
IDAHO, an Idaho corporation; CORPORATE  
DOES I-X, whose true names are  
unknown,  
  
Defendants-Respondents.

ORDER GRANTING MOTION  
TO AUGMENT/CORRECT THE  
CLERK'S RECORD

No. 34250

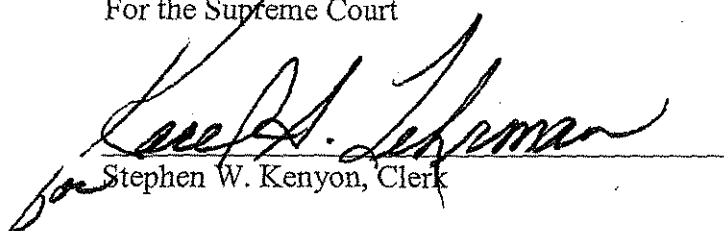
A MOTION TO AUGMENT/CORRECT THE RECORD AND AFFIDAVIT OF APRIL M. LINSOTT IN SUPPORT THEREOF was filed by Appellants on December 21, 2007; therefore good cause appearing,

IT IS HEREBY ORDERED that Appellants' MOTION TO AUGMENT/CORRECT be, and hereby is, GRANTED and the appeal record shall include the documents listed below, copies of which accompanied the motion:

1. A true and correct copy of Exhibit "A", Armstrongs' Protector Plus Homeowner's Insurance Policy Number 91828-0327, originally produced as a one-sided document instead of two-sided, attached to the Affidavit of Douglas S. Marfice In Support of Plaintiffs' Motion for Partial Summary Judgment; and
2. Affidavit of David Nipp, signed and dated January 18, 2005.

DATED this 24<sup>th</sup> day of January, 2008.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

**AUGMENTATION RECORD**

# In the Supreme Court of the State of Idaho

BRIAN ARMSTRONG and GLENDA  
ARMSTRONG, husband and wife,

Plaintiffs-Appellants,

v.

FARMERS INSURANCE COMPANY OF  
IDAHO, an Idaho corporation; CORPORATE  
DOES I-X, whose true names are  
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Defendants-Respondents.

ORDER GRANTING MOTION  
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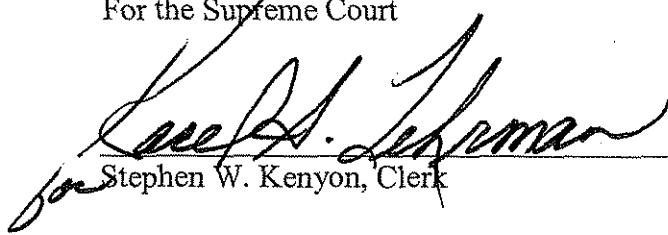
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DATED this 24<sup>th</sup> day of January, 2008.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

DOUGLAS S. MARFICE, ISB #4072  
MICHAEL A. EALY, ISB #5619  
RAMSDEN & LYONS  
618 North 4<sup>th</sup> Street  
Post Office Box 1336  
Coeur d'Alene, Idaho 83816-1336  
Telephone: (208) 664-5818  
Facsimile: (208) 664-5884

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED

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CLERK DISTRICT COURT  
*Douglas S. Marfice*  
DEPUTY J.R.

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BRIAN ARMSTRONG and GLENDA  
ARMSTRONG, husband and wife,

Plaintiffs,

vs.

FARMERS INSURANCE COMPANY OF  
IDAHO, an Idaho corporation; CORPORATE  
DOES I - X, whose true names are unknown,

Defendants.

Case No. CV- 03-9214

**AFFIDAVIT OF DOUGLAS S.  
MARFICE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

STATE OF IDAHO     )  
                                  ) ss.  
County of Kootenai     )

Douglas S. Marfice, having been first duly sworn upon oath, deposes and states:

1. I am an attorney for the Plaintiffs herein, and I have personal knowledge of the matters set forth in this affidavit.
2. I make the Affidavit of my own personal knowledge.
3. Attached hereto is a true and accurate photocopy of the following:

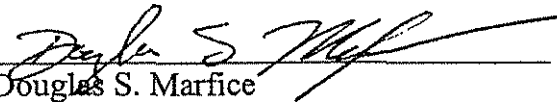
Exhibit "A": The Armstrongs' Protector Plus Homeowner's Insurance Policy  
Number 91828-0327

4. Attached hereto is a true and accurate photocopy of the following:  
Exhibit "B": The Armstrongs' sworn statement of Proof of Loss
5. Attached hereto is a true and accurate photocopy of the following:  
Exhibit "C": Farmers letter of November 14, 2003 denying the Armstrongs' claim.
6. Exhibit C provides in material part:

Specifically, coverage afforded is stated as "Sudden and accidental discharge or overflow of water from within a plumbing, heating or air conditioning system, or from within a household appliance." Your swimming pool is not part of a plumbing, heating or air conditioning system, nor is it a household appliance. Therefore, our original decision to decline coverage will remain.


7. Attached hereto is a true and accurate photocopy of the following:  
Exhibit "D": excerpts from the deposition transcript of Brian Armstrong and exhibits thereto.
8. Attached hereto is a true and accurate photocopy of the following:  
Exhibit "E": excerpts from the deposition transcript of Glenda Armstrong and exhibits thereto.

FURTHER YOUR AFFIANT SAYETH NOT.

  
Douglas S. Marfice



AND SWORN to me before this 4th day of January 2005.

  
Notary Public for Idaho  
Residing at Coeur d' Alene  
My Commission expires: 11-2-09

CERTIFICATE OF SERVICE

I hereby certify that on the 4<sup>th</sup> day of January 2005, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Patrick E. Miller, Esq.  
701 Front Avenue, Suite 101  
PO Box E  
Coeur d'Alene ID 83816-0328

US Mail  
 Overnight Mail  
 Hand Delivered  
 Facsimile (208) 664-6338

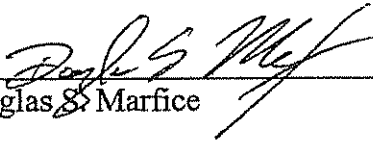
  
\_\_\_\_\_  
Douglas S. Marfice

EXHIBIT "A"



Non-Assessable

4TH EDITION

**YOUR PROTECTOR PLUS PACKAGE POLICY**

**IDAHO**

Farmers Insurance Group of Companies®  
4680 Wilshire Boulevard, Los Angeles, California 90010

Dear customer:

The member Companies and Exchanges of the Farmers Insurance Group of Companies would like to take this opportunity to say "Thank You" for your recent business.

