

5-21-2008

Farber v. Idaho State Ins. Fund Clerk's Record v. 1 Dckt. 35144

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LAW CLERK

Vol. 1 of 1

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

**RANDOLPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association,**

Plaintiffs-Appellants,

-vs-

**THE IDAHO STATE INSURANCE FUND,
JAMES M. ALCORN, its Manager, and
WILLIAM DEAL, WAYNE MEYER,
MARGUERITE MCLAUGHLIN, GERALD
GEDDES, MILFORD TERRELL, JUDI
DANIELSON, JOHN GOEDDE, ELAINE
MARTIN, and MARK SNODGRASS in their
Capacity as members of the Board of
Directors of the State Insurance Fund,**

Defendants-Respondents.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

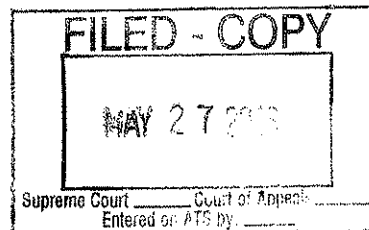
Honorable THOMAS J. RYAN, District Judge

Donald W. Lojek
LOJEK LAW OFFICES, CHTD
P.O. Box 1712
Boise, Idaho 83701

Attorney for Appellants

Phillip Gordon and Bruce S. Bistiline
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Boise, Idaho 83702

Attorneys for Respondents



35144

IN THE SUPREME COURT OF THE
STATE OF IDAHO

RANDOLPH E. FARBER, SCOTT ALAN)
BECKER and CRITTER CLINIC, an Idaho)
Professional Association,)

Plaintiffs-Appellants,)

-vs-)

THE IDAHO STATE INSURANCE FUND,)
JAMES M. ALCORN, its Manager, and)
WILLIAM DEAL, WAYNE MEYER,)
MARGUERITE MCLAUGHLIN, GERALD)
GEDDES, MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE, ELAINE)
MARTIN, and MARK SNODGRASS, in their)
capacity as members of the Board of Directors)
of the State Insurance Fund,)

Defendants-Respondents.)

Supreme Court No. 35144

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE THOMAS J. RYAN, Presiding

Donald W. Lojek, LOJEK LAW OFFICES, CHTD, P.O. Box 1712, Boise, ID 83701

Attorney for Appellants

Richard E. Hall and Keely E. Duke, HALL, FARLEY, OBERRECHT & BLANTON, P.A.,
P.O. Box 1271, Boise, ID 83701

Attorneys for Respondents

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Other Claims

Date		Judge
7/21/2006	New Case Filed-Other Claims	James C. Morfitt
	Summons Issued (11)	James C. Morfitt
	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Lojek, Donald W (attorney for Farber, Randolph E) Receipt number: 0194411 Dated: 7/21/2006 Amount: \$88.00 (Check)	James C. Morfitt
7/26/2006	Acceptance of Service for James Alcorn, Manager Idaho State Insurance Fund	James C. Morfitt
	Acceptance of Service for The Idaho State Insurance Fund	James C. Morfitt
8/14/2006	Filing: 11A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Hall, Richard E (attorney for Alcorn, James M) Receipt number: 0198805 Dated: 8/14/2006 Amount: \$58.00 (Check)	James C. Morfitt
	Notice Of Appearance for all Def	James C. Morfitt
8/18/2006	Stipulated Motion for extension of time to respond to Plt comp & Propounded Discovery	James C. Morfitt
8/22/2006	Order for Stipulated mo for extension of time to respond to Plt comp and propounded Discovery	James C. Morfitt
9/15/2006	Notice Of Service of Plt 3rd set of Discovery (fax)	James C. Morfitt
10/2/2006	Filing: 11A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Hall, Richard E (attorney for Idaho State Insurance Fund) Receipt number: 0207355 Dated: 10/2/2006 Amount: \$58.00 (Check)	James C. Morfitt
	Answer	James C. Morfitt
10/26/2006	Notice of Service Re: Discovery (7)	James C. Morfitt
1/8/2007	Plt Motion for Partial Summary Judgment	James C. Morfitt
	Affidavit of Donald W Lojek Relative to Plt mo for PArTial Sum Judgment	James C. Morfitt
	Affidavit of Philip Gordon Relative to Plt mo for Partial Sum Judg	James C. Morfitt
	Affidavit of Bruce S Bistline Relative to Plt mo for Partial Summary Judgment	James C. Morfitt
	Memorandum in support of Plt mo for Partial Sum Judg	James C. Morfitt
	Notice Of Hearing 2-15-07 9:00	James C. Morfitt
	Hearing Scheduled (Motion Hearing 02/15/2007 09:00 AM)	James C. Morfitt
1/26/2007	Motion to vacate hearing on Plt mo for partial sum judgment (fax)	James C. Morfitt
	Affidavit of Keely E Duke in support of def mo vacate hearing (fax)	James C. Morfitt
	Memorandum in support of mo vacate hrg (fax)	James C. Morfitt
	Motion to shorten time for hrg def mo to vacate hrg (fax)	James C. Morfitt
1/30/2007	Hearing result for Motion Hearing held on 02/15/2007 09:00 AM: Hearing Held	James C. Morfitt
	Hearing result for Motion Hearing held on 02/15/2007 09:00 AM: Motion Granted - defendant's motion to vacate plaintiff's motion for partial summary judgment	James C. Morfitt
	Hearing Scheduled (Motion Hearing 04/06/2007 01:30 PM) plaintiff mot for part summary jdmt	James C. Morfitt
	Notice of hearing on motion to vacate	James C. Morfitt
	Order granting motion to shorten time	James C. Morfitt

Other Claims

Date		Judge
2/6/2007	Order Resheduling Hearing & Scheduling Deadlines	James C. Morfitt
2/13/2007	Motion for leave to file plaintiffs' first amended class action complaint and demand for jury trial	James C. Morfitt
	Affidavit of Bruce Bistline in support of motion for leave to file plaintiffs' first amended class action complaint and demand for jury trial	James C. Morfitt
	Notice Of Hearing Re: motion for leave to file plaintiffs' first amended class action complaint and demand for jury trial 4-6-07	James C. Morfitt
	Defendants' Motion for summary judgment	James C. Morfitt
	Memorandum in support of defendants' motion for summary judgment	James C. Morfitt
	Affidavit of Michael Camiller	James C. Morfitt
	Affidavit of James Alcorn	James C. Morfitt
	Notice Of Hearing on defendants' motion for summary judgment 4-6-07	James C. Morfitt
3/2/2007	Plaintiffs motion for certification of class	James C. Morfitt
	Affidavit in support of motion for class cert	James C. Morfitt
	Affidavit of Bruce S Bistline in support of pl motion for class cert	James C. Morfitt
	Memorandum in support of pl motn for class cert	James C. Morfitt
3/12/2007	Memorandum in support of motion to continue summary judgment proceedings (fax)	James C. Morfitt
	Motion to strike affidavit of Michael Camilleri	James C. Morfitt
	Memorandum in support of motion to strike affidavit of Michael Camilleri	James C. Morfitt
	Memorandum in opposition to defendants motion for summary judgment	James C. Morfitt
	Motion to Continue defendants summary judgment proceedings	James C. Morfitt
	Affidavit of Bruce S Bistline in support of memo in support of motion to cont defs summ judgment proceedings	James C. Morfitt
	Notice Of Hearing on Plaintiffs motion to continue summary judgment proceedings to permit discovery	James C. Morfitt
	Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment	James C. Morfitt
	Affidavit of Keely E Duke in Support of Defendant's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment	James C. Morfitt
3/13/2007	Notice Of Hearing on Plt mo to strike Affidavit of Michael Camilleri 4-6-07 1:30(fax)	James C. Morfitt
	Transcript Filed motion to continue partial summary judgment held January 30, 2007	James C. Morfitt
3/15/2007	Suppl Affidavit of Bruce S Bistline in support of memo in support of mo to continue def summary judg proceedings pursuant to rule 56 f (fax)	James C. Morfitt
3/16/2007	Amended Memorandum in support of mo to continue sum judg proceedings pursuant to Rule 56(f)	James C. Morfitt
3/28/2007	Response to Def memo in oppose to Plt mo for Partial sum judg (fax)	James C. Morfitt
	Defendants Reply to Plaintiffs opposition to Defendants Motion for Summary Judgment	James C. Morfitt
3/30/2007	Affidavit/Keely E Duke in supp of defs memo in opposition to plaintiffs motion to cont summ judgment proceedings pursuant to rule 56(f)	James C. Morfitt

Other Claims

Date		Judge
3/30/2007	Memorandum/opposition to plaintiffs motion to cont summ judgment	James C. Morfitt
	Defs Memorandum in opposition to plaintiffs motio to strike the affd of Michael Camilleri	James C. Morfitt
	Affidavit of George M Parham	James C. Morfitt
	Affidavit of Keely E Duke in supp of defs memo in opposition to plaintiffs motion to certify class	James C. Morfitt
	Def's Idaho State Ins Fund and James M Alcorns opposition to Motion to Certify Class	James C. Morfitt
4/4/2007	Plt Reply Memorandum RE: Plt mo to cont summary Judgment Proceedings pursuant to rule 56 (f) Fax	James C. Morfitt
	Plt Reply Memorandum RE: Plt mo to strike the affidavit of Michael Camilleri (fax)	James C. Morfitt
	Suppl Affidavit of Bruce Bistline in support of mo to cont Def sum judgment Proceedings pursuant to rule 56 (f) Fax	James C. Morfitt
4/5/2007	Notice Of Hearing on Plt mo for class certiifcation 4-19-07 9:00 (fax)	James C. Morfitt
	Hearing Scheduled (Motion Hearing 04/19/2007 09:00 AM) mo for class certification	James C. Morfitt
4/6/2007	Hearing result for Motion Hearing held on 04/06/2007 01:30 PM: Hearing Held plaintiff mot for part summ jdmt - mo to cont summ judgment & Plt mo to strike Affd of Michael Camilleri	James C. Morfitt
4/17/2007	Hearing result for Motion Hearing held on 04/19/2007 09:00 AM: Hearing Vacated mo for class certification	James C. Morfitt
	Notice of vacating hearing (fax)	James C. Morfitt
	Notice Of Taking Deposition randolph farber	James C. Morfitt
	Notice Of Taking Deposition scott becker	James C. Morfitt
4/30/2007	Order vacating hearing on plaintiffs' motion to strike the affidavit of Michael Camilleri	James C. Morfitt
	Order granting plaintiffs' motion for leave to file plaintiffs' first amended class action complaint and demand for jury trial	James C. Morfitt
	Notice Of Taking Deposition debbie hiatt	James C. Morfitt
	Order granting pltf's rule 56(f) motion and order vacating hearing on pltf's motion for partial summary judgment	James C. Morfitt
	Order denying def's motion for summary judgment on the issues of standing and waiver	James C. Morfitt
	Order granting def's motion for summary judgment on the issue of statute of limitation	James C. Morfitt
5/2/2007	Transcript Filed - for motion hearing held on April 6, 2007	James C. Morfitt
5/10/2007	Seconded Amended Notice Of Taking Deposition Randolph Farber	James C. Morfitt
	Second Amended Notice Of Taking Deposition Scott Becker	James C. Morfitt
5/24/2007	Notice Of Service of Plaintiffs' Fourth Set of Discovery Requests: Interrogatories No: 19-22; Requests for production of Documents No: 14-22 (fax)	James C. Morfitt
6/4/2007	Notice Of Taking Deposition james alcorn	James C. Morfitt
	Notice Of Taking Deposition debbie hiatt	James C. Morfitt

Other Claims

Date		Judge
6/11/2007	Notice of Service Re: Discovery ____	James C. Morfitt
6/28/2007	Notice of Service Re: Discovery ____	James C. Morfitt
7/2/2007	Change Assigned Judge (batch process)	
7/10/2007	First Amended class action complaint and demand for jury trial	Thomas J Ryan
7/11/2007	Objection to notice of deposition of debbie hiatt (fax)	Thomas J Ryan
7/17/2007	Notice Of Service (fax)	Thomas J Ryan
7/20/2007	Answer to plt first amended class action complaint and demand for jury trial	Thomas J Ryan
7/23/2007	Notice Of Service (fax)	Thomas J Ryan
7/26/2007	Notice Of Service of Plt Randolph Farbers responses to def State Insurance 1st set interr	Thomas J Ryan
7/27/2007	Notice of Service Re: Discovery (fax)	Thomas J Ryan
	Plt second Motion for PArTial Summary Judgment (fax)	Thomas J Ryan
	Notice Of Hearing 8-31-07 11:00 (fax)	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 08/31/2007 11:00 AM) sum judgment	Thomas J Ryan
7/30/2007	Memorandum in support of Plt second mo for PArTial sum judgment	Thomas J Ryan
7/31/2007	Hearing result for Motion Hearing held on 08/31/2007 11:00 AM: Hearing Vacated sum judgment per phone call from attorneys office	Thomas J Ryan
	Amended Notice Of Hearing Re: Plaintiffs' Second Motion for Partial Summary Judgment (fax) 9-20-07	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 09/20/2007 09:00 AM) summ judg	Thomas J Ryan
8/8/2007	Notice of hearing RE: Plt mo for certification of class 9-10-07 1:30 (fax)	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 09/10/2007 01:30 PM) mo certification of class	Thomas J Ryan
8/23/2007	Defendants Second Motion for Summary Judgment	Thomas J Ryan
	Affidavit of Keely E Duke in support of Defendants Motion for Summary Judgment	Thomas J Ryan
	Memorandum in support of Defendants Second Motion for Summary Judgment	Thomas J Ryan
	Notice Of Hearing on Defendants Second Motion for Summary Judgment 09-20-07	Thomas J Ryan
8/31/2007	Reply Memorandum in support of plaintiffs' motion for class certification	Thomas J Ryan
9/4/2007	Plt Motion to shorten time RE: Plt renewed mo to cont def summary judg proceedings pursuant to rule 56 (f) or alternatively to reset such mo to a later date 9-10-07 1:30	Thomas J Ryan
	Affidavit of Bruce Bistline in support of Plt mo shorten time RE: Renewed mo to cont def sum judgment pursuant to rule 56 (f) or alternatively to reset such motion to a later date	Thomas J Ryan
	Plt Renewed Motion to cont def sum judgment proceedings pursuant to rule 56 f	Thomas J Ryan
	Affidavit of Bruce S Bistline in support of Plt renewed mo to cont def sum judgment	Thomas J Ryan
	Memorandum in support of Plt renewed mo to cont def sum judgment	Thomas J Ryan
	Notice Of Hearing 09/10/2007 (fax)	Thomas J Ryan

Other Claims

Date		Judge
9/4/2007	defendant's supplemental Memorandum opposing motion to certify class (fax)	Thomas J Ryan
9/7/2007	Affidavit of Keely Duke in support of defendants' memorandum in opposition to plaintiffs' second motion for partial summary judgment	Thomas J Ryan
	Memorandum in opposition to plaintiffs' second motion for partial summary judgment	Thomas J Ryan
9/10/2007	Plt Memorandum in Response to Def memo in support of def 2nd mo for sum judgment	Thomas J Ryan
	Hearing result for Motion Hearing held on 09/10/2007 01:30 PM: Hearing Held mo certification of class & Plt mo sum judgment	Thomas J Ryan
	Hearing result for Motion Hearing held on 09/10/2007 01:30 PM: Motion Granted mo certification of class	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 11/05/2007 01:30 PM)	Thomas J Ryan
	Estimated costs on appeal	Thomas J Ryan
	Hearing result for Motion Hearing held on 09/20/2007 09:00 AM: Hearing Vacated summ judg	Thomas J Ryan
9/24/2007	Order on Plt mo for class certification	Thomas J Ryan
	Order vacating & Resetting hearing & setting out Briefing schedule	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 10/09/2007 02:30 PM)	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 11/27/2007 01:30 PM) sum judg	Thomas J Ryan
9/27/2007	Memorandum regarding process for statutory construction (fax)	Thomas J Ryan
	Bench brief regarding the proper method of statutory construction	Thomas J Ryan
9/28/2007	reporter's transcript of proceedings	Thomas J Ryan
10/4/2007	Plt opposition Memorandum to def Bench Brief regarding the proper method of statutory construction	Thomas J Ryan
	def idaho state insurance fund reply to pltf's memorandum re: statutory construction process (fax)	Thomas J Ryan
	Idaho State Insurance Fund Defendants' Reply to Plaintiffs' Memorandum Re: Statutory Construction (fax)	Thomas J Ryan
10/5/2007	Notice of Errata to Idaho State Insurance Fund def Bench Brief regarding the proper method of construction	Thomas J Ryan
	Amended Bench Brief Regarding the proper method of statutory construction	Thomas J Ryan
10/9/2007	Hearing result for Motion Hearing held on 10/09/2007 02:30 PM: Hearing Held	Thomas J Ryan
10/23/2007	Plt revised second motion for partial sum judg	Thomas J Ryan
	Memorandum in support of plaintiffs' revised second motion for partial sum judg	Thomas J Ryan
	Def motion for sum judg on the meaning of Idaho code section 72-915	Thomas J Ryan
	Memorandum in support of def motn for sum judg on the meaning of Idaho code section 72-915	Thomas J Ryan
11/5/2007	Hearing Vacated	Thomas J Ryan
11/6/2007	Affidavit of George Bambauer (fax)	Thomas J Ryan
11/7/2007	Plt objection to Def mo for summary judgment	Thomas J Ryan

