

2-9-2010

# Farm Bureau Mut. Ins. Co. v. Schrock Clerk's Record v. 1 Dckt. 37172

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Volumel

1 of 3

IN THE **LAW CLERK**  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

~~FARM BUREAU MUTUAL INSURANCE~~

~~Plaintiff/Counterdefendant/  
Respondent~~ and

VS.  
JOHN SCHROCK, etal

~~Defendant/Counterclaimants/  
Appellant~~

and

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

Hon. **RANDY J. STOKER** District Judge

**DOUGLAS CRANDALL**

Attorney  for Appellant

**RAYMOND POWERS**

**FILED - COPY** Attorney  for Respondent

Filed this **FEB - 9 2010** day of \_\_\_\_\_, 20\_\_

Clerk

Supreme Court Court of Appeals

Entered on ATS by:

Deputy

37172

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

FARM BUREAU MUTUAL INSURANCE )  
COMPANY OF IDAHO, )

Plaintiff/Counterdefendant/ )  
Respondent )

vs )

JOHN SCHROCK, STACY SCHROCK, )  
CHRISTINA MONROE, )

Defendants/Counterclaimants/ )  
Appellants, )

and LISA SCHROCK, CHRISTA SPRINGER, )  
APRIL SEITZINGER, MICHELE RUNYAN, )

Defendants/Appellants )

SUPREME COURT NO. *37178*  
DISTRICT COURT NO. *2009-829*

CLERK'S RECORD ON APPEAL

*Volume 1*  
Appeal from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for the County of Twin Falls

HONORABLE RANDY J. STOKER  
District Judge

Douglas Crandall  
CRANDALL LAW OFFICE  
Veltex Building  
420 W. Main Street, Suite 206  
Boise, ID 83702

Raymond Powers  
James Thomson  
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ATTORNEY FOR APPELLANTS/  
DEFENDANTS/  
COUNTERCLAIMANTS

ATTORNEY FOR RESPONDENT/  
PLAINTIFF/  
COUNTERDEFENDANT

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Farm Bureau Mutual Insurance Company Of Idaho vs. John Schrock, etal.

Date	Code	User	Description	Judge
1/13/2009	NCOC	SCHULZ	New Case Filed-Other Claims	Randy J. Stoker
	APER	SCHULZ	Plaintiff: Farm Bureau Mutual Insurance Company Of Idaho Appearance Raymond D Powers	Randy J. Stoker
		SCHULZ	Filing: U - Fee for opening any other civil case not listed on the schedule Paid by: Powers Thompson, P.C Receipt number: 9004235 Dated: 2/13/2009 Amount: \$88.00 (Check) For: Farm Bureau Mutual Insurance Company Of Idaho (plaintiff)	Randy J. Stoker
	COMP	SCHULZ	Complaint for Declaratory Judgment	Randy J. Stoker
	SMIS	SCHULZ	Summons Issued x7	Randy J. Stoker
2/5/2009	AFSV	NIELSEN	Affidavit Of Service 2-24-9 fax	Randy J. Stoker
	SMRT	NIELSEN	Summons Returned fax	Randy J. Stoker
	AFSV	NIELSEN	Affidavit Of Service 2-25-9 fax	Randy J. Stoker
	SMRT	NIELSEN	Summons Returned	Randy J. Stoker
	AFSV	NIELSEN	Affidavit Of Service 2-24-9 fax	Randy J. Stoker
	SMRT	NIELSEN	Summons Returned	Randy J. Stoker
		SCHULZ	Filing: I7 - All Other Cases Paid by: Benoit Law Receipt number: 9006361 Dated: 3/5/2009 Amount: \$58.00 (Check) For: Springer, Christa (defendant)	Randy J. Stoker
	NOAP	SCHULZ	Notice Of Appearance	Randy J. Stoker
3/6/2009	APER	SCHULZ	Defendant: Springer, Christa Appearance Anthony M. Valdez	Randy J. Stoker
4/11/2009	NOAP	NIELSEN	Notice Of Appearance	Randy J. Stoker
4/17/2009		NICHOLSON	Filing: I7 - All Other Cases Paid by: Douglas W. Crandall Receipt number: 9009613 Dated: 4/7/2009 Amount: \$58.00 (Check) For: Schrock, John (defendant)	Randy J. Stoker
	APER	NICHOLSON	Defendant: Schrock, John Appearance Douglas W. Crandall	Randy J. Stoker
	APER	NICHOLSON	Defendant: Schrock, Stacy Appearance Douglas W. Crandall	Randy J. Stoker
	APER	NICHOLSON	Defendant: Monroe, Christina Appearance Douglas W. Crandall	Randy J. Stoker
	ANSW	NICHOLSON	Answer and Counterclaim	Randy J. Stoker
	SMIS	NICHOLSON	Summons Issued	Randy J. Stoker



Date	Code	User	Description	Judge
1/14/2009	NOAP	NIELSEN	Notice Of Appearance fax	Randy J. Stoker
1/24/2009	RECO	NIELSEN	Reply To Counterclaim fax	Randy J. Stoker
1/27/2009	MOTN	NIELSEN	Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
	MEMO	NIELSEN	Memorandum in Support of Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
	NOHG	NIELSEN	Notice Of Hearing	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Dismiss 05/11/2009 10:00 AM) Motion to Dismiss Counterclaim	Randy J. Stoker
1/4/2009	MEMO	NIELSEN	Memorandum in Opposition to Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
1/6/2009	MEMO	NIELSEN	Memorandum in Opposition to Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
1/11/2009	DCHH	MCMULLEN	Hearing result for Motion to Dismiss held on 05/11/2009 10:00 AM: District Court Hearing Held Court Reporter: Torres Number of Transcript Pages for this hearing estimated: Motion to Dismiss Counterclaim	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
1/15/2009		NIELSEN	Defendants' Christa Springer and Michele Runyan's Answer to Complaint	Randy J. Stoker
1/18/2009	NOSV	NIELSEN	Notice Of Service fax	Randy J. Stoker
1/20/2009	ORDR	MCMULLEN	Order Re: Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
1/24/2009	MEMO	MCMULLEN	Memorandum In Opposition to Farm Bureau's Motion to Dismiss Counterclaim	Randy J. Stoker
1/27/2009	HRSC	MCMULLEN	Hearing Scheduled (Status 08/17/2009 10:00 AM) Scheduling Conference	Randy J. Stoker
	OSCO	MCMULLEN	Order for Scheduling Conference and Order RE: Motion Practice	Randy J. Stoker
1/28/2009	STIP	NIELSEN	Stipulation for Scheduling and Planning fax	Randy J. Stoker
1/16/2009	HRSC	MCMULLEN	Hearing Scheduled (Pretrial Conference 08/23/2010 09:00 AM)	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Court Trial 09/21/2010 09:00 AM)	Randy J. Stoker
	ORDR	MCMULLEN	Order Approving Stipulated Scheduling and Court Trial Notice	Randy J. Stoker
1/28/2009	MOTN	NIELSEN	Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment	Randy J. Stoker
		NIELSEN	Farm Bureau Mutual Insurance Company of Idaho's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	Randy J. Stoker

Date	Code	User	Description	Judge
1/28/2009	MEMO	NIELSEN	Memorandum in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment	Randy J. Stoker
	AFFD	NIELSEN	Affidavit of James S. Thomson, II in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment	Randy J. Stoker
1/29/2009	NOHG	NIELSEN	Notice Of Hearing fax	Randy J. Stoker
1/12/2009	NOAP	NIELSEN	Notice Of Appearance fax	Randy J. Stoker
1/31/2009	MEMO	MCMULLEN	Memorandum in Support of Defendants Motion for Summary Judgment and in Opposition to Plaintiffs Summary Judgment Motion	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 09/14/2009 10:00 AM)	Randy J. Stoker
1/2/2009	MOTN	MCMULLEN	Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe's Motion for Summary Judgment	Randy J. Stoker
1/8/2009	MOTN	NIELSEN	Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe's Motion for Summary Judgment	Randy J. Stoker
		NIELSEN	Farm Bureau Mutual Insurance Company of Idaho's Statement of Disputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	Randy J. Stoker
		NIELSEN	Reply to Memorandum in Opposition to Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment and Memorandum in Opposition to Defendants' Motion for Summary Judgment	Randy J. Stoker
1/14/2009	DCHH	MCMULLEN	Hearing result for Motion for Summary Judgment held on 09/14/2009 10:00 AM: District Court Hearing Held Court Reporter: Vasquez Number of Transcript Pages for this hearing estimated:	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
	ADVS	MCMULLEN	Case Taken Under Advisement	Randy J. Stoker
1/26/2009	OPIN	MCMULLEN	Memorandum Opinion Re Cross Motions for Summary Judgment	Randy J. Stoker
1/2/2009	JDMT	MCMULLEN	Judgment	Randy J. Stoker
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Monroe, Christina, Defendant; Runyan, Michele, Defendant; Schrock, John, Defendant; Schrock, Lisa, Defendant; Schrock, Stacy, Defendant; Seitzinger, April, Defendant; Springer, Christa, Defendant; Farm Bureau Mutual Insurance Company Of Idaho, Plaintiff. Filing date: 11/2/2009	Randy J. Stoker

Date	Code	User	Description	Judge
1/25/2009	NOTC	PIERCE	Notice of Change of Firm Name	Randy J. Stoker
1/30/2009	REQU	PIERCE	Request for Additional Documents and Reporter's Transcript	Randy J. Stoker
	APSC	COOPE	Appealed To The Supreme Court	Randy J. Stoker
	NTOA	COOPE	Notice Of Appeal	Randy J. Stoker
2/1/2009	CCOA	COOPE	Clerk's Certificate Of Appeal	Randy J. Stoker
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Douglas Crandall Receipt number: 9031897 Dated: 12/1/2009 Amount: \$70.00 (Check)	Randy J. Stoker
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Douglas Crandall Receipt number: 9031897 Dated: 12/1/2009 Amount: \$30.00 (Check)	Randy J. Stoker
		COOPE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Crandall, Douglas W. (attorney for Schrock, John) Receipt number: 9031898 Dated: 12/1/2009 Amount: \$101.00 (Check) For: Monroe, Christina (defendant), Runyan, Michele (defendant), Schrock, John (defendant), Schrock, Lisa (defendant), Schrock, Stacy (defendant), Seitzinger, April (defendant) and Springer, Christa (defendant)	Randy J. Stoker
2/8/2009	SCDF	COOPE	Supreme Court Document Filed- Clerk's Certificate Filed	Randy J. Stoker
	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal Filed (T)	Randy J. Stoker
2/24/2009	NOTC	COOPE	Notice of Transcript Lodged	Randy J. Stoker
	LODG	COOPE	Lodged Transcript Sabrina Vasquez	Randy J. Stoker

ORIGINAL

DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

FEB 13 2009 2:55

By \_\_\_\_\_  
P.D. Clerk  
Deputy Clerk

Raymond D. Powers  
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James S. Thomson, II  
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W:\13\13-095\Complaint-Dec Action.doc

Attorneys for Plaintiff

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

vs.

JOHN SCHROCK, LISA SCHROCK,  
STACY SCHROCK, CHRISTA  
SPRINGER, APRIL SEITZINGER,  
MICHELE RUNYAN, and CHRISTINA  
MONROE,

Defendants.

Case No. CV-09-829

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

U= 88  
District

**COMES NOW** plaintiff FARM BUREAU MUTUAL INSURANCE COMPANY OF  
IDAHO (hereinafter "Farm Bureau"), by and through its counsel, POWERS THOMSON, P.C.,  
and hereby alleges the following as and for claims against defendants JOHN SCHROCK, LISA

SCHROCK, STACY SCHROCK, CHRISTA SPRINGER, APRIL SEITZINGER, MICHELE RUNYAN, and CHRISTINA MONROE, in the above-captioned litigation.

**I.**

**INTRODUCTION**

This is a declaratory judgment action arising out of a single-vehicle automobile accident that occurred on October 24, 2008, on Interstate Highway 84 in Minidoka County, Idaho. Through this action plaintiff Farm Bureau seeks a declaration concerning its rights and obligations under two (2) policies of insurance: (a) a Farm Bureau City Squire Policy (Policy No. 01-B-079565-01), which provided insurance to John Schrock and Lisa Schrock with regard to the automobile involved in the accident, a 2001 Isuzu Rodeo, and further provided insurance to their 22 year old daughter, Stacy Schrock, as an additional insured in regard to her use of the subject 2001 Isuzu Rodeo; and (b) a Farm Bureau Personal Umbrella Policy (Policy No. 01-U-079565-06), also held by defendants John Schrock and Lisa Schrock.

**II.**

**PARTIES**

1. Plaintiff Farm Bureau is a corporation organized and existing under the laws of the State of Idaho, duly authorized to transact business as an insurance company in the State of Idaho, with its principal place of business located in Pocatello, Bannock County, Idaho.

2. Upon information and belief, defendant John Schrock is an individual residing in Twin Falls, Twin Falls County, Idaho. Defendant John Schrock is an insured of Farm Bureau under a City Squire Policy (Policy No. 01-B-079565-01) and Personal Umbrella Policy (Policy No. 01-U-079565-06), which said policies are the subject of this declaratory judgment action.

3. Upon information and belief, defendant Lisa Schrock is an individual residing in Twin Falls, Twin Falls County, Idaho. Upon further information and belief, defendant Lisa

Schrock is the owner of the 2001 Isuzu Rodeo which was involved in the subject October 24, 2008 accident. Defendant Lisa Schrock is an insured of Farm Bureau under a City Squire Policy (Policy No. 01-B-079565-01) and Personal Umbrella Policy (Policy No. 01-U-079565-06), which said policies are the subject of this declaratory judgment action.

4. Upon information and belief, defendant Stacy Schrock is an individual residing in Twin Falls, Twin Falls County, Idaho. Defendant Stacy Schrock is an additional insured under the automobile coverage provided by John and Lisa Schrock's Farm Bureau City Squire Policy (Policy No. 01-B-079565-01) with respect to her use of the 2001 Isuzu Rodeo which was involved in the subject October 24, 2008 accident.

5. Upon information and belief, defendant Christa Springer is an individual residing in Twin Falls, Twin Falls County, Idaho. Upon further information and belief, defendant Christa Springer was, at the time of the subject October 24, 2008 accident, operating the subject 2001 Isuzu Rodeo with the permission of defendant Stacy Schrock, and, therefore, qualifies as an insured under John and Lisa Schrock's Farm Bureau City Squire Policy (Policy No. 01-B-079565-01).

6. Upon information and belief, defendant April Seitzinger is an individual residing in Twin Falls, Twin Falls County, Idaho. Defendant Seitzinger was a passenger in the subject 2001 Isuzu Rodeo at the time of the October 24, 2008 accident, and is named as a necessary party to this insurance coverage action pursuant to Rule 57(b) of the Idaho Rules of Civil Procedure, which provides that "[i]n an action seeking declaratory judgment as to coverage under a policy of insurance, any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action shall be joined if feasible." Defendant Seitzinger is further joined as a necessary party to be bound by this Court's determination of Farm Bureau's rights and duties under the subject insurance policies.

7. Upon information and belief, defendant Michele Runyan is an individual residing in Twin Falls, Twin Falls County, Idaho. Defendant Runyan was a passenger in the subject 2001 Isuzu Rodeo at the time of the October 24, 2008 accident, and is named as a necessary party to this insurance coverage action pursuant to Rule 57(b) of the Idaho Rules of Civil Procedure, which provides that “[i]n an action seeking declaratory judgment as to coverage under a policy of insurance, any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action shall be joined if feasible.” Defendant Runyan is further joined as a necessary party to be bound by this Court’s determination of Farm Bureau’s rights and duties under the subject insurance policies.

8. Upon information and belief, defendant Christina Monroe is an individual residing in Filer, Twin Falls County, Idaho. Defendant Monroe was a passenger in the subject 2001 Isuzu Rodeo at the time of the October 24, 2008 accident, and is named as a necessary party to this insurance coverage action pursuant to Rule 57(b) of the Idaho Rules of Civil Procedure, which provides that “[i]n an action seeking declaratory judgment as to coverage under a policy of insurance, any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action shall be joined if feasible.” Defendant Monroe is further joined as a necessary party to be bound by this Court’s determination of Farm Bureau’s rights and duties under the subject insurance policies.

### **III.**

#### **JURISDICTION and VENUE**

9. This is an action for declaratory judgment pursuant to the Idaho Uniform Declaratory Judgment Act, Idaho Code § 10-1201 et seq., and Idaho Rule of Civil Procedure 57, for the purposes of determining a question of actual controversy between the parties as hereinafter more fully set forth.

10. This action is ripe for adjudication.
11. The amount in controversy exceeds the jurisdictional minimum of this Court.
12. Venue is proper in Twin Falls County, Idaho, pursuant to Idaho Code § 5-404.

#### IV.

#### FACTS

##### **The October 24, 2008 Accident**

13. On October 24, 2008, at approximately 11:50 p.m., defendant Christa Springer was operating a 2001 Isuzu Rodeo (hereinafter “Isuzu”), Idaho license number 2TF5404, westbound on Interstate Highway 84 in Minidoka County, Idaho.

14. At the same time, defendants Stacy Schrock, April Seitzinger, Christina Monroe and Michele Runyan were traveling in the Isuzu as passengers.

15. While operating the Isuzu, defendant Christa Springer apparently lost control and crashed.

16. During the accident the Isuzu rolled. Defendants Stacy Schrock and Christina Monroe were ejected and sustained serious injuries.

17. Defendants Christa Springer, April Seitzinger and Michele Runyan were also injured as a result of the accident.

##### **The 2001 Isuzu Rodeo**

18. Upon information and belief, at all times relevant to this action, the Isuzu was owned by defendant Lisa Schrock.

19. Upon information and belief, defendants John Schrock and Lisa Schrock are Stacy Schrock’s parents, and Stacy Schrock is the natural born child of John Schrock and/or Lisa Schrock.



20. Upon information and belief, at all times relevant to this action, defendant Stacy Schrock was a resident of the household of John Schrock and Lisa Schrock.

21. Upon information and belief, defendant Christa Springer was operating the Isuzu at the time of the accident on October 24, 2008, with the express or implied permission of defendant Stacy Schrock.

### **The Farm Bureau City Squire Policy**

22. On October 24, 2008, defendants John Schrock and Lisa Schrock were insureds pursuant to a City Squire Policy issued by Farm Bureau (Policy No. 01-B-079565-01), for the policy period October 19, 2008 to October 19, 2009. A true and correct certified copy of the Farm Bureau City Squire Policy is attached hereto as Exhibit 1.

23. The Farm Bureau City Squire Policy Declarations identify the Isuzu as an insured vehicle.

24. The Farm Bureau City Squire Policy Declarations identify defendant Stacy Schrock as a “Section III Additional Insured” on the policy, “[b]ut only in regard to the 2001 Isuzu Rodeo.”

25. The Farm Bureau City Squire Policy Declarations state that the limit of liability for bodily injury and property damage under Section III – Automobile Insurance is \$500,000 for each occurrence.

26. The Farm Bureau City Squire Policy contains the following relevant definitions:

#### **DEFINITIONS**

Throughout this policy, . . . [y]ou and your mean a person named in the Declarations as an **insured** and that person’s spouse if a resident of the same household.

\* \* \*

#### **DEFINITIONS APPLICABLE TO SECTION III (Automobile Insurance)**

**Bodily injury** means physical injury to a person and any resulting sickness, disease, or death.

\* \* \*

**Insured** means:

1. Under Coverages N, O, R, S, and T, with respect to an **insured vehicle**:
  - a. You or any **relative**; or
  - b. Anyone using an **insured vehicle** within the scope of your permission or within the scope of permission of your adult **relative**. This does not include a passenger.

\* \* \*

**Insured vehicle** means:

1. Any vehicle owned by you and described in the Declarations;

\* \* \*

**Occurrence** means an accident arising out of the ownership, maintenance, or use of a **motor vehicle**, . . . All **bodily injury** and **property damage** resulting from a common cause shall be considered the result of one **occurrence**.

\* \* \*

**Relative** means a person related to you by blood, marriage, or adoption, who is a resident of your household, including a ward or foster child. This definition applies only if you are an individual.

27. The Farm Bureau City Squire Policy also contains the following relevant provisions regarding automobile insurance:

### **SECTION III – AUTOMOBILE INSURANCE**

#### **COVERAGE N – BODILY INJURY LIABILITY and COVERAGE O – PROPERTY DAMAGE LIABILITY**

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

1. Pay up to our limit of liability for the damages for which the **insured** is legally liable (damages includes any awarded prejudgment interest); and
2. Provide a defense at our expense by counsel of our choice. .

\* \* \*

**I320 (0108) Combined Single Limit Endorsement – Coverages N and O.** The limits of liability paragraph pertaining to Coverages N and O under **Section III Conditions** is changed to read as follows:

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

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

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

\* \* \*

28. Pursuant to the foregoing policy provisions, defendants Stacy Schrock, Lisa Schrock and John Schrock are insureds under the Farm Bureau City Squire Policy.

29. Pursuant to the foregoing policy provisions and upon information and belief, defendant Christa Springer is an insured under the Farm Bureau City Squire Policy in so far as she was operating the Isuzu within the scope of defendant Stacy Schrock's permission.

**The Farm Bureau Umbrella Policy**

30. On October 24, 2008, defendants John Schrock and Lisa Schrock were insureds pursuant to a Personal Umbrella Policy issued by Farm Bureau (Policy No. 01-U-079565-06), for the policy period October 19, 2008 to October 19, 2009. A true and correct certified copy of the Farm Bureau Umbrella Policy is attached hereto as Exhibit 2.

31. The Farm Bureau Umbrella Policy Declarations identify the Schrocks' Farm Bureau City Squire Policy on the Schedule of Underlying Insurance.

32. The Farm Bureau Umbrella Policy Declarations state that the limit of personal liability coverage under the policy is \$1,000,000 for each occurrence.

33. The Farm Bureau Umbrella Policy contains the following relevant definitions:

**PART I – DEFINITIONS**

In this policy, you and your mean a person named in the Declarations as an insured and that person's spouse if a resident of the same household. . . . The following defined words appear in bold print in the policy.

\* \* \*

**Bodily injury** means physical injury, sickness, disease, or resulting death to a person. . . .

\* \* \*

**Damages** means the total of damages you must pay (legally or by agreement with our written consent) because of **personal injury**, **bodily injury**, or **property damage**, covered by this policy.

\* \* \*

**Insured** means you, and if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**. **Insured** does not include a **relative** age 24 or over who is a student and lives away from your residence while attending school. A **permissive driver** who is your employee is an **insured** while using your **motor vehicle**.

**Permissive driver** means any person or organization while using a **motor vehicle** owned by, rented by, or loaned to you or any **insured** and covered by this policy, provided that an **insured** gave permission for the type of use of the **motor vehicle**.

\* \* \*

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

\* \* \*

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

**Retained limit** means the limit so stated in the Declarations that will be paid by you. This limit applies if the **underlying insurance** described in the Declarations and the amounts of any other insurance do not provide coverage to the **insured**. But this **retained limit** does not apply if the injury or damage would have been covered by **underlying insurance** but for exhaustion of the applicable limits of insurance of such **underlying insurance**.

\* \* \*

**Underlying limit** means the total of the applicable limits of insurance of the type of policy or policies scheduled as **underlying insurance**.

**Underlying insurance** means the policies listed on the schedule of underlying insurance and includes any other insurance available to the **insured** that is applicable to the injury or damage alleged.

34. The Farm Bureau Umbrella Policy also contains the following relevant provisions:

## **PART II – COVERAGES**

1. We will pay **damages** for which the **insured** becomes legally responsible caused by:
  - a. An **occurrence** to which this insurance applies that results in **bodily injury** or **property damage**, during the policy period; . . . .

2. These coverages are subject to all exclusions, terms, and conditions of this policy.
3. These coverages apply only to **damages** in excess of the greater of the applicable **underlying limit** or the **retained limit**. Any payment we make for **damages** is subject to **Part V – Limit of Liability**.

\* \* \*

#### **PART IV – EXCLUSIONS**

We do not cover:

\* \* \*

9. A **permissive driver**. If state law requires that this policy apply to a **permissive driver**, however, our applicable limit of liability for an **occurrence** shall be reduced (see Part V Limit of Liability). This exclusion does not apply if the **permissive driver** is your employee;

\* \* \*

16. **Personal injury, bodily injury, or property damage** sustained by you, your spouse, your minor children, your **relative**, or any other **insured**;

\* \* \*

#### **PART V – LIMIT OF LIABILITY**

Regardless of the number of **insureds**, claims, or injured persons, the most we pay as **damages** resulting from one **occurrence** shall not exceed the amount stated in the Declarations, subject to the following:

1. This policy pays only after the limits of the **underlying insurance**, and any other insurance covering the claim, have been paid by the **insured** or on the **insured's** behalf;

\* \* \*

9. If the law requires that this policy covers a **permissive driver**, the limits of liability that apply to this **permissive driver** shall be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility,

or similar law affecting motor vehicle insurance requirements.

35. Pursuant to the foregoing policy provisions, defendants Stacy Schrock, Lisa Schrock and John Schrock are insureds under the Farm Bureau Umbrella Policy.

**Coverage with Regard to the October 24, 2008 Accident**

36. Defendants Stacy Schrock, Christa Springer, April Seitzinger, Michele Runyan and Christina Monroe each sustained bodily injuries as a result of the October 24, 2008 accident.

37. Farm Bureau is currently addressing claims by each of these defendants arising out of the October 24, 2008 accident.

38. Upon information and belief, defendant Stacy Schrock sustained significant and permanent injuries as a result of the accident, and has incurred significant medical expenses in excess of \$300,000.00 to date. Upon information and belief, the injury claim by Stacy Schrock alone is likely to exceed the liability limit of the Farm Bureau City Squire Policy, and may further exceed the liability limit of the Farm Bureau Umbrella Policy.

39. An actionable, justiciable controversy exists between Farm Bureau and the defendants herein, involving rights and liabilities under the Farm Bureau City Squire and Umbrella policies, dependent on the construction of said contracts and policies of insurance, which controversy may be determined by judgment of this Court, without other lawsuits.

V.

**CAUSES OF ACTION**

**Count I – Declaratory Judgment**  
**(No Coverage for Claim against Defendant Christa Springer**  
**Under Farm Bureau Umbrella Policy Insuring Agreement)**

40. Plaintiff Farm Bureau incorporates all previous allegations as though fully set forth herein.

41. The Farm Bureau Umbrella Policy provides insurance coverage for only those “damages” for which an “insured” becomes legally responsible as a result of an “occurrence,” as those terms are defined by the Farm Bureau Umbrella Policy.

42. Defendant Christa Springer, the operator of the Isuzu at the time of the accident on October 24, 2008, is not specifically named as an insured on the Farm Bureau Umbrella Policy, nor does she otherwise qualify as an “insured,” as that term is defined in the Farm Bureau Umbrella Policy.

43. Therefore, Farm Bureau is entitled to a declaratory judgment as follows:

- a. The Farm Bureau Umbrella Policy does not provide coverage for defendant Christa Springer’s operation of the Isuzu at the time of the October 24, 2008 accident;
- b. The limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claim or suit for damages against defendant Christa Springer, including, but not limited to, any claim or suit by, or on behalf of defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from defendant Christa Springer’s operation of the Isuzu at the time of the October 24, 2008 accident; and
- c. Farm Bureau has no duty to defend and/or indemnify defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the October 24, 2008 accident.

**Count II – Declaratory Judgment**  
**(No Coverage for Claim against Defendant Christa Springer based on Farm Bureau Umbrella Policy Permissive Driver Exclusion (Exclusion 9))**

44. Plaintiff Farm Bureau incorporates all previous allegations as though fully set forth herein.

45. Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy excludes coverage for a “permissive driver,” which is defined by the policy as any person while using a motor vehicle



owned by an insured and covered by the policy, provided that an insured gave permission for the type of use of the motor vehicle.

46. Upon information and belief, defendant Christa Springer was operating the Isuzu at the time of the October 24, 2008, accident with the permission of Stacy Schrock.

47. Defendant Stacy Schrock is an “insured,” as that term is defined in the Farm Bureau Umbrella Policy.

48. Therefore, Farm Bureau is entitled to a declaratory judgment as follows:

- a. The Farm Bureau Umbrella Policy does not provide coverage for defendant Christa Springer’s operation of the Isuzu at the time of the October 24, 2008 accident, based on Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy;
- b. Based on Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claim or suit for damages against defendant Christa Springer, including, but not limited to, any claim or suit by or on behalf of defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from defendant Christa Springer’s operation of the Isuzu at the time of the October 24, 2008 accident; and
- c. Based on Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy, Farm Bureau has no duty to defend and/or indemnify defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the October 24, 2008 accident.

**Count III – Declaratory Judgment**  
**(No Coverage for Defendant Stacy Schrock based on**  
**Farm Bureau Umbrella Policy Exclusion 16)**

49. Plaintiff Farm Bureau incorporates all previous allegations as though fully set forth herein.

50. Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy excludes from coverage “bodily injury” sustained by “you, your spouse, your minor children, your **relative**, or any other **insured**.”

51. Defendant Stacy Schrock is an “insured,” as well as a “relative,” as those terms are defined in the Farm Bureau Umbrella Policy.

52. Therefore, Farm Bureau is entitled to a declaratory judgment as follows:

- a. Based on Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy, the Farm Bureau Umbrella Policy does not provide coverage for any claim or suit for damages by or on behalf of defendant Stacy Schrock arising out of the October 24, 2008 accident; and
- b. Based on Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by defendant Stacy Schrock as a result of the October 24, 2008 accident.

**Count IV – Declaratory Judgment**  
**(Farm Bureau City Squire Policy)**

53. Plaintiff Farm Bureau incorporates all previous allegations as though fully set forth herein.

54. Upon information and belief, defendant Christa Springer was operating the Isuzu at the time of the accident on October 24, 2008, with the express or implied permission of defendant Stacy Schrock. Therefore, defendant Christa Springer qualifies as an insured under the Farm Bureau City Squire Policy, whereas she does not qualify as an insured under the Farm Bureau Umbrella Policy.

55. In contrast to the Farm Bureau Umbrella Policy, the Farm Bureau City Squire Policy does not exclude from coverage a claim for bodily injury sustained by an insured, such as defendant Stacy Schrock.

56. Therefore, Farm Bureau is entitled to a declaratory judgment as follows:

- a. As between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the Farm Bureau City Squire Policy is the only policy that provides coverage for defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident;
- b. As between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau City Squire Policy are the only limits available to satisfy any claim or suit for damages against defendant Christa Springer, including, but not limited to, any claim or suit by or on behalf of defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident; and
- c. As between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau City Squire Policy are the only limits available to satisfy any claims or suits involving medical expenses or other losses or damages to defendant Stacy Schrock as a result of the October 24, 2008 accident.

## VI.

### CLAIM FOR ATTORNEY FEES AND COSTS

Farm Bureau has been required to retain the services of Powers Thomson, P.C., to prosecute this action, and has and will continue to incur reasonable attorney fees and costs relative to its prosecution of this action. Farm Bureau alleges and hereby makes a claim against defendants for its costs and reasonable attorney fees incurred pursuant to the provisions of Idaho Code §§ 10-1210, 12-121, 12-123, Rule 54 of the Idaho Rules of Civil Procedure, and any other contractual provision, statute, rule or regulation providing for an award of attorney fees and/or costs in this action.

**WHEREFORE**, plaintiff Farm Bureau prays for declaration and judgment as follows:

1. Under Counts I and II, that the Farm Bureau Umbrella Policy does not provide coverage for defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident;

2. Under Counts I and II, that the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claim or suit for damages against defendant Christa Springer, including, but not limited to, any claim or suit by or on behalf of defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident;

3. Under Counts I and II, that Farm Bureau has no duty to defend and/or indemnify defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the October 24, 2008 accident;

4. Under Count III, that any claim or suit for damages by or on behalf of defendant Stacy Schrock arising out of the October 24, 2008 accident is excluded from coverage pursuant to Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy;

5. Under Count III, that based on Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by defendant Stacy Schrock as a result of the October 24, 2008 accident;

6. Under Count IV, that as between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the Farm Bureau City Squire Policy is the only policy that provides coverage for defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident;

7. Under Count IV, that as between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau City Squire Policy are the

only limits available to satisfy any claim or suit for damages against defendant Christa Springer, including, but not limited to, any claim or suit by, or on behalf of defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident;

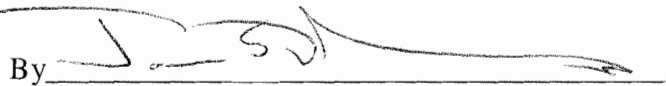
8. Under Count IV, that as between the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy, the limits of liability under the Farm Bureau City Squire Policy are the only limits available to satisfy any claims or suits involving medical expenses or other losses or damages to defendant Stacy Schrock as a result of the October 24, 2008 accident;

9. That Farm Bureau be awarded its costs and reasonable attorney fees incurred in prosecuting this action; and

10. All other relief that the Court deems just and equitable.

DATED this 11<sup>TH</sup> day of February, 2009.

POWERS THOMSON, P.C.

By 

Raymond D. Powers - Of the Firm  
James S. Thomson, II - Of the Firm  
Attorneys for Plaintiff

# EXHIBIT 1









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

CITY SQUIRE POLICY  
 DECLARATIONS  
 PAGE 3

POLICY NUMBER: 01-B-079565-01  
 EFFECTIVE DATE: 1D-19-2008

SECTION III - AUTOMOBILE

INSURED VEHICLES:

DRIVER CLASS	DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	LIENHOLDER / LESSOR	ANNUAL PREMIUM
03-362-2	2001 ISUZU RODEO 4S2DM58WX14358815 WORK OR SCHOOL 3-10 MILES - SINGLE FEMALE AGE 21-24 LIABILITY PREMIUM \$411.00 COMP / COLL PREMIUM \$397.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*I334 (0108) *I368 (0108)	LIENHOLDER: IDAHO CENTRAL CR UN PO BOX 2469 POCATELLO ID 83206	\$808.00

SECTION III ADDITIONAL INSURED(S):

STACY SCHROCK IS AN INSURED UNDER SECTION III, BUT ONLY IN REGARD TO THE 2001 ISUZU RODEO 4S2DM58WX14358815.

TOTAL SECTION III ANNUAL PREMIUM \$2,132.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT I320 (0108) - COMBINED SINGLE LIMITS ON COVERAGES N AND O (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT I324 (0108) - NEW VEHICLE LOAN COVERAGE ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT I326 (0108) - NEW VEHICLE ADDITIONAL COVERAGE ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION IV - INLAND MARINE

LIMITS OF LIABILITY	DESCRIPTION	ITEM NUMBER	DEDUCTIBLE	ENDORSEMENT	ANNUAL PREMIUM
	SCHEDULED PERSONAL PROPERTY ENDORSEMENT	001	0	1418 (0108)	\$5.00
5000	ALL TERRAIN VEHICLE 2006 YAMA 5YAJ16Y06A009604	004	250	1412 (0108)	\$61.00
5000	ALL TERRAIN VEHICLE 2006 YAMA 5Y4AJ16Y76A009387	006	250	1412 (0108)	\$61.00

SEE ATTACHED SCHEDULES FOR A DESCRIPTION OF THE PROPERTY COVERED AND THE APPLICABLE LIMITS OF LIABILITY FOR EACH SECTION IV ENDORSEMENT THAT DOES NOT HAVE A LIMIT OF LIABILITY SHOWN.

TOTAL SECTION IV ANNUAL PREMIUM \$127.00

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

POLICY BOOKLET ID-TQ-02-01(0108) - CITY SQUIRE POLICY

TOTAL ANNUAL PREMIUM \$2,941.00

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

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

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



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

CITY SQUIRE POLICY  
DECLARATIONS  
PAGE 4

POLICY NUMBER: 01-B-079565-01  
EFFECTIVE DATE: 10-19-2008

NOTICE OF ANNUAL MEETING

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

NO CONTINGENT LIABILITY. THE POLICY IS WITHOUT CONTINGENT LIABILITY AND IS NONASSESSABLE.

