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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE ESTATE OF JUD Y DUMOULIN, deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual, Plaintiff-Appellant, vs. CUNA Mutual Group, an Iowa corporation authorized by the State of Idaho, Department of Insurance, to transact business in the State of Idaho, Defendant-Respondent.	Supreme Court Case No. 36828

RESPONDENT'S BRIEF

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada

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THE HONERABLE CHERI C. COPSEY, DISTRICT JUDGE

THOMAS V. MAILE, IV, ISB #2378
Attorney at Law
380 West State Street
Eagle, Idaho 83616
Telephone (208) 939-1000
Attorneys for Appellant

J. KEVIN WEST, ISB #3337
Noah G. Hillen, ISB #7690
HALL, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho, Suite 700
Post Office Box 1271
Boise, Idaho 83701
Telephone: (208) 395-8500
Attorneys for Respondent

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Entered on ATS by: ____

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I.
STATEMENT OF THE CASE

A. Nature of the Case

This is an insurance coverage case. Appellant, Joseph Dumoulin and the Estate of Judy Dumoulin filed the instant breach of contract action against Respondent CUNA Mutual Insurance Society ("CUNA Mutual"), the insurance company administering Appellant's Accidental Death & Dismemberment ("AD&D") plan, after CUNA Mutual denied AD&D insurance benefits to Appellant. The district court granted summary judgment in favor of CUNA Mutual below and dismissed the case.

B. Course of the Proceedings

On October 2, 2008, Appellant filed a cause of action against CUNA Mutual alleging claims for breach of contract and the tort of breach of good faith and fair dealing. R. Vol. 1 at 6-12; Complaint and Demand for Jury Trial ("Complaint") 1-7. On April 20, 2009, CUNA Mutual filed its Motion for Summary Judgment. R. Vol. 1 at 43; Motion for Summary Judgment at 1. On June 1, 2009, CUNA filed a Motion to Strike Portions of the Affidavits of Joseph Dumoulin and Sheri Arnold ("Motion to Strike"). R. Vol. 1 at 47; Motion to Strike at 1. On July 16, 2009, the district court held a hearing on Respondent's Motion for Summary Judgment. R. Vol. 1 at 69; Order on Motion to Strike at 1.

At the summary judgment hearing, the district court granted Respondent's Motion for Summary Judgment. Tr. at p. 19 l. 1-2. On July 17, 2009, the district court struck portions of the affidavits Appellant submitted in opposition to Respondent's Motion for Summary Judgment. R. Vol. 1 at 69; Order on Motion to Strike at 1. On July 22, 2009, the district court issued its

written order granting summary judgment. R. Vol. 1 at 72; Order Granting Summary Judgment at 1. On July 28, 2009, the district court dismissed Appellant's complaint with prejudice. R. Vol. 1 at 74; Judgment at 1.

On August 20, 2009, Appellant filed a Notice of Appeal, R. Vol. 1 at 76; Notice of Appeal at 1; and on August 31, 2009, Appellant filed an Amended Notice of Appeal, R. Vol. 1 at 81; Amended Notice of Appeal at 1.

C. Statement of Facts

On November 1, 2007, Ms. Dumoulin purchased AD&D insurance through Pioneer Federal Credit Union. R. Vol. 1 at 13; Complaint and Demand for Jury Trial, Ex. A, p. 1. This Certificate of Insurance, issued by CUNA Mutual, provided $40,000.00 in benefits for accidental death or accidental dismemberment and covered injuries only. *Id.*

The Policy defines "accident" as: "An occurrence which is unexpected or unforeseen, either as to its cause or as to its result." R. Vol. 1 at 14; Complaint, Ex. A, p. 2. The Policy defines "accidental death" as: "[d]eath resulting from an injury, and occurring within 1 year of the date of the accident causing the injury." *Id.* The Policy defines "injury, injuries" as: "Bodily damage or harm which: (1) is caused directly by an accident and independently of all other causes; (b) is effected solely through external means; and (c) occurs while a covered person's insurance is in force under your certificate." *Id.*

The Policy also contains exclusions, which state: "No benefit will be paid for any loss or covered injury that: . . . is due to any disease, sickness, bodily or mental illness, or complication

resulting from medical treatment, surgery, pregnancy or childbirth." R. Vol. 1 at 17; Complaint, Ex. A, p. 5.