Your needs for insurance protection are very important to us. We are committed to providing you with the best customer service at the lowest cost possible.

If you haven't already done so, please take a moment to review your policy to assure you understand the coverages. This is a very important document that you'll want to keep in a safe place.

If you have any questions regarding your policy or if you would like information about other coverages, feel free to contact me.

Again, thank you for choosing us for your insurance protection. We look forward to serving you.

Sincerely,

*David R. Nipp LUTCF*

Your Farmers® Agent

(208) 773-8484

<http://www.farmersinsurance.com>





DECLARATIONS HOMEOWNERS

Replaces all prior Declarations, if any

PROTECTOR PLUS

FARMERS INSURANCE COMPANY OF IDAHO, POCATELLO, IDAHO

TRANSACTION TYPE: NEW BUSINESS

The Policy Period is effective (not prior to time applied for) at described residence premises.

Table with columns: POLICY NUMBER, POLICY PERIOD (FROM, TO, STANDARD TIME), POLICY EDITION

ISSUING OFFICE: P.O. BOX 4820 POCATELLO, ID 83205

This policy will continue for successive policy periods, if: (1) we elect to continue this insurance, and (2) if you pay the renewal premium for each successive policy period as required by our premiums, rules and forms then in effect.

INSURED'S NAME & MAILING ADDRESS: BRIAN L ARMSTRONG AND GLENDA A ARMSTRONG... LOCATION OR DESCRIPTION OF RESIDENCE PREMISES:

DESCRIPTION OF PROPERTY

Table with columns: YEAR OF CONSTRUCTION, CONSTRUCTION TYPE, ROOF TYPE, NUMBER OF UNITS, OCCUPANCY

COVERAGES - We provide insurance only for those coverages indicated by a specific limit or other notation.

Table with columns: SECTION I - PROPERTY (A, B, C, D), SECTION II - LIABILITY (E, F), ANNUAL PREMIUM

ENDORSEMENTS

Table with columns: ENDORSEMENT NUMBER, EDITION NUMBER, DESCRIPTION

DISCOUNTS

NEW HOME, AUTO/HOME, AND NON SMOKER DISCOUNTS HAVE BEEN APPLIED TO YOUR POLICY.

DEDUCTIBLES

\$500 Deductible is applicable to covered losses under Coverage A, B, C. THE FOLLOWING DEDUCTIBLE(S) APPLIES TO THE PERILS NAMED: GLASS: \$500

POLICY ACTIVITY

Table with columns: Amount, Description (Previous Balance, Premium, Fees, Payments or Credits, Total)

This Declarations page is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

AGENT: David R. Nipp LUTCF AGENT PHONE: (208) 773-8484 AGENT NUMBER: 75 67 330

Countersignature

Handwritten signature of E. Marshall

Authorized Representative



# Your Protector Plus Homeowners Package Policy

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This policy is a legal contract between you (the policyholder) and us (the Company).  
IT CONTAINS CERTAIN EXCLUSIONS.

READ YOUR POLICY CAREFULLY.



## AGREEMENT

We will provide the insurance described in this policy. In return you will pay the premium and comply with all policy conditions.

## DEFINITIONS

Throughout this policy, "you" and "your" mean the "named insured" shown in the Declarations and spouse if a resident of the same household. "We," "us" and "our" mean the Company named in the Declarations which provides this insurance. In addition, certain words appear in bold type. They are defined as follows:

1. **Actual Cash Value** - means replacement cost of the property at the time of loss, less depreciation.
2. **Aircraft** - means any device used or designed for flight including self-propelled missiles and spacecraft, except model or hobby aircraft not used or designed to carry people or cargo.
3. **Annual aggregate limit** - means the total amount we will pay for all **occurrences** which happen in each 12 month period, beginning with the inception date of this policy, regardless of the number of such **occurrences**.
4. **Bodily injury** - means bodily harm, sickness or disease, including care, loss of services and death resulting from that injury.
5. **Business** - means any full or part-time trade, profession or occupation.
6. **Business property** - means property pertaining to or intended for use in **business**.
7. **Earthquake** - means shaking or trembling of the earth, whether caused by volcanic activity, tectonic processes or any other cause.
8. **Earth Movement** - means movement of earth, including, but not limited to the following:
  - a. **earthquake**, landslide or mudflow, all whether combined with **water** or not.
  - b. collapse, settling, cracking, shrinking, bulging, subsidence, erosion, sinking, rising, shifting, expanding, or contracting of earth, all whether combined with **water** or not.
  - c. volcanic eruption, including explosion, lava flow and volcanic action.
9. **Insured** - means you and the following **persons** if permanent residents of your household:
  - a. your relatives,
  - b. anyone under the age of 21,Under Section II - Liability, **insured** also means:
  - c. any **person** or organization legally responsible for animals or watercraft owned by you, or anyone included in 9a or 9b, and covered by this policy. Any **person** or organization using or having custody of these animals or watercraft in the course of any **business** or without permission of the owner is not an **insured**.
  - d. any **person** while employed by you or anyone in 9a or 9b with respect to any vehicle covered by this policy.
10. **Insured location** - means:
  - a. the **residence premises**;
  - b. any other premises you acquire during the policy period for use as a residence;
  - c. that part of any other premises shown in the Declarations which you use as a residence;
  - d. any premises you use in connection with the premises included in 10a, 10b or 10c.
  - e. that part of a premises not owned by any **insured** but where an **insured** is temporarily residing.
  - f. that part of a premises occasionally rented to any **insured** for non-**business** purposes.
  - g. vacant land, other than farm land, owned by or rented to any **insured** and shown in the Declarations.
  - h. land owned by or rented to you and on which you are building a one or two family dwelling to be used as your residence.
  - i. cemetery plots or burial vaults of an **insured**.
11. **Motor vehicle** - means:
  - a. a motorized land vehicle, including a trailer, semi-trailer or motorized bicycle, designed for travel on public roads.
  - b. any vehicle while being towed or carried on a vehicle described in 11a.
  - c. any other motorized land vehicle designed for recreational use off public roads.