*L. Leydeyer*  
Authorized Representative



# THE CITY SQUIRE

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## Farm Bureau Mutual Insurance Company of Idaho

P.O. Box 4848 ♦ 275 Tierra Vista Drive ♦ Pocatello, Idaho ♦ 83201

ID-TQ-02-01(0108)

CERTIFIED COPY

01-B-079565-01 *JNL*  
POLICY NO. INITIAL

33

CO 00534

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## AGREEMENT

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1. We will provide the insurance described in this policy and the Declarations if you have paid the premium and have complied with the policy provisions and conditions. This policy is divided into four sections, some with multiple coverages. You have only the coverages for which you have paid premium. These coverages are indicated in the Declarations and are subject to the indicated limits of insurance. If you have Section III, the coverages which apply to each **Insured vehicle** are indicated in the Declarations.
2. The **insured** first named in the Declarations, or that person's spouse if also named, is authorized to act on behalf of all **insureds** with respect to giving or receiving notices, receiving refunds, or agreeing to or making any changes in this policy.
3. By acceptance of this policy, you agree that the Declarations indicate the coverages you purchased. No agreement in conflict with, modifying, or extending this policy shall be valid unless in writing and made a part of the policy.
4. To the extent that this policy replaces another policy that terminates at a different hour on the effective date of this policy, this policy shall not be effective until the other policy terminates.
5. This policy booklet, the Declarations, and applicable endorsements constitute your policy. The Declarations references coverages and endorsements that are included in your policy. Upon renewal or change of your policy you will receive an updated Declarations but no new policy booklet unless the policy booklet changes.

**READ THE DECLARATIONS TO DETERMINE WHICH COVERAGES PERTAIN TO YOU.**

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## DEFINITIONS

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Throughout this policy, we, us, and our, mean Farm Bureau Mutual Insurance Company of Idaho. You and your mean a person named in the Declarations as an **insured** and that person's spouse if a resident of the same household. You and your do not include an additional insured such as a lessor, trustee, or landlord. The following defined words appear in bold print in the policy.

### **DEFINITIONS APPLICABLE TO SECTIONS I (Property Insurance), II (Liability Insurance), AND IV (Inland Marine Insurance)**

The following definitions apply to Sections I, II, and IV. They do not apply to Section III (Automobile Insurance).

**Bodily Injury** means physical injury, sickness, disease, or resulting death, to a person. **Bodily Injury** does not include:

1. The transmission or exposure to a person of any disease through sexual contact or contact with a person's bodily discharges or blood; or
2. The transmission of the Acquired Immune Deficiency Syndrome (A.I.D.S.) virus by any means.

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

1. Your **residence premises** if rented occasionally;
2. Garages, if not more than three car spaces are rented; or
3. One-, two-, three-, or four-family **dwellings** described in the Declarations.

**Business** does not include:

1. Newspaper delivery, lawn care, or similar activities, normally performed by minors, when the activity is not the principal occupation of any **insured**; or
2. Childcare services provided by any **insured** if the number of children is six or fewer and then only if care is provided for fewer than a total of 31 days during your policy period. Part-time child care services provided by any **insured** who is a minor is not considered a **business**.

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

**Dwelling premises** means a **dwelling** listed in the Declarations, including its grounds and private garages. A **dwelling premises** includes a **residence premises**.

**Insured** means you. **Insured** also means if residents of your household, your spouse, your **relatives**, and minors in the care of you or your **relatives**. **Insured** does not include a **relative** age 25 or over who is a student and lives away from your **residence premises** while attending school.

Under Section II, **insured** also means a person while operating your watercraft or in charge of your domestic animals: (a) to which this policy applies, (b) with your permission, and (c) in your activities covered by this policy.

**Insured location** means:

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

**Insured location** does not include property where a **business** is conducted.

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

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

1. Utility, boat, camping, or travel trailers;
2. **Recreational motor vehicles**; or
3. Any equipment which is designed for use principally off public roads.

**Occurrence** means an accident, including continuous or repeated exposure to conditions, which results in unexpected **bodily injury** or **property damage** during the policy period. All **bodily injury** and

**property damage** resulting from a common cause shall be considered the result of one **occurrence**.

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

**Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum products, waste, or anything defined by federal or state law as a pollutant. Waste includes materials to be recycled, reconditioned, or reclaimed.

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

**Recreational motor vehicle** means any motorized vehicle designed for recreational use off public roads, including but not limited to, golf carts, snowmobiles, trail bikes, mopeds, dune buggies, motorcycles, or all-terrain vehicles. It does not include motorcycles that are licensable for road use.

**Relative** means a person related to you by blood, marriage, or adoption, who is a resident of your household, including a ward or foster child. This definition applies only if you are an individual.

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

**Residence premises** means a **dwelling** that is your principal residence, including its grounds and private garages. **Residence premises** also means that part of any other building that is your principal residence and is shown in the Declarations as your **residence premises** but does not include any part used for **business**.

#### **DEFINITIONS APPLICABLE TO SECTION III (Automobile Insurance)**

**Bodily Injury** means physical injury to a person and any resulting sickness, disease, or death.

**Business** has the same definition under Section III as under **DEFINITIONS APPLICABLE TO SECTIONS I (Property Insurance), II (Liability Insurance), AND IV (Inland Marine Insurance)**.

**Insured** means:

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

- b. Anyone using an **Insured vehicle** within the scope of your permission or within the scope of permission of your adult **relative**. This does not include a passenger.
2. Under Coverages N and O with respect to a **nonowned vehicle**, you or your **relatives** when operating a **nonowned vehicle**.

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

**Insured vehicle** means:

1. Any vehicle owned by you and described in the Declarations;
2. Any vehicle in your care, custody, or control, which you drive on a regular basis, and that is described in the Declarations;
3. A **temporary substitute vehicle**. The same coverages apply to the **temporary substitute vehicle** as apply to the **insured vehicle** for which it is being substituted;
4. Under Coverages N and O only, any **trailer** while attached to a vehicle described in the Declarations. Also included is a **trailer** while being used with a **temporary substitute vehicle**;
5. Under Coverages R, S, and T, any camper, camper shell, topper, or other **shell**, described in the Declarations;
6. Under Coverages N, O, P, P-1, and Q, any licensed private passenger automobile, pickup, SUV, passenger van, motorcycle, or motor home, ownership of which is acquired by you during the policy period;
7. Under Coverages S and T, any licensed private passenger automobile, pickup, SUV, **trailer**, passenger van, motorcycle, or motor home, ownership of which is acquired by you during the policy period; and
8. Under Coverages S and T, any camper, camper shell, topper, or similar shell, ownership of which is acquired by you during the policy period.

The newly acquired vehicles or equipment in paragraphs 6, 7, and 8 above are not **insured vehicles** unless we insure all of your licensed vehicles and you ask us to insure the newly acquired vehicle or equipment during the policy period or within 30 days of its acquisition, whichever is shorter.

Coverage under paragraphs 7 and 8 does not apply unless Coverages S and T apply to at least one **Insured vehicle** listed on the Declarations.

Coverage P-1 does not apply to a newly acquired vehicle unless it applies to all of your other **Insured vehicle(s)**. A newly acquired vehicle includes a vehicle that replaces one shown in the Declarations.

Ownership includes your written lease of a motor **vehicle** for more than 6 continuous months.

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

**Nonowned vehicle** means a **trailer** or **motor vehicle** with a gross vehicle rating of 20,000 lbs. or less, as indicated by the manufacturer, operated by you or your **relatives**, or in the custody of you or your **relatives**, provided the actual use is with the permission of the owner.

A **nonowned vehicle** does not include:

1. A vehicle owned by you or your **relatives** or that is available for regular use by you or your **relatives**. This limitation does not apply to a **motor vehicle** owned by you or your **relatives**, that is driven by you, and is described as an **insured vehicle** in the Declarations of another policy issued by us or Western Community Insurance Company, if it otherwise qualifies as a **nonowned vehicle**.
2. Any pickup, truck, van, or **trailer**, used for any **business** purpose. This limitation does not apply to a pickup or passenger van that otherwise qualifies as a **nonowned vehicle** if we insure a pickup or van shown in the Declarations for which premium is charged based on a business use class.
3. A **motor vehicle** rented to an **insured** for more than three weeks.

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

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

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

**Relative** means a person related to you by blood, marriage, or adoption, who is a resident of your household, including a ward or foster child. This definition applies only if you are an individual.

**Temporary substitute vehicle**, means a **motor vehicle** or **trailer** you do not own while temporarily used as a substitute for a vehicle described in the Declarations when that vehicle cannot be used because of breakdown or servicing.

**Trailer** means a vehicle designed to be towed by a private passenger automobile, pickup, SUV, or van. **Trailer** does not include vehicles used:

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

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## GENERAL CONDITIONS APPLICABLE TO THIS POLICY

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Unless otherwise indicated, the following conditions are applicable to this policy.

1. **Abandonment of Property.** We are not obligated to pay for or accept any property abandoned by an **insured**.
2. **Arbitration.** This paragraph does not apply to liability coverages, or uninsured or underinsured motorist coverages. An **insured** or we may make a written demand for arbitration to determine all disputed issues as to (1) whether an **insured** is entitled under the policy to coverage for a loss, or (2) the value of a loss to real or personal property where coverage is not disputed. Each party will select a competent, impartial arbitrator within 20 days of receipt of the written demand. The two arbitrators will select a third arbitrator. If they cannot agree upon a third arbitrator within 10 days, either may request that a judge of a court having jurisdiction selects a third arbitrator. Both parties shall make disclosure to each other of all information as required by the arbitrator(s) in the scheduling and discovery order. Each party will pay the expenses it incurs, including attorney's fees and related costs, and bear the expenses of the third arbitrator equally. Arbitration will take place in Idaho in the county where the policy was issued unless both parties agree otherwise. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.
3. **Assignment.** No assignment or transfer of this policy to another person or entity shall be valid.
4. **Premium.** The premium stated in the Declarations shall be computed according to our rules and rating plans. The premium is for insurance from the policy inception date to its expiration date.
5. **Bankruptcy of An Insured.** Bankruptcy or insolvency of an **insured** shall not relieve us of our obligations under this policy.
6. **Cancellation.**
  - a. You may cancel this entire policy by mailing to us written notice stating the future date when this cancellation shall be effective.
  - b. We may cancel all or part of Sections I, II, or IV, by mailing notice to the first named **insured** in the Declarations at least 30 days before the date the cancellation takes effect. If cancellation is because you did not pay the premium, however, we may cancel by mailing notice to you at least 15 days before the cancellation date.
  - c. When allowed by state law, we may cancel all or part of Section III of this policy by mailing notice to you:
    - (1) At least 10 days before the cancellation effective date if the policy has not been in force for 60 days or if the cancellation is because you did not pay the premium. Under this paragraph, if the notice is mailed, the 10 day period begins 5 days after the date our notice is postmarked;
    - (2) At least 30 days before the cancellation effective date if the cancellation pertains to a vehicle which is considered commercial, unless cancellation is because of non-payment of premium. We will then give you 10 days notice of cancellation; or
    - (3) At least 20 days before the cancellation effective date if the cancellation is because of any other reason.
  - d. Payment or tender of unearned premium is not a condition of cancellation. We will mail any notice of cancellation to you at the address shown in the Declarations. Our proof of mail shall be sufficient proof of the mailing of notice. The effective date and hour of



cancellation stated in the notice shall become the end of the policy period. Our hand delivery of this written notice shall be equivalent to mailing. If you or we cancel, earned premiums shall be computed pro rata based on the effective date of cancellation. Premium adjustment may be made at this time or as soon after as is practical. Our check mailed or delivered shall be sufficient tender of any refund of premium.

- e. Our cancellation rights are limited by state insurance law.
7. **Changes.** We reserve the right to adjust the amount of your premiums if there is a change in the information used to calculate your policy premiums.
8. **Concealment or Fraud.** We will not provide coverage if any **Insured** has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.
9. **Cooperation of Insured.** If any **insured** fails to cooperate with us or send us legal papers as required, we have the right to refuse any further coverage for the **occurrence** or loss.
10. **Death.** Upon your death, we will continue through the current policy period to insure any member of your household who is an **Insured** at the time of your death. We will also insure:
- a. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative; or
  - b. Your legal representative, but only with respect to:
    - (1) Your property that we covered at the time of your death; and
    - (2) Your legal liability covered by this policy.
11. **Deductible Clause.** Loss from each **occurrence** shall be adjusted separately. We will not pay for any covered loss until the amount of loss exceeds the deductible stated in the Declarations. We will apply only one deductible (the highest one applicable) to a loss to which more than one section of this policy applies, or if two or more **Insured vehicles** or other damaged items are involved in a single **occurrence**.
12. **Dividends or Credits.** Any obligation of ours for dividend or credit shall not in any way extend or change the policy period.
13. **Inspection and Audit.** You shall permit us to inspect and audit your insured property and operation at any reasonable time. We are not obligated, however, to conduct inspections. We are not obligated to give you a copy of any inspection report. Any inspection or report shall not be considered a representation that the operation or property is safe or complies with any legal requirements. The purpose of any inspection is to determine insurability and the appropriate premium charge.
14. **Insured's Interest and Limit of Liability.** If more than one person has an insurable interest in the property covered by this policy, we shall not be liable to the **Insured** for an amount greater than the **Insured's** interest up to the applicable limit of liability.
15. **Liberalization Clause.** If within 60 days prior to or during the policy period we adopt any revision that broadens the coverage under this policy without payment of additional premium, the broadened coverage will immediately apply to this policy. This clause does not apply to changes implemented through introduction of a new edition of our policy.
16. **Loss Payment.** This paragraph does not apply to liability coverages. We will adjust all losses with you unless someone else is entitled to payment under this policy. Payment for loss will be made within 60 days after we receive your signed, sworn proof of loss and ascertainment of the loss is made by: (a) agreement with you; (b) entry of a final judgment; or (c) the filing of an arbitration award with us.
17. **No Benefit to Ballee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this policy.
18. **Nonduplication of Insurance Benefits.** No person entitled to any payment or benefit under any coverage of this policy shall recover any duplicate payment or benefit for the same elements of loss under any other coverage of this policy, including liability coverages, or any other policy.
19. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
- a. Take all or any part of the property at the agreed or appraised value. If we exercise this option, you must sign any papers we require for transfer of title; or

- b. Repair or replace any part of the property with equivalent property. We will not be liable for any loss resulting from delay in repair or choice of repairmen.
20. **Policy Period.** The policy period is shown in the Declarations and is subject to cancellation as set forth in the policy. This policy applies only to **occurrences** which take place during the policy period. Losses to your insured property are covered only if the peril and loss both occur during the policy period. The time shown in the Declarations is standard time at your primary residence.
21. **Policy Renewals.**
- a. Subject to our consent, you may renew this policy for successive periods by payment to us of the premium we require to renew the policy. If we are willing to renew this policy we shall give you 20 days notice in writing of the amount of premium or estimated premium to be paid to renew the policy. Premium payment for any renewal period shall be due before the expiration of the preceding policy period. We may change the terms of your policy at renewal. We will give you notice of any change resulting in any material decrease in coverage.
- b. We shall give you 30 days advance written notice of any intention to non-renew all or part of this policy.
22. **Policy Termination.** If you fail to pay the renewal premium when due, this policy will terminate on its expiration date without any notice or action by us. If you purchase another policy to replace this one, this policy terminates on the inception of such policy without notice by you or us.
23. **Premium Waiver.** If the amount of any additional premium you owe us or premium we owe you is \$2 or less it shall be waived.
24. **Subrogation – Our Right to Recover Payment.**
- a. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages, we will be subrogated to that right (have that right transferred to us). That person must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights.
- b. If we make a payment under this policy, and the person to or for whom payment was made recovers damages from another, that person must reimburse us to the extent of our payment.
- c. We may prosecute in the name of any **insured** for the recovery of these payments.
25. **Special or Lower Limit, or Additional Coverage.** Under some coverages there may be a special or lower limit or an additional coverage for a particular type of property or loss. Unless the policy specifically states otherwise, such limit is included within and does not increase the applicable coverage limit.
26. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions. No one shall have any right to join us as a party to any action against an **Insured**. Further, no action with respect to liability coverages shall be brought against us until the obligation of the **Insured** has been determined by final judgment or agreement signed by us.
27. **Terms of Policy to Conform to Statute.** Terms of this policy which are in conflict with the statutes of the state of Idaho are hereby amended to conform to such statutes.
28. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid.

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## SECTION I – PROPERTY INSURANCE

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We cover the property insured under Section I against direct physical loss only, caused by specified perils. For most coverages, the applicable perils, limit of liability, and deductible, are indicated in the Declarations; for some coverages, one or more of these may be indicated in the policy booklet or applicable endorsement.

### COVERAGE A – DWELLINGS

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We cover the following:

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

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

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### COVERAGE B – LOSS OF USE

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1. **Additional Living Expense.** If a loss covered under Coverage A makes your covered **dwelling** uninhabitable, we will pay any necessary increase in living expenses incurred by you so that your family can maintain its normal standard of living. Payment shall be for the shortest time required to repair or replace the premises or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy. We will not pay for any increase in living expenses resulting from your rental or use of any real property that is more than 150 miles from the covered **dwelling**.
2. **Fair Rental Value.** If a loss under Coverage A causes your covered **dwelling** rented to others to become uninhabitable, we will pay the fair rental value of the **dwelling premises**. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expenses that do not continue while part of the **dwelling premises** rented or held for rental is uninhabitable.
3. **Prohibited Use.** If a civil authority prohibits you from use of the **dwelling premises** as a result of direct damage to neighboring premises by a peril insured against in this policy, we cover any resulting additional living expenses or fair rental value loss incurred by you for a period not exceeding two weeks during which use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

### COVERAGE C – PERSONAL PROPERTY

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

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at each location bears to the total value of all property distributed between the two locations. If you have more than one **dwelling premises** insured under this policy, a different Coverage C limit of liability applies to each **dwelling premises**. These limits are stated in the Declarations. The limit applicable to one insured **dwelling premises** cannot be applied to a loss at another insured **dwelling premises**.

1. **Special Limits of Liability.** Special limits of liability apply to the following categories of property. If an item of property is subject to more than one category, only the category with the lowest limit applies. The special limit for each following category is the total aggregate limit for each loss for all property in that category:

- a. \$200 on money, bank notes, numismatic property, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, gift cards or certificates, scrip, smart cards, stored value cards, or prepaid phone cards;
- b. \$1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets, sports collection cards, and stamps. This limit applies regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace, or restore the information from the lost or damaged material;
- c. \$1,500 on watercraft, including their trailers, attached equipment, and outboard motors. We do not cover any loss by windstorm or hail to this property unless it is inside a fully enclosed building;
- d. \$1,500 on trailers, not including trailers used with any watercraft;
- e. \$2,000 on any one article and \$4,000 in the aggregate for loss by theft of jewelry, watches, furs, and precious and semi-precious stones;
- f. \$3,500 for loss by theft of firearms;
- g. \$3,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, and pewterware;
- h. \$3,000 on property on the **residence premises** used at any time or in any manner for any **business** purpose and \$2,000 for such property away from the **residence premises**. This includes computers, blank electronic storage media, and pre-recorded

computer programs available to the public. We do not cover cash, securities, books of account, drawings, other paper or electronic records, CD-ROM, electronic data processing tapes, disks, or other software media;

- i. \$1,500 on DVD players, GPS devices, cell or mobile phones, televisions, computers, and other electronic data processing equipment, while this property is in or upon a **motor vehicle**. This limitation applies to portable equipment that is capable of being operated by the **motor vehicle's** electrical system;
- j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet, tapestry, wall hanging, or other similar article;
- k. \$5,000 on your **personal property** which is usually located at your **residence premises** while this property is at any other **dwelling** owned by you and insured by us. This is in addition to any other limit which may apply at that **dwelling**;
- l. \$7,500 on hand, electronic, power, and similar tools that can be used for carpentry, building construction, or dwelling or vehicle maintenance or repair; and
- m. \$3,000 in the aggregate on saddles and tack.

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

2. **Exclusions.** Coverage C does not cover:

- a. Hay, straw, or any other animal feed, except for loss by fire;
- b. Animals, **livestock**, birds, fish, or pets;
- c. Agricultural machinery, motorized land vehicles, and their parts, except vehicles designed for assisting the handicapped and vehicles used solely to service your **dwelling**, provided they cannot be licensed for road use;
- d. Aircraft and their parts;
- e. Property of roomers, tenants, and boarders, not related to an **insured**;
- f. **Recreational motor vehicles**, trailer homes, camper shells, tent trailers, and campers, and their parts;

- g. Any **personal property** located at any **dwelling**, its grounds, garages, or sheds, which are owned by you and not insured under Section I or by Western Community Insurance Company;
- h. Articles separately insured by this or other insurance;
- i. Materials and supplies on any **dwelling premises** for the construction, alteration, or repair of the **dwelling premises** or its private garages; or
- j. Personal property owned and insured by someone who is not an **Insured**.

3. **Additional Coverages.** Coverage C includes the following additional coverages:

- a. We cover loss to property insured under Coverage C while at the **Insured location** due to change in temperature as a result of physical damage to the building or its equipment caused by a peril insured against.
- b. **Credit Card, Bank Transfer Card, Counterfeit Currency, and Forgery.** We will pay up to \$1,000 for:

- (1) The legal obligation of an **Insured** to pay because of the theft or unauthorized use of credit cards or bank debit cards issued to or registered in any **Insured's** name. We do not cover credit card or bank debit card use if any **Insured** has not complied with all terms and conditions under which the card was issued;
- (2) Loss suffered by an **Insured** caused by forgery or alteration of any check or negotiable instrument; or
- (3) Loss suffered by an **Insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover losses resulting from **business** pursuits or dishonesty of any **Insured**. Our annual aggregate limit for this coverage is \$2,000.

**COVERAGE E – ADDITIONAL BUILDINGS**

The Declarations describes your **dwellings**, buildings, fences, and structures, which we cover under Coverage E.

- 1. **Buildings.** Coverage on buildings includes their permanent fixtures and attached sheds, but excludes fences.
- 2. **Materials and Supplies.** Coverage on a building or structure is extended to cover all materials and supplies on the premises or adjacent to them intended to be used in the construction, alteration, or repair of such building or structure.
- 3. **Utility Poles.** Coverage on private utility poles includes attached switch boxes, fuse boxes, and other electrical equipment mounted on the poles.
- 4. **Fences and Similar Structures.** For fences, corrals, and similar structures, we shall be liable for no greater portion of any loss than the amount of insurance bears to 100% of the actual cash value of the property at the time of the loss.
- 5. **Antennas, Aerials, and Receivers.** Coverage on outdoor radio and television antennas, aerials, and satellite receivers, including their lead-in wiring, masts, and towers, is subject to a maximum payment of \$250, unless this equipment is specifically insured for a greater amount. No deductible applies to this coverage.

**SECTION I ADDITIONAL COVERAGES**

Section I includes the following additional coverages.

- 1. **Debris Removal.**
  - a. We will pay the reasonable expense incurred by you for the removal of debris of covered property provided coverage is afforded for the peril causing the loss. This includes the cost to remove from a building or from **personal property** in a building, ash, dust, or particles, resulting from a covered loss caused by peril 19 (volcanic eruption). Debris removal expense is included in the limit of liability applying to the damaged property. When the amount payable under Coverage A for the actual damage to the property plus the expense for debris removal exceeds the Coverage A limit of liability for the damaged property, an additional 5% of that limit of liability will be available to cover debris removal expense. This coverage does not include the expense of removing **pollutants** from land or water.
  - b. We will pay up to \$1,000 for the reasonable cost for removal from the **residence premises** of:
    - (1) Your tree(s) felled by peril 3 (windstorm or hail);

(2) Your tree(s) felled by peril 12 (weight of ice, snow, or sleet); or

(3) A neighbor's tree(s) felled by perils 1 through 19;

provided the tree(s) damages a covered structure or blocks your driveway or sidewalk. The \$1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees.

2. **Reasonable Repairs.** We will pay the reasonable costs incurred by you for necessary repairs made solely to protect covered property from further damage provided coverage is afforded for the peril causing the loss.
3. **Door Locks.** We will pay up to \$200 for the cost of re-keying or replacing locks to exterior doors on the **residence premises** if your keys have been stolen during the policy period. No deductible applies to this coverage.
4. **Headstones.** We will pay up to \$5,000 for loss caused by perils 1 through 19 to a headstone for your spouse, parent, or child.
5. **Trees, Shrubs, and Other Plants** (limited to Coverage A). We cover trees, shrubs, plants, and lawns, on the **dwelling premises** for loss caused by peril 1 (fire or lightning), peril 4 (explosion), peril 5 (riot or civil commotion), peril 6 (aircraft), peril 7 (vehicles), peril 9 (vandalism or malicious mischief), or peril 10 (theft). The limit of liability for all loss under this coverage shall not exceed 5% of the limit of liability specified for the Coverage A **dwelling** at that same **dwelling premises**. The limit of liability for any one tree, shrub, or plant is \$500. We do not cover property grown for **business** purposes under this paragraph.
6. **Refrigerated Products.** If Coverage C applies to your policy, we will pay an amount not to exceed the limit of liability stated in the Declarations for loss to contents of a freezer or refrigerator at the **residence premises**. The loss or damage must be caused by a change in temperature resulting from:
  - a. Interruption of electrical service to refrigeration equipment caused by damage to the generating or transmission equipment which results in a shutdown of the system;
  - b. Mechanical or electrical breakdown of the refrigeration system; or
  - c. A tripped breaker or blown fuse.

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

7. **Fire Department Service Charge.** We will pay up to the amount shown in the Declarations for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.
8. **Building Ordinance or Law Coverage.** When your **dwelling** insured under Coverage A sustains a covered loss, we will pay for the increased cost to repair or rebuild your **dwelling** required by the enforcement of a building, zoning, or land use ordinance or law, if the enforcement is because of repairs to the covered damages and the requirement is in effect at the time the loss occurs. This coverage includes legally required changes to the undamaged portion of your **dwelling** if the enforcement of a building, zoning, or land use ordinance or law, is directly related to the same covered loss and the requirement is in effect at the time the covered loss occurs. This coverage does not include the cost to remove, neutralize, treat, monitor, or test for **pollutants**.

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

- a. We will not pay more for a covered upgrade to the undamaged portion of your **dwelling** than the depreciated value of the undamaged portion of the **dwelling**.
- b. We will not pay more for a covered loss than the amount you actually spend to upgrade or repair your **dwelling**.
- c. The **Loss Settlement** paragraph under **SECTION I CONDITIONS** that applies to **dwelling**s insured under Coverage A also applies to this coverage.

**Limit of Liability.** Our limit of liability under this coverage for all losses is 10% of the Coverage A limit of liability for the **dwelling** that sustains the loss. This limit is included within and does not increase the limit of liability for the **dwelling**.

#### **SECTION I PERILS INSURED AGAINST**

We cover for direct physical loss to property insured caused by the following perils if shown on the Declarations:

1. **Fire or lightning.**
2. **Removal.** When property is removed because it is endangered by other insured perils, we pay for direct loss from any cause for accidental loss to that property while it is being removed and for 30 days after removal to a safe place.
3. **Windstorm or hail.**
  - a. This peril does not include loss to the interior or contents of a building caused by rain, snow, sleet, sand, or dust, unless the direct force of wind or hail damages the building causing an opening in a roof or wall through which the rain, snow, sleet, sand, or dust gets in.
  - b. This peril does not include loss caused directly or indirectly by frost, cold weather, ice (other than hail), snowstorm, or sleet, all whether driven by wind or not.
4. **Explosion.** This peril does not include rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines, or water pipes, if owned by, leased, or operated under the control of an **Insured**.
5. **Riot or civil commotion.**
6. **Aircraft,** including self-propelled missiles and spacecraft. We cover only direct loss caused by physical contact of the covered property with an aircraft.
7. **Vehicles,** meaning direct loss caused by physical contact of the covered property with a vehicle, or an object thrown up by a vehicle. We also cover an **Insured's personal property** while it is in a vehicle, for loss caused by rollover of the vehicle or collision of the vehicle with another vehicle, an animal, an object, or structure.
8. **Smoke,** meaning sudden and accidental damage from smoke. This peril includes a puff back of smoke from a furnace. This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
9. **Vandalism or malicious mischief,** meaning the willful and malicious damage to or destruction of the covered property. We do not cover:
  - a. Loss if the **dwelling** has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. Any ensuing loss caused by the vandalism or malicious mischief is also not covered. A **dwelling** being constructed is not considered vacant or unoccupied; or

b. Vandalism or malicious mischief by your tenants or members of their household.

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

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

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

We do not cover loss:

- a. Caused by any **Insured** or any person residing at any **dwelling premises**;
- b. In or to a building under construction;
- c. Of materials, tools, or supplies, for use in the construction of a building until it is completed and occupied;
- d. From any part of a **dwelling premises** rented by an **insured** to other than an **insured**;
- e. Of property while in the custody of the postal service or similar government or private business;
- f. Caused by any of your tenants, members of their households, or your employees; or
- g. Caused by someone to whom an **Insured** has entrusted or voluntarily given possession of the property.

We will not pay any reward you offer for the return or recovery of any stolen property.

11. **Breakage of glass or safety glazing** material that is part of the covered building. This coverage extends to storm doors and storm windows in summer storage. This peril does not include loss if the building has been vacant more than 30 consecutive days immediately before the loss. A building being constructed is not considered vacant. This peril does not include loss to window framing or other materials that are not glass.

12. **Weight of ice, snow, or sleet,** which causes damage to a building or property contained in a building. This peril does not include loss to an awning, fence, patio, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.

13. **Collapse** of a building or any part of a building. Collapse means the abrupt falling down or caving in of all or part of a building resulting in the building being unfit for occupancy and its intended use. A building that is in danger of falling down or caving in is not in a state of collapse. A building that is standing is not in a state of collapse even if it is cracking, bulging, sagging, bending, leaning, settling, shrinking, or expanding.

We cover collapse only if caused by one or more of the following:

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

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

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

We do not cover loss:

- a. On the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant;

- b. Caused by fungi, wet or dry rot, or bacteria, unless all of the damage is hidden behind walls, above ceilings, or beneath floors;
- c. To the system or appliance from which the water or steam escaped;
- d. Caused by or resulting from freezing, except as provided in peril 17 (freezing); or
- e. On the **dwelling premises** caused by accidental discharge or overflow which occurs off the **dwelling premises**.

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

15. **Sudden or accidental tearing apart, cracking, burning, or bulging** of a steam or water heating system, an air conditioning system, or an appliance for heating water. We do not cover loss caused by or resulting from freezing under this peril.

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

17. **Freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or of a household appliance**, but only if you have used reasonable care to:

- a. Maintain heat in the building; or
- b. Have shut off the water supply and drained the systems and appliances of water.

18. **Sudden and accidental damage from artificially generated electrical current**. This peril does not include loss to a tube, transistor, integrated circuit, or similar electronic component unless caused by a sudden and accidental increase or decrease of artificially generated electrical current. Our limit of liability under this peril is \$2,500 for each damaged item of **personal property** with a per **occurrence** limit for all damaged items of \$5,000.

19. **Volcanic eruption**, meaning direct loss by volcanic eruption, including volcanic blast, air born shock wave, lava flow, and volcanic fallout, except as to trees, shrubs, lawns, plants, and grounds.



We do not cover loss caused directly or indirectly by earthquake, land shock wave, landslide, mud flow, tidal wave, flooding, or earth sinking, rising, or shifting, resulting from volcanic eruption, except for direct loss by fire, theft, or breakage of glass.

One or more volcanic eruptions that occur within a 72-hour period shall constitute a single volcanic eruption.

**27. Special form.** We insure for risks of direct physical loss to the property insured except those excluded below. Under items a through m below, any ensuing loss not excluded is covered. We also cover under peril 27 any loss which would have been covered had perils 1 through 19 applied to your covered property. We do not cover under this peril any loss excluded under **SECTION I EXCLUSIONS.**

**Exclusions Applicable to Peril 27**

We do not cover under peril 27 any loss caused directly or indirectly by:

- a. Collapse, except as provided in peril 13;
- b. Freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or household appliance, unless you have used reasonable care to:
  - (1) Maintain heat in the building; or
  - (2) Have shut off the water supply and drained the systems and appliances of water;
- c. Freezing, thawing, pressure, or weight of water or ice, whether driven by wind or not, to an awning, fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock;
- d. Theft in or to a building under construction, or of materials, tools, or supplies, for use in its construction, until the building is completed and occupied;
- e. Vandalism, malicious mischief, or breakage of glass and safety-glazing materials, if the building has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant or unoccupied;
- f. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning, or automatic fire protective

sprinkler system, or from a household appliance, except as provided in peril 14;

- g. Wear and tear, marring, deterioration, inherent vice, hidden or latent defect, or mechanical breakdown or failure;
- h. Mold, fungus, rust, wet or dry rot, bacteria, or any other corrosion;
- i. Smog or contamination;
- j. Smoke from agricultural smudging or industrial operations;
- k. Settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings;
- l. Birds, vermin, rodents, insects, or domestic animals. Hidden insect or vermin damage causing collapse, however, is covered but only as provided in peril 13 (collapse). The word vermin, includes but is not limited to, bats, beavers, coyotes, mice, porcupines, raccoons, rats, skunks, snails, snakes, slugs, or squirrels;
- m. Pressure from or presence of tree, plant, or shrub roots; or
- n. Any pollution, contamination, or environmental impairment, unless the loss or damage follows immediately as a result of a loss caused directly by perils 1 through 10, and then only to the extent of such direct loss. Residual or consequential loss not evident immediately at the conclusion of the loss event is not covered.

If peril 27 applies to Coverage C, the following additional exclusions also apply. We do not cover any loss caused directly or indirectly by:

- o. Breakage of eyeglasses, glassware, statuary, bric-a-brac, porcelains, and similar fragile articles, other than jewelry, watches, bronzes, cameras, and photographic lenses. These items are covered only if breakage results from perils 1 through 10 or 12 through 19;
- p. Dampness of atmosphere or extremes of temperature, unless the direct cause of loss is rain, snow, sleet, or hail;
- q. Refinishing, renovating, or repairing property other than watches, jewelry, and furs;
- r. Any malicious computer code, including but not limited to, computer virus, trojan, worm, or spyware;

- s. Collision, other than collision of the insured property with a land vehicle; or
- t. Sinking, swamping, or stranding of watercraft, including their trailers, attached equipment, or outboard motors. This exclusion does not apply to **personal property** not considered a watercraft's equipment, but our total aggregate limit is \$1,500 per **occurrence**.

**SECTION I EXCLUSIONS**

We do not cover loss under Section I resulting directly or indirectly from the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- 1. **Ordinance or law**, meaning if because of any loss caused by any covered peril you are required during repairs or replacement to comply with any ordinance or law regulating the construction, repair, or demolition of your insured property which increases the cost of repairs or replacement beyond our obligation to repair or replace with like kind and quality, we do not cover that increased cost. This exclusion includes any requirement that you test for, monitor, clean up, remove, or respond in any way to **pollutants**. Limited ordinance or law coverage, however, may apply under **SECTION I ADDITIONAL COVERAGES** to a Coverage A dwelling.
- 2. **Earth movement**, including but not limited to, earthquake, landslide, mine subsidence, mudflow, earth sinking, rising, or shifting. Direct loss by peril 1 (fire), peril 4 (explosion), peril 10 (theft), or peril 11 (breakage of glass or safety glazing materials), resulting from earth movement is covered if these perils apply to your covered property.
- 3. **Water damage**, meaning:
  - a. Flood, surface water, ice flow, waves, tidal water, storm surge, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind. This exclusion applies even if an excluded peril is caused in whole or in part by man, the failure of a man-made structure, or other non-natural means;
  - b. Water or sewage which backs up through sewers, drains, or a septic system; or
  - c. Water below the surface of the ground, including water that exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.