On March 13, 2008, Ms. Dumoulin was admitted to the emergency department of West Valley Medical Center ("WVMC") with a chief complaint of dyspnea (shortness of breath). R. Ex. 9, Ex. A; Affidavit of Records Custodian Certifying Records ("Custodian Aff.") at WVMC 00003, 00005, 000013.[1] Ms. Dumoulin was placed on oxygen as she was having difficulty breathing. R. Ex. 1, Ex. 1 at 10-11; Affidavit of Counsel in Support of Motion for Summary Judgment ("Counsel Aff."), Ex. 1, Plaintiffs' Answers to First Set of Interrogatories and Responses to Requests for Production of Documents ("First Interrogatory Responses"), pp. 10-11. Ms. Dumoulin had multiple risk factors that would predispose her to a large variety of illnesses that could manifest as dyspnea. R. Ex. 9, Ex. A; Custodian Aff. at WVMC 00002. Ms. Dumoulin also had a history of depression, paranoid schizophrenia, bipolar, manic depression, and other psychotic disorders. R. Ex. 1, Ex. 1 at 15; Counsel Aff., Ex. 1, First Interrogatory Responses at 15. Ms. Dumoulin also complained of the flu when she was admitted to the hospital. *Id.*

Upon admission to the hospital, Ms. Dumoulin reported that she had pneumonia three weeks prior to admission from which she had not completely recovered. R. Ex. 9, Ex. A; Custodian Aff. at WVMC 000023. Ms. Dumoulin's chest CT scan indicated a possible "diffuse

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[1] An excerpt of the relevant medical records from Ms. Dumoulin's hospital stay is attached to Exhibit 9 of the record on appeal, the Affidavit of Records Custodian Certifying Records. The documents are Bates numbered WVMC 00001-00240, and are referenced by Bates number in the text above.

atypical pneumonia concerning for maybe a fungal infection, as well as nodules concerning for possible malignancy." R. Ex. 9, Ex. A; Custodian Aff. at WVMC 00003-00004.

On March 16, 2008, Ms. Dumoulin was found on the floor without a pulse or respirations. R. Ex. 9, Ex. A; Custodian Aff. at WVMC 00004. Ms. Dumoulin was resuscitated, intubated, and placed on a ventilator. *Id.* A CT scan of the chest indicated a "worsening progression of [Ms. Dumoulin's] atypical infection." *Id.* A brain CT scan revealed a "global anoxic brain injury." *Id.* Ms. Dumoulin was declared dead on March 17, 2008. *Id.* Ms. Dumoulin's autopsy revealed that she died from pre-existing bronchopneumonia with superimposed aspiration pneumonia. R. Ex. 9, Ex. A; Custodian Aff. at WVMC 00022-00027.

Appellant's expert, Dr. Bekanich, concluded that Ms. Dumoulin's death was preventable and that the attending physicians and/or the hospital staff were negligent in the treatment of Ms. Dumoulin. Though CUNA Mutual believes this assertion is incorrect, it was accepted as true for purposes of CUNA Mutual's Motion for Summary Judgment. R. Ex. 2 at 5; Memorandum in Support of Motion for Summary Judgment at 5. Appellant did not bring a medical negligence action against WVMC or any of Ms. Dumoulin's health care providers.

On June 13, 2008, Appellant's counsel mailed a Proof of Loss Claim to defendant CUNA Mutual, demanding payment of the proceeds under the terms of the subject policy. R. Vol. 1 at 20; Complaint, Ex. B. On June 18, 2008, defendant CUNA Mutual denied liability for payment of the proceeds under the AD&D policy because the certificate only covered losses due to death or dismemberment caused by accidental means, and losses due to illness or medical conditions were not covered by the certificate. R. Vol. 1 at 24; Complaint, Ex. C.

The district court granted summary judgment in favor of CUNA Mutual, holding the Policy provision excluding coverage for any loss due to any disease, sickness, bodily or mental illness or complication resulting from medial treatment, surgery, pregnancy or childbirth, was unambiguous and applicable to the instant case. Tr. at 16-17. The district court further held that the Appellant introduced no evidence below that was material to the court's decision showing Ms. Dumoulin's death was an accident. Tr. at 17-18.