Wall-to-wall carpeting attached to the structure is part of the structure.

We do not cover land or the value of land, including land on which the separate structure is located or the cost to restore, replace, repair or rebuild land. If a covered loss causes damage to a separate structure and to the land on the **residence premises**, we do not cover any increased cost to repair or rebuild the separate structure because of damage to the land.

We do not cover separate structures which are intended for use in **business** or which are actually used in whole or in part for **business** purposes.

### Coverage C - Personal Property

We cover personal property owned or used by an **insured** while it is anywhere in the world. At your request after a loss we will also cover personal property:

- a. owned by others while the property is on the part of the **residence premises** occupied by an **insured**. However, property of tenants not related to the **insured** is not covered.
- b. owned by a guest while the property is in any residence occupied by an **insured**.
- c. owned by and in the physical custody of a **residence employee** while in the service of an **insured** anywhere in the world.

### Special Limits On Certain Personal Property

The limits shown below do not increase the Coverage C limit of insurance shown in the Declarations. The limit for each numbered group is the total limit for any one loss for all property in that group.

1. \$1,000 or 10% of Coverage C limit (whichever is greater) on personal property usually located at an **insured's** residence, other than the **residence premises**.

This limit does not apply to personal property in a newly acquired principal residence for 45 days after moving begins.

2. \$100 on money, bank notes, medals, coins, bullion, platinum, gold and silver other than goldware and silverware, and collections of all such property.
3. \$1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamp collections.
4. \$1,000 on watercraft, and windsurfers, including their trailers, furnishings, equipment and outboard motors.
5. \$1,000 on trailers not used with watercraft.
6. Jewelry, watches, precious and semi-precious stones, and furs, including articles for which fur represents the principal value, are insured for accidental direct physical loss or damage. The following exclusions and limitations apply:
  - a. on loss caused by theft, \$1,000 on any one article and \$2,500 total limit.
  - b. on loss caused by perils named under Coverage C of this policy other than theft, the limit shown in the Declaration for Coverage C will apply.
  - c. on loss caused by perils not named and not excluded in this policy, \$1,000 on any one article and \$2,500 total limit.
  - d. We do not cover loss or damage resulting from any process of refinishing, renovating, repairing, restoration or retouching; moths, vermin, insects, wear and tear, deterioration, inherent defects or faulty manufacturing.
7. \$2,500 on theft of silverware, goldware and pewterware, including articles for which such metal represents the principal value.
8. firearms are insured for accidental direct physical loss or damage. The following exclusions and limitations apply:
  - a. \$1,000 on loss caused by theft.
  - b. on loss caused by perils named under Coverage C of this policy other than theft, the limit shown in the Declarations for Coverage C will apply.
  - c. \$1,000 on loss caused by perils not named and not excluded in this policy.
  - d. We do not cover loss or damage resulting from any process of refinishing, renovating, repairing, restoration or retouching; dampness or extremes in temperatures; vermin, insects, wear and tear, deterioration, inherent defects, faulty manufacturing, rust, fouling or explosion; marring, scratching, tearing or denting unless caused by fire, thieves or accidents to conveyances.



The limit of insurance, including debris removal, for any one loss will not exceed 5% of the limit applying to the dwelling, nor more than \$500 for any one tree, shrub or plant. This coverage is in addition to the limit applying to the dwelling.

- 4. *Fire Department Service Charge.* We pay up to \$500 as an additional amount of insurance for service charges made by a fire department when called to protect covered property from an insured loss. In no event will we pay more than \$500 in charges resulting from any one service call. No deductible applies to this coverage.
- 5. *Emergency Removal of Property.* We pay for direct loss from any cause to covered property:
  - a. while being removed from a premises endangered by a loss covered under LOSSES INSURED, and
  - b. while removed for not more than 30 days from the date of removal.
 This coverage does not change the amount of insurance applying to the covered property.
- 6. *Credit Card, Fund Transfer Card, Forgery and Counterfeit Money.* We pay up to \$1,500 as an additional amount of insurance for loss to an **insured** caused by:
  - a. theft or unauthorized use of credit or fund transfer cards issued to an **insured**.
  - b. forgery or alteration of a check or other negotiable instrument.
  - c. acceptance in good faith of counterfeit United States or Canadian paper money.

No deductible applies to a, b or c above.

We do not cover:

- a. **business** pursuits or dishonest acts of any **insured**.
- b. use of any card by a resident of your household or any **person** entrusted with any card if an **insured** has not met the terms under which such card is issued.

Defense of a claim or suit against any **insured** or any **insured's** bank for liability under this coverage:

- a. We may investigate and settle any claim or suit we consider proper. Our duty to defend any claim or suit ends when we pay a loss equal to the limit of insurance.
- b. We will defend at our expense and with attorneys of our choice a claim made or suit brought against any **insured** for payment under Credit or Fund Transfer Card Coverage.
- c. At our option and expense we may defend the **insured** or the **insured's** bank against a suit to enforce payment under Forgery Coverage.

- 7. *Collapse of Buildings.* We cover accidental direct physical loss to covered property covered in A and B if caused by collapse which occurs due to:
  - a. weight of ice, snow, sleet or rain which collects on a roof;
  - b. weight of people, contents or equipment while on a roof.
- 8. *Freezer Food Spoilage.* We will pay for the cost of loss or damage to food in a freezer on the **residence premises** which thaws due to interruption of power or other utility service which originates off the **residence premises**.
- 9. *Guaranteed Replacement Cost Coverage - Buildings.* We will settle covered loss to buildings under Coverage A - Dwelling and Coverage B - Separate Structures at replacement cost regardless of the limits of insurance shown on the Declarations Page, subject to the following provisions:
  - a. You have insured your dwelling and separate structures to 100% of their replacement cost as determined by our Building Replacement Cost Guide.
  - b. You have accepted each annual adjustment in building amounts in accordance with Value Protection Clause in the policy.
  - c. You have notified us within 90 days of the start of any physical changes which increase the value of your insured buildings by \$5,000 or more, and pay any additional premium. This includes any new structures and any additions to or remodeling of your dwelling or other structures on the **residence premises**.
  - d. You have complied with all of the "Loss Settlement" provisions shown in Condition 3 of Section I of the policy applicable to Coverages A and B.