Direct loss by peril 1 (fire), peril 4 (explosion), or peril 10 (theft), resulting from water damage is covered if these perils apply to your covered property.

- 4. **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of loss, or when property is endangered by a peril insured against.
- 5. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military force or military personnel, destruction or seizure of property for use for any military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.
- 6. **Power, heating, or cooling failure**, unless the failure results from physical damage to power, heating, or cooling equipment situated on the **dwelling premises** where the loss occurs. This failure must be caused by a peril insured against.
- 7. **Depreciation, decay, deterioration, change in temperature or humidity, loss of market**, or from any other consequential or indirect loss of any kind.
- 8. **Nuclear hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named or otherwise included within the perils insured against in Section I.
- 9. **Weather conditions**, meaning any weather condition which results in:
  - a. Landslide, mudflow, or earth sinking, rising, or shifting;
  - b. Flood, surface water, ice flow, waves, tidal water, storm surge, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind;
  - c. Water or sewage backing up through sewers, drains, or a septic system; or
  - d. Water below the surface of the ground, including water that exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.

Direct loss by peril 1 (fire), peril 4 (explosion), or peril 10 (theft), resulting from weather conditions

is covered if these perils apply to your covered property.

**Section I also does not cover the following:**

10. Any loss where one or more of the following at any time directly or indirectly cause, contribute to, or aggravate the loss:
  - a. Any conduct, act, failure to act, or decision of any person, organization, or governmental entity, whether intentional, wrongful, negligent, or without fault;
  - b. Any faulty, inadequate, or defective compaction, design, development, grading, planning, siting, specifications, surveying, workmanship, or zoning;
  - c. Any faulty, inadequate, or defective construction, remodeling, renovation, repair, workmanship, or materials, except as is specifically covered under paragraph f of peril 13 (collapse); or
  - d. Any maintenance of all or any part of any property whether on or off the **insured location**.

Any ensuing loss not excluded or excepted in this policy, however, is covered if the loss is caused by a covered peril.
11. Any cassette player, CD player, MP3 player, satellite radio receiver, citizens band radio, scanning monitor, or radar detector, while such device is in or upon any motorized vehicle if the device is used primarily in a vehicle.
12. Any tape, record, disc, CD, DVD, diskette, or other medium, including downloaded media, while such items are in a motorized vehicle. This exclusion does not apply to a prerecorded software program available to the public and purchased for use in a laptop or desktop computer.
13. Any loss caused intentionally by or at the direction of any **Insured**.
14. Any loss caused by the possession or manufacturing of a controlled substance, including but not limited to, methamphetamines.
15. Any loss caused by the intentional dispersal or application by anyone of pathogenic, poisonous, biological, or chemical materials.
16. Any land or water.

**SECTION I CONDITIONS**

1. **Dwelling Not Owned by You.** If we choose to insure a **dwelling premises** under Section I not owned by you, the **Insured** and applicable coverages are shown in the Declarations.
2. **Duties after Loss.** In case of a loss to which this insurance may apply, the **Insured** must see that the following duties are performed:
  - a. Give notice as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law. In case of loss under the credit or bank card coverage, also notify the issuing card company;
  - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property, and keep an accurate record of repair expenditures;
  - c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value, and amount of loss. Attach to the inventory all bills, receipts, and related documents, that substantiate the figures and ownership of property in the inventory;
  - d. As often as we may reasonably require: exhibit the damaged property; provide us with records and documents we request and allow us to make copies; and submit to examination under oath while not in the presence of any other **Insured** and sign the same; and
  - e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
    - (1) The time and cause of loss;
    - (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
    - (3) Other insurance which may cover the loss;
    - (4) Changes in title or occupancy of the property during the term of the policy;
    - (5) Specifications of any damaged building and detailed estimates for repair of the damage;
    - (6) An inventory of damaged or stolen property as described above;

- (7) Receipts for additional living expenses incurred and records supporting any fair rental value loss;
  - (8) Evidence or affidavit supporting a claim under the credit card coverage stating the amount and cause of loss; and
  - (9) Such other information that we may reasonably request.
3. **Limit of Liability.** Subject to the provisions of this policy, the most we will pay for loss or damage from any **occurrence** is the applicable limit of liability stated in the Declarations, in the policy booklet, or in any applicable endorsement.
4. **Loss Settlement.** Subject to the applicable limits stated in the Declarations, in the policy booklet, or in any applicable endorsement, covered property losses are settled as follows:
- a. **Personal property,** structures that are not buildings, and buildings insured under Coverage E, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace. If repair or replacement results in better than like kind or quality, the **insured** must pay for the amount of the betterment.
  - b. Floor coverings, domestic appliances, awnings, outdoor antennas, and outdoor equipment, whether or not attached to the buildings, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace.
  - c. Buildings insured under Coverage A:
    - (1) When the full cost of repair or replacement for loss to a building under Coverage A is less than \$5,000, Coverage A is extended to include the full cost of repair or replacement without deduction for depreciation.
    - (2) If the limit of liability on the damaged building is less than 80% of its replacement cost at the time of the loss, we shall pay the larger of the following:
      - i. Actual cash value of the damaged part of the buildings; or
      - ii. That proportion of the replacement cost of the damaged part which our limit of liability on the building bears to 80% of the full replacement cost of the building.
- (3) If the limit of liability on the damaged building is at least 80% of its replacement cost at the time of loss, we shall pay the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the smallest of the following amounts:
- i. The limit of liability applicable to the building;
  - ii. The cost to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practicable; or
  - iii. The amount actually and necessarily spent to repair or replace the damage.
- (4) When the cost to repair or replace exceeds 5% of the applicable limit of liability on the damaged building, we are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. Such repairs or rebuilding must be made at the same location as where the loss occurred. Any replacement structure must be of a similar type and use.
- (5) You may make a claim for the actual cash value amount of the loss before repairs are made. A claim for any additional amount payable under this provision must be made and construction started within one year after the loss.
5. **Increased Hazard.** We shall not be liable for any loss to property insured under this policy occurring while the hazard is increased by any means within the control or knowledge of any **insured**.
6. **Loss to a Panel, Section, Pair, or Set.** In case of a loss to a panel, section, pair, or set, we may elect to:
- a. Repair, replace, or restore, the panel, section, pair, set, or any part, to its value before the loss;
  - b. Pay the difference between the actual cash value of the property before and after the loss; or
  - c. Pay the reasonable cost of providing a substitute to match as closely as practicable the remainder of the panel, section, pair, or set.

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

7. **Glass Replacement.** Covered loss for breakage of glass shall be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
8. **Waiver of Subrogation.** You may waive in writing before a loss all right of recovery against any person. If not waived, we may require an assignment of rights for a loss to the extent that payment is made by us.
9. **Other Insurance.** If you have other insurance on the property to which this policy applies, we will not be liable for a greater portion of any loss than our pro rata share in excess of any deductible. Our coverage is excess, however, over any property restoration plan, home warranty, or similar coverage, whether or not it is characterized as insurance.
10. **Recovered Property.** If an **Insured** or we recover any property for which we have made payment under this policy, the **Insured** or we will notify the other of the recovery. At the **insured's** option, the property will be returned to or retained by the **Insured** or it will become our property. If the recovered property is returned to or retained by the **Insured**, the loss payment will be adjusted based on the amount the **Insured** received for the recovered property.
11. **Mortgagee Clause.** The word "mortgagee" includes a trustee of a deed of trust. If a mortgagee is named in this policy, any loss payable shall be paid to the mortgagee and you, as interests appear. If a payable loss is under \$7,500 and is for repairs, however, payment shall be made to you only. If more than one mortgagee

is named, the order of payment shall be the same as the order or precedence of the mortgages.

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

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

Policy conditions relating to Arbitration, Suit Against Us, and Loss Payment apply to the mortgagee.

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

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

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

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

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## SECTION II – LIABILITY INSURANCE

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### **COVERAGE F-1 – BODILY INJURY LIABILITY and COVERAGE G – PROPERTY DAMAGE LIABILITY**

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

1. Pay up to our limit of liability for the damages for which the **Insured** is legally liable (damages includes any awarded prejudgment interest); and
2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any suit or claim ends when our limit of liability is paid in settlements or judgments.

### **COVERAGE F-2 – PREMISES MEDICAL**

We will pay, subject to the applicable limit of liability, the reasonable and necessary medical and funeral expenses incurred within three years from the date of an **occurrence** causing **bodily injury**. This coverage does not apply to you or residents of your household other than **residence employees**. As to others, this coverage applies only:

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

Any payment under this coverage applies toward settlement of any claim for damages against any **Insured**.

### **COVERAGE J – MEDICAL PAYMENTS (NAMED PERSONS)**

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

Any payment under this coverage applies toward settlement of any claim for damages against any **Insured**.

### **COVERAGE K – DEATH OF LIVESTOCK BY COLLISION**

We will pay for loss by death of **livestock** owned by you and not otherwise covered, caused by a collision between your **livestock** and a **motor vehicle**, provided:

1. The **motor vehicle** is not owned or operated by an **Insured** or any **Insured's** employee;
2. The **livestock** is within a public road and is not being transported; and
3. Death to the **livestock** occurs within 30 days after the date of the collision.

This includes the death of **livestock** when killed by any train, provided you first present a claim in your name to the railroad company involved.

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

### **COVERAGE M – DAMAGE TO PROPERTY OF OTHERS**

We will pay for **property damage** to property of others caused by an **Insured**.

**Exclusions.** We do not cover under Coverage M any **property damage**:

1. Caused intentionally by any **Insured** who is 13 years of age or older;
2. To property owned by or rented to any **Insured**, a tenant of any **Insured**, or a resident of any **Insured's** household. This exclusion does not apply to a rented golf cart when it is being used to play golf on a golf course;

3. Arising out of:
  - a. Any **business**;
  - b. The ownership, maintenance, use, loading, or unloading of a **motor vehicle** or aircraft;
  - c. Theft, mysterious disappearance, or loss of use; or
  - d. Mechanical or electrical breakdown or failure, wear and tear, latent defect, or inherent vice;
4. To tires; or
5. Arising out of the discharge, dispersal, release, or escape of any **pollutants**.

Coverage M is subject only to the above exclusions. It is not subject to the remaining Section II exclusions.

**Additional Conditions.** The following additional conditions apply to Coverage M:

1. **Additional Duties.** The **Insured** shall submit to us within 60 days after the loss, a sworn proof of loss and exhibit the damaged property, if within the **Insured's** control.
2. **Application of Section I.** If Section I of this policy also applies to a loss under Coverage M, Section I is primary and Coverage M is excess. You must pay any applicable Section I deductible before Coverage M applies.
3. **Limit of Liability.** Our limit of liability under Coverage M for **property damage** arising out of any **occurrence** shall not exceed the lesser of:
  - a. The actual cash value of the damaged property at the time of the loss;
  - b. What it would then cost to repair or replace the damaged property with other property of like kind and quality; or
  - c. The limit of liability stated in the Declarations for Coverage M.

Our limit of liability is the most we will pay for any **occurrence** regardless of the number of **Insureds** under this policy or persons or organizations sustaining **property damage**. Our limit of liability is also the most we will pay for all damages arising out of one or more **occurrences** within a 24-hour period.

4. **No Coverage for Defense.** We have no obligation under Coverage M to provide a defense against any claim or suit brought against any **Insured**.

5. **Occurrence.** Under Coverage M only, the definition of **occurrence** includes **property damage** caused intentionally by an **Insured** who is under 13 years of age.
6. **Our Settlement Options.** We may pay for the loss in money or may repair or replace the property. We may settle the claim for loss to property either with the owner or with you. Any property paid for or replaced shall, at our option, become our property. We may investigate and settle any claim or suit that we decide is appropriate.

## SECTION II ADDITIONAL COVERAGES

Section II includes the following additional coverages:

1. **Fire Legal.** Coverage G covers **property damage** to a lodging place and its furnishings rented to, occupied by, used by, or in the care of an **Insured**, if such **property damage** arises out of fire, smoke, or explosion. For purposes of this fire legal coverage, an **Insured** shall include only you and those persons listed in paragraph 1 of the definition of **Insured**. The care, custody, and control exclusion (exclusion 17) does not apply to this extension of coverage.
2. **Newly Acquired Locations.** Section II covers locations you acquire by ownership or leasehold during the policy period, if similar to premises or **dwellings** described in the Declarations, and if you notify us of these acquisitions on or prior to the next renewal date of this policy. The insurance afforded to these acquisitions is limited to the insurance applicable to the locations already described in the Declarations. This coverage does not apply to loss for which you have other valid and collectible insurance.

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

## SECTION II ADDITIONAL PAYMENTS

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

1. Expenses for first aid to others incurred by any **Insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **Insured**;
2. Expenses incurred by us and costs taxed against any **Insured** in any suit we defend;

3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$200 per day for assisting us in the investigation or defense of any claim or suit; and
5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender, or deposit in court that part of the judgment which does not exceed the applicable limit of liability.

## **SECTION II EXCLUSIONS**

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

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

This exclusion does not apply to **bodily injury** sustained by a **residence employee** maintaining, loading, or unloading a **motor vehicle** in the course of employment; it also does not apply to Coverage J;
5. Arising out of the use of any aircraft, **motor vehicle**, machinery, watercraft, or **recreational motor vehicle**, while being used in or following

- any prearranged or organized racing, speed, or stunting contest or activity, or in practice or preparation for any such contest or activity;
6. Which results from liability arising out of any contract or agreement;
7. Caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction or seizure or use of property for any military purpose, and including any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;
8. Resulting from any act or omission of a **residence employee** while away from the **insured location** if the employee is under the control and direction of some person other than an **insured**;
9. Sustained by you or any **insured** as defined in the definition of **insured** or by any other resident of your **residence premises**;
10. Arising out of a violation of a criminal law, Youth Rehabilitation Act, or similar law, except traffic violations, if committed by any **insured**;
11. With respect to which any **insured** under this policy is also an insured under a nuclear energy liability policy issued by a Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any similar organization, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability; or
12. Arising out of the molestation, corporal punishment, or physical, sexual, emotional, or mental abuse of any person.

### **Section II also does not cover the following:**

13. **Property damage** to property owned by, used by, rented to, or in the care, custody, or control of any **insured** or the **insured's** employees, or as to which any **insured** or the **insured's** employees exercise physical control for any purpose;
14. Punitive or exemplary damages;
15. **Bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under any worker's compensation, non-occupational disease, disability, or occupational disease law;



16. **Property damage** to an **Insured location** arising out of the alienation (for example; selling, leasing, separating, etc.) of that location;

17. **Bodily Injury** under Coverage F-2 sustained by any person residing on the **Insured location** except a **residence employee** to whom worker's compensation does not apply;

18. Under Coverages F-2 and J:

a. **Bodily Injury** involving hernia or back injury, unless it is of recent origin, it is accompanied by pain, it was immediately preceded by some accidental strain suffered in the course of employment, and it did not exist prior to the date of the alleged injury;

b. Any person while conducting his **business** on the **Insured location**, including the employees of that person;

c. **Bodily injury** to the extent that any medical expenses are paid or payable under the provisions of any worker's compensation or similar law; or

d. Expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose;

19. **Bodily Injury or property damage:**

a. Arising out of a rodeo or horse racing, including chariot or harness racing, or from practice or preparations for any of these activities. This exclusion does not apply to an **insured's** participation in a riding club's practice, preparation for, or performance in a rodeo;

b. Arising out of the training, care, boarding, pasturing, or act of breeding, of any horse not owned by an **insured**; or

c. Arising out of the lease of all or part of the **insured location** for any activity involving horses;

20. Any **occurrence** covered under Section III; or

21. The transmission of a communicable disease by an **insured**.

## SECTION II CONDITIONS

1. **Duties after Loss.** In case of an accident or **occurrence**, the **Insured** shall perform the following duties to the extent possible:

a. Give written notice to us as soon as practicable, which sets forth to the best of the **insured's** knowledge and belief:

(1) The identity of the policy and **insured**;

(2) Reasonably available information on the time, place, and circumstances of the **occurrence**;

(3) Names and addresses of any claimants and witnesses; and

(4) Such other information that we may reasonably request;

b. Immediately forward to us every notice, demand, summons, or other process relating to the **occurrence**; and

c. At our request, assist in:

(1) Making settlement;

(2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;

(3) The conduct of suits and attend hearings and trials; and

(4) Securing and giving evidence and obtaining the attendance of witnesses.

2. **Payment by an Insured.** For any **occurrence** involving a potential claim against an **Insured**, an **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of the **bodily Injury**.

3. **Duties of an Injured Person—Coverages F-2 and J.** The injured person shall:

a. Give us written proof of loss containing the information we request, under oath if required, as soon as practicable;

b. Submit to such medical or other examinations or evaluations by persons selected by us when and as often as we may reasonably require;

c. At our request, submit to examination under oath as often as we may reasonably require, and subscribe the same; and

d. Execute authorization to allow us to obtain copies of any medical or other reports and records.

If a claim is being made because of the death of an injured person, the person(s) making the claim shall comply with paragraphs a, c, and d above.

4. **Payment of Claim.** Any payment under Section II is not an admission of liability by any **Insured** or us.
5. **Limits of Liability—Coverages F-1 and G.** Regardless of the number of:
  - a. **Insureds** under this policy;
  - b. Persons or organizations sustaining damages, **bodily injury**, or **property damage**; or
  - c. Claims made;

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

- a. Under Coverage F-1, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**.

Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**.

- b. Under Coverage G, the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**.

6. **Limits of Liability—Coverages F-2 and J.** Our limit of liability per person for Coverages F-2 and J is stated in the Declarations. This is the maximum amount we will pay for all covered expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**. This limit is subject to reduction as explained below.

- a. Our limit of liability for chiropractic treatment per person per **occurrence** is the lesser of \$2,000 or the limit of liability stated in the Declarations.
- b. Our limit of liability for funeral expenses per person is the lesser of \$5,000 or the limit of liability stated in the Declarations.

Subject to the limit of liability for each person, our total limit of liability for each **occurrence** for **bodily injury** sustained by two or more persons is the per **occurrence** limit of liability stated in the Declarations.

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

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## SECTION III – AUTOMOBILE INSURANCE

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### COVERAGE N – BODILY INJURY LIABILITY and COVERAGE O – PROPERTY DAMAGE LIABILITY

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

1. Pay up to our limit of liability for the damages for which the **Insured** is legally liable (damages includes any awarded prejudgment interest); and
2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when our limit of liability is paid in settlements or judgments.

**Additional Payments.** Under Coverages N and O, we will pay the following in addition to our limit of liability, but our obligation for these payments ceases when our obligation to defend ends:

1. Expenses for first aid to others incurred by any **Insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **Insured**;
2. Expenses incurred by us and costs taxed against any **Insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We will also pay up to \$250 for the premium of any bail bond required of an **insured** because of an arrest in connection with an accident resulting from the use of an **Insured vehicle**. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **Insured** at our request, including actual loss of earnings (but not loss of other income) up to \$200 per day for assisting us in the investigation or defense of any claim or suit; and
5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender, or deposit in court that part of the judgment which does not exceed the applicable limit of liability.

### COVERAGE P – UNINSURED MOTORIST

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

### COVERAGE P-1 – UNDERINSURED MOTORIST

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

**Additional Definitions.** The following additional definitions apply to Coverages P and P-1:

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

person limits compared to the per person limit of this coverage. For an **occurrence** involving 2 or more **insureds**, this means the sum of all applicable per **occurrence** limits compared to the per **occurrence** limit of this coverage.

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

4. An **uninsured** or **underinsured motor vehicle** does not include any **motor vehicle**:
  - a. Owned or operated by a self-insured as defined by any applicable **motor vehicle** law;
  - b. Owned by any governmental unit or agency;
  - c. Used as a residence;
  - d. That does not collide with an **insured**, an **insured vehicle**, or a vehicle that an **insured** is **occupying**, and neither the driver or the owner can be identified;
  - e. Owned by or furnished for the regular use of you or any **relative**; or
  - f. Which is an **insured vehicle**.
5. An **uninsured** or **underinsured motor vehicle** does not include any motorized vehicle designed for recreation use off public roads, including but not limited to, golf carts, snowmobiles, trail bikes, mopeds, dune buggies, or all-terrain vehicles.

**Additional Exclusions.** The following additional exclusions apply to Coverages P and P-1. Coverages P and P-1 do not apply to:

1. **Bodily Injury** sustained by an **insured** while **occupying** a **motor vehicle** or **trailer** without the permission of the owner;
2. The direct or indirect benefit of any insurer or self-insured under any worker's compensation, disability benefits, or similar law;
3. **Bodily Injury** sustained by an **insured** while **occupying** a **motor vehicle** owned by or available for the regular use of any **insured** which is not an **insured vehicle**. Any Coverage P or P-1 under your policy applies to you, however, while driving a **motor vehicle** insured by us that is owned by a **relative**;
4. The liability of an owner or operator of an **insured vehicle** or **nonowned vehicle** for **bodily injury** sustained by a passenger of that vehicle; or

5. **Bodily Injury** for which a claim against the owner or driver of the **uninsured** or **underinsured motor vehicle** is barred by the applicable statute of limitations, unless we received notice of the claim before the statute of limitations has expired.

**Additional Conditions.** The following additional conditions apply to Coverages P and P-1:

1. **Limits of Liability.** Under Coverages P and P-1, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**.

Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**.

If both Coverages P and P-1 apply to the same **occurrence**, our combined limit of liability for all damages payable under both coverages for: (1) each person shall be the applicable Coverage P limit of liability for each person; and (2) each **occurrence** shall be the applicable Coverage P limit of liability for each **occurrence**.

2. **Nonstacking of Limits.** Regardless of the number of **insured vehicles**, **insureds**, policies of insurance with us, premium charges, claims made, or vehicles involved in the **occurrence**, the most we will pay for all damages resulting from any **occurrence** is the limit of liability shown in the Declarations, subject to reduction as outlined in the next paragraph.
3. **Reduction of Amounts Payable.** The amount payable under Coverages P and P-1 shall be the lesser of our limit of liability stated in the Declarations reduced by a and b below, or the total damages for **bodily injury** reduced by a and b below:
  - a. All sums paid or payable by or on behalf of persons or organizations who may be legally responsible for the **bodily injury** to which this coverage applies. This includes all amounts paid under the liability coverage of this policy; and
  - b. The sums of all amounts payable under any worker's compensation, disability, or similar law.

Any payment under this coverage to or for an **insured** will reduce any amount that person is

entitled to receive under this policy's liability coverages.

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

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

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

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

7. **Arbitration.** If we and an **Insured** disagree whether the **Insured** is legally entitled to recover damages from the owner or driver of an **uninsured** or **underinsured motor vehicle** or disagree as to the amount of damages, either party may make a written demand for arbitration. Each party will select a competent, impartial arbitrator within 20 days of receipt of the written demand. The two arbitrators will select a third arbitrator. If they cannot agree upon a third arbitrator within 10 days, either may request that a judge of a court having jurisdiction select a third arbitrator. Both parties shall make disclosure to each other of all information as required by the

arbitrator(s) in the scheduling and discovery order. Each party will pay the expenses it incurs, including attorney's fees and related costs, and bear the expenses of the third arbitrator equally. Arbitration will take place in Idaho in the county where the policy was issued unless both parties agree otherwise. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

8. **Trust Agreement.** If a claim or payment is made under Coverages P or P-1:

- a. We will be entitled to reimbursement of payments we have made to an **Insured** to be taken from the proceeds of any judgment or settlement;

- b. An **Insured** must hold in trust all rights of recovery for us against any person or organization. That person must also do whatever is necessary to secure those rights and do nothing after the loss to prejudice any rights of recovery;

- c. If we make the request in writing, the **insured** must take any necessary or appropriate action to recover damages from any other person or organization through any representative we designate. Any action may be taken in the **Insured's** name and in the event of recovery, we will be reimbursed for any expenses, costs, and attorney fees we incur; and

- d. The **Insured** must execute and deliver any document to us that may be appropriate for the purpose of securing the rights and obligations for the **Insured** and for us as established by this provision.

9. **Nonbinding Judgment.** No judgment resulting from a suit brought without our written consent is binding on us, either in determining the liability of the **uninsured** or **underinsured motor vehicle** operator or owner, or the amount of damages to which the **Insured** is entitled.

10. **Interest.** The term damages does not include interest. We are not liable for any interest on any payment we make under Coverages P or P-1.

#### **COVERAGE Q – MEDICAL PAYMENTS**

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

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

1. Any person **occupying** an **insured vehicle** with your permission or the permission of an adult **relative** and sustaining **bodily injury** caused by an **occurrence** resulting from the use of this **insured vehicle**;
2. If you are an individual, you or your **relatives** sustaining **bodily injury** caused by an **occurrence** while **occupying** an **insured vehicle** or a **motor vehicle** not owned by any **Insured**;
3. Any person sustaining **bodily injury** while **occupying** a **nonowned vehicle**, if the **bodily injury** results from its operation by you, a **relative**, or on your behalf by a private chauffeur or domestic servant; and
4. If you are an individual, you or your **relatives** sustaining **bodily injury** when struck by a **motor vehicle** or **trailer** while a pedestrian, an equestrian, or while on a bicycle or other vehicle.

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

#### **COVERAGE R – FIRE AND THEFT ONLY**

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

1. Fire, lightning, or windstorm;
2. Smoke or smudge due to a **sudden, unusual, and faulty** operation of any heating equipment serving the premises in which the vehicle is located;
3. The stranding, sinking, burning, collision, or derailment of any conveyance in or upon which the vehicle is being transported; or
4. Theft.

#### **COVERAGE S – COMPREHENSIVE**

We will pay for any direct and accidental loss of, or damage to, your **insured vehicle** and its equipment not covered by Coverage T. We cover loss or damage from missiles, falling objects, theft, collision with animals, or accidental glass breakage under this coverage.

#### **COVERAGE T – COLLISION AND ROLLOVER**

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

#### **SECTION III ADDITIONAL COVERAGES**

1. **Loss to Personal Property.** We will pay up to \$500 for loss to personal property being transported by the **insured vehicle** if the loss results from an **occurrence** involving an **insured vehicle** that is covered under Coverages R, S, or T. We do not cover cash or securities under this additional coverage. We do not cover loss by theft of any personal property unless the loss is caused by the **insured vehicle** being stolen.
2. **Loss of Use by Theft—Reimbursement.**
  - a. Following a theft of an **insured vehicle** covered under Coverages R or S, we will reimburse you for expenses for the rental of a substitute automobile including taxicabs.
  - b. This reimbursement is limited to the expense incurred during the period commencing 48 hours after the theft has been reported to us and the police, and terminating, regardless of expiration of the policy period, on the date the **insured vehicle** is returned to you or on such earlier date as we make or offer settlement for this theft.
  - c. **Limit of Liability.** Our limit of liability per day and per accident for this coverage are shown in the Declarations.
3. **Rental Car Coverage.** If Coverages S and T apply to an **insured vehicle** they also apply to a private passenger car, pickup, or passenger van, that is rented, qualifies as a **nonowned vehicle**, and is driven by an **insured**. This coverage does not apply to a **relative** who owns a **motor vehicle** that is insured by another insurance company.
4. **Locks.** We will pay up to \$200 for the cost of re-keying or replacing the locks of an **insured vehicle** to which Coverage S applies if the keys to the vehicle have been stolen during the policy period. No deductible applies to this coverage.

### SECTION III EXCLUSIONS

Section III does not cover:

1. Damages arising out of the use of a vehicle to carry persons for a fee. This exclusion does not apply to a share-the-expense car pool;
2. Any vehicle rented or leased to others;
3. Damages arising out of the use of a vehicle in a pre-arranged race, speed contest, or other competition, or preparation for any of these activities;
4. Damages which are intentionally caused by any **insured**;
5. Any **nonowned vehicle** while an **insured** is using it in the business of selling, repairing, servicing, storing, or parking **motor vehicles**, including road testing and delivery of a **motor vehicle**;
6. Damages caused by nuclear reaction, radiation, or radioactive contamination;
7. Any radar or similar detection device, or any portable GPS or similar electronic device;
8. Any device or instrument designed for the recording, reproduction, amplification, receiving, or transmitting of sound, radio waves, micro-waves, or television signals; or tapes, records, CDs, DVDs, discs, or other medium, designed for use with this equipment. This exclusion does not apply to such device or instrument if it is permanently installed in the dash, trunk, or console opening, at the time of manufacture or by a dealer when the **insured vehicle** is purchased new;
9. Damages caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction or seizure or use of property for any military purpose, and including any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;
10. Damages caused by the confiscation of insured property by a duly constituted governmental or civil authority;
11. Punitive or exemplary damages;
12. **Bodily Injury** to anyone eligible to receive benefits that an **insured** either provides or is required to provide under any worker's compensation or occupational disease law;
13. Under Coverage O, damage to property owned by an **insured**, or transported by, rented to, used by, or in the care, custody, or control of an **insured**. This exclusion does not apply to **property damage** to:
  - a. A residence or private garage rented to an **insured**; or
  - b. A **nonowned vehicle** if there is no comprehensive or collision coverage on the vehicle;
14. Under Coverages N, O, P, and P-1, liability arising out of any contract or agreement;
15. Under Coverage Q:
  - a. **Bodily Injury** sustained while an **insured vehicle** is used as a residence or temporary living quarters;
  - b. **Bodily Injury** sustained by a person engaged in the maintenance or repair of an **insured vehicle**;
  - c. **Bodily Injury** to anyone eligible to receive benefits under any worker's compensation or similar law;
  - d. Any expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose; or
  - e. **Bodily Injury** arising from any **insured's** use of a **motor vehicle** in the commission of a felony;
16. Under Coverages R, S, and T:
  - a. Any loss to a camper, camper shell, topper, or other shell, unless listed on the Declarations for these coverages, or unless it qualifies for coverage as newly acquired equipment under the definition of **insured vehicle**;
  - b. Any loss by collapse, explosion, or implosion of any tank or container;
  - c. Any welder or compressor;
  - d. Any equipment or accessories contained in an insured motor home, camper unit, or **trailer**, unless the equipment or accessories are built in and form a permanent part of the vehicle;

- e. Any loss caused by recall of an **insured vehicle**;
  - f. Loss to tires, unless damaged concurrent with other loss covered under Coverages R, S, or T. This exclusion does not apply to loss caused by vandalism, theft, or fire;
  - g. Damages caused by wear and tear, freezing, mechanical or electrical breakdown or failure, other than burning of wiring, unless the damage results from other loss covered under Coverages R, S, or T;
  - h. Damages to any vehicle caused by any fuel or fuel additive not approved by the vehicle's manufacturer;
  - i. Any loss resulting from conversion, embezzlement, or secretion, by any person possessing the vehicle under any lien, rental, or sales agreement; or
  - j. Any loss to an **insured vehicle** caused by the possession or manufacturing of a controlled substance, including but not limited to, methamphetamines; or
17. Under Coverage S, any loss resulting from defective title or failure to obtain proper title.

**SECTION III CONDITIONS**

- 1. **Out of State Insurance.** If you have liability insurance under this policy and if an **insured** is traveling outside the state of Idaho in a state or province which has a compulsory insurance, financial responsibility, or similar law affecting nonresidents, we will automatically provide the required minimum amounts and types of coverages if your policy does not already provide these coverages, but only to the extent required by law and only with respect to the operation or use of the **insured vehicle** in that state or province. The required coverage, however, will be excess over any other collectible insurance.
- 2. **Attached Trailers.** A vehicle and an attached trailer will be considered one vehicle under Coverages N, O, P, P-1, and Q, and separate vehicles under Coverages R, S, and T. The maximum applicable limits of liability in this policy shall not be increased in any way by this paragraph.
- 3. **Other Vehicle Insurance In the Company.** If this policy and any other vehicle insurance policy issued to you or your **relative** by us or Western Community Insurance Company apply to the same **occurrence**, the maximum limit of our

liability under all of the policies shall not exceed the highest applicable limit of liability under any one policy. This is the most we will pay regardless of the number of **insureds**, claims made, **insured vehicles**, or premium charges.

- 4. **Payment by an Insured.** For any **occurrence** involving a potential claim against an **Insured**, the **Insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of the **occurrence**.
- 5. **Duties after Loss.** In case of an **occurrence**, the **insured** shall perform the following duties to the extent possible:
  - a. Give written notice to us as soon as practicable, which sets forth to the best of the **insured's** knowledge and belief:
    - (1) The identity of the policy and the **Insured**;
    - (2) Reasonably available information on the time, place, and circumstances of the **occurrence**;
    - (3) Names and addresses of any claimants and available witnesses; and
    - (4) Such other information that we may reasonably request;
  - b. Immediately forward to us every notice, demand, summons, or other process relating to the **occurrence**; and
  - c. At our request, assist in:
    - (1) Making settlement;
    - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
    - (3) The conduct of suits and attend hearings and trials; and
    - (4) Securing and giving evidence and obtaining the attendance of witnesses.
- 6. **Additional Duties of an Injured Person—Coverages P, P-1, and Q.** If Coverage P, P-1, or Q applies to a loss, the injured person shall:
  - a. Give us written proof of loss containing the information we request, under oath if required, as soon as practicable;



- b. Submit to such medical or other examinations or evaluations by persons selected by us when and as often as we may reasonably require;
- c. At our request, submit to examination under oath as often as we may reasonably require, and subscribe the same; and
- d. Execute authorization to allow us to obtain copies of any medical or other reports and records.

If a claim is being made because of the death of an injured person, the person(s) making the claim shall comply with paragraphs a, c, and d above.

7. **Additional Duties after Loss—Coverages R, S, and T.** If Coverage R, S, or T applies to a loss, the **Insured** shall perform the following duties:

- a. Give notice as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law;
- b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property, and keep an accurate record of repair expenditures;
- c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value, and amount of loss. Attach to the inventory all bills, receipts, and related documents, that substantiate the figures and ownership of property in the inventory;
- d. As often as we may reasonably require: exhibit the damaged property, provide us with records and documents we request and allow us to make copies, and submit to examination under oath while not in the presence of any other **Insured** and subscribe the same; and
- e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **Insured's** knowledge and belief:
  - (1) The time and cause of loss;
  - (2) The interest of the **Insured** and all others in the **Insured vehicle** involved and all encumbrances on the **insured vehicle**;
  - (3) Other insurance which may cover the loss;
  - (4) Changes in title of the **insured vehicle** during the term of the policy; and

(5) Such other information that we may reasonably request.

8. **Territory.** This policy applies only to **occurrences** within the United States of America (USA) and Canada. If applicable to your **Insured vehicle**, Coverages R, S, and T only are extended for trips into that part of the Republic of Mexico lying not more than 100 miles from the boundary line of the USA. Our liability will be determined on the basis of cost at the nearest USA point.

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

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

10. **Limits of Liability – Coverages N, O, and Q.** Regardless of the number of:

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

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

- a. Under Coverage N, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**.

Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;

- b. Under Coverage O, the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**; and

c. Under Coverage Q, our limit of liability per person is stated in the Declarations. This is the maximum amount we will pay for all covered expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**. This limit is subject to reduction as explained below:

(1) Our limit of liability for chiropractic treatment per person per **occurrence** is the lesser of \$2,000 or the limit of liability stated in the Declarations; and

(2) Our limit of liability for funeral expenses per person is the lesser of \$5,000 or the limit of liability stated in the Declarations.

11. **Limit of Liability - Coverages R, S, and T.** Our limit of liability under Coverages R, S, and T is the lesser of:

a. The actual cash value of the **insured vehicle** or covered property; or

b. The cost of repair or replacement using parts of like kind and quality.

Actual cash value is determined by the market value, age, and condition, at the time the loss occurred. The cost of repair or replacement is based on the cost of repair agreed upon by us or an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, and parts and material prices, charged by a majority of repair facilities in the area where the **insured vehicle** is to be repaired.

We do not cover any reduction in value to your **insured vehicle** after repairs are completed.