II.
ADDITIONAL ISSUES PRESENTED ON APPEAL

1. Did the district court correctly grant CUNA Mutual's motion for summary judgment and hold that Ms. Dumoulin's death was related to either medical treatment or a pre-existing illness, and therefore falls within the Policy exclusion language?
2. Is CUNA Mutual entitled to attorney fees and costs on appeal pursuant to Idaho Code Sections 41-1839(4) and 12-123 because Appellant filed the instant appeal frivolously and defended it without foundation?

III.
STANDARD OF REVIEW

When reviewing a ruling on a summary judgment motion, this Court employs the same standard used by the district court. *Sprinkler Irrigation Co. Inc. v. John Deere Ins. Co., Inc.*, 139 Idaho 691, 695, 85 P.3d 667, 671 (2004) (citing *Baker v. Sullivan*, 132 Idaho 746, 748, 979 P.2d 619, 621 (1999)). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

When ruling on a motion for summary judgment, the trial court must determine whether the evidence, when construed in the light most favorable to the nonmoving party, presents a genuine issue of material fact or shows that the moving party is not entitled to judgment as a matter of law. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007) (citing *Pincock v. Pocatello Gold & Copper Mining Co.*, 100 Idaho 325, 328, 597 P.2d 211, 214 (1979)). The moving party bears the burden of proving the absence of material facts. *Id.* (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact. *Id.* A nonmoving party must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact. *Id.* (citing *Zehm v. Assoc. Logging Contractors, Inc.*, 116 Idaho 349, 350, 775 P.2d 1191, 1192 (1988)).

IV.
ARGUMENT

This Court should affirm the district court's grant of summary judgment below and award CUNA Mutual attorney fees on appeal.

A. The district court correctly granted summary judgment in favor of CUNA Mutual and held that Ms. Dumoulin's death was related to her medical treatment or a pre-existing illness, and therefore fell within the Policy exclusion language.

Absent ambiguity, an insurance policy is governed by the same rules as applied to contracts generally. *Gordon v. Three Rivers Agency, Inc.*, 127 Idaho 539, 542, 903 P.2d 128, 131 (1995) (citations omitted). If ambiguity is present, however, the court will consider the uneven bargaining power between the parties and will construe the ambiguous provisions in favor of the insured. *Mut. of Enumclaw Ins. Co. v. Pedersen*, 133 Idaho 135, 138, 983 P.2d 208, 211 (1999) (citations omitted). To determine ambiguity, the court must ask whether the policy is reasonably susceptible to conflicting interpretations. *Farmers Ins. Co. v. Talbot*, 133 Idaho 428, 432, 987 P.2d 1043, 1046 (1999) (citations omitted). If ambiguity is found, the court must determine "what a reasonable person would have understood the language to mean." *Id.*; *see also Martinez v. Idaho Counties Reciprocal Mgmt. Prog.*, 134 Idaho 247, 999 P.2d 902 (2000); *Allstate Ins. Co. v. Mocaby*, 133 Idaho 593, 990 P.2d 1204.

1. The instant Policy is unambiguous.

The district court correctly, as a threshold matter, determined that the Policy was unambiguous. The district court noted that "the fact that someone can posit a different interpretation in and of itself does not meet the [ambiguity] requirement. The question is whether the interpretation is a reasonable interpretation." Tr. at 15. When determining that the Policy was unambiguous, the district court examined the language of the Policy exclusion, and the definitions of "injury, "accident," and "accidental death" under the Policy. Tr. at 16-17.