Other Claims

Date		Judge
11/7/2007	Affidavit of Donald W Lojek in support of Plt memo in reponse to memo of state Insurance Fund in support of mo for sum judg	Thomas J Ryan
	Plt Memorandum in response to the memo of the state Insurance fund in support of its mo for summary Judgment	Thomas J Ryan
	Memorandum in opposition to Plt revised second motn for partial sum judg	Thomas J Ryan
	Affidavit of keely E. Duke in support of Def memo in opposition to Plt revised second motn for partial sum judg	Thomas J Ryan
11/20/2007	Affidavit of Donald W Lojek RE: Plt revised second motion for PArtial sum Judgment	Thomas J Ryan
	Response to Def memo in oppose to Plt revised second mo for PArtial Sum Judgment	Thomas J Ryan
	Def Reply to Plt memo response to def motn for sum judg on the meaning of Idaho Code section 72-915	Thomas J Ryan
11/27/2007	Hearing result for Motion Hearing held on 11/27/2007 01:30 PM: Hearing Held sum judg	Thomas J Ryan
12/26/2007	Memorandum decision upon motions for summary judgment-(summary judgment neither granted nor denied this decision is on the ruling of Idaho Code 72-915)	Thomas J Ryan
1/4/2008	Motion for Rule 54(b) Certificate (fax)	Thomas J Ryan
	Memorandum in Support of Plaintiff's Motion for Rule 54(b) Certificate (fax)	Thomas J Ryan
	Notice Of Hearing on Plaintiffs' Motion for Rule 54(b) Certificate (fax) 2-14-08	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 02/14/2008 09:00 AM) motn for rule 54 cert	Thomas J Ryan
1/9/2008	Def' s Memorandum of Costs and Fees (fax)	Thomas J Ryan
1/10/2008	Affidavit of Keely E. Duke in Support of Defendants' Memorandum of Costs (fax)	Thomas J Ryan
	Defendant's Brief in Support of Defendants' Memorandum of Costs (fax)	Thomas J Ryan
	Objection to proposed order regarding motions for summary judgment and notice of hearing 02/14/2008 (fax)	Thomas J Ryan
	Memorandum in support of objection (fax)	Thomas J Ryan
1/18/2008	pltf's objection to costs claimed by defendant (fax)	Thomas J Ryan
	Memorandum in support of pltf's objection (fax)	Thomas J Ryan
1/23/2008	Notice Of Hearing 02/14/2008 (def's memo costs)	Thomas J Ryan
2/7/2008	Memorandum in opposition to Plt's motn for Rule 54(b) certificate and Plt's objection to proposed order regarding motn for sum judg	Thomas J Ryan
2/12/2008	def's reply to objections to memorandum of costs (fax)	Thomas J Ryan
2/14/2008	Hearing result for Motion Hearing held on 02/14/2008 09:00 AM: Hearing Held motn for rule 54 cert/def memo costs	Thomas J Ryan
2/15/2008	Order RE: Motions for summary Judgment	Thomas J Ryan
	Amendment to the courts memorandum Decision Upon motions for sumamry Judgment	Thomas J Ryan
	Rule 54b certification of Final Judgment	Thomas J Ryan

Other Claims

Date		Judge
2/15/2008	Civil Disposition entered for: Alcorn, James M, Defendant; Danielson, Judi, Defendant; Deal, William W, Defendant; Geddes, Gerald, Defendant; Goedde, John, Defendant; Idaho State Insurance Fund, Defendant; Martin, Elaine, Defendant; Mclaughlin, Marguarite, Defendant; Meyer, Wayne, Defendant; Snodgrass, Mark, Defendant; Terrell, Milford, Defendant; Becker, Scott Alan, Plaintiff; Critter Clinic,, Plaintiff; Farber, Randolph E, Plaintiff. order date: 2/15/2008 Case Status Changed: Closed	Thomas J Ryan Thomas J Ryan
2/28/2008	Motion for Appeal By Permission Memorandum in support of mo for Appeal Notice Of Hearing on Plt mo 3-20-08 9:00 Hearing Scheduled (Motion Hearing 03/20/2008 09:00 AM) mo for Appeal by Permission Case Status Changed: Closed pending clerk action	Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan Thomas J Ryan
3/13/2008	SIF Defendants' Memorandum in Opposition to Plaintiffs' Motion for Appeal by Permission (fax)	Thomas J Ryan
3/20/2008	Hearing result for Motion Hearing held on 03/20/2008 09:00 AM: Hearing Held mo for Appeal by Permission Hearing result for Motion Hearing held on 03/20/2008 09:00 AM: Plan Denied mo for Appeal by Permission District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan Thomas J Ryan Thomas J Ryan
3/25/2008	Order Regarding Plt Motion for Appeal by permission and Def Request for Atty fees & costs (Denied)	Thomas J Ryan
3/27/2008	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Lojek, Donald W (attorney for Farber, Randolph E) Receipt number: 0302797 Dated: 3/27/2008 Amount: \$15.00 (Check) For: Farber, Randolph E (plaintiff) Bond Posted - Cash (Receipt 302799 Dated 3/27/2008 for 100.00) clerks record Appealed To The Supreme Court Notice of Appeal from Plt	Thomas J Ryan Thomas J Ryan Thomas J Ryan

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Attorneys for Plaintiffs and the Class

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

**RANDOLPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association.**

Plaintiffs,

vs.

**THE IDAHO STATE INSURANCE FUND,
JAMES M. ALCORN, its Manager, and
WILLIAM DEAL, WAYNE MEYER,
MARGUERITE McLAUGHLIN, GERALD
GEDDES, MILFORD TERRELL, JUDI
DANIELSON, JOHN GOEDDE, ELAINE
MARTIN, and MARK SNODGRASS in their
capacity as member of the Board of Directors
of the State Insurance Fund**

Defendants.

FILED
A.M. 2/0 P.M.

JUL 21 2006

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

Case No. CV 06-7877

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

COME NOW THE PLAINTIFFS, ON BEHALF OF THEMSELVES AND ANY AND ALL PERSONS AND ENTITIES SIMILARLY SITUATED, AND FOR THEIR CAUSE OF ACTION AGAINST THE DEFENDANTS, DO HEREBY STATE, ALLEGE AND COMPLAIN AS FOLLOWS:

INTRODUCTION

This is a class action brought on behalf of the named Plaintiffs and a class of persons and entities who, at any time during the preceding five years, were subscribers of the Idaho State Insurance Fund (hereinafter "the Fund"), who have paid annual premiums in an amount of \$2,500 (two thousand, five hundred dollars) or less, and who, despite being lawfully entitled to receive a dividend when the payment of a dividend was determined to be appropriate by the Manager and /or the Board of Directors of the Fund, have not received any dividend in one or more years when other Fund subscribers whose annual premiums have exceeded \$2,500.00 received a percentage of such premiums as a dividend. The determination that the Fund would pay dividends to some but not all of the Fund subscribers appears to have been made by the Fund's appointed Manager James M. Alcorn (hereinafter either "Alcorn" or "the Manager") but it may also have been made by or with the approval of the Board of Directors of the Fund. The payment of dividends based upon the amount of premium paid to some, but not all, Fund subscribers improperly favors the larger subscribers to the Fund. The named Plaintiffs and the members of the class are seeking first a declaratory judgment ordering and adjudging that the Fund acted in direct contravention of its statutory and contractual authority when it determined that the dividends would only be paid to subscribers whose annual premium exceeded the sum

of \$2,500.00.

Second, Plaintiffs and the members of the class are seeking injunctive relief enjoining the Defendants from paying out dividends to subscribers in a manner which is contrary to law and the terms of the contract between the Fund and its subscribers.

Third, the named Plaintiffs and the members of the class are asking the Court to award them damages in an amount equal to the dividends which they should have had paid or credited to them during each of the five years preceding the filing of this Complaint for or in respect to which the Fund issued dividends to some but not all subscribers.

PART ONE: PARTIES

1.

All of the named Plaintiffs are now and during some or all of the years comprising the class period have been conducting business in the State of Idaho. All of the named Plaintiffs have during some or all of such period had one or more employees whom they have been required by law to provide with worker's compensation insurance coverage. All of the named Plaintiffs have, during some or all of the class period, subscribed to the Fund for the purpose of obtaining their worker's compensation insurance coverage.

2.

Plaintiffs reside and do business in Idaho as follows:

- a. Plaintiff Farber is a lawyer who lives in and operates a law practice at 823 12th Street S, Nampa, Idaho 83653 and who resides in Canyon County, Idaho.
- b. Plaintiff Becker is a small business operator who conducts business as Marvs

Framing Gallery at 5901 Overland Road, in Boise, Idaho 83709 and who lives in Ada County, Idaho.

- c. Critter Clinic, P.A. is a veterinary practice with its sole place of business located at 10534 W.Ustick Rd., in Boise, Ada County, Idaho 83704.

3.

At all times material and relevant to this action, the State of Idaho has had in force and effect a comprehensive worker's compensation statutory scheme which, as set forth in I.C. 72-203, applies to "all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code". These statutes establishing this system, and, *inter alia*, creating the Fund, are found in Title 72 of the Idaho Code.

4.

The Defendant Fund is "an independent body corporate politic" created by statute (specifically, Idaho Code § 72-901) for the purpose of insuring employers against liability for compensation under the worker's compensation and occupational injury laws of the State of Idaho. The Fund is administered without liability on the part of the state of Idaho.

5.

The Fund is governed by a board of five directors (hereinafter "the Board"), all of whom are appointed by the governor. Defendants William Deal (2000 to current), Wayne Meyer (2000 to current), Marguerite McLaughlin (2001 & 2001), Gerald Geddes (2000 to current), Milford Terrell (2000 into 2003), Judi Danielson (part of 2001), John Goedde (part of 2001 to current), Elaine Martin (2004 to current) and Mark Snodgrass (2005 to current) served on during the years

noted) as members of the Board.

6.

The members of the Board appoint a Manager of the Fund who serves at their pleasure (Idaho Code § 72-901). The Defendant Alcorn is now and at all times relevant hereto was the duly appointed and acting Manager of the Defendant Fund.

PART ONE: FACTUAL ALLEGATIONS

7.

The Fund is the single largest issuer of worker's compensation insurance in the State of Idaho. In recent years both the number of worker's compensation policies issued by the Fund and the total amount of premiums collected by it for the issuance of such coverage have grown. The Fund's reports reflect that its surplus and its reserves have also grown over this same period of time.

8.

Idaho Code § 72-915 provides as follows:

At the end of every year, and as such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

This statute provides the sole and exclusive authority under and pursuant to which the Fund can lawfully pay dividends to its subscribers. This statute does not provide the Manager

any authority whatsoever to distinguish among subscribers or to pay dividends based upon whether a subscriber has paid some threshold amount of annual premium.

9.

During the five years immediately proceeding the filing of this complaint and potentially for some time following the filing of this complaint (herein the "class period") the Fund has paid a dividend to subscribers. The payment of such dividends was made after the Board or the Manager determined that it was appropriate for the Fund to pay a dividend. In all cases the amount of the dividend has been a percentage of the annual premium paid by each subscriber considered to be qualified to receive a dividend and the dividend has been paid without regard to class of employment or industry.

10.

Commencing several years ago and for all years in the class period, the Manager and/or the Board arbitrarily, capriciously, and without any statutory or contractual authority whatsoever, determined that such dividends would not be paid to subscribers who had paid annual premiums if \$2,500.00 or less.

11.

Each of the Plaintiffs now, and at all times material and relevant hereto, has had one or more employees – not expressly exempted by section 72-212 – for whom such Plaintiff is statutorily required at all times to keep and maintain in force a policy of worker's compensation insurance.

12.

Each Plaintiff now, and for all or portions of the class period, has obtained worker's compensation insurance coverage applicable to non-exempt employees by subscribing to the Defendant Fund.

13.

For each year in the class period, some or all of the Plaintiffs paid annual premiums to the Fund which were \$2,500.00 or less and, for each such year, those Plaintiffs did not receive a dividend although for each such year subscribers who paid an annual premium of more than \$2,500 did receive a dividend.

14.

Plaintiffs allege on information and belief that the percentage of employers purchasing worker's compensation insurance from the Fund and who received a dividend during any year within the class period varies from year to year, but is usually between five and twenty percent. The decision to pay dividends only to those employers whose total premiums for the year in question exceeds \$2,500 means that dividends are being paid out by the Fund only to the biggest Idaho employers who are subscribers to the Fund. Otherwise stated, this arbitrary, capricious and unlawful cut-off results in between 80 and 95 percent of the Fund's subscribers being deprived of dividends. The use of a premium-based benchmark to determine which subscribers will be paid a dividend from the growing surpluses held by the Fund is unlawful, arbitrary and capricious and contrary to the contract between the Fund and its subscribers.

PART III: CLASS ACTION ALLEGATIONS

15.

Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b) of the Idaho Rules of Civil Procedure individually and on behalf of a class of similarly situated persons and entities.

16.

The Class shall include all Idaho employers who: a.) at any time during the class period have been subscribers to the Fund (i.e. purchased worker's compensation insurance from the Fund); b.) for one or more years during that period paid an annual premium for such insurance to the Fund which was equal to or less than \$2,500.00; and c.) did not receive any dividend from the Fund for a year or years as to which the Manager or the Fund determined that payment of a dividend was appropriate. It is reasonable to anticipate that while there will be Fund subscribers who have sustained damages as a consequence of the Defendants' conduct during all of the years with the class period, there will also be, for a variety of reasons (including but not limited to: not subscribing to the Fund in all years in the class period, or having paid sufficient annual premium in some but not all years to have qualified to receive a dividend), subscribers who will have sustained damage due to not having received a dividend in some but not all of the years falling within the class period.

17

The Class is so numerous that joinder of all members of the Class as Plaintiffs herein is impracticable. The number of policies issued by the Fund for the year 2002 totaled 29,789. This figure rose to 32,320 in the year ended December 31, 2003. On information and belief Plaintiff

alleges that the total number of policies issued by the Fund also exceeded 30,000 for 2004 and 2005.

18.

The claims of the named Plaintiffs are typical of the claims of all members of the Class, and all members of the Class sustained damages arising out of the same wrongful conduct of the Defendants.

19.

The named Plaintiffs will fairly and adequately protect the interests of the Class. They have retained counsel who are competent and experienced in class action litigation. Their counsel have among them over 90 years of experience practicing law in State and Federal Courts in Idaho and other jurisdictions and they have been involved in and processed to recovery numerous class action lawsuits.

20.

A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Joinder of all members of the Class is impractical because the members number in the tens of thousands and they reside (or have their principal place of business) throughout the entire State of Idaho. It would also be impracticable for each member of the Class to bring separate actions because the individual damages of any one Class member will be relatively small when measured against the potential costs of bringing this action, making the expense and burden of this litigation unjustifiable for individual actions. In this class action, the court can determine the rights of the named Plaintiffs and all members of the Class with judicial economy. The named Plaintiffs do not anticipate any difficulty in the management of this suit as

a class action.

21.

The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant.

22.

The Defendant has acted on grounds which are universally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

23.