We do not cover any costs required to replace, rebuild, stabilize or otherwise restore the land.

## LOSSES INSURED

### Coverage A - Dwelling

### Coverage B - Separate Structures

We insure for accidental direct physical loss to property described in Coverage A and B, except as provided in Section I - Losses Not Insured.



- 14. Sudden and accidental tearing apart, cracking, burning or bulging of a steam, hot water or air conditioning system, or appliance for heating **water**.  
This peril does not include loss caused by or resulting from freezing.
- 15. Freezing of a plumbing, heating, air conditioning system or household appliance.  
This peril does not include loss on the **residence premises** while the dwelling is unoccupied *unless* you have used reasonable care to:
  - a. maintain heat in the building, or
  - b. shut off the **water** supply and drain the system and appliance of **water**.
- 16. Sudden and accidental damage from artificially generated electrical current.  
This peril does not include loss to a tube, transistor, microchip or similar electronic component.

### SECTION I - LOSSES NOT INSURED

Applying to Coverage A and B - Dwelling and Separate Structures and Coverage C - Personal Property

We do not insure for loss either consisting of, or caused directly or indirectly by:

#### 1. Earth Movement.

Acts or omissions of **persons** can cause, contribute to or aggravate **earth movement**. Also, **earth movement** can occur naturally to cause loss, or combine with acts or omissions of **persons** to cause loss. Whenever **earth movement** occurs, the resulting loss is always excluded under this policy, however caused; except we do cover direct loss by fire or explosions resulting from **earth movement**.

The following examples are set forth to help you understand this exclusion and are not meant to be all-inclusive.

##### EXAMPLE 1:

Rain falls on soil inadequately compacted or maintained by a builder, neighbor or you. As a result, **earth movement** occurs, causing loss to the dwelling or personal property. Such loss is not covered by this policy.

##### EXAMPLE 2:

Cracks occur in your dwelling or separate structure because it is built on natural or fill soil which is expansive and the dwelling or structure is not designed or constructed to withstand the soil movement. Such loss is not covered under this policy.

##### EXAMPLE 3:

**Water** leaks from a pipe which causes settling, and the settling causes loss to the dwelling, separate structure, or personal property. Such loss is not covered by this policy, regardless of the cause or causes of the **water** leak.

#### 2. Water damage.

Acts or omissions of **persons** can cause, contribute to or aggravate **water damage**. Also **water damage** can occur naturally to cause loss or combine with acts or omissions of **persons** to cause loss. Whenever **water damage** occurs, the resulting loss is always excluded under this policy, however caused; except we do cover direct loss to the dwelling, separate structures, or personal property if caused by fire or explosion resulting from water damage.

The following examples are set forth to help you understand this exclusion and are not meant to be all-inclusive.

##### EXAMPLE 1:

Rain **water** collects on or soaks into the ground surface. Because of faulty design, construction or maintenance of the **residence premises**, your neighbor's property or **water** diversion devices, the **water** causes loss to the dwelling, separate structure, or personal property. Such loss is not covered by this policy.

##### EXAMPLE 2:

A pipe under your sink breaks, and **water** damages your wallpaper, carpeting and personal property. The **water** also gets under the dwelling or separate structure causing **earth movement** which results in cracking of the foundation and walls. The loss to the wallpaper, carpeting and personal property is covered, but the loss to the foundation and walls is not covered by this policy.

##### EXAMPLE 3:

**Water** which has backed up through sewers or drains, or **water** below ground level causes loss to the dwelling, separate structure or personal property. Such loss is not covered by this policy.



## SECTION I - CONDITIONS

### 1. *Insurable Interest and Limit of Insurance.*

Even if more than one **person** has an insurable interest in the covered property, we pay the smallest of the following amounts.

- a. an amount equal to the **insured's** interest, or
- b. the applicable limit of insurance.

### 2. *Your Duties After Loss.*

If a covered loss occurs, you will perform the following duties:

- a. give written notice to us or our agent without unnecessary delay. In case of theft, also notify the police. In case of loss under the Credit or Fund Transfer Card Coverage, also notify the issuer of the card.
- b. protect the property from further damage. Make any emergency repairs needed to protect the property from further damage. Keep records of repair costs.
- c. make a list of all damaged or destroyed personal property showing in detail the quantity, description, **actual cash value** and amount of loss. Attach all bills, receipts and related records that support your claim.
- d. as often as we reasonably require:
  - (1) exhibit damaged property.
  - (2) provide us with records and documents we may request, including banking or other financial records, if obtainable and permit us to make copies.
  - (3) submit to examination under oath and sign a transcript of same.
- e. send us within 60 days after our request your signed sworn statement showing:
  - (1) time and cause of loss,
  - (2) interest of the **insured** and all others in the property involved,
  - (3) all legal claims against the property involved,
  - (4) other insurance which may cover the loss,
  - (5) changes in title or occupancy of the property during the term of the policy,
  - (6) specifications and detailed repair estimates of any damaged building,
  - (7) a list of damaged or destroyed personal property described in 2c,
  - (8) receipts and records that support additional living expenses and loss of rents,
  - (9) evidence which states the amount and cause of loss to support a claim under Credit or Fund Transfer Card, Forgery and Counterfeit Money Coverage.

### 3. *Loss Settlement.*

#### *Coverage A and B*

Covered loss to Buildings under Coverage A and B will be settled at replacement cost without deduction for depreciation, subject to the following methods:

- (1) Settlement under replacement cost will not be more than the *smallest* of the following:
  - (a) the replacement cost of that part of the building damaged for equivalent construction and use on the same premises.
  - (b) the amount actually and necessarily spent to repair or replace the building intended for the same occupancy and use.
- (2) When the cost to repair or replace is *more* than \$1,000 or *more* than 5% of the limit of insurance in this policy on the damaged or destroyed building, whichever is less, we will pay no more than the **actual cash value** of the damage *until* repair or replacement is completed.
- (3) At your option, you may make a claim under this policy on an **actual cash value basis** for loss or damage to buildings. Within 180 days after loss you may make a claim for any additional amount on a replacement cost basis if the property has been repaired or replaced.