The exclusion at issue in the instant Policy read as follows: "**6.01 Exclusions:** No benefit will be paid for any loss or covered *injury* that: . . . i) is due to any disease, sickness, bodily or mental illness, or complication resulting from medical treatment, surgery, pregnancy or childbirth." R. Vol. 1 at 17; Complaint, Ex. A (emphasis in original). Under the Policy, an "injury" or "injuries" are defined as: Bodily damage or harm which: (a) is caused directly by an *accident* **and independently of all other causes**; (b) is effected solely through external means; and (c) occurs while a *covered person's* insurance is in force under *your* certificate. R. Vol. 1 at 14; Complaint, Ex. A (emphasis added). The Policy defines an "accident" as: "An occurrence which is unexpected or unforeseen, either as to its cause or as to its result." *Id.* The Policy also defines "accidental death" as: "Death resulting from an *injury*, and occurring within 1 year of the date of the *accident* causing the *injury*." *Id.*

Appellant argues that the term "medical or surgical treatment" is ambiguous because it allows for two reasonable constructions: "One construction could mean that all medical treatment, no matter how skillfully or unskillfully performed, is covered by that phrase." App. Opening Br. at 10. "Another construction, [sic] could mean that improper treatment, or malpractice, which is an accident, is not included within the meaning of 'medical treatment.'" *Id.* Appellant, however, does not provide any citation to authority when arguing these two interpretations are reasonable. A party waives an issue cited on appeal if either authority or argument is lacking. *Kootenai Med. Ctr. ex rel Teresa K. v. Idaho Dept. of Health and Welfare*, 147 Idaho 872, 880, 216 P.3d 630, 638 (2009) (citing *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996)). Therefore, this Court should not address this argument on appeal.

Furthermore, the plain and ordinary meaning of the term "medical or surgical treatment" does not support Appellant's constructions. Appellant relies upon the case *Dinkowitz v. Prudential Ins. Co. of America*, 216 A.2d 613 (1966), which required the court to determine whether accidental death and dismemberment insurance with exclusions for an accidental death covered payment for death arising from medical negligence. However, that case resolves the instant controversy in favor of Respondent. In *Dinkowitz*, two of the three insurance policies at issue excluded payment under the policy "if such death results . . . directly or indirectly from bodily or mental infirmity or disease in any form, *or medical or surgical treatment* therefore." *Id.* at 614 (emphasis added). The third policy contained an exclusion for "any loss which results from or is caused, directly or indirectly, by . . . disease or bodily or mental infirmity, or *medical or surgical treatment* thereof." *Id.* at 614-15 (emphasis added).

The court noted that "clear basic terms and particular provisions of an insurance contract may not be disregarded at will and a new contract judicially made for the parties." *Id.* at 615 (citing *Linden Motor Freight Co., Inc., v. Travelers Ins. Co.*, 193 A.2d 217, 225 (1963)). This principle is also followed in Idaho: Where a court finds policy language unambiguous, the court construes the policy as written, "and the [c]ourt by construction cannot create a liability not assumed by the insurer nor make a new contract for the parties, or one different from that plainly intended, nor add words to the contract of insurance to either create or avoid liability." *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 69, 205 P.3d 1203, 1205 (2009) (citations omitted).

Much like the instant case, the plaintiff in *Dinkowitz* argued that "the average policy-holder might well realize that accidental death benefits would not be paid by the insurer for a death resulting from unexpected contingencies during the course of proper medical treatment, he would expect the additional compensation to be payable if death resulted solely from medical malpractice." 216 A.2d at 615-16. The *Dinkowitz* court, however, found that the policy language was not ambiguous, and instead enforced the plain meaning of the words of the contract. The court held that "[t]he average policy holder could not reasonably reach a conclusion of coverage in the particular circumstances here in the light of and having in mind the limiting language of the insuring clause." *Id.* at 618 (internal quotations omitted) (citation omitted).

In reaching the above conclusion, the *Dinkowitz* court relied upon the definitions of medical and surgical treatment. "Webster's New International Dictionary (2d ed. 1958) defines 'treatment' as 'Act, manner, or an instance of treating, especially of treating a person or animal, a patient, subject, or a sub-stance, as in processing; handling; usage; as unkind treatment of a child; to require medical treatment.'" *Id.* at 616. The court also noted that "'[m]edical and surgical treatment mean what is done by a physician of any recognized type or by a surgeon in diagnosing a bodily ailment and seeking to alleviate or cure it.'" *Id.* (citing *Barkerding v. Aetna Life Ins. Co.*, 82 F.2d 358, 359 (5th Cir. 1936)). Based on the definitions of medical and surgical treatment, the *Dinkowitz* court determined the policies were unambiguous: "Adoption of the plaintiff's contention in the light of the limiting language of the insuring clause here would render meaningless the words by which the parties expressed their bargain and read into the

contracts something which is not there." *Id.* at 618 (internal quotations omitted) (citation omitted). The same result is required in the instant case. The Policy language is clear and unambiguous.