There are numerous common questions of law and fact that exist as to all members of the Class and they clearly predominate over any questions affecting solely individual members of the Class include. These questions include, but are not limited to, the following:

- a. Whether, during one or more of the years included in and comprising the class period, the individual class member has been a subscriber to the Fund.
- b. Whether, during one or more of those years, the individual class member paid an annual premium of \$2,500.00 or less.
- c. Whether, during one or more of those years, the Fund paid out a dividend, but denied payment to subscribers whose annual premium for that year equaled or was less than \$2,500.00.
- d. Whether the Fund's failure to pay a dividend to those subscribers whose

annual premium for that year equaled or was less than \$2,500.00 was contrary to the law and the terms of the contract between the Fund and its subscribers.

- e. Whether, during one or more years included in the class period, a Plaintiff or an individual member of the class was a subscriber entitled to a dividend once the manager had determined it was appropriate to pay dividends.
- f. Whether one or more of the Defendants must, for each year during the class period that the Fund paid a dividend, pay a dividend to Plaintiffs and members of the class for each year that they were determined to be ineligible to receive a dividend for the reason that they had paid an annual premium of \$2,500.00 or less.
- g. How the dividends to be paid to each such subscriber shall be calculated for each such year.
- h. Whether one or more of the Defendants must pay the Plaintiffs and members of the class interest on such sums as the Fund should have paid to them for each year during the class period.
- i. If the Plaintiffs and the members of the class are entitled to recover interest, then it will be necessary to determine the applicable rate of interest and the date or dates from which interest will be assessed.
- j. Whether the members of the class are entitled to an order enjoining the Defendants from, in future years, paying dividends only to those

subscribers whose annual premium exceeded the sum of \$2,500.00 or in any other manner which is contrary to the law or the contract between the Fund and its subscribers.

COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS

24.

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment pursuant to Idaho Code title 10, chapter 12.

25.

There is an actual controversy within the jurisdiction of this Court and declaratory relief will provide an effective and efficacious means for terminating uncertainty and resolving controversy by adjudicating the rights and interests of the parties with respect to the following acts and events:

- a.) One or more of the Defendants have, for each year during the class period, used an unlawful, arbitrary and/or improper benchmark or calculation to determine which of its subscribers were entitled to receive a dividend and, as a consequence, have denied dividends to subscribers who were otherwise lawfully entitled to receive a dividend once the Manager or the Fund determined that it was appropriate to pay dividends.
- b.) One or more of the Defendants will, absent an order from this Court, continue to use an unlawful, arbitrary, and/or improper benchmark or calculation to determine which of the Fund's subscribers are entitled to receive a dividend

c.) For each of the years in the class period, the Plaintiffs and members of the class have not received dividends when dividends have been paid out by the Fund and they will, absent an order from this Court, continue to be denied the dividends which are due to them.

26.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that the acts and actions of one or more of the Defendants, as set forth in this Complaint, are not now and, at no time during the class period, have been lawful, and that such acts and actions are in derogation of the contractual and statutory provisions authorizing the Defendants to declare and pay dividends to its subscribers.

27.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that the Manager and the Fund are not now, and at no time during the class period, have ever been authorized by law or the contract to, after determining that payment of a dividend is appropriate, deny payment of that dividend to any subscriber because the annual premium paid by the subscriber was \$2,500.00 or less.

28.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that:

- a. one or more of the Defendants have, after determining that payment of a dividend was appropriate, acted wrongly, arbitrarily, in violation of an law of the State of Idaho and contrary to the contract between the Fund and its subscribers by

denying payment of that dividend to any subscriber because the annual premium paid by the subscriber was \$2,500.00 or less and

- b. one or more of the Defendants must now pay to each member of the class an amount equal to the dividend such member should have received during each year of the class period in which such class member was lawfully entitled to receive a dividend.

29.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that by reason of the conduct alleged herein one or more of the Defendants should also pay interest on all amounts found due to any Plaintiff or class member as unpaid dividends from the date(s) that such dividend(s) should have been paid to the date of judgment herein. The Court has the authority to determine the applicable rates of interest.

30.

This Court has the authority to make all such other, further and additional rulings as are needed fully and completely to resolve any and all issues that are raised by this Complaint.

31.

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

COUNT II: DECLARATORY RELIEF — INJUNCTION

32.

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment providing for injunctive relief, pursuant to Idaho Code title 10, chapter 12.

33.

This Court has the authority to declare that, under the circumstances set forth above, the Defendants have acted in violation of Idaho law and the provisions of the contract between the Fund and its subscribers. This Court may, therefore, order that the Defendants should be permanently enjoined from conditioning any future distribution of dividends to its subscribers based in whole or in part upon whether they have paid more than some threshold amount of annual premiums during the calendar year to which the dividend is attributable.

34.

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

COUNT III: DAMAGES

35.

Plaintiffs reallege the allegations contained in Paragraphs 1. through and including 32. of this Complaint, and incorporate the same by reference herein.

36.

For each year during the class period for which each Plaintiff and each and every member of the class was entitled to but did not receive a dividend, such Plaintiffs and class members have been damaged by the acts and actions of the Defendants as set forth herein. The amount of the damages sustained by each Plaintiff and each and every member of the class is easily ascertainable. It is equal to the amount of the dividend which should have been, but was not, paid to each such Plaintiff and each such member of the class. These damages should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

37.

For each year during the class period, Plaintiffs and the members of the class are entitled to pre-judgment interest on the dividends they should have received, commencing on the date that dividends were paid to some of the Fund's subscribers and continuing to the date of judgment. Interest should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

38.

Plaintiffs have been required to engage the services of the attorneys named in this Complaint in order to represent them and the members of the class in connection with this action. Plaintiffs should be awarded the attorneys fees and costs which they incur in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

1. That the Court certify the class as herein above requested and conduct proceedings to

establish an appropriate class notice and method of sending notice to the class;


2. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205, that the Defendants do not now have, and at all times material and relevant to this action, did not have any lawful or contractual authority to cause the Fund to condition the payment of a dividend to its subscribers upon the amount of the annual premium which such subscriber paid in respect to the year to which such dividend relates.
3. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, it was wrongful for one or more of the Defendants to cause the Fund to fail or refuse to pay dividends to any subscribers because the subscriber's annual premium equaled or was less than \$2,500.00 (two thousand five hundred dollars).
4. That the Court find and rule that the Plaintiffs and the members of the class were damaged by the acts and actions of one or more of the Defendants and that the amount of the damages sustained by each Plaintiff and each member of the class is the total dividends which such Plaintiff or such class member should have received from the Defendants during the class period, together with pre-judgment interest thereon.
5. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period as herein defined one or more of the Defendants must, to the extent that the Fund failed to do so, pay to the Plaintiffs and the members of the class a dividend for each year in which each Plaintiff and each member of the class was a subscriber to the Fund. This dividend should be a percentage of the annual premiums each paid for the year to which such dividend relates, based on the same

percentage as that paid to subscribers whose premiums for the year in question exceeded the sum of \$2,500.00 (two thousand, five hundred dollars).

6. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, that one or more of the Defendants must pay to the Plaintiffs and the members of the class, pre-judgment interest on such sums as the Fund should have paid to them as dividends.
7. That the Court ascertain the correct rate of interest to be applied and make all determinations necessary to compute the dividends and interest that is due to the Plaintiffs and members of the class in connection with any and all dividends which were wrongfully withheld from or not paid to them at any time after the commencement of the class period.
8. That the Court enter a temporary injunction, enjoining the Defendants from issuing dividends to some, but not all of its subscribers, based either upon the total amount of the annual premium paid by such subscriber in the year to which such dividends are attributable, or upon any other criterion not specifically permitted by statute or contract.
9. That the Court make all such other, further and additional rulings as are needed in order to fully and completely resolve any and all issues that are raised by this Complaint.
10. That the Court order one or more of the Defendants to pay the attorney's fees and costs incurred by the Plaintiffs and members of the class in connection with this action.
11. For such other and further relief as is just and equitable in the premises.

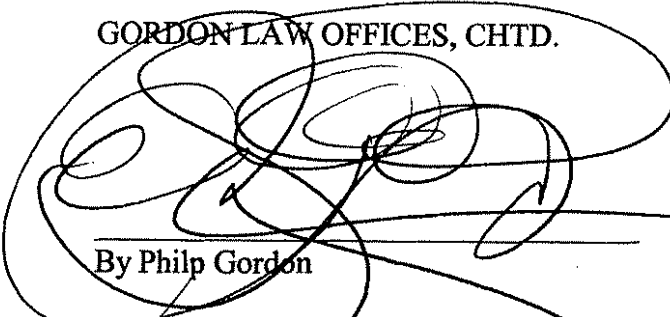
DATED: this 20th, day of July, 2006.

LOJEK LAW OFFICES, CHTD.




By Donald W. Lojek

GORDON LAW OFFICES, CHTD.



By Philp Gordon

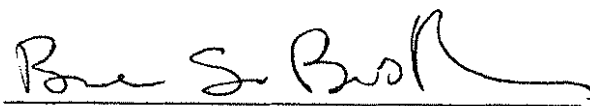


By Bruce S. Bistline

Attorneys for Plaintiffs and the Class

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on any and all issues properly triable by jury in this action.



Bruce S. Bistline
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FILED ✓
A.M. 4:30 P.M.

OCT - 2 2006

CANYON COUNTY CLERK
K CANO, DEPUTY

Attorneys for Defendants Idaho State Insurance Fund and
James M. Alcorn, Manager of the State Insurance Fund

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDO LPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE
FUND, JAMES M. ALCORN, its Manager,
and WILLIAM DEAL, WAYNE MEYER,
MARGUERITE McLAUGHLIN,
GERALD GEDDES, MILFORD
TERRELL, JUDI DANIELSON, JOHN
GOEDDE, ELAINE MARTIN, and MARK
SNODGRASS in their capacity as member
of the Board of Directors of the State
Insurance Fund,

Defendants.

Case No. CV06-7877

**ANSWER TO PLAINTIFFS' CLASS
ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

COME NOW defendants, Idaho State Insurance Fund and James M. Alcorn, Manager of
the State Insurance Fund ("SIF"), by and through their counsel of record, Hall, Farley, Oberrecht

& Blanton, P.A., and in answer to plaintiff's Class Action Complaint and Demand for Jury Trial ("Complaint"), admit, deny and allege as follows:

FIRST DEFENSE

Plaintiffs' Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The SIF denies each and every paragraph and allegation of plaintiffs' Complaint unless specifically and expressly admitted in this document.

INTRODUCTION

With respect to the allegations contained in the introduction to plaintiffs' Complaint, such allegations in many instances do not require a response because they are preliminary statements as to the filing of the action. To the extent a response is required with respect to any statement or allegation contained in the introductory paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within the introduction of plaintiffs' Complaint as an outright denial and/or due to lack of sufficient information or knowledge.

PART ONE: PARTIES

1. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of plaintiffs' Complaint and, therefore, denies the same.
2. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2 of plaintiffs' Complaint and, therefore, denies the same.
3. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(a) of plaintiffs' Complaint and, therefore, denies the same.
4. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(b) of plaintiffs' Complaint and, therefore, denies the same.

5. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(c) of plaintiffs' Complaint and, therefore, denies the same.

6. The SIF admits the allegations contained in paragraph 3 of plaintiffs' Complaint.

7. The SIF admits the allegations contained in paragraph 4 of plaintiffs' Complaint.

8. With respect to the allegations contained in paragraph 5 of plaintiffs' Complaint, the SIF admits that the SIF is governed by a board of five directors, all of whom are appointed by the Governor. The SIF further admits that William Deal, Wayne Meyer, Marguerite McLaughlin, Gerald Geddes, Milford Terrell, Judi Danielson, John Goedde, Elaine Martin, and Mark Snodgrass all served (or are serving) on the board of directors for the SIF. The SIF further admits that Judi Danielson served for part of 2001, John Goedde served for part of 2001 to the present, Elaine Martin served from 2004 to the present, and Mark Snodgrass served from 2005 to the present. However, with respect to the other board members, the SIF denies the dates plaintiffs identified as the dates of service by those individuals on the board of directors for the SIF.

9. The SIF admits the allegations contained in paragraph 6 of plaintiffs' Complaint.

10. The SIF admits the first two sentences contained in paragraph 7 of plaintiffs' Complaint. With respect to the third sentence, the fund's report speaks for itself and, therefore, the SIF is not in a position to admit or deny the information contained within that third sentence.

11. With respect to the allegations contained in paragraph 8 of plaintiffs' Complaint, Idaho Code § 72-915 speaks for itself. The SIF denies all allegations, including plaintiffs' characterizations, contained within the last two sentences of paragraph 8 of plaintiffs' Complaint.

12. With respect to the allegations contained in paragraph 9 of plaintiffs' Complaint, the SIF denies the any and all allegations contained in the first sentence of paragraph 9, including plaintiffs' characterizations. The SIF admits the second sentence of paragraph 9. With respect

to the remaining allegations contained in paragraph 9 of plaintiffs' Complaint, the SIF is without sufficient information or knowledge to admit or deny those allegations and, therefore, deny the same.

13. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 10 of plaintiffs' Complaint.

14. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 11 of plaintiffs' Complaint and, therefore, denies the same.

15. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 12 of plaintiffs' Complaint and, therefore, denies the same.

16. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 13 of plaintiffs' Complaint.

17. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 14 of plaintiffs' Complaint.

18. Paragraph 15 does not contain an allegation for which a response is required. To the extent a response is required, the SIF denies paragraph 15 of plaintiffs' Complaint.

19. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 16 of plaintiffs' Complaint and, therefore, denies the same.

20. With respect to the first sentence of paragraph 17 of plaintiffs' Complaint, the SIF denies that sentence. With respect to the remaining three sentences contained within paragraph 17, the SIF denies those allegations given that plaintiffs' use of the term "issued" is vague and ambiguous.

21. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 18 of plaintiffs' Complaint.

22. The SIF denies the first sentence of paragraph 19. With respect to the remaining two sentences of that paragraph, the SIF is without sufficient information or knowledge to admit or deny the allegations contained in those two sentences and, therefore, denies the same.

23. With respect to the first sentence in paragraph 20 of plaintiffs' Complaint, such sentence does not appear to require a response by the SIF. To the extent a response is required, the SIF denies the first sentence of paragraph 20 of plaintiffs' Complaint. With respect to the remaining allegations contained within paragraph 20 of plaintiffs' Complaint, the SIF denies those allegations either as being untrue and/or due to a lack of sufficient knowledge or information.

24. The SIF is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 21 of plaintiffs' Complaint and, therefore, denies the same.

25. Paragraph 22 of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 22 of plaintiffs' Complaint.

26. Paragraph 23 of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23 of plaintiffs' Complaint.

27. Paragraph 23(a) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(a) of plaintiffs' Complaint.

28. Paragraph 23(b) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(b) of plaintiffs' Complaint.

29. Paragraph 23(c) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(c) of plaintiffs' Complaint.

30. Paragraph 23(d) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(d) of plaintiffs' Complaint.

31. Paragraph 23(e) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(e) of plaintiffs' Complaint.

32. Paragraph 23(f) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(f) of plaintiffs' Complaint.

33. Paragraph 23(g) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(g) of plaintiffs' Complaint.

34. Paragraph 23(h) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(h) of plaintiffs' Complaint.

35. Paragraph 23(i) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(i) of plaintiffs' Complaint.

36. Paragraph 23(j) of plaintiffs' Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(j) of plaintiffs' Complaint.

COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS

37. Paragraph 24 of plaintiffs' Complaint does not appear to require a response by the SIF. To the extent a response is required, the SIF denies any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

38. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 25 of plaintiffs' Complaint.

39. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(a) of plaintiffs' Complaint.

40. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(b) of plaintiffs' Complaint.

41. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(c) of plaintiffs' Complaint.

42. Paragraph 26 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 26.

43. Paragraph 27 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 27.

44. Paragraph 28 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 28.

45. Paragraph 28(a) of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 28(a).

46. Paragraph 28(b) of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 28(b).

47. Paragraph 29 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 29.

48. Paragraph 30 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 30.

49. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 31 of plaintiffs' Complaint.

COUNT II: DECLARATORY RELIEF - INJUNCTION

50. Paragraph 32 of plaintiffs' Complaint does not appear to require a response by the SIF. To the extent a response is required, the SIF denies any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

51. Paragraph 33 of plaintiffs' Complaint contains a legal conclusion for which a response is not required by the SIF. To the extent it is deemed that the SIF is responsible for responding to this paragraph, the SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 33.

52. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 34 of plaintiffs' Complaint.

COUNT III: DAMAGES

53. Paragraph 35 of plaintiffs' Complaint does not appear to require a response by the SIF. To the extent a response is required, the SIF denies any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

54. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 36 of plaintiffs' Complaint.

55. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 37 of plaintiffs' Complaint.

56. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within paragraph 38 of plaintiffs' Complaint.

57. The SIF denies any and all allegations, including plaintiffs' characterizations, contained within plaintiffs' prayer for relief.

THIRD DEFENSE

Plaintiffs' claims are barred under the doctrine of laches, waiver, unclean hands and/or estoppel under the circumstances asserted in the Complaint.

FOURTH DEFENSE

Any damages that plaintiffs allegedly suffered resulted from the acts or omissions of others for whom defendants are not liable.

FIFTH DEFENSE

Plaintiffs have failed to mitigate their damages.

SIXTH DEFENSE

Plaintiffs lack standing to assert the causes of action alleged in plaintiffs' Complaint.

SEVENTH DEFENSE

Plaintiffs have not complied with all conditions precedent to bringing this action.

EIGHTH DEFENSE

Neither the allegations in the Complaint, nor the facts related to this subject matter of this action, call for class action certification. Defendants reserve the right to contest any motion or request for certification plaintiffs may file.

NINTH DEFENSE

Plaintiffs' damages, if any, were not proximately caused by the conduct of Plaintiffs.

TENTH DEFENSE

Some or all of plaintiffs' claims are barred by the applicable statute of limitations, Idaho Code §§ 5-215, 5-217, 5-218, 5-224, and/or 5-237.

ELEVENTH DEFENSE

Plaintiffs have failed to comply with the requirements of the Idaho Tort Claims Act, Idaho Code § 6-901, *et seq.*

TWELTH DEFENSE

To the extent any of plaintiffs' claims are asserted against James M. Alcorn, such claims may only be brought against Mr. Alcorn in his official capacity.

THIRTEENTH DEFENSE

At all times, the SIF and Mr. Alcorn acted in good faith in connection with the administration of the state insurance fund or affairs relating thereto. *See* I.C. § 72-907.

RESERVATION OF DEFENSES

The SIF, by virtue of pleading a defense above, does not admit that said defense is an affirmative defense within the meaning of applicable law, and the SIF does not thereby assume a burden of proof or production not otherwise imposed upon it as a matter of law. In addition, in asserting any of the above defenses, the SIF does not admit any fault, responsibility, liability or damage but, to the contrary, expressly denies the same. Discovery has yet to commence, the results of which may disclose the existence of facts supporting further and additional defenses. Defendant, therefore, reserves the right to seek leave of this Court to amend its Answer as it deems appropriate.

REQUEST FOR ATTORNEY FEES

As a result of the filing of this action by the plaintiffs, the SIF has been required to obtain the services of Hall, Farley, Oberrecht & Blanton, P.A., Boise, Idaho to defend this action, and has and will continue to incur reasonable attorney fees based upon the time expended in such defense. The SIF alleges and hereby makes a claim against plaintiffs for attorney fees and costs incurred pursuant to the provisions Idaho Code §§ 12-120, 12-121, 12-123, 41-1839, Rule 54 of the Idaho Rules of Civil Procedure, and any other appropriate provision of law.

PRAYER FOR RELIEF

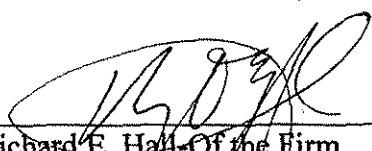
Wherefore, the SIF prays for judgment as follows:

1. That plaintiffs take nothing against the SIF by way of their Complaint and that the Complaint be dismissed with prejudice;
2. That the SIF be awarded its costs and reasonable attorney fees incurred in the defense of this action; and
3. For such other and further relief as the Court may deem just and proper.

DATED this 7th day of October, 2006.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By

 #6432
Richard E. Hall-Of the Firm
Keely E. Duke-Of the Firm
Attorneys for Defendant, Idaho State Insurance
Fund

CERTIFICATE OF SERVICE

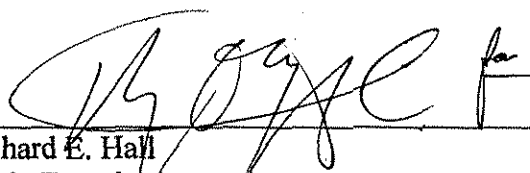
I HEREBY CERTIFY that on the 2nd day of October, 2006, I caused to be served a true copy of the foregoing ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL, by the method indicated below, and addressed to each of the following:

Donald W. Lojek
Lojek Law Offices, CHTD
1199 W. Main Street
P.O. Box 1712
Boise, ID 83701-1712
Fax No.: (208) 343-5200

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Philip Gordon
Bruce S. Bistline
Gordon Law Offices
623 West Hays Street
Boise, ID 83702
Fax No.: (208) 345-0050

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy


Richard E. Hall
Keely E. Duke

F I L E D
A.M. 3:30 P.M.

APR 30 2007

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT)
ALAN BECKER and CRITTER)
CLINIC, an Idaho Professional)
Association,)

Plaintiffs,)

-vs-

THE IDAHO STATE INSURANCE)
FUND, JAMES M. ALCORN, its)
Manager, and WILLIAM DEAL,)
WAYNE MEYER, MARGUERITE)
McLAUGHLIN, GERALD GEDDES,)
MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE,)
ELAINE MARTIN, and MARK)
SNODGRASS in their capacity)
As member of the Board of Directors)
of the State Insurance Fund,)

Defendants.)

Case No. CV 2006-07877*C

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDG-
MENT ON THE ISSUES OF
STANDING AND WAIVER

Defendants' Motion for Summary Judgment came on regularly before the Court for hearing on April 6, 2007. Plaintiffs appeared through their attorneys of record, Mr. Bruce S. Bistline, Mr. Phillip Gordon and Mr. Donald W. Lojek. Defendants appeared through their attorneys of record, Mr. Richard Hall and Ms. Keely E. Duke.

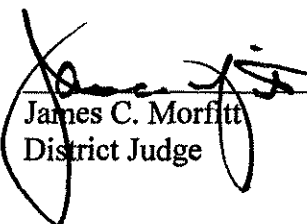
The Court having fully and carefully considered the file and record in this case together with the briefing and memoranda submitted in support of and in opposition to the Defendants' motion, and the Court having orally announced its findings of fact and conclusions of law on the record, in open court, which findings of fact and conclusions of law are adopted herein, and

Good Cause Appearing,

IT IS HEREBY ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment grounded upon Plaintiffs lack of STANDING, be, and is hereby, DENIED.

IT IS FURTHER ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment on the issue of WAIVER, be, and is hereby DENIED.

DATED: APR 30 2007


James C. Morfitt
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order Denying Defendants' Motion for Summary Judgment on the Issues of Standing and Waiver was mailed to each of the attorneys listed herein on the 30 day of April, 2007.

Donald W. Lojek
LOJEK LAW OFFICES, CHTD.
1199 W. Main Street
P. O. Box 1712
Boise, ID 83701-1712

Phillip Gordon
Bruce S. Bistline
GORDON LAW OFFICES
623 West Hays Street
Boise, ID 83702

Richard E. Hall
Keely E. Duke
HALL, FARLEY, OBERRECHT
& BLANTON, P.A.
702 West Idaho, Suite 700
P. O. Box 1271
Boise, ID 83701

William H. Hurst,
Clerk of the District Court

By: 
Deputy Clerk

F I L E D
A.M. 3:20 P.M.

APR 30 2007

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT)
ALAN BECKER and CRITTER)
CLINIC, an Idaho Professional)
Association,)
Plaintiffs,)

Case No. CV 2006-07877*C

-vs-

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON
THE ISSUE OF STATUTE OF
LIMITATION

THE IDAHO STATE INSURANCE)
FUND, JAMES M. ALCORN, its)
Manager, and WILLIAM DEAL,)
WAYNE MEYER, MARGUERITE)
McLAUGHLIN, GERALD GEDDES,)
MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE,)
ELAINE MARTIN, and MARK)
SNODGRASS in their capacity)
As member of the Board of Directors)
of the State Insurance Fund,)
Defendants.)

Defendants' Motion for Summary Judgment came on regularly before the Court for hearing on April 6, 2007. Plaintiffs appeared through their attorneys of record, Mr. Bruce S. Bistline, Mr. Phillip Gordon and Mr. Donald W. Lojek. Defendants appeared through their attorneys of record, Mr. Richard Hall and Ms. Keely E. Duke.

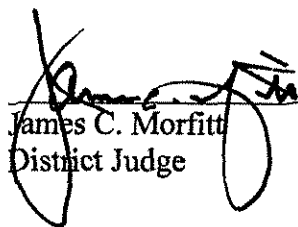
The Court having fully and carefully considered the file and record in this case together with the briefing and memoranda submitted in support of and in opposition to the Defendants' motion, and the Court having orally announced its findings of fact and conclusions of law on the record, in open court, which findings of fact and conclusions of law are adopted herein, and

Good Cause Appearing,

IT IS HEREBY ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment on the three-year statute of limitation issue, be, and is hereby GRANTED.

IT IS FURTHER ORDERED, and this does ORDER, that Plaintiffs' claims and causes of action accruing prior to July 21, 2003, are TIME-BARRED, based upon the applicable statute of limitation for statutory violations.

DATED: APR 30 2007



James C. Morfitt
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order Denying Defendants' Motion for Summary Judgment on the Issues of Standing and Waiver was mailed to each of the attorneys listed herein on the 30 day of April, 2007.

Donald W. Lojek
LOJEK LAW OFFICES, CHTD.
1199 W. Main Street
P. O. Box 1712
Boise, ID 83701-1712

Phillip Gordon
Bruce S. Bistline
GORDON LAW OFFICES
623 West Hays Street
Boise, ID 83702

Richard E. Hall
Keely E. Duke
HALL, FARLEY, OBERRECHT
& BLANTON, P.A.
702 West Idaho, Suite 700
P. O. Box 1271
Boise, ID 83701

William H. Hurst,
Clerk of the District Court

By: 
Deputy Clerk

Donald W. Lojek ISBN 1395
Lojek Law Offices, CHTD
1199 W. Main Street
PO Box 1712
Boise, ID 83701
Telephone: 208-343-7733
Facsimile: 208-343-5200

Philip Gordon ISBN 1996
Bruce S. Bistline ISBN 1988
GORDON LAW OFFICES
623 West Hays Street
Boise, ID 83702
Telephone: 208/345-7100
Facsimile: 208/345-0050

F I L E D
A.M. *7:15* P.M.

JUL 10 2007 ✓

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Plaintiffs and the Class

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

**RANDOLPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association.**

Plaintiffs,

vs.

**THE IDAHO STATE INSURANCE FUND,
JAMES M. ALCORN, its Manager, and
WILLIAM DEAL, WAYNE MEYER,
MARGUERITE McLAUGHLIN, GERALD
GEDDES, MILFORD TERRELL, JUDI
DANIELSON, JOHN GOEDDE, ELAINE
MARTIN, and MARK SNODGRASS in their
capacity as member of the Board of Directors
of the State Insurance Fund**

Defendants.

Case No. CV 06-7877

**FIRST AMENDED
CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

COME NOW THE PLAINTIFFS, ON BEHALF OF THEMSELVES AND ANY AND ALL PERSONS AND ENTITIES SIMILARLY SITUATED, AND FOR THEIR CAUSE OF ACTION AGAINST THE DEFENDANTS, DO HEREBY STATE, ALLEGE AND COMPLAIN AS FOLLOWS:

INTRODUCTION

This is a class action brought on behalf of the named Plaintiffs and a class of persons and entities who, at any time during the preceding five years, were subscribers of the Idaho State Insurance Fund (hereinafter "the Fund"), who have paid annual premiums in an amount of \$2,500 (two thousand, five hundred dollars) or less, and who, despite being lawfully entitled to receive a dividend when the payment of a dividend was determined to be appropriate by the Manager and /or the Board of Directors of the Fund, have not received any dividend in one or more years when other Fund subscribers whose annual premiums have exceeded \$2,500.00 received a percentage of such premiums as a dividend. The determination that the Fund would pay dividends to some but not all of the Fund subscribers appears to have been made by the Fund's appointed Manager James M. Alcorn (hereinafter either "Alcorn" or "the Manager") but it may also have been made by or with the approval of the Board of Directors of the Fund. The payment of dividends based upon the amount of premium paid to some, but not all, Fund subscribers improperly favors the larger subscribers to the Fund. The named Plaintiffs and the members of the class are seeking first a declaratory judgment ordering and adjudging that the Fund acted in direct contravention of its statutory and contractual authority when it determined that the dividends would only be paid to subscribers whose annual premium exceeded the sum of \$2,500.00.

Second, Plaintiffs and the members of the class are seeking injunctive relief enjoining the Defendants from paying out dividends to subscribers in a manner which is contrary to law and the terms of the contract between the Fund and its subscribers.

Third, the named Plaintiffs and the members of the class are asking the Court to award them damages in an amount equal to the dividends which they should have had paid or credited to them during each of the five years preceding the filing of this Complaint for or in respect to which the Fund issued dividends to some but not all subscribers.

PART I: PARTIES

1.

All of the named Plaintiffs are now and during some or all of the years comprising the class period have been conducting business in the State of Idaho. All of the named Plaintiffs have during some or all of such period had one or more employees whom they have been required by law to provide with worker's compensation insurance coverage. All of the named Plaintiffs have, during some or all of the class period, subscribed to the Fund for the purpose of obtaining their worker's compensation insurance coverage.

2.

Plaintiffs reside and do business in Idaho as follows:

- a. Plaintiff Farber is a lawyer who lives in and operates a law practice at 823 12th Street S, Nampa, Idaho 83653 and who resides in Canyon County, Idaho.
- b. Plaintiff Becker is a small business operator who conducts business as Marvs Framing Gallery at 5901 Overland Road, in Boise, Idaho 83709 and who lives in

Ada County, Idaho.

- c. Critter Clinic, P.A. is a veterinary practice with its sole place of business located at 10534 W.Ustick Rd., in Boise, Ada County, Idaho 83704.

3.

At all times material and relevant to this action, the State of Idaho has had in force and effect a comprehensive worker's compensation statutory scheme which, as set forth in I.C. 72-203, applies to "all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code". These statutes establishing this system, and, *inter alia*, creating the Fund, are found in Title 72 of the Idaho Code.

4.

The Defendant Fund is "an independent body corporate politic" created by statute (specifically, Idaho Code § 72-901) for the purpose of insuring employers against liability for compensation under the worker's compensation and occupational injury laws of the State of Idaho. The Fund is administered without liability on the part of the state of Idaho.

5.

The Fund is governed by a board of five directors (hereinafter "the Board"), all of whom are appointed by the governor. Defendants William Deal (2000 to current), Wayne Meyer (2000 to current), Marguerite McLaughlin (2001 & 2001), Gerald Geddes (2000 to current), Milford Terrell (2000 into 2003), Judi Danielson (part of 2001), John Goedde (part of 2001 to current), Elaine Martin (2004 to current) and Mark Snodgrass (2005 to current) served on during the years noted as members of the Board.

6.

The members of the Board appoint a Manager of the Fund who serves at their pleasure (Idaho Code § 72-901). The Defendant Alcorn is now and at all times relevant hereto was the duly appointed and acting Manager of the Defendant Fund.

PART II: FACTUAL ALLEGATIONS

7.

The Fund is the single largest issuer of worker's compensation insurance in the State of Idaho. In recent years both the number of worker's compensation policies issued by the Fund and the total amount of premiums collected by it for the issuance of such coverage have grown. The Fund's reports reflect that its surplus and its reserves have also grown over this same period of time.

8.

Idaho Code § 72-915 provides as follows:

At the end of every year, and as such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

This statute provides the sole and exclusive authority under and pursuant to which the Fund can lawfully pay dividends to its subscribers. This statute does not provide the Manager any authority whatsoever to distinguish among subscribers or to pay dividends based upon

whether a subscriber has paid some threshold amount of annual premium.

9.

During some or all five years immediately proceeding the filing of **the initial complaint in this matter on July 21, 2006, and again on or about December 31, 2006, but in any event prior to February 15, 2007**, (herein the “class period”) the Fund has paid a dividend to subscribers. The payment of such dividends was made after the Board or the Manager determined that it was appropriate for the Fund to pay a dividend. In all cases the amount of the dividend has been a percentage of the annual premium paid by each subscriber considered to be qualified to receive a dividend and the dividend has been paid without regard to class of employment or industry.

10.

Commencing several years ago and for **some or all** years in the class period, the Manager and/or the Board arbitrarily, capriciously, and without any statutory or contractual authority whatsoever, determined that such dividends would not be paid to subscribers who, **though not otherwise disqualified from sharing in a dividend distribution**, had paid annual premiums of \$2,500.00 or less.

11.

Each of the Plaintiffs now, and at all times material and relevant hereto, has had one or more employees – not expressly exempted by section 72-212 – for whom such Plaintiff is statutorily required at all times to keep and maintain in force a policy of worker’s compensation insurance.

12.

Each Plaintiff now, and for all or portions of the class period, has obtained worker's compensation insurance coverage applicable to non-exempt employees by subscribing to the Defendant Fund.

13.

For each year in the class period, some or all of the Plaintiffs paid annual premiums to the Fund which were \$2,500.00 or less and, for each such year, those Plaintiffs did not receive a dividend although for each such year subscribers who paid an annual premium of more than \$2,500.00 did receive a dividend.

14.

Plaintiffs allege on information and belief that the percentage of employers purchasing worker's compensation insurance from the Fund and who received a dividend during any year within the class period varies from year to year, but is usually between five and twenty percent. The decision to pay dividends only to those employers whose total premiums for the year in question exceeds \$2,500.00 means that dividends are being paid out by the Fund only to the biggest Idaho employers who are subscribers to the Fund. Otherwise stated, this arbitrary, capricious and unlawful cut-off results in between 80 and 95 percent of the Fund's subscribers being deprived of dividends. The use of a premium-based benchmark to determine which subscribers will be paid a dividend from the growing surpluses held by the Fund is unlawful, arbitrary and capricious and contrary to the contract between the Fund and its subscribers.

PART III: CLASS ACTION ALLEGATIONS

15.

Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b) of the Idaho Rules of Civil Procedure individually and on behalf of a class of similarly situated persons and entities.

16.

The Class shall include all Idaho employers who: **a.) were subscribers to the Fund (i.e. purchased worker's compensation insurance from the Fund); b.) for one or more policy years, paid an annual premium for such insurance to the Fund which was equal to or less than \$2,500.00; and, c.) on each instance during the Class Period when the Manager or the Fund determined that payment of a dividend was appropriate and acted to distribute that dividend to qualified subscribers, did not receive a dividend that they would otherwise have been qualified and entitled to receive because they paid premiums of \$2,500.00.** It is reasonable to anticipate that while there will be Fund subscribers who have sustained damages as a consequence of the Defendants' conduct during all of the years with the class period, there will also be, for a variety of reasons (including but not limited to: not subscribing to the Fund in all years in the class period, or having paid sufficient annual premium in some but not all years to have qualified to receive a dividend), subscribers who will have sustained damage due to not having received a dividend in some but not all of the years falling within the class period.

17.

The Class is so numerous that joinder of all members of the Class as Plaintiffs herein is impracticable. The number of policies issued by the Fund for the year 2002 totaled 29,789. This

figure rose to 32,320 in the year ended December 31, 2003. On information and belief, Plaintiff alleges that the total number of policies issued by the Fund also exceeded 30,000 for 2004 and 2005.

18.

The claims of the named Plaintiffs are typical of the claims of all members of the Class, and all members of the Class sustained damages arising out of the same wrongful conduct of the Defendants.

19.

The named Plaintiffs will fairly and adequately protect the interests of the Class. They have retained counsel who are competent and experienced in class action litigation. Their counsel have among them over 90 years of experience practicing law in State and Federal Courts in Idaho and other jurisdictions and they have been involved in and processed to recovery numerous class action lawsuits.

20.

A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Joinder of all members of the Class is impractical because the members number in the tens of thousands and they reside (or have their principal place of business) throughout the entire State of Idaho. It would also be impracticable for each member of the Class to bring separate actions because the individual damages of any one Class member will be relatively small when measured against the potential costs of bringing this action, making the expense and burden of this litigation unjustifiable for individual actions. In this class action, the court can determine the rights of the named Plaintiffs and all members of the Class with judicial

economy. The named Plaintiffs do not anticipate any difficulty in the management of this suit as a class action.

21.

The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant.

22.

The Defendant has acted on grounds which are universally applicable to the class, thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class as a whole.

23.

There are numerous common questions of law and fact that exist as to all members of the Class and they clearly predominate over any questions affecting solely individual members of the Class. These questions include, but are not limited to, the following:

- a. Whether, during one or more of the years included in and comprising the class period, the individual class member has been a subscriber to the Fund.
- b. Whether, during one of more of those years, the individual class member paid an annual premium of \$2,500.00 or less **for a policy of workers compensation coverage.**
- c. Whether, during one or more of those years, the Fund paid out a dividend, but denied payment to subscribers, whose annual premium for that year

- equaled or was less than \$2,500.00 even though
- d. Whether the Fund's failure to pay a dividend to those subscribers whose annual premium for that year equaled or was less than \$2,500.00 was contrary to the law and the terms of the contract between the Fund and its subscribers.
 - e. Whether, during one or more years included in the class period, a Plaintiff or an individual member of the class was a subscriber entitled to a dividend once the manager had determined it was appropriate to pay dividends.
 - f. Whether one or more of the Defendants must, for each year during the class period that the Fund paid a dividend, pay a dividend to Plaintiffs and members of the class for each year that they were determined to be ineligible to receive a dividend for the reason that they had paid an annual premium of \$2,500.00 or less.
 - g. How the dividends to be paid to each such subscriber shall be calculated for each such year.
 - h. Whether one or more of the Defendants must pay the Plaintiffs and members of the class interest on such sums as the Fund should have paid to them for each year during the class period.
 - i. If the Plaintiffs and the members of the class are entitled to recover interest, then it will be necessary to determine the applicable rate of interest and the date or dates from which interest will be assessed.

- j. Whether the members of the class are entitled to an order enjoining the Defendants from, in future years, paying dividends only to those subscribers whose annual premium exceeded the sum of \$2,500.00 or in any other manner which is contrary to the law or the contract between the Fund and its subscribers.

COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS

24.

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment pursuant to Idaho Code title 10, chapter 12.

25.

There is an actual controversy within the jurisdiction of this Court and declaratory relief will provide an effective and efficacious means for terminating uncertainty and resolving controversy by adjudicating the rights and interests of the parties with respect to the following acts and events:

- a.) One or more of the Defendants have, for each year during the class period, used an unlawful, arbitrary and/or improper benchmark or calculation to determine which of its subscribers were entitled to receive a dividend and, as a consequence, have denied dividends to subscribers who were otherwise lawfully entitled to receive a dividend once the Manager or the Fund determined that it was appropriate to pay dividends.
- b.) One or more of the Defendants will, absent an order from this Court, continue to

use an unlawful, arbitrary, and/or improper benchmark or calculation to determine which of the Fund's subscribers are entitled to receive a dividend

c.) For each of the years in the class period, the Plaintiffs and members of the class have not received dividends when dividends have been paid out by the Fund and they will, absent an order from this Court, continue to be denied the dividends which are due to them.

26.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that the acts and actions of one or more of the Defendants, as set forth in this Complaint, are not now and, at no time during the class period, have been lawful, and that such acts and actions are in derogation of the contractual and statutory provisions authorizing the Defendants to declare and pay dividends to its subscribers.

27.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that the Manager and the Fund are not now, and at no time during the class period, have ever been authorized by law or the contract to, after determining that payment of a dividend is appropriate, deny payment of **any amount of dividend** to any subscriber **who was otherwise qualified to receive** because the annual premium paid by the subscriber was \$2,500.00 or less.

28.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that:

a. One or more of the Defendants have, after determining that payment of a

dividend was appropriate, acted wrongly, arbitrarily, in violation of an law of the State of Idaho and contrary to the contract between the Fund and its subscribers by denying payment of that dividend to any subscriber because the annual premium paid by the subscriber was \$2,500.00 or less; and,

- b. One or more of the Defendants must now pay to each member of the class an amount equal to the dividend such member should have received during each year of the class period in which such class member was lawfully entitled to receive a dividend.

29.

Pursuant to Idaho Code §§10-1201 & 10-1205, this Court has the authority to declare that by reason of the conduct alleged herein one or more of the Defendants should also pay interest on all amounts found due to any Plaintiff or class member as unpaid dividends from the date(s) that such dividend(s) should have been paid to the date of judgment herein. The Court has the authority to determine the applicable rates of interest.

30.

This Court has the authority to make all such other, further and additional rulings as are needed fully and completely to resolve any and all issues that are raised by this Complaint.

31.

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

COUNT II: DECLARATORY RELIEF — INJUNCTION

32.

Plaintiffs and the members of the class are, based upon all of the foregoing allegations which are incorporated herein as though set out in full, seeking a Declaratory Judgment providing for injunctive relief, pursuant to Idaho Code title 10, chapter 12.

33.

This Court has the authority to declare that, under the circumstances set forth above, the Defendants have acted in violation of Idaho law and the provisions of the contract between the Fund and its subscribers. This Court may, therefore, order that the Defendants should be permanently enjoined from conditioning any future distribution of dividends to its subscribers based in whole or in part upon whether they have paid more than some threshold amount of annual premiums during the calendar year to which the dividend is attributable.

34.

It has been necessary for the Plaintiffs to engage the services of the undersigned attorneys in order to represent them in this action and the Plaintiffs and the members of the Plaintiff class are entitled to their attorneys fees and costs incurred in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

COUNT III: DAMAGES

35.

Plaintiffs reallege the allegations contained in Paragraphs 1. through and including 32. of this Complaint, and incorporate the same by reference herein.

36.

For each year during the class period for which each Plaintiff and each and every member of the class was entitled to but did not receive a dividend, such Plaintiffs and class members have been damaged by the acts and actions of the Defendants as set forth herein. The amount of the damages sustained by each Plaintiff and each and every member of the class is easily ascertainable. It is equal to the amount of the dividend which should have been, but was not, paid to each such Plaintiff and each such member of the class. These damages should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

37.

For each year during the class period, Plaintiffs and the members of the class are entitled to pre-judgment interest on the dividends they should have received, commencing on the date that dividends were paid to some of the Fund's subscribers and continuing to the date of judgment. Interest should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

38.

Plaintiffs have been required to engage the services of the attorneys named in this Complaint in order to represent them and the members of the class in connection with this action. Plaintiffs should be awarded the attorneys fees and costs which they incur in the prosecution of this action. These fees should be paid to Plaintiffs and each member of the class by one or more of the Defendants.

WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

1. That the Court certify the class as herein above requested and conduct proceedings to establish an appropriate class notice and method of sending notice to the class;
2. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205, that the Defendants do not now have, and at all times material and relevant to this action, did not have any lawful or contractual authority to cause the Fund to condition the payment of a dividend to its subscribers upon the amount of the annual premium which such subscriber paid in respect to the year to which such dividend relates.
3. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, it was wrongful for one or more of the Defendants to cause the Fund to fail or refuse to pay dividends to any subscribers because the subscriber's annual premium equaled or was less than \$2,500.00 (two thousand five hundred dollars).
4. That the Court find and rule that the Plaintiffs and the members of the class were damaged by the acts and actions of one or more of the Defendants and that the amount of the damages sustained by each Plaintiff and each member of the class is the total dividends which such Plaintiff or such class member should have received from the Defendants during the class period, together with pre-judgment interest thereon.
5. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period as herein defined one or more of the Defendants must, to the extent that the Fund failed to do so, pay to the Plaintiffs and the members of the class **the dividend that each is otherwise qualified to receive** for each

year in which each Plaintiff and each member of the class was a subscriber to the Fund. This dividend should be a percentage of the annual premiums each paid for the year to which such dividend relates, based on the same percentage as that paid to subscribers whose premiums for the year in question exceeded the sum of \$2,500.00 (two thousand, five hundred dollars) **and adjusted in the same manner used with respect to all subscribers to account for any losses reported during the policy year to which the dividend applies.**

6. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, that one or more of the Defendants must pay to the Plaintiffs and the members of the class, pre-judgment interest on such sums as the Fund should have paid to them as dividends.
7. That the Court ascertain the correct rate of interest to be applied and make all determinations necessary to compute the dividends and interest that is due to the Plaintiffs and members of the class in connection with any and all dividends which were wrongfully withheld from or not paid to them at any time after the commencement of the class period.
8. That the Court enter a temporary injunction, enjoining the Defendants from issuing dividends to some, but not all of its subscribers, based either upon the total amount of the annual premium paid by such subscriber in the year to which such dividends are attributable, or upon any other criterion not specifically permitted by statute or contract.
9. That the Court make all such other, further and additional rulings as are needed in order to fully and completely resolve any and all issues that are raised by this Complaint.

10. That the Court order one or more of the Defendants to pay the attorney's fees and costs incurred by the Plaintiffs and members of the class in connection with this action.

11. For such other and further relief as is just and equitable in the premises.

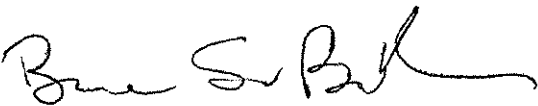
DATED: This 6th day of July, 2007.

GORDON LAW OFFICES, CHTD.


By Bruce S. Bistline

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on any and all issues properly triable by jury in this action.


Bruce S. Bistline
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2007, I caused the foregoing document to be delivered by the method indicated below and addressed to the following:

Richard E. Hall
Keely Duke
Hall Farley Oberrecht & Blanton
702 W. State St. Ste. 700
Boise, Idaho 83701

HAND DELIVERY
 U.S. MAIL
 OVERNIGHT MAIL
 FACSIMILE 208-395-8585

ORIGINAL

Richard E. Hall
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W:\33-461.2\Answer to First Amended Complaint.doc

F I L E D
A.M. 3:40 P.M.

JUL 20 2007

CANYON COUNTY CLERK
J. Duke DEPUTY

Attorneys for Defendants Idaho State Insurance Fund,
James M. Alcorn, Manager of the State Insurance Fund, and
the individually named Board of Directors of the
State Insurance Fund

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOL PH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association,

Plaintiffs,

vs.

THE IDAHO STATE INSURANCE
FUND, JAMES M. ALCORN, its Manager,
and WILLIAM DEAL, WAYNE MEYER,
MARGUERITE McLAUGHLIN,
GERALD GEDDES, MILFORD
TERRELL, JUDI DANIELSON, JOHN
GOEDDE, ELAINE MARTIN, and MARK
SNODGRASS in their capacity as member
of the Board of Directors of the State
Insurance Fund,

Defendants.

Case No. CV06-7877

**ANSWER TO PLAINTIFFS' FIRST
AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

COME NOW defendants, Idaho State Insurance Fund, James M. Alcorn, and the individually named Board of Directors of the State Insurance Fund, collectively the "SIF defendants", by and through their counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiffs' First Amended Class Action Complaint and Demand for Jury Trial ("Amended Complaint"), admit, deny and allege as follows:

FIRST DEFENSE

Plaintiffs' Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The SIF defendants deny each and every paragraph and allegation of plaintiffs' Amended Complaint unless specifically and expressly admitted in this document.

INTRODUCTION

With respect to the allegations contained in the introduction to plaintiffs' Amended Complaint, such allegations in many instances do not require a response because they are preliminary statements as to the filing of the action. To the extent a response is required with respect to any statement or allegation contained in the introductory paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within the introduction of plaintiffs' Amended Complaint as an outright denial and/or due to lack of sufficient information or knowledge.

PART ONE: PARTIES

1. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of plaintiffs' Amended Complaint and, therefore, denies the same.

2. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2 of plaintiffs' Amended Complaint and, therefore, denies the same.

3. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(a) of plaintiffs' Amended Complaint and, therefore, denies the same.

4. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(b) of plaintiffs' Amended Complaint and, therefore, denies the same.

5. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2(c) of plaintiffs' Amended Complaint and, therefore, denies the same.

6. The SIF defendants admit the allegations contained in paragraph 3 of plaintiffs' Amended Complaint.

7. The SIF defendants admit the allegations contained in paragraph 4 of plaintiffs' Amended Complaint.

8. With respect to the allegations contained in paragraph 5 of plaintiffs' Amended Complaint, the SIF defendants admit that the State Insurance Fund ("SIF") is governed by a board of five directors, all of whom are appointed by the Governor. The SIF defendants further admit that William Deal, Wayne Meyer, Marguerite McLaughlin, Gerald Geddes, Milford Terrell, Judi Danielson, John Goedde, Elaine Martin, and Mark Snodgrass all served (or are serving) on the board of directors for the SIF. The SIF defendants further admit that Judi Danielson served for part of 2001, John Goedde served for part of 2001 to the present, Elaine Martin served from 2004 to the present, and Mark Snodgrass served from 2005 to the present.

However, with respect to the other board members, the SIF defendants deny the dates plaintiffs identified as the dates of service by those individuals on the board of directors for the SIF.

9. The SIF defendants admit the allegations contained in paragraph 6 of plaintiffs' Amended Complaint.

10. The SIF defendants admit the first two sentences contained in paragraph 7 of plaintiffs' Amended Complaint. With respect to the third sentence, the fund's report speaks for itself and, therefore, the SIF defendants are not in a position to admit or deny the information contained within that third sentence.

11. With respect to the allegations contained in paragraph 8 of plaintiffs' Amended Complaint, Idaho Code § 72-915 speaks for itself. The SIF defendants deny all allegations, including plaintiffs' characterizations, contained within the last two sentences of paragraph 8 of plaintiffs' Amended Complaint.

12. With respect to the allegations contained in paragraph 9 of plaintiffs' Amended Complaint, the SIF defendants deny any and all allegations contained in the first sentence of paragraph 9, including plaintiffs' characterizations. With respect to the allegations contained in the second sentence of paragraph 9, the SIF defendants admit only that dividends are issued after the Manager, in his discretion, deems the aggregate balance may be safely and properly divided. With respect to the remaining allegations contained in paragraph 9 of plaintiffs' Amended Complaint, the SIF defendants are without sufficient information or knowledge to admit or deny those allegations and, therefore, denies the same.

13. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 10 of plaintiffs' Amended Complaint.

14. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 11 of plaintiffs' Amended Complaint and, therefore, denies the same.

15. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 12 of plaintiffs' Amended Complaint and, therefore, denies the same.

16. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 13 of plaintiffs' Amended Complaint.

17. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 14 of plaintiffs' Amended Complaint.

18. Paragraph 15 does not contain an allegation for which a response is required. To the extent a response is required, the SIF defendants deny paragraph 15 of plaintiffs' Amended Complaint.

19. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 16 of plaintiffs' Amended Complaint and, therefore, denies the same.

20. With respect to the first sentence of paragraph 17 of plaintiffs' Amended Complaint, the SIF defendants deny that sentence. With respect to the remaining three sentences contained within paragraph 17, the SIF defendants deny those allegations given that plaintiffs' use of the term "issued" is vague and ambiguous.

21. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 18 of plaintiffs' Amended Complaint.

22. The SIF defendants deny the first sentence of paragraph 19 of plaintiffs' Amended Complaint. With respect to the remaining two sentences of that paragraph, the SIF defendants

are without sufficient information or knowledge to admit or deny the allegations contained in those two sentences and, therefore, denies the same.

23. With respect to the first sentence in paragraph 20 of plaintiffs' Amended Complaint, such sentence does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny the first sentence of paragraph 20 of plaintiffs' Amended Complaint. With respect to the remaining allegations contained within paragraph 20 of plaintiffs' Amended Complaint, the SIF defendants deny those allegations either as being untrue and/or due to a lack of sufficient knowledge or information.

24. The SIF defendants are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 21 of plaintiffs' Amended Complaint and, therefore, denies the same.

25. Paragraph 22 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 22 of plaintiffs' Amended Complaint.

26. Paragraph 23 of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23 of plaintiffs' Amended Complaint.

27. Paragraph 23(a) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(a) of plaintiffs' Amended Complaint.

28. Paragraph 23(b) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(b) of plaintiffs' Amended Complaint.

29. Paragraph 23(c) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(c) of plaintiffs' Amended Complaint.

30. Paragraph 23(d) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(d) of plaintiffs' Amended Complaint.

31. Paragraph 23(e) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(e) of plaintiffs' Amended Complaint.

32. Paragraph 23(f) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(f) of plaintiffs' Amended Complaint.

33. Paragraph 23(g) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(g) of plaintiffs' Amended Complaint.

34. Paragraph 23(h) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(h) of plaintiffs' Amended Complaint.

35. Paragraph 23(i) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(i) of plaintiffs' Amended Complaint.

36. Paragraph 23(j) of plaintiffs' Amended Complaint seeks a legal conclusion for which a response is not required. To the extent it is deemed a response is required, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 23(j) of plaintiffs' Amended Complaint.

COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS

37. Paragraph 24 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

38. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25 of plaintiffs' Amended Complaint.

39. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(a) of plaintiffs' Amended Complaint.

40. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(b) of plaintiffs' Amended Complaint.

41. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 25(c) of plaintiffs' Amended Complaint.

42. Paragraph 26 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 26 of plaintiffs' Amended Complaint.

43. Paragraph 27 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 27 of plaintiffs' Amended Complaint.

44. Paragraph 28 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 28 of plaintiffs' Amended Complaint.

45. Paragraph 28(a) of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 28(a) of plaintiffs' Amended Complaint.

46. Paragraph 28(b) of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all

allegations, including plaintiffs' characterizations, contained within paragraph 28(b) of plaintiffs' Amended Complaint.

47. Paragraph 29 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 29 of plaintiffs' Amended Complaint.

48. Paragraph 30 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 30 of plaintiffs' Amended Complaint.

49. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 31 of plaintiffs' Amended Complaint.

COUNT II: DECLARATORY RELIEF - INJUNCTION

50. Paragraph 32 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

51. Paragraph 33 of plaintiffs' Amended Complaint contains a legal conclusion for which a response is not required by the SIF defendants. To the extent it is deemed that the SIF defendants are responsible for responding to this paragraph, the SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 33 of plaintiffs' Amended Complaint.

52. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 34 of plaintiffs' Amended Complaint.

COUNT III: DAMAGES

53. Paragraph 35 of plaintiffs' Amended Complaint does not appear to require a response by the SIF defendants. To the extent a response is required, the SIF defendants deny any and all claims or relief for declaratory judgment prosecuted by plaintiffs in this action.

54. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 36 of plaintiffs' Amended Complaint.

55. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 37 of plaintiffs' Amended Complaint.

56. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within paragraph 38 of plaintiffs' Amended Complaint.

57. The SIF defendants deny any and all allegations, including plaintiffs' characterizations, contained within plaintiffs' prayer for relief.

THIRD DEFENSE

Plaintiffs' claims are barred under the doctrine of laches, unclean hands, waiver and/or estoppel under the circumstances asserted in the Amended Complaint.

FOURTH DEFENSE

Any damages that plaintiffs allegedly suffered resulted from the acts or omissions of others for whom defendants are not liable.

FIFTH DEFENSE

Plaintiffs have failed to mitigate their damages.

SIXTH DEFENSE

Plaintiffs lack standing to assert the causes of action alleged in plaintiffs' Amended Complaint.

SEVENTH DEFENSE

Plaintiffs have not complied with all conditions precedent to bringing this action.

EIGHTH DEFENSE

Neither the allegations in the Amended Complaint, nor the facts related to this subject matter of this action, call for class action certification. The SIF defendants reserve the right to contest any motion or request for certification plaintiffs may file.

NINTH DEFENSE

Plaintiffs' damages, if any, were not proximately caused by the conduct of defendants.

TENTH DEFENSE

Some or all of plaintiffs' claims are barred by the applicable statute of limitations, Idaho Code §§ 5-215, 5-217, 5-218, 5-224, and/or 5-237.

ELEVENTH DEFENSE

Plaintiffs have failed to comply with the requirements of the Idaho Tort Claims Act, Idaho Code § 6-901, et seq.

TWELFTH DEFENSE

To the extent any of plaintiffs' claims are asserted against James M. Alcorn, such claims may only be brought against Mr. Alcorn in his official capacity.

THIRTEENTH DEFENSE

At all times material hereto, the SIF, Mr. Alcorn, and the Directors of the Board of the SIF acted in accordance with Idaho Code § 72-901, et seq.

RESERVATION OF DEFENSES

The SIF defendants, by virtue of pleading a defense above, does not admit that said defense is an affirmative defense within the meaning of applicable law, and the SIF defendants do not thereby assume a burden of proof or production not otherwise imposed upon it as a matter of law. In addition, in asserting any of the above defenses, the SIF defendants do not admit any fault, responsibility, liability or damage but, to the contrary, expressly denies the same. Discovery has yet to commence, the results of which may disclose the existence of facts supporting further and additional defenses. The SIF defendants, therefore, reserves the right to seek leave of this Court to amend its Answer as it deems appropriate.

REQUEST FOR ATTORNEY FEES

As a result of the filing of this action by the plaintiffs, the SIF defendants have been required to obtain the services of Hall, Farley, Oberrecht & Blanton, P.A., Boise, Idaho to defend this action, and has and will continue to incur reasonable attorney fees based upon the time expended in such defense. The SIF defendants allege and hereby makes a claim against plaintiffs for attorney fees and costs incurred pursuant to the provisions Idaho Code §§ 12-120, 12-121, 12-123, 41-1839, Rule 54 of the Idaho Rules of Civil Procedure, and any other appropriate provision of law.

PRAYER FOR RELIEF

Wherefore, the SIF defendants pray for judgment as follows:

1. That plaintiffs take nothing against the SIF defendants by way of their Amended Complaint and that the Amended Complaint be dismissed with prejudice;

2. That the SIF defendants be awarded its costs and reasonable attorney fees incurred in the defense of this action; and

3. For such other and further relief as the Court may deem just and proper.

DATED this 20th day of July, 2007.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By Keely E. Duke
Richard E. Hall - Of the Firm
Keely E. Duke - Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2007, I caused to be served a true copy of the foregoing ANSWER TO PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL, by the method indicated below, and addressed to each of the following:

Donald W. Lojek
Lojek Law Offices, CHTD
1199 W. Main Street
P.O. Box 1712
Boise, ID 83701-1712
Fax No.: (208) 343-5200

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Philip Gordon
Bruce S. Bistline
Gordon Law Offices
623 West Hays Street
Boise, ID 83702
Fax No.: (208) 345-0050

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Keely E. Duke
Richard E. Hall
Keely E. Duke

Bruce Bistline, attorney at law. Presenting oral argument for the defendants was Richard Hall, attorney at law.

The court has reviewed the written briefs submitted on behalf of the parties, the affidavits submitted and considered the oral arguments presented and finds as follows:

PROCEDURAL HISTORY

This is a class action law suit. The class is defined as all Idaho employers who pay annual premiums of \$2,500 or less to the Idaho State Insurance Fund, hereinafter "SIF", for workers compensation coverage. The complaint declares that I.C. §72-915 authorizes the SIF manager to readjust the rates of a particular class of employment or industry, in other words, to pay dividends. Since 2003, the fund has paid dividends to only those subscribers who pay more than \$2,500 of annual premiums into the fund.

Plaintiffs allege that those in their class comprise 80 to 95 % of the subscribers to the SIF. The number of policies issued by the SIF is claimed to be 29,789 in 2002 and 32,320 in 2003. So the class is very large.

Count I of the complaint calls for the court to use its power to declare the rights, status, and other legal relations of parties pursuant to I.C. §10-1201, in other words, to make SIF pay dividends to the members of the class by Declaratory Judgment.

Count II of the complaint asks the court to enjoin the defendants from ever again paying out dividends to some but not all of the SIF subscribers.

Count III asks the court to award damages to the class in the amount that would have been paid to them in dividends in previous years.

The defendants in the case are SIF itself, its manager, James Alcorn and the board of directors (nine in number).

Both sides have filed Motions for Summary Judgment.

The plaintiffs filed theirs on January 5, 2007 asking the court to rule that I.C. §72-915 is the only authority that exists re: dividends paid by SIF and that it provides no discretion to the SIF manager to select particular classes of subscriber to receive dividends. Alternatively, if the manager

has the discretion to select classes of subscriber, it does not allow the class to be determined by the amount of premium paid. The court has not yet ruled on this motion.

The defendants filed theirs on February 13, 2007 asking the court to rule that, as a matter of law, I.C. §72-915 does allow the SIF manager the discretion to allocate dividends as he deems appropriate. Further, that the court needed to resolve issues of standing and the applicable statute of limitations to this case. On the latter issues, the court has ruled that the plaintiffs do have standing and that the applicable statute of limitations is three years in this case where the gravamen of the plaintiffs' claim is a statutory violation.

Plaintiffs' second motion for summary judgment asks the court for its judicial determination that the words set out in the last several lines of 72-915 clearly and unambiguously express a legislative intention that any dividend which the manager decides to distribute must be distributed in direct proportion to the amount of premium paid in the dividend period by each policy holder.

The plaintiffs argue that the Court must use the literal meaning of the words of the statute unless it would be contrary to other clearly expressed legislative intent or would lead to an absurd result. Plaintiffs initially argue that the words set out in the last lines of 72-915 unambiguously express a legislative intent relative to the calculus to be used in allocating a dividend and that the calculus requires any dividend which the Manager may decide to distribute, must be distributed in direct proportion to the amount of premium paid in the dividend period by each policyholder who meets the longevity requirement and falls within the classes of employment sharing in the dividend. Plaintiffs argue that the following framework is established by 72-915:

The second sentence of the statute provides for a readjustment process which involves crediting back to qualified subscribers excess funds which involves two phases:

a) the phase leading to the declaring of a dividend

Step 1: Manager must determine if there are available funds

Step 2: Manager must determine if those funds may be safely and properly divided

b) the phase in which distribution of the dividend is accomplished.

Step 1: Manager must determine if he will proceed with a dividend. Statute provides that having found funds available for division, the Manager may in

his discretion proceed with the *distribution*.

Step 2: Manager must determine which policyholders are qualified to share in the distribution

- To be a qualified policyholder, a subscriber must be a member of “such class” which refers to any class of employment or industry as to which there were excess funds
- Further, the policyholder must satisfy the longevity requirement which requires subscription for 6 months or more prior to the time of readjustment

Step 3: Manager shall “credit to each” qualified policyholder their share. The use of the following phrase “as he is properly entitled to, having regard to his prior paid premiums” demonstrates an intention for the respective share of “each” to be calculated solely with reference to the amount of premiums paid.

Plaintiffs further argue that the term “class of employment” cannot, considering the section as a whole, rationally be read to allow differentiation between employers based upon the amount of the annual premium paid. If “classes of employment” is instead ambiguous, the legislature intended the term to refer to employment groupings for rating and accounting purposes and was not intended to refer to the amount of premium paid by the employer.

The defendants counter with their own summary judgment motion arguing that if the court considers the entire statutory framework of the SIF, it will see that the legislature clearly and unambiguously provided the SIF and its manager the discretion to determine how declared dividends should be distributed. By its motion for summary judgment, the defendants want the court to declare this to be true as a matter of law.

Defendants argue that the SIF was set up in 1917 to provide workers compensation insurance to Idaho employers who could not otherwise get it from private carriers. In order to provide the security necessary to insure that payments are made on all deserving claims, the SIF must be managed such that it maintains sufficient surplus and reserve totals to provide a stable and ongoing source of workers’ compensation insurance to Idaho workers. The duty of insuring the

financial integrity of the SIF is left to the board of directors and the fund manager.

They further argue that the decision to pay a dividend to only those subscribers who pay premiums in excess of \$2,500 is based upon a marketing strategy. That is, the larger accounts are generally more profitable and the dividends to them keeps them in the SIF instead of going to private insurers and this allows the SIF to fulfill its public policy objective of providing a source of insurance for the smaller, less profitable accounts. The defendants declare that providing larger policy holders with a larger dividend is a good business practice and is consistent with insurance industry standards as well as the statutory mandate of 72-901(3) to run the SIF as an efficient insurance company.

In the end, the court has before it motions for summary judgment filed by both parties each asking the court to interpret the meaning of Idaho Code §72-915.

FINDINGS OF LAW

“Statutory construction is a question of law. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct.App.2003). Where the language of a statute is plain and unambiguous, the Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct.App.2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67.

When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is incumbent upon a court to give a statute an interpretation which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct.App.2001). Construction of a statute that leads

to an absurd result is disfavored. *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004); *State v. Burtlow*, 144 Idaho 455, 163 P.3d 244, 245 -246 (Ct.App., 2007).

“The objective of statutory interpretation is to give effect to legislative intent. *Robison v. Bateman-Hall*, 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because “the best guide to legislative intent is the words of the statute itself,” the interpretation of a statute must begin with the literal words of the statute. *In re Permit No. 36-7200*, 121 Idaho 819, 824, 828 P.2d 848, 853 (1992); accord *McLean v. Maverick Country Stores, Inc.*, 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). Where the statutory language is unambiguous, the Court does not construe it but simply follows the law as written. *McLean*, 142 Idaho at 813, 135 P.3d at 759. The plain meaning of a statute therefore will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Gillihan v. Gump*, 140 Idaho 264, 266, 92 P.3d 514, 516 (2004). In determining its ordinary meaning “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006) (quoting *In re Winton Lumber Company*, 57 Idaho 131, 136, 63 P.2d 664, 666 (1936)).

If the language of the statute is capable of more than one reasonable construction it is ambiguous. *Carrier v. Lake Pend Oreille Sch. Dist. No. 84*, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006). An ambiguous statute must be construed to mean what the legislature intended it to mean. *Id.* To ascertain legislative intent, the Court examines not only the literal words of the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and its legislative history. *Id.*” *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183, 1187 (20

It is a well-settled principle of statutory construction that statutes should not be construed to render other provisions meaningless.

As stated in *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988):

[O]ur prior cases have held that statutory or constitutional provisions cannot be read in isolation, but must be interpreted in the context of the entire document. *Wright v. Willer*, 111 Idaho 474, 476, 725 P.2d 179, 181 (1986) (“Statutes must be read to give effect to every word, clause and sentence.”); *Hartley v. Miller-Stephan*, 107 Idaho 688, 690, 692 P.2d 332, 334 (1984), *reh'g denied* December 31, 1984 (“We will not construe a statute in a way which makes mere

surplusage of the provisions included therein.); ... *Bastian v. City of Twin Falls*, 104 Idaho 307, 310, 658 P.2d 978, 981 (Ct.App.1983), *petition for review denied* 1983 ("The particular words of a statute should be read in context; and the statute as a whole should be construed, if possible, to give meaning to all its parts in light of the legislative intent.'). 114 Idaho at 403-04, 757 P.2d at 666-67. Emphasis added.

The Court's primary duty in interpreting a statute is to give effect to the legislative intent and purpose of the statute. *Adamson v. Blanchard*, 133 Idaho 602, 605, 990 P.2d 1213, 1216 (1999); *Bannock County v. City of Pocatello*, 110 Idaho 292, 294, 715 P.2d 962, 964 (1986). The legislature's intent is ascertained from the statutory language and the Court may seek edification from the statute's legislative history and historical content at enactment. *Adamson*, 133 Idaho at 605, 990 P.2d at 1216." *Idaho Cardiology Associates, P.A. v. Idaho Physicians Network, Inc.*, 141 Idaho 223, 225, 108 P.3d 370, 372 (Idaho, 2005).

A statute is ambiguous where the language is capable of more than one reasonable construction. *Jen-Rath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002). "Ambiguity is not established merely because differing interpretations are presented to a court; otherwise, all statutes subject to litigation would be considered ambiguous." *Hamilton*, 135 Idaho at 571, 21 P.3d at 893. "The interpretation should begin with an examination of the literal words of the statute, and this language should be given its plain, obvious, and rational meaning." *Williamson v. City of McCall*, 135 Idaho 452, 455, 19 P.3d 766, 769 (2001)." *Porter v. Board of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (Idaho,2004).

ANALYSIS

In filing their 2nd motion for summary judgment, the plaintiffs are seeking a ruling from the court on four narrow issues:

1. that the words of 72-915 clearly and unambiguously express a legislative intent as to the "calculus to be used in allocating a dividend."
2. that the calculus referred to above requires distribution of dividends in proportion to premiums paid by the various policyholders;

3. that the term "class of employment" as used in 72-915 cannot be used to form a class based upon amount of premiums paid;
4. that if the term "classes of employment" is ambiguous, then the legislature intended the term to refer to employment groupings for rating and accounting purposes and that classes were differentiated by the "hazards" associated with each employment grouping so that "rates of premiums" could be fixed and not by the amount of premium paid by the employer.

I.C. § 72-915 provides:

DIVIDENDS. At the end of every year, and at such other times as the manager in his discretion may determine, a readjustment of the rate shall be made for each of the several classes of employments or industries. If at any time there is an aggregate balance remaining to the credit of any class of employment or industry which the manager deems may be safely and properly divided, he may in his discretion, credit to each individual member of such class who shall have been a subscriber to the state insurance fund for a period of six (6) months or more, prior to the time of such readjustment, such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums since the last readjustment of rates.

In filing their motion for summary judgment, defendants are seeking a ruling from the court that their interpretation of the meaning of I.C. §72-915 is the correct interpretation. Specifically:

1. I.C. §72-915 unambiguously grants the SIF manager the discretionary authority to issue dividends as he deems may be "safely and properly divided", or alternatively,
2. I.C. §72-915 is ambiguous and therefore the court must look to other sources to determine legislative intent, such as the other statutes within the act which declare that the paramount goal of managing the SIF is achieving and maintaining a solvent insurer for the various policy holders.

The court determines that plaintiffs' first two issues are intertwined with the whole of defendants' motion for summary judgment and will therefore discuss them together.

Plaintiffs emphasize the language "credit to each individual member of the class" supports their argument that the manager, if he declares a dividend, must pay everyone in the class something. Further, that from 1917 until 2003, this was interpreted to mean a pro rata distribution

to all policyholders.

Defendants emphasize that whether the statute is determined to be clear or ambiguous, the manager has the discretionary authority to exclude the low premium policyholders from the dividend distribution.

The court has considered the analysis of both parties arguing that I.C. §72-915 is clear and unambiguous. However, the court cannot make that finding. There are too many different interpretations of that statute which can be reasonably made which renders it ambiguous.

For instance, the language of I.C. §72-915 states that if the SIF manager deems a dividend may be safely made, "he may in his discretion, credit to each individual member . . . such proportion of such balance as he is properly entitled to, having regard to his prior paid premiums".

This could be interpreted to mean what the plaintiffs claim that it means. That is, that if a dividend is declared by the fund manager, every subscriber must receive a share of the total amount of dividend in direct proportion to the amount of premium that subscriber paid as a percentage of the total premiums paid by all subscribers.

It can also be interpreted to mean that the manager could distribute the dividend as he has done in this case because he has decided that giving regard to prior premiums paid, it is the larger premium paying subscribers who are properly entitled to receive the dividend.

A third interpretation could be that every subscriber must receive a portion of the dividend, but it does not have to be in direct proportion to the amount of premium the subscriber paid relative to the whole. Giving regard to the amount of premiums paid allows for the manager to give the subscribers who paid a smaller premium less of a percentage than the larger subscribers.

All of these interpretations seem reasonable to the court. If the language of the statute is capable of more than one reasonable construction it is ambiguous. *Carrier v. Lake Pend Oreille Sch. Dist. No. 84, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006)*. It is the opinion of this court that the statute is ambiguous.

Therefore, we turn to the interpretation of I.C. §72-915 which may include analysis of:

- a) the text of the statute itself, or its four corners; and,
- b) the dictionary;
- c) legislative history;
- d) public policy;
- e) reasonableness of proposed construction;

- f) other statutes within the Act, as well as other relevant statutes contained outside the Act;
- g) decisions of sister courts which have resolved the same or similar issues;
- h) other relevant extrinsic evidence leading interpretative assistance submitted through affidavits, testimony, etc.

An ambiguous statute must be construed to mean what the legislature intended it to mean. To ascertain legislative intent, the Court examines not only the literal words of the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and the legislative history. *Carrier, supra; State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).

The overriding theme of the Act which creates the State Insurance Fund is the maintenance of the Fund's solvency so as to avoid liability on the part of the state and the creation of "an independent body corporate politic . . . for the purpose of insuring employers against liability for compensation under this worker's compensation law . . . I.C. §72-901.

The powers and duties of the state insurance manager are based upon conducting the business of the state insurance fund "and do any and all things which are necessary and convenient in the administration thereof: I.C. §72-902. Said manager is appointed by the members of the board of directors who have the duty "to direct the policies and operation of the state insurance fund **to assure that the state insurance fund is run as an efficient insurance company, remains actuarially sound and maintains the public purposes for which the state insurance fund was created.**" I.C. §72-901(3), emphasis added.

The manager, James Alcorn, in his affidavit, explains his rationale for declaring and issuing dividends only to subscribers who have paid an annual premium in excess of \$2,500. Essentially, he claims that a primary need of the Fund in maintaining solvency is to be able to compete with other insurance carriers to retain large employers/subscribers. Accordingly, he, with the approval of the members of the board of directors, decided to issue dividends to those larger subscribers only to provide them greater incentive to stay with the SIF.

The plaintiffs argue that there is no basis to conclude that any of the information discussed by the manager in his affidavit was known to or within the contemplation of the legislature at the time that it acted in 1917. The facts presented to the court in support of plaintiffs' argument are contained in the affidavit of George Bambauer. Therein, he declares that when he was employed

with the SIF, the amount of dividend distribution was based upon a formula which took into account the amount of premiums paid by a policyholder but did not include a minimum premium cut off. Nothing in his affidavit addresses the claims of the manager that the decision conforms to industry practice and is based upon running the SIF as an efficient insurance business. The defendants' position is not only supported by the affidavit of the SIF manager but also the affidavit of their insurance expert, Michael Camilleri.

It seems to this court that the plaintiffs' argument is based upon the principle that as subscribers, they have an interest in the dividend distribution and are entitled to a pro rata share of the distribution. Our supreme court has stated that the SIF cannot be analogized to a trust creating property rights in policyholders. Rather, the SIF has no fiduciary duties to its policyholders. *Hayden Lake Fire Protection Dist. V. Alcorn, et al*, 141 Idaho 388, 401-402, 111 P.3d 73 (2005).

Other states have adopted dividend distribution practices similar to the method that plaintiffs complain about in this case. See Mont. Code Ann. §39-71-2323 (2005) in conjunction with Mont. Admin. Rule 2.55.502 (2006) and N.D. Cent. Code § 65-04-19.3 (2005) in conjunction with N.D. Admin. Code §92-01-02-55 (2005). That is, the states of Montana and North Dakota specifically provide for the exclusion of policyholders who pay smaller premiums from receiving dividend distributions.

Plaintiffs seek a further determination that the term "class of employment" as used in 72-915 cannot be used to form a class based upon amount of premiums paid and that if "classes of employment" is ambiguous, then the legislature intended the term to refer to employment groupings for rating and accounting purposes and that classes were differentiated by the "hazards" associated with each employment so that "rates of premiums" could be fixed and not by the amount of premium paid by the employer.

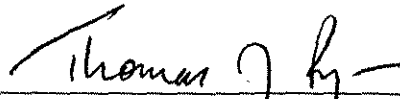
The use of the term "class of employment" in 72-915 by its phrasing "any class of employment or industry" is ambiguous. By the use of "or", this Court is not convinced that plaintiffs' proposed interpretation that it refers to grouping classes based solely on type of industry is the only reasonable interpretation. That phrase could reasonably be interpreted to mean that the classes could be determined by industry, by size of employer, by premium amounts paid by employer, etc. As the term is ambiguous, this Court is free to examine not only the literal words of

the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and the legislative history.

Therefore, it is this court's conclusion that, as a matter of law, the language of I.C. §72-915, in context with the directives of other statutes set forth in the Act, the laws of our sister states and the decisions of our supreme court, allows the fund manager, with approval of the board of directors, to distribute the dividends in the manner they have adopted since 2003.

The defendants' counsel is directed to prepare an order of summary judgment consistent with this Memorandum Decision.

Dated this 26th day of December, 2007.



District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

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DEC 26 2007
Date



Deputy Clerk

FILED
A.M. 3 P.M.

FEB 15 2008

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

RANDOLPH E. FARBER, SCOTT
ALAN BECKER and CRITTER CLINIC,
an Idaho Professional Association,

Plaintiffs,

-vs-

THE IDAHO STATE INSURANCE
FUND, JAMES M. ALCORN,
its Manager, and WILLIAM DEAL,
WAYNE MEYER, MARGUARITE
McLAUGHLIN, GERALD GEDDES,
MILFORD TERRELL, JUDI
DANIELSON, JOHN GOEDDE,
ELAINE MARTIN, and MARK
SNODGRASS in their capacity as
member of the Board of Directors of the
State Insurance Fund,

Defendants.

Case No. CV 2006-7877*C

ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT

The parties' respective Motions for Summary Judgment (specifically Plaintiffs' Revised
Second Motion for Summary Judgment filed October 23, 2007 and Defendants' Motion for
ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

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Summary Judgment on the meaning of I.C. §72-915), having come before the Court with the parties having appeared through their counsel of record, and the Court having considered the briefs and having heard oral argument by counsel for all parties, and being otherwise fully advised, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Revised Second Motion for Partial Summary Judgment asks the court to hold, as a matter of law, that:
 - A. I.C. §72-915 clearly and unambiguously expresses a legislative intent relative to the calculus to be employed for allocation of any amount which the Manager, in his discretion, determines should be distributed as dividend: and
 - B. That the legislature intended by the language it used in I.C. §72-915 to provide that, after excluding policyholders who do not meet the longevity requirement and who are not within the classes of employment sharing in the dividend, any dividend which was declared must be distributed among all remaining policyholders in direct proportion to the amount of premium each paid in the dividend period.

As more specifically set forth in its Memorandum Decision, the Court finds that Idaho Code Section 72-915 does not clearly and unambiguously express this legislative intent and the plaintiffs' motion is DENIED.

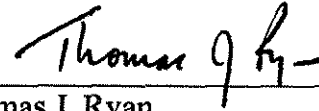
2. As specified in the Court's Memorandum Decision Upon Motions for Summary Judgment dated December 26, 2007, as amended in its decision of February 15, 2008, it is the conclusion of this Court that the language of Idaho Code Section 72-915, in context with the directives of other statutes set forth in the Act, the laws of Idaho's sister states, and the decisions of the Idaho Supreme Court, allows the Manager of the State Insurance Fund, with approval of

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

the Board of Directors, to use his discretion to distribute dividends to policyholders in a manner that is consistent with the legislative purpose and directives set forth in Article 72, Chapter 9, Idaho Code, which establishes the State Insurance Fund. Specifically, to assure that the State Insurance Fund is run as an efficient insurance company, remains actuarially sound, and maintains the public purposes for which the Fund was created.

Therefore, the Defendants' Motion for Summary Judgment on the Meaning of I.C. §72-915 is GRANTED.

DATED this 15th day of February, 2008.



Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

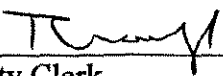
I HEREBY CERTIFY that a true and correct copy of the foregoing Order Re: Motions for Summary Judgment is forwarded to the following persons on this 15 day of February, 2008.

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William H. Hurst
CLERK OF THE DISTRICT COURT



Deputy Clerk

FILED
A.M. 1:30 P.M.

FEB 15 2008

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT)
ALAN BECKER and CRITTER)
CLINIC, an Idaho Professional)
Association.)
)
Plaintiffs,)
)
vs.)
)
THE IDAHO STATE INSURANCE)
FUND, JAMES M. ALCORN, its)
Manager, and WILLIAM DEAL,)
WAYNE MEYER, MARGUERITE)
McLAUGHLIN, GERALD GEDDES,)
MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE,)
ELAINE MARTIN, and MARK)
SNODGRASS in their capacity)
as member of the Board of)
Directors of the State)
Insurance Fund)
)
Defendants.)
)
)
)

CASE NO. CV 2006-07877*C

AMENDMENT TO THE COURT'S
MEMORANDUM DECISION UPON
MOTIONS FOR SUMMARY
JUDGMENT

The Court, upon reviewing the proposed order for summary judgment submitted by the defendants and the arguments of the parties relating to that proposed order and the plaintiffs'

AMENDMENT TO THE COURT'S
MEMORANDUM DECISION UPON
MOTIONS FOR SUMMARY JUDGMENT

request for a Rule 54(b) certificate, has reconsidered the language set forth in that decision and finds that the final two paragraphs need to be amended in order to more clearly conform to the Court's opinion. The language of those paragraphs in the Memorandum Decision of December 26, 2007 is as follows:

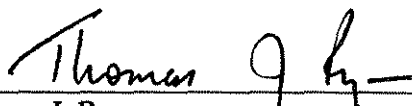
Therefore, it is this court's conclusion that, as a matter of law, the language of I.C. §72-915, in context with the directives of other statutes set forth in the Act, the laws of our sister states and the decisions of our supreme court, allows the fund manager, with approval of the board of directors, to distribute the dividends in the manner they have adopted since 2003.

The defendants' counsel is directed to prepare an order of summary judgment consistent with this Memorandum Decision.

That language is amended to read that it is this Court's conclusion that, as a matter of law, the language of I.C. §72-915, in context with the directives of other statutes set forth in the Act, the laws of our sister states, and the decisions of our Supreme Court, allows the fund manager, with the approval of the board of directors, to use his discretion to distribute dividends to policyholders in a manner that is consistent with the legislative purpose and directives set forth in Article 72, Chapter 9, Idaho Code, which establishes the State Insurance Fund. Specifically, to assure that the State Insurance Fund is run as an efficient insurance company, remains actuarially sound, and maintains the public purposes for which the Fund was created.

The Court will prepare an Order upon motions for summary judgment which conforms to the Memorandum Decision and this amendment.

Dated this 15th day of February, 2008.



Thomas J. Ryan
District Judge

AMENDMENT TO THE COURT'S
MEMORANDUM DECISION UPON
MOTIONS FOR SUMMARY JUDGMENT

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CERTIFICATE OF SERVICE

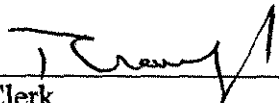
I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

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2-15-08
Date


Deputy Clerk

F I L E D
A.M. 4:30 P.M.

FEB 15 2008

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

RANDOLPH E. FARBER, SCOTT)
ALAN BECKER and CRITTER CLINIC,)
an Idaho Professional Association,)
)
Plaintiffs,)
-vs-)
)
THE IDAHO STATE INSURANCE)
FUND, JAMES M. ALCORN,)
its Manager, and WILLIAM DEAL,)
WAYNE MEYER, MARGUARITE)
McLAUGHLIN, GERALD GEDDES,)
MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE,)
ELAINE MARTIN, and MARK)
SNODGRASS in their capacity as)
member of the Board of Directors of the)
State Insurance Fund,)
)
Defendants.)
_____)

Case No. CV 2006-7877*C
RULE 54(b) CERTIFICATION
OF FINAL JUDGMENT

WHEREAS Rule 54(b) provides that a court may direct the entry of a final judgment upon one or more but less than all of the claims of a party;

RULE 54(b) CERTIFICATE OF FINAL JUDGMENT

WHEREAS this court has entered summary judgment for the defendants in this action and denied summary judgment for the plaintiffs as more specifically set forth in this court's Memorandum Decision and amendment thereto and Order upon Motions for Summary Judgment;

WHEREAS the gravaman of the plaintiffs' claims for relief is that the State Insurance Fund Manager, James Alcorn, and its board of directors, did not have discretion to distribute dividends to policyholders in the manner that it did for the years 2003 forward; or, if it did have that discretion, that said discretion was abused;

WHEREAS this court's Order upon Motions for Summary Judgment affirmatively ruled that the Fund Manager and board of directors had the discretion to distribute dividends to policyholders and that the only remaining issue before the district court was whether the defendants abused that discretion;

WHEREAS this court finds that this litigation is both costly and complex and that it is in the interests of justice to allow appellate review of the issue decided by this court prior to the parties embarking upon the costly discovery necessary to bring the second issue to final judgment;

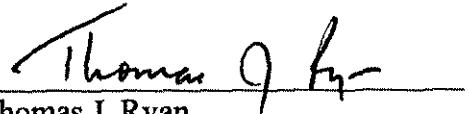
WHEREAS this court makes an express determination that there is no just reason for delay certifying this court's Order upon Motions for Summary Judgment as final;

RULE 54(b) CERTIFICATE

With respect to the issues determined by the judgment set forth in this court's Order upon Motions for Summary Judgment filed February 15, 2008, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason

for delay of the entry of a final judgment and that the court has and does hereby direct that said judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 15th day of February, 2008.


Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing Order Re: Motions for Summary Judgment is forwarded to the following persons on this 15 day of ~~January~~, 2008. *Feb*

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CLERK OF THE DISTRICT COURT



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623 West Hays Street
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Facsimile: 208/345-0050

Attorneys for Plaintiffs/Appellants and the Class

FILED
10:28 A.M. P.M.

MAR 27 2008

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
Professional Association.

Plaintiffs/Appellants,

vs.

THE IDAHO STATE INSURANCE FUND,
JAMES M. ALCORN, its Manager, and
WILLIAM DEAL, WAYNE MEYER,
MARGUERITE McLAUGHLIN, GERALD
GEDDES, MILFORD TERRELL, JUDI
DANIELSON, JOHN GOEDDE, ELAINE
MARTIN, and MARK SNODGRASS in their
capacity as members of the Board of
Directors of the State Insurance Fund

Defendants/Respondents.

Case No. CV06-7877

NOTICE OF APPEAL

Filing Fee: \$86.00 Idaho Supreme Ct.
\$15.00 Canyon County

NOTICE OF APPEAL - 1
Notice of Appeal No. 2.wpd

000103

TO: THE ABOVE NAMED RESPONDENTS, THE IDAHO STATE INSURANCE FUND, JAMES M. ALCORN, ITS MANAGER AND WILLIAM DEAL, WAYNE MEYER, MARGUARITE MCLAUGHLIN, GERALD GEDDES, MILFORD TERRELL, JUDI DANIELSON, JOHN GOEDDE, ELAINE MARTIN AND MARK SNODGRASS IN THEIR CAPACITY AS MEMBERS OF THE BOARD OF DIRECTORS OF THE STATE INSURANCE FUND, AND THE PARTIES' ATTORNEYS, RICHARD E. HALL AND KEELY DUKE OF HALL, FARLEY, OBERRECHT & BLANTON AND THE CLERK OF THE ABOVE ENTITLED COURT. NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Randolph E. Farber, Scott Alan Becker and Critter Clinic and the Class they represent, appeal against the above named respondents to the Idaho Supreme Court from the Order of the Honorable Thomas J. Ryan, District Judge of the Third Judicial District, County of Canyon, dated February 15, 2008 granting the respondents' motion for summary judgment and denying the appellants' motion for summary judgment.
2. These appellants have a right to appeal to the Idaho Supreme Court and the Judgment/Order described in ¶ 1 above is an appealable Order under and pursuant to Rule 11(a)(3) I.A.R. A copy of the Certification of Final Judgment pursuant to Rule 54(b) I.R.C.P. is attached to this Notice of Appeal.
3. The issue is the legislative intent expressed in I.C. § 72-915 relative to the calculus to be employed for the allocation of any amount which the Manager of the State Insurance Fund, in his discretion, determines should be distributed as a dividend to policy holders; particularly, whether the Manager has discretion, once a dividend is declared, to award that dividend, or a portion thereof, to some policyholders but not all policyholders on a pro rata basis.

4. The trial court has ruled that this matter may be appealed pursuant to I.R.C.P. 12(b) and a copy of the Court's Certificate is attached to this Notice of Appeal.
5. No reporter's transcript is requested or required.
6. The appellants' request no additional documents to be included in the Clerk's Record in addition to those automatically included under Rule 28, I.A.R..
7. I certify:
 - (a) That the Clerk of the District Court has been paid the estimated fee for preparation of the Clerk's record in the amount of \$100.00.
 - (b) The appellate filing fee has been paid.
 - (c) Service has been made on all parties as required by I.A.R. 20.

DATED this 26th day of March, 2008.

LOJEK LAW OFFICES, CHTD.



By: Donald W. Lojek - Of the Firm
Attorneys for Plaintiffs/Appellants

GORDON LAW OFFICE, CHTD.



for By: Bruce S. Bistline - Of the Firm
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of March, 2008, a true and correct copy of the foregoing instrument was served on the following by the method indicated below, and addressed as follows:

<input type="checkbox"/>	Hand Delivery	Richard E. Hall
<input checked="" type="checkbox"/>	U.S. Mail, postage paid	Keely Duke
<input type="checkbox"/>	Overnight Express Mail	Hall Farley Oberrecht & Blanton
<input type="checkbox"/>	Facsimile Copy:	702 W. Idaho St. Ste. 700
	395-8585	PO Box 1271
		Boise, Idaho 83701

<input type="checkbox"/>	Hand Delivery	Kim Saunders
<input checked="" type="checkbox"/>	U.S. Mail, postage paid	Court Reporter
<input type="checkbox"/>	Overnight Express Mail	Canyon County Courthouse
<input type="checkbox"/>	Facsimile Copy:	1115 Albany St.
		Caldwell, ID 83605



Donald W. Lojek

RECEIVED
FEB 20 2008
LOJEK LAW OFFICES

FILED
A.M. 4:30 P.M.

FEB 15 2008
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, SCOTT)
ALAN BECKER and CRITTER CLINIC,)
an Idaho Professional Association,)
)
Plaintiffs,)
-vs-)
)
THE IDAHO STATE INSURANCE)
FUND, JAMES M. ALCORN,)
its Manager, and WILLIAM DEAL,)
WAYNE MEYER, MARGUARITE)
McLAUGHLIN, GERALD GEDDES,)
MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE,)
ELAINE MARTIN, and MARK)
SNODGRASS in their capacity as)
member of the Board of Directors of the)
State Insurance Fund,)
)
Defendants.)

Case No. CV 2006-7877*C
RULE 54(b) CERTIFICATION
OF FINAL JUDGMENT

WHEREAS Rule 54(b) provides that a court may direct the entry of a final judgment upon one or more but less than all of the claims of a party;

000107

WHEREAS this court has entered summary judgment for the defendants in this action and denied summary judgment for the plaintiffs as more specifically set forth in this court's Memorandum Decision and amendment thereto and Order upon Motions for Summary Judgment;

WHEREAS the gravamen of the plaintiffs' claims for relief is that the State Insurance Fund Manager, James Alcorn, and its board of directors, did not have discretion to distribute dividends to policyholders in the manner that it did for the years 2003 forward; or, if it did have that discretion, that said discretion was abused;

WHEREAS this court's Order upon Motions for Summary Judgment affirmatively ruled that the Fund Manager and board of directors had the discretion to distribute dividends to policyholders and that the only remaining issue before the district court was whether the defendants abused that discretion;

WHEREAS this court finds that this litigation is both costly and complex and that it is in the interests of justice to allow appellate review of the issue decided by this court prior to the parties embarking upon the costly discovery necessary to bring the second issue to final judgment;

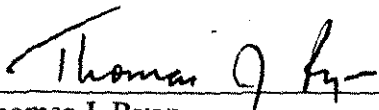
WHEREAS this court makes an express determination that there is no just reason for delay certifying this court's Order upon Motions for Summary Judgment as final;

RULE 54(b) CERTIFICATE

With respect to the issues determined by the judgment set forth in this court's Order upon Motions for Summary Judgment filed February 15, 2008, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason

for delay of the entry of a final judgment and that the court has and does hereby direct that said judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 15th day of February, 2008.



Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

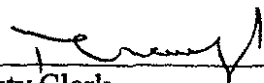
I HEREBY CERTIFY that a true and correct copy of the foregoing Order Re: Motions for Summary Judgment is forwarded to the following persons on this 15 day of ~~January~~, Feb, 2008.

Donald W. Lojek
Lojek Law Offices
P.O. Box 1712
Boise, ID 83701

Philip Gordon
Bruce S. Bistline
Gordon Law Offices
623 West Hays Street
Boise, ID 83702

Richard E. Hall
Keely Duke
Hall Farley Oberrecht & Blanton
702 W. State St. Ste. 700
Boise, Idaho 83701

William H. Hurst
CLERK OF THE DISTRICT COURT



Deputy Clerk

In the Supreme Court of the State of Idaho

RANDOLPH E. FARBER, SCOTT ALAN
BECKER and CRITTER CLINIC, an Idaho
professional association,)

Plaintiffs-Appellants,)

v.)

THE IDAHO STATE INSURANCE FUND,)
JAMES M. ALCORN, its manager, and)
WILLIAM DEAL, WAYNE MEYER,)
MARGUERITE MC LAUGHLIN, GERALD)
GEDDES, MILFORD TERRELL, JUDI)
DANIELSON, JOHN GOEDDE, ELAINE)
MARTIN, and MARK SNODGRASS in their)
capacity as members of the Board of Directors of)
the STATE INSURANCE FUND,)

Defendants-Respondents.)

ORDER RE: RESPONSE TO
ORDER GRANTING MOTION TO
AUGMENT

Supreme Court Docket No. 35144
Canyon County Case No. 06-7877

Ref. No. 08S-295

On July 2, 2008, this Court issued an Order Granting Appellants' Motion to Augment Record with exhibits attached to the motion. Thereafter, a RESPONSE TO ORDER GRANTING MOTION TO AUGMENT with attachments was filed by counsel for Respondents on July 8, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondents' RESPONSE TO ORDER GRANTING MOTION TO AUGMENT be, and hereby is, GRANTED in part and the augmentation record shall include the items underlined below, copies of which accompanied the Response to Order Granting Motion to Augment, as an EXHIBIT:

1. Idaho Session Law pages 290 – 293, which are attached to the Affidavit of Donald W. Lojek in Support of Plaintiffs' Memorandum in Response to Memorandum of State Insurance Fund in Support of its Motion for Summary Judgment, file stamped November 7, 2007.

IT FURTHER IS ORDERED that the remainder of Respondents' RESPONSE TO ORDER GRANTING MOTION TO AUGMENT be, and hereby is, DENIED.

DATED this 17th day of July 2008.

By Order of the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, etal)	
)	
Plaintiffs-Appellants,)	Case No. CV-06-07877*C
)	
-vs-)	CERTIFICATE OF EXHIBIT
)	
THE IDAHO STATE INSURANCE)	
FUND, etal)	
)	
Defendants-Respondents.)	

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following is being sent as an exhibit as requested in the Notice of Appeal:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 24 day of April, 2008.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *Heideman* Deputy

CERTIFICATE OF EXHIBIT

000111

9. Affidavit of Keely E. Duke in Support of Defendants' Memorandum in Opposition to Plaintiffs' Second Motion for Partial Summary Judgment, file stamped September 7, 2007;
10. Affidavit of Donald W. Lojek in Support of Plaintiffs' Memorandum in Response to the Memorandum of State Insurance Fund in Support of its Motion for Summary Judgment, file stamped November 7, 2007;
11. Affidavit of George Bambauer, file stamped November 6, 2007; and
12. Affidavit of Keely E. Duke in Support of Defendants' Memorandum in Opposition to Plaintiffs' Revised Second Motion for Partial Summary Judgment, file stamped November 7, 2007.

DATED this 2nd day of July 2008.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, etal)	
)	
Plaintiffs-Appellants,)	Case No. CV-06-07877*C
)	
-vs-)	CERTIFICATE OF CLERK
)	
THE IDAHO STATE INSURANCE FUND,)	
etal,)	
)	
Defendants-Respondents.)	

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 24 day of April, 2008.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *W. H. Hurst* Deputy

CERTIFICATE OF CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RANDOLPH E. FARBER, etal,)	
)	
Plaintiffs-Appellants,)	Supreme Court No. 35144
)	
-vs-)	CERTIFICATE OF SERVICE
)	
THE IDAHO STATE INSURANCE FUND,)	
etal,)	
)	
Defendants-Respondents.)	

I, WILLIAM H. HURST, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record to the attorney of record to each party as follows:

Donald W. Lojek, LOJEK LAW OFFICES, CHTD, P.O. Box 1712, Boise, ID 83701

Richard E. Hall and Keely E. Duke, HALL, FARLEY, OBERRECHT & BLANTON, P.A., P.O. Box 1271, Boise, ID 83701

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 24 day of April, 2008.

WILLIAM H. HURST, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: Heideman Deputy

CERTIFICATE OF SERVICE