

2-9-2010

Farm Bureau Mut. Ins. Co. v. Schrock Clerk's Record v. 2 Dckt. 37172

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Vol. 2 of 3
Volume 2

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 X for Appellant

RAYMOND POWERS

Attorney X for Respondent

FILED - COPY
Filed this _____ day of _____, 20____

FEB - 9 2010

Clerk

By _____

Deputy

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

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. *37172*
DISTRICT COURT NO. *2009-823*

CLERK'S RECORD ON APPEAL

Volume 2
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

ATTORNEY FOR APPELLANTS/
DEFENDANTS/
COUNTERCLAIMANTS

Raymond Powers
James Thomson
POWERS THOMSON, PC
345 Bobwhite Court, Suite 150
P. O. Box 9756
Boise, ID 83707

ATTORNEY FOR RESPONDENT/
PLAINTIFF/
COUNTERDEFENDANT

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Date	Code	User	Judge
1/13/2009	NCOC	SCHULZ	New Case Filed-Other Claims
	APER	SCHULZ	Plaintiff: Farm Bureau Mutual Insurance Company Of Idaho Appearance Raymond D Powers
		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)
	COMP	SCHULZ	Complaint for Declaratory Judgment
	SMIS	SCHULZ	Summons Issued x7
3/5/2009	AFSV	NIELSEN	Affidavit Of Service 2-24-9 fax
	SMRT	NIELSEN	Summons Returned fax
	AFSV	NIELSEN	Affidavit Of Service 2-25-9 fax
	SMRT	NIELSEN	Summons Returned
	AFSV	NIELSEN	Affidavit Of Service 2-24-9 fax
	SMRT	NIELSEN	Summons Returned
		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)
	NOAP	SCHULZ	Notice Of Appearance
3/6/2009	APER	SCHULZ	Defendant: Springer, Christa Appearance Anthony M. Valdez
3/11/2009	NOAP	NIELSEN	Notice Of Appearance
4/7/2009		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)
	APER	NICHOLSON	Defendant: Schrock, John Appearance Douglas W. Crandall
	APER	NICHOLSON	Defendant: Schrock, Stacy Appearance Douglas W. Crandall
	APER	NICHOLSON	Defendant: Monroe, Christina Appearance Douglas W. Crandall
	ANSW	NICHOLSON	Answer and Counterclaim
	SMIS	NICHOLSON	Summons Issued

Date	Code	User		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
1/14/2009	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	Judge
1/28/2009	MEMO	NIELSEN	Memorandum in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment
	AFFD	NIELSEN	Affidavit of James S. Thomson, II in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment
1/29/2009	NOHG	NIELSEN	Notice Of Hearing fax
1/12/2009	NOAP	NIELSEN	Notice Of Appearance fax
1/31/2009	MEMO	MCMULLEN	Memorandum in Support of Defendants Motion for Summary Judgment and in Opposition to Plaintiffs Summary Judgment Motion
	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 09/14/2009 10:00 AM)
1/2/2009	MOTN	MCMULLEN	Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe's Motion for Summary Judgment
1/8/2009	MOTN	NIELSEN	Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe's Motion for Summary Judgment
		NIELSEN	Farm Bureau Mutual Insurance Company of Idaho's Statement of Disputed Material Facts in Opposition to Defendants' Motion for Summary Judgment
		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
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:
	CMIN	MCMULLEN	Court Minutes
	ADVS	MCMULLEN	Case Taken Under Advisement
1/26/2009	OPIN	MCMULLEN	Memorandum Opinion Re Cross Motions for Summary Judgment
1/2/2009	JDMT	MCMULLEN	Judgment
	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

Date	Code	User		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
2/31/2009	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal Filed (T)	Randy J. Stoker
5/2010	NOTC	COOPE	Notice of Balance Due on Clerk's Record	Randy J. Stoker
11/2010		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Douglas Crandall, Attorney Receipt number: 1000915 Dated: 1/11/2010 Amount: \$373.75 (Check)	Randy J. Stoker
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Douglas Crandall, Attorney Receipt number: 1000915 Dated: 1/11/2010 Amount: \$30.00 (Check)	Randy J. Stoker

ORIGINAL

2009 JUL 28 AM 10:39
BY OW

Raymond D. Powers
ISB #2737; rdp@powersthomson.com
James S. Thomson, II
ISB #6124; 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 - Aff- JST.docx

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.

JOHN SCHROCK, STACY SCHROCK
and CHRISTINA MONROE,

Counterclaimants,

Case No. CV 09-829

**AFFIDAVIT OF JAMES S.
THOMSON, II IN SUPPORT OF
FARM BUREAU MUTUAL
INSURANCE COMPANY OF
IDAHO'S MOTION FOR SUMMARY
JUDGMENT**

vs.

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO,

Counterdefendant.

STATE OF IDAHO)
) ss.
County of Ada)

JAMES S. THOMSON, II, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record for plaintiff/counterdefendant Farm Bureau Mutual Insurance Company of Idaho (hereinafter "Farm Bureau") and I make this Affidavit on my personal knowledge and belief.

2. Attached to this Affidavit as Exhibit "A" is a true and correct copy of the City Squire Policy issued by Farm Bureau to John and Lisa Schrock, Policy No. 01-B-079565-01, policy period October 19, 2008 to October 19, 2009.

3. Attached to this Affidavit as Exhibit "B" is a true and correct copy of the Personal Umbrella Policy issued by Farm Bureau to John and Lisa Schrock, Policy No. 01-U-079565-06, for the policy period October 19, 2008 to October 19, 2009.

4. Attached to this affidavit as Exhibit "C" is a true and correct copy of Bulletin 2008-1, issued on February 6, 2008 by William W. Deal, Director of Insurance of the Idaho Department of Insurance, to all property and casualty insurers offering motor vehicle liability insurance policies in Idaho.

5. Attached to this affidavit as Exhibit "D" is a true and correct copy of Senate Bill No. 1126 of the 59th Legislature of the State of Idaho, 2007 First Regular Session, including its

bill status, bill text, amendments, engrossed bill (original bill with amendments incorporated and statement of purpose/fiscal impact (can also be located at the following web address: <http://www3.state.id.us/oasis/2007/S1126.html#daily>).

FURTHER YOUR AFFIANT SAYETH NAUGHT.



JAMES S. THOMSON, II

SUBSCRIBED AND SWORN TO before me this ____ day of July, 2009.

Notary Public for Idaho

Residing at _____

Commission expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July, 2009, I caused to be served a true copy of the foregoing **AFFIDAVIT OF JAMES S. THOMSON, II 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
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

EXHIBIT A



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

CITY SQUIRE POLICY
DECLARATIONS
PAGE 1

8

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

INSURED: JOHN R SCHROCK
LISA A SCHROCK
3627 N 2700 E
TWIN FALLS ID 83301-0162
|||||

POLICY NUMBER: 01-B-079565-01
POLICY PERIOD: 10-19-2008 UNTIL 10-19-2009
AT 12:01 AM STANDARD TIME
COUNTY: TWIN FALLS
AGENCY: BOYD AGENCY
AGENT: DEMITT PAUL E
EFFECTIVE DATE: 10-19-2008
ISSUE DATE: 10-28-2008

SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
214000	A RESIDENCE PREMISE FRAME BUILDING NUMBER: 001 LOCATION: 01 REPLACEMENT COST WAIVE DEDUCTIBLE ON GLASS	27		LOAN: 0042380683 METLIFE HOME LOANS PO BOX 7481 SPRINGFIELD OH 45501	\$588.00
21400	SEWAGE SYSTEM BACKUP		1171 (0108) 1125 (0108)		
21400	DETACHED GARAGES, STORAGE SHEDS, SWIMMING POOLS				
21400	LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA SMOKE ALARM, DEAD BOLT LOCKS, NONSMOKER, AND NO AUXILIARY HEAT DISCOUNTS APPLIED		1133 (0108)		
42800	B LOSS OF USE				
149800	C PERSONAL PROPERTY REPLACEMENT COST	1-19	1111 (0108)		
500	REFRIGERATED PRODUCTS		1125 (0108)		
14980	SEWAGE SYSTEM BACKUP				
8000	E SHED FRAME 016X024 BUILDING NUMBER: 011 LOCATION: 01	1-9			\$24.00
500	FIRE DEPARTMENT SERVICE CHARGE				
	250 DEDUCTIBLE APPLIES TO EACH SECTION I LOSS				
TOTAL SECTION I ANNUAL PREMIUM					\$612.00

SECTION I IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT I133 (0108) - LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA ENDORSEMENT

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	ANNUAL PREMIUM
500000	F1 BODILY INJURY G PROPERTY DAMAGE EACH OCCURRENCE	\$70.00
10000 50000	F2 PREMISES MEDICAL EACH PERSON EACH OCCURRENCE	
1000	M DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE	
DESCRIPTION OF PREMISES:		
LOCATION DESCRIPTION		
01	1 RES 2 ACRES 3627 N 2700 E TWIN FALLS ID	

CERTIFIED COPY

01-B-079565-01
POLICY NO. INITIAL

TOTAL SECTION II ANNUAL PREMIUM \$70.00

CONTINUED ON PAGE 2

CO 00530



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

CITY SQUIRE POLICY
DECLARATIONS
PAGE 2

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

SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT I201 (0108) - COMBINE SINGLE LIMITS (CITY SQUIRE) (PRINTED IN THE POLICY BOOKLET)
ENDORSEMENT I282 (0108) - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	N BODILY INJURY O PROPERTY DAMAGE EACH OCCURRENCE		
300000 500000	P UNINSURED MOTORIST EACH PERSON EACH OCCURRENCE		
300000 500000	P1 UNDERINSURED MOTORIST EACH PERSON EACH OCCURRENCE		
10000	Q MEDICAL EACH PERSON		
	S 100 COMPREHENSIVE DEDUCTIBLE		
	T 500 COLLISION DEDUCTIBLE		
100	ROADSIDE ASSISTANCE EACH OCCURRENCE		
25 500	CAR RENTAL REIMBURSEMENT PER DAY PER ACCIDENT		
25 500	LOSS OF USE BY THEFT PER DAY PER ACCIDENT		
	THE FOLLOWING ARE INSURED UNDER ACCIDENTAL DEATH AND DISMEMBERMENT:	*I312 (0108)	\$6.00
	JOHN R SCHROCK	LISA A SCHROCK	STACY SCHROCK
	INSURED VEHICLES:		

DRIVER CLASS	DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	LIENHOLDER / LESSOR	ANNUAL PREMIUM
03-471-2	2005 GMC PU 2GTEK13T551223397 PLEASURE - AGE 50-59 LIABILITY PREMIUM \$226.00 COMP / COLL PREMIUM \$231.00	N,O,P,P1,Q,S,T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*I334 (0108) *I368 (0108)		\$457.00
03-092-Z	2000 WINN MTRHM 3FCNF53S8YJA08677 MOTORHOME LIABILITY PREMIUM \$134.00 COMP / COLL PREMIUM \$364.00	N,O,P,P1,Q,S,T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*I334 (0108) *I368 (0108)	LIENHOLDER: CITIZENS BANK 1 CITIZENS PLZ PO BOX 42089 PROVIDENCE RI	\$498.00 02940
03-171-X	1998 HOND CRV L JHLRD1840WC056426 PLEASURE - AGE 50-59 LIABILITY PREMIUM \$226.00 COMP / COLL PREMIUM \$137.00	N,O,P,P1,Q,S,T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*I334 (0108) *I368 (0108)		\$363.00

CONTINUED ON PAGE 3

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0000531



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

CITY SQUIRE POLICY
DECLARATIONS
PAGE 3

8

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

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	I418 (0108)	\$5.00
5000	ALL TERRAIN VEHICLE 2006 YAMA 5YAJ16Y06A009604	004	250	I412 (0108)	\$61.00
5000	ALL TERRAIN VEHICLE 2006 YAMA 5Y4AJ16Y76A009387	006	250	I412 (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.

CONTINUED ON PAGE 4

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CO 00532



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

CITY SQUIRE POLICY
DECLARATIONS
PAGE 4

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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.




THE CITY SQUIRE

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 

POLICY NO.

INITIAL

201

CO 00534

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AGREEMENT

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.

DEFINITIONS

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.

GENERAL CONDITIONS APPLICABLE TO THIS POLICY

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 Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this policy.

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.

SECTION I – PROPERTY INSURANCE

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

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**.

COVERAGE B – LOSS OF USE

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

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

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.

SECTION II – LIABILITY INSURANCE

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.

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. 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

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.

SECTION IV – INLAND MARINE INSURANCE

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

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

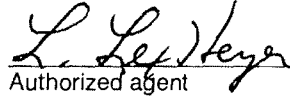
lienholder. At our option we may pay you and the lienholder for any loss.

- 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

POLICY ENDORSEMENTS

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

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
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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 B



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

PERSONAL UMBRELLA POLICY
DECLARATIONS
PAGE 1

8

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

INSURED: JOHN R SCHROCK
LISA A SCHROCK
3627 N 2700 E
TWIN FALLS ID 83301-0162
|||||

POLICY NUMBER: 01-U-079565-06
POLICY PERIOD: 10-19-2008 UNTIL 10-19-2009
AT 12:01 AM STANDARD TIME
COUNTY: TWIN FALLS
AGENCY: BOYD AGENCY
AGENT: DEWITT PAUL E
EFFECTIVE DATE: 10-19-2008
ISSUE DATE: 10-28-2008

LIMITS OF
LIABILITY COVERAGE

1000000 PERSONAL LIABILITY
1000000 EACH OCCURRENCE
ANNUAL AGGREGATE

1000 RETAINED LIMIT

SCHEDULE OF UNDERLYING INSURANCE:

LIMITS OF
LIABILITY TYPE OF INSURANCE

500000 FARM BUREAU POLICY NUMBER 01-B-079565-01
COMBINED SINGLE LIMIT

500000 AUTOMOBILE LIABILITY FARM BUREAU POLICY NUMBER 01-B-079565-01
COMBINED SINGLE LIMIT

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

ID-UP-02-01(0108)

TOTAL ANNUAL PREMIUM \$231.00

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

*** THIS IS NOT A BILLING ***

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

NOTICE OF ANNUAL MEETING

THE 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.

CERTIFIED COPY

01-U-079565-06
POLICY NO.

INITIAL

INSURED'S COPY
ID-UP-03-01(0108)

L. L. Meyer
Authorized Representative

CO 00519



PERSONAL UMBRELLA POLICY

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-079566-06 *ML*
POLICY # INITIAL 242

CO 00520

TABLE OF CONTENTS

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

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.

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. 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/fungl/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.

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; 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**.

PART III - DEFENSE OF SUITS NOT COVERED BY OTHER INSURANCE

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**.

PART IV - EXCLUSIONS

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 practioners, 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.

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;
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.

PART VI - UNDERLYING INSURANCE REQUIREMENT

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.

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

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**.

PART VIII - POLICY CONDITIONS

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

EXHIBIT C

EXHIBIT C

IDAHO INSURANCE BULLETINS AND RELATED MATERIALS

BULLETINS

Bulletin 2008-1

February 6, 2008

TO: Property And Casualty Insurers Offering Motor Vehicle Liability Insurance Policies In Idaho

FROM: William W. Deal

Director Of Insurance

DATE: February 6, 2008

RE: HOUSEHOLD EXCLUSIONS AND STEP-DOWN PROVISIONS WITHIN MOTOR VEHICLE LIABILITY INSURANCE POLICIES - IDAHO CODE § 49-1212

The Idaho Department of Insurance (Department) has received questions from insurers concerning Idaho Code § 49-1212(12), which became effective July 1, 2007. The new subsection states that '[n]o 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 412510, Idaho Code.' In the course of responding to these questions, questions arose concerning the interaction between Idaho Code §§ 49-1212(12), 49-1229 and the Idaho Supreme Court decision in **Farmers Insurance Group v. Reed**, 109 Idaho 849 (1985) (Reed).

Idaho Code § 49-1212(12) requires any motor vehicle liability policy coverage above the statutory minimum (set forth in Idaho Code §§ 49-1229 and 49-117(18)) to maintain the same level of coverage for all insureds and those persons explicitly or implicitly given permission to operate the insured vehicle. The type of policy exclusion targeted by Idaho Code § 49-1212(12) provides generally that the insurer will cover designated individuals at the maximum level provided under the policy, while all others are covered up to the minimum level required by the Motor Vehicle Responsibility Act. In other words, the contract states that, unless otherwise designated in the policy, the insured receives the minimum coverage afforded by law. Idaho Code § 49-1212(12) reverses this 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.

It is also clear that the exclusion authorized in Idaho Code § 49-1212(12) pursuant to Idaho Code § 41-2510 cannot take the form of a blanket household exclusion. In **Reed**, the Idaho Supreme Court invalidated a household exclusion as a violation of Idaho Code § 49-232 (now codified at Idaho Code § 49-1229). In general, household exclusions remove from liability coverage bodily injury to any person related to the insured and residing in their household or any person related to the operator and residing in the household of the operator.

Property and casualty insurers selling motor vehicle liability insurance policies should review their contracts to make sure they are in compliance with Idaho law. If a property and casualty insurer identifies any of its policies that are not in compliance with Idaho law, please contact the Department to discuss appropriate compliance efforts.

Persons with questions regarding filings affected by this bulletin should contact the Department of Insur-

ance, Rates & Forms Section at (208) 334-4250.

ID Bulletin No. 2008-1

2008 WL 375502

ID Bulletin 2008-1

END OF DOCUMENT

EXHIBIT D

SENATE BILL NO. 1126[View Bill Status](#)[View Bill Text](#)[View Amendment](#)[View Engrossed Bill \(Original Bill with Amendment\(s\) Incorporated\)](#)[View Statement of Purpose / Fiscal Impact](#)

Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

Bill Status

S1126aa,aaH.....by JUDICIARY AND RULES
MOTOR VEHICLE LIABILITY - Amends existing law to require that a minimum level of motor vehicle liability coverage be provided to certain persons; to revise liability provisions relating to liability for imputed negligence; and to provide nonliability to the owner that rents or leases a motor vehicle under certain circumstances.