2. The plain language of the Policy excludes coverage in the instant case.

Because the Policy is unambiguous, the Policy is governed by the same rules as applied to contracts generally. *Gordon*, 127 Idaho at 542, 903 P.2d at 131. General contract principles provide that if a contract's terms are clear and unambiguous, the contract's meaning and legal effect are questions of law and that the meaning of the contract and intent of the parties must be determined from the plain meaning of the contract's own words. *Albee v. Judy*, 136 Idaho 226, 31 P.3d 248 (2001) (holding that the plain language of the contract at issue was unambiguous and as such, the intent of the parties must be determined from the plain meaning of the contract); *City of Idaho Falls v. The Home Indemnity Co.*, 126 Idaho 604, 888 P.2d 383 (1995) (holding policy terms were clear and unambiguous and, therefore, the determination of the contract's meaning and intent of the parties must be determined from the plain meaning of the words of the contract).

Based on the unambiguous nature of the policy exclusion at issue, the district court determined, as a matter of law, the meaning of the exclusion provision. The plain language of the Policy excludes coverage for any injury due to any disease, sickness, bodily or mental illness, or complication resulting from medical treatment. The Policy only provides coverage for injuries or death caused directly by an accident, which must be unexpected or unforeseen, and independent of all other causes.

In a case similar to the one at issue, *Leslie v. J.C. Penney Life Ins. Co.*, the beneficiary made a claim for coverage under two accidental death policies insuring her husband. 138 Idaho 305, 62 P.3d 1101 (2003). The two policies covered injuries caused by an "accident" occurring "directly and independently of all other causes." *Id.* at 306, 62 P.3d at 1102. Additionally, both policies had exclusions that stated that "[n]o benefit shall be paid for Injury that . . . is due to disease, bodily or mental infirmity, or medical or surgical treatment of these." *Id.* Six months after a snowmobile accident, Mr. Leslie was admitted into the hospital and diagnosed with potential bowel entrapment in a ventral hernia related to the snowmobile accident. *Id.* No hernia or bowel blockage was located, but the appendix was removed. *Id.* Two days after the surgery, Mr. Leslie died due in part to the post-operative removal of a nasogastric tube. *Id.* J.C. Penney denied coverage for both claims, because the injury leading to death was excluded by the policy as a disease or bodily infirmity or related to a surgical procedure. *Id.* at 306, 62 P.3d at 1102. The case went to a jury, which found that there was no coverage under the policy. *Id.* at 308, 62 P.3d at 1104. This Court upheld the exclusion of coverage for injury due to disease or bodily infirmity and affirmed the decision of the district court. *Id.*

The same result is compelled by the facts here. As discussed above, the policy exclusions at issue unambiguously provide that Mr. Dumoulin would not receive benefits under the policy if Ms. Dumoulin passed away from sickness or disease, or from complications arising from medical care or treatment. In fact, it is undisputed that Ms. Dumoulin died from sickness and disease, or, alternatively, from complications of the medical care she received at West Valley Medical Center, as noted in the autopsy report.

Furthermore, even if this Court were to find the phrase medical or surgical treatment to be ambiguous, and further infer medical negligence constituted an accident, the plain language of the Policy still excludes coverage for Ms. Dumoulin's death. As the district court noted, "even if I were to assume it was an accident, it was not independent of all other causes." Tr. at 17. Ms. Dumoulin's autopsy revealed that she died from pre-existing bronchopneumonia with superimposed aspiration pneumonia. R. Ex. 9, Ex. A; Custodian Aff. at WVMC 00022-00027. The Policy excludes coverage for any injury "due to any disease, sickness, bodily or mental illness, *or* complication resulting from medical treatment [or] surgery." R. Vol. 1 at 17; Complaint, Ex. A (emphasis added). The exclusion language is written in the disjunctive. Even if medical malpractice does not constitute medical treatment, Appellant has failed submit any evidence below, or account for the fact that the Policy also excludes coverage for any injury due to an illness such as bronchopneumonia with superimposed aspiration pneumonia. Furthermore, Appellant failed to submit any evidence below establishing that medical malpractice was the independent cause of Ms. Dumoulin's death, as required by the definition of injury under the Policy. R. Vol. 1 at 14; Complaint, Ex. A. As the district court noted: "The bottom line here is there's nothing in the record to show that the reason that [Ms. Dumoulin] died was anything other than a complication arising out of or resulting from the medical treatment of her pneumonia."[2] Tr. at 18. Therefore, this Court should affirm the decision of the district court below.