12. **Non-Original Manufacturer Parts.** Under Coverages R, S, and T, we have the right to base our payment on the cost of non-original equipment manufacturer parts provided they are certified by C.A.P.A., or a similar independent testing organization, as being equivalent to or better than original equipment.

13. **Betterment.** Under Coverages R, S, and T, deductions for betterment and replacement will be made only for parts normally subject to repair and replacement during the useful life of the **insured vehicle**. Such deductions shall be the lesser of:

a. An amount equal to the proportion that the expired life of the part bears to the normal useful life of the part; or

b. The amount which the resale value of the vehicle is increased by the repair or replacement.

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

a. Pay up to the actual cash value of the property;

b. Pay to repair or replace the property or part with like kind and quality. If the repair or replacement results in better than like kind and quality, you must pay for the amount of the betterment;

c. Return the stolen property and pay for any damage due to the theft; or

d. Take the property at an agreed value, but it cannot be abandoned to us.

15. **Other Insurance.** The insurance under Section III is excess over any other valid and collectible insurance. Coverage Q, however, is primary coverage for you or a **relative**.

16. **Vehicle Registration.** We insure only **motor vehicles** registered in the state of Idaho.

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

a. If a payable loss is for repairs only, we will pay you. If a payable loss is for the value of the vehicle, we will pay you and the lienholder. At our option we may pay you and the lienholder for any loss.

b. Section III covers the interest of the lienholder unless the loss results from fraudulent acts or omissions on your part.

c. We may cancel the policy during the policy period. We will mail notice of cancellation to the lienholder at least 10 days before the date the cancellation takes effect.

d. If we make any payment to the lienholder, we will obtain their rights against any other party.

e. We will pay the lienholder for their interest directly for covered loss if your **insured vehicle** has been repossessed.

f. Policy conditions relating to Arbitration, Suit Against Us, and Loss Payment apply to the lienholder.

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## SECTION IV – INLAND MARINE INSURANCE

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

### SECTION IV CONDITIONS

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1. **Duties after Loss.** In case of a loss to which this insurance may apply, the **Insured** must see that the following duties are performed:

- a. Give notice as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law;
- b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property, and keep an accurate record of repair expenditures;
- c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value, amount of loss, and ownership of property. Attach to the inventory all bills, receipts, and related documents, that substantiate the figures and ownership of property in the inventory;
- d. As often as we may reasonably require: exhibit the damaged property; provide us with records and documents we request and allow us to make copies; and submit to examination under oath while not in the presence of any other **insured** and subscribe the same; and
- e. Within 60 days after our request, submit to us the **insured's** signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
  - (1) The time and cause of loss;
  - (2) The interest of the **Insured** and all others in the property involved and all encumbrances on the property;
  - (3) Other insurance which may cover the loss;
  - (4) Changes in title during the term of the policy;

(5) Specifications of any damaged property and detailed estimates for repair of the damage;

(6) An inventory of damaged property as described above; and

(7) Such other information that we may reasonably request.

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

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

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

3. **Limit of Liability.** Our applicable limit of liability is shown in each endorsement or an accompanying schedule.

4. **Loss Settlement.** Subject to the limit of liability stated in the endorsement or schedule, our payment for covered losses shall be the lesser of:

- a. The actual cash value of the insured property; or
- b. The cost to repair or replace the property or part with like kind and quality.

If repair or replacement results in better than like kind or quality, you must pay for the amount of betterment.

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

- a. If a payable loss is for repairs only, we will pay you. If a payable loss is for the value of the covered property, we will pay you and the

lienholder. At our option we may pay you and the lienholder for any loss.

- b. Section IV covers the interest of the lienholder unless the loss results from fraudulent acts or omissions on your part.
- c. We may cancel the policy during the policy period. We will mail notice of cancellation to the lienholder at least 10 days before the date the cancellation takes effect.
- d. If we make any payment to the lienholder, we will obtain their rights against any other party.
- e. We will pay the lienholder for their interest directly if the covered property has been repossessed.

f. Policy Conditions relating or Arbitration, Suit Against Us, and Loss Payment apply to the lienholder.

- 6. **Other Insurance.** The insurance under Section IV is excess over any other valid and collectible insurance.

This policy is signed on our behalf by our authorized agent.

  
Authorized agent

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## POLICY ENDORSEMENTS

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The coverage in your policy may be modified by endorsement. Each of the following endorsements may or may not apply to your policy. An endorsement applies to your policy only when it is listed in the Declarations. In addition to the endorsements in this booklet, other endorsements may apply if listed in the Declarations. The policy provisions apply to endorsements unless an endorsement specifically states otherwise.

### SECTION I ENDORSEMENTS

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**I111 (0108) Replacement Cost—Personal Property Endorsement.** Losses under Coverage C shall be settled at replacement cost. This endorsement also covers domestic appliances, floor coverings, awnings, outdoor antennas, and outdoor equipment, pertaining to a **dwelling** insured under Coverage A. Limitations on this coverage are explained below.

- 1. **Property Not Eligible.** Property listed below is not eligible for replacement cost settlement. Any loss to this property shall be settled at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace.
  - a. Antiques, fine arts, paintings, statues, and other articles, which by their inherent nature cannot be replaced with new items.
  - b. Articles whose age or history contribute substantially to their value, including but not limited to, memorabilia, souvenirs, and collectors items.
  - c. Personal property of others.

d. Articles not maintained in good or workable condition.

e. Articles that are outdated or obsolete and are stored or not being used.

- 2. **Limit of Coverage.** Subject to the Coverage C limit of liability, we will not pay more than the smallest of the following amounts under this endorsement:

a. Replacement cost at time of loss without deduction for depreciation;

b. The full cost of repair at time of loss;

c. 400% of the actual cash value at time of loss;

d. 150% of the actual cash value of any property purchased or acquired used; or

e. Any special limit of liability applicable under Coverage C.

Any payment under Coverage C that is not subject to replacement cost coverage under this endorsement reduces the Coverage C limit of liability available under this endorsement for the same **occurrence**.

- 3. **Additional Provisions.**

a. When the replacement cost for the entire loss under this endorsement exceeds \$500, we will pay no more than the actual cash value for the loss or damage until the actual repair or replacement is completed. You must

provide proof of replacement with purchase receipts or other proof of purchase.

- b. An **insured** may make a claim for loss on an actual cash value basis and then make claim within one year after the loss for any additional liability in accordance with this endorsement.
- c. Under this endorsement, replacement cost means the cost at the time of loss of a new item identical to the one for which the claim is made. If an identical item is not available, it means the cost of a new article of comparable quality and features.

**I125 (0108) Sewage System Backup Endorsement.** Coverages A, B, and C are amended to include loss caused by water or sewage backup, meaning water or sewage backup from a sewer system pipe or septic system pipe, into your insured **dwelling**.

This coverage is limited to damage caused to your **dwelling** and **personal property** in the **dwelling**. It does not include service, damage, or repair to a sewage system or septic system. The Coverage A and C limits for this endorsement are stated in the Declarations. Each limit is the annual aggregate limit for all losses under this endorsement during the policy period. Exclusion 3 b under Section I exclusions does not apply to this endorsement.

**I171 (0108) Glass Deductible Waived Endorsement.** No deductible applies to glass breakage to the building(s) insured under Coverage A. This endorsement does not apply to window framing or other materials that are not glass.

**I183 (0108) Increased Replacement Cost Endorsement.** Our limit of liability applicable to a **dwelling** insured under Coverage A to which this endorsement applies shall be increased to 125% of the amount shown for that **dwelling** on the Declarations provided:

1. You insure your **dwelling** and other structures for 100% of their replacement cost as we determine based on the accuracy of information you furnish, and you pay the premium we require;
2. You accept any annual adjustment we make to the limit applicable to your **dwelling** and you pay the additional premium; and
3. You notify us within 90 days of the start of any additions or other physical changes that increase the value of your **dwelling** or other structures on the **dwelling premises** by \$5,000 or more, and pay the additional premium.

Subject to our limit of liability, losses under this endorsement are covered for the cost of repair or replacement of the damaged part with new materials  
ID-TQ-02-01(0108)

without deduction for depreciation, but not more than the amount spent to repair or replace the damage on the same premises using new materials of equivalent kind and quality to the extent practical.

Paragraphs c (1), (2), and (3) of the **Loss Settlement** paragraph of **SECTION I CONDITIONS** are deleted. This endorsement is void if you fail to comply with its provisions.

## **SECTION II ENDORSEMENTS**

**I201 (0108) Combined Single Limit Endorsement-Coverages F-1 and G.** The **Limits of Liability-Coverages F-1 and G** paragraph under **SECTION II CONDITIONS** is changed to read as follows:

5. **Limit of Liability—Coverages F-1 and G.**  
Regardless of the number of:

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

our liability for each **occurrence** is subject to the following limitations. Our total combined single limit of liability under Coverages F-1 and G for all **bodily injury** and **property damage** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.

**I282 (0108) Personal Injury Endorsement.** Under Coverage F-1, we cover personal injury. Personal injury means injury other than **bodily injury** arising out of one or more of the following offenses:

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

**Exclusions.** The exclusions under **SECTION II EXCLUSIONS** do not apply to this endorsement, but this endorsement does not cover:

1. Liability arising out of any contract or agreement;
2. Injury caused by a violation of a criminal law or ordinance;
3. Injury arising out of the oral or written publication of materials if done by or at the direction of an **insured** with the knowledge that it is false;

4. Injury arising out of an oral or written publication that was first published before the beginning of the policy period;
5. Injury caused by or at the direction of an **Insured** with the knowledge that the **Insured** would violate the rights of another and would inflict injury;
6. Injury sustained by any person as a result of an offense directly or indirectly related to the employment of this person by the **Insured**;
7. Injury sustained by an **Insured**;
8. Injury arising out of the **business** pursuits of an **Insured**;
9. Civic or public activities performed for pay by an **Insured**;
10. Injury arising out of the molestation, corporal punishment, or physical, sexual, emotional, or mental abuse of any person;
11. Injury arising out of the posting of any material on the Internet by an **insured**, including chat rooms, bulletin boards, and gripe sites;
12. Injury arising out of any material in an e-mail sent by an **Insured**; or
13. Injury arising out of the discharge, dispersal, release, or escape of any **pollutants**.

**Additional Condition.** Our applicable per occurrence limit of liability shown in the Declarations is also the most we will pay for all damages from all **occurrences** during the policy period.

### **SECTION III ENDORSEMENTS**

#### **I312 (0108) Automobile Accidental Death and Indemnity and Specific Disability Benefits Endorsement.**

1. **Death Benefit.** We agree to pay \$10,000 if an **insured** dies solely as the result of **bodily injury** caused by an **occurrence** while **occupying** or if struck by a **motor vehicle**. Death of the **Insured** must occur within one year after the date of the **occurrence**.
2. **Specific Disability Benefits.** We agree to pay the amount stated in the Schedule of Benefits for the specific injury listed as the result of **bodily injury** sustained by an **Insured** caused by an **occurrence** while **occupying** or struck by a **motor vehicle**. The specific injury must be medically treated within 90 days from the date of **occurrence**. Any sum paid under this paragraph shall reduce the amount to which the **insured** is entitled under the Death Benefit. Payment of the

death benefit shall terminate our obligation to pay any further sum.

#### **Schedule of Benefits**

- a. For loss of both hands, both feet, sight of both eyes, one hand and one foot, or either hand or foot and sight of one eye: \$7,500.
- b. For loss of either hand or foot, sight of one eye, thumb and finger of one hand, or any three fingers: \$3,000.
- c. For loss of any two fingers: \$2,000.

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

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

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

**Conditions.** The following additional conditions apply to this endorsement:

1. **Insured** means only those persons listed in the Declarations as persons to whom this endorsement applies.

2. **Notice of Claim.** The injured person, the **Insured's** beneficiary, or someone acting on behalf of such person shall:

- a. Give us a written proof of loss containing the information we request, under oath if required, as soon as practical; and
- b. Execute authorization to allow us to obtain copies of medical reports and records.

An injured person who is making claim shall submit to a physical examination by a physician selected by us when and as often as we may reasonably require.

3. **Payment of Death Benefit—Autopsy**

- a. If the insured decedent is survived by a spouse who is a resident of the same household at the time of the **occurrence**, the death benefit is payable to the decedent's spouse. If the insured decedent was a minor, the death benefit is payable to any parent who was a resident of the same household at the time of the **occurrence**; otherwise, the death benefit is payable to the insured decedent's estate.
- b. We shall have the right to have an autopsy performed where it is not forbidden by law.

The paragraphs titled **Nonduplication of Insurance Benefits, Subrogation—Our Right to Recover Payment, and Other Insurance**, do not apply to this endorsement.

**I313 (0108) Combined Single Limit Endorsement-Coverages P and P-1.** The limits of liability paragraph pertaining to Coverages P and P-1 under additional conditions applicable to Coverages P and P-1 is changed to read as follows:

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

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

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

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

**I320 (0108) Combined Single Limit Endorsement-Coverages N and O.** The limits of liability paragraph pertaining to Coverages N and O under **Section III Conditions** is changed to read as follows:

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

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

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

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

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

**I323 (0108) Drive Other Car Endorsement.** Coverages N and O are amended to cover you while you are operating a **motor vehicle** that does not qualify as a **nonowned vehicle**, provided you have the permission of the owner of the vehicle. This endorsement does not cover a **motor vehicle**:

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

This endorsement applies only to a private passenger car, a pickup, or a passenger van. It does not cover the owner of the **motor vehicle** you are driving.

**I324 (0108) New Vehicle Loan Coverage Endorsement.** For each **insured vehicle** to which this endorsement applies, our limit of liability for a covered total loss shall be increased to cover the interest of a lienholder in the vehicle which exceeds the actual cash value of the vehicle subject to the following:

1. The lienholder must be listed in the Declarations;

2. The lienholder must be a financial institution licensed or chartered under state or federal law; and
3. Our maximum limit of liability under this endorsement is an additional 20% of the actual cash value of the **insured vehicle** at the time of loss.

**Additional Provisions.**

1. Total loss in this endorsement means that the cost of repairs exceeds the actual cash value of the **insured vehicle** less salvage value.
2. We do not pay any amount of a lien:
  - a. Resulting from overdue payments;
  - b. Resulting from the cost of an extended warranty, credit life or other insurance; or
  - c. Resulting from carry-over balances from previous loans.
3. This endorsement applies only to an **insured vehicle**:
  - a. That you purchased new from a new car dealer and it had mileage of less than 1,000 miles on the date of purchase;
  - b. That is financed under the original purchase lien;
  - c. That is covered under Coverages S (Comprehensive) and T (Collision); and
  - d. That is a private passenger car or van, or a pickup.
4. This endorsement does not apply to any loss for which you make claim under I326 (0108) (New Vehicle Additional Coverage Endorsement).

**I326 (0108) New Vehicle Additional Coverage Endorsement.** For each **insured vehicle** to which this endorsement applies, for a total loss we shall pay the cost to replace the **insured vehicle** without deduction for depreciation. Our limit of liability under this coverage shall not exceed the lesser of:

1. The cost of a new vehicle of the same make, model, size, class, body type, and equipment as your **insured vehicle**; or
2. The amount you paid the dealer for the vehicle when it was purchased.

**Exclusions.** This endorsement does not apply to:

1. An **insured vehicle** that is damaged or stolen more than one year past the date you bought it;
2. A motor vehicle that you lease or you do not own; or
3. An **insured vehicle** that has been driven more than 20,000 miles.

**Additional Provisions.**

1. This endorsement does not apply unless you replace within 60 days of the date of the loss, the **insured vehicle** that is damaged or stolen.
2. If a replacement vehicle of the same make, model, size, class, body type, and equipment is not available, we may require you replace the vehicle with one that is similar in size, class, body type, and equipment as we may determine.
3. Total loss in this endorsement means that the cost of repairs exceeds the actual cash value of the **insured vehicle** less salvage value.
4. This endorsement applies only to an **insured vehicle**:
  - a. That is covered under Coverages S (Comprehensive) and T (Collision);
  - b. That you purchased new from a new car dealer and it had mileage of less than 1,000 miles on the date of purchase; and
  - c. That is a private passenger car or van, or a pickup.
5. This endorsement does not apply to any loss for which you make claim under I324 (0108) (New Vehicle Loan Coverage Endorsement).

**I334 (0108) Roadside Assistance Endorsement.** We will pay for reasonable and necessary roadside assistance expense caused by the disablement of your **insured vehicle** and incurred at the place of disablement. Roadside assistance includes only the following:

1. Unlocking the **insured vehicle** if the keys have been locked inside the vehicle or if the keys have been lost;
2. Flat tire repair;
3. Labor for on-site mechanical repairs;
4. Battery jump;
5. Towing or winch-out service; or



6. Delivery of up to 3 gallons of gasoline, antifreeze, or other **motor vehicle** fluids.

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

**I368 (0108) Car Rental Reimbursement Endorsement.** If a loss exceeds the applicable deductible to the **insured vehicle** under Coverages S or T, we agree to reimburse you for:

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

**When Coverage Begins and Ends.** Coverage applies during a period starting on:

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

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

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

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

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

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

# EXHIBIT 2





# PERSONAL UMBRELLA POLICY

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**Farm Bureau Mutual Insurance Company of Idaho**

P.O. Box 4848 ♦ 275 Tierra Vista Drive ♦ Pocatello, Idaho ♦ 83201

ID-UP-02-01(0108)

CERTIFIED COPY  
01-U-079565-06 *mtl*  
POLICY # INITIAL

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Please read your policy carefully. Check the Declarations to see which of the following coverages apply to you.

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## PERSONAL UMBRELLA POLICY

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We provide the insurance described in this policy in return for payment of the premium and your compliance with the policy provisions.

This policy booklet and the Declarations together with any referenced endorsements constitute your policy.

Upon renewal or change of your policy you will receive an updated Declarations but no new policy booklet unless the policy booklet is being changed.

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### PART I - DEFINITIONS

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In this policy, you and your mean a person named in the Declarations as an insured and that person's spouse if a resident of the same household. We, us, and our mean Farm Bureau Mutual Insurance Company of Idaho. The following defined words appear in bold print in the policy.

**Aircraft** means any vehicle designed for flight and used to transport persons or property. Hot air balloons, parachutes, hanggliders, paragliders, and similar craft are considered **aircraft**.

**Bodily injury** means physical injury, sickness, disease, or resulting death to a person. **Bodily Injury** does not include:

1. The transmission or exposure to a person of any disease through sexual contact or contact with a person's bodily discharges or blood; or
2. The transmission of the Acquired Immune Deficiency Syndrome (A.I.D.S.) virus by any means.

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

1. Your residence described in the Declarations if rented occasionally;
2. Garages if not more than three car spaces are rented; or
3. One-, two-, three-, or four-family dwellings described in the Declarations.

**Business** does not include:

1. Newspaper delivery, lawn care, or similar activities normally performed by minors, when the activity is not the principal occupation of any **insured**; or

2. Childcare services provided by any **insured** for fewer than a total of 31 days during your **policy period**, or part-time childcare services provided by any **insured** who is a minor.

**Damages** means the total of damages you must pay (legally or by agreement with our written consent) because of **personal injury, bodily injury, or property damage**, covered by this policy.

**Fungus/fungi/spore(s)** includes, but is not limited to microorganisms, biological organisms, bioaerosols, or other organic contaminants, including but not limited to mold, mildew, fungus, spores, yeast or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time.

**Insured** means you, and if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**. **Insured** does not include a **relative** age 24 or over who is a student and lives away from your residence while attending school. A **permissive driver** who is your employee is an **insured** while using your **motor vehicle**.

**Permissive driver** means any person or organization while using a **motor vehicle** owned by, rented by, or loaned to you or any **insured** and covered by this policy, provided that an **insured** gave permission for the type of use of the **motor vehicle**.

**Insured location** means a location insured by **underlying insurance**.

**Motor vehicle** means a land motor vehicle or trailer designed for travel on public roads, but does not include:

1. Utility, boat, camping, or travel trailers;
2. **Recreational motor vehicles**; or
3. Any equipment which is designed for use principally off public roads.

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

**Personal Injury** means injury other than **bodily injury**, arising out of one or more of the following offenses:

1. False arrest, detention, or imprisonment;
2. Malicious prosecution;
3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premise that a person occupies if committed by or on behalf of its owner, landlord, or lessor;
4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or
5. Oral or written publication of material that violates a person's right of privacy.

**Policy period** means the time period stated in the Declarations at your residence. It begins at 12:01 a.m. standard time at your residence on the inception date in the Declarations and ends at 12:01 a.m. standard time on the expiration date shown.

**Pollutants** means any solid, liquid, gaseous, or thermal irritant, or contaminant, including but not limited to, smoke, vapor, soot, radon gas, asbestos, lead, dioxin, polychlorinated biphenols, fumes, acids, alkalis, chemicals, waste materials, petroleum products, or anything defined by federal or state law as a pollutant. Waste material includes materials which are intended to be or have been recycled, reconditioned, or reclaimed.

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

**Recreational motor vehicle** means any motorized land vehicle designed for recreational use off public

roads, including but not limited to, a golf cart, snowmobile, trail bike, moped, dune buggy, all-terrain vehicle, or motorcycle.

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

**Retained limit** means the limit so stated in the Declarations that will be paid by you. This limit applies if the **underlying insurance** described in the Declarations and the amounts of any other insurance do not provide coverage to the **insured**. But this **retained limit** does not apply if the injury or damage would have been covered by **underlying insurance** but for exhaustion of the applicable limits of insurance of such **underlying insurance**.

**Suit** means a civil proceeding in which damages because of **personal injury**, **bodily injury**, or **property damage**, to which this insurance applies are claimed or sought. **Suit** includes:

1. An arbitration proceeding in which such damages are claimed and to which the **insured** must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the **insured** submits with our consent or the **underlying insurer's** consent.

**Underlying limit** means the total of the applicable limits of insurance of the type of policy or policies scheduled as **underlying insurance**.

**Underlying insurance** means the policies listed on the schedule of underlying insurance and includes any other insurance available to the **insured** that is applicable to the injury or damage alleged.

**Watercraft** means a craft, vessel, or vehicle designed for the transportation of people or property on or over water.

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## PART II - COVERAGES

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1. We will pay **damages** for which the **insured** becomes legally responsible caused by:
  - a. An **occurrence** to which this insurance applies that results in **bodily injury** or **property damage**, during the policy period; or
  - b. An offense to which this insurance applies committed during the policy period that results in **personal injury**.
2. These coverages are subject to all exclusions, terms, and conditions of this policy.

3. These coverages apply only to **damages** in excess of the greater of the applicable **underlying limit** or the **retained limit**. Any

payment we make for **damages** is subject to **Part V - Limit of Liability**.

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### PART III - DEFENSE OF SUITS NOT COVERED BY OTHER INSURANCE

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If **underlying insurance** has exhausted its applicable limit of liability or does not cover **bodily injury, personal injury, or property damage**, covered by this policy:

1. We will defend any **suit** seeking **damages** for **bodily injury, personal injury, or property damage**, covered by this policy which are not payable under the terms of any other insurance or under the terms of the **underlying insurance** described in the Declarations;
2. We may investigate and settle any claim or **suit** that may involve the insurance afforded under this policy as we feel is appropriate;
3. We will pay costs taxed against the **Insured** in any **suit** we defend;
4. We will pay interest on **damages** payable under this policy accruing after a judgment is entered

in a **suit** we defend. Our duty to pay interest ends when we offer to pay that part of any judgment which does not exceed our Limit of Liability;

5. We will pay premiums on bonds required in a **suit** we defend. The bond amounts shall not exceed our Limit of Liability. We will pay the cost of bail bonds required of the **insured** because of an accident or traffic violation. We are not required to apply for or furnish such bonds; and
6. We will pay reasonable expenses incurred by any **Insured** at our request in assisting us in the investigation or defense of a claim or **suit**. Expenses include actual loss of earnings (but not other income) up to \$200 a day with a total annual aggregate limit of \$5,000.

We will pay the above amounts in addition to our Limit of Liability. You must promptly repay us for those **damages** that we paid that are within the **retained limit**.

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### PART IV - EXCLUSIONS

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We do not cover:

1. **Bodily Injury** to a person eligible for payments voluntarily provided by you or required to be provided under a worker's compensation, disability benefits, unemployment compensation, or occupational disease law;
2. **Bodily Injury** or **property damage** arising out of any **insured's** ownership, maintenance, use, operation, loading, unloading, entrustment to others, or supervision of any **aircraft**; or arising out of vicarious parental liability, whether or not statutorily imposed, for the actions of a child or minor using such **aircraft**;
3. **Personal Injury** or **bodily injury** to any of your employees as a result of employment by the **insured**, unless such liability is covered by valid and collectible **underlying insurance** described in the Declarations, and then only to the same extent that such **damages** are covered under such policy. This exclusion applies not only to the **insured's** employee, but also to **personal injury**

or **bodily injury** to the spouse, child, parent, brother, or sister of such employee as a consequence of injury to that employee;

4. **Bodily injury** or **property damage** expected or intended from the standpoint of the **insured**. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property;
5. **Personal Injury, bodily injury, or property damage** arising out of or in connection with any **insured's business** pursuits or **business property** unless such injury or damage is covered by valid and collectible **underlying insurance** described in the Declarations, and then only to the extent such damages are covered under that policy;
6. **Personal Injury, bodily injury, or property damage**, arising out of any **insured's** act, error or omission, or failure to act in any capacity as a professional. Professional includes but is not limited to accountants, architects, engineers,



lawyers, and medical practitioners, including doctors, nurses, and veterinarians;

7. **Bodily Injury** or **property damage** arising out of the ownership, maintenance, use, entrustment to others, loading, or unloading of any **watercraft** unless covered by valid and collectible **underlying Insurance** described in the Declarations, and then only to the extent such injury or **damages** are covered by such policy;
8. **Bodily Injury** or **property damage** arising out of the ownership, maintenance, use, or entrustment to others of any **motor vehicle** unless covered by valid and collectible **underlying insurance** described in the Declarations, and then only to the extent such injury or **damages** are covered by such policy;
9. A **permissive driver**. If state law requires that this policy apply to a **permissive driver**, however, our applicable limit of liability for an **occurrence** shall be reduced (see Part V Limit of Liability). This exclusion does not apply if the **permissive driver** is your employee;
10. **Property damage** to:
  - a. Property that any **Insured** owns, rents, or occupies, including any costs or expenses incurred by the **Insured** or any other person, organization, or entity, for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
  - b. Premises an **Insured** sells, gives away, or abandons, if the **property damage** arises out of any part of those premises;
  - c. Property loaned to an **Insured**;
  - d. Personal property in the care, custody, or control of an **Insured** including transportation of such property by any **Insured**;
11. Any loss, cost, or expense arising out of any governmental direction or request that an **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, **pollutants**;
12. **Personal Injury, bodily injury, or property damage** arising out of the discharge, dispersal, release, absorption, ingestion, inhalation, or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids, gases, waste materials, other irritants, contaminants, or **pollutants** into or upon land, the atmosphere, or any water course, or body of water.

This exclusion does not apply to **bodily Injury** or **property damage** arising out of heat, smoke, or fumes, from a hostile fire. As used in this exclusion, a hostile fire means one that becomes uncontrollable or breaks out from where it was intended to be;

13. **Bodily Injury** or **property damage** for which an **Insured** under this policy is also an **Insured** under a nuclear energy liability policy or would be an **Insured** but for its termination upon using up its limits of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors;
14. **Bodily injury** or **property damage** arising out of the ownership, maintenance, use, loading, or unloading of any **motor vehicle, watercraft, or recreational motor vehicle**, while being used in any:
  - a. Prearranged or organized racing, speed, or demolition contest;
  - b. Stunting activity; or
  - c. Practice or preparation for such contest or activity;
15. **Personal Injury, bodily Injury, or property damage**, caused by or resulting from declared or undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for any government purpose, and including any consequence of these. Discharge of a nuclear weapon is deemed a warlike act even if an accident;
16. **Personal Injury, bodily Injury, or property damage** sustained by you, your spouse, your minor children, your **relative**, or any other **Insured**;
17. **Personal Injury, bodily injury, or property damage** arising out of any corporation, partnership, or joint venture, of which an **Insured** is a partner or member;
18. **Personal injury, bodily Injury, or property damage** arising from an **Insured's** membership on a board of directors, or as an officer of an organization. This does not include a charitable, religious, or civic non-profit organization if service is without remuneration;

19. **Bodily Injury** or **property damage** for which an **Insured** is legally entitled to recover from the owner or operator of an uninsured **motor vehicle**;
20. **Bodily Injury** or **property damage** for which an **Insured** is legally entitled to recover from the owner or operator of an underinsured **motor vehicle**;
21. **Bodily Injury** or **property damage** for which an **insured** is legally entitled to recover under the no-fault or pip provisions of any state law;
22. **Bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any **recreational motor vehicle**, unless covered by valid and collectible **underlying insurance** described in the Declarations, and then only to the extent such injury or **damages** are covered by such policy;
23. Punitive or exemplary damages;
24. **Personal Injury**, **bodily injury**, or **property damage** arising out of a violation by any **insured** of a criminal law, except traffic violations;
25. **Personal injury**, **bodily injury**, or **property damage** arising out of the molesting, corporal punishment, physical, sexual, emotional, or mental abuse of any person;
26. **Personal injury** or **bodily injury** arising out of the transmission of a communicable disease by any **insured**;
27. Any claim for loss assessments charged against members of an association, corporation, or community of property owners;
28. **Personal injury**, **bodily injury**, or **property damage**, which results from liability assumed under any contract or agreement, but this exclusion does not apply to liability for **damages** that the **insured** would have in the absence of such contract or agreement;
29. **Personal Injury** unless covered by valid and collectible **underlying insurance** described in the Declarations and then only to the extent such **personal injury** or **damages** are covered by such policy. Regardless of any coverage afforded by such **underlying insurance** we do not cover **personal injury** arising out of and of the following:
  - a. The refusal to employ;
  - b. The termination of employment;
  - c. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment-related practices, policies, acts, or omissions; or
  - d. Consequential **personal injury** as a result of a through c above.

This exclusion applies whether the **Insured** may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury;
30. **Bodily Injury** or **property damage** arising out of childcare services provided by or at the direction of any **insured**, any **Insured's** employee, or any other person acting on behalf of any **insured**, unless covered by valid and collectible **underlying insurance** described in the Declarations, and then only to the extent such injury or **damages** are covered by such policy; or
31. **Bodily injury** or **property damage** that would not have occurred, in whole or in part, but for the actual, alleged, or threatened, inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any **fungus/fungi/spore(s)** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

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#### PART V - LIMIT OF LIABILITY

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Regardless of the number of **Insureds**, claims, or injured persons, the most we pay as **damages** resulting from one **occurrence** shall not exceed the amount stated in the Declarations, subject to the following:

1. This policy pays only after the limits of the **underlying insurance**, and any other insurance covering the claim, have been paid by the **Insured** or on the **Insured's** behalf;
2. If the **underlying insurance** terminates or the limits are less than shown in the Declarations, we

will pay only **damages** we would have paid if the **underlying insurance** had not terminated or its limits lessened;

3. If the **underlying insurance** or any other insurance is reduced or used up by payment of loss, we will pay **damages** over the lessened limits. This will apply only to those underlying policies that have an aggregate limit of liability;
4. If the **underlying insurance** or any other insurance does not pay because of bankruptcy or insolvency or because you do not comply with the terms of the other or **underlying insurance**, we pay only **damages** which exceed the required limits of **underlying insurance**;
5. If the **underlying insurance** or other insurance does not cover an **occurrence** which results in **bodily injury, personal injury, or property damage**, but the **occurrence** is covered by this policy, we pay only **damages** which exceed the **retained limit** as stated in the Declarations;

6. The insurance provided by this policy applies separately to each **Insured**; however, this provision does not increase our Limit of Liability for each **occurrence**;
7. The Annual Aggregate Limit shown in the Declarations is our total limit of liability for all **occurrences** during the **policy period**;
8. If this policy and any other umbrella policy issued by us or by Western Community Insurance Company cover the same **Insured** or **Insureds** and apply to the same **occurrence**, the aggregate maximum limit of insurance under all of the umbrella policies shall not exceed the highest applicable limit of insurance under any one umbrella policy; and
9. If the law requires that this policy covers a **permissive driver**, the limits of liability that apply to this **permissive driver** shall be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility, or similar law affecting motor vehicle insurance requirements.

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#### PART VI - UNDERLYING INSURANCE REQUIREMENT

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This policy requires that you have and maintain the types and limits of liability insurance shown in the Declarations.

You must keep the **underlying insurance** described in the Declarations, or renewal or replacement policies not more restrictive in their terms and conditions, in full force and effective during the **policy period** of this policy. The limits of insurance must be maintained without reduction other than by payment of losses covered. You must inform us within 30 days of any cancellation of any policy of **underlying insurance** or replacement of any policy of **underlying insurance**.

Failure to maintain the **underlying insurance** will not void the policy. We will only be liable to the extent that we would have been liable if the **underlying insurance** or policies had been maintained in force as required. You must make every effort to reinstate the aggregate limits of any **underlying insurance** that have been reduced because of the payment of a claim. You must make every effort to replace any **underlying insurance** which terminates.

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#### PART VII - WHAT TO DO IN CASE OF ACCIDENT OR LOSS

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In case of an **occurrence** which may result in a claim, the **Insured** must promptly give written notice to advise us or our agent of:

1. How, when, and where the **occurrence** took place; and
2. Names and addresses of all injured and all witnesses.

If the **insured** receives any information about a claim or legal action, the **insured** must immediately send us a copy of every notice, demand, summons, or other legal papers. The **insured** must cooperate with us in the investigation, defense, and settlement of any claim or **suit**.