02/12 Senate intro - 1st rdg - to printing

02/13 Rpt prt - to Com/HuRes

02/23 Rpt out - to 14th Ord

03/01 Rpt out amen - to engros

03/02 Rpt engros - 1st rdg - to 2nd rdg as amen

03/05 2nd rdg - to 3rd rdg as amen

03/06 3rd rdg as amen - PASSED - 33-2-0

AYES -- Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett, Coiner, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, McGee, McKague, McKenzie, Pearce, Richardson, Schroeder, Siddoway, Stegner, Stennett, Werk

NAYS -- Cameron, Goedde

Absent and excused -- None

Floor Sponsor - Hill

Title apvd - to House

03/07 House intro - 1st rdg - to Transp

03/15 Rpt out - to Gen Ord

Rpt out amen - to 1st rdg as amen

03/16 1st rdg - to 2nd rdg as amen

03/19 2nd rdg - to 3rd rdg as amen

03/20 3rd rdg as amen - PASSED - 66-1-3

AYES -- Anderson, Andrus, Barrett, Bayer, Bedke, Bell, Bilbao, Black, Block, Bock, Boe, Bolz, Brackett, Bradford, Chadderdon, Chew, Clark, Collins, Crane, Durst, Edmunson, Eskridge, Hagedorn, Hart, Harwood, Henbest, Henderson, Jaquet, Killen, King, Labrador, Lake, LeFavour, Loertscher, Luker, Marriott, Mathews, McGeachin, Mortimer, Moyle, Nielsen, Nonini, Pasley-Stuart, Patrick, Pence, Raybould, Ring, Ringo, Roberts, Ruchti, Rusche, Sayler, Schaefer, Shepherd(2), Shepherd(8), Shirley, Shively, Smith(24), Snodgrass, Stevenson, Thayne, Trail, Vander Woude, Wills, Wood(27), Wood(35)

NAYS -- Smith(30)

Absent and excused -- Chavez, Kren, Mr. Speaker
 Floor Sponsors - Wood(35) & Ringo
 Title apvd - to Senate
 03/21 Senate concurred in House amens - to engros
 Rpt engros - 1st rdg - to 2nd rdg as amen
 03/22 2nd rdg - to 3rd rdg as amen
 Rls susp - PASSED - 33-2-0
 AYES -- Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett,
 Coiner, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Hammond,
 Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge,
 Malepeai, McGee, McKague, McKenzie, Pearce, Richardson, Schroeder,
 Siddoway, Stegner, Stennett, Werk
 NAYS -- Cameron, Goedde
 Absent and excused -- None
 Floor Sponsor - Hill
 Title apvd - to enrol
 03/23 Rpt enrol - Pres signed
 03/26 Sp signed - To Governor
 03/30 Governor signed
 Session Law Chapter 307
 Effective: 07/01/07

Bill Text

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
 Fifty-ninth Legislature First Regular Session - 2007

IN THE SENATE

SENATE BILL NO. 1126

BY JUDICIARY AND RULES COMMITTEE

1 AN ACT

2 RELATING TO MOTOR VEHICLE LIABILITY; AMENDING SECTION 49-1212, IDAHO CODE, TO
 3 REQUIRE THAT A MINIMUM LEVEL OF MOTOR VEHICLE LIABILITY COVERAGE BE PRO-
 4 VIDED TO CERTAIN PERSONS; AND AMENDING SECTION 49-2417, IDAHO CODE, TO
 5 REVISE LIABILITY PROVISIONS RELATING TO LIABILITY FOR IMPUTED NEGLIGENCE.

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 49-1212, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 49-1212. EXPRESSED, PERMITTED AND IMPLIED PROVISIONS OF MOTOR VEHICLE
 10 LIABILITY POLICY. (1) An owner's policy of liability insurance shall:
 11 (a) Designate by explicit description or by appropriate reference all
 12 motor vehicles with respect to which coverage is to be granted; and
 13 (b) Insure the person named therein and any other person, as insured,
 14 using any such described motor vehicles with the express or implied per-
 15 mission of the named insured, against loss from the liability imposed by
 16 law for damages arising out of the ownership, maintenance or use of the
 17 motor vehicles within the United States of America or the Dominion of Can-
 18 ada, subject to limits exclusive of interest and costs, with respect to
 19 each motor vehicle, as provided in section 49-117, Idaho Code.
 20 (2) An operator's policy of liability insurance shall insure the person
 21 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.

(3) A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) A motor vehicle liability policy shall not insure any liability under any worker's compensation law as provided in title 72, Idaho Code, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any described motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to any liability by any agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by the motor vehicle liability policy.

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(b) Satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount shall be deductible from the limits of liability specified in subsection (1)(b) of this section.

(d) The policy and its written application, if any, and any rider or indorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(6) 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.

(7) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(8) Any motor vehicle liability policy may provide for the prorating of the insurance with other valid and collectible insurance.

(9) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one (1) or more insurance carriers which policies together meet the requirements of this chapter.

(10) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(11) When the negligent operation of a loaned vehicle results in the death or injury to a person or personal property, except for the loaned vehicle, and at the time of the negligent operation of the loaned vehicle the operator of the loaned vehicle is insured under a motor vehicle liability policy complying with the financial responsibility law of this state, primary coverage for the death of or injury to a person or personal property, except for the loaned vehicle, shall be provided by the operator's motor vehicle liability policy.

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The insurance policy of the owner of the loaned vehicle shall provide secondary or excess coverage for the death of or injury to a person or personal property, however the loaned vehicle owner's insurance shall provide primary coverage for damage to the loaned vehicle.

(a) For the purpose of this subsection, "loaned vehicle" means a motor vehicle which is provided for temporary use without charge to the operator by an entity licensed under chapter 16, title 49, Idaho Code, for the purpose of demonstrating the vehicle to the operator as a prospective purchaser, or as a convenience to the operator during the repairing or servicing of a motor vehicle for the operator, regardless of whether such repair or service is performed by the owner of the loaned vehicle or by some other person or business.

(b) Should the owner of a motor vehicle receive any compensation from or on behalf of the operator for the temporary use of the motor vehicle, excluding any compensation provided to the owner as a result of the repairing or servicing of a motor vehicle for the operator, the owner's insurance coverage shall be primary and the operator's motor vehicle insurance shall be secondary or excess.

(12) No motor vehicle liability policy providing coverage beyond state

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mandated minimum limits shall provide a reduced level of coverage to any insured's family or household member or other authorized user.

SECTION 2. That Section 49-2417, Idaho Code, be, and the same is hereby amended to read as follows:

49-2417. OWNER'S TORT LIABILITY FOR NEGLIGENCE OF ANOTHER -- SUBROGATION.

(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.**

(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.

(4) In the event a recovery is had under the provisions of this section against an owner for imputed negligence the owner is subrogated to all the rights of the person injured and may recover from the operator the total amount of any judgment and costs recovered against the owner. If the bailee of an owner with the permission, expressed or implied, of the owner, permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner, within the meaning of subsections (3) and (4) of this section.

(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. Lia-

38 bility may exist by reason of imputed negligence, pursuant to this section,
 39 and not arising through the negligence of the owner nor through the relation-
 40 ship of principal and agent nor master and servant.
 41 (6) If a motor vehicle is sold under a contract of conditional sale
 42 whereby the title to the motor vehicle remains in the vendor, the vendor or
 43 his assignee shall be deemed an owner within the provisions of this section.

Amendment

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
 Fifty-ninth Legislature First Regular Session - 2007

Moved by Moyle

Seconded by Denney

IN THE HOUSE OF REPRESENTATIVES
 HOUSE AMENDMENT TO S.B. NO. 1126, As Amended

AMENDMENT TO SECTION 2

On page 3 of the engrossed bill, following line 44, insert:

"(7) An owner that rents or leases a motor vehicle to a person shall not be liable under the laws of the state of Idaho or a political subdivision thereof, by reason of being the owner of the vehicle, for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if:

(a) The owner is engaged in the trade or business of renting or leasing motor vehicles; and

(b) There is no negligence or criminal wrongdoing on the part of the owner."

CORRECTION TO TITLE

On page 1, in line 5, following "NEGLIGENCE" insert: "AND TO PROVIDE NON-LIABILITY TO THE OWNER THAT RENTS OR LEASES A MOTOR VEHICLE TO A PERSON UNDER CERTAIN CIRCUMSTANCES".

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Moved by Broadsword

Seconded by Bilyeu

IN THE SENATE
 SENATE AMENDMENT TO S.B. NO. 1126

AMENDMENT TO SECTION 1

On page 3 of the printed bill, in line 2, following "user" insert: "except as provided in section 41-2510, Idaho Code".

Engrossed Bill (Original Bill with Amendment(s) Incorporated)

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]

Fifty-ninth Legislature

First Regular Session - 2007

IN THE SENATE

SENATE BILL NO. 1126, As Amended, As Amended in the House

BY JUDICIARY AND RULES COMMITTEE

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 OWNER THAT RENTS OR LEASES A MOTOR VEHICLE TO A PERSON UNDER CERTAIN CIRCUMSTANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 49-1212, Idaho Code, be, and the same is hereby amended to read as follows:

49-1212. EXPRESSED, PERMITTED AND IMPLIED PROVISIONS OF MOTOR VEHICLE LIABILITY POLICY. (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 within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as provided in section 49-117, Idaho Code.

(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.

(3) A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) A motor vehicle liability policy shall not insure any liability under any worker's compensation law as provided in title 72, Idaho Code, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any described motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to any liability by any

agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by the motor vehicle liability policy.

4 (b) Satisfaction by the insured of a judgment for injury or damage shall
5 not be a condition precedent to the right or duty of the insurance carrier
6 to make payment on account of the injury or damage.

7 (c) The insurance carrier shall have the right to settle any claim cov-
8 ered by the policy, and if the settlement is made in good faith, the
9 amount shall be deductible from the limits of liability specified in sub-
10 section (1)(b) of this section.

11 (d) The policy and its written application, if any, and any rider or
12 indorsement which does not conflict with the provisions of this chapter
13 shall constitute the entire contract between the parties.

14 (6) Any policy which grants the coverage required for a motor vehicle
15 liability policy may also grant any lawful coverage in excess of or in addi-
16 tion to the coverage specified for a motor vehicle liability policy, and any
17 excess or additional coverage shall not be subject to the provisions of this
18 chapter. With respect to a policy which grants an excess of additional cover-
19 age the term "motor vehicle liability policy" shall apply only to that part of
20 the coverage which is required by this section.

21 (7) Any motor vehicle liability policy may provide that the insured shall
22 reimburse the insurance carrier for any payment the insurance carrier would
23 not have been obligated to make under the terms of the policy except for the
24 provisions of this chapter.

25 (8) Any motor vehicle liability policy may provide for the prorating of
26 the insurance with other valid and collectible insurance.

27 (9) The requirements for a motor vehicle liability policy may be ful-
28 filled by the policies of one (1) or more insurance carriers which policies
29 together meet the requirements of this chapter.

30 (10) Any binder issued pending the issuance of a motor vehicle liability
31 policy shall be deemed to fulfill the requirements for such a policy.

32 (11) When the negligent operation of a loaned vehicle results in the death
33 or injury to a person or personal property, except for the loaned vehicle, and
34 at the time of the negligent operation of the loaned vehicle the operator of
35 the loaned vehicle is insured under a motor vehicle liability policy complying
36 with the financial responsibility law of this state, primary coverage for the
37 death of or injury to a person or personal property, except for the loaned
38 vehicle, shall be provided by the operator's motor vehicle liability policy.
39 The insurance policy of the owner of the loaned vehicle shall provide second-
40 ary or excess coverage for the death of or injury to a person or personal
41 property, however the loaned vehicle owner's insurance shall provide primary
42 coverage for damage to the loaned vehicle.

43 (a) For the purpose of this subsection, "loaned vehicle" means a motor
44 vehicle which is provided for temporary use without charge to the operator
45 by an entity licensed under chapter 16, title 49, Idaho Code, for the pur-
46 pose of demonstrating the vehicle to the operator as a prospective pur-
47 chaser, or as a convenience to the operator during the repairing or ser-
48 vicing of a motor vehicle for the operator, regardless of whether such
49 repair or service is performed by the owner of the loaned vehicle or by
50 some other person or business.

51 (b) Should the owner of a motor vehicle receive any compensation from or
52 on behalf of the operator for the temporary use of the motor vehicle,
53 excluding any compensation provided to the owner as a result of the
54 repairing or servicing of a motor vehicle for the operator, the owner's
55 insurance coverage shall be primary and the operator's motor vehicle

3

1 insurance shall be secondary or excess.

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

SECTION 2. That Section 49-2417, Idaho Code, be, and the same is hereby amended to read as follows:

49-2417. OWNER'S TORT LIABILITY FOR NEGLIGENCE OF ANOTHER -- SUBROGATION.
(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.

(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.

(4) In the event a recovery is had under the provisions of this section against an owner for imputed negligence the owner is subrogated to all the rights of the person injured and may recover from the operator the total amount of any judgment and costs recovered against the owner. If the bailee of an owner with the permission, expressed or implied, of the owner, permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner, within the meaning of subsections (3) and (4) of this section.

(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.

(6) If a motor vehicle is sold under a contract of conditional sale whereby the title to the motor vehicle remains in the vendor, the vendor or his assignee shall be deemed an owner within the provisions of this section.

(7) An owner that rents or leases a motor vehicle to a person shall not be liable under the laws of the state of Idaho or a political subdivision thereof, by reason of being the owner of the vehicle, for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease if:

(a) The owner is engaged in the trade or business of renting or leasing motor vehicles; and

(b) There is no negligence or criminal wrongdoing on the part of the owner.

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IN THE SENATE

SENATE BILL NO. 1126, As Amended

BY JUDICIARY AND RULES COMMITTEE

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.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 3. That Section 49-1212, Idaho Code, be, and the same is hereby amended to read as follows:

49-1212. EXPRESSED, PERMITTED AND IMPLIED PROVISIONS OF MOTOR VEHICLE LIABILITY POLICY. (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 within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as provided in section 49-117, Idaho Code.

(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.

(3) A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) A motor vehicle liability policy shall not insure any liability under any worker's compensation law as provided in title 72, Idaho Code, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any described motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to any liability by any agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by the motor vehicle liability policy.

(b) Satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier

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to make payment on account of the injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount shall be deductible from the limits of liability specified in subsection (1)(b) of this section.

(d) The policy and its written application, if any, and any rider or indorsement which does not conflict with the provisions of this chapter

8 shall constitute the entire contract between the parties.

9 (6) Any policy which grants the coverage required for a motor vehicle
10 liability policy may also grant any lawful coverage in excess of or in addi-
11 tion to the coverage specified for a motor vehicle liability policy, and any
12 excess or additional coverage shall not be subject to the provisions of this
13 chapter. With respect to a policy which grants an excess of additional cover-
14 age the term "motor vehicle liability policy" shall apply only to that part of
15 the coverage which is required by this section.

16 (7) Any motor vehicle liability policy may provide that the insured shall
17 reimburse the insurance carrier for any payment the insurance carrier would
18 not have been obligated to make under the terms of the policy except for the
19 provisions of this chapter.

20 (8) Any motor vehicle liability policy may provide for the prorating of
21 the insurance with other valid and collectible insurance.

22 (9) The requirements for a motor vehicle liability policy may be ful-
23 filled by the policies of one (1) or more insurance carriers which policies
24 together meet the requirements of this chapter.

25 (10) Any binder issued pending the issuance of a motor vehicle liability
26 policy shall be deemed to fulfill the requirements for such a policy.

27 (11) When the negligent operation of a loaned vehicle results in the death
28 or injury to a person or personal property, except for the loaned vehicle, and
29 at the time of the negligent operation of the loaned vehicle the operator of
30 the loaned vehicle is insured under a motor vehicle liability policy complying
31 with the financial responsibility law of this state, primary coverage for the
32 death of or injury to a person or personal property, except for the loaned
33 vehicle, shall be provided by the operator's motor vehicle liability policy.
34 The insurance policy of the owner of the loaned vehicle shall provide second-
35 ary or excess coverage for the death of or injury to a person or personal
36 property, however the loaned vehicle owner's insurance shall provide primary
37 coverage for damage to the loaned vehicle.

38 (a) For the purpose of this subsection, "loaned vehicle" means a motor
39 vehicle which is provided for temporary use without charge to the operator
40 by an entity licensed under chapter 16, title 49, Idaho Code, for the pur-
41 pose of demonstrating the vehicle to the operator as a prospective pur-
42 chaser, or as a convenience to the operator during the repairing or ser-
43 vicing of a motor vehicle for the operator, regardless of whether such
44 repair or service is performed by the owner of the loaned vehicle or by
45 some other person or business.

46 (b) Should the owner of a motor vehicle receive any compensation from or
47 on behalf of the operator for the temporary use of the motor vehicle,
48 excluding any compensation provided to the owner as a result of the
49 repairing or servicing of a motor vehicle for the operator, the owner's
50 insurance coverage shall be primary and the operator's motor vehicle
51 insurance shall be secondary or excess.

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

7

1 SECTION 4. That Section 49-2417, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 49-2417. OWNER'S TORT LIABILITY FOR NEGLIGENCE OF ANOTHER -- SUBROGATION.

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

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(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.

(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.

(4) In the event a recovery is had under the provisions of this section against an owner for imputed negligence the owner is subrogated to all the rights of the person injured and may recover from the operator the total amount of any judgment and costs recovered against the owner. If the bailee of an owner with the permission, expressed or implied, of the owner, permits another to operate the motor vehicle of the owner, then the bailee and the driver shall both be deemed operators of the vehicle of the owner, within the meaning of subsections (3) and (4) of this section.

(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.

(6) If a motor vehicle is sold under a contract of conditional sale whereby the title to the motor vehicle remains in the vendor, the vendor or his assignee shall be deemed an owner within the provisions of this section.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 16843

This bill is one of a series proposed to modernize and streamline judicial and legal proceedings in automobile insurance litigation. These revisions to current law allow insureds to make claims against insurance policy amounts for which premiums have been collected. This protects family members, passengers and authorized users of the insured person's vehicle.

FISCAL NOTE

This bill will have no fiscal impact.

Contact

Name: Senator Brent Hill

Phone: 332-1315

Barbara Jorden

Phone: 345-1890

STATEMENT OF PURPOSE/FISCAL NOTE

S 1126

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

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

AUG 31 2009

2:40 P.M.

By _____ Clerk
 _____ Deputy Clerk

Attorney for the Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan,
 and Christina Monroe and Counterclaimants John Schrock, Stacy Schrock and Christina Monroe

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, MICHELLE RUNYAN, and)
 CHRISTINA MONROE,)

Defendants.)

JOHN SCHROCK, STACY SCHROCK and)
 CHRISTINA MONROE,)

Counterclaimants,)

vs.)

LISA SCHROCK,)

Counterdefendant.)

Case No. CV-09-829

MEMORANDUM IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT AND IN
 OPPOSITION TO PLAINTIFF'S
 SUMMARY JUDGMENT MOTION

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
 AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION - PAGE 1

I.**QUESTIONS PRESENTED ON SUMMARY JUDGMENT**

Farm Bureau Mutual Insurance Company insured the defendants John and Lisa Schrock under two policies. The first policy was a single limit City Squire Auto Policy, which also had Stacy Schrock listed as an additional insured, with a single limit \$500,000 maximum coverage. The second policy was a personal umbrella policy with a \$1,000,000 single limit maximum coverage. Farm Bureau has tendered the \$500,000 City Squire Policy to the defendants. Farm Bureau has filed this declaratory judgment action requesting this Court's ruling pertaining to the responsibilities of Farm Bureau under John and Lisa Schrock's Personal Umbrella Policy (hereinafter, "Umbrella Policy").