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[2] The Court may also take note that Appellant contends that the Affidavit of Joseph Dumoulin provides the court with the factual medical history of Ms. Dumoulin. *See* App. Br. At 6. However, much of the Affidavit of Joseph

B. CUNA Mutual is entitled to attorney fees and costs on appeal pursuant to Idaho Code Sections 41-1839(4) and 12-123 because Appellant filed the instant appeal frivolously and defended it without foundation.

The availability of attorney fees in insurance cases is governed by statute. Idaho Code section 41-1839(4) provides the authority for an award of attorney fees when a court finds that the case was "brought, pursued, or defended frivolously, unreasonably or without foundation." *Howard v. Oregon Mut. Ins. Co.*, 137 Idaho 214, 219, 46 P.3d 510, 515 (2002). The statute provides a basis for an award of attorney fees to either the insured or the insurer. *Id.*

Idaho Code sections 41-1839(4) and 12-123 are the exclusive methods by which a court may grant attorney fees when a dispute arises under the insurance policy between an insurer and insured. *Trinity Universal Ins. Co. v. Kirsling*, 139 Idaho 89, 95, 73 P.3d 102, 108 (2003). Idaho Code Section 41-1839(4) states in relevant part:

> Notwithstanding any other provision of statute to the contrary, this section and section 12-123, Idaho Code, shall provide the exclusive remedy for the award of statutory attorney's fees in all actions between insureds and insurers involving disputes arising under policies of insurance. Provided, attorney's fees may be awarded by the court when it finds, from the facts presented to it that a case was brought, pursued or defended frivolously, unreasonably or without foundation.

In addition, Idaho Code Section 12-123 states that a court may award attorney fees to the prevailing party if the case was brought, pursued, or defended frivolously, unreasonably, or without foundation.

Dumoulin in Opposition to Defendant's Motion for Summary Judgment, which is Exhibit 6 to the Record on Appeal, was struck as inadmissible by the district court below, including the allegation that there was no course of treatment by the hospital. R. Vol. 1 at 70; Order Granting Motion to Strike Affidavits at 2.

> Frivolous conduct means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:
>
> (a) It obviously serves merely to harass or maliciously injure another party to the civil action;
>
> (b) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law.

I.C. § 12-123.

The instant appeal was frivolously filed and pursued by Appellant. The language and terms contained within the Policy at issue did not provide any support for Appellant's contention that Ms. Dumoulin's death was a covered occurrence. The applicable terms and exclusions contained in the Policy were clear and unambiguous. The plain meaning of the terms of the Policy provided that the death of Ms. Dumoulin was not covered under the Policy.

Appellant's appeal was predicated on factual evidence that the district court struck from the record below, and Appellant merely asks this Court to reweight the district court's decision below. Appellant's appeal had no basis in law or fact and was so plainly without merit that it should be deemed frivolous, unreasonable, and without foundation.

V.
CONCLUSION

For the foregoing reasons, CUNA Mutual respectfully requests this Court affirm the district court's grant of summary judgment below.

RESPECTFULLY SUBMITTED this 19 day of February, 2010.

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

By /s/ J. Kevin West
J. Kevin West - Of the Firm
Noah G. Hillen - Of the Firm
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of February, 2010, I caused to be served a true copy of the foregoing **RESPONDENT'S BRIEF**, by the method indicated below, and addressed to each of the following:

Thomas V. Maile, IV
Attorney at Law
380 West State Street
Eagle, ID 83616
Attorney for Appellant

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

/s/ J. Kevin West
J. Kevin West
Noah G. Hillen