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**PART VIII - POLICY CONDITIONS**

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1. **Defense Settlement.** Except as provided in Part III of this policy, we are not required to take charge of the investigation, defense, or settlement of a claim or **suit**. We have the right at any time to join you or your primary insurers in the investigation, defense, or settlement of a claim or **suit**. If the **underlying insurance** limit is paid, we have the option to defend a claim or **suit**. We may investigate and settle a claim or **suit** which we feel is appropriate.
2. **Appeals.** We may appeal a judgment in excess of the applicable **underlying insurance** limit or the **retained limit**. We pay all costs, taxes, expenses, and incidental interest. Our liability for **damages** does not exceed our Limit of Liability for one **occurrence**, plus the cost and expense of the appeal.
3. **Suits Against Us.** No action may be brought against us unless the **Insured** has complied with all terms of this policy.
4. **Other Insurance.** This insurance is excess over other collectible insurance.
5. **Our Right to Recover.** If payment is made by us, we will join the **Insured** and any underlying insurer in exercising the **Insured's** rights to recover against any party. The **Insured** shall not prejudice such rights after loss.
6. **Assignment.** Your rights and duties under this policy shall not be assigned without our written consent.
7. **Change, Modification, or Waiver of Policy Periods.** A waiver or change of any terms of this policy must be issued by us in writing to be valid. If we adopt any revision of forms or endorsements during a **policy period** which would broaden coverage under this policy without additional premium, the broadened coverage will automatically apply to this policy.
8. **Misrepresentation, Concealment, or Fraud.** There is no coverage under this policy for any **Insured** if any **Insured** intentionally conceals or misrepresents any material fact or circumstance pertaining to this insurance.
9. **Death of Named Insured.** If you die while insured under this policy, your protection passes to your legal representative or other persons having proper, temporary custody of covered property. That person or your legal representative, however, is an **Insured** only with respect to your legal liability covered by this policy. Any person who is an **Insured** at the time of your death continues to be an **Insured** while residing in your household.
10. **Policy Period and Territory.** We cover **personal Injury, bodily Injury, or property damage**, which occurs anywhere in the world during the **policy period** stated in the Declarations subject to the exclusions and conditions of this policy.
11. **Premium.** The premium stated in the Declarations shall be computed according to our rules and rating plans.
12. **Policy Renewals.**
  - a. Subject to our consent, you may renew this policy for successive periods by payment to us of the premium we require to renew the policy. If we are willing to renew this policy we shall give you 20 days notice in writing of the amount of premium to be paid to renew the policy. Premium payment for any renewal period shall be due on the expiration of the preceding **policy period**.
  - b. When allowed by state law, we may decline to renew this policy. We shall give you 30 days written notice of any such intention to nonrenew.
  - c. We shall give you notice of the reason for any nonrenewal of this policy. We shall mail a copy of any notice of nonrenewal to your insurance agent within five days of the mailing of the notice to you. Notice of any nonrenewal may be delivered or mailed to you at the mailing address shown on the Declarations. Our proof of mailing or delivery is sufficient proof of notice.
13. **Policy Termination.** If you fail to pay the renewal premium when due, this policy shall terminate on its expiration date without any notice or action by us. If you purchase another policy to replace this one, this policy terminates upon the inception of such policy without notice by you or us.
14. **Premium Refund.** If the amount of any additional premium you owe us or returned premium we owe you is \$2 or less it will be waived.
15. **Policy Cancellation.**
  - a. You may cancel this policy by returning this policy to us or by mailing to us written notice

- stating the future date when this cancellation shall be effective.
- b. We may cancel this policy subject to the following:
- (1) If you have not paid the premium when due, we may cancel by mailing notice to you at least 10 days before the date cancellation takes effect.
  - (2) We may cancel for any other reason allowed by law by mailing notice to you at least 30 days before the date cancellation takes effect.
- c. Our notice under this cancellation paragraph shall be written notice mailed to you at the address shown in the Declarations. Our proof of mail shall be sufficient proof of mailing of notice. We shall give you notice of the reason(s) for cancellation. The effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Our hand delivery of this written notice shall be equivalent to mailing.
- d. We shall mail a copy of any notice of cancellation to your insurance agent within five days of the date the notice of cancellation is mailed to you. We shall also mail notice of cancellation to any other person or lienholder who is named on the Declarations and has an interest in the insured property.
- e. Payment or tender of unearned premium is not a condition of cancellation. If you or we cancel, earned premiums shall be computed pro rata based on the effective date of cancellation. We will mail any check for unearned premiums within 30 days after we receive your notice of cancellation if you cancel or within 45 days after the date of notice of cancellation if we cancel. Our check mailed or delivered shall be sufficient tender of any refund of premium.
- f. Our cancellation rights are limited by state insurance law.
16. **Changes.** We reserve the right to adjust the amount of your premiums if there is a change in the information used to develop your policy premiums.
17. **Conformity to Statute.** Any terms of this policy which are in conflict with the statutes of the state of Idaho are hereby amended to conform to such statutes.
18. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured shall not relieve us of our obligations under this policy.

This policy is signed on our behalf by our authorized agent.

  
Authorized Agent

Douglas W. Crandall, ISB No. 3962  
CRANDALL LAW OFFICE  
Veltex Building  
420 W. Main Street, Suite 206  
Boise, ID 83702  
Telephone: (208) 343-1211  
Facsimile: (208) 336-2088

Attorney for Defendants/Counterclaimants John  
Schrock, Stacy Schrock and Christina Monroe

DISTRICT COURT  
TWIN FALLS CO., IDAHO

**ORIGINAL**

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BY \_\_\_\_\_  
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STAFF

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

vs.

JOHN SCHROCK, LISA SCHROCK, STACY  
SCHROCK, CHRISTA SPRINGER, APRIL  
SEITZINGER, MICHELE RUNYAN, and  
CHRISTINA MONROE.

Defendants.

JOHN SCHROCK, STACY SCHROCK and  
CHRISTINA MONROE,

Counterclaimants,

vs.

LISA SCHROCK,

Counterdefendant.

Case No. CV-09-829

ANSWER AND COUNTERCLAIM

Fees: \$58.00/\$14.00

COME NOW Defendants John Schrock, Stacy Schrock and Christina Monroe, by and  
through their counsel of record, and answer Plaintiff's Complaint as follows:

I.

**INTRODUCTION**

These answering Defendants admit that a declaratory judgment action has been filed arising out of a single-vehicle automobile accident that occurred on October 24, 2008 on Interstate Highway 84 in Minidoka County, Idaho. Defendants further admit that Farm Bureau Mutual Insurance Company of Idaho seeks declaration concerning its rights and obligations under two policies of insurance (a) a Farm Bureau City Squire Policy (Policy No. 01-B-079565-01), which provided insurance to John and Lisa Schrock with regard to the automobile involved in the accident, a 2001 Isuzu Rodeo, and further provided insurance to their 22-year-old daughter, Stacy Schrock, as an additional insured in regard to her use of the subject 2001 Rodeo, and (b) a Farm Bureau Umbrella Policy (Policy No. 01-U-079565-06), also held by Defendants John and Lisa Schrock.

To the extent the introductory paragraph of the Complaint for Declaratory Judgment sets forth that the action as filed sets forth all issues between the Defendants and Farm Bureau Mutual Insurance Company of Idaho, these Defendants deny any such reading of the introductory paragraph.

II.

**PARTIES**

1. These answering Defendants admit Farm Bureau is a corporation organized and existing under the laws of the State of Idaho, duly authorized to transact business as an insurance company in the State of Idaho, with its principal place of business located in Pocatello, Bannock County, Idaho.

2. These answering Defendants admit that John Schrock is an individual residing in the City of Twin Falls, County of Twin Falls, State of Idaho and is an insured of Farm Bureau under City Squire Policy No. 01-B-07956501 and Personal Umbrella Policy No. 01-U-079565-06, which said policies are the subject of this declaratory judgment action.

3. These answering Defendants admit that Defendant Lisa Schrock is an individual residing in the City of Twin Falls, County of Twin Falls, State of Idaho and is the owner of the 2001 Rodeo which was involved in the subject of October 24, 2008 accident and that Lisa Schrock is an additional insured of Farm Bureau under City Squire Policy No. 01-B-07956501 and Personal Umbrella Policy No. 01-U-07 with respect to the 2001 Isuzu Rodeo which was involved in the subject October 24, 2008 accident.

4. Defendants admit that Defendant Stacy Schrock resides in the city of Twin Falls, county of Twin Falls, state of Idaho. Defendant Stacy Schrock is an insured under the auto coverage of Farm Bureau City Squire Policy No. 01-B-079565-01 with respect to the 2001 Isuzu Rodeo.

5. These answering Defendants are without sufficient information to either admit or deny Defendant Christa Springer's residency and, as such, deny as to Christa Springer. Defendants admit she was a permissive driver and qualifies as an insured under Farm Bureau City Squire Policy No. 01-B-07965-01.

6. These answering Defendants are without sufficient information to either admit or deny allegation 6 of the Complaint for Declaratory Judgment, and as such deny the same.

7. These answering Defendants are without sufficient information to either admit or deny allegation 7 of the Complaint for Declaratory Judgment, and as such deny the same.

8. These answering Defendants admit Christina Monroe is an individual residing in the City of Filer, County of Twin Falls, State of Idaho, and that she was a passenger in the subject 2001 Isuzu Rodeo at the time of the October 24, 2008 accident. It is further admitted Defendant Monroe is a necessary party to this action, whose rights need to be determined by this Court's decision concerning Farm Bureau's rights and duties under the subject insurance policies.

9. Defendants admit that this action is brought property under Idaho Code § 10-201, et seq. and Idaho Rule of Civil Procedure 57 for purposes of determining a controversy between the parties.



10. These answering Defendants admit this action is ripe for adjudication.
11. These answering Defendants admit the amount in controversy exceeds the jurisdictional minimum of this Court.
12. These answering Defendants admit venue is proper in Twin Falls County, Idaho, pursuant to Idaho Code §5-404.
13. These answering Defendants admit that on October 24, 2008, at approximately 11:50 p.m., Defendant Christa Springer was operating a 2001 Isuzu Rodeo (hereinafter "Isuzu"), Idaho license number 2TF5404, westbound on Interstate Highway 84 in Minidoka County, Idaho.
14. These answering Defendants admit that at the same time, Defendants Stacy Schrock, April Seitzinger, Christina Monroe and Michele Runyan were traveling in the Isuzu as passengers.
15. These answering Defendants admit that while operating the Isuzu, Defendant Christa Springer apparently lost control and crashed.
16. These answering Defendants admit that during the accident, the Isuzu rolled. Defendants Stacy Schrock and Christina Monroe were ejected and sustained serious injuries.
17. These answering Defendants are without sufficient information to either admit or deny allegation 17 of the Complaint for Declaratory Judgment, and as such deny the same.
18. These answering Defendants admit that, at all times relevant to this action, the Isuzu was owned by Defendant Lisa Schrock.
19. These answering Defendants admit that Defendants John and Lisa Schrock are Stacy Schrock's parents, and Stacy Schrock is the natural born child of John and Lisa Schrock.
20. These answering Defendants admit that at all times relevant to this action, Defendant Stacy Schrock was a resident of the household of John and Lisa Schrock.
21. These answering Defendants admit that, upon information and belief, Christina Springer was operating the Isuzu at the time of the accident on October 24, 2008 with the express and/or implied permission of Defendant Stacy Schrock.

22. These answering Defendants admit that on October 24, 2008, Defendants John and Lisa Schrock were insureds pursuant to a City Squire Policy issued by Farm Bureau (Policy No. 01-B-079565-01), for the policy period October 19, 2008 to October 19, 2009.

23. These answering Defendants admit that the Farm Bureau City Squire Policy Declarations identify the Isuzu as an insured vehicle.

24. These answering Defendants admit that the Farm Bureau City Squire Policy Declarations identify Defendant Stacy Schrock as a "Section III Additional Insured" on the policy, "[b]ut only in regard to the 2001 Isuzu Rodeo."

25. These answering Defendants admit that the Farm Bureau City Squire Policy Declarations state that the limit of liability for bodily injury and property damage under Section III-Automobile Insurance is \$500,000 for each occurrence.

26. These answering Defendants admit allegation No. 26 to the extent that language from the Farm Bureau City Squire Policy is set forth accurately in the Complaint. However, these answering Defendants deny that this is an exclusive list of all relevant definitions and that additional definitions may play a part in the accurate analysis of the declaratory judgment action.

27. These answering Defendants admit allegation No. 27 to the extent that language from the Farm Bureau City Squire Policy is set forth accurately in the Complaint. However, these answering Defendants deny that this is an exclusive list of all relevant definitions. Additional definitions may play a part in the accurate analysis of this declaratory judgment action.

28. These answering Defendants admit that Stacy, Lisa and John Schrock are insured under the Farm Bureau City Squire Policy.

29. These answering Defendants admit that Defendant Christa Springer is an insured under the Farm Bureau City Squire Policy insofar as she was operating the Isuzu with the permission of Defendant Stacy Schrock.

30. These answering Defendants admit that Defendants John and Lisa Schrock were insureds pursuant to a Personal Umbrella Policy issued by Farm Bureau (Policy No. 01-U-079565-06) for the policy period October 19, 2008 to October 19, 2009.

31. These answering Defendants admit that Farm Bureau Umbrella Policy Declarations identify the Schrocks' Farm Bureau City Squire Policy on the Schedule of Underlying Insurance.

32. These answering Defendants admit that Farm Bureau Umbrella Policy Declarations state that the limit of personal liability coverage under the policy is \$1,000,000 for each occurrence.

33. These answering Defendants admit that Farm Bureau Umbrella Policy contains the definitions set forth in allegation number 33 of the Complaint for Declaratory Judgment. However, these answering Defendants deny that this is an exclusive list of all relevant definitions. Additional definitions may play a part in the accurate analysis of the declarations action.

34. These answering Defendants admit that Farm Bureau Umbrella Policy contains the provisions set forth in allegation number 34 of the Complaint for Declaratory Judgment. However, these answering Defendants deny that this is an exclusive list of all relevant provisions. Additional provisions may play a part in the accurate analysis of the declarations action.

35. These answering Defendants admit that Defendants Stacy, Lisa and John Schrock are insureds under the Farm Bureau Umbrella Policy.

36. These answering Defendants admit that Defendants Stacy Schrock and Christina Monroe sustained bodily injuries as a result of the October 24, 2008 accident. These answering Defendants are without sufficient information to either admit or deny the allegation with regard to Defendants Christa Springer, April Seitzinger and Michele Runyan, and therefore deny the same.

37. These answering Defendants are without sufficient information to either admit or deny Farm Bureau's handling of the claims arising out of the October 24, 2008 accident as it pertains to Defendants Christa Springer, April Seitzinger and Michele Runyan. Defendants admit that Farm Bureau is currently addressing claims by Defendants Stacy Schrock, John Schrock, Lisa Schrock and Christina Monroe.

38. These answering Defendants admit that Defendant Stacy Schrock sustained significant and permanent injuries as a result of the accident, and has incurred significant medical expenses, and that Stacy Schrock's injuries will exceed the liability limit of the Farm Bureau City Squire Policy, and will exceed the liability limit of the Farm Bureau Umbrella Policy.

39. These answering Defendants admit that an actionable, justiciable controversy exists between Farm Bureau and these Defendants involving rights and liabilities under the Farm Bureau City Squire and Umbrella Policies, and are dependent upon the construction of said contracts and policies of insurance, which controversy may be determined by judgment of this Court. As to other lawsuits, Defendants deny such. Further, Defendants deny this allegation with regard to any reference of allegation number 39 to counterclaims and other actions and claims which may arise out of the October 24, 2008 accident, as well as Farm Bureau's actions and conduct in addressing the claims of each of the involved individuals. Defendants also deny as to other lawsuits to the extent that coverage for Christa Springer may exist through State Farm Insurance.

40. These answering Defendants are without sufficient information to either admit or deny allegation No. 40 as it contains no new factual allegations.

41. These answering Defendants admit that Farm Bureau Umbrella Policy states that insurance coverage is for only those "damages" for which an "insured" becomes legally responsible as a result of an "occurrence," but denies that the definition issued by the Farm Bureau Umbrella Policy is exclusive as to the issues regarding said policy.

42. These answering Defendants are without sufficient information to either admit or deny allegation No. 42 regarding the rights of Defendant Christina Springer and therefore deny the same.

43. a. These answering Defendants deny that the Farm Bureau Umbrella Policy did not provide coverage for Defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident.

b. These answering Defendants deny the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claim or suit for damages against Defendant Christa Springer, including, but not limited to, any claim for suit by, or on behalf of Defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from Defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident.

c. These answering Defendants deny Farm Bureau has no duty to defend and/or indemnify Defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the October 24, 2008 accident.

44. These answering Defendants are without sufficient information to either admit or deny allegation No. 44 as it contains no new factual allegations.

45. These answering Defendants deny that Exclusion 9 of the Farm Bureau Umbrella Policy excludes coverage for a "permissive driver," which is defined by the policy as any person while using a motor vehicle owned by an insured and covered by the policy, provided that an insured gave permission for the type of use of the motor vehicle.

46. These answering Defendants admit that Defendant Christa Springer was operating the Isuzu at the time of the October 24, 2008 accident with the permission of Defendant Stacy Schrock.

47. These answering Defendants admit that Defendant Stacy Schrock is an "insured," as that term is defined in the Farm Bureau Umbrella Policy.

48. a. These answering Defendants deny that the Farm Bureau Umbrella Policy does not provide coverage for Defendant Springer's operation of the Isuzu at the time of the October 24, 2008 accident.

b. These answering Defendants deny that the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claim or suit for damages against Christa Springer, including, but not limited to, any claim or suit by or on behalf of Defendants Stacy Schrock,

April Seitzinger, Michele Runyan and/or Christina Monroe arising from Defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident.

c. These answering Defendants deny that Farm Bureau has no duty to defend and/or indemnify Defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the October 24, 2008 accident.

49. These answering Defendants are without sufficient information to either admit or deny allegation No. 49 as it contains no new factual allegations.

50. These answering Defendants deny that Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy excludes from coverage "bodily injury" sustained by "you, your spouse, your minor children, your **relative**, or any other **insured**."

51. These answering Defendants admit that Defendant Stacy Schrock is an "insured," as well as a "relative," as those terms are defined in the Farm Bureau Umbrella Policy.

52. a. These answering Defendants deny that the Farm Bureau Umbrella Policy does not provide coverage for any claim or suit for damages by or on behalf of Defendant Stacy Schrock arising out of the October 24, 2008 accident.

b. These answering Defendants deny that limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by Defendant Stacy Schrock as a result of the October 24, 2008 accident.

53. These answering Defendants are without sufficient information to either admit or deny allegation No. 53 as it contains no new factual allegations.

54. These answering Defendants admit that Defendant Christa Springer was operating the Isuzu at the time of the accident on October 24, 2008 with the express or implied permission of Defendant Stacy Schrock, and that Defendant Christa Springer qualifies as an insured under the Farm Bureau City Squire Policy. These answering Defendants deny that Defendant Christa Springer does not qualify as an insured under the Farm Bureau Umbrella Policy.

55. These answering Defendants admit that Farm Bureau City Squire Policy does not exclude from coverage a claim for bodily injury sustained by an insured, such as Defendant Stacy Schrock. To the extent that allegation number 55 suggests that the Farm Bureau Umbrella Policy does not provide coverage to Stacy Schrock, that portion of the allegation is denied.

56. a. These answering Defendants admit that Farm Bureau City Squire Policy provides coverage to Defendant Christa Springer's operation of the Isuzu at the time of the accident. Defendants deny that Farm Bureau's Umbrella Policy does not provide coverage for Defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident.

b. These answering Defendants admit that the City Squire Policy is available to satisfy any claim or suit for damages against Defendant Christa Springer, including but not limited to, any claim or suit by or on behalf of Defendants Stacy Schrock, April Seitzinger, Michele Runyan and/or Christina Monroe, arising from Defendant Christa Springer's operation of the Isuzu at the time of the October 24, 2008 accident. Defendants deny that the Farm Bureau Umbrella Policy does not provide coverage for Defendant Christa Springer's operation of the Isuzu at the time of the accident.

c. These answering Defendants deny the limits of liability under the Farm Bureau City Squire Policy are the only limits available to satisfy any claims or suits involving medical expenses or other losses or damages to Defendant Stacy Schrock as a result of the October 24, 2008 accident.

## **COUNTERCLAIM**

### **General Allegations**

I.

Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe incorporate by reference their Answer to Complaint for Declaratory Judgment contained herein.

II.

On October 24, 2008, Defendant/Counterclaimant Christa Springer was operating a 2001 Isuzu Rodeo owned by Defendant/Counterclaimant Lisa Schrock. At said time, Christa Springer, through inattention, negligence or otherwise, caused the 2001 Isuzu to roll, ejecting Defendants/Counterclaimants Stacy Schrock and Christina Monroe. Stacy Schrock has suffered extensive physical injuries, included but not limited to, paralysis from the waist down. On the date of the accident, Stacy Schrock was 22 years old. To date, Ms. Schrock has incurred medical expenses in excess of \$300,000. Christina Monroe was also seriously injured and continues to have some level of partial paralysis on the left side of her body. Ms. Monroe has incurred medical expenses in excess of \$100,000.

III.

At the time of the accident, the 2001 Isuzu Rodeo was insured by Farm Bureau Mutual Insurance Company of Idaho under both a City Squire Policy and a Personal Umbrella Policy.

IV.

Defendant/Counterclaimant Christa Springer was operating the 2001 Isuzu Rodeo with the express permission of Defendant/Counterclaimant Stacy Schrock and as such with the permission of Defendant Lisa Schrock. The Personal Umbrella Policy provided motor vehicle coverage of \$1,000,000 above and beyond the limits set forth in the City Squire Policy. The City Squire Policy is a \$500,000 single-limit policy.

V.

By way of Farm Bureau Mutual Insurance Company's allegation in the declaratory judgment action, it admits that the entire underlying City Squire Policy limits are available to pay for the damages resulting from the October 24, 2008 accident, under a single-limit of \$500,000 for each occurrence.

VI.

In dispute is the coverage related to the Personal Umbrella policy.



LIABILITY – LISA SCHROCK

VII.

Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe incorporate by reference allegations I-VI of the Counterclaim, enumerated above.

VIII.

At all relevant times hereto, Idaho Code §49-2417 set forth the following:

(1) Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his motor vehicle. in the business of the owner or otherwise, by any person using or operating the vehicle with permission, express or implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages.

(2) The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amount set forth under "proof of financial responsibility" in section 49-117, Idaho Code, or the limits of the liability insurance maintained by the owner, whichever is greater.

IX.

At the time of the accident on October 24, 2008, Christa Springer was operating the 2001 Isuzu Rodeo with the express and/or implied permission of Stacy Schrock. Stacy Schrock had been given permission to drive the 2001 Isuzu Rodeo and to extend that permission to others as she saw fit. As a result of the permission extended to Stacy Schrock, Lisa Schrock, by way of that permission, permitted Christa Springer to operate the 2001 Isuzu Trooper in question.

X.

As a result of that permission, the negligence of Christa Springer shall be imputed to Lisa Schrock for purposes of all civil damages.

XI.

Lisa Schrock is an insured under both the City Squire Policy and the Personal Umbrella Policy.

XII.

As such, Lisa Schrock is responsible for payment of all damages to Defendants pursuant to Idaho Code §49-2417 up to the limits of all liability insurance maintained by Lisa Schrock.

**EXCLUSION 16 OF THE PERSONAL UMBRELLA POLICY**

XIII.

At all times relevant hereto, Defendant/Counterclaimant Stacy Schrock was the daughter of Defendant/Counterclaimant Lisa Schrock.

XIV.

At all times relevant hereto, Defendant/Counterclaimant Stacy Schrock was a resident of the household wherein Defendant/Counterclaimant Lisa Schrock resided.

XV.

At all relevant times hereto, Idaho Code §49-1212(12) provided:

No motor vehicle liability policy providing coverage beyond state mandated minimum limits shall provide a reduced level of coverage to any insured's family or household member or other authorized user except as provided in section 41-2510, Idaho Code.

XVI.

That Exclusion 16 of the Personal Umbrella Policy provides a reduced level of coverage to the insureds' (John and Lisa Schrock) family or household member. That the Personal Umbrella Policy in question provided motor vehicle coverage beyond state-mandated minimum limits.

XVII.

That the Umbrella Policy in question is a motor vehicle policy in that it insured the persons named therein (John and Lisa Schrock) against loss from liability imposed upon them by law for damages for motor vehicle accidents including the accident in question, involving the 2001 Isuzu Rodeo.

HOUSEHOLD EXCLUSION VIOLATES PUBLIC POLICY

XVIII.

At all times relevant hereto, the Idaho Supreme Court has ruled, pursuant to *Reed v. Farmers Ins. Group*, 109 Idaho 849, 712 P.2d 550 (1986), that household exclusions are in violation of Idaho Code §49-233, and the household exclusions clauses are therefore unenforceable and void as against public policy. (Idaho Code §49-233 as amended to §49-1229) Exclusion 16 of the Personal Umbrella Policy sets forth:

We do not cover:

16. **Personal injury, bodily injury, or property damage** sustained by you, your spouse, your minor children, your **relative**, or any other **insured**.

XIX.

Exclusion 16 is as a household exclusion as set forth in *Farmers v. Reed* and in violation of Public policy.

XXX.

Exclusion 16 is in violation of Idaho Code §49-1212(12) in that it attempts to reduce coverage based upon family or household relationship of the parties.

XXXI.

Exclusion 16 is in violation of Idaho Code §49-2417 in that it limits the liability of the owner of all liability insurance based upon family or household relationships.

XXXII.

Exclusion 16 is in violation of Idaho Code §49-1229 in that it violates the statutory mandate to insure "any person" by limiting coverage to family or household members.

PRAYER FOR RELIEF

WHEREFORE, Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe pray for judgment against Counterdefendant Farm Bureau Mutual Insurance Company as follows:

1. That Lisa Schrock, as owner of the 2001 Isuzu Rodeo, be provided coverage and defense as owner of the 2001 Isuzu Rodeo up to and including the underlying City Squire Policy (\$500,000) and the Personal Umbrella coverage (\$1,000,000.00).

2. That Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe are entitled to coverage under the Personal Umbrella Policy (\$1,000,000) and the City Squire Policy (\$500,000) for a total of \$1,500,000 in coverage.

3. That the Farm Bureau Personal Umbrella Policy cannot exclude coverage to Stacy Schrock under exclusion number 16 of the Umbrella Policy as it violates *Farmers v. Reed*, public policy and Idaho Code §§49-1212(12), 49-2417 and 49-1229.

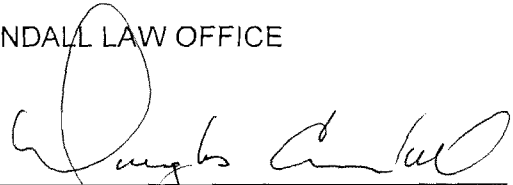
4. That Plaintiff/Counterdefendant pay reasonable attorney fees and costs to Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe as a result of having to defend the Complaint and file the Counterclaim in this matter.

5. For any further equitable relief the Court deems just.

DATED this 16th day of April, 2009.

CRANDALL LAW OFFICE

By

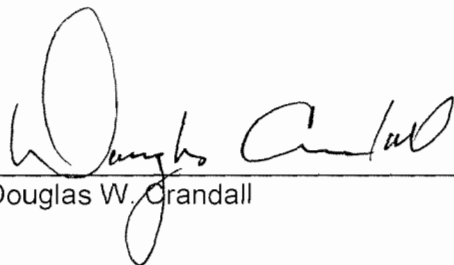
  
\_\_\_\_\_  
Douglas W. Crandall  
Attorneys for Defendants John Schrock,  
Stacy Schrock and Christina Monroe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6<sup>th</sup> day of April, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jim Thomson  
Powers Thomson, PC  
345 Bobwhite Court, Ste 150  
PO Box 9756  
Boise, ID 83707  
Facsimile No.: (208) 577-5101

- US Mail
- Overnight Mail
- Hand-Delivery
- Facsimile Transmission
- Electronic Transmission

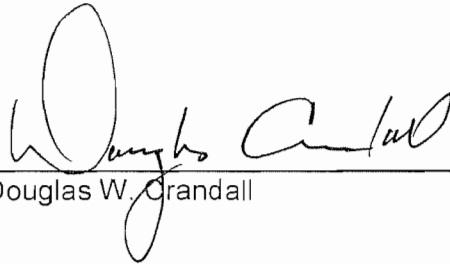
  
\_\_\_\_\_  
Douglas W. Grandall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6<sup>th</sup> day of April, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jim Thomson  
Powers Thomson, PC  
345 Bobwhite Court, Ste 150  
PO Box 9756  
Boise, ID 83707  
Facsimile No.: (208) 577-5101

- US Mail
- Overnight Mail
- Hand-Delivery
- Facsimile Transmission
- Electronic Transmission

  
\_\_\_\_\_  
Douglas W. Grandall

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2009 APR 24 PM 2: 17

BY \_\_\_\_\_ CLERK  
\_\_\_\_\_ DEPUTY

Raymond D. Powers  
ISB #2737; [rdp@powersthomson.com](mailto:rdp@powersthomson.com)  
James S. Thomson, II  
ISB #6124; [jst@powersthomson.com](mailto:jst@powersthomson.com)  
POWERS THOMSON, P.C.  
345 Bobwhite Court, Suite 150  
Post Office Box 9756  
Boise, Idaho 83707  
Telephone: (208) 577-5100  
Facsimile: (208) 577-5101  
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Attorneys for Plaintiff

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiffs,

vs.

JOHN SCHROCK, LISA SCHROCK,  
STACY SCHROCK, CHRISTA  
SPRINGER, APRIL SEITZINGER,  
MICHELE RUNYAN, and CHRISTINA  
MONROE,

Defendants.

JOHN SCHROCK, STACY SCHROCK  
and CHRISTINA MONROE,

Counterclaimants,

Case No. CV 09-829

**REPLY TO COUNTERCLAIM**

vs.

LISA SCHROCK,

Counter-Defendant.

COMES NOW plaintiff/counter-defendant Farm Bureau Mutual Insurance Company of Idaho ("Farm Bureau"), by and through its counsel of record, Powers Thomson, P.C., and in reply to defendants/counterclaimants John Schrock, Stacey Schrock and Christina Monroe's Counterclaim, admits, denies and alleges as follows:

**FIRST DEFENSE**

Defendants/Counterclaimants' Counterclaim fails to state a claim against Farm Bureau upon which relief may be granted.

**SECOND DEFENSE**

Based either upon a lack of information or its belief that the allegations contained in Defendants/Counterclaimants' Counterclaim are untrue, Farm Bureau denies each and every allegation contained in Defendants/Counterclaimants' Counterclaim that is not expressly and specifically admitted hereinafter. Farm Bureau further denies that Defendants/Counterclaimants are entitled to the relief requested in paragraphs 1 through 5 of their prayer for relief or otherwise.

**THIRD DEFENSE**

With respect to the specific allegations contained in Defendants/Counterclaimants' Counterclaim, Farm Bureau responds as follows:

1. In answering the allegations set forth in Paragraph II of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits that on October 24, 2008, defendant Christa Springer was operating a 2001 Isuzu Rodeo, in which Stacey Schrock, April Seitzinger, Christina Monroe and Michele Runyan were traveling as passengers, when she



apparently lost control and crashed. Farm Bureau further admits that as a result of the crash, defendants/counterclaimants Stacey Schrock and Christina Monroe were ejected and sustained serious injuries, to date Ms. Schrock has incurred medical expenses in excess of \$300,000, and defendants Christina Springer, April Seitzinger and Michele Runyan were also injured.

2. In answering the allegations set forth in Paragraph III of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that the 2001 Isuzu Rodeo was insured by Farm Bureau pursuant to a City Squire Policy, and that the Personal Umbrella Policy refers to the City Squire Policy as underlying insurance.

3. In answering the allegations set forth in Paragraph IV of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that the Personal Umbrella Policy limits are \$1,000,000 and the City Squire Policy limit of liability for bodily injury and property damage is \$500,000 for each occurrence.

4. In answering the allegations set forth in Paragraphs V and VI of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that the allegations contained in its Complaint for Declaratory Judgment action speak for themselves.

5. In answering the allegations set forth in Paragraph VIII of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that Idaho Code section 49-2417 was in existence at the time of the subject automobile accident and Defendants/Counterclaimants' Counterclaim appears to accurately set forth the provisions of subsections (1) and (2) of the statute.

6. In answering the allegations set forth in Paragraph IX of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only upon information and belief that at the time of the accident on October 24, 2008, Christa Springer was operating the 2001 Isuzu Rodeo with the permission of Stacy Schrock.

7. Farm Bureau admits the allegations set forth in Paragraph XI of Defendants/Counterclaimants' Counterclaim.

8. Farm Bureau admits the allegations set forth in Paragraphs XIII and XIV of Defendants/Counterclaimants' Counterclaim.

9. In answering the allegations set forth in Paragraph XV of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that Idaho Code section 49-1212(12) was in existence at the time of the subject automobile accident and Defendants/Counterclaimants' Counterclaim appears to accurately set forth the language of the same.

10. In answering the allegations set forth in Paragraph XVIII of Defendants/Counterclaimants' Counterclaim, Farm Bureau admits only that Exclusion 16 of the Personal Umbrella Policy is accurately set forth therein.

#### **CLAIM FOR ATTORNEY FEES AND COSTS**

Farm Bureau has been required to retain the services of the law firm of Powers Thomson, P.C. in order to defend against Defendants/Counterclaimants' Counterclaim and will continue to incur reasonable attorney fees and costs based upon the time expended in its defense. Farm Bureau, therefore, alleges and hereby makes a claim against Defendants/Counter-claimants for recovery of its reasonable attorney fees and costs incurred in defending this action, pursuant to Idaho Code §§ 10-1210, 12-121, 12-123, Rule 54 of the Idaho Rules of Civil Procedure, and all other applicable laws allowing for the recovery of costs or attorney fees in this action.

**WHEREFORE**, Farm Bureau prays for judgment as follows:

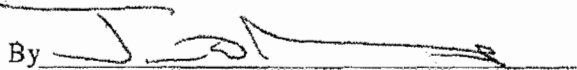
1. That Defendants/Counterclaimants' Counterclaim be dismissed against Farm Bureau with prejudice and that Defendants/Counterclaimants' take nothing thereby;

2. That Farm Bureau be awarded its costs and reasonable attorney fees incurred in this action; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 24<sup>th</sup> day of April, 2009.

POWERS THOMSON, P.C.

By   
Raymond D. Powers - Of the Firm  
James S. Thomson, II - Of the Firm  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

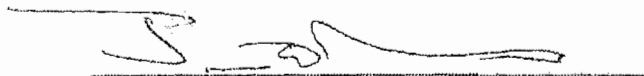
I HEREBY CERTIFY that on the 24<sup>th</sup> day of April, 2009, I caused to be served a true copy of the foregoing **REPLY TO COUNTERCLAIM**, by the method indicated below, and addressed to each of the following:

Doug Crandall  
CRANDALL LAW OFFICE  
420 W. Main St. Suite 206  
Boise, ID 83702  
*Attorney for Defendants/Counterclaimants  
John Schrock, Stacey Schrock and Christina  
Monroe and Defendants Michele Runyan  
and April Seitzinger*

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

Anthony M. Valdez  
BENOIT, ALEXANDER, HARWOOD,  
HIGH & VALDEZ  
126 Second Avenue North  
PO Box 366  
Twin Falls, ID 83303  
*Attorneys for Defendants Christa Springer  
and Michele Runyan*

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

  
Raymond D. Powers  
James S. Thomson, II

Anthony M. Valdez, ISB No. 5349  
 VALDEZ LAW OFFICE, PLLC  
 304 Second Avenue East  
 Twin Falls, Idaho 83301  
 Telephone: (208) 736-7333  
 Fax: (208) 736-8333  
 Attorney for Defendants, Christa Springer and  
 Michele Runyan

FILED  
 2009 MAY 15 PM 12:11  
 BY: [Signature]  
 CLERK

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

\* \* \* \* \*

FARM BUREAU MUTUAL INSURANCE	)	
COMPANY OF IDAHO	)	Case No. CV-09-829
	)	
Plaintiff,	)	
	)	<b>DEFENDANTS' CHRISTA</b>
v.	)	<b>SPRINGER AND MICHELE</b>
	)	<b>RUNYAN'S ANSWER TO</b>
JOHN SCHROCK, LISA SCHROCK, STACY	)	<b>COMPLAINT</b>
SCHROCK, CHRISTA SPRINGER, APRIL	)	
SEITZINGER, MICHELE RUNYAN and	)	
CHRISTINA MONROE,	)	
	)	
Defendants.	)	

\* \* \* \* \*

COME NOW Defendants, Christa Springer and Michele Runyan, by and through  
 counsel, Anthony M. Valdez, of the law firm of Valdez Law Office, PLLC, and answers  
 Plaintiff's Complaint as follows:

1. These answering Defendants admit generally the introduction paragraph set forth by Plaintiffs in its Complaint.
2. These answering Defendants admit paragraphs 1, 2, 3, 4 and 5 of Plaintiff's Complaint.

3. In answer to paragraph 6, these answering Defendants are without sufficient information and belief to either admit or deny the allegations relating to Defendant April Seitzinger, and on that basis denies the same.

4. These answering Defendants admit paragraphs 7 and 8 of Plaintiff's Complaint.

5. These answering Defendants admit paragraphs 9, 10, 11 and 12 of Plaintiff's Complaint.

6. These answering Defendants admit paragraphs 13, 14, 15, 16, and 17 of Plaintiff's Complaint.

7. These answering Defendants admit paragraphs 18, 19, 20 and 21 of Plaintiff's Complaint.

8. These answering Defendants admit paragraphs 22, 23, 24 and 25 of Plaintiff's Complaint.

9. In answer to paragraphs 26 and 27 of Plaintiff's Complaint, these answering Defendants assert that the provisions of the Farm Bureau City Squire Policy speak for themselves. Further, these answering Defendants deny that the referenced provisions in the above paragraphs comprise the entirety of "relevant" provisions in said policy.