#### *Coverage C -*

- a. *The following types of property will be settled at full current cost or repair or replacement at the time of loss, without deduction for depreciation.*
  - (1) personal property and structures that are not buildings.
  - (2) carpeting, domestic appliances, awnings, outdoor equipment and antennas, all whether or not attached to buildings.



- 12. *Suit Against Us.* We may not be sued unless there has been full compliance with all the terms of this policy. Suit on or arising out of this policy must be brought within one year after the loss occurs.
- 13. *Our Options.* We may repair or replace the damaged property with equivalent property. We may also take all or part of the damaged property at the agreed or appraised value. We will give you written notice of our intention within 30 days after receipt of your signed sworn statement of loss.
- 14. *Loss Payment.* We will adjust all losses with you. We will pay you unless another payee is named in the policy. We will pay within 60 days after:
  - a. we reach agreement with you, or
  - b. a court judgment, or
  - c. an appraisal award.
 A loss payment will not reduce the applicable limit of insurance.
- 15. *Abandoned Property.* We need not accept property abandoned by an **insured**.
- 16. *Mortgage Clause.* The word "mortgagee" includes trustee or loss payee. If a mortgagee is named in this policy, a covered loss will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of the mortgagees.
 

If we deny your claim, such denial will not apply to a mortgagee's valid claim if the mortgagee:

  - a. knows and notifies us of any change of ownership, occupancy or substantial change in risk.
  - b. pays on demand any premium due if you have failed to do so.
  - c. submits a signed, sworn statement of loss within 60 days after we notify the mortgagee of your failure to do so.
 Policy conditions relating to *Other Insurance, Appraisal, Suit Against Us and Loss Payment* apply to the mortgagee.
 

We will give the mortgagee 10 days notice before cancelling this policy.

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

  - a. we have right of recovery against any party responsible for the loss, or
  - b. at our option, we may pay off the entire mortgage debt to the mortgagee. In this event, we receive full transfer of the mortgage.
 A mortgagee's claim will not be impaired by transfer of a right of recovery.
- 17. *No Benefit to Bailee.* This insurance will not benefit any **person** or organization who may be caring for or handling property for a fee.

## SECTION II - LIABILITY

### Coverages

#### Coverage E - Personal Liability

We will pay those damages which an **insured** becomes legally obligated to pay because of **bodily injury, property damage** or personal injury resulting from an **occurrence** to which this coverage applies. Personal injury means any injury arising from:

- (1) false arrest, imprisonment, malicious prosecution and detention.
- (2) wrongful eviction, entry, invasion of rights of privacy.
- (3) libel, slander, defamation of character.
- (4) discrimination because of race, color, religion or national origin. Liability prohibited by law is excluded. Fines and penalties imposed by law are covered.

At our expense and with attorneys of our choice, we will defend an **insured** against any covered claim or suit. We are not obligated to pay defense costs, including attorneys' fees of any claim or suit where you select an attorney not chosen by us because there is a dispute between you and us over coverage. We may investigate and settle any claim or suit that we consider proper. Our obligation to defend any claim or suit ends once we have paid our limit of liability.

#### Coverage F - Medical Payments To Others

We will pay the necessary medical expenses for services furnished to a **person** other than you or any resident of your household within 3 years from the date of an **occurrence** causing **bodily injury**. Medical expenses mean reasonable charges for medical, surgical, x-ray and dental services, prosthetic devices, eyeglasses hearing aids, pharmaceuticals, ambulance, hospital, licensed nursing and funeral services.

This coverage applies to:

- (a) **persons** on the **insured** location with permission of an **insured**; or





10. Personal injury arising from or during the course of civic or public activities performed for pay by an **insured**.
11. Personal injury to any resident of the **residence premises**.
12. Any loss, cost, or expense resulting from the clean-up, detoxification, or treatment of any site used by you or any **person** acting on your behalf for the disposal, storage, handling, processing or treatment of waste.

### Applying To Coverage F - Medical Payments To Others

We do not cover **bodily injury**:

1. To you or any resident of your **residence premises** except a **residence employee**.
2. To a **residence employee** who is off the **insured location** and not in the course of employment by an **insured**.
3. To any person eligible to receive benefits provided or mandated under any workers' compensation, occupational disease or non-occupational disability law.
4. Resulting from any **nuclear hazard**.

### Applying To Coverage E and F - Personal Liability and Medical Payments To Others

We do not cover **bodily injury**, **property damage** or personal injury which:

1. arises from or during the course of **business** pursuits of an **insured**.

But we do cover:

- a. that part of a residence of yours which is rented or available for rent:
    - (1) on an occasional basis for sole use as a residence.
    - (2) to no more than two roomers or boarders for sole use as a residence.
    - (3) as an office, studio or private garage.
  - b. part-time services performed directly by an **insured** under age 21 who is a resident of your household. "Part-time" means no more than 20 hours per week.
2. results from the rendering or failure to render **business** or professional services.
  3. is either:
    - a. caused intentionally by or at the direction of an **insured**; or
    - b. results from any **occurrence** caused by an intentional act of any **insured** where the results are reasonably foreseeable.
  4. results from the legal liability of any **insured** because of home care services provided to any **person** on a regular basis by or at the direction of:
    - a. any **insured**;
    - b. any employee of any **insured**;
    - c. any other **person** actually or apparently acting on behalf of any **insured**.

Regular basis means more than 20 hours per week.

This exclusion does not apply to:

- a. home care services provided to the relatives of any **insured**;
  - b. occasional or part time home care services provided by any **insured** under 21 years of age.
5. results from an **insured** transmitting a communicable (including sexually transmitted) disease.
  6. results from an existing condition on an uninsured location owned by or rented to an **insured**.
  7. results from the ownership, maintenance, use, loading or unloading of:
    - a. **aircraft**
    - b. **motor vehicles**
    - c. jet skis and jet sleds or
    - d. any other watercraft owned or rented to an **insured** and which:
      - (1) has more than 50 horsepower inboard or inboard-outdrive motor power; or
      - (2) is powered by one or more outboard motors with more than 25 total horsepower; or
      - (3) is a sailing vessel 26 feet or more in length.



- c. cooperate with and assist us in any matter relating to a claim or suit.
  - d. under *Damage to Property of Others Coverage*, send us a sworn statement of loss within 60 days of the loss. Also exhibit any damaged property which is within the **insured's** control.
  - e. the **insured** will not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense except First Aid Expenses.
4. *Duties of an Injured Person - Coverage F - Medical Payments to Others.* The injured **person** or someone acting on behalf of the injured **person** will:
- a. give us written proof of claim as soon as possible, under oath if required.
  - b. authorize us to obtain medical records and reports.

The injured **person** will submit to physical examination by a doctor we choose as often as we reasonably require.

5. *Payment of Claim - Coverage F - Medical Payments to Others.* Payment under this coverage is not an admission of liability by an **insured** or us.
6. *Suit Against Us.* We may not be sued unless there has been full compliance with the terms of this policy. No one has any right to make us a party to a suit to determine the liability of a **person** we insure. We may not be sued under Coverage E - Personal Liability until the obligation of the **insured** has been determined by final judgment or agreement signed by us.
7. *Bankruptcy of an Insured.* Bankruptcy or insolvency of an **insured** will not relieve us of our duties under this policy.
8. *Other Insurance - Coverage E - Personal Liability.* This insurance is excess over any other valid and collectible insurance. But if other insurance is specifically written as excess coverage over this policy, the limit of this policy applies first.

If other insurance is written by us, only the highest limit of any one policy applies to the loss.

## GENERAL CONDITIONS

### Applying To The Entire Policy

- 1. *Entire Contract.* This policy, the Declarations and any endorsements include all the agreements between you and us relating to this insurance.
- 2. *Policy Period.* This policy applies only to loss under Section I or **bodily injury, property damage** or personal injury under Section II which occurs during the policy period as shown in the Declarations.
- 3. *Concealment or Fraud.* This entire policy is void if any **insured** has knowingly and willfully concealed or misrepresented any material fact or circumstance relating to this insurance before or after the loss.
- 4. *Coverage Changes.* We may change this policy or replace it to conform to coverage currently in use. If we broaden coverages without charge during or within 60 days prior to the policy period, the broadened coverage will apply immediately. If we restrict any coverages, these restrictions will not apply until the next renewal date. The change or new policy will be delivered to you or mailed to you at your mailing address shown on the Declarations at least 30 days before its effective date.

No other change or waiver in this policy is valid except by endorsement, new Declarations, or new policy issued by us.

If a premium adjustment is necessary, we will make the adjustment as of the effective date of the change.

5. *Cancellation.*
- a. You may cancel this policy by:
    - (1) returning it to us, or
    - (2) notifying us in writing when cancellation is to take effect.
  - b. We may cancel this policy by mailing or delivering written notice to you, or your representative. Such notice will be mailed or delivered to the last address known to us. The mailing of it will be sufficient proof of notice.

### Cancellation Reasons

We may cancel this policy only for the following reasons:

- (1) Non-payment of premium, whether payable to us or our agent. We may cancel at any time by notifying you at least 10 days before the date cancellation takes effect.



**RECIPROCAL PROVISIONS**

**(Applicable Only If This Policy Is Issued By The Fire Insurance Exchange Or Farmers Insurance Exchange)**

This policy is made and accepted in consideration of your premium payment to us. It is also in consideration of the power of attorney you signed as part of your application and the information you gave to us on your application. Some of your statements actually become a part of the policy which we call "The Declarations."

When you signed the power of attorney authority on your application, you authorized the Underwriters Association to execute interinsurance policies between you and other subscribers.

Nothing in this policy is intended, or shall be construed, to create either:

1. A partnership or mutual insurance association.
2. Any joint liability.

We may sue or be sued in our own name, as though we were an individual, if necessary to enforce any claims which arise under this policy. In any suit against us, service of process shall be upon the Underwriters Association, Attorney-in-Fact.

Membership fees which you pay are not part of the premium. They are fully earned when you are granted membership and coverage is effective. They are not returnable. However, they may be applied as a credit to membership fees required of you for other insurance which we agree to write.

We hold the Annual Meeting of the members of the Fire Insurance Exchange at our Home Office at Los Angeles, California, on the first Monday following the 15th day of March of each year at 10:00 a.m. If this policy is issued by the Farmers Insurance Exchange, we hold such meeting at the same place on the same day each year at 2:00 p.m.

The Board of Governors may elect to change the time and place of the meeting. If they do so, you will be mailed a written or printed notice at your last known address at least ten (10) days before such a time. Otherwise, no notice will be sent to you.

The Board of Governors shall be chosen by subscribers from among yourselves. This will take place at the Annual Meeting or at any special meeting which is held for that purpose. The Board of Governors shall have full power and authority to establish such rules and regulations for our management as are not inconsistent with the subscriber's agreements.

Your premium for this policy and all payment made for its continuance shall be payable to us at our Home Office or such location named by us in your premium invoice.

The funds which you pay shall be placed to your credit on our records. They will be applied to the payment of your proportion of losses and expenses and to the establishment of reserves and general surplus. The Board of Governors or its Executive Committee has the authority to deposit, withdraw, invest, and reinvest such funds. You agree that any amount which the Board of Governors allocates to our surplus fund may be retained by us. Also, after provision is made for all of our liabilities, it may be applied to any purpose deemed proper and advantageous to you and other policyholders.

This policy is non-assessable.

This policy shall not be effective unless countersigned on the Declarations Page by a duly authorized representative of the Company named on the Declarations.

The Company named on the Declarations has caused this policy to be signed by the Officers shown below.

**FIRE INSURANCE EXCHANGE®**  
by Fire Underwriters Association,  
Attorney-in-Fact

**FARMERS INSURANCE EXCHANGE®**  
by Farmers Underwriters Association,  
Attorney-in-Fact

**MID-CENTURY INSURANCE COMPANY®**

Farmers Insurance Company of Arizona  
Farmers Insurance Company of Idaho  
Farmers Insurance Company of Oregon  
Illinois Farmers Insurance Company  
Farmers Insurance Company, Inc.  
Farmers Insurance of Columbus, Inc.

  
Secretary

  
Vice President



EXTENDED REPLACEMENT COST AND BUILDING ORDINANCE OR LAW COVERAGE ENDORSEMENT PROTECTOR PLUS POLICY

E6047a 1st Edition

When this endorsement is attached to your policy, the following provisions apply:

Extended Replacement Cost - Coverage A

Under Section I - Property, Additional Coverages, Item 9. Guaranteed Replacement Cost Coverage - Buildings is deleted and replaced with the following:

9. Extended Replacement Cost Coverage - Coverage A. We will pay to repair or replace covered loss under Coverage A - Dwelling up to 125% of the limits of insurance for Coverage A - Dwelling.

You must agree to and comply with the following additional policy provisions:

- a. You must insure your dwelling to 100% of the replacement cost.
b. You must accept each annual adjustment in building amounts in accordance with Value Protection Clause in the policy.
c. You must notify us within 90 days of the start of any physical changes which increase the value of your insured buildings by \$5,000 or more, and pay any additional premium. This includes any new structures and any additions to or remodeling of your dwelling on the residence premises.

We do not cover any costs required to repair, replace, rebuild, stabilize or otherwise restore the land.

This coverage does not apply to Coverage B - Separate Structures.

Under Section I - Property, Conditions, 3. Loss Settlement, Coverage A and B is deleted and replaced with the following:

3. Loss Settlement.

Coverage A and Coverage B

Covered loss to buildings under Coverage A - Dwelling and Coverage B - Separate Structures will be settled at replacement cost without deduction for depreciation, subject to the following methods:

- 1. Settlement under replacement cost will not be more than the smallest of the following:
a. the limit of insurance under this policy that applies to the damaged or destroyed dwelling or separate structure.
b. the replacement cost of that part of the building damaged for equivalent construction and use on the same premises.
c. the amount actually and necessarily spent to repair or replace the building intended for the same occupancy and use.
2. When the cost to repair or replace is more than \$1,000 or more than 5% of the limit of insurance in this policy on the damaged or destroyed building, whichever is less, we will pay no more than the actual cash value of the damage until repair or replacement is completed.
3. At your option, you may make a claim under this policy on an actual cash value basis loss or damage to buildings. Within 180 days after loss you may make a claim for any additional amount on a replacement cost basis if the property has been repaired or replaced.

This endorsement replaces any Guaranteed Replacement Cost provision which is currently in your policy.

Building Ordinance or Law Coverage

Under Section I - Property, Losses Not Insured, Item 5. is deleted.

Enforcement of any ordinance or law regulating construction, repair or demolition of a building or other structure, unless endorsed on this policy.



**ENDORSEMENT AMENDING DEBRIS REMOVAL  
COVERAGE AND POLLUTION EXCLUSION**

**E6018**  
1st Edition

When this endorsement is attached to your policy the following provisions apply:

**SECTION I - PROPERTY - ADDITIONAL COVERAGES**

1. *Debris Removal* is deleted and replaced with the following:

1. *Debris Removal*. We will pay your reasonable expenses to remove debris caused by a covered loss to covered property under SECTION I - PROPERTY. However, we will not pay any expenses incurred by you or anyone acting on your behalf to:

- a. extract **pollutants** from land or water; or
- b. remove, restore or replace polluted land or water.

If the amount of loss, including debris removal expense exceeds the limit of insurance, we will pay up to an additional 5% of the limit of insurance on the damaged property.

**SECTION II - LIABILITY - EXCLUSIONS**

Item 8 (Item 12 in Protector Plus) under SECTION II - EXCLUSIONS - Applying to Coverage E - Personal Liability is deleted and replaced with the following:

8. (12) A. We do not cover **bodily injury** or **property damage** resulting from the actual, alleged or threatened discharge, dispersal, seepage, release, migration or escape of **pollutants**:

- (1) at or from the **insured location**;
- (2) at or from any premises, site or location which is or was at any time owned or occupied by or rented or loaned to you or any **insured**;
- (3) at or from any premises, site or location which is or was at any time used by or for you or any **person** acting on your behalf for the handling, storage, disposal, processing or treatment of any **pollutant**;
- (4) which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for you or any **person** or organization for whom you may be legally responsible; or
- (5) at or from any premises, site or location on which you or any **person** or organization acting directly or indirectly on your behalf are performing operations to:
  - (a) transport any **pollutant** on or to any site or location used for the disposal, storage, handling, processing or treatment of **pollutants**; or
  - (b) test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**.

B. We do not cover any loss, cost or expense arising out of any:

- 1. Request, demand, or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**;
- 2. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants**.

**Pollutant** or **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include materials which are intended to be or have been recycled, reconditioned or reclaimed.

**Pollutant** or **pollutants** does not mean smoke, soot or fumes from a fire caused by one or more of the Section I - Losses Insured.

The following exclusion is added:

We do not cover any claim or suit for actual, alleged, threatened or feared **bodily injury** or **property damage** for which you or any **insured** may be held legally liable because of actual, alleged, threatened or feared **bodily injury** or **property damage** resulting from lead or lead poisoning.



**SPECIAL STATE PROVISIONS ENDORSEMENT -  
IDAHO**

**s7581**  
IDAHO  
2nd Edition

Under General Condition 5, *Cancellation*, no notice of cancellation is valid unless we notify you at least 20 days before the date cancellation takes effect.

General Condition 10, *Policy Fees*, (does not apply to Mobile Homeowners Policy) and the fifth paragraph of the Reciprocal Provisions, are deleted and replaced with the following:

Membership or policy fees which you pay are part of the premium but are fully earned when coverage is effective. They are not refundable (except as noted in a. and b. below), but may be applied as a credit to membership or policy fees required for other insurance accepted by us.

- a. If we cancel this policy during or at the end of the first policy period, we shall refund all membership or policy fees.
- b. If you cancel this policy during or at the end of the first policy period because it does not agree with the application and is not as represented by the agent, we shall refund all membership or policy fees.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**SPECIAL LIMITS ON SPORTS CARDS**

**H6106**  
1st Edition

The following provisions apply when this endorsement is attached to your policy:

Under SECTION I, Coverage C - Special Limits On Certain Personal Property:

Item 12. is added as follows:

- 12. \$200 per card and \$1,000 in the aggregate on sports cards, including but not limited to baseball cards.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.



**CHILD MOLESTATION EXCLUSION  
SECTION II - LIABILITY**

**E4207**  
1st Edition

We do not cover actual or alleged injury or medical expenses caused by or arising out of the actual, alleged, or threatened molestation of a child by:

- 1. any **insured**; or
- 2. any employee of any **insured**; or
- 3. any volunteer, **person** for hire, or any other **person** who is acting or who appears to be acting on behalf of any **insured**.