Therefore the over-arching issue in this case is whether the limits of liability under the Umbrella Policy that the Plaintiff Farm Bureau issued to the Schrock Defendants are available to satisfy the claims made by the defendants in this case? This question is entirely resolved by the reliance upon the express terms of the parties' contract as stated on the face of the Umbrella Policy. Regardless of whether or not the Umbrella Policy is, or is not, subject to the statutory requirements of Idaho's Motor Vehicle Financial Responsibility Act ("MVFRA"), as extensively and almost exclusively argued by Farm Bureau, the terms of the parties' contract are enforceable and control the determination of whether coverage is provided to the defendants under the Umbrella Policy.

In a nutshell, the "savings clause" exception to Exclusion No. 8 of the Umbrella Policy declares that coverage under that policy is coextensive with the coverage provided by the valid and collectible underlying City Squire policy to the same extent that the defendants injuries and damages

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION - PAGE 2**

are covered by that policy. That contractually declared result, in respect to the coverage that is extended by Farm Bureau to the defendants, necessarily requires that neither any household exclusion, nor any permissive use exclusion, can apply to provide the coverage that is provided by the savings clause exception to Exclusion No. 8 of the Umbrella Policy. Consequently, this Court should hold that the defendants are entitled to the full extent of coverage that is provided by the Umbrella Policy.

II.

LEGAL STANDARDS APPLICABLE ON THIS SUMMARY JUDGMENT MOTION

The purpose of summary judgment is to avoid useless trials. *Bandelin v. Pietsch*, 98 Idaho 337, 340-41, 563 P.2d 395, 398-99 (1977).

In *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 179 P.3d 1064 (2008) the Idaho Supreme Court recently held that the trial court had erred in granting summary judgment because, "there were factual issues that should have been presented to a jury for determination," and in so holding the Court reiterated the following applicable standard of review:

[T]his Court applies the same standard used by the district court originally ruling on the motion. *Carnell v. Barker Mgmt., Inc.*, 137 Idaho 322, 326, 48 P.3d 651, 655 (2002). Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* at 327, 48 P.3d at 656 (citing Idaho R. Civ. P. 56(c)). All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party. *Id.* The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 808 P.2d 851, 854 (1991). The plaintiff's case must be anchored in something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue. *Id.* However, all doubts are to be resolved against the moving party, and the motion must be denied if the

evidence is such that one may draw conflicting inferences therefrom, and if reasonable people might reach different conclusions. Id.

145 Idaho at 410-11, 179 P.3d at 1066-67 (emphasis added).

On a motion for summary judgment the responding party is only required to present evidence establishing a genuine issue of material fact in respect to those elements of the case that have been challenged by the moving party's motion. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1992). The non-moving party has no burden to present evidence in opposition to the moving party's motion for summary judgment, when the moving party has not raised an issue, or presented argument or authority in support of that issue. *Foster v. Traul*, 141 Idaho 890, 893, 120 P.3d 278, 281 (2005); and *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 401, 987 P.2d 300, 313 (1999). The trial court may not decide an issue not raised in the moving party's motion for summary judgment. *Harwood v. Talbert*, 136 Idaho 672, 678, 39 P.3d 612, 618 (2001).

A court can grant summary judgment to the non-moving party when there are no genuine issues of material fact and the non-moving party is entitled to judgment as a matter of law. *Harwood v. Talbert*, 136 Idaho 672, 677-78, 39 P.3d 612, 617-18 (2001).

III.

STATEMENT OF UNDISPUTED FACTS

1. On October 24, 2008, Defendant Christa Springer was operating a 2001 Isuzu Rodeo westbound on Interstate 84 in Minidoka County, Idaho, where she lost control of the vehicle, causing it to roll several times.

2. Defendants Stacy Schrock, Christa Springer, April Seitzinger and Christina Monroc sustained injuries. Defendant Stacy Schrock was rendered a paraplegic by the accident.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION – PAGE 4**

3. At the time of the accident, the vehicle in question (the 2001 Isuzu Rodeo) was owned by Defendant Lisa Schrock.

4. Christa Springer was operating the vehicle with the express and/or implied permission of Defendant Lisa Schrock and Defendant/Counterclaimant Stacy Schrock. Defendant Lisa Schrock had "entrusted" to others the 2001 Isuzu Rodeo, as the term "entrusted" is used in the Farm Bureau Personal Umbrella Policy, Exclusion No. 8.

5. Defendants Stacy Schrock, April Seitzinger, Christina Monroe and Michele Runyan were passengers in the Isuzu Rodeo.

6. At the time of the accident, Defendants John and Lisa Schrock were insured under Farm Bureau City Squire Policy No. 01BN079565-01 and a Personal Umbrella Policy No. 01-U-079565-06. Farm Bureau City Squire had a policy limit of \$500,000 single limit. The Personal Umbrella had a policy limit of \$1,000,000.

7. The Farm Bureau City Squire policy provided to John and Lisa Schrock has been tendered and paid in recognition of the claims associated with this accident, in the sum of \$500,000.

8. Farm Bureau has denied coverage under the Umbrella Policy issued by Farm Bureau to Defendants John and Lisa Schrock.

9. At the time of the accident, the subject umbrella policy contained the following exclusions:

We do not cover:

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

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION - PAGE 5**

by such policy.

(Emphasis added).

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;

...
(Emphasis added).

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

(Emphasis added).

10. There was valid, collectible underlying insurance that covered the damages from this accident.

11. The subject umbrella policy contains the following definitions:

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.

Motor vehicle means a land motor vehicle or trailer designated 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.

...

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.

12. The insurance policy underlying the Farm Bureau Umbrella Policy was the \$500,000 City Squire Policy, which was the valid and collectible underlying insurance described in the declarations page for the Umbrella Policy.

13. The underlying insurance described in the declarations page of the Umbrella Policy covered the damages that Farm Bureau no attempts to exclude under Umbrella Policy.

14. Farm Bureau relies upon the permissive driver exclusion and the household exclusion in the Umbrella Policy in support of its attempt to exclude coverage under the Umbrella Policy.

15. The underlying Farm Bureau City Squire Policy does not exclude coverage for a permissive driver, nor does that underlying policy contain a household exclusion.

16. Defendant Lisa Schrock is a named insured under the Farm Bureau Umbrella Policy.

17. Christa Springer was negligent on October 24, 2008 when she lost control of the 2001 Isuzu Rodeo, causing it to roll, and ejecting Lisa Schrock and Christina Monroe.

18. Defendants Lisa Schrock, Christina Monroe, April Seitzinger and Michele Runyan were injured as a direct result of Defendant Springer's negligence.

19. At the time of the accident, the Personal Umbrella Policy of the Defendants Lisa and John Schrock contained the policy **condition**:

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.

IV.

ARGUMENT

A. By Application Of The "Exception" To Exclusion No. 8 Of The Umbrella Policy, Neither The Household Exclusion, Nor The Permissive Use Exclusion, Contained In That Umbrella Policy Preclude Coverage For The Defendants' Injuries Under That Umbrella Policy

The dispositive issue on this motion for summary judgment is the application of the "savings clause" exception to Exclusion No. 8 of the Umbrella Policy. A straightforward application of the clear and unambiguous language of the policy provision results in full coverage being provided to the defendants under the Umbrella Policy. This Court's determination of this contract interpretation question on this coverage issue under the Umbrella Policy controls the outcome of this summary judgment motion, regardless of whether or not the Umbrella Policy is classified as a "motor vehicle liability policy," and regardless of any attempt by Farm Bureau to create spurious "permissive driver," or "imputed liability" issues.

As further argued below, the enforcement of Exclusion No. 8 of the Umbrella Policy, and in particular the savings clause exception to that exclusion, does not violate any Idaho public policy, does not violate any Idaho statute, and in fact the full and complete enforcement of that savings clause exception to Exclusion No. 8 is entirely consistent with existing Idaho public policy, and existing Idaho law.

The Umbrella Policy at issue here, by the very terms included within that policy, establishes that the parties here have contractually agreed to extend coverage under the Umbrella Policy on the exact same basis as the coverage that is provided by the underlying City Square Policy. This result is accomplished by the application of an express exception to Exclusion No. 8 of the Umbrella

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION – PAGE 8**

Policy, which operates as a savings clause, and that provides as follows:

PART IV - EXCLUSIONS

We do not cover:

...

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;

Exclusion No. 8 on its face excludes from coverage under the Umbrella policy those instances where bodily injury or property damage arises out of ownership, maintenance, use, or "entrustment" of any motor vehicle to others. But then in the immediately following clause creates an exception to that exclusion that functions as a savings clause as applied to the facts of this case. That exception to the exclusion provides that coverage does exist under the Umbrella Policy for the otherwise excluded injuries or damages if: (1) those injuries or damages are "covered by valid and collectible underlying insurance described in the Declarations;" and (2) "then only to the extent such injury or damages are covered by such policy."

Both requirements for the application of this savings clause exception to the exclusion are met by the facts of this case.

It is undisputed that at the time of the accident, Defendants John and Lisa Schrock were insured under Farm Bureau City Squire Policy No. 01BN079565-01. It is undisputed that Farm Bureau City Squire Policy No. 01BN079565-01 was listed as the underlying insurance as that term is defined in the Personal Umbrella Policy and listed on the Declarations Page of the Farm Bureau Personal Umbrella Policy of John and Lisa Schrock. It is undisputed that the insurance described

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION – PAGE 9**

in the Declarations Page covered the extent of the injuries suffered by the defendants. Farm Bureau Mutual Insurance Company of Idaho has tendered to the defendants collectively the limits of the underlying insurance (Farm Bureau City Squire Policy) in this case. That underlying insurance has neither a permissive driver exclusion nor a household exclusion.

Consequently, Exclusion No. 8, when coupled with the savings clause exception to that exclusion, establishes that coverage under the Umbrella Policy at issue in this case does apply to its full extent to the bodily injury arises out of the ownership, maintenance, use or entrustment to others of any motor vehicle, notwithstanding the existence of both a household and permissive use exclusion in the Umbrella Policy. In sum, by the terms of the policy itself, coverage is provided under the Umbrella Policy to the same extent that the defendants' injuries and damages are covered by the underlying City Squire Policy. Similar "savings clause" language in the nature of an exception to an exclusion is also found in Exclusion Nos. 3, 5, 7, 22, 29, and 30 of the Umbrella Policy that is at issue here.

The U.S. District Court for the Southern District of Ohio has declared that similar savings clause language, as contained in an umbrella policy, provided the same coverage as the referenced underlying policy, in *General Mills Inc. v. Liberty Insurance Underwriters Inc.*, 498 F.Supp.2d 1088 (S.D.Ohio 2007). The Ohio Court in the *General Mills* case held:

Here, Exclusion Q in Defendant's Umbrella Policy is deceptively labeled as an exclusion in light of the language contained therein. Exclusion Q is an exclusion to the extent that it precludes "coverage for all employee claims." That exclusion, however, is followed by an inclusive qualifier that states "unless an underlying policy cover such claims." Thus, this Court finds that Exclusion Q contains a follow-form provision that defines the scope of the employer's liability coverage afforded in the Umbrella Policy. Namely, it affords the same coverage as the underlying first-level employer's liability policy.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION – PAGE 10**

498 F.Supp.2d at 1094 (emphasis added).

A similar question was presented to the Texas Court of Appeals in, *Mesa Operating Co. v. California Union Insurance Co.*, 986 S.W.2d 749 (Tex.App.1999), where the issue before the court was whether a pollution exclusion in an umbrella policy rendered ineffective another provision in that umbrella policy that provided continuation coverage based upon the coverage that was provided by the underlying policy. The Texas Court rejected the argument that the umbrella policy's pollution exclusion rendered the continuation coverage ineffective, holding as follows:

Cal Union argues that this "continued coverage" is subject to the terms and conditions set forth in the umbrella policy, including the pollution exclusion. In other words, Cal Union takes the position that the umbrella policy continues the coverage provided by the primary policy only if the coverage is also available under the umbrella policy. Such an interpretation renders the phrase "as is afforded by . . . underlying insurance" meaningless. Although the umbrella policy states that Cal Union agrees to insure Mesa "subject to all the terms of [the] policy," one of those terms is that the umbrella policy will provide coverage under the conditions set out in the underlying primary insurance once the aggregate limits of the primary insurance have been met.

A basic rule of contract construction is that the preferred interpretation is one that provides meaning to every provision and does not read any term out of the contract. [citations omitted]. The contract must be considered as a whole, and each part of the contract should be given effect. [citations omitted]. With these rules in mind, we read the umbrella policy to continue the coverage provided by the primary policy once the aggregate limits of the primary policy have been reduced or exhausted. . . .

986 S.W.2d at 753 (emphasis and bracketed references to, "citations omitted," added).

The just-cited Ohio and Texas decisions construed and upheld a "savings clause" exception to an umbrella policy exclusion that is similar to the savings clause exception that is found in the Umbrella Policy that is before this Court. In contrast, a review of the decisions that have been cited by Farm Bureau at pp. 21-25 of its summary judgment brief reveals that none of those cases involved

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
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a savings clause exception to an umbrella policy exclusion, such as is at issue in this case. Therefore, none of those cases provides persuasive authority on the precise question that has been put at issue in this case.

No Idaho appellate case has been found that addresses this question in terms of the "follow form" umbrella policy coverage that was addressed by the Ohio Court, as cited above, or in terms of the "continuation coverage" umbrella policy coverage that was addressed by the Texas Court, as cited above, both of which were held to provide the "savings clause" effect in an umbrella policy that the defendants are arguing for in this case. The reasoning and logic of the Ohio and Texas courts, as revealed in the decisions cited above, is persuasive in support of their respective conclusions that the umbrella policy coverages that were at issue in those cases, which were stated as exceptions to exclusions, should not be rendered ineffective by the application of other exclusions contained in those umbrella policies.

A second issue that is related to this question is the coverage that is provided under the savings clause exception to Exclusion No. 8 which is based upon the "entrustment" of the car under the express terms of that Exclusion, rather than upon its permissive use.

Lisa Schrock, as the owner of the motor vehicle in question, is liable and responsible for the injuries to all defendants resulting from the negligence of Christa Springer in the operation of Lisa Schrock's vehicle. This liability extends to "any person" using or operating the vehicle with the permission, expressed or implied, of Lisa Schrock. In this case the negligence of Christa Springer is be imputed to Lisa Schrock for purposes of civil damages. It is undisputed that Christa Springer was using the 2001 Isuzu Rodeo with the expressed permission of Stacy Schrock and at a minimum

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the implied permission of Lisa Schrock. Under 49-2417(1) Lisa Schrock is liable to the defendants as the owner of the 2001 Isuzu Rodeo.

The Farm Bureau Personal Umbrella policy states: "Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any motor vehicle" (Emphasis added). This coverage is broader than the imputed liability that is addressed by Idaho Code 49-2417 liability. In this case there is no need for a determination of "permissive use," whether implied or expressed, in order for coverage under the Umbrella Policy to apply. All that is required is that bodily injury or property damage arises out of ownership, maintenance, use, or the "entrustment to others" of any motor vehicle. It is undisputed on the facts of this case that the injuries and or damages arose out to the entrustment of the vehicle to Christa Springer. Thus it is not necessary for coverage to arise under the express language used in the Umbrella Policy language that the use of the vehicle be with either the express or implied permission of Lisa Schrock.

However it just so happens that the use in this case was with the express and/or implied permission of Lisa Schrock. Exclusion No. 9 of the Umbrella Policy states that it does not cover a permissive driver.

We do not cover:

9. A permissive driver. If state law requires that this policy apply to a permissive drive 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;

This exclusion only speaks to covering Christa Springer as the permissive driver. Liability

as to Lisa Schrock is imputed to her by way of ownership under Idaho Code 49-2417. This exclusion does not speak to Lisa Schrock's liability under Idaho Code 49-2417. Any failure of coverage in respect to Christa Springer has no bearing upon the imputed negligence of Lisa Schrock under 49-2417. Lisa Schrock as owner, and/or having entrusted her vehicle to others, has coverage under the saving clause exception to Exclusion No. 8 of the Umbrella Policy, and as provided under the imputed liability statute, 49 -2417. Exclusion No. 9 in the Umbrella Policy is entirely silent as to excluding coverage for bodily injury or damages that arise out of ownership, maintenance, use, or entrustment to others. Consequently, as already argued above, the language of the savings clause exception to Exclusion No. 8 of the Umbrella Policy provides coverage to the defendants in this case.

It should also be pointed out that a clause contained under "coverages" in the Umbrella Policy that is at issue in this case declares that, "2. These coverage are subject to all exclusions, terms, and conditions of this policy." That clause is only given full effect if the exceptions to the listed exclusions are also given full effect as written in that Umbrella Policy. When those exceptions declare that coverage under the Umbrella Policy is to be provided to the same extent as covered by the underlying policy, then other exclusions contained within that Umbrella Policy should not be applied to render those specifically declared exceptions ineffective.

Therefore, the express terms of the savings clause exception to Exclusion No. 8, which provides coverage for bodily injury or property damage to the extent such injury or damages are covered by the underlying policy, cannot be rendered a nullity by the application of any exclusion in the Umbrella Policy which did not also limit the coverage provided in the underlying policy.

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Therefore, neither the household exclusion (No. 16), nor the permissive driver exclusion (No. 9) of the Umbrella Policy at issue here precludes coverage under the savings clause exception to Exclusion No. 8.

Ultimately, full coverage for the injuries and damages suffered by the defendants in this case is afforded to them under the express terms of the Umbrella Contract. This Court should so hold on this motion for summary judgment.

B. The Umbrella Policy Is Subject To The Public Policy Requirements Of I.C. § 49-1229

Farm Bureau expends about 30 pages of its summary judgment memorandum (pp. 5-35) arguing that, because the Umbrella Policy is not a "motor vehicle liability policy," which is subject to the requirements of Idaho's Motor Vehicle Financial Responsibility Act ("MVFRA"), that the coverage requirements that are encompassed within the MVFRA laws, which would provide coverage to the defendants under the Umbrella Policy in this case, simply do not apply.

Notwithstanding the considerable effort expended by Farm Bureau on this question, it is nothing more than a red herring designed to distract attention from the central question in this case, which is the nature and extent of the contractually agreed coverage provided under the Umbrella Policy, as already addressed in Part A of this argument. To the extent that the Court deems it necessary to address this question that Farm Bureau has raised at all, the defendants submit the following response argument.

The statutorily limited phrase, "motor vehicle liability policy," upon which Farm Bureau bases a substantial part of its argument, is defined as follows at I.C. § 49-114(18):

49-114 DEFINITIONS -- M. --

***MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION -- PAGE 15***

...

(18) "Motor vehicle liability policy" means an 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.

...

The definitions that are provided in §§ 49-102 through 49-127 are declared in I.C. § 49-101 to be applicable whenever those defined words and phrases are used in Title 49 of the Idaho Code.

The statutory requirements for either an "owner's policy" or an "operator's policy," as those terms are encompassed within the definition of a "motor vehicle liability policy" provided at I.C. § 49-118(18), as set out immediately above, are provided in I.C. § 49-1212. A review of the Umbrella Policy that is at issue in this case reveals that it provides neither the description of the covered motor vehicles that is required for an owner's policy, nor do the facts in this case involve an "insured" under the Umbrella Policy who was operating a non-owned vehicle for purposes of an operator's policy, as described in I.C. § 49-1212.

In short, the defendants agree that the Umbrella Policy at issue in this case is not a "motor vehicle liability policy," as defined in I.C. §§ 49-114(18) and 49-1212. This bare conclusion is no help whatsoever in determining the questions that have been raised on this motion for summary judgment concerning the applicable coverage under the Umbrella Policy, which is governed by the terms of the contract itself. Contrary to the extensive argument that has been made by Farm Bureau, the requirements and public policy provisions of I.C. § 49-1229(1), which dictate that Farm Bureau provide coverage to the defendants under the Umbrella Policy, are not limited under the express

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
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terms of that statute only to a "motor vehicle liability policy," but instead the provisions of that statute extend to any insurance that has been obtained by an insured that provides coverage against a loss resulting from liability that is imposed by law for bodily injury, death, or damage to property arising from the use or maintenance of a motor vehicle. The text of I.C. § 49-1229(1) provides as follows:

49-1229 REQUIRED MOTOR VEHICLE INSURANCE. – (1) 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.

...

(Emphasis added).

On its face, I.C. § 49-1229(1) is not limited in its application to only a "motor vehicle liability policy" as argued by Farm Bureau – that statutorily defined phrase does not even appear in this statute. Instead, I.C. § 49-1229 only requires that a motor vehicle owner, "provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property." Consequently, I. C. § 49-1229 is not limited only to motor vehicle liability policies in its application, and nowhere in this statute does it expressly require the acquisition of a statutorily defined, "motor vehicle liability policy" in order for its requirements to apply.

In a decision issued prior to the enactment of Idaho's compulsory insurance law, the Idaho Supreme Court in *Porter v. Farmers Ins. Co. of Idaho*, 102 Idaho 132, 627 P.2d 311 (1981)

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
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recognized that the phrase, "motor vehicle liability policy," as defined at that time in I.C. § 49-1521, did not have the same meaning as "automobile liability policy," as used in another section of the motor vehicle code. 102 Idaho at 135, 627 P.2d at 314 ("It should also be noted that the 'motor vehicle policy' defined in I.C. § 49-1521, is not the same as the 'automobile liability policy' which is described in I.C. § 49-1505(c), -(d), . . ."). Consequently, the Idaho Supreme Court has recognized that not all liability policies that are subject to the MVFRA are "motor vehicle liability policies," as Farm Bureau has argued to this Court.

In an implicit reference to *Farmers Ins. Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1985) that is made at page 17 of its summary judgment memorandum, Farm Bureau declares that, "the Idaho Supreme Court has previously invalidated a household exclusion when contained in a 'motor vehicle liability policy.'" Farm Bureau's placement of quotation marks around the phrase, "motor vehicle liability policy" in its citation to the *Reed* case implies that the Supreme Court made an express ruling in *Reed* that applies to that specific type of policy. It did not. That phrase never appears in the majority opinion, and only once in a quotation from then-I.C. § 491521(g) in Justice Shepard's dissent. 109 Idaho at 856, 712 P.2d at 557. The actual holding in *Reed* was stated rather broadly:

The second approach, represented by the high court decisions of Oklahoma, Massachusetts and Delaware, limits any recovery to the extent of the automobile liability policy. *Williams v. Williams*, 369 A.2d 669, 672 (Del.1976); *Sorensen v. Sorensen*, 369 Mass. 350, 339 N.E.2d 907, 909 (1975); *Unah*, 676 P.2d at 370. We think this is the better approach, and therefore adopt it. Therefore, we hold that intrafamily actions may be maintained in this narrow area, but only up to the limits of the automobile liability insurance policy.

109 Idaho at 854, 712 P.2d at 555 (emphasis added).

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The Court in issuing its decision in *Reed* used the phrases, “automobile liability policy” and “automobile liability insurance policy,” which, as the Court in the *Porter* decision cited above observed, do not have the same meaning as the statutorily defined, “motor vehicle liability policy.” It is also significant to note that the Court in *Reed* did not impose a limit on recovery only to the extent the minimum statutorily required coverage, but rather allowed recovery “up to the limits of the automobile liability insurance policy.”

The fact that other states may have addressed this same issue is only significant to the decision of this question if those state’s relevant statutes contain the same operative language as that which applies under Idaho law. In this respect, at page 12 of its summary judgment memorandum Farm Bureau has argued that the Montana Supreme Court, in *Rowe v. Travelers Indemnity Co.*, 800 P.2d 157 (Mont.1990) has confronted the very question that has been placed before this Court on this motion for summary judgment. Farm Bureau has argued that the Montana court, in interpreting a statute that is identical to the Idaho statute, has held that an umbrella policy could not constitute a motor vehicle liability policy as envisioned under that state’s compulsory insurance law.

Contrary to the argument that has been put forward by Farm Bureau, the *Rowe* decision involved Montana’s uninsured motorist coverage statute (33-23-201, MCA), not that state’s compulsory insurance statute (61-6-301, MCA) which, with a few minor variations in wording, is substantially similar to I.C. § 49-1229. Instead, the Montana Court in construing that state’s uninsured motorist statute, which does include the phrase “motor vehicle liability policy,” held that uninsured motorist coverage is not mandated in umbrella policies under Montana law. 800 P.2d at 159. That question is not before this Court.

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If the *Montana Rowe* decision had involved the question of whether that state's compulsory insurance statute applied to coverage provided by umbrella policies, then it might be persuasive in construing Idaho's similar statute. But as based upon the uninsured motorist coverage question that was actually raised and decided in that Montana case, it is irrelevant to the decision of this case and the pending question that involves the application of Idaho's compulsory insurance statute, I.C. § 42-1229. Each of the decisions from the ten states cited at pp. 10-11 of Farm Bureau's summary judgment memorandum also involved questions of uninsured motorist coverage under an umbrella policy, and not the question of compulsory insurance coverage that is at issue in this case, and are equally irrelevant to the precise question that has been placed before this Court.

In contrast, the defendants here can cite to the Court at least two instances where courts in other jurisdictions have held that household exclusions in umbrella policies are unenforceable to the same extent that such an exclusion would be unenforceable in the underlying primary policy. In *State Farm Mut. Auto. Ins. Co. v. Marley*, 151 S.W.3d 33 (Ky.2004), the Kentucky Court held that the fact that a policy is labeled an "umbrella" policy, or provides excess coverage, does not validate a household exclusion that is otherwise against public policy. The Court concluded:

This Court finds no reason to discriminate between those with minimum coverage required by law and those with higher, optional coverage. [citation omitted] **An umbrella insurance policy must be considered in accordance with the nature of the claims that it is called upon to cover.** An umbrella policy was purchased to serve as an extension of the automobile policy limits and any distinction between the automobile liability and an umbrella liability policy is a distinction without a difference.

131 S.W.3d at 36 (emphasis, and bracketed reference to "citation omitted," added).

A similar result was reached by the Washington Court of Appeals in *Safeco Ins. Co. of*

Illinois v. Automobile Club Ins. Co., 31 P.3d 52 (Wash.App.2001), where that court held:

Based upon our supreme court's repeated characterization of the relevant public policy as one of full compensation for innocent victims of automobile accidents, we conclude that the household member exclusion in Safeco of America's umbrella policy, as applied to recovery for injuries due to vehicular accidents, is void as against public policy.

31 P.3d at 55-56.

In sum, Farm Bureau has predicated a substantial portion of its summary judgment argument upon an assumption that only a statutorily defined "motor vehicle liability policy" is subject to the requirements of I.C. § 49-1229. As already noted above, this question is irrelevant to the determination of coverage under the terms of the parties' contract. But even when taken at face value Farm Bureau's argument still fails on the basis that Idaho's motor vehicle financial responsibility statutes do apply to policies other than those that satisfy the statutory definition of a "motor vehicle liability policy."

C. Idaho Law Recognizes Imputed Liability Under I.C. § 49-2417 Based Upon Use By A "Sub-Permittee" Of A Permitted User

As addressed in Part A of this argument, the contractual language used in Exclusion No. 8 of the Umbrella Policy refers to "entrustment" of a motor vehicle – not the express or implied permissive use of a motor vehicle. Consequently, the issues that have been raised and extensively brief by Farm Bureau on "permissive use" and the "permissive use exclusion," and "imputed liability" under I.C. § 49-2417 are irrelevant to the contract interpretation question upon which the determination of this summary judgment motion is controlled. Notwithstanding this fact, the following response is offered to Farm Bureau's arguments.

At pp. 35-37 of its summary judgment memorandum Farm Bureau argues that the negligence

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
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of the driver of the vehicle, Christa Springer, cannot be imputed to Lisa Schrock because Springer was not a permissive driver of the vehicle for purposes of I.C. § 49-2417. In making this argument Farm Bureau avoids citation to the controlling Idaho precedents on this question, *Jennings v. Edmo*, 115 Idaho 391, 766 P.2d 1272 (Ct.App.1988), and the Supreme Court's decision in *Butterfield v. Western Casualty & Surety Co.*, 83 Idaho 79, 357 P.2d 944 (1960) upon which the Court of Appeals relied in deciding the *Jennings* case.

Farm Bureau's argument is essentially that Christa Springer could not be effectively given permission to drive the car from Lisa Schrock's permittee, her daughter Stacy Schrock. In the *Jennings* decision the car at issue was owned by an elderly woman, Irene Edmo, who did not drive. She gave permission to drive her car to her grandson, Boyd Gould. While driving the car Gould was stopped for DUI and turned the car over to his girlfriend, Violena Waterhouse. Thereafter, Waterhouse continued to use the car and several days later allowed a person she met in a bar, Dennis Hildreth, to drive the car. The accident occurred while Hildreth was driving Mrs. Edmo's car.

The Court in *Jennings* did not disallow any "sub-permittee" from being considered a permissive driver of the vehicle, but rather required evidence establishing an inference of implied permission to the "sub-permittee" from the owner's original grant of permission. The Court's reasoning was as follows:

Boyd Gould, the grandson of Edmo, is the only person who had express permission from the owners to drive the car. When Boyd Gould was arrested for driving under the influence he turned the keys over to his girl friend, Violena Waterhouse. Because Boyd Gould's use of the automobile was not restricted by the owners, we could presume under *Butterfield* that the owners might permit him to allow some third person to operate the vehicle if the need arose. Arguably, then, Waterhouse might be a person who can be said to have the implied permission from the owners under the circumstances of Boyd Gould's arrest. At least such permission

might reasonably exist for the purpose of returning the car to Boyd Gould's home or to return Waterhouse to her home. However, Waterhouse's use of the car went beyond any such imputed permission. During a joy ride on the second day Waterhouse had the car, she turned its operation over to Hildreth, whom she happened to meet in a bar. As noted earlier, Hildreth had no driver's license. Hildreth was not related to the owners or to Boyd Gould. In fact, neither the owners nor Boyd Gould knew him. In short, there was no relationship between Hildreth and the owners or Boyd Gould that would give rise to any inference of permission from the owners to drive the automobile. Likewise, there were no circumstances attendant to Hildreth's and Waterhouse's use of the automobile which would raise such an inference. *Compare Farm Bureau Mutual Ins. Co. of Idaho v. Hmelevsky*, 97 Idaho 46, 539 P.2d 598 (1975) and *Steele v. Nagel*, *supra*.

115 Idaho at 394, 766 P.2d at 1275.

Paragraphs 2, 14, & 15 in Farm Bureau's Statement of Undisputed Facts do not exclude the possibility that Christa Springer was a permissive driver for purposes of imputed liability under I.C. § 49-2417 within the context of the inference of permission that is stated in the *Jennings* decision. Consequently, a genuine issue of material facts exists on this question under the *Jennings* standard, which precludes entry of summary judgment on any question of imputed liability that may exist in this case, although the defendants again reiterate that the "entrustment" of a motor vehicle under Exclusion No. 8 of the Umbrella Policy does not implicate any issue of permissive use.

V.

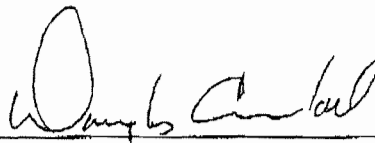
CONCLUSION

On the coverage issues raised under the Umbrella Policy, Farm Bureau's motion for summary judgment should be denied in its entirety, and summary judgment should be entered for the defendants finding that such coverage exists.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION - PAGE 23**

Respectfully Submitted this 31 day of August, 2009.

CRANDALL LAW OFFICE

By 
Douglas W. Crandall
Attorneys for Defendants John Schrock,
Stacy Schrock, April Seitzinger, Michele
Runyan and Christina Monroe and
Counterclaimants John Schrock, Stacy
Schrock and Christina Monroe

CERTIFICATE OF SERVICE

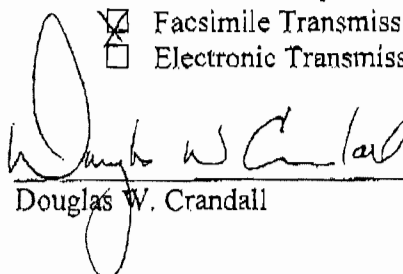
I HEREBY CERTIFY that on this 31 day of August, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Douglas W. Crandall

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION - PAGE 24**

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

SEP - 2 2009

By _____ 2:33 PM
Clerk
Deputy Clerk

Attorney for Defendants John Schrock, Stacy
Schrock, April Seitzinger, Michele Runyan and
Christina Monroe and Counterclaimants John
Schrock, Stacy Schrock and Christina Monroe

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

DEFENDANTS JOHN SCHROCK, STACY
SCHROCK, APRIL SEITZINGER,
MICHELE RUNYAN AND CHRISTINA
MONROE'S MOTION FOR SUMMARY
JUDGMENT

COME NOW Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan
and Christina Monroe, by and through their counsel of record, Douglas W. Crandall, and, pursuant

DEFENDANTS JOHN SCHROCK, STACY SCHROCK, APRIL SEITZINGER, MICHELE RUNYAN
AND CHRISTINA MONROE'S MOTION FOR SUMMARY JUDGMENT - 1

to Rule 56 of the Idaho Rules of Civil Procedure, move this Court for entry of summary judgment.

This Motion is based upon the documents, pleadings, affidavits and memoranda on file herein.

This Motion is supported by the legal Memorandum and by the Statement of Undisputed Facts submitted on or about August 31, 2009.

RESPECTFULLY SUBMITTED this ~~2nd~~ day of September, 2009.

CRANDALL LAW OFFICE

By 

Douglas W. Crandall

Attorneys for Defendants John Schrock,
Stacy Schrock, April Seitzinger, Michele
Runyan and Christina Monroe and
Counterclaimants John Schrock, Stacy
Schrock and Christina Monroe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ~~2nd~~ 1st day of September, 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:

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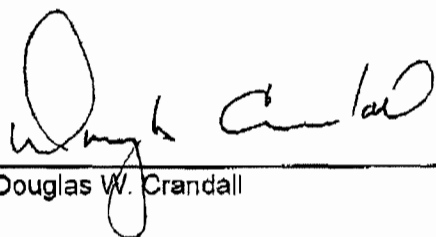
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Douglas W. Crandall

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

 **ORIGINAL**

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,

Case No. CV 09-829

**FARM BUREAU MUTUAL
INSURANCE COMPANY OF
IDAHO'S STATEMENT OF
DISPUTED MATERIAL FACTS IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

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 Disputed Material Facts in Opposition to Defendants' Motion for Summary Judgment:

1. With respect to paragraph 4 of Defendants' Statement of Undisputed Facts, while Farm Bureau has previously admitted that Christa Springer was operating the Isuzu Rodeo with the express or implied permission of defendant/counterclaimant Stacey Schrock, there is no evidence in the record to support defendants' claim that Christa Springer was operating the Isuzu Rodeo with the express or implied permission of Defendant Lisa Schrock. Nor is there any evidence in the record to support defendants' additional contention in that paragraph that "Defendant Lisa Schrock had 'entrusted' to others the 2001 Isuzu Rodeo, as the term 'entrusted' is used in the Farm Bureau Personal Umbrella Policy, Exclusion No. 8." In fact, defendants fail to make any citations to the record, in violation of this Court's July 2, 2009 Order for Scheduling Conference and Order Re: Motion Practice which expressly provides that "[e]ach statement of facts shall include a reference to the particular place in the record which supports the claimed fact."¹ Simply put, this Court should not consider these conclusory assertions that are unsubstantiated in the record.

¹ Defendants also failed to provide Farm Bureau with the appropriate time to respond to their motion for summary judgment as provided under the rules. Rule 56(c) of the Idaho Rules of Civil Procedure required defendants to serve

2. With respect to paragraph 12 of Defendants' Statement of Undisputed Facts, while the Farm Bureau City Squire Policy is considered valid and collectible underlying insurance, defendants ignore the fact that the term "underlying insurance," as defined in the Farm Bureau Umbrella Policy, also applies to Christa Springer's motor vehicle liability policy obtained through State Farm Mutual Insurance Company.

3. With respect to paragraph 14 of Defendants' Statement of Undisputed Facts, while it is true that Farm Bureau relies upon the permissive driver exclusion and the household exclusion in the Umbrella Policy to exclude coverage, there are additional grounds upon which Farm Bureau relies to exclude coverage. For instance, (1) the Umbrella Policy does not qualify as a "motor vehicle liability policy" and, thus, is not subject to the requirements of Idaho's Motor Vehicle Financial Responsibility Act; and (2) 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 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.

4. With respect to paragraphs 17 and 18 of Defendants' Statement of Undisputed Facts, Lisa Schrock was not a passenger in the 2001 Isuzu Rodeo, nor was she injured in the subject accident. Rather, Stacey Schrock was a passenger and was injured in the subject accident.

their motion and supporting brief 28 days prior to the date of hearing. However, defendants served these materials on August 31, 2009, only 14 days prior to the September 15, 2009 hearing.

DATED this 8th day of September, 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 8th day of September, 2009, I caused to be served a true copy of the foregoing **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO'S STATEMENT OF DISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**, by the method indicated below, and addressed to each of the following:

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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
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*Attorneys for Defendants Christa Springer
and Michele Runyan*

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Raymond D. Powers
James S. Thomson, II

DISTRICT COURT
TWIN FALLS, IDAHO
FILED

2009 SEP -8 PM 4:22

BY _____

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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

ORIGINAL

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,

Case No. CV 09-829

**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**

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 respectfully submits this reply to Defendants' "Memorandum in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment."