10. These answering Defendants admit paragraphs 28 and 29 of Plaintiff's Complaint.

11. These answering Defendants admit paragraphs 30, 31 and 32 of Plaintiff's Complaint.

12. In answer to paragraphs 33 and 34 of Plaintiff's Complaint these answering Defendants assert that the provisions of the Farm Bureau Umbrella Policy speak for themselves. Further, these answering Defendants deny that the referenced provisions in the above paragraphs comprise the entirety of "relevant" provisions in said policy.

13. These answering Defendants admit paragraph 35 of Plaintiff's Complaint.

14. These answering Defendants admit paragraph 36 of Plaintiff's Complaint.

15. In answer to paragraphs 37 and 38 of Plaintiff's Complaint, these answering Defendants are without sufficient knowledge or belief to admit or deny the allegations contained in the above paragraphs and on that basis, denies the same.

16. In answer to paragraph 39 of Plaintiff's Complaint, these answering Defendants admit there is an actionable, justifiable controversy between Plaintiff and Defendants related to the Farm Bureau City Squire and Umbrella Insurance Policies. In response to the last clause of paragraph 39, these answering Defendants are unable to determine the scope of the phrase "without other lawsuits" and therefore deny the same.

17. In answer to paragraph 41 of Plaintiff's Complaint, these answering Defendants admit that the Farm Bureau Umbrella Policy contains the language set forth herein, but denies that coverage and other issues related to the interpretation of the Policy are exclusively determined by how those referenced terms are defined by the Policy itself.

18. In answer to paragraph 42 of Plaintiff's Complaint, These answering Defendants state that Christa Springer was the operator of the subject vehicle at the

time of the accident on October 24, 2008. These answering Defendants deny the remaining allegations contained therein.

19. These answering Defendants deny the allegations contained in paragraph 43 of Plaintiff's Complaint.

20. These answering Defendants deny the allegations contained in paragraph 45 of Plaintiff's Complaint.

21. These answering Defendants admit the allegations contained in paragraphs 46 and 47 of Plaintiff's Complaint

22. These answering Defendants deny the allegations contained in paragraph 48 of Plaintiff's Complaint.

23. These answering Defendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint.

24. These answering Defendants admit the allegations in paragraph 51 of Plaintiff's Complaint.

25. These answering Defendants deny the allegations in paragraph 52 of Plaintiff's Complaint.

26. In answer to paragraph 54 of Plaintiff's Complaint, these answering Defendants admit that Defendant Christa Springer was operating the subject vehicle with the express or implied permission of Defendant Stacy Schrock, and that Defendant Christa Springer is an insured under the Farm Bureau City Squire Policy. These answering Defendants deny that Defendant Christa Springer does not qualify as an insured under the Farm Bureau Umbrella Policy.

27. In answer to paragraph 55 of Plaintiff's Complaint, these answering Defendants admit the allegations contained therein.

28. In answer to paragraph 56 of Plaintiff's Complaint, these answering Defendants admit that the Farm Bureau City Squire Policy provides coverage to Defendant Christa Springer's operation of the subject vehicle at the time of the October 24, 2008 accident. These answering Defendants deny that Plaintiff's assertion that the City Squire Policy is the "only" policy that provides coverage for the subject motor vehicle accident. These answering Defendants deny the remaining allegations in sub-paragraphs a, b and c of paragraph 56.

WHEREFORE, These answering Defendants pray for relief as follows:

1. Defendants, Christa Springer and Michele Runyan have retained the services of Valdez Law Office, PLLC, to defend and assert their rights in this declaratory judgment action and will continue to incur reasonable attorneys fees and costs accordingly. These answering Defendants therefore request Plaintiff pay their costs and reasonable attorneys fees incurred pursuant to Idaho Code §§ 10-1210, 12-120, 12-121, 12-123, Idaho Rule of Civil Procedure 45 et al. and any other legal authority including the provisions of the insurance policies at issue providing for the award of attorneys fees and/or costs.
2. That the Court declare that the Farm Bureau Umbrella Policy provides coverage to Defendant Christa Springer's operation of the subject vehicle relative to the referenced October 24, 2008 motor vehicle accident;




3. That the Court declare that Plaintiff has a duty to defend and indemnify Defendant Christa Springer under the Farm Bureau Umbrella Policy related to any and all claims resulting from the October 24, 2008 motor vehicle accident.

4. Any and all relief as the Court deems just and equitable.

DATED This 15<sup>TH</sup> day of May, 2009.

VALDEZ LAW OFFICE, PLLC

By   
Anthony M. Valdez  
Attorney for Defendants, Christa  
Springer and Michele Runyan

**CERTIFICATE OF SERVICE**

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 15<sup>TH</sup> day of May, 2009, he caused a true and correct copy of the **DEFENDANTS' CHRISTA SPRINGER AND MICHELE RUNYAN'S ANSWER TO COMPLAINT** to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Raymond D. Powers  
James S. Thomson, II  
POWERS THOMSON, P.C.  
Post Office Box 9756  
Boise, ID 83707

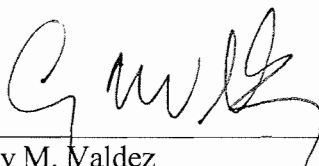
**Attorneys for Plaintiffs**

Hand Delivered   
U.S. Mail   
Fax   
Fed. Express

Douglas W. Crandall  
CRANDALL LAW OFFICE  
420 W. Main Street, Suite 206  
Boise, ID 83702

**Attorney for John Schrock, Stacy  
Schrock and Christina Monroe**

Hand Delivered   
U.S. Mail   
Fax   
Fed. Express

  
Anthony M. Valdez

JUL - 2 2009

By \_\_\_\_\_ 10:30 AM  
Clerk  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Farm Bureau Mutual Insurance Company Of	)	
Idaho	)	Case No. CV-2009-0000829
	)	
Plaintiff(s),	)	<b>ORDER FOR SCHEDULING</b>
	)	<b>CONFERENCE AND ORDER</b>
vs.	)	<b>RE: MOTION PRACTICE</b>
	)	
John Schrock, etal.	)	
	)	
Defendant(s).	)	

IT IS HEREBY ORDERED that the above-captioned case is scheduled for a scheduling conference to commence on August 17, 2009 at 10:00 am at the Twin Falls Judicial Courthouse, 427 Shoshone Street North, Twin Falls, Idaho.

The purpose of the conference will be to enter a scheduling order regarding the deadlines contained in the attached schedule. **All parties must appear at this time in person or by counsel.** Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind his/her client and law firm on all matters set forth in I.R.C.P. 16(a) and 16(b).

In lieu of this scheduling conference, all parties may stipulate to deadlines and other information required in the enclosed **Stipulation for Scheduling and Planning**. This stipulation must be completed and signed by all parties, and filed with the court at least three (3) working days before the scheduling conference. The hearing will not be vacated until: 1) the attached stipulation is received by the court; and 2) counsel has contacted the court's clerk at the number set forth below to confirm that the hearing

is vacated. The foregoing notwithstanding, THE STIPULATION MAY NOT ALTER THE TIME REQUIREMENTS SPECIFIED IN THIS ORDER.

IT IS FURTHER ORDERED that the following shall apply to motions filed in this case.

**1. SCHEDULING AND HEARINGS.** The Court holds its regular civil law and motion calendar on alternating Mondays (or Wednesdays following holidays) commencing at 9:00 A.M. Scheduling conferences and miscellaneous matters shall be heard starting at 9:00 A.M. Motions shall be heard commencing at 10:00 A.M. Absent an order shortening time, all motion practice other than motions for summary judgment will be governed by I.R.C.P. 7. As a matter of courtesy, counsel are expected to contact the Court's Deputy Clerk, Dorothy McMullen (phone 208-736-4036) to schedule hearings and to confirm the availability of opposing counsel for proposed hearing dates.

ANY MATTER REQUIRING TESTIMONY TOTALLING MORE THAN 30 MINUTES SHALL NOT BE SCHEDULED ON THE COURT'S REGULAR MOTION CALENDAR.

As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except scheduling conferences, motions for summary judgment, motions in limine or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b) (4). Unless ordered by the court, telephone conferences will be held ONLY if all counsel so stipulate and the court approves that stipulation. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call and the cost thereof. The telephone conference must be pre-arranged by the Wednesday preceding the date of the hearing.

**MOTIONS GENERALLY** (applies to **every** motion).

- a. One additional copy marked or stamped "**Judge's Copy**" of any motion and opposing papers (including affidavits, and briefs) must be submitted to the judge's chambers when such documents are filed or lodged with the clerk of the court. If a party relies upon any case decided by an appellate court outside of Idaho, a copy of such case must be attached to the copy of the brief submitted to the judge's chambers.
- b. The amount of time each side will be allotted for oral argument on a motion will be set by the court.
- c. If a notice of hearing is not filed within fourteen (14) days after the motion is filed, the motion will be deemed withdrawn.

**2. MOTIONS TO COMPEL DISCOVERY.**

- a. A motion to compel discovery must contain a certification as required by IRCP 37(a) (2) (that efforts were made to resolve the dispute before the motion was filed).

The motion to compel must SPECIFICALLY ADDRESS THAT PORTION OF THE DISCOVERY AT ISSUE and CONTAIN A STATEMENT OF REQUESTED RELIEF.

- b. Reasonable expenses incurred when successfully prosecuting or opposing a motion to compel discovery shall be awarded as provided in Rule 37(a)(4) of the Idaho Rules of Civil Procedure.

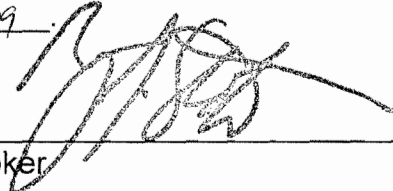
**3. MOTIONS FOR FULL OR PARTIAL SUMMARY JUDGMENT.**

- a. The party moving for summary judgment shall prepare as **separate** documents: (a) a motion; (b) a legal memorandum containing a written statement of reasons and legal authority in support of the motion, and (c) a concise statement of the claimed undisputed material facts alleged by movant. Each statement of facts shall include a reference to the particular place in the record which supports the claimed fact. The legal memorandum shall ALSO include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.
- b. The party opposing a motion for summary judgment shall prepare as **separate** documents: (a) a legal memorandum containing a written

statement of reasons in opposition to the motion, and (b) a concise statement of claimed genuine issues of material fact and/or which are material facts omitted from the moving party's statement of facts. Each statement of a fact shall include a reference to the particular place in the record which supports the factual dispute. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.

- c. The schedule for serving briefs and affidavits shall be as set forth in Idaho Rule of Civil Procedure 56(c). THESE TIME REQUIREMENTS SHALL BE STRICTLY COMPLIED WITH.
  
- d. The hearing on a motion for summary judgment will be set **AFTER** the moving party has submitted the motion, legal memorandum and statement of facts. The hearing date can then be obtained from the judge's court clerk.

DATED this 2 day of July, 2009.

  
\_\_\_\_\_  
Randy J. Stoker  
District Judge

CERTIFICATE OF MAILING

The undersigned certifies that on the 2nd day of July, 2009, she caused a true and correct copy of the foregoing **ORDER FOR SCHEDULING CONFERENCE AND ORDER RE: MOTION PRACTICE** to be served upon the following persons in the following manner:

**Plaintiff's Counsel:**

Raymond D Powers  
PO Box 1271  
Boise ID 83701

Mailed  Courthouse Mailbox \_\_\_\_\_ Faxed \_\_\_\_\_

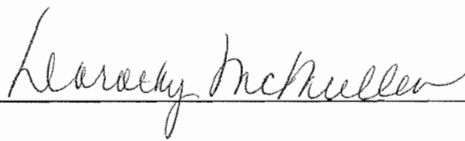
**Defendant's Counsel:**

Douglas W. Crandall  
420 W. Main Street, Suite 206  
Boise ID 83702

Mailed  Courthouse Mailbox \_\_\_\_\_ Faxed \_\_\_\_\_

Anthony M. Valdez  
304 2nd Ave E  
Twin Falls ID 83301

Mailed  Courthouse Mailbox \_\_\_\_\_ Faxed \_\_\_\_\_

  
\_\_\_\_\_

Deputy Clerk

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

Farm Bureau Mutual Insurance Company Of Idaho	)	Case No. CV-2009-0000829
	)	
Plaintiff(s),	)	<b>STIPULATION FOR</b>
	)	<b>SCHEDULING AND PLANNING</b>
vs.	)	
	)	
John Schrock, etal.	)	
	)	
_____		
Defendant(s).		

The above parties hereby stipulate to the following scheduling deadlines:

**A. EXPERT WITNESSES**

**(Plaintiff's experts)**

1. \_\_\_\_\_ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

2. \_\_\_\_\_ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

3. \_\_\_\_\_ days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

**(Defendant's experts)**

4. \_\_\_\_\_ days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

5. \_\_\_\_\_ days before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

6. \_\_\_\_\_ days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

**(Plaintiff's rebuttal experts)**

7. \_\_\_\_\_ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.

8. \_\_\_\_\_ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. \_\_\_\_\_ days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

**B. LAY WITNESSES**

1. \_\_\_\_\_ days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. \_\_\_\_\_ days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

3. \_\_\_\_\_ days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. \_\_\_\_\_ days before trial, all parties shall complete any depositions of lay witnesses.

**C. DEADLINES FOR INITIATING DISCOVERY**

1. \_\_\_\_\_ days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. \_\_\_\_\_ days before trial is the last day for filing motions for a physical or mental examination.

**D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY**



1. \_\_\_\_\_ days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

#### E. PRETRIAL MOTIONS

1. \_\_\_\_\_ days before trial is the last day to file motions to add additional parties to the lawsuit.

2. \_\_\_\_\_ days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

3. \_\_\_\_\_ All other non-dispositive pre-trial motions (including, but not limited to motions *in limine*) must be filed and heard not less than fourteen (14) days before trial.

#### F. TRIAL SETTING

1. This case can be set for a trial to commence on or after \_\_\_\_\_.  
**Note, that absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.**

2. It is estimated that the trial will take \_\_\_\_\_ days.

3. This case is to be tried as a:

\_\_\_\_\_ court trial

\_\_\_\_\_ jury trial

4. Parties preference for trial dates: **(Please confer and complete. Do not attach "unavailable dates")**.

(a) Week of Tuesday, \_\_\_\_\_, 20\_\_\_\_.

(b) Week of Tuesday, \_\_\_\_\_, 20\_\_\_\_.

(c) Week of Tuesday, \_\_\_\_\_, 20\_\_\_\_.

5. The parties will submit a pretrial conference memorandum pursuant to I.R.C.P. 16(d), which shall be filed with the Clerk no later than seven (7) days before the pre-trial conference. The Memorandum may be filed as a joint submission or separately.

**G. MEDIATION**

1. The parties agree to mediation: Yes \_\_\_ No \_\_\_

2. If yes:

- a. The parties agree to submit to mediation with a mediator mutually agreed upon.
- b. Mediation shall begin \_\_\_\_\_ days prior to trial.
- c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

**The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).**

Appearances:

Counsel for Plaintiff(s):

\_\_\_\_\_  
\_\_\_\_\_

Date:

Counsel for Defendant(s):

\_\_\_\_\_  
\_\_\_\_\_

Date:

Counsel for Other Parties:

\_\_\_\_\_  
\_\_\_\_\_

Date:





**(Plaintiff's rebuttal experts)**

7. 60 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.

8. 60 days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. 30 days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

**B. LAY WITNESSES**

1. 60 days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. 60 days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

3. 45 days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. 30 days before trial, all parties shall complete any depositions of lay witnesses.

**C. DEADLINES FOR INITIATING DISCOVERY**

1. 60 days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. ~~N/A~~ 30 days before trial is the last day for filing motions for a physical or mental examination.

**D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY**

1. 30 days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

**E. PRETRIAL MOTIONS**

1. 180 days before trial is the last day to file motions to add additional parties to the lawsuit.

2. 180 days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

3. → All other non-dispositive pre-trial motions (including, but not limited to motions *in limine*) must be filed and heard not less than fourteen (14) days before trial.

**F. TRIAL SETTING**

1. This case can be set for a trial to commence on or after \_\_\_\_\_  
Note, that absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.

2. It is estimated that the trial will take 3 days.

3. This case is to be tried as a:

X court trial  
\_\_\_\_\_ jury trial

4. Parties preference for trial dates: (Please confer and complete. Do not attach "unavailable dates").

- (a) Week of Tuesday, September 14, 2010.
- (b) Week of Tuesday, September 21, 2010. ✓
- (c) Week of Tuesday, September 28, 2010.

5. The parties will submit a pretrial conference memorandum pursuant to I.R.C.P. 16(d), which shall be filed with the Clerk no later than seven (7) days before the pre-trial conference. The Memorandum may be filed as a joint submission or separately.

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LAW OFFICES

PAGE 05/05

7/7/2009 11:48 AM FROM: Powers Thomson TO: 336-2000 PAGE: 005 OF 006

**G. MEDIATION**

1. The parties agree to mediation: Yes \_\_\_ No X

2. If yes:

- a. The parties agree to submit to mediation with a mediator mutually agreed upon.
- b. Mediation shall begin \_\_\_\_\_ days prior to trial.
- c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with L.R.C.P. 18(a) and 18(b).

Appearances:

Counsel for Plaintiff(s):

[Signature]

Date: 7/14/09

Counsel for Defendant(s):

[Signature: Douglas W. Crandall]

Date: 7/9/09

Counsel for Other Parties:

\_\_\_\_\_

Date:

JUL-07-2009 TUE 02:25 PM

TOM VALDEZ

DEFAULT DISPL. 1-208-736-8333 P. 002

**G. MEDIATION**

1. The parties agree to mediation: Yes \_\_\_ No X

2. If yes:

- a. The parties agree to submit to mediation with a mediator mutually agreed upon.
- b. Mediation shall begin \_\_\_\_\_ days prior to trial.
- c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Appearances:

Counsel for Plaintiff(s):

\_\_\_\_\_

Date:

Counsel for Defendant(s): CHRISTA SPRINGER & MICHELE RUNYAN

[Signature]  
\_\_\_\_\_

Date: 7/7/2009

Counsel for Other Parties:

\_\_\_\_\_

Date:



DISTRICT COURT  
Fifth Judicial District  
County of Twin Falls - State of Idaho

JUL 16 2009

By \_\_\_\_\_ *3:00 PM*  
Clerk  
Deputy Clerk

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


FARM BUREAU MUTUAL INSURANCE )  
COMPANY OF IDAHO, )  
 )  
Plaintiffs. )  
Vs )  
 )  
JOHN SCHROCK et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 09-829

ORDER APPROVING  
STIPULATED SCHEDULING  
and COURT TRIAL NOTICE

The stipulated scheduling order submitted by the parties is hereby approved and adopted as the Court's scheduling order. A formal pre-trial conference pursuant to IRCP 16 shall be conducted on August 23, 2010, at 9:00 A.M. In lieu thereof the parties may present a written stipulation pursuant to IRCP 16(e) no later than three business days prior to the scheduled pre-trial conference. Trial to the Court shall commence promptly at 9:00 a.m. on September 21, 2010.

DATED this 16th day of July 2009.

  
\_\_\_\_\_  
Randy J. Stoker  
District Judge

CERTIFICATE OF SERVICE

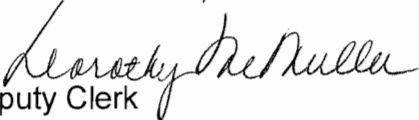
I hereby certify that on this 16th day of July 2009 I served a true and correct copy of the foregoing Order Approving Stipulated Scheduling and Court Trial Notice:

Raymond D. Powers  
Attorney at Law  
P.O. Box 1271  
Boise, Idaho 83701-1271

Douglas W. Crandall  
Attorney at Law  
420 W. Main Street, Suite 206  
Boise, Idaho 83701

Anthony M. Valdez  
Attorney at Law  
304 2<sup>nd</sup> Ave. E.  
Twin Falls, Idaho 83301

Kristina Glascock, Clerk

By   
Deputy Clerk

ORIGINAL

2009 JUL 28 AM 10:38

2009 JUL 28 AM 10:38

BY: \_\_\_\_\_

Raymond D. Powers  
ISB #2737; [rdp@powersthomson.com](mailto:rdp@powersthomson.com)  
James S. Thomson, II  
ISB #6124; [jst@powersthomson.com](mailto:jst@powersthomson.com)  
POWERS THOMSON, P.C.  
345 Bobwhite Court, Suite 150  
Post Office Box 9756  
Boise, Idaho 83707  
Telephone: (208) 577-5100  
Facsimile: (208) 577-5101  
W:\13\13-095\MSJMSJ - Mot.docx

Attorneys for Plaintiff/Counterdefendant

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiffs,

vs.

JOHN SCHROCK, LISA SCHROCK,  
STACY SCHROCK, CHRISTA  
SPRINGER, APRIL SEITZINGER,  
MICHELE RUNYAN, and CHRISTINA  
MONROE,

Defendants.

Case No. CV 09-829

**FARM BUREAU MUTUAL  
INSURANCE COMPANY OF  
IDAHO'S MOTION FOR SUMMARY  
JUDGMENT**

JOHN SCHROCK, STACY SCHROCK  
and CHRISTINA MONROE,

Counterclaimants,  
vs.  
FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,  
Counterdefendant.

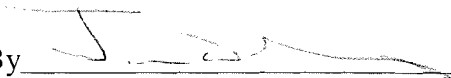
**COMES NOW** plaintiff/counterdefendant FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO (hereinafter "Farm Bureau"), by and through its counsel of record, Powers Thomson, P.C., pursuant to Rule 56 of the Idaho Rules of Civil Procedure, hereby moves this Court for summary judgment in its favor. This motion is made on the grounds that there exist no genuine issues of material fact concerning the fact that the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained as a result of the single-vehicle automobile accident that occurred on October 24, 2008, on Interstate Highway 84 in Minidoka County, Idaho which is the subject of this declaratory judgment action, and judgment should be entered in favor of Farm Bureau as a matter of law. In addition, Farm Bureau respectfully requests that this Court dismiss the Counterclaim of John Schrock, Stacy Schrock and Christina Monroe because the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained as a result of the subject accident.

This Motion is based upon the pleadings, files and record herein, as well the Farm Bureau's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, the Memorandum in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment and Affidavit of James S. Thomson, II, filed contemporaneously herewith.

ORAL ARGUMENT IS REQUESTED.

DATED this 27<sup>th</sup> day of July, 2009.

POWERS THOMSON, P.C.

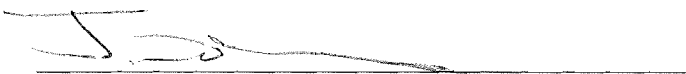
By   
Raymond D. Powers - Of the Firm  
James S. Thomson, II - Of the Firm  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27<sup>th</sup> day of July, 2009, I caused to be served a true copy of the foregoing **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO'S MOTION FOR SUMMARY JUDGMENT**, by the method indicated below, and addressed to each of the following:

Doug Crandall	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
CRANDALL LAW OFFICE	<input checked="" type="checkbox"/>	Hand Delivered
420 W. Main St. Suite 206	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Telecopy
<i>Attorney for Defendants/Counterclaimants John Schrock, Stacey Schrock and Christina Monroe and Defendants Michele Runyan and April Seitzinger</i>		

Anthony M. Valdez	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
BENOIT, ALEXANDER, HARWOOD, HIGH & VALDEZ	<input type="checkbox"/>	Hand Delivered
126 Second Avenue North	<input type="checkbox"/>	Overnight Mail
PO Box 366	<input type="checkbox"/>	Telecopy
<i>Attorneys for Defendants Christa Springer and Michele Runyan</i>		

  
Raymond D. Powers  
James S. Thomson, II

ORIGINAL

2009 JUL 28 AM 10:38  
BY \_\_\_\_\_  
CLEAN

Raymond D. Powers  
ISB #2737; [rdp@powersthomson.com](mailto:rdp@powersthomson.com)  
James S. Thomson, II  
ISB #6124; [jst@powersthomson.com](mailto:jst@powersthomson.com)  
POWERS THOMSON, P.C.  
345 Bobwhite Court, Suite 150  
Post Office Box 9756  
Boise, Idaho 83707  
Telephone: (208) 577-5100  
Facsimile: (208) 577-5101  
W:\13\13-095\MSJ\Statement of Undisputed Facts.docx

Attorneys for Plaintiff/Counterdefendant

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

vs.

JOHN SCHROCK, LISA SCHROCK,  
STACY SCHROCK, CHRISTA  
SPRINGER, APRIL SEITZINGER,  
MICHELE RUNYAN, and CHRISTINA  
MONROE,

Defendants.

Case No. CV 09-829

**FARM BUREAU MUTUAL  
INSURANCE COMPANY OF  
IDAHO'S STATEMENT OF  
UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

JOHN SCHROCK, STACY SCHROCK  
and CHRISTINA MONROE,

Counterclaimants,  
vs.  
FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,  
Counterdefendant.

**COMES NOW** plaintiff/counterdefendant FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO (hereinafter “Farm Bureau”), by and through its counsel of record, Powers Thomson, P.C., and submits the following Statement of Undisputed Material Facts in support of its motion for summary judgment:

**The Motor Vehicle Accident**

1. On October 24, 2008, defendant Christa Springer was operating a 2001 Isuzu Rodeo (“Isuzu Rodeo”) westbound on Interstate-84 in Minidoka County, Idaho when she lost control of the vehicle and crashed.<sup>1</sup> Traveling as passengers in the Isuzu Rodeo were defendants Stacy Schrock, April Seitzinger, Christina Monroe and Michele Runyan.<sup>2</sup> All occupants of the Isuzu Rodeo sustained injuries as a result of the accident.<sup>3</sup>

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<sup>1</sup> See Complaint for Declaratory Judgment (“Complaint”), ¶¶ 13, 15, previously filed with this Court on February 13, 2009; see also Answer and Counterclaim (“Answer and Counterclaim”) filed on behalf of Defendants/Counterclaimants John Schrock, Stacey Schrock and Christina Monroe, ¶¶ 13, 15, previously filed with this Court on April 6, 2009. Farm Bureau’s instant motion cites to the original Answer and Counterclaim although it is Farm Bureau’s understanding, pursuant to the Court’s May 20, 2009 Order Re: Farm Bureau’s Motion to Dismiss Counterclaim, that Defendants/Counterclaimants John Schrock, Stacey Schrock and Christina Monroe will be filing an Amended Answer and Counterclaim substituting Farm Bureau for Lisa Schrock as the proper counterdefendant. However, as of today’s date, that amended pleading has not been filed. That said, Farm Bureau’s arguments are based, in part, on the understanding that the amended pleading will be filed in the immediate future. See also Defendants’ Christa Springer and Michele Runyan’s Answer to Complaint (“Answer”), ¶ 6, previously filed with this Court on May 18, 2009.

<sup>2</sup> See Complaint, ¶ 14; Answer and Counterclaim, ¶ 14; Answer, ¶ 6.

<sup>3</sup> See Complaint, ¶¶ 16-17; Answer and Counterclaim, ¶ 16. In particular, defendant Stacey Shrock sustained significant and permanent injuries and it is anticipated that her injury claim alone may exceed the limits of both the Farm Bureau City Squire Policy and Farm Bureau Umbrella Policy. See also Answer, ¶ 6.

2. At the time of the subject accident, defendant Christa Springer was operating the Isuzu Rodeo with the express or implied permission of defendant Stacy Schrock.<sup>4</sup>

3. The Isuzu Rodeo was owned by defendant Lisa Schrock.<sup>5</sup> Defendants Lisa Schrock and John Schrock are the mother and father of defendant Stacey Schrock, who resided with her parents at the time of subject accident.<sup>6</sup>

### **The Farm Bureau City Squire Policy**

4. On October 24, 2008, defendants John Schrock and Lisa Schrock were insureds pursuant to a City Squire Policy issued by Farm Bureau (Policy No. 01-B-079565-01), for the policy period October 19, 2008 to October 19, 2009.<sup>7</sup>

5. The Farm Bureau City Squire Policy Declarations identify the Isuzu Rodeo as an insured vehicle and also identify defendant Stacy Schrock as a “Section III Additional Insured” on the Policy, “[b]ut only in regard to the 2001 Isuzu Rodeo.”<sup>8</sup> The Farm Bureau City Squire Policy Declarations state that the limit of liability for bodily injury and property damage under Section III – Automobile Insurance is \$500,000 for each occurrence.<sup>9</sup>

6. Pursuant to the relevant provisions of the Farm Bureau City Squire Policy, Defendants Stacy Schrock, Lisa Schrock and John Schrock are insureds under that Policy, and defendant Christa Springer is an insured in so far as she was operating the Isuzu Rodeo within the scope of defendant Stacy Schrock’s permission.

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<sup>4</sup> See Complaint, ¶ 21; Answer and Counterclaim, ¶ 21; Answer, ¶ 7.

<sup>5</sup> See Answer and Counterclaim, ¶ 18; Answer, ¶ 7.

<sup>6</sup> See Answer and Counterclaim, ¶¶ 19-20; Answer, ¶ 7.

<sup>7</sup> See Complaint, ¶ 22; Answer and Counterclaim, ¶ 22; Answer, ¶ 8; *see also* Affidavit of James S. Thomson, II in Support of Farm Bureau Mutual Insurance Company of Idaho’s Motion for Summary Judgment (“Thomson Aff.”), Exhibit A.

<sup>8</sup> See Complaint, ¶¶ 23-24; Answer and Counterclaim, ¶¶ 23-24; Answer, ¶ 8; *see also* Thomson Aff., Ex. A, p. 3 of Declarations.

<sup>9</sup> See Complaint, ¶ 25; Answer and Counterclaim, ¶ 25; Answer, ¶ 8; *see also* Thomson Aff., Ex. A, p. 2 of Declarations.



7. Coverage under the Farm Bureau City Squire Policy is not at issue in this case, as Farm Bureau has acknowledged coverage under the City Squire Policy with respect to defendant Christa Springer's operation of the Isuzu Rodeo at the time of the October 24, 2008 accident.<sup>10</sup>

### The Farm Bureau Umbrella Policy

8. On October 24, 2008, defendants John Schrock and Lisa Schrock were insureds pursuant to a Personal Umbrella Policy issued by Farm Bureau (Policy No. 01-U-079565-06), for the policy period October 19, 2008 to October 19, 2009.<sup>11</sup>

9. The Farm Bureau Umbrella Policy Declarations identify the Schrocks' Farm Bureau City Squire Policy on the Schedule of Underlying Insurance and state that the limit of personal liability coverage under the policy is \$1,000,000 for each occurrence.<sup>12</sup>

10. The Farm Bureau Umbrella Policy contains the following relevant definitions:

#### **PART I – DEFINITIONS**

In this policy, you and your mean a person named in the Declarations as an insured and that person's spouse if a resident of the same household. . . . The following defined words appear in bold print in the policy.

\* \* \*

**Bodily injury** means physical injury, sickness, disease, or resulting death to a person. . . .

\* \* \*

**Damages** means the total of damages you must pay (legally or by agreement with our written consent) because of **personal injury**, **bodily injury**, or **property damage**, covered by this policy.

\* \* \*

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<sup>10</sup> See Complaint, ¶¶ 28-29; Answer and Counterclaim, ¶¶ 28-29; Answer, ¶ 10.

<sup>11</sup> See Complaint, ¶ 30; Answer and Counterclaim, ¶ 30; Answer, ¶ 11; *see also* Thomson Aff., Ex. B.

<sup>12</sup> See Complaint, ¶¶ 31-32; Answer and Counterclaim, ¶¶ 31-32; Answer, ¶ 11; *see also* Thomson Aff., Ex. B, p. 1 of Declarations.

**Insured** means you, and if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**. **Insured** does not include a **relative** age 24 or over who is a student and lives away from your residence while attending school. A **permissive driver** who is your employee is an **insured** while using your **motor vehicle**.

**Permissive driver** means any person or organization while using a **motor vehicle** owned by, rented by, or loaned to you or any **insured** and covered by this policy, provided that an **insured** gave permission for the type of use of the **motor vehicle**.

\* \* \*

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

\* \* \*

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

**Retained limit** means the limit so stated in the Declarations that will be paid by you. This limit applies if the **underlying insurance** described in the Declarations and the amounts of any other insurance do not provide coverage to the **insured**. But this **retained limit** does not apply if the injury or damage would have been covered by **underlying insurance** but for exhaustion of the applicable limits of insurance of such **underlying insurance**.

\* \* \*

**Underlying limit** means the total of the applicable limits of insurance of the type of policy or policies scheduled as **underlying insurance**.

**Underlying insurance** means the policies listed on the schedule of underlying insurance and includes any other insurance available to the **insured** that is applicable to the injury or damage alleged.<sup>13</sup>

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<sup>13</sup> See Complaint, ¶ 33; Answer and Counterclaim, ¶ 33; Answer, ¶ 10; see also Thomson Aff., Ex. B, pp. 1-2 of Policy.

11. The Farm Bureau Umbrella Policy also contains the following relevant provisions:

**PART II – COVERAGES**

1. We will pay **damages** for which the **insured** becomes legally responsible caused by:
  - a. An **occurrence** to which this insurance applies that results in **bodily injury** or **property damage**, during the policy period; . . . .
2. These coverages are subject to all exclusions, terms, and conditions of this policy.
3. These coverages apply only to **damages** in excess of the greater of the applicable **underlying limit** or the **retained limit**. Any payment we make for **damages** is subject to **Part V – Limit of Liability**.

\* \* \*

**PART IV – EXCLUSIONS**

We do not cover:

\* \* \*

9. A **permissive driver**. If state law requires that this policy apply to a **permissive driver**, however, our applicable limit of liability for an **occurrence** shall be reduced (see Part V Limit of Liability). This exclusion does not apply if the **permissive driver** is your employee;

\* \* \*

16. **Personal injury, bodily injury, or property damage** sustained by you, your spouse, your minor children, your **relative**, or any other **insured**;

\* \* \*

**PART V – LIMIT OF LIABILITY**

Regardless of the number of **insureds**, claims, or injured persons, the most we pay as **damages** resulting from one **occurrence** shall

not exceed the amount stated in the Declarations, subject to the following:

1. This policy pays only after the limits of the **underlying insurance**, and any other insurance covering the claim, have been paid by the **insured** or on the **insured's** behalf;

\* \* \*

9. If the law requires that this policy covers a **permissive driver**, the limits of liability that apply to this **permissive driver** shall be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility, or similar law affecting motor vehicle insurance requirements.<sup>14</sup>

12. Pursuant to the foregoing policy provisions, defendants Stacy Schrock, Lisa Schrock and John Schrock are insureds under the Farm Bureau Umbrella Policy.<sup>15</sup>

13. While defendant Stacy Schrock qualifies as an insured under the Farm Bureau Umbrella Policy, Part IV, Exclusion 16 of the Policy excludes from coverage “bodily injury” sustained by “you, your spouse, your minor children, your **relative**, or any other **insured**.”<sup>16</sup> Defendant Stacey Schrock is an “insured,” as well as a “relative,” as those terms are defined in the Farm Bureau Umbrella Policy.<sup>17</sup> As such, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by defendant Stacey Schrock as a result of the October 24, 2008 accident.<sup>18</sup>

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<sup>14</sup> See Complaint, ¶ 34; Answer and Counterclaim, ¶ 34; Answer, ¶ 12; *see also* Thomson Aff., Ex. B, pp. 2-6 of Policy.

<sup>15</sup> See Complaint, ¶ 35; Answer and Counterclaim, ¶ 35; Answer, ¶ 13.

<sup>16</sup> See Thomson Aff., Ex. B, p. 4.

<sup>17</sup> See Complaint, ¶ 51; Answer and Counterclaim, ¶ 51; Answer, ¶ 24.


<sup>18</sup> See Thomson Aff., Ex. B.