Molestation includes but is not limited to any act of sexual misconduct, sexual molestation or physical or mental abuse of a minor.

We have no duty to defend or settle any molestation claim or suit against any **insured**, employee of any **insured**, or any other **person**.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**OPTIONAL PAYMENT PLAN ON RENEWAL OF POLICY**

**s7504**  
IDAHO  
1st Edition

If we send you an offer to renew any of all of the coverages in your policy, we will send you a Renewal Premium Notice. You may pay the premium either in full or in two equal installments.

If paid in installments, we will add a service charge when the policy is renewed.

The first premium installment, including the service charge, shall be payable on or before the policy renewal date. The second installment shall be payable not later than 60 days after the renewal date.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED

2005 JAN 18 PM 5:01

CLERK DISTRICT COURT

DEPUTY \_\_\_\_\_

PATRICK E. MILLER  
Attorney at Law  
701 Front Avenue, Suite 101  
P.O. Box E  
Coeur d'Alene, ID 83816-0328  
Telephone: (208) 664-8115  
Facsimile: (208) 664-6338  
ISBA# 1771

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BRIAN ARMSTRONG and GLENDA )  
ARMSTRONG, husband and wife, )

Plaintiffs, )

vs. )

FARMERS INSURANCE COMPANY OF )  
IDAHO, an Idaho corporation; CORPORATE )  
DOES I-X, whose true names are unknown, )

Defendants. )

) Case No. CV-03-9214

) AFFIDAVIT OF DAVID NIPP

STATE OF IDAHO )

: ss.

County of Kootenai )

DAVID NIPP, being first duly sworn upon oath, deposes and states:

1. Affiant is a licensed insurance agent. Affiant has been licensed as an insurance agent  
by the State of Idaho since 1988.

AFFIDAVIT OF DAVID NIPP - 1

ORIGINAL

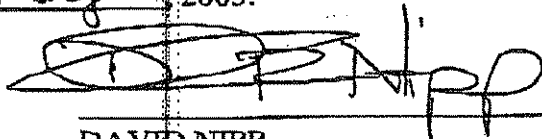


2. Affiant owns and operates his own independent agency. Affiant is neither an employee or general agent of Farmers Insurance Company of Idaho or Farmers Insurance Group. Affiant is an independent contractor to Farmers Insurance Company of Idaho.
3. Affiant is informed that Brian Armstrong and Glenda Armstrong have asserted that they conversed with Affiant about insurance coverage for, or in relation to, an above-ground swimming pool, at their residence premises.
4. Affiant has acted as an independent insurance agent and placed insurance coverages for Brian Armstrong and Glenda Armstrong.
5. Affiant states of his own personal knowledge, based upon Affiant's recollection, Affiant's business practices, and Affiant's business records, that Brian Armstrong and Glenda Armstrong did not, and have not, discussed with Affiant insurance coverages related to the placement of a swimming pool, above ground, or underground, at their residence. Affiant states that he was never requested to define, or interpret, under any policy of insurance, applicable coverages that would relate to an above-ground swimming pool, or any swimming pool. Affiant states that he was never requested, and has never defined for Brian Armstrong and Glenda Armstrong definitions, or construction, of policy terms, including "household appliance", "water damage", and has never defined flood coverages with respect to such a residence. Affiant states that he was never requested by Brian Armstrong or Glenda Armstrong to define the referenced terms.

6. Affiant states that he was never advised by Brian Armstrong or Glenda Armstrong that they intended to purchase for placement at their residence, an above-ground swimming pool. Affiant states that neither Brian Armstrong nor Glenda Armstrong, discussed the existence of a swimming pool nor any questions of insurance coverage related to a swimming pool.
7. Affiant states that it is his practice to conduct coverage reviews and that Affiant enters within Affiant's computer system comments with respect to the subject matter, points of discussion, or points with respect to insurance coverages. In review of Affiant's records, Affiant states that there is no reference, at any time, to a discussion about a swimming pool. Affiant states that it is his business practice to make such entries contemporaneous with any conversation with a client. Affiant states that, had there been any discussion about a swimming pool, Affiant would have made an entry into Affiant's records. Affiant states that there are no such entries.
8. Affiant further states that Affiant was not requested, and did not make any interpretations as to which insurance policy would be applicable to a residence with a swimming pool. Affiant states that it is his business practice, if a client inquires about coverage interpretations, to make inquiry of an appropriate insurance adjuster. Affiant, from his recollection, notes that he made no such inquiry because he received no such request by Brian Armstrong or Glenda Armstrong.

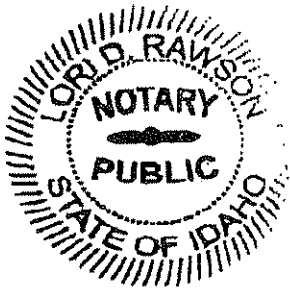
9. In conclusion, Affiant states that he did not have any conversation as to the existence, use, installation, purchase, or insurance coverage of an above-ground swimming pool, with either Brian Armstrong or Glenda Armstrong.
10. Affiant states that he made no interpretations of policy, or policy application, to any swimming pool installation by Brian Armstrong or Glenda Armstrong.

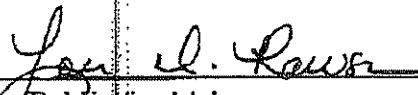
Dated this 18<sup>th</sup> day of January, 2005.

  
\_\_\_\_\_  
DAVID NIPP

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of January, 2005.

(SEAL)



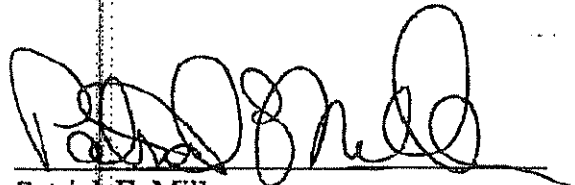
  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Coeur d'Alene  
My Commission Expires: 6/24/2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of January, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Douglas S. Marfice  
Michael A. Ealy  
Ramsden & Lyons  
618 North 4<sup>th</sup> Street  
P. O. Box 1336  
Coeur d'Alene, ID 83816-1336

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: 664-5884

  
Patrick E. Miller

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