I. INTRODUCTION

Defendants attempt to short circuit Farm Bureau's argument that the Farm Bureau Umbrella Policy (hereinafter "Umbrella Policy") is not subject to the statutory requirements of Idaho's Motor Vehicle Financial Responsibility Act (hereinafter "MVFRA") by arguing "the savings clause exception to Exclusion No. 8" declares that coverage under the Umbrella Policy is coextensive with the coverage provided by the underlying City Squire Policy. Not only does defendants' argument lack merit when considered in the context of well-established principles of coverage analysis and contract construction, it has been patently rejected by the Fifth Circuit Court of Appeals in *United National Ins. Co. v. Hydro Tank, LLC*, 497 F.3d 445 (5th Cir. 2007).

To the extent defendants set aside their unpersuasive "savings clause" argument to actually challenge the arguments asserted in Farm Bureau's opening memorandum, their arguments can be quickly dispatched due to their failure to take into account several pertinent provisions of Idaho's MVFRA, particularly Idaho Code § 49-1212(6), which clearly and

unambiguously provides that excess policies of insurance are not subject to the requirements of the Act.

Ironically, defendants' statement that this matter "is entirely resolved by the reliance upon the express terms of the parties' contract as stated on the face of the Umbrella Policy"¹ just so happens to be correct; however, it does not stand for the proposition they suggest. Rather, based upon contract interpretation principles, the household and permissive driver exclusions contained in the Umbrella Policy should be upheld as valid and enforceable because they are not illegal, nor do they contravene public policy or a statute.

As demonstrated below, defendants' arguments are not well-taken. Accordingly, this Court should rule in favor of Farm Bureau and find that the Umbrella Policy does not provide coverage in regard to the October 24, 2008 accident.

II. ARGUMENT AND ANALYSIS

A. The "savings clause exception to Exclusion No. 8" does not generate coverage under the Farm Bureau Umbrella Policy to the same extent as the underlying City Squire Policy.

Defendants advance the anomalous argument that "the Umbrella Policy . . . establishes that the parties here have contractually agreed to extend coverage under the Umbrella Policy on the exact same basis as the coverage that is provided by the underlying City Squire Policy."² This argument not only blurs the distinction between "stand alone" and "follow form" umbrella policies, but is wholly inconsistent with well-established principles of coverage analysis and contract construction by arguing for a grant of coverage where none exists. Were this Court to

¹ See Memorandum in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Summary Judgment Motion ("Opposition Memorandum"), p. 8.

² See Opposition Memorandum, p. 8.

adopt defendants' argument, it would render much of the Umbrella Policy meaningless, which is contrary to law.

1. The Farm Bureau Umbrella Policy is a "stand-alone" policy that must be interpreted pursuant to its own terms; it does not "follow form" as argued by defendants.³

Contrary to defendants' contention, the Umbrella Policy does not "follow form" to the underlying City Squire Policy. Rather, the Umbrella Policy is a "stand alone" policy because it relies exclusively on its own insuring agreement, conditions, definitions, and exclusions to grant and limit coverage. In fact, page one of the Umbrella Policy begins by stating: "We provide the insurance described in *this policy* in return for payment of the premium and your compliance with the policy provisions."⁴ The Umbrella Policy's coverage grant further provides, in clear and unambiguous language: "[t]hese coverages are subject to all exclusions, terms and conditions of *this policy*."⁵ As this express language indicates, the Umbrella Policy is designed to "stand alone" from any other underlying insurance policy that might exist, including the underlying City Squire Policy.

On the other hand, a "following form" insurance agreement is one that subjects the excess insurer to the "terms, conditions and exclusions" of the underlying policy. *Home Ins. Co. v. American Home Products Corp.*, 902 F.2d 1111, 1113 (2nd Cir. 1990). For an umbrella or

³ Excess insurance can be classified by type: "true excess" or "umbrella" and by form: "following form" and "stand alone." A true excess policy provides coverage above a primary policy for specific risks. An umbrella policy provides coverage over more than one policy, and may cover risks not covered by the primary policy. A following form policy has the same terms and conditions as the primary policy, but has a different liability limit. A stand alone policy has its own terms and conditions that may vary from the primary policy. *Planet Ins. Co. v. Ertz*, 920 S.W.2d 591, 593-94 (Mo. App. 1996) (citing Rowland H. Long, 3 *The Law of Liability Insurance* § 22.03 (1995)). (emphasis added).

⁴ See Affidavit of James S. Thomson, II in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment ("Thomson Aff."), Exhibit B, p. 1, previously filed with this Court on July 28, 2009 (emphasis added).

⁵ *Id.* at p. 2 (emphasis added).

excess policy to be designated as “following form” to an underlying policy, it usually contains a clause that indicates it “follows the exact terms or conditions of the underlying policy” or is “subject to the same warranties, terms and conditions as contained in the underlying policy” or language of similar import. *See, e.g., Planet Ins. Co. v. Ertz*, 920 S.W.2d 591, 593-94 (Mo. App. 1996) (“The Planet policy contains a clause that it ‘is warranted to follow the exact terms and conditions of the Transamerica [policy] except with respect to the limit of liability and premium,’ and it is a true excess, following form policy.”). Critically, the Umbrella Policy does not contain any such language, which provides further evidence of its “stand alone” character.⁶

That said, even though a policy is described as “follow form,” it does not necessarily provide coverage that is substantively identical to the underlying one. *See Insituform Technologies, Inc. v. American Home Assurance Co.*, 566 F.3d 274, 278 at n. 3 (1st Cir. 2009) (citation omitted). Instead, “[i]t is well settled that the obligations of following form excess insurers are defined by the language of the underlying policies, except to the extent that there is a conflict between the two policies, in which case the wording of the excess policy will control.” *Lexington Ins. Co. v. Western Pennsylvania Hosp.*, 318 F.Supp.2d 270, 274 at n. 3 (W.D. Pa. 2004) (citation omitted) (emphasis added). In fact, this issue was addressed in *Home Ins. Co. v. American Home Products Corp.*, *supra*. In that case, the excess policy followed form to the underlying policy “except as otherwise provided” in the excess policy. 902 F.2d at 1113. The excess policy expressly provided that it is “subject to the same conditions (except as otherwise provided herein) as are contained in . . . the Underlying Coverage” *Id.* The Second Circuit

⁶ *See generally id.*

found that the excess policy followed form only to the extent the two policies were consistent; where conflicts existed, the terms of the excess policy controlled. *Id.* at 1114.

Based on this well-settled rule, even if the Umbrella Policy were to be characterized as a “follow form” policy, which it clearly is not, its terms and conditions would control over those found in the underlying City Squire Policy to the extent a conflict existed between the two policies. In any event, the Umbrella Policy’s terms and conditions control regardless of whether it is considered a “stand alone” policy or a “follow form” policy, based on the plain language contained in its coverage grant, as well as the fact it contains no language indicating it is “subject to the same warranties, terms and conditions as contained in the underlying policy.” Consequently, the permissive driver exclusion and household exclusion contained in the Umbrella Policy, as well as the Policy’s different definition of who is an insured, are valid and enforceable as a matter of contract between Farm Bureau and its insureds.

2. Defendants are inappropriately attempting to use an exception to an exclusion to expand coverage under the Umbrella Policy’s insuring agreement.

Defendants’ “savings clause” argument runs contrary to basic principles of coverage analysis. Proper coverage analysis begins by considering whether the policy’s insuring agreements create coverage for the disputed claim. *See Stanford Ranch, Inc. v. Md. Cas. Co.*, 89 F.3d 618, 627 (9th Cir. 1996). If coverage exists, then the court must consider whether any exclusions apply. *Id.* If coverage does not exist, the inquiry ends; the exclusions are no longer part of the analysis because “they cannot expand the basic coverage granted in the insuring agreement.” *Id.*; *see also Allstate Ins. Co. v. Johnston*, 339 F.Supp.2d 1191, 1196 ((D. Kan. 2004) (stating that an “umbrella policy’s exclusions become relevant when interpreting the insurance policy only when the policy provides coverage in the first place.”)).

The rule is no different for exceptions to exclusions. A “carve back” within an exclusionary provision merely restores already-existing coverage. *Sony Computer Entertainment America Inc. v. American Home Assur. Co.*, 532 F.3d 1007, 1117 (9th Cir. 2008). “[T]here is no cure for a lack of coverage under the insuring clause. Even if the effect of an exception is to render a particular exclusion inoperative, the insured must still prove the loss is covered.” *Id.* (citation omitted).

As the basic principles of coverage analysis indicate, this Court is required to first examine the coverage grant of the Umbrella Policy to determine the scope of coverage. As the Umbrella Policy’s coverage grant (Part II) indicates, it “will pay for **damages** for which the **insured** becomes legally responsible caused by . . . an **occurrence** to which this insurance applies”⁷ Under the Umbrella Policy, “insured” means:

[Y]ou, 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.⁸

The plain language of the Umbrella Policy does not provide coverage for defendant Christa Springer’s use of the Isuzu Rodeo. 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. 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

⁷ See Thomson Aff., Ex. B, p. 2 (emphasis in original).

⁸ *Id.* at 1.

Umbrella Policy, which must be interpreted under its own terms and conditions. As a result, there is no need to even consider the Umbrella Policy exclusions that might apply to further exclude coverage for defendant Christa Springer's use of the Isuzu Rodeo.

The coverage grant further provides that the coverage provided by the Umbrella Policy "are subject to all exclusions, terms and conditions of this policy."⁹ As this provision of the coverage grant indicates, any coverage provided is subject to the exclusions of the Umbrella Policy, which include both the permissive driver exclusion (Exclusion 9) and the household exclusion (Exclusion 16). Thus, even if Christa Springer somehow qualified as an insured under the Umbrella Policy, the permissive driver exclusion would preclude coverage. And while Stacey Schrock may qualify as an insured under the Umbrella Policy, the household exclusion of the Umbrella Policy excludes from coverage "bodily injury" sustained by "you, your spouse, your minor children, your **relative**, or any other **insured**."¹⁰ Defendant Stacey Schrock is an "insured," as well as a "relative," as those terms are defined in the Umbrella Policy. As such, the limits of liability under the Umbrella Policy are not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained by her as a result of the October 24, 2008 accident.

In the instant matter, the defendants' "savings clause" argument inappropriately attempts to use an exception to an exclusion to generate coverage that never existed in the first place. As the Ninth Circuit Court explained in *Sony, supra*, "there is no cure for a lack of coverage under the insuring clause." 532 F.3d at 1117. Furthermore, in applying exclusions to policy language,

⁹ *Id.* at 2.

¹⁰ *Id.* at 4.

each exclusion eliminates coverage and operates independently against the general declaration of insurance coverage and all prior exclusions by specifying other occurrences not covered by the policy. *See, e.g., Kelley v. Farmers, Inc. Co., Inc.*, 281 F.Supp.2d 1290, 1295 (W.D. Okla 2003) (citing *Dodson v. St. Paul Ins. Co.*, 812 P.2d 372, 376 (Okla. 1991)). Thus, subsequent exclusions can further limit or even remove a covered risk from the general declaration of insurance coverage. *Id.*

Here, Exclusion 9 (permissive driver exclusion) and Exclusion 16 (household exclusion) operate separately and independently of Exclusion 8. Exclusion 8 essentially operates as a general exclusion to coverage where underlying insurance may not be available. It is a method to prevent the Umbrella Policy from providing broader coverage than that provided by the underlying policy. Stated otherwise, if coverage is not provided by the underlying policy, then coverage will not be provided by the Umbrella Policy. However, that does not prevent the Umbrella Policy from further restricting coverage, which it accomplishes through other exclusions, such as Exclusions 9 and 16. Defendants' argument strips away this result, and inappropriately reads these two clear and unambiguous exclusions out of the Umbrella Policy.

In support of their argument that the "savings clause" exception to Exclusion 8 results in full coverage under the Umbrella Policy, defendants rely exclusively on the following two cases: *Mesa Operating Co. v. California Union Ins. Co.*, 986 S.W.2d 749 (Tex. App. 1999) and *General Mills, Inc. v. Liberty Insurance Underwriters, Inc.*, 498 F.Supp.2d 1088 (S.D. Ohio 2007). *Mesa Operating Co.* is easily distinguishable from the instant matter and offers little, if any, support for defendants' position. In that case, California Union's umbrella policy contained

a clause addressing coverage once the aggregate limits of the underlying insurance had been reduced or exhausted:

If the aggregate limits of liability of the underlying insurance listed in the Schedule of Underlying Insurance are reduced or exhausted because of personal injury, property damage, or advertising injury during the period of this policy, [Cal Union] will, subject to the company's limit of liability stated above, continue such coverage as is afforded by such listed underlying insurance for the remainder of the policy year of such underlying insurance in excess of the reduced or exhausted limits.

Id. at 753 (emphasis added).

The language of the umbrella policy clearly indicated that it would continue coverage for all occurrences covered by the underlying policy once the aggregate limits of the underlying insurance were exhausted. California Union argued that the umbrella policy continued the coverage provided by the underlying policy only if coverage was available under the umbrella policy. The *Mesa Operating* court disagreed, stating that such an interpretation would render the phrase “as afforded by . . . underlying insurance meaningless.” *Id.* The California Union umbrella policy expressly indicated it would continue the coverage provided by the underlying policy. However, such is not the case with the Farm Bureau Umbrella Policy, which contains no such similar language. Rather, the Umbrella Policy at issue here provides a contrary result—it is subject to its own insuring agreement, conditions, definitions, and exclusions to grant and limit coverage.

Ironically, *Mesa Operating* actually supports Farm Bureau’s position rather than defendants’ position. This is evidenced by the court’s commentary in footnote 3, wherein it takes issue with the arguments advanced by Mesa Operating Company in an effort to find coverage under the umbrella policy, which are similar to those relied upon by defendants here:

Mesa urges an even broader reading of the umbrella policy and argues that, under all circumstances, the policy covers all the same risks or “follows form” to the

underlying primary policy. Although it is generally true that umbrella policies are designed to provide excess coverage for risks covered in the underlying policy, we cannot conclude that an umbrella policy covers the same risks under the same terms as the underlying policy unless the umbrella policy clearly and explicitly states that it does so.

Id. at 753.

As the *Mesa Operating* court recognized, an umbrella policy only covers the same risks under the same terms if it “clearly and explicitly states that it does.” This illustrates the critical distinction between a “stand alone” policy versus a policy that “follows form,” and the importance of determining whether the umbrella policy clearly and explicitly indicates it adopts the terms, conditions and exclusions of the underlying policy. Because the Umbrella Policy contains no such provision, it is subject to its own terms and must be analyzed accordingly. As such, defendants’ broad and unsupported claim that “the Umbrella Policy . . . establishes that the parties have contractually agreed to extend coverage . . . on the exact same basis as the coverage that is provided by the underlying City Squire Policy”¹¹ is untenable.

Defendants also rely on *General Mills, Inc. v. Liberty Insurance Underwriters, Inc.*, 498 F.Supp.2d 1088 (S.D. Ohio 2007) in support of their claim that the “savings clause” exception to Exclusion 8 results in full coverage under the Umbrella Policy. This case, however, is not persuasive and holds little, if any, precedential value. It has not been reviewed on appeal, or relied upon as persuasive authority by any other case. In addition, it fails to provide any discussion of the coverage grant under the subject umbrella policy by instead jumping immediately to the exclusions of the subject policy. And while that case ultimately chose to rule that an exception to one exclusion effectively neutralized all other specific exclusions to

¹¹ See Opposition Memorandum, p. 8.

coverage, the Fifth Circuit correctly refused to adopt such logic and reasoning in *United National Ins. Co. v. Hydro Tank, LLC*, 497 F.3d 445 (5th Cir. 2007).

In *United National*, three refinery workers were injured while removing petroleum-byproduct sludge from a mixing tank. *Id.* at 447. Two of the workers were overcome by fumes and fell face-first into the sludge; the third pulled his coworkers out of the tank. *Id.* They sued the owner of the refinery, Motiva Enterprises, who settled and sought indemnification from its insurer. *Id.* Motiva Enterprises was named as an “additional insured” under a one-million dollar commercial general liability policy from American Equity Insurance and a five-million dollar umbrella policy from United National Insurance Company. *Id.*

United National refused to provide coverage, arguing the injuries were excluded under the umbrella policy’s Pollution Exclusion clause. Motiva Enterprises countered by claiming that the umbrella policy’s Contractors Limitation Endorsement provided coverage even if the Pollution Exclusion applied because it contained a “savings clause,” which essentially excluded coverage for any tort liability unless coverage was available under the underlying policy. In essence, Motiva Enterprises argued what defendants are arguing here, i.e., since the losses were covered by the underlying commercial general liability policy, the umbrella policy adopted the same coverage pursuant to the “savings clause.”

Unlike the *General Mills* court, the Fifth Circuit found this argument unimpressive. After discussing principles of contract interpretation and insurance law, the Fifth Circuit stated that the argument asserted by Motiva Enterprises “ignor[ed]” several basic tenets. Specifically, the Fifth Circuit noted:

Accepting this argument would require this court to disregard the explicit exclusion provisions that comprise most of the United National policy, which plainly state that “[t]his insurance does not apply to” several enumerated types of property damage and bodily injury, including injury by pollutants. Motiva

provides no legitimate basis upon which the language of [the Contractors Limitation Endorsement] can be construed to reach such a sweeping result.

Id. at 452. The Fifth Circuit continued:

Motiva's reading of the United National CLE would require this court to hold that an exception to an exclusion contained in an umbrella policy's CLE can impliedly neutralize all other specific exclusions to coverage. We decline to reach this anomalous result.

Id. at 453 (emphasis added). In essence, the Fifth Circuit rejected the precise arguments being advanced by defendants here—that the “savings clause” exception to Exclusion 8 results in full coverage being provided under the Umbrella Policy despite other exclusions contained elsewhere in the same policy expressly restricting coverage for permissive drivers and household members. Defendants are asking this Court to find that an exception to an exclusion “can impliedly neutralize all other specific exclusions to coverage.” The Fifth Circuit rejected this request, as should this Court.

B. Defendants are confusing liability arising from a claim of negligent entrustment with that of liability arising from a claim of imputed liability pursuant to Idaho Code § 49-2417.

Defendants are clearly blurring the distinction between Lisa Schrock's potential liability, if any, pursuant to a claim of negligent entrustment, and that arising from imputed liability pursuant to Idaho Code § 49-2417 by virtue of her ownership of the Isuzu Rodeo. This is evident based on the fact that defendants' counterclaim is noticeably silent as to a negligent entrustment claim against Lisa Schrock (it raises only an imputed liability claim against her), as well as the arguments found on pages 12-15 of Defendant's Opposition. Defendants argue that “[i]t is undisputed that on the facts of this case that the injuries and or damages arose out of the

entrustment of the vehicle to Christa Springer.”¹² Defendants make this conclusory and unsupported statement by confusing a claim of negligent entrustment with that of imputed liability pursuant to Idaho Code § 49-2417. However, a negligent entrustment against Lisa Schrock cannot arise from any grant of permission extended to Christa Springer by way of Stacy Schrock. Rather, it can only arise from Lisa Schrock’s own actionable negligence.

Negligent entrustment is a particularized application of the general principles of negligence law. *See Olguin v. City of Burley*, 119 Idaho 721, 810 P.2d 255 (1991). A negligent entrustment claim under these circumstances would essentially be based on Lisa Schrock’s failure to exercise ordinary care by permitting Christa Springer to use the Isuzu Rodeo in circumstances where she knew or should foreseeably have known that such use may create an unreasonable risk of harm. *See Ransom v. City of Garden City*, 113 Idaho 202, 207, 743 P.2d 70, 75 (1987). This tort flows from Lisa Schrock’s individual negligence, if any, and is not based on Christa Springer’s negligence, which defendants are seeking to impute to Lisa Schrock.

Which brings us to the issue of imputed liability Idaho Code § 49-2417. While defendants argue “the issues that have been raised and extensively briefed by Farm Bureau on ‘permissive use’ and the ‘permissive use exclusion,’ and ‘imputed liability’ under I.C. § 49-2417 are irrelevant,”¹³ this is clearly not the case based on the holding of the Fifth Circuit in *United National Ins. Co. v. Hydro Tank, LLC, supra*. Rather, these issues are very much relevant to deciding the instant matter and cannot be so easily dispatched as suggested by defendants.

With respect to the issue of imputed liability Idaho Code § 49-2417, defendants incorrectly claim that “Farm Bureau’s argument is essentially that Christa Springer could not be

¹² See Opposition Memorandum, p. 12.

¹³ *Id.* at p. 21.

effectively given permission to drive the car from Lisa Schrock's permittee, her daughter Stacey Schrock."¹⁴ Not only is this a misstatement of Farm Bureau's argument, it ignores several additional arguments raised in support of its position that Idaho Code § 49-2417 does not apply to the Umbrella Policy. Contrary to defendants' assertions, Farm Bureau's argument (as outlined in Section III.E.2, pages 35-37 of its opening memorandum) is that Lisa Schrock did not exercise any control over the Isuzu Rodeo that could result in defendant Christa Springer's negligence being imputed to her under Idaho Code § 49-2417, rather than Christa Springer being unable to be given permission to drive the car from Lisa Schrock's permittee, Stacey Schrock.

This confusion stems from defendants' failure to take into account the holding of *Lopez v. Langer*, 114 Idaho 873, 761 P.2d 1225 (1988), which predicates any grant of permission under Idaho Code § 49-2417 on first establishing the right to control. As *Lopez* instructs, without first establishing the right to control the Isuzu Rodeo, the question of permission (express or implied) as discussed in the two cases relied upon by defendants, *Jennings v. Edmo*, 115 Idaho 391, 766 P.2d 1272 (Ct. App. 1988) and *Butterfield v. Western Casualty & Surety Co.*, 83 Idaho 79, 357 P.2d 944 (1960), becomes moot. As the allegations in defendants' counterclaim make clear, Lisa Schrock had the same degree of ownership as that discussed in *Lopez*—bare legal title only. The sole owner of the vehicle for purposes of imputed liability under the statute is Stacy Schrock. 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 Christa Springer's operation of it.

That said, defendants ignore several additional arguments raised by Farm Bureau on pages 31 to 41 of its opening memorandum as to why Idaho Code § 49-2417 does not apply to

¹⁴ *Id.* at p. 12.

the Umbrella Policy. These arguments are briefly highlighted here: (1) Idaho Code § 49-2417 does not apply to the Umbrella Policy because that statute only applies to “motor vehicle liability polic[ies]”; (2) that statute is meant to establish an owner’s liability rather than setting forth the minimum requirements for insurance; and (3) the internal inconsistencies in that statute render it void for vagueness. In fact, Defendants failed to even address this argument. Again, the internal inconsistency in the statute leads to absurd results because on one hand the revised 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. As the statute is presently constructed, it is impossible to determine Lisa Schrock’s maximum liability for the imputed negligence of Christa Springer.

In sum, defendants are confusing negligent entrustment and imputed liability under Idaho Code § 49-2417, which are two separate and distinct causes of action. In addition, the Umbrella Policy is not subject to the requirements of Idaho Code § 49-2417 as argued by defendants.

C. The Farm Bureau Umbrella policy is not subject to Idaho Code § 49-1229, or any other statutory requirement contained within Idaho’s MVFRA.

To begin with, Defendants’ assertion that “the considerable effort expended by Farm Bureau [in arguing the Umbrella Policy is not a ‘motor vehicle liability policy’ and thus not subject to Idaho’s MVFRA] is nothing more than a red herring”¹⁵ is easily dispatched given the holding of the Fifth Circuit in *United National Ins. Co. v. Hydro Tank, LLC, supra*. Therefore, contrary to defendants’ assertions, the primary issue for this Court to resolve continues to center on whether the Umbrella Policy is subject to the requirements of Idaho’s MVFRA.

¹⁵ See Opposition Memorandum, p. 15.

Defendants' advance the faulty proposition that Idaho Code § 49-1229(1) dictates that Farm Bureau provide coverage under the Umbrella Policy. Defendants erroneously assert that "the provisions of that statute extend to any insurance that has been obtained by an insured that provides coverage against a loss resulting from liability that is imposed by law" and "I.C. § 49-1229 is not limited in its application to only a 'motor vehicle liability policy' [since] that statutorily defined phrase does not even appear in this statute."¹⁶ These statements are clear mischaracterizations of Idaho law stemming from defendants' failure to consider Idaho Code § 49-1212(6), which expressly indicates otherwise. That statute, which has been completely ignored by defendants, provides as follows:

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) (emphasis added).

As Idaho Code § 49-1212(6) clearly indicates, excess or additional insurance coverage, such as an umbrella policy, is not subject to the statutory provisions of Chapter 12, Motor Vehicle Financial Responsibility, which includes Idaho Code § 49-1229 within its purview. Reading Idaho Code § 49-1212(6) in conjunction with Idaho Code § 49-1229, which this Court is required to do pursuant to the basic rules of statutory construction, it is clear that Idaho Code § 49-1212(6) places a limitation on Idaho Code § 49-1229 to the detriment of defendants' argument. Stated otherwise, defendants' argument that "the provisions of [Idaho Code § 49-1229] extend to any insurance" falls flat on its face when confronted with the plain and

¹⁶ *Id.* at 17.

unambiguous language of Idaho Code § 49-1212(6). This is further supported by the fact that Idaho Code § 49-1229 is titled "*Required* motor vehicle insurance," and Idaho law does not require that every driver obtain excess or umbrella coverage.

While defendants are quick to dismiss the Montana Supreme Court's decision in *Rowe v. Travelers Indemnity Co.*, 800 P.2d 157 (Mont. 1990), it remains instructive and persuasive because it addressed what is at issue here—the statutory definition of "motor vehicle liability policy" does not include excess insurance, such as an umbrella policy. Although the overarching issue in *Rowe* dealt with uninsured motorist coverage, its rationale applies here to the extent it held that an umbrella policy could not constitute a "motor vehicle liability policy," particularly since MCA § 61-6-103(8) is nearly identical to Idaho Code § 49-1212(6). *See Rowe*, 800 P.2d at 160. As such, defendants' argument must be rejected by this Court.

Defendants also argue that Farm Bureau misrepresents the holding of the Idaho Supreme Court in *Farmers Ins. Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1985) by claiming the phrase "automobile liability policy" and "automobile liability insurance policy" appearing in the that decision do not have the same meaning as the statutorily defined "motor vehicle liability policy." This, however, amounts to a distinction without a difference since it is clear *Reed* involved an underlying policy of insurance, not an excess or umbrella policy.

Defendants attempt this play on words by first directing this Court's attention to *Porter v. Farmers Ins. Co. of Idaho*, 102 Idaho 132, 627 P.2d 311 (1981) and claiming that case "recognized that the phrase 'motor vehicle liability policy,' as defined at that time in I.C. § 49-1521, did not have the same meaning as 'automobile liability policy,' as used in another section

of the motor vehicle code.”¹⁷ Importantly, *Porter* was decided prior to the Idaho Legislature enacting its compulsory insurance laws. *Porter* involved an analysis of the then existing “Motor Vehicle Safety Responsibility Act” and discussed the Act’s two main divisions, the “safety responsibility law” and the “financial responsibility law.” *Id.* at 134, 627 P.2d at 313. As the *Porter* court explained:

The two divisions have very distinct purposes. The “safety responsibility law” is retrospective in operation in that it requires the furnishing of collateral or proof of insurance, after a motor vehicle accident, so that victims of that accident may be assured of compensation. In contrast, the “financial responsibility law” operates prospectively to require, under certain circumstances, evidence of ability to meet possible judgments arising from the future ownership, maintenance, or operation of motor vehicles.

Id. It was in this context that the *Porter* court made the distinction between a “motor vehicle liability policy” as defined in then existing Idaho Code § 49-1521 (“financial responsibility law”), and an “automobile liability policy” described in the “safety responsibility law” section. *Id.* As the *Porter* court indicated, “if a policy of liability insurance meeting certain coverage limits is not in effect at the time of an accident, then the security requirement of the ‘safety responsibility law’ comes into effect. That section in no way compels liability coverage.” *Id.* The instant matter does not involve the “safety responsibility law,” but rather the “financial responsibility law.”

Defendants then inappropriately attempt to parlay this distinction from *Porter* into a claim that Farm Bureau is misrepresenting the holding in *Reed*. The argument goes as follows: because the majority opinion in *Reed* does not contain the phrase “motor vehicle liability policy,” rather only “automobile liability insurance policy,” the holding of *Reed* is not limited

¹⁷ *Id.* at 18.

simply to “motor vehicle liability polic[ies]” as argued by Farm Bureau because of the *Porter* distinction.

Importantly, neither the *Reed* court, nor any of the other court holdings on which it based its decision—*Transamerica Ins. Co. v. Royle*, 656 P.2d 820, 824 (Mont. 1983); *Williams v. Williams*, 369 A.2d 669, 672 (Del. 1976); *Sorensen v. Sorensen*, 339 N.E.2d 907, 909 (Mass. 1975); *Unah By and Through Unah v. Martin*, 676 P.2d 1366, 1367-68 (Okla. 1984)—considered an excess or umbrella policy of insurance. Rather, these cases simply focused on whether a household exclusion in an underlying motor vehicle liability policy, or “the liability policy,” was against public policy based on requirements of each state’s compulsory insurance laws. This is particularly evident given the *Reed* court’s adoption of the Montana Supreme Court’s holding in *Transamerica Ins. Co., supra*:

The effect of the language of the Mandatory Insurance Law requires the liability policy to protect against bodily injury and property damage to “any person.” In so providing, the legislature has expressly outlawed the “household exclusion.”

* * * *

We now reach the same conclusion. Therefore, we hold that the household exclusion clause is in violation of I.C. § 49- 233 (1978). Consequently, the clause is unenforceable, and void as against public policy.

Reed, 109 Idaho at 852-53, 712 P.2d at 553-54 (emphasis added).

As the above passage indicates, the *Reed* court was clear that a household exclusion in a policy mandated by Idaho’s compulsory insurance laws violated the statutory requirements of Idaho’s MVFRA, as well as the public policy underlying that Act. However, it fell short of addressing whether a household exclusion found in an optional umbrella policy is void and unenforceable. Therefore, Farm Bureau’s representation of the *Reed* holding is appropriate.

There is further support for Farm Bureau's argument contained within the Idaho Insurance Bulletin cited to and relied upon by Farm Bureau in its opening memorandum. That Insurance Bulletin was issued to property and casualty insurers offering "motor vehicle liability policies" in Idaho given the Legislature's recent amendment to Idaho's MVFRA, particularly requiring 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.¹⁸ The Bulletin examines the interaction between Idaho Code §§ 49-1212(12), 49-1229 and *Reed*, and states "[p]roperty and casualty insurers selling motor vehicle liability insurance policies should review their contracts to make sure they are in compliance with Idaho law."¹⁹

And while defendants were able to cite two cases to this Court where other jurisdictions held that household exclusions in umbrella policies are unenforceable, this clearly represents the minority rule on the subject. On the other hand, Farm Bureau once again refers this Court to the cases cited on pages 21 to 25 of its opening memorandum, as well as the reasoning and analysis behind the majority rule, which provides that a household exclusion contained in an umbrella policy is valid and enforceable, even though such an exclusion contained in the underlying primary motor vehicle liability policy may be invalid under a state's mandatory motor vehicle financial responsibility laws.

In sum, defendants failure to consider Idaho Code § 49-1212(6) in conjunction with Idaho Code § 49-1229 constitutes a fatal flaw in their argument. Contrary to defendants' assertions, Idaho Code § 49-1229 does not apply to "any insurance that has been obtained"; rather, it only applies to insurance required under Idaho's MVFRA. And expressly excluded

¹⁸ See Thomson Aff., Ex. C.

¹⁹ *Id.*

from Idaho's MVFRA is excess or additional insurance, such as Farm Bureau's Umbrella Policy. As such, the household exclusion and the permissive driver exclusion in the Umbrella Policy are valid and enforceable.

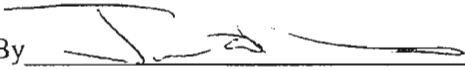
III. CONCLUSION

Based on the foregoing, Farm Bureau respectfully requests that this Court grant its motion for summary judgment and deny defendants' motion for summary judgment.

DATED this 8th day of September, 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 5th day of September, 2009, I caused to be served a true copy of the foregoing **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**, by the method indicated below, and addressed to each of the following:

Doug Crandall	_____	U.S. Mail, Postage Prepaid
CRANDALL LAW OFFICE	_____	Hand Delivered
420 W. Main St. Suite 206	_____	Overnight Mail
Boise, ID 83702	<u> x </u>	Telecopy

*Attorney for Defendants/Counterclaimants
John Schrock, Stacy Schrock and Christina
Monroe and Defendants Michele Runyan
and April Seitzinger*

Anthony M. Valdez	_____	U.S. Mail, Postage Prepaid
BENOIT, ALEXANDER, HARWOOD,	_____	Hand Delivered
HIGH & VALDEZ	_____	Overnight Mail
126 Second Avenue North	<u> x </u>	Telecopy
PO Box 366		
Twin Falls, ID 83303		

*Attorneys for Defendants Christa Springer
and Michele Runyan*



Raymond D. Powers
James S. Thomson, II

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

OCT 26 2009

4:30 PM

By _____ 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,

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,

Farm Bureau Mutual Insurance
Company of Idaho,

Counterdefendant.

CASE NO. CV 2009-829

MEMORANDUM OPINION RE
CROSS MOTIONS FOR
SUMMARY JUDGMENT

This matter is before the Court on the cross motions of Plaintiff Farm Bureau Mutual Insurance Company of Idaho ("Farm Bureau") and Defendants and

Counterclaimants ("Defendants") for summary judgment. Farm Bureau is represented by James Thomson, Attorney at Law and Defendants by Douglas Crandall, Attorney at Law. Oral argument was presented to the Court on September 14, 2009 and the matter is deemed under advisement as of that date.

INTRODUCTION

The following facts are undisputed. On October 24, 2008 Defendant Christa Springer ("Christa") was operating a 2001 Isuzu Rodeo ("Rodeo") westbound on Interstate 84 in Minidoka County, Idaho when she lost control of the vehicle and crashed (hereinafter the "accident"). Stacy Schrock ("Stacy"), April Seitzinger ("April"), Christina Monroe ("Christina") and Michele Runyan ("Michele") were passengers in the Rodeo. All occupants of the Rodeo sustained injuries. In particular Stacy sustained significant and permanent injuries.

Christa was operating the Rodeo with the express or implied permission of Stacy.¹ The Rodeo was owned by Defendant Lisa Schrock ("Lisa") who is Stacy's mother. John Schrock ("John") is Lisa's husband and Stacy's father. Stacy resided with her parents on the date of the accident.

On the date of the accident John and Lisa were insured pursuant to a City Squire Policy (hereinafter the "primary policy") issued by Farm Bureau. The Rodeo is a named insured vehicle under that policy. Stacy is an additional insured under that policy but only in regard to the Rodeo. Christa is an insured in so far as she was operating the Rodeo within the scope of Stacy's permission. Farm Bureau acknowledges coverage

¹ It is disputed whether Christa was operating the Rodeo with the express or implied permission of the owner Lisa Schrock. However, as will be discussed *infra*, that is not a material fact insofar as the issues presented in the summary judgment motions.

pursuant to the City Squire Policy with respect to Christa's operation of the Rodeo at the time of the accident.

On the date of the accident John and Lisa were insureds under a second policy issued by Farm Bureau know as a Personal Umbrella Policy (hereinafter the "umbrella"). Stacy is also an insured under this policy. However, the policy contains a "household exclusion" which if valid and applicable to this case would exclude Stacy from coverage under this policy. The policy also contains a "permissive driver" exclusion which if valid and applicable to this case would exclude coverage for any negligence of Christa as a claimed "permissive driver."

POSITION OF THE PARTIES

Farm Bureau asserts that the umbrella policy does not provide coverage for the accident. It asserts that the umbrella is a "stand alone" policy which excludes coverage for permissive drivers and household members. Simply stated Farm Bureau asserts that because Idaho law does not require coverage for a permissive driver under this type of policy that it has the right to and did exclude coverage of Christa even if it is determined that she was a permissive driver of any of the named insureds. Second, Farm Bureau claims that because Stacy was a member of John and Lisa's household at the time of the accident the "household exclusion" applies and hence she has no coverage under this policy.

Defendants contend that the umbrella policy is a "follow form" policy to the primary policy and as such simply extends the monetary limit of that policy to that provided by the umbrella. In making these assertions they rely on the explicit wording of what they term a "savings clause" contained in ¶8 of the exclusions and argue that the

coverage under the umbrella policy is coextensive with coverage provided by the primary policy. As such they contend that the household and permissive driver exclusions are invalid. Specifically, they allege that because the underlying primary policy does not exclude coverage for Christa as a permissive driver and because the policy cannot and does not exclude Stacy as a household member that the umbrella policy likewise cannot provide for these exclusions. In addition they argue even if the Court concludes that Farm Bureau's argument concerning the exclusions is correct that there is coverage under the umbrella policy based upon Idaho Code § 49-2417.

APPLICABLE LAW

Insurance contracts are considered adhesion contracts and ambiguities are construed against the insurer. *Erland v. Nationwide Ins. Co.*, 136 Idaho 131, 133, 30 P.3d 286, 288 (2001), citing *Mutual of Enumclaw v. Roberts*, 128 Idaho 232, 912 P.2d 119 (1996). Whether an insurance policy is ambiguous is a question of law. *Erland, Id*; *Farmers Ins. Co. of Idaho v. Talbot*, 133 Idaho 428, 431, 987 P.2d 1043, 1046 (1999). A policy provision is ambiguous if it is reasonably subject to differing interpretations. *Moss v. Mid-Am. Fire and Marine Ins. Co.*, 103 Idaho 298, 647 P.2d 754 (1982). When deciding whether or not a particular provision is ambiguous, a court must consider the provision within the context in which it occurs in the policy. *North Pac. Ins. Co. v. Mai*, 130 Idaho 251, 939 P.2d 570 (1997). *Purdy v. Farmers Ins. Co. of Idaho*, 138 Idaho 443, 65 P.3d 184 (2003). Any ambiguities should be resolved in favor of the insured, and where language may be given two meanings, one of which permits recovery while the other does not, the policy should be given the construction most favorable to the insured. *Foremost Ins. Co. v. Putzier*, 102 Idaho 138, 142, 627 P.2d 317, 321 (1981)

(citations omitted). However, a policy must be construed as a whole not by an isolated phrase. *Idaho Counties Risk Management Program Underwriters v. Northland Insurance Companies*, 147 Idaho 84, 205 P.3d 1220 (2009); *Cascade Auto Glass, Inc. v. Idaho Farm Bureau Ins. Co.*, 141 Idaho 660, 663, 115 P.3d 751, 754 (2005).

Courts are to construe insurance contracts as written and cannot create liability not assumed by the insurer. *Erland*, 136 Idaho at 133, 30 P.3d at 288. Unless a contrary intent is shown, common, non-technical words are given the meaning applied by laymen in daily usage-as opposed to the meaning derived from legal usage-in order to effectuate the intent of the parties. *Mutual of Enumclaw v. Box*, 127 Idaho 851, 853, 908 P.2d 153, 155 (1995); *Howard v. Oregon Mutual Insurance Co.*, 137 Idaho 214, 218, 46 P.3d 510, 514 (2002). Where the provisions of an insurance contract are not against public policy, the contract provisions control. See *Featherston v. Allstate Ins. Co.*, 125 Idaho 840, 843, 875 P.2d 937, 940 (1994); *Nationwide Mut. Ins. Co. v. Scarlett*, 116 Idaho 820, 822, 780 P.2d 142, 144 (1989).

While provisions of a contract are to be read together and harmonized whenever possible if two clauses relating to the same thing are so repugnant that they cannot stand together, the first will be received and the later one rejected, especially when the latter is inconsistent with the general purpose and intent of the instrument and would nullify it. See 12 Am.Jur. 778, 779; 6 R.C.L. 847; *Dupuy v. United States*, 35 F.2d 990, 68 Ct.Cl. 574; Annotation 60 Am.St.Rep. 93. Special provisions will control over general ones where both relate to the same thing. 12 Am.Jur. 779; *State v. Commercial Casualty Ins. Co.*, 125 Neb. 43, 248 N.W. 807, 88 A.L.R. 790; *Harrity v. Continental-Equitable Title & Trust Co.*, 280 Pa. 237, 124 A. 493. Further, as between two

permissible constructions, that which establishes a valid contract is preferred to one which does not, since it is reasonable to suppose that the parties meant something by their agreement, and were not engaged in an attempt to do a vain and meaningless thing. 6 Cal.Jur. 268. See also, *Durant v. Snyder*, *supra*, 65 Idaho at 686, 151 P.2d 776; 12 Am.Jur. 793; *Hunt v. Hunt*, 119 Ky. 39, 82 S.W. 998, 68 L.R.A. 180, 7 Ann.Cas. 788. It is a well settled rule of construction that words of a contract will be construed most strongly against the party who uses them. *Hauter v. Coeur D'Alene Mining Co.*, 39 Idaho 621, at page 635, 228 P. 259; *Morgan v. Firestone Tire & Rubber Co*, 68 Idaho 506, 201 P.2d 976 (1948).

ANALYSIS AND DECISION

A. The Court's Interpretation of the Savings Clause in ¶8 of the Umbrella Policy.

Defendants do not assert that Farm Bureau must provide the same type of mandatory coverage in its umbrella policy as is required by Idaho law for the primary policy which is a motor vehicle policy. Indeed they concede that the umbrella policy is not a motor vehicle policy. See, *Defendant's Memorandum*, p. 16. Thus, the Court need not address the extensive argument made by Farm Bureau in its briefing on this issue. The Court agrees with Farm Bureau that the umbrella is not a motor vehicle policy. However, Defendants assert that the umbrella incorporates various provisions of the underlying motor vehicle policy thus requiring that it be treated as a motor vehicle policy in certain respects. In particular Defendants assert that the umbrella cannot exclude household members from coverage and that since the underlying policy covers permissive drivers, so must the umbrella.

There is no disagreement in this case that the primary policy was in force and effect at the time of the accident, that such policy provides coverage for the claimants, and that claimants have been tendered and accepted the limits of that policy. In doing so Farm Bureau concedes that Christa is a permissive driver pursuant to the underlying policy.² Farm Bureau also concedes that Stacy is a household member of her parents.

The parties are in diametric disagreement, however, concerning the meaning of ¶8, Part IV of the umbrella policy. That provision states that there is no coverage under the umbrella for:

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;

Emphasis added.

Defendants contend that ¶8 makes the umbrella a “follow form” policy.³ Defendants reach their conclusion by the following logic. Paragraph 8 creates an exception to coverage relating to injuries arising from motor vehicles. However, the italicized language creates an “exception to the exception.” Stated differently,

² Christa is covered as a permissible driver under the primary policy because that policy specifically authorizes Stacy to grant permission to drive the Rodeo. “Insured means . . . b. Anyone using the insured vehicle within the scope of your permission or within the scope of permission of your adult relative.” *Squire Policy*, pages 2-3. Conversely, under the umbrella, “Insured means you, and if residents of your household, your spouse, your relatives. . . .” “Umbrella policy p. 1. Farm Bureau correctly concludes that Christa is not an insured under the umbrella policy.

³ A helpful definition of the types of policies involved here is found in *Planet Ins. Co. v. Ertz*, 920 S.W.2d 591 (Mo.App. W.D. 1996). “Primary insurance first pays toward the loss. Excess insurance then pays after the limit of the primary insurance is exhausted. A separate class of policies is expressly written to provide excess coverage. Designed to cover catastrophic losses, excess insurance policies begin coverage when the underlying coverage ends. Excess insurance can be classified by type: “**true excess**” or “**umbrella**” and by form: “**following form**” and “**stand alone**.” A **true excess policy** provides coverage above a primary policy for specific risks. An **umbrella policy** provides coverage over more than one policy, and may cover risks not covered by the primary policy. A **following form policy** has the same terms and conditions as the primary policy, but has a different liability limit. A **stand alone policy** has its own terms and conditions that may vary from the primary policy. *Id.* 920 S.W. 2d at 593-594.

Defendants interpret the umbrella to effectively read as follows: "We insure for bodily injury but not bodily injury arising from use of a motor vehicle unless the Squire Policy covers that bodily injury." Therefore the defendants assert that because the underlying policy covers permissive drivers and household members, the umbrella also covers permissive drivers and household members. As such they argue, the specific exclusions of ¶9 (permissive drivers) and ¶16 (household members) are in direct conflict with the grant of coverage, create an ambiguity in the policy and that therefore the grant of coverage must control over the exclusions.

Farm Bureau insists that the umbrella is a "stand alone" policy. Because of this they assert that the Court must read the umbrella policy independent of the underlying policy and that the specific exclusions under the umbrella for permissive drivers and household members thus preclude coverage for the Defendants under this policy.

Defendants rely on *Mesa Operating Co. v. California Union Ins. Co.*, 969 S.W. 2d 749 (Tex. App. 1999) and *General Mills, Inc. v. Liberty Insurance Underwriters, Inc.* 498 F.Supp.2d 1088 (S.D. Ohio 2007) and in support of their position. The Court agrees with Farm Bureau that *Mesa* is not determinative of the issue before the Court. There California Union issued an umbrella policy that provided continuation coverage of an underlying policy. Both the primary policy and the umbrella policy contained pollution exclusions. Mesa argued that the "continuation coverage" clause in the umbrella rendered the "pollution exclusion" of the umbrella inapplicable. California Union argued the umbrella was independent of the primary policy relying on language stating that the insurance coverage was "subject to all of the terms" of the umbrella policy. Stated differently, it argued that there was coverage under the primary policy only if there was

coverage under the umbrella. Ultimately the Court determined that one of the endorsements to the main policy conflicted with the pollution exclusion thus superseding the pollution exclusion. Because of the unique facts in this case, the Court does not find *Mesa* determinative of the issue before the Court.

General Mills is more directly on point with the issue before the Court. *General Mills* dealt with an umbrella policy with language very similar to that before the Court. There "Exclusion A" of umbrella provided that the insurance would not apply to bodily injury for "substantial certainty intentional torts." Another exclusion, "Exclusion Q", provided that the insurance would not apply bodily injury "except to the extent that such insurance is provided by a policy listed in the Schedule of Underlying Insurance." The underlying insurance, or the primary policy, did provide coverage for substantial certainty intentional torts. There, like here, the claimant argued that the exclusion was not an exclusion at all, but rather a grant of follow-form coverage. Claimant contended that the two exclusions were in direct conflict with each other with one interpretation providing coverage and the other excluding it. Under the doctrine that ambiguities must be resolved against the insurer, claimant argued that there should be coverage.

The District Court agreed recognizing that policy exclusions do not create, but rather narrow, coverage. Nevertheless it held:

Exclusion Q is an exclusion to the extent that it precludes "coverage for all employee claims." That exclusion, however, is followed by an inclusive qualifier that states "unless an underlying policy cover such claims." Thus, this Court finds that Exclusion Q contains a follow-form provision that defines the scope of employer's liability coverage afforded in the Umbrella Policy. Namely, it affords the same coverage as the underlying first-level employer's liability policy.

498 F.Supp.2d at 1094.

Farm Bureau asserts that General Mills “is not persuasive and holds little, if any, precedential value. It has not been reviewed on appeal, or relied upon as persuasive authority by any other case.” *Farm Bureau Reply Memorandum*, p. 11. Moreover, it asserts that the rationale of *United National Insurance Company v. Hydro Tank, Inc.*, 497 F.3d 445 (Fifth Cir. 2007) is more reasoned and provides a sounder basis to reject Defendant’s “savings clause” argument. There the exclusion in an umbrella policy provided no coverage for bodily injury arising from “pollutants.” The party seeking to enforce the umbrella policy argued that nevertheless the language of the umbrella afforded coverage because that policy stated that it assumed liability as provided in the primary policy. The Fifth Circuit rejected this “carve back” approach:

Both Texas insurance law and the language of the umbrella policy support United National's argument. An exclusion like CLE § III (a) cannot affirmatively grant coverage that would not otherwise exist under the policy and is to be read independently of every other exclusion contained therein. See *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133-34 (Tex.1994) (coverage excluded under a specific policy provision cannot be reinstated by another more general grant of coverage). Moreover, each policy provision is, to the greatest extent possible, to be given independent significance and effect. See *id.* at 133; *Barnett v. Aetna Life Ins. Co.*, 723 S.W.2d 663, 666 (Tex.1987). No single provision should be interpreted in isolation from the rest of the policy. See *Forbau*, 876 S.W.2d at 134.

Motiva's CLE claim ignores these maxims. What Motiva's argument amounts to is that the prefatory language of CLE § III creates an exception not only to the exclusions contained in CLE § III(a)-(c), but to every exclusion contained in the United National policy-including the Pollution Exclusion. Put otherwise, CLE § III overrides all other policy provisions. Accepting this argument would require this court to disregard the explicit exclusion provisions that comprise most of the United National policy, which plainly state that “[t]his insurance does not apply to” several enumerated types of property damage and bodily injury, including injury by pollutants. Motiva provides no legitimate basis upon which the language of CLE § III can be construed to reach such a sweeping result.

Emphasis added.

Reconciling these cases is difficult, if not impossible. *General Mills* seems to support the Defendant's position. As noted, *Mesa* is distinguishable because of the unique facts of that case. *United National Insurance* certainly supports Farm Bureau's position. Certainly the opposite holdings can be reconciled by simply concluding that different courts apply different philosophies or policy construction principles. For the reasons which follow the Court finds it unnecessary to explain the differences of opinion.

Farm Bureau and the Defendants focus their arguments on how this Court should classify the umbrella policy. However, the Court finds it unnecessary to determine whether the umbrella policy is a true "follow form" policy or a "stand alone" policy. This policy has features of both. The umbrella certainly provides "excess" or "additional" coverage to that of the underlying policy and to that extent "follows form" to a limited extent. But it also purports to exclude some coverage granted in the underlying policy, thus placing it into the "stand alone" category. In the strictest sense it is not a "form policy" *in toto* because nowhere does it contain language fully incorporating the provisions of the underlying policy.

The issue here is not how the policy is classified, but rather whether the policy has conflicting provisions which make it ambiguous as argued by Defendants. For the reasons that follow, the Court concludes that the umbrella is not ambiguous. The umbrella contains a broad grant of coverage for damages which the insured becomes legally responsible if the damages are caused by – "a. An occurrence to which this insurance applies that results in bodily injury or property damage" or "b. An offense to which this insurance applies committed during the policy period that results in personal

injury.” See Part II, Coverages, Umbrella Policy, p. 2. Thus coverage can apply to a variety of types of bodily injury other than those relating to the operation of a motor vehicle such as false arrest, imprisonment, malicious prosecution, libel, slander and notably covers the cost of defending various types of law suits.

The umbrella clearly excludes a variety of types of bodily injury claims arising from a variety of circumstances. Paragraph 8 addresses but one of those exclusions. The “unless covered by valid and collectible underlying insurance described in the declarations” clause in ¶8 is both a prerequisite to coverage and a limitation on the umbrella’s policy in the event the underlying insurance policy lapses after the umbrella takes effect. *See Part VI-Underlying Insurance Requirement, Umbrella Policy, p. 6.* A plain reading of ¶8 satisfies the Court that the Defendants’ position is incorrect.

The Court’s interpretation of this clause is as follows: *Despite the broad grant of coverage for bodily injury Farm Bureau will not provide additional monies to cover bodily injury arising from a motor vehicle incident unless there is an underlying primary policy in place that covers the same injury or damages complained of.* This clause does not in anyway constitute an *additional* grant of coverage. Rather the umbrella becomes effective *only if* the named insureds John and Lisa Schrock have in place a motor vehicle policy in the first instance. Schrocks are not required to have a motor vehicle policy in order to have a valid umbrella policy. They are only required to have a motor vehicle policy in order to have the umbrella provide them excess coverage beyond the limits of that underlying policy.⁴

⁴ Schrocks might well have decided to purchase umbrella coverage for a variety of reasons irrespective of whether they also had an underlying motor vehicle policy (*i.e* for personal injury coverage) independent of operation of a motor vehicle). Under these circumstances the umbrella can truly be considered a “stand alone” policy.

Since John and Lisa Schrock did purchase an underlying motor vehicle policy the umbrella will provided "excess coverage" to the extent stated in the policy. That coverage will not be greater than the underlying insurance ("and then only to the extent such injury or damages are covered by such policy"). Grammatically, use of the word "then" makes it clear that the umbrella is not expanding the coverage of the underlying policy. Additionally, the plain wording of the policy states that Farm Bureau's coverage is subject to "all exclusions, terms, and conditions of this policy." *Umbrella, Part II-Coverages*, 2. Thus, the Court rejects Defendants argument that ¶8 is ambiguous.

This conclusion is consistent with the economic realities of insurance coverage as argued by Farm Bureau. The economic cost of providing basic motor vehicle coverage far exceeds the economic cost of providing umbrella coverage by these policies. It would make little sense for an insurer to provide "second dollar" coverage pursuant to an umbrella policy at a rather nominal cost without also spreading the risk of that coverage to an underlying motor vehicle policy more carefully calculated to offset policy payout with policy premium. While this analysis does not save Farm Bureau from providing coverage in this case *if its policy is truly ambiguous*, it does help explain why the policy uses certain words in ¶8.

Paragraph 8 requires that there be "valid and collectible underlying insurance" before the umbrella provides coverage. That phraseology coupled with a reading of ¶VI which explains the requirements and limitations of the underlying insurance satisfies this Court that the "unless covered by valid and collectible underlying insurance described in the Declarations" simply means that the umbrella does not in any way apply to "bodily injury arising out of the ownership, maintenance, use, or entrustment to others of any

motor vehicle" unless that underlying coverage is in place at the time the umbrella policy is issued. In other words, the language cited by the Defendants is not a grant of coverage, but rather a limitation thereof. As such, ¶8 is not an "exception to the exception" but rather a restriction on when coverage will apply to motor vehicle in the first instance.

As noted, the holding of *General Mills* seems to support the Defendants position in this case. However, it only supports their position if this Court concludes that there are conflicting and irreconcilable provisions in the umbrella that would require construing the policy against Farm Bureau.⁵ The Court has concluded that such ambiguity does not exist here.⁶

B. The Validity of the Household Exclusion.

The Idaho Supreme Court's decision in *Farmers Insurance Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1986) authorized intrafamily actions but only "up to the limits of an applicable automobile policy" thus effectively invalidating household exclusions in automobile policies. The parties recognize that no Idaho appellate cases since that time have mandated coverage for household members under umbrella policies which provide excess coverage for motor vehicle policies. Nevertheless Defendants argue that

⁵ Moreover, the Court agrees with Farm Bureau that the Court in *General Mills* failed to address a significant principle of contract construction as set forth in *United National*. Certainly an insurer can provide exclusions to coverage. A plain reading of the umbrella makes it clear that the umbrella is significantly restricted in its scope of coverage. *General Mills* does not address this insurance contract interpretation principle.

⁶ This interpretation is also consistent with the holding and rationale of *Weitz v. Allstate Insurance Company*, 273 N.J. Super. 548, 642 A.2d 1040 (1994). There Varsavia Weitz sued her husband for injuries caused by his negligent operation of a motor vehicle. Mr. Weitz was insured under an automobile policy and an umbrella, both issued thru Allstate. The umbrella excluded coverage for Mrs. Weitz because she was a relative of the named insured, Mr. Weitz. The Court's explanations of the purposes and function of umbrella policies is consistent with the position of Farm Bureau in this case.

the use of the expansive term “automobile policy” in *Reed* certainly suggests that our Court intended to invalidate household exclusion clauses in any policy providing for coverage relating to automobile insurance policies—those required by the compulsory insurance law as well as those providing for excess coverage. Farm Bureau vehemently disagrees with this conclusion.

This Court is not willing to interpret *Reed* in the broad manner suggested by Defendants. In invalidating the household exclusion, the Court in *Reed* relied on language in the motor vehicle statute requiring mandatory insurance coverage that “any person” was entitled to the benefits of such coverage. This case arose after *Porter v. Farmers Ins. Co. of Idaho*, 102 Idaho 132, 627 P.2d 311 (1981) and after Idaho’s enactment of our compulsory insurance law. The Court’s opinion dealt with a motor vehicle policy. Thus the Court’s reference to an “automobile liability insurance policy” was not intended to apply to other policies.

Paragraph 16 of the umbrella expressly disallows coverage in this case for injuries sustained by a household member, *to wit*: Stacy Schrock. Since *Reed* was issued the Idaho legislature has declared that “any excess or additional coverage [to a motor vehicle policy] shall not be subject to the provisions of [title 49]. I.C. §49-1212(6). The legislature (presumably aware of the Court’s holding in *Reed*) has specifically authorized issuance of excess or additional insurance without requiring compliance with the motor vehicle financial responsibility act.⁷ Absent legislative change or a contrary

⁷ It is a rule of law that the Court must assume that when a statute is amended that the legislature had full knowledge of the existing judicial decisions and caselaw of the State. *Ultrawall, Inc. v. Washington Mutual Bank*, FSB, 135 Idaho 832, 836, 25 P.3d 855, 859 (2001); *see also Reynolds v. Continental Mortgage Co.*, 85 Idaho 172, 183, 377 P.2d 134, 141 (1962) (“The rule of statutory construction that where the courts have construed a statute, its subsequent amendment, or later legislative action on the subject, which does not change or disapprove the judicial construction, will be taken as legislative approval of such construction, is persuasive; but such rule is not absolute and does not debar the courts from

opinion from the Idaho appellate courts, this Court is unwilling to declare that household exclusions in umbrella policies covering motor vehicle accidents invalid.⁸

C. The Validity of the Permissive Driver Exclusion.

Christa is a permissive driver pursuant to the underlying policy because that policy specifically authorizes Stacy as an insured driver to grant permission to drive the Rodeo. She is not a named insured under the umbrella. The umbrella expressly excludes a permissive driver from coverage. Thus absent any ambiguity in the policy which would invalidate this explicit exclusion there is no coverage from Christa under the umbrella.

Defendants argue that the language in ¶8 referencing bodily injury arising from the "entrustment" of a motor vehicle creates an ambiguity and thus brings Christa within the coverage of the umbrella. As set forth above Defendants make the argument that the "carve back" method of interpretation of the ¶8 mandates coverage. The Court has already rejected this argument and need not address it further.

reexamining their own previously accepted doctrines or from modifying or overruling their former decisions").

⁸ This conclusion was also reached by the Court in *Weitz*, fn.6, *supra*. "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. Plaintiff suggests no compelling reason to tack onto one form of insurance the statutory requirements governing another. See *Horesh v. State Farm Fire & Cas. Co.*, 265 N.J.Super. 32, 37, 625 A.2d 541 (App.Div.1993) ("In the absence of any statutory or substantial public policy requirement to cover liability for an insured's injury, a homeowner's insurance policy may exclude such liability from coverage," even where such an exclusion could not be enforced if contained in an automobile liability insurance policy); *Stiefel v. Bayly, Martin and Fay*, 242 N.J.Super. 643, 577 A.2d 1303 (App.Div.1990) (no public policy or statute requires uninsured motorist coverage to be read into an umbrella policy as it could be read into the primary automobile insurance policy); *Foley v. Foley*, 173 N.J.Super. 256, 414 A.2d 34 (App.Div.1980) (homeowners policy cannot be equated with automobile policy to invalidate exclusion for intra-family torts). The unambiguous exclusion set forth in Allstate's umbrella policy must be enforced as written." *Weitz*, 642 A.2d 1041-1042. This Court agrees with this rationale. Defendants further argument that *Porter v. Farmers Ins. Co. of Idaho*, 102 Idaho 132, 627 P.2d 311 (1981) or *Farmers Ins.Group v. Reed*, 109 Idaho 849, 712 P.2d 550 (1985) alters this analysis because of the provisions of I.C. §49-1229 is addressed below.

Recognizing that the Court could reach this conclusion Defendants further argue that the definition of the permissive driver exclusion (§9) is much narrower than the definition of a driver “entrusted” with a motor vehicle. If the Court accepted Defendants argument that §8 constitutes a grant of coverage then perhaps there would be merit to the Defendant’s argument on this point. Because the Court has rejected the grant of coverage argument so there is no need to address this particular issue either.

D. The Claimed Public Policy Requirements of I.C. §49-1229.

I.C. §49-1229 provides that every owner of a motor vehicle must provide insurance against loss from liability suffered by any person in an amount not less than that required by I.C. §48-117. Defendants agree that the umbrella is not a motor vehicle liability policy. But they nevertheless assert that I.C. §49-1229 means that “Idaho’s motor vehicle financial responsibility statutes do apply to policies other than those that satisfy the statutory definition of a motor vehicle liability policy.” *Defendants Memorandum, p. 21.*

Defendants reach this conclusion by pointing out that I.C. §49-1229 speaks of the requirement to provide “insurance” not just a “motor vehicle liability policy.” They argue that there is a distinction between a “motor vehicle liability policy” and an “automobile liability policy” and that *Farmers v. Reed* invalidates household exclusions in a statutorily required motor vehicle policy as well as any other automobile liability policy. The Court addressed this argument in part above but will address it further in the context of this statute.

Defendants reach their conclusion by pointing out that *Porter v. Farmers* recognized a distinction between a “motor vehicle policy” and an “automobile liability

policy" and that *Farmers v. Reed* permitted intrafamily actions "but only up to the limits of the automobile insurance policy." 109 Idaho at 854 (Emphasis added). Further they point out that both Kentucky and Washington have declared household exclusions in umbrella policies covering vehicular accidents void as against public policy.

Farm Bureau counters this argument by pointing out that the Idaho legislature has excepted "any excess or additional coverage" from the provisions of mandatory motor vehicle coverage. I.C. §49-1212(6). Further, it asserts that the holding of *Reed* only applies to motor vehicle policies and that the decisions of the Kentucky and Washington courts represent a minority view.⁹

For a variety of reasons the Court rejects the Defendants argument that a household exclusion in any policy providing motor vehicle coverage is void as against public policy. As acknowledged above, Idaho appellate courts have never extended the holding of *Reed* to any insurance policies other than a "motor vehicle policy." It is true that the language of *Reed* speaks of an "automobile liability insurance policy." But that language must be read in the context of the decision. *Reed* is strictly limited to compulsory motor vehicle insurance. While it would have been preferable for the Idaho Supreme Court to specifically reference the statutory basis for its holding, this Court is unwilling to adopt the broad interpretation of this decision suggested by the Defendants.

Nevertheless Defendants argue that for policy reasons this Court should invalidate the household exclusion. Those cases that have invalidated these clauses in umbrella policies have valid arguments for doing so. While this Court certainly is free to make such a judicial determination in the absence of contrary appellate decisions in

⁹ The cases cited in Farm Bureau's opening Memorandum certainly suggest that the opinions of Kentucky and Washington do represent the minority view on this issue.

Idaho it does not believe that the Defendant's position is legally sound given the legislative history of our compulsory insurance law.

The Idaho legislature has already effectively addressed this policy issue by enacting I.C. §49-1212(6). *Reed* was decided in 1986. Prior to 1988 I.C. §49-1212(6) read that “such excess or additional coverage shall not be subject to the provisions of this act.” In 1988, when Title 49 was recodified, the legislature amended the statute to read that “any excess or additional coverage shall not be subject to this chapter.” Session Laws 1988, ch. 265, §302, p. 731. As discussed above, the Court presumes that the legislature was aware of decisions of the Idaho Supreme Court when recodifying Title 49. The reenactment of subparagraph (6) suggests that the legislature intended to exclude excess policies from the requirements of the compulsory insurance act. See *fn. 7, supra*. Further by changing the word “such” to “any” in subsection (6) the legislature actually expanded the statute to exclude additional policies not subject to the motor vehicle financial responsibility law.

For these reasons unless our appellate courts determine that for judicial reasons that a household exclusion in umbrella policies providing excess coverage for motor vehicle accident is against public policy and thus I.C. §49-1212 (6) is invalid to this extent, this Court finds itself without authority to invalidate the household exclusion in the umbrella.

E. Coverage for Imputed Liability Under I.C. §49-2417.

Defendants argue that I.C. §49-2417 and the provisions of the policy provide a further basis for coverage in addition to that discussed above. They allege in their counterclaim:

Emphasis added.

However there is no evidence in the record that Christa was a permissive driver by grant of authority from Lisa. Nor is there evidence that Lisa entrusted the vehicle to Christa.¹⁰ If Christa did not have the expressed or implied permission of Lisa as an owner to operate the vehicle then of course there is no statutory basis to impute liability to Lisa.¹¹ For purposes of analysis the Court will assume that Christa did have permission to operate the Rodeo *and* that Defendants are able to prove this allegation

Defendants do not allege this tort as a basis for recovery under the policy. Hence, the Court need not address this issue further.

at trial. In other words, the Court will consider for purposes of analyzing the scope of coverage that Lisa has imputed liability as an owner pursuant to I.C. §49-2417.¹²

Defendants again assert their “savings clause” argument that Exclusion ¶8 provides a basis for coverage for Christa’s use of the vehicle. Specifically, they assert that the word “entrustment” is broad enough to cover the actions of Christa and that this “exclusion” constitutes a grant of coverage. The Court has already addressed this carve back argument above and adheres to its conclusion that this portion of the policy does not provide coverage for the defendants even if Lisa “entrusted” the vehicle to Christa.

However, Defendants assert an alternate theory of coverage under the policy. They allege that I.C. §49-2417() which provides that the liability of an owner for imputed negligence “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, [hereinafter the “quoted language”] whichever is greater” means that the umbrella must respond to the damage claims of all defendants in this case because of this imputed negligence. As the Court understands Defendants’ argument, because Lisa has elected insurance coverage greater than that required by Idaho’s motor vehicle financial law (*i.e.* the umbrella) that policy is available to satisfy the claims of the defendants. This result follows, they argue, because of the wording of this statute and

¹² Farm Bureau argues that liability cannot be imputed to Lisa because she did not exercise any control over the Rodeo and hence under *Lopez v. Langer*, 114 Idaho 873, 761 P.2d 1225 (1988) was not in any position to grant permission as an “owner” under I.C. §49-2417. At most this assertion would raise a material issue of fact requiring the Court to deny summary judgment on this issue. The Court also notes that based upon the recent decision of *Oregon Mutual Insurance Company v. Farm Bureau Insurance Company et al*, -Idaho-, -P.3d-, 2009 WL 3199852 (Oct. 9, 2009) that the scope of general and specific permission to use a vehicle may alter the analysis of *Lopez*. However, given the Court’s conclusion that there is no coverage under the umbrella pursuant to Defendants argument relying upon I.C. §49-2427 it is unnecessary to further address the law on this point.

regardless of any contractual limitations in that policy.¹³ In other words, Defendants argue that any coverage over the statutory minimums set forth in I.C. 49-117 will attach to an owner who has granted permission to drive their automobile. This coverage would apply not only to the extent of the limits of the underlying policy issued as an owner's policy, but also to any policy that provides coverage for an owner.

This argument is premised on the wording of I.C. §49-1212 which provides that "No motor vehicle liability policy providing coverage beyond state mandated minimums shall provide a reduced level of coverage to any insured's family or household member or other authorized user . . . "I.C. §49-1212(12) Defendants argue that an insurer is not at liberty to reduce the "limits" of that additional policy below that set forth in the declarations by a policy by any policy exclusions. Stated slightly differently, Defendants assert that if an owner obtains any insurance coverage and if that owner grants permission to drive their automobile and if the driver is negligent, then that negligence is imputed to the owner who must respond to damages to the extent of the policy limits of any insurance policy, regardless of whether the policy limits the owners exposure to permissive drivers.

Farm Bureau responds to this argument by asserting that the provisions of this code section only apply to motor vehicle policies, not excess policies. Nevertheless, it does acknowledge that the amendment to I.C. §49-2417(2) providing coverage to "the limits of the liability insurance maintained by the owner" is ambiguous. The Court agrees and thus recognizes that it must engage in a statutory analysis to determine the intent of the legislature in amending the statute. Upon doing so the Court agrees with Farm

¹³ Lisa has elected coverage in the underlying policy beyond the minimum coverage. There is no dispute that the full limits of the underlying policy are available to satisfy the claims of all defendants.

Bureau that the highlighted language in the statute applies only to the underlying policy and not to the umbrella.

Senate Bill No. 1126 (2007 legislative session) which amended both I.C. §49-2417 and I.C. §49-1212 was clearly intended to remedy the practice of some insurers of providing for a reduced level of coverage to an insured's family or household member within the coverage *mandated* by state law. I.C. §49-1212(12) provides that an insurer who issues a policy providing greater limits than the State mandated minimum insurance cannot reduce that limit to provide less coverage to the insured's family, household member or user. Had the legislature enacted I.C. §49-1212(12) without also modifying I.C. §49-2417 there would be an anomalous result. An insured could purchase a policy that would cover an "other authorized user" in excess of \$50,000 but then only be liable pursuant to the statute up to \$50,000. In such situation there would be a direct conflict between an owner's statutory obligations and the insurer's contractual obligations to extend coverage beyond the statutory minimum. Thus it was necessary for the legislature to clarify that if an owner elected coverage greater than the statutory minimum that this coverage would automatically extend the statutory liability of the owner.

Significantly while the legislature did amend the statute precluding step down coverage for motor vehicle policies it did not modify I.C. §49-1212(6) relating to policies providing for "any excess or additional coverage." The lack of any legislation dealing with such excess policies is a further indication that the legislature did not and has not intended to interfere with an insurer's ability to place limits on such excess policies.

Simply stated, the quoted language relied upon by Defendants does not provide an independent basis for coverage beyond the policy itself.

Having determined that I.C. §49-2417 does not itself provide that Defendants are entitled to pursue the policy limit of the umbrella does not completely resolve the scope of the declaratory judgment issue before the Court. If Defendants are able to prove that Lisa granted permission for Christa to operate the Rodeo then the grant of coverage under the umbrella provides coverage because Lisa is an insured under the policy. It is then necessary to examine whether the policies exclusions apply to defeat Defendants' claims.

For the reasons stated above in this opinion the "household exclusion" defeats coverage for Stacy. There is nothing about the provisions of I.C. §49-2417 which would alter the Court's analysis applying this exclusion. Likewise, the "permissive driver" exclusion of the umbrella precludes coverage. I.C. §49-2417 does not require coverage beyond the limits of the underlying policy. Thus, parties are free to contract to place limitations on excess policy coverage for an owner who wishes to limit liability by purchasing an excess policy.¹⁴ As such, the permissive driver exclusion prohibits any claims under the umbrella by any of the defendants. Thus, even though there is a material issue of fact regarding whether Lisa granted permission to Christa, this does not preclude summary judgment in this case. Even if there was permission, the policy excludes coverage.

¹⁴ Paragraph 9 of the Exclusions provides that the policy does not apply to permissive drivers. However, Paragraph 9 of the Umbrella Policy Exclusions also 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)." Having determined that state law does not require that an excess policy cover permissive drivers, this provision of the policy is inapplicable.

At oral argument the parties also discussed in some detail the interplay between subsection 2 and subsection 5 of I.C. §49-2417. Farm Bureau has asserted that there is an inconsistency between these subsections and thus the principles of statutory construction require the Court to declare the statute void. Given that Farm Bureau has tendered the underlying policy to the Defendants and that the Court has determined that the quoted language in I.C. §49-2417 does not apply to the umbrella it is unnecessary to further address Farm Bureau's assertion on this point.

CONCLUSION

For the reasons stated above the Court concludes:

1. The umbrella policy is not a motor vehicle policy as defined under Idaho Law.
2. The umbrella policy can and does lawfully exclude household members and permissive drivers from coverage.
3. The provisions of I.C. §49-2417 do not apply to the umbrella.
4. The umbrella does not provide coverage for any of the named defendants.
5. Farm Bureau's Motion for Summary Judgment is **GRANTED** to the extent of the declarations set forth in ¶¶1-4 of this Conclusion. The Counterclaim shall be dismissed.
6. Defendant's Motion for Summary Judgment is **DENIED**.
7. Mr. Thomson is requested to prepare a judgment in conformance with this opinion.

8. Each party shall bear their own costs and fees herein.

Dated this 26 day of October 2009.

Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of October 2009, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

James Thomson
Attorney at Law
P.O. Box 9756
Boise, Idaho 83707

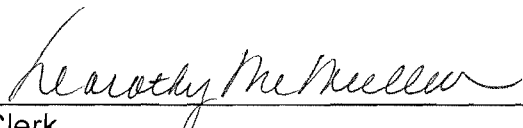
☒ U.S. Mail
☐ Hand delivered
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☐ Court Folder

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Attorney at Law
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Boise, Idaho 83702

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

Anthony Valdez
304 2nd Ave E.
Twin Falls, Idaho 83301

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder


Clerk

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

NOV - 2 2009

By _____ 5:00 PM
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,

Plaintiffs,

vs.

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

Defendants.

Case No. CV 09-829

JUDGMENT

JOHN SCHROCK, STACY SCHROCK
and CHRISTINA MONROE,

Counterclaimants,

vs.

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO,

Counterdefendant.

Based upon the Court's Memorandum Opinion Re: Cross Motions for Summary

Judgment, entered on October 26, 2009,

350

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in this matter in favor of Plaintiff Farm Bureau Mutual Insurance Company of Idaho ("Farm Bureau") and against Defendants John Schrock, Lisa Schrock, Stacy Schrock, Christa Springer, April Seitzinger, Michele Runyan and Christian Monroe ("Defendants"), and it is **DECLARED** that:

(1) The Personal Umbrella Policy issued to John and Lisa Shrock by Farm Bureau (Policy No. 01-U-079565-06), for the policy period October 19, 2008 to October 19, 2009 ("Umbrella Policy"), is not a motor vehicle liability policy as defined under Idaho law;

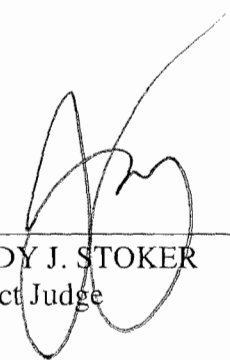
(2) The Umbrella Policy can and does lawfully exclude household members and permissive drivers from coverage;

(3) The provisions of Idaho Code § 49-2417 do not apply to the