14. Defendant Christa Springer is not specifically named as an insured on the Farm Bureau Umbrella Policy, nor does she otherwise qualify as an “insured” under the Umbrella Policy.<sup>19</sup>

15. In addition, Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy excludes coverage for a “permissive driver,” which is defined by the Policy as any person while using a motor vehicle owned by an insured and covered by the Policy, provided that an insured gave permission for the type of use of the motor vehicle.<sup>20</sup> At the time of the October 24, 2008 accident, defendant Christa Springer was operating the Isuzu Rodeo with the permission of defendant Stacey Schrock, who qualifies as an “insured” under the Farm Bureau Umbrella Policy.<sup>21</sup> As such, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits for damages against defendant Christa Springer arising from her operation of the Isuzu Rodeo at the time of the October 24, 2008 accident.<sup>22</sup>

DATED this 27<sup>th</sup> day of July, 2009.

POWERS THOMSON, P.C.

By   
Raymond D. Powers - Of the Firm  
James S. Thomson, II - Of the Firm  
Attorneys for Plaintiff/Counterdefendant

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at pp. 1, 4.

<sup>21</sup> *See* Complaint, ¶¶ 46-47; Answer and Counterclaim, ¶¶ 46-47; Answer, ¶ 21.


<sup>22</sup> *See* Thomson Aff., Ex. B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27<sup>th</sup> day of July, 2009, I caused to be served a true copy of the foregoing **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, by the method indicated below, and addressed to each of the following:

Doug Crandall	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
CRANDALL LAW OFFICE	<input checked="" type="checkbox"/>	Hand Delivered
420 W. Main St. Suite 206	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Telecopy
<i>Attorney for Defendants/Counterclaimants</i>		
<i>John Schrock, Stacey Schrock and Christina</i>		
<i>Monroe and Defendants Michele Runyan</i>		
<i>and April Seitzinger</i>		

Anthony M. Valdez	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
BENOIT, ALEXANDER, HARWOOD,	<input type="checkbox"/>	Hand Delivered
HIGH & VALDEZ	<input type="checkbox"/>	Overnight Mail
126 Second Avenue North	<input checked="" type="checkbox"/>	Telecopy
PO Box 366		
Twin Falls, ID 83303		
<i>Attorneys for Defendants Christa Springer</i>		
<i>and Michele Runyan</i>		

  
\_\_\_\_\_  
Raymond D. Powers  
James S. Thomson, II

ORIGINAL

FIFTH JUDICIAL DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
FILED

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Attorneys for Plaintiff/Counterdefendant

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

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

vs.

JOHN SCHROCK, LISA SCHROCK,  
STACY SCHROCK, CHRISTA  
SPRINGER, APRIL SEITZINGER,  
MICHELE RUNYAN, and CHRISTINA  
MONROE,

Defendants.

Case No. CV 09-829

**MEMORANDUM IN SUPPORT OF  
FARM BUREAU MUTUAL  
INSURANCE COMPANY OF  
IDAHO'S MOTION FOR SUMMARY  
JUDGMENT**

JOHN SCHROCK, STACY SCHROCK  
and CHRISTINA MONROE,

Counterclaimants,  
vs.  
FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,  
Counterdefendant.

**COMES NOW** plaintiff/counterdefendant FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO (hereinafter "Farm Bureau"), by and through its counsel of record, Powers Thomson, P.C., and states as follows in support of its motion for summary judgment:

### I. INTRODUCTION

This is a declaratory judgment action arising out of a single-vehicle automobile accident that occurred on October 24, 2008, on Interstate Highway 84 in Minidoka County, Idaho. Through this action Farm Bureau seeks a declaration concerning its rights and obligations under primary and personal umbrella policies, which provided insurance to John Schrock and Lisa Schrock with regard to the automobile involved in the accident, a 2001 Isuzu Rodeo. The significant dispute in this case concerns the extent of coverage, if any, provided under the Schrocks' personal umbrella policy.

As will be demonstrated through the analysis set forth below, the Schrocks' personal umbrella policy does not provide coverage in regard to the October 24, 2008 accident, and Farm Bureau is entitled to entry of a declaratory judgment in its favor as a matter of law. In addition, Farm Bureau respectfully requests that this Court dismiss the Counterclaim of John Schrock, Stacey Schrock and Christina Monroe because the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained as a result of the subject accident.



## II. SUMMARY JUDGMENT STANDARD

Motions for summary judgment are governed by Idaho Rule of Civil Procedure 56(c) which provides in part:

The judgment sought shall be rendered forthwith if the pleadings, discovery, depositions and admission on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Idaho R. Civ. P. 56(c).

In evaluating the motion, the Court should consider facts and reasonable inferences in the light most favorable to the non-moving party. *Willie v. Board of Trustees*, 138 Idaho 131, 133, 59 P.3d 302, 304 (2002). If the moving party challenges an element of the non-moving party's case on the basis that there are no genuine issues of material fact, the burden shifts to the non-moving party to present evidence that is sufficient to establish a genuine issue of material fact. *Id.* Stated otherwise, when a defendant moves for summary judgment, the plaintiff cannot "rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact." *Anderson v. Hollingsworth*, 136 Idaho 800, 803, 41 P.3d 228, 231 (2001); *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991). This is further supported by Idaho Rule of Civil Procedure Rule 56(e), which states in pertinent part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, that the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Idaho R. Civ. P. 56(e). When the non-moving party fails to make a showing sufficient to establish the existence of an essential element of the claim upon which he or she bears the burden of proof, summary judgment is proper. *Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000).

### III. ARGUMENT AND ANALYSIS

**A. The household exclusion and permissive driver exclusion in the Farm Bureau Umbrella Policy are unambiguous, valid and enforceable as a matter of contract between Farm Bureau and its insureds.**

Idaho case law is well-settled that parties to an insurance contract have the power and right to contract with respect to certain risks for which a contract of insurance will or will not cover. In Idaho, “[a]n insurance policy is a contract and must be construed the same way as other contracts.” *Anderson v. Title Ins. Co.*, 103 Idaho 875, 878, 655 P.2d 82, 85 (1982). In determining the intent of the contracting parties, the contract must be construed as a whole. *See Wing v. Martin*, 107 Idaho 267, 273, 688 P.2d 1172, 1178 (1984). The Idaho Supreme Court has repeatedly stated that it is the function of the Court “to construe a contract of insurance as it is written, and the Court by construction cannot create 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.” *Kromrei v. AID Ins. Co.*, 110 Idaho 549, 551-552, 716 P.2d 1321, 1323-1324 (1986) (citing *Unigard Ins. Group v. Royal Globe, Etc.*, 100 Idaho 123, 128, 594 P.2d 633 (1979) (quotation omitted)).

The proper method by which to interpret a contract of insurance is well-established in Idaho. Where the policy language of an insurance policy is unambiguous, there is no occasion for construction and coverage must be determined, as a matter of law, according to the plain meaning of the words employed. *Casey v. Highland Ins. Co.*, 100 Idaho 505, 509, 600 P.2d 1387, 1391 (1979). Although a contract may be unambiguous, if it violates public policy, or defeats the purpose for which a statute has been enacted, it is illegal and unenforceable. *See Martinez v. Idaho Counties Reciprocal Mgmt. Program*, 134 Idaho 247, 252, 999 P.2d 902, 907 (2000); *Whitney v. Continental Life and Accident Co.*, 89 Idaho 96, 105, 403 P.2d 573, 579 (1965). Accordingly, an insurance company, such as Farm Bureau, is entitled to structure those

terms it will undertake to cover an insured against loss, and it cannot be compelled to provide coverage on any terms other than those agreed to with the insured, provided, of course, that the terms of the insurance policy are not illegal, or contravene public policy or a statute. *See, e.g., Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 500, 465 P.2d 107, 111 (1970) (“Unless in circumstances affronting public policy, it is no part of the business of the courts to decline to give effect to contracts which parties have freely and deliberately made.” (quotation omitted)).

In the instant matter, the household and permissive driver exclusions contained in the Farm Bureau Umbrella Policy are clear and unambiguous, and the public policy considerations regarding these exclusions in mandatory “motor vehicle liability polic[ies]” as may be reflected in Idaho’s Motor Vehicle Financial Responsibility Act (“MVFRA”)—codified in Title 49, Chapter 12 of the Idaho Code—do not conflict with the freedom of Farm Bureau and Lisa and John Schrock to contract for the additional and optional insurance coverage provided for by the Farm Bureau Umbrella Policy. Although the law generally requires that policy exclusions be strictly construed against an insurer, in this case, the household and permissive driver exclusions are in no way ambiguous and should be upheld. *See Moss v. Mid-America Fire and Marine Ins.*, 103 Idaho 298, 300, 647 P.2d 754, 756 (1982).

In sum, there is no statutory authority mandating the purchase of excess or umbrella coverage. The Farm Bureau Umbrella Policy is not a motor vehicle liability policy subject to the requirements of Idaho’s motor vehicle financial responsibility laws, and based upon contract interpretation principles promulgated by the Idaho Supreme Court as set forth above, the household and permissive driver exclusions contained in the Farm Bureau Umbrella Policy should be upheld as valid and enforceable because they are not illegal, nor do they contravene public policy or a statute.

**B. The Farm Bureau Umbrella Policy does not qualify as a “motor vehicle liability policy” and, therefore, is not subject to the requirements of Idaho’s MVFRA.**

The MVFRA regulates motor vehicle liability insurance policies in Idaho. It consists of a comprehensive set of statutory provisions that apply to the compulsory motor vehicle insurance within its purview. While the Farm Bureau City Squire Policy (the “underlying policy”) qualifies as a “motor vehicle liability policy,” and, thus, is governed by Idaho’s MVFRA, the Farm Bureau Umbrella Policy falls outside the scope of the MVFRA’s parameters. To rule that the Farm Bureau Umbrella Policy is governed by Idaho’s MVFRA would require this Court to revise and rewrite the terms of that Policy, not to mention require all excess or additional policies of insurance to conform to the requirements of the Act, an outcome clearly not intended by the Idaho Legislature. Such a result would substantially expand the coverage initially bargained for by the Schrocks (at a modest premium), and defeat the very important, yet limited, benefit of such policies.

**1. The statutory framework of Idaho’s MVFRA.**

Idaho’s MVFRA, Idaho Code §§ 49-1201 *et seq.*, sets forth the requirements for compulsory insurance with respect to the ownership and/or operation of motor vehicles within the State. In deciding the instant matter, the relevant statutory provisions of the Act that must be examined are as follows:

Idaho Code § 49-1229(1). Required motor vehicle insurance.

Every owner of a motor vehicle which is registered and operated in Idaho by the owner or with his permission shall continuously, except as provided in section 41-2516, Idaho Code, provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of motor vehicles described therein in an amount not less than that required by section 49-117, Idaho Code, and shall demonstrate the existence of any other coverage required by this title or a certificate of self-insurance issued by the department pursuant to section 49-1224, Idaho Code, for each motor vehicle to be registered.

Idaho Code § 49-117(18) sets forth the mandatory minimum level of insurance required under the Act:

“Proof of financial responsibility” means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one (1) person in any one (1) accident, and, subject to the limit for one (1) person, in the amount of fifty thousand dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and in the amount of fifteen thousand dollars (\$15,000) because of injury to or destruction of property of others in any one (1) accident.

In turn, Idaho Code § 49-1212 (Expressed, permitted and implied provisions of motor vehicle liability policy) sets forth the specific requirements that a “motor vehicle liability policy” must satisfy under the MVFRA. A “motor vehicle liability policy” is defined as:

[A]n owner’s or operator’s policy of liability insurance, certified as provided in section 49-1210, Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

I.C. § 49-114(18).

Idaho Code § 49-1212 was enacted, in part, to ensure that insurance companies provide minimum levels of coverage, and designates two types of “motor vehicle liability policies”—“owner’s policies” and “operator’s policies.”

In reference to “owner’s policies,” the Act provides:

(1) An owner’s policy of liability insurance shall: (a) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is to be granted; and (b) Insure the person named therein and any other person, as insured, using any such described motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicles . . . with respect to each motor vehicle, as provided in section 49-117, Idaho Code.

I.C. § 49-1212(1).

In reference to “operator’s policies,” the Code provides:

(2) An operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth in subsection (1) of this section with respect to an owner's policy of liability insurance.

I.C. § 49-1212(2).

Defining these two types of "motor vehicle liability polic[ies]" is critical, because it underscores the Idaho Legislature's intent to distinguish between those policies that constitute "motor vehicle liability polic[ies]" and those that constitute excess or umbrella policies. Importantly, Idaho's MVFRA recognizes that not all insurance policies that afford coverage for liability arising out of the operation or use of motor vehicles are considered "motor vehicle liability polic[ies]" as that term is defined in the Act. Specifically, if the policies are excess or umbrella policies, they are not subject to the requirements of Idaho's MVFRA. *See* I.C. § 49-1212(6) (providing that "any excess or additional coverage shall not be subject to the provisions of this chapter").

Finally, Idaho Code § 49-1212(12) provides:

No motor vehicle liability policy providing coverage beyond state mandated minimum limits shall provide a reduced level of coverage to any insured's family or household member or other authorized user except as provided in section 41-2510, Idaho Code.

I.C. § 49-1212(12). This statutory provision became effective on July 1, 2007 and requires any "motor vehicle liability policy" to maintain the same level of coverage for all insureds and those persons explicitly or implicitly given permission to operate the insured vehicle. Importantly, however, this newly enacted provision does not extend to an excess or umbrella policy of insurance.

2. **The Farm Bureau Umbrella Policy is not a “motor vehicle liability policy” under Idaho’s MVFRA.**

The Farm Bureau Umbrella Policy is a broad blanket excess legal liability contract of insurance whose very nature is to “fill the gaps” left open by an insured’s primary or underlying policy of insurance. As such, it cannot be considered a “motor vehicle liability policy” as that term is defined under Idaho’s MVFRA.

a. **An umbrella policy fundamentally differs from a “motor vehicle liability policy” of insurance.**

An umbrella policy is fundamentally different from a motor vehicle liability policy of insurance. “An ‘umbrella policy’ is a supplemental insurance policy which protects insureds against losses in excess of the amount covered by their liability insurance policies and fills in gaps in coverage.” *Fratus v. Republic Western Ins. Co.*, 147 F.3d 25 (1st Cir. 1998) (citation omitted). The purpose of umbrella coverage is to protect the insured in the event of a catastrophic loss in which liability exceeds the available primary coverage; it is only after the underlying primary policy has been exhausted that the coverage provided for by an umbrella policy is potentially implicated. *Couch on Insurance 3D*, § 220:32. Moreover, an umbrella policy is not dedicated solely to motor vehicle liability, but rather provides coverage for a variety of risks that are unrelated to motor vehicle ownership and operation. *Id.*

Several jurisdictions have distinguished an umbrella policy from a motor vehicle liability policy. For example, in *Trinity Universal Ins. Co. v. Metzger*, 360 So.2d 960 (Ala. 1976), the Alabama Supreme Court noted:

An umbrella policy . . . is fundamentally excess insurance designed to protect against catastrophic loss. Before an umbrella policy is issued, a primary policy (the “underlying policy”) must be in existence and this primary policy must by law provide uninsured motorist coverage. The umbrella policy assumes a risk of much less frequent occurrence, i.e., the risk of judgments in excess of primary policy limits, and accordingly carries premiums which reflect the lesser magnitude of this risk. The umbrella policy issued by Trinity Universal is an

inherently different type of insurance from an automobile or motor vehicle liability policy . . . .

*Id.* at 962.

Similarly, in *Jostens v. Mission Ins. Co.*, 387 N.W.2d 161, 165 (Minn. 1986), the Minnesota Supreme Court stated:

This arrangement [of having underlying coverage] enables the umbrella insurer to offer high limits at a relatively modest premium. The umbrella policy is attractive to the prudent person who wants protection for the infrequent but always possible and much-to-be-dreaded catastrophic loss . . . . The policy can be issued for a relatively modest premium because most claims are absorbed by the underlying insurer, and also because the umbrella insurer's defense costs are ordinarily less than those of other insurers.

*Id.*

This distinction was also shared by the New Jersey appellate court in *Weitz v. Allstate Ins. Co.*, 642 A.2d 1040, 1041 (N.J. Super. 1994):

[I]t is important to recognize the distinction between an automobile policy [and] an umbrella policy . . . . The former is mandated by and subject to strict statutory regulation . . . . [An] umbrella policy is not subject to such regulation. It is additional coverage not required for the purpose of auto insurance. While it is well established that automobile liability insurance is statutorily required and that any deviation therefrom would be in contravention with the public policy of New Jersey mandating auto insurance . . . . umbrella policies are not required. Any additions, exclusions, or other conditions of such policy [do] not contravene public policy in New Jersey . . . .

In fact, the majority of courts having considered the issue have concluded that an umbrella policy is not a "motor vehicle liability policy" as defined by their motor vehicle financial responsibility statutory schemes. *See, e.g., Rowe v. Travelers Indemnity Co.*, 800 P.2d 157 (Mont. 1990); *O'Hanlon v. Hartford Accident and Indemnity Co.*, 639 F.2d 1019 (3d Cir. 1981) (interpreting Delaware law); *Furlough v. Transamerica Ins. Co.*, 203 Cal. App. 3d 40 (2 Dist. 1988); *Cohn v. Pacific Employers Ins. Co.*, 569 A.2d 544 (Conn. 1990); *Continental Ins. Co. v. Howe*, 488 So.2d 917 (Fla. App. 3 Dist. 1986) (interpreting Rhode Island law); *Cincinnati*



*Ins. Co. v. Miller*, 546 N.E.2d 700 (Ill. App. 1989); *United Services Automobile Ass'n v. Wilkinson*, 569 A.2d 749 (N.H. 1989); *Matarasso v. Continental Casualty Co.*, 82 A.D.2d 861 (N.Y. 1981); *Moser v. Liberty Mut. Ins. Co.*, 731 P.2d 406 (Okla. 1986); and *MacKenzie v. Empire Ins. Co.*, 782 P.2d 1063 (Wash. 1989).

As noted by the courts in those cases, there are fundamental differences between a motor vehicle liability policy and an excess or umbrella policy, or in the instant matter, between the Farm Bureau City Squire Policy and the Farm Bureau Umbrella Policy. The most glaring is the cost of each policy of insurance. The total annual premium for the City Squire Policy (or “underlying insurance”) here was \$2,132.<sup>1</sup> On the other hand, the annual cost of the Umbrella Policy was \$231.<sup>2</sup> A second significant difference is that the Umbrella Policy, by its own terms, is not effective unless there is an underlying policy in existence providing coverage consistent with the statutory mandates set forth under Idaho’s MVFRA; even then, the Umbrella Policy is available only when the limits of the underlying policy are exhausted. Here, the City Squire Policy provides coverage well above the statutory minimums set forth under Idaho’s MVFRA (\$500,000 versus \$50,000 required by the MVFRA due to number of occupants in the Isuzu Rodeo). Third, the underlying policy cannot contain any exclusion that would negate the statutory coverage mandates of Idaho’s MVFRA. However, while the underlying policy must satisfy the statutory mandates, the Umbrella Policy is not subject to such statutory restrictions. Finally, the Umbrella Policy insures the policyholder (i.e., John and Lisa Schrock) versus a particular automobile. In fact, the Umbrella Policy does not even mention the Isuzu Rodeo, or any other motor vehicle for that matter. Overall, these two policies differ dramatically in their

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<sup>1</sup> See Thomson Aff., Exhibit A, p. 3 of the Declarations.

<sup>2</sup> See Thomson Aff., Exhibit B, p. 1 of the Declarations.

cost, their scope, and their statutory restrictions, and must be treated as different insurance products.

As a result, this Court should adopt the sound reasoning set forth by the majority of jurisdictions having ruled that an umbrella policy is not a “motor vehicle liability policy.” As outlined herein, there are fundamental differences between the two types of policies that cannot be reconciled.

b. **The Farm Bureau Umbrella Policy does not meet the statutory definition of a “motor vehicle liability policy” under Idaho’s MVFRA.**

The Farm Bureau Umbrella Policy does not qualify as a “motor vehicle liability policy” under Idaho’s MVFRA. Pursuant to Idaho Code § 49-114(18), a “motor vehicle liability policy” is defined as:

[A]n owner’s or operator’s policy of liability insurance, certified as provided in section 49-1210, Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

I.C. § 49-114(18).

In *Rowe v. Travelers Indemnity Co.*, 800 P.2d 157 (Mont. 1990), the Montana Supreme Court confronted this precise issue and held that an umbrella policy could not constitute a “motor vehicle liability policy” as envisioned by that state’s compulsory insurance law. *Id.* at 160. Importantly, Montana’s compulsory insurance law is identical to Idaho’s. *See Farmers Ins. Group v. Reed*, 109 Idaho 849, 850, 712 P.2d 550, 551 (1985) (stating that “Montana’s newly enacted compulsory insurance law [was] identical to Idaho’s”). Based on the statutory definition of “motor vehicle liability policy”—which is identical to that found in I.C. § 49-114(18)—the Montana Supreme Court refused to blur the distinction between an excess or umbrella policy and a “motor vehicle liability policy.”

This Court should adopt the reasoning advanced in *Rowe*. Critically, the statutory definition of “motor vehicle liability policy” does not include excess insurance, such as an umbrella policy. The Farm Bureau Umbrella Policy is not an owner’s policy because it does not specifically identify the vehicles to which it applies. Further, it is not an operator’s policy because it covers vehicles owned by the insured, as well as non-owned motor vehicles. Simply because an umbrella policy potentially covers liabilities arising from the use of a motor vehicle does not, by that fact itself, transform it into a “motor vehicle liability policy” subject to Idaho’s MVFRA. Again, the purpose of excess or umbrella coverage is to protect the family assets of the policyholder in the case of a catastrophic liability judgment being entered against him or her, and to address a wide range of potential liabilities beyond just the liability that may result from operation of a motor vehicle. As such, the Farm Bureau Umbrella Policy is excluded from the restrictions and other requirements of Idaho’s MVFRA.

- c. **Based upon principles of statutory construction, the Farm Bureau Umbrella Policy does not qualify as a “motor vehicle liability policy” under Idaho’s MVFRA, and, thus, is not subject to its statutory requirements.**

Based upon principles of statutory construction, it is clear that the Idaho Legislature sought to exclude excess insurance, such as umbrella policies, from the statutory mandates applicable to motor vehicle liability policies. With respect to excess or umbrella coverage, Idaho’s MVFRA provides:

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and any excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants an excess of additional coverage the term “motor vehicle liability policy” shall apply only to that part of the coverage which is required by this section.

I.C. § 49-1212(6). Based upon the unambiguous language set forth in Idaho Code § 49-1212(6), it is clear the Idaho Legislature intended to treat an excess or umbrella policy different from a “motor vehicle liability policy.”

The applicable rules for statutory construction in Idaho are well-established. In determining the meaning of a statute, a court must determine and give effect to legislative intent. *Idaho Cardiology Assoc., P.A. v. Idaho Physicians Network, Inc.*, 141 Idaho 223, 227, 108 P.3d 370, 374 (2005).<sup>3</sup> When construing a statute, the Court “will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions.” *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). 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).

Where a statute is clear and unambiguous, statutory construction is unnecessary and courts are free to apply the plain meaning; the Court does not construe it but simply follows the law as written and need only determine the application of the words to the facts of the case at hand. *Porter v. Board of Trustees, Preston School District No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004). 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, plain meaning “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or

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<sup>3</sup> Statute as used in this context refers to a specific provision contained within an “Act,” or statutory framework. *See, e.g., Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 429, 849 P.2d 98, 102 (1993). For instance, Idaho Code § 49-1212 is a specific provision contained within the statutory framework of Title 49, Chapter 12 of the Idaho Code, or “Act” creating MVFRA.

redundant.” *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006) (quotations omitted) (emphasis added). Terms in a statute are given their common, everyday meanings when the legislature has not provided a definition in the statute. *Ada County Assessor*, 123 Idaho at 428, 849 P.2d at 101. The statute must be construed as a whole. *Hoskins v. Howard*, 132 Idaho 311, 315, 971 P.2d 1135 (1998). If the language of the statute is reasonably susceptible of only one interpretation, the statute is unambiguous and there is no occasion to look beyond the text of the statute. *In re Permit No. 36-7200*, 121 Idaho at 822-24, 828 P.2d at 851-53.

Where, however, 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). “When a statute is ambiguous, ‘it must be construed to mean what the legislature intended it to mean. To determine that intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.’” *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 388, 398-99, 111 P.3d 73, 83-84 (2005).

Here, Idaho Code § 49-1212(6) unambiguously provides that “any excess or additional coverage shall not be subject to the provisions of this chapter.” (emphasis added.) In crafting Idaho’s MVFRA, the Legislature concluded that it was not feasible or realistic to require every motor vehicle owner or operator to purchase excess or umbrella coverage, but at the same time it recognized that a prudent individual who wished to expand his or her coverage, at the lowest possible cost, should be permitted to do so without having to comply with the restrictions of the MVFRA. Nor is there any other statutory authority dictating the parameters of coverage contained in such excess or additional policies of insurance. Even the Idaho Supreme Court has recognized that “the legislatively set minimum limits of coverage do not preclude the owner or operator—either or both—from purchasing greater coverage than the statutorily set minimum

limits.” *Colonial Penn Franklin Ins. Co. v. Welch*, 119 Idaho 913, 916, 811 P.2d 838, 841 (1990) (emphasis added). Idaho Code § 49-1212(6) further provides that “the term ‘motor vehicle liability policy’ shall apply only to that part of coverage which is required by this section.” I.C. § 49-1212(6) (emphasis added). An umbrella policy cannot be considered “required coverage” because it offers coverage beyond that required by the statutorily set minimum limits.

An umbrella policy is considered an “excess” policy and Idaho Code § 49-1212(6) unambiguously exempts from the requirements of Idaho’s MVFRA any excess coverage. Unlike the Farm Bureau City Squire Policy (the “underlying policy”), which is governed by Idaho’s MVFRA, the Farm Bureau Umbrella Policy is defined by its plain language and is unencumbered by the statutory requirements promulgated by the Idaho’s MVFRA. To rule otherwise would render much of the language of Idaho Code § 49-1212(6) void or superfluous, in violation of statutory construction principles. *See Mercer, supra.* (stating that “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant”). It would essentially strip away the Legislature’s express desire to differentiate between excess or additional coverage versus that mandated under the Act, as well as ignore the Legislature’s mandate to relieve such policies from the burden of having to comply with the requirements of the Act.

The term “motor vehicle liability policy” is used at least fourteen times throughout the statutory provisions of Idaho Code § 49-1212, which unambiguously sets forth the requirements that each “motor vehicle liability policy” must satisfy to be in compliance with Idaho law. While the Farm Bureau City Squire Policy was written to satisfy these requirements, the Farm Bureau Umbrella Policy was not. In fact, inasmuch as the Umbrella Policy required the Schrocks to carry underlying liability insurance, it is clear the Umbrella Policy contemplated that the

Schrocks would have some other policy to satisfy Idaho's MVFRA. Otherwise, that Policy would not only run afoul of the statutory mandates of the Act, but its own requirements as well.

By reading the pertinent statutes of Idaho's MVFRA together, it becomes apparent that the Idaho Legislature sought to distinguish between a "motor vehicle liability policy" and an excess or additional policy. It is also clear that Idaho's MVFRA applies only to underlying or primary motor vehicle liability policies, rather than excess or umbrella policies issued to protect the insured from liability to third parties.

C. **Because the Farm Bureau Umbrella Policy is not subject to the requirements of Idaho's MVFRA, its household exclusion as applied to Stacy Schrock is valid and enforceable.**

As discussed in Section IV.B, the Farm Bureau Umbrella Policy does not qualify as a "motor vehicle liability policy" and, thus, is not subject to the requirements of Idaho's MVFRA. This is a critical distinction, because the Idaho Supreme Court has previously invalidated a household exclusion when contained in a "motor vehicle liability policy." However, the Supreme Court has never held that such an exclusion would be invalid in an excess or umbrella policy; and solid, sensible reasons exist as to why the maintenance of such an exclusion in an excess policy should be allowed.

1. **The Idaho Appellate Courts have not addressed the validity of household exclusions contained in optional umbrella policies.**

While Idaho case law has previously addressed the validity of household exclusions contained in mandatory motor vehicle liability insurance policies, the issue before this Court is whether a household exclusion in an optional umbrella policy is valid and enforceable. To date, this issue has not been addressed by the Idaho Appellate Courts.

In general, household exclusions remove from liability coverage bodily injury to any person related to the insured and residing in the insured's household or any person related to the

operator and residing in the household of the operator. The case which ultimately held that a household exclusion is unenforceable and void as against public policy under Idaho's mandatory motor vehicle liability laws, *Farmers Ins. Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1985), is easily distinguishable from the instant matter and, thus, offers little precedential value.

In *Reed*, a father and mother sued their son, who had been the driver of a vehicle involved in an accident that caused the death of their other child. The insurance company that insured the vehicle sought to avoid coverage under the policy on the basis of a household exclusion clause. The Idaho Supreme Court held that the household exclusion did not shield the insurance company from liability under the policy, because of the requirements of Idaho Code § 49-233 (now Idaho Code § 49-1229). The pertinent portion of this statute, as it existed at the time of the decision in *Reed*, provided:

Every owner of a motor vehicle which is registered and operated in Idaho by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of motor vehicles described therein in an amount not less than that required by section 49-1521, Idaho Code . . . .

I.C. § 49-233 (1978) (emphasis added). In measuring the household exclusion in *Reed* against the requirements of I.C. § 49-223, the Idaho Supreme Court said:

However, unlike the statute, the insurance contract contains a clause which excludes coverage for household members. This is in spite of the clear legislative mandate ordering coverage extended for damage, injury or death suffered "by any person." This type of exclusion in a liability insurance policy leaves completely unprotected those family members injured when another family or household member is at the wheel in a negligently caused automobile accident. Unless the [insurance company] can show that something shields it from the statutory obligation "imposed by law" to pay damages caused by the policy holder to "any person," the household exclusion clause is flatly and unmistakably in violation of Idaho's compulsory insurance law.

*Id.* at 851, 712 P.2d at 552 (emphasis added).



Consequently, *Reed* stands for the proposition that a household exclusion in a mandatory motor vehicle liability policy violates the statutory requirements of Idaho's MVFRA, as well as the public policy underlying that Act. However, it is critical to note that *Reed* falls short of addressing whether a household exclusion found in an optional umbrella policy is void and unenforceable. The facts of the instant matter differ significantly from those on which the Idaho Supreme Court based its decision in *Reed*. Here, it is undisputed that Lisa and John Schrock obtained a "motor vehicle liability policy" as required by Idaho's MVFRA (i.e., the Farm Bureau City Squire Policy), and that Policy had limits well above those required under the Act. In fact, the Farm Bureau City Squire Policy contained a \$500,000 limit of liability for bodily injury and property damage for each occurrence, and is available to satisfy any claim or suit for damages arising from defendant Christa Springer's operation of the Isuzu Rodeo at the time of the October 24, 2008 accident. As such, the Farm Bureau City Squire Policy is in compliance with *Reed* as it does not contain a household exclusion.

But the analysis does not necessarily end there as the Idaho Legislature recently amended Idaho's MVFRA to require that all "motor vehicle liability polic[ies]" maintain the same level of coverage for all insureds and those persons explicitly or implicitly given permission to operate the insured vehicle. This requirement is encapsulated in Idaho Code § 49-1212(12), which became effective on July 1, 2007:

No motor vehicle liability policy providing coverage beyond state mandated minimum limits shall provide a reduced level of coverage to any insured's family or household member or other authorized user except as provided in section 41-2510, Idaho Code.

I.C. § 49-1212(12) (emphasis added).

Importantly, this subsection did not exist prior to July 2007. As the Department of Insurance recognized in a February 6, 2008 Bulletin, "[t]he type of policy exclusion targeted by

I.C. § 49-1212(12) provides generally that the insurer will cover designated individuals at the maximum level of the policy, while all others are covered up to the minimum level required by [Idaho's MVFRA]."<sup>4</sup> I.C. § 49-1212(12) essentially eliminated the ability for insurers to rely on those policy provisions that automatically reduce the amount of coverage afforded under the policy to the minimum limits allowable under Idaho law. As the February 6, 2008 Bulletin further explains: "Idaho Code § 49-1212(12) [eliminates step down provisions] by stating that unless otherwise designated in the policy as an exclusion pursuant to Idaho Code § 41-2510, the insured receives maximum coverage stated in the policy."<sup>5</sup>

By its express terms, this newly enacted subsection applies only to "motor vehicle liability polic[ies]" and does not extend to an excess or umbrella policies. Aside from purchasing a "motor vehicle liability policy," Lisa and John Schrock further obtained an optional umbrella policy, not required by Idaho's MVFRA (or any other Idaho law), to provide additional insurance coverage. The *Reed* decision was based, in part, on the fact that Idaho's MVFRA mandated the particular policy at issue in that case. And Idaho Code § 49-1212(12) was enacted to otherwise prevent an insurer from relying on step down provisions to reduce the amount of coverage afforded under a "motor vehicle liability policy" to the minimum limits allowable. In essence, Idaho Code § 49-1212(12) broadened the reach of *Reed* with respect to "motor vehicle liability polic[ies]" of insurance.

In the instant matter, however, it is undisputed that the Farm Bureau City Squire Policy is in compliance with the requirements of *Reed* and Idaho Code § 49-1212(12), as it does not contain a household exclusion or a step down provision. However, these mandatory requirements do not extend to the Farm Bureau Umbrella Policy. As such, the parties were free

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<sup>4</sup> See Thomson Aff., Exhibit C.

<sup>5</sup> *Id.*

to accept or reject the terms of the contract. Simply put, the Farm Bureau Umbrella Policy is subject neither to the limitations nor the requirements of *Reed*, nor Idaho's MVFRA. Rather, coverage under the optional umbrella policy is a discretionary, contractual matter between the Schrocks and Farm Bureau. Consequently, the plain and unambiguous language of the Umbrella Policy controls, since it falls outside the scope of Idaho's MVFRA.

2. **The majority of other jurisdictions support the validity and enforceability of household exclusions in umbrella policies.**

Although there appears to be no Idaho appellate decision directly addressing the issue before the Court in this case, the majority of courts in other jurisdictions having ruled on the issue have held that a household exclusion contained in an umbrella policy is valid and enforceable, even though such an exclusion contained in underlying primary motor vehicle liability may be invalid under their state's mandatory motor vehicle financial responsibility laws.

In *Weitz v. Allstate Ins. Co.*, 642 A.2d 1040 (N.J. Super. Ct. App. Div. 1994), a wife sued her husband for injuries she suffered in a motor vehicle accident as a result of her husband's negligent operation of the vehicle. The wife sought a declaratory judgment, ordering her husband's excess liability insurance carrier (Allstate) to cover her husband under his umbrella policy for damages awarded for her injuries in excess of his primary automobile policy limit. The plain language of the policy excluded liability coverage for injury to "an insured," and the policy defined "insured" to include "relatives living in [the insured's] household." *Id.* at 1040.

The trial court dismissed the wife's complaint against Allstate, explaining:

[I]t is important to recognize the distinction between an automobile policy [and] an umbrella policy . . . The former is mandated by and subject to strict statutory regulation . . . [An] umbrella policy is not subject to such regulation . . . it is additional coverage not required for the purpose of auto insurance . . . [I]t is well established that automobile liability insurance is statutorily required and that any deviation therefrom would be in contravention with the public policy of New Jersey mandating auto insurance. Conversely, umbrella policies are not required.

Any additions, exclusions, or other conditions of such policy does not contravene public policy in New Jersey . . . .

*Id.* at 1041.

The New Jersey Court of Appeals affirmed the trial court stating:

The Legislature has not required automobile insureds to purchase umbrella policies; and there is no legislation dictating the parameters of coverage contained in such policies. Unlike his underlying automobile policy whose scope is defined by statute, Mr. Weitz's umbrella policy is defined by the policy's plain language, unencumbered by the statutory requirements for automobile insurance.

*Id.* at 1041-42. The *Weitz* Court noted the significant distinction between a primary automobile liability policy, which is subject to extensive regulation and compelled by statute to provide liability coverage without such an exception, and an excess policy, which is not. And because the New Jersey legislature did not require automobile owners to purchase excess insurance policies, it ruled that the scope of coverage in an umbrella contract of insurance is defined by the contract terms, i.e., the policy's plain language.

The same reasoning was used in *Bogas v. Allstate Ins. Co.*, 562 N.W.2d 236 (Mich. Ct. App. 1997) to reach an identical result. In *Bogas*, a daughter was killed in a car wreck in which the daughter's boyfriend was driving an automobile owned by the daughter's mother. At the time of the accident, the mother had a personal liability umbrella policy with Allstate that contained a household exclusion, which specifically excluded liability coverage for personal injury to an insured. The policy defined an "insured" as "the person named on the policy declarations page, that person's resident spouse, and any person related to the named insured by blood marriage or adoption who resides in the named insured's family." Because the daughter resided with her mother and therefore qualified as an "insured" as defined by the policy, Allstate denied coverage for the daughter's injuries. The daughter's estate filed suit to recover under the policy.

The daughter's estate argued that the household exclusion was void as against public policy, relying on a case where the Michigan Supreme Court held (in similar fashion to the Idaho Supreme Court in *Reed*) that household exclusions in compulsory no-fault automobile insurance policies are void as against public policy.<sup>6</sup> The *Bogas* Court rejected this argument citing the distinction between statutorily mandated automobile policies and optional policies such as umbrella policies:

[W]e agree with defendant that the public policy considerations discussed in [*Sivey*], which made a household exclusion for a compulsory automobile policy void are not relevant for optional policies, such as the umbrella policy at issue. Our Supreme Court's decision in [*Sivey*], was based upon the fact that the motor vehicle financial responsibility act . . . specifically required that policies of liability insurance provide coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle. The [*Sivey* Court] held that the household exclusion contained in the automobile policy was void as against public policy because it would serve to prevent coverage required by the motor vehicle financial responsibility act . . . Because the umbrella policy at issue, an optional insurance policy that applied not only to liability arising from the use of an automobile but also other personal activities of the insured, does not conflict with any statutory provisions mandating the coverage that the household exclusion excludes, we hold that the exclusion in the policy is enforceable.

*Id.* at 236-37.

A similar conclusion was reached in *Electric Ins. Co. v. Rubin*, 32 F.3d 814 (3d Cir. 1994). In that case, the Third Circuit, applying Pennsylvania law, affirmed the District Court's grant of summary judgment in favor of plaintiff Electric Insurance Company ("Electric"), declaring that Electric was not obligated to provide coverage under a personal excess liability insurance policy issued by Electric to defendant Nathan Rubin for claims made by Patricia Rubin, defendant's wife, arising from an automobile accident. Mrs. Rubin's medical bills totaled \$746,489.78, but the primary automobile insurance policy on the Rubin's vehicle contained a limit of only \$100,000.

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<sup>6</sup> *State Farm Mut. Auto. Ins. Co. v. Sivey*, 272 N.W.2d 555 (Mich. 1978).

The excess policy at issue contained the following household exclusion: “we do not provide Liability Coverage for any insured . . . for personal injury to you or your relative.” *Id.* at 815. The federal district court found “it was undisputed that the excess policy excluded coverage for Patricia Rubin’s claim.” *Id.* The federal district court, while acknowledging that Pennsylvania law invalidates family exclusions in primary automobile insurance policies, held that this “interdiction was immaterial because excess liability insurance is not governed by [Pennsylvania’s Motor Vehicle Financial Responsibility Law (“MVFRL”).]” *Id.* at 816. The Third Circuit found no instance in which a Pennsylvania court held that an excess policy was subject to the MVFRL, and opined that the Pennsylvania Supreme Court would not subject an excess policy to the requirements of the MVFRL. *Id.* at 818. Therefore, the Third Circuit enforced the exclusion contained in the excess policy as written. *Id.* at 820.

The Court of Appeals of Louisiana has also ruled that a household exclusion in an excess liability policy is valid and enforceable. In *Walker v. State Farm Auto Ins.*, 850 So.2d 882 (La. Ct. App. 2003), the court was required to address both the mandatory nature of Louisiana’s financial responsibility act as well as the state’s public policy as to household exclusions in insurance policies. As to the financial responsibility act, the Louisiana court held that the umbrella policy was not mandatory primary automobile insurance. It stated: “it provides excess insurance for accidents that result in personal injury or property damage. These are not limited to automobile accidents.” *Id.* at 888. The *Walker* court further wrote that the insurer in an umbrella policy “is not providing compulsory coverage and the insurer has the right to express the limits of its liability. The insured is free to accept or reject those terms.” *Id.* at 889.

Finally, the Supreme Court of Delaware reached a similar ruling in *State Farm Mut. Auto. Ins. Co. v. Daprato*, 840 A.2d 595 (Del. 2003). In *Daprato*, a wife was injured while riding as a passenger in an automobile operated by her husband. The husband was insured under

an automobile policy for \$100,000 and also had personal liability umbrella policy of \$1,000,000. The wife was paid the \$100,000 liability limits of the automobile policy, but then asserted a claim under the umbrella policy. State Farm denied the claim based upon a household exclusion similar to the instant matter.

The wife subsequently sought declaratory judgment against State Farm, claiming that “the household exclusion in the personal liability umbrella policy as applied to her automobile accident claim, was contrary to the broad scope of the public policy embraced by Delaware’s Financial Responsibility Laws.” In addressing cross motions for summary judgment, the trial court ruled in favor of the wife, holding that the exclusion “was void and unenforceable as applied to [the wife]’s claim for damages from the automobile accident.” *Id.* at 597. State Farm appealed.

On appeal the Supreme Court of Delaware reversed the trial court, holding that Delaware’s Financial Responsibility Laws are inapplicable to the umbrella policy:

[Delaware’s] Financial Responsibility Laws simply do not apply to the umbrella policy at issue here. The Dapratos maintained a separate “motor vehicle liability policy” that satisfied the statutory coverage for the class of victims the Financial Responsibility Laws were designed to protect. In fact, the umbrella policy required the Dapratos to maintain that separate, primary policy. The personal liability umbrella coverage purchased by the Dapratos did indeed contain excess automobile liability coverage, but that coverage was a discretionary, contractual matter between them and State Farm. The scope of that coverage was subject neither to the limitations nor to the requirements of the Financial Responsibility Laws. The public policy underlying the Financial Responsibility Laws does not extend to coverage purchased by contract in excess of the full amount of coverage contracted for and purchased in a primary “motor vehicle liability policy.”

*Id.* at 598 (footnote omitted).

As outlined above, several jurisdictions have refused to extend restrictions on the use of household exclusions in the context of motor vehicle policies to umbrella policies.

3. **Validating and enforcing the household exclusion in the Farm Bureau Umbrella Policy does not violate Idaho Code § 49-1212(12).**

As previously indicated, the Idaho Legislature recently amended Idaho's MVFRA to require all "motor vehicle liability polic[ies]" to maintain the same level of coverage for all insureds and those persons explicitly or implicitly given permission to operate the insured vehicle. I.C. § 49-1212(12). However, by its express terms, this newly enacted subsection applies only to "motor vehicle liability polic[ies]" and does not extend to an umbrella policy.

As previously set forth in Section IV.B, above, an excess or umbrella policy of insurance does not qualify as a "motor vehicle liability policy" under Idaho's MVFRA. Importantly, had the Idaho Legislature sought to extend the requirements of I.C. § 49-1212(12) to excess or umbrella policies they could have easily done so. Instead, the Legislature sought to limit the application of that statutory provision to solely "motor vehicle liability polic[ies]" as defined by I.C. § 49-114(18). This result is further supported by the plain language of I.C. § 49-1212(6), which was left in-tact when Section 49-1212(12) was enacted, and provides that "any excess or additional coverage shall not be subject to the provisions of this chapter." Consequently, the household exclusion in the Farm Bureau Umbrella Policy is valid and enforceable.

4. **Because the household exclusion contained in the Farm Bureau Umbrella Policy is valid and enforceable, the limits of liability under that Policy are not available to satisfy any claims involving medical expenses or damages sustained by defendant Stacy Schrock.**

The household exclusion at issue here is set forth in Part IV, Exclusion 16 of the Farm Bureau Umbrella Policy, and excludes from coverage "bodily injury" sustained by "you, your spouse, your minor children, your **relative**, or any other **insured**."<sup>7</sup> Defendant Stacy Schrock is an "insured," as well as a "relative," as those terms are defined in the Farm Bureau Umbrella

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<sup>7</sup> See Thomson Aff., Ex. B, p. 4.



Policy.<sup>8</sup> As such, the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by defendant Stacy Schrock as a result of the October 24, 2008 accident.<sup>9</sup>

This outcome is supported by the fact that neither public policy nor Idaho law renders unenforceable or invalid the household exclusion in the Farm Bureau Umbrella Policy as applied to defendant Stacy Schrock, because that Policy falls wholly outside the ambit of Idaho's MVFRA. As a result, the costs and benefits associated with that contract of insurance are matters solely within the discretion of the contracting parties, and must be enforced according to its terms.

**D. Because the Farm Bureau Umbrella Policy is not subject to the requirements of Idaho's MVFRA, its permissive driver exclusion is valid and enforceable and does not provide coverage for defendant Christa Springer's operation of the Isuzu Rodeo, and is not available to satisfy any claim for damages arising therefrom.**

It is critical to note that defendant Christa Springer is not specifically named as an "insured" on the Farm Bureau Umbrella Policy, nor does she otherwise qualify as an "insured" as that term is defined in the Policy.<sup>10</sup> While she does qualify as an insured under the Farm Bureau City Squire Policy in so far as she was operating the Isuzu Rodeo within the scope of defendant Stacy Schrock's permission, that same result does not extend to the Farm Bureau Umbrella Policy, which must be interpreted under its own terms and conditions. Pursuant to the rules of interpreting insurance contracts as set forth in Section IV.A, above, it is clear the Farm Bureau Umbrella Policy does not provide coverage for her use of that vehicle.

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<sup>8</sup> See Complaint, ¶ 51; Answer and Counterclaim, ¶ 51; Answer, ¶ 24.

<sup>9</sup> See Thomson Aff., Ex. B.

<sup>10</sup> *Id.*

The plain language of the Farm Bureau Umbrella Policy does not provide coverage for defendant Christa Springer's use of the Isuzu Rodeo. Part II of the Farm Bureau Umbrella Policy states, in pertinent part:

1. We will pay **damages** for which the **insured** becomes legally responsible caused by:
  - a. An **occurrence** to which this insurance applies that results in **bodily injury** or **property damage**, during the policy period . . . .
2. These coverages are subject to all exclusions, terms and conditions of this policy.<sup>11</sup>

The Farm Bureau Umbrella Policy defines insured as follows:

**Insured** means you, and if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**. **Insured** does not include a **relative** age 24 or over who is a student and lives away from your residence while attending school. A **permissive driver** who is your employee is an **insured** while using your **motor vehicle**.<sup>12</sup>

The Umbrella Policy clearly and unambiguously names only John and Lisa Schrock as insureds; defendant Christa Springer is not specifically named as an "insured" on the Farm Bureau Umbrella Policy, nor does she otherwise qualify as an "insured" as that term is defined in the Policy. As a result, there is no need to even consider the exclusions that might apply to further exclude coverage for defendant Christa Springer's use of the Isuzu Rodeo.

However, even if defendant Christa Springer somehow qualified as an insured under the Farm Bureau Umbrella Policy, the permissive driver exclusion would preclude coverage. The same analysis utilized in Section IV.C, above, with respect to determining the validity and enforceability of the household exclusion contained in Farm Bureau's Umbrella Policy can be employed to analyze the validity and enforceability of the permissive driver exclusion contained within the same. Because the Farm Bureau Umbrella Policy falls outside the scope of Idaho's

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<sup>11</sup> *Id.* at p. 2.

<sup>12</sup> *Id.* at p. 1.

MVFRA, the plain and unambiguous language of that Policy controls. As such, the permissive driver exclusion is valid and enforceable, and excludes from coverage defendant Christa Springer's operation of the Isuzu Rodeo on the date of the subject accident.

Specifically, Part IV, Exclusion 9 of the Farm Bureau Umbrella Policy excludes coverage for a "permissive driver," which is defined as "any person . . . while using a motor vehicle owned by, rented by, or loaned to you or any Insured and covered by this policy, provided that an Insured gave permission for the type of use of the motor vehicle."<sup>13</sup> The Exclusion provides:

If state law requires that this policy apply to a **permissive driver**, however, our applicable limit of liability for an **occurrence** shall be reduced (see Part V Limit of Liability). This exclusion does not apply if the **permissive driver** is your employee . . .<sup>14</sup>

In the instant matter, defendant Christa Springer qualifies as a "permissive driver" because she was operating the Isuzu Rodeo at the time of the October 24, 2008 accident with the permission of defendant Stacy Schrock, an insured under the Farm Bureau Umbrella Policy. As a result, the Farm Bureau Umbrella Policy does not provide coverage for defendant Christa Springer's operation of the Isuzu Rodeo, and the limits of liability under that Policy are not available to satisfy any claim or suit for damages against Springer arising from her operation of that vehicle. Consequently, Farm Bureau has no duty to defend or indemnify defendant Christa Springer under the Farm Bureau Umbrella Policy with regard to any claims or suits arising from the subject accident.

Nor does the permissive driver exclusion violate the requirements of Idaho Code § 49-1212(12). Again, that recently enacted statutory provision requires any "motor vehicle liability policy" to maintain the same level of coverage for all insureds and those persons explicitly or

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<sup>13</sup> *Id.* at p. 4.

<sup>14</sup> *Id.* at p. 1.

implicitly given permission to operate the insured vehicle. It does not allow any “motor vehicle liability policy” to provide a reduced level of coverage. However, as previously argued herein, this restriction does not extend to excess or umbrella policies of insurance based not only on the definition of “motor vehicle policy,” but the express language of I.C. § 49-1212(6) (providing that “any excess or additional coverage shall not be subject to the provisions of this chapter”).

This outcome is also supported by public policy considerations. When it comes to the underlying Farm Bureau City Squire Policy, Farm Bureau is required to expose itself and provide indemnity for damages flowing from a permissive driver’s use of an insured’s vehicle even though it knows nothing about that individual’s driving record. In those situations, the vehicle owner’s “motor vehicle liability policy” must automatically respond pursuant to the statutory mandates of Idaho’s MVFRA, which require these policies to cover permissive drivers regardless of their driving records. The insurer is able to account for this unknown risk by charging a higher premium for the underlying policy, which is reflected by the fact the Schrocks paid \$2,132 in total annual premium for \$500,000 in coverage for the underlying policy, and only \$231 in total annual premium for \$1,000,000 in coverage under the umbrella policy.

But, on the other hand, an excess or umbrella policy of insurance is supplemental in nature and generally protects the insureds against catastrophic loss. The very nature of the umbrella policy at issue is illustrated by its title—“Personal Umbrella Policy”—and, as such, it is in place for the “personal” benefit of John and Lisa Schrock versus that of third parties, such as defendant Christa Springer. For the relatively modest premium of \$231, the Schrocks were provided \$1,000,000 in personal excess liability insurance. However, it would stand to reason that Farm Bureau would not be willing to provide that amount of coverage at that relatively modest premium in those situations where the Schrocks might be willing to “hand the keys over” to an unknown permissive driver. The Farm Bureau Umbrella Policy clearly and unambiguously

precludes coverage for such an unknown driver. And the premium charged for the policy is consistent with this approach. If Farm Bureau's Umbrella Policy was meant to cover permissive drivers, such as defendant Christa Springer, than the premium charged for it would have likely been significantly higher.

In sum, because the Farm Bureau Umbrella Policy is not subject to the requirements of Idaho's MVFRA, its permissive driver exclusion is valid and enforceable and does not provide coverage for defendant Christa Springer's operation of the Isuzu Rodeo, and is not available to satisfy any claim for damages arising therefrom.

**E. Idaho Code § 49-2417 does not apply to the Farm Bureau Umbrella Policy.**

Counterclaimants John Schrock, Stacy Schrock and Christina Monroe claim that “[a]s a result of the permission extended to Stacy Schrock, Lisa Schrock, by way of that permission, permitted Christa Springer to operate the 2001 Isuzu Trooper (sic) in question” and therefore “the negligence of Christa Springer shall be imputed to Lisa Schrock for purpose of all civil damages [pursuant to I.C. § 49-2417].”<sup>15</sup>

I.C. § 49-2417 (Owner's tort liability for negligence of another – Subrogation) provides, in pertinent part:

(1) Every owner of a motor vehicle is liable and responsible for the death of or injury to a person or property resulting from negligence in the operation of his motor vehicle, in the business of the owner or otherwise, by any person using or operating the vehicle with the permission, expressed or implied, of the owner, and the negligence of the person shall be imputed to the owner for all purposes of civil damages.

(2) The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amounts set forth under “proof of financial responsibility” in section 49-117, Idaho Code, or the limits of the liability insurance maintained by the owner, whichever is greater.

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<sup>15</sup> See Answer and Counterclaim, ¶ X, p. 12.

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(3) In any action against an owner for imputed negligence as imposed by the provisions of this section the operator of the vehicle whose negligence is imputed to the owner shall be made a defendant party if personal service of process can be had upon that operator within Idaho. Upon recovery of a judgment, recourse shall first be had against the property of the operator so served.

\* \* \*

(5) Where two (2) or more persons are injured or killed in one (1) accident, the owner may settle or pay any bona fide claim for damages arising out of personal injuries or death, whether reduced to a judgment or not, and the payments shall diminish to the extent of the owners' total liability on account of the accident. Payments so made, aggregating the full sum of fifty thousand dollars (\$50,000), shall extinguish all liability of the owner hereunder to the claimants and all other persons on account of the accident. Liability may exist by reason of imputed negligence, pursuant to this section, and not arising through the negligence of the owner nor through the relationship of principal and agent nor master and servant.

As argued herein, I.C. § 49-2417 does not apply to the Farm Bureau Umbrella Policy because that statute only applies to “motor vehicle liability polic[ies]”.

1. **Because the phrase “the liability insurance maintained by the owner” contained within Idaho Code § 49-2417(2) is ambiguous, this Court is required to look beyond the literal words of the statute to determine its meaning.**

Counterclaimants allege that Lisa Schrock is responsible for payment of all damages them pursuant to I.C. § 49-2417(2) “up to the limits of all liability insurance.”<sup>16</sup> Counterclaimants’ argument, however, is based on the faulty proposition that the phrase “the liability insurance maintained by the owner” contained in I.C. § 49-2417(2) refers to all liability insurance maintained by the owner. On the other hand, Farm Bureau maintains that phrase refers solely to the “motor vehicle liability policy” of insurance maintained by the owner mandated by the statutory provisions of Idaho’s MVFRA.

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<sup>16</sup> See Answer and Counterclaim, ¶¶ VII-XII, pp. 12-13.

I.C. § 49-2417(2) provides:

The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amounts set forth under “proof of financial responsibility” in section 49-117, Idaho Code, or the limits of the liability insurance maintained by the owner, whichever is greater.

I.C. § 49-2417(2) (emphasis added). Because the highlighted phrase lends itself to more than one reasonable interpretation, it is ambiguous, requiring this Court to engage in statutory construction to determine its meaning. Once this occurs, this Court will recognize that the phrase refers solely to the Farm Bureau City Squire Policy.

In interpreting a statute, the Court is required to ascertain and give effect to legislative intent by reading the entire act, including amendments. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990). If the language of the statute is clear, the Court should apply the plain meaning of the statute. *Jen-Rath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002). If, however, a statute lends itself to more than one reasonable interpretation, it is ambiguous. *Carrier v. Lake Pend Oreille Sch. Dist. No. 84*, 142 Idaho 804, 807-08, 134 P.3d 655, 658-59 (2006). When a statute is ambiguous, the Court should consider not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history in order to discern and implement the intent of the legislature. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 398-99, 111 P.3d 73, 83-84 (2005).

Farm Bureau’s position in this case finds significant support in the legislative history of I.C. § 49-2417(2). That subsection was amended in 2007 in conjunction with another statute previously addressed herein, I.C. § 49-1212(12), through Senate Bill No. 1126, which was entitled:

AN ACT RELATING TO MOTOR VEHICLE LIABILITY; AMENDING SECTION 49-1212, IDAHO CODE, TO REQUIRE THAT A MINIMUM LEVEL OF MOTOR VEHICLE LIABILITY COVERAGE BE PROVIDED TO CERTAIN PERSONS; AND AMENDING SECTION 49-2417, IDAHO CODE, TO REVISE LIABILITY PROVISIONS RELATING TO LIABILITY FOR IMPUTED NEGLIGENCE AND TO PROVIDE NONLIABILITY TO THE OWNE THAT RENTS OR LEASES A MOTOR VEHICLE TO A PERSON UNDER CERTAIN CIRCUMSTANCES.<sup>17</sup>

The title of the Act, particularly “An Act Relating to Motor Vehicle Liability,” speaks volumes to the intent of the Idaho Legislature in revising I.C. § 49-2417(2), which was to focus on “motor vehicle liability polic[ies],” rather than excess or umbrella policies.

The Act essentially added subsection (12) to I.C. § 49-1212, which as previously addressed in Section IV.C.1, prevents an insurer from relying on step down provisions to reduce the amount of coverage afforded under a “motor vehicle liability policy” to the minimum limits allowable. However, in conjunction with adding I.C. § 49-1212(12), the Idaho Legislature thought it prudent to revise I.C. § 49-2417(2) through the same Senate Bill by adding the following highlighted language to the end of that previously existing statutory provision:<sup>18</sup>

The liability of an owner for imputed negligence imposed by the provisions of this section and not arising through the relationship of principal and agent or master and servant is limited to the amounts set forth under “proof of financial responsibility” in section 49-117, **Idaho Code, or the limits of the liability insurance maintained by the owner, whichever is greater.**

Between the two revisions, the Idaho Legislature effectively eliminated step down provisions in “motor vehicle liability polic[ies]” (unless otherwise designated as an exclusion pursuant to I.C. § 41-2510), and increased the maximum coverage available to cover damages to the limits of the “motor vehicle liability policy” maintained by the owner versus simply the statutory minimums set forth in 49-117(18), i.e., \$25,000/\$50,000.

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<sup>17</sup> S. Res. 1126, 59th Leg., 1st Reg. Sess. (Id. 2007), attached to the Thomson Aff. as Ex. D.

<sup>18</sup> The Act also added subsection (7) to I.C. § 49-2417, but that subsection is inapplicable to the instant matter.



Because these revisions were implemented at the same time and directly relate to one another, it logically follows that the Idaho Legislature was referring solely to “motor vehicle liability polic[ies]” through its use of the phrase “the limits of the liability insurance maintained by the owner” within I.C. § 49-2417(2). The statute’s use of the term “owner” must also logically be referring to the owner of a motor vehicle. Thus, the most reasonable reading of the statute must be that the phrase “the liability insurance” refers only to the applicable “motor vehicle liability policy” maintained by the owner which is required under Idaho’s MVFRA.

This is further supported by the fact that although I.C. § 49-2417(2) technically falls outside of Idaho’s MVFRA, it is still contained within the motor vehicle statutes and refers back to Idaho’s financial responsibility laws. As such, it must be construed in conjunction with Idaho’s MVFRA, thereby implicating much of the discussion previously addressed herein, particularly the fact that the Farm Bureau Umbrella Policy does not qualify as a “motor vehicle liability policy” under Idaho’s MVFRA, and, thus, is not subject to its statutory requirements.

**2. Counterclaimants reliance on Idaho Code § 49-2417 fails as a matter of law because Stacy, rather than Lisa, exercised control over the 2001 Isuzu Rodeo.**

Paragraph IX of the Counterclaim alleges the following:

At the time of the accident on October 24, 2008, Christa Springer was operating the 2001 Isuzu Rodeo with the express and/or implied permission of Stacy Schrock. Stacy Schrock had been given permission to drive the 2001 Isuzu Rodeo and to extend that permission to others as she saw fit. As a result of the permission extended to Stacy Schrock, Lisa Schrock, by way of that permission, permitted Christa Springer to operate the 2001 Isuzu Trooper (sic) in question. (emphasis added.)

As that allegation is constructed, Lisa Schrock did not exercise any control over the Isuzu Rodeo that would impute defendant Christa Springer’s negligence to her under Idaho Code § 49-2417; rather, it was Stacy Schrock exercising control over the Isuzu Rodeo. As such, Lisa Schrock is

not the “owner” of the Isuzu Rodeo for the purpose of imposing liability under Idaho Code § 49-2417.

The seminal case addressing the concept of ownership as contemplated in I.C. § 49-2417 is *Lopez v. Langer*, 114 Idaho 873, 761 P.2d 1225 (1988). In a unanimous decision, the Idaho Supreme Court determined that I.C. § 49-2417, then I.C. § 49-1404, “predicates liability upon the giving of permission, express or implied, to use the automobile.” *Id.* at 876, 761 P.2d at 1228. This idea is based upon the notion that a person may be held liable under a “theory of negligent entrustment where such person knew or should have known that such use may create unreasonable risk of harm to others.” *Id.* at 875, 761 P.2d at 1227 (citing *Kinney v. Smith*, 95 Idaho 328, 508 P.2d 1234 (1973)).

“Typically the person who entrusts a vehicle is the title owner.” *Langer*, 114 Idaho at 875, 761 P.2d at 1227 (1988). However, “[r]igid and formalistic conceptions of ownership based upon the issuance of certificates of title are disfavored by the courts.” *Id.* (citing *Pacific Insurance Co. v. Oregon Auto Insurance Co.*, 490 P.2d 899 (Hawaii 1971)). “[T]he paramount requirement for liability under a theory of negligent entrustment is whether or not the defendant had the right to control the vehicle.” *Id.* (emphasis added).

In *Spindle v. Reid*, 277 A.2d 11 (D.C. Ct. App. 1971), cited with approval by the Idaho Supreme Court, the court construed a Motor Vehicle Safety Responsibility Act similar to the ownership statute at issue in the instant matter. In that case, the defendant was the title owner, and the son the sole operator, of an automobile involved in an accident. The defendant had taken title to the vehicle to enable her son to obtain financing for the car. Payments on the vehicle were made by the son, and he had full control and use of the car. After an accident resulted in injuries to a third party, the defendant was sued for negligent entrustment. However, the *Spindle* court refused to impose liability on the defendant:

[The] purpose of the statute was to place the liability upon the person in a position immediately to allow or prevent the use of the vehicle and to do so by giving lawful and effective consent or prohibition to its operation by others. The object was to control the giving of consent to irresponsible drivers by the one having that power rather than to impose liability upon one having a naked legal title with no immediate right of control.

*Spindle*, 277 A.2d at 119. The Idaho Supreme Court adopted the rationale of the *Spindle* court:

We adopt the rationale used in *Spindle*, supra. It would make no sense, and serve no purpose, to hold one liable for negligent entrustment who has no control over, and no ability to prevent, irresponsible driving.

*Langer*, 114 Idaho at 877, 761 P.2d at 1229 (citing *Spindle v. Reid*, 277 A.2d 11 (D.C. Ct. App. 1971)) (emphasis added).

Here, counterclaimants are alleging liability against Lisa Schrock based upon her ownership of the Isuzu Rodeo. However, “naked legal title with no immediate right of control” is insufficient to impose liability on Lisa Schrock under I.C. § 49-2417. *Langer*, 114 Idaho at 877, 761 P.2d at 1229. As the allegations in the counterclaim are presently constructed, Lisa Schrock had the same degree of ownership as that discussed in *Langer*—bare legal title only. The sole owner of the vehicle for purposes of imputed liability under I.C. § 49-2417 is Stacy Schrock, and, based on the undisputed facts, it was only Stacey Schrock who, in the period prior to the subject accident, had the immediate right of control over the Isuzu Rodeo relative to defendant Christa Springer’s operation of it. As a result, the attempt by counterclaimants to impute defendant Christa Springer’s negligence to Lisa Schrock fails as a matter of law.

3. **I.C. § 49-2417 is an “owner liability” statute rather than a “requirement for insurance” statute.**

An additional reason why I.C. § 49-2417 does not apply to the Farm Bureau Umbrella Policy is because that statute is meant to establish an owner’s liability rather than setting forth the minimum requirements for insurance. The reference to liability insurance is only contained in the statute to determine the limit of liability that can be imputed to the owner through a third

person's negligence. All references to "required insurance" are set forth in the statutory provisions of Idaho's MVFRA. Nothing contained within I.C. § 49-2417 alters, amends or changes the minimum levels of insurance required by an owner under Idaho's MVFRA.

Were this Court to rule that the Farm Bureau Umbrella Policy limits applied simply for an owner's imputed negligence, then the result would essentially be a re-write of the Policy to provide excess insurance coverage for a permissive driver's operation of the vehicle, such as defendant Christa Springer, despite its express wording to the contrary. It is undisputed that the Farm Bureau Umbrella Policy expressly and unambiguously excluded permissive drivers. Even if Lisa Schrock provided permission to defendant Christa Springer to operate the Isuzu Rodeo, the Farm Bureau Umbrella Policy did not allow for this to occur—or at least did not provide coverage for such an occurrence—and clearly excluded coverage for any damages resulting from such permission.

Under I.C. § 49-2417(2), Lisa Schrock's imputed liability only arises out of the alleged permission she gave to use the Isuzu Rodeo, but the Farm Bureau Umbrella Policy expressly excluded permissive drivers. In essence, the Farm Bureau Umbrella Policy did not apply to defendant Christa Springer's use, which therefore prevents the \$1,000,000 in coverage under that Policy from being available to cover her negligence, if such negligence can be imputed to Lisa Schrock.

4. **The internal inconsistencies within Idaho Code § 49-2417 render it void for vagueness.**

A statute is void for vagueness where it "either forbids or requires the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning." *Haw v. Idaho St. Bd. of Med.*, 140 Idaho 152, 157, 90 P.3d 902, 907 (2004). However, a civil statute will not be held void for vagueness "if it can be given any practical interpretation" or if persons

of common intelligence “can derive core meaning from it.” *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 716, 791 P.2d 1285, 1295 (1990). When comparing the recently amended I.C. § 49-2417(2) with I.C. § 49-2417(5), it is clear there exists an internal inconsistency that cannot be reconciled, leads to absurd results and cannot otherwise be given any practical interpretation.

I.C. § 49-2417(5) states as follows:

Where two (2) or more persons are injured or killed in one (1) accident, the owner may settle or pay any bona fide claim for damages arising out of personal injuries or death, whether reduced to a judgment or not, and the payments shall diminish to the extent of the owners’ total liability on account of the accident. Payments so made, aggregating the full sum of fifty thousand dollars (\$50,000), shall extinguish all liability of the owner hereunder to the claimants and all other persons on account of the accident. Liability may exist by reason of imputed negligence, pursuant to this section, and not arising through the negligence of the owner nor through the relationship of principal and agent nor master and servant.

As subsection (5) of I.C. § 49-2417 provides, in those instances where two or more persons are injured or killed in a motor vehicle accident, the owner of the vehicle may “settle or pay any bona fide claim for damages” and if the owner pays the full sum of fifty-thousand dollars, all of his or her owner liability “shall be extinguished.” (emphasis added.) This result, however, directly contradicts the newly enacted revision to I.C. § 49-2417(2), which provides that the owner liability is “limited to the amounts set forth under ‘proof of financial responsibility’ in section 49-117, Idaho Code [i.e., \$50,000 in situations where two or more persons are injured or killed], or the limits of the liability insurance maintained by the owner, whichever is greater.” (emphasis added).

Prior to the 2007 amendment to I.C. § 49-2417(2), the maximum amount an owner could be held liable for imputed negligence involving injuries or death to two or more persons was \$50,000. However, the 2007 amendment attempted to remove that ceiling by increasing an owner’s liability for imputed negligence involving injuries or death to two or more persons to the limits of the motor vehicle liability policy (if it exceeded \$50,000). For instance, if an owner’s

motor vehicle liability policy had a \$300,000 limit for each occurrence, and multiple persons were injured or killed as a result of a third-person operating the owner's vehicle, the owner could be held liable for imputed negligence for up to \$300,000 pursuant to the revised I.C. § 49-2417(2).

However, it appears the Idaho Legislature failed to consider I.C. § 49-2417(5) in conjunction with the revisions to I.C. § 49-2417(2); rather, subsection (5) remained unchanged and otherwise unaffected by Senate Bill No. 1126.<sup>19</sup> As a result, the statute now refers to the maximum owner liability being the limits of "the liability insurance" in subsection (2), while at the same time indicating the maximum owner liability is still \$50,000 under subsection (5), whether such amount is reduced to judgment or not. This internal inconsistency leads to absurd results and cannot otherwise be given any practical interpretation that would provide meaningful guidance to an owner attempting to determine what his or her maximum liability truly is. The fact that subsection (2) refers to "the liability insurance" while subsection (5) does not fails to solve this internal inconsistency because the purpose of the statute is to provide indemnity for a claim for damages arising out of personal injuries or death, whether reduced to judgment or not. This internal inconsistency is problematic and requires "people of common intelligence [to] necessarily guess at its meaning," which, in turn, renders I.C. § 49-2417 void for vagueness.

5. **Regardless of how this Court rules on this issue, Defendant Christa Springer's State Farm policy, as well as other property, would have to respond in damages first.**

I.C. § 49-2417(3) provides:

In any action against an owner for imputed negligence as imposed by the provisions of this section the operator of the vehicle whose negligence is imputed to the owner shall be made a defendant party if personal service of process can be

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<sup>19</sup> See Thomson Aff., Ex. D.

had upon that operator within Idaho. Upon recovery of a judgment, recourse shall first be had against the property of the operator so served.

According to subsection (3), should it be found that Christa Springer's negligence be imputed Lisa Schrock as a result of the subject accident, the party seeking to recover any judgment resulting therefrom would first be required to seek recourse from Christa Springer's property (i.e., her motor vehicle liability policy obtained through State Farm Mutual Insurance Company, etc.). Farm Bureau would not have to respond in damages until this had taken place.

#### IV. CONCLUSION

Based on the foregoing, Farm Bureau respectfully requests that this Court grant its motion for summary judgment and rule that the Schrocks' personal umbrella policy does not provide coverage in regard to the October 24, 2008 accident. In addition, Farm Bureau respectfully requests that this Court dismiss the Counterclaim of John Schrock, Stacey Schrock and Christina Monroe because the limits of liability under the Farm Bureau Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained as a result of the subject accident.

DATED this 27<sup>th</sup> day of July, 2009.

POWERS THOMSON, P.C.

By 


Raymond D. Powers - Of the Firm  
James S. Thomson, II - Of the Firm  
Attorneys for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27<sup>th</sup> day of July, 2009, I caused to be served a true copy of the foregoing **MEMORANDUM IN SUPPORT OF FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO'S MOTION FOR SUMMARY JUDGMENT**, by the method indicated below, and addressed to each of the following:

Doug Crandall	___	U.S. Mail, Postage Prepaid
CRANDALL LAW OFFICE	<u>X</u>	Hand Delivered
420 W. Main St. Suite 206	___	Overnight Mail
Boise, ID 83702	___	Telecopy
<i>Attorney for Defendants/Counterclaimants John Schrock, Stacy Schrock and Christina Monroe and Defendants Michele Runyan and April Seitzinger</i>		

Anthony M. Valdez	<u>X</u>	U.S. Mail, Postage Prepaid
BENOIT, ALEXANDER, HARWOOD, HIGH & VALDEZ	___	Hand Delivered
126 Second Avenue North	___	Overnight Mail
PO Box 366	___	Telecopy
Twin Falls, ID 83303		
<i>Attorneys for Defendants Christa Springer and Michele Runyan</i>		

  
\_\_\_\_\_  
Raymond D. Powers  
James S. Thomson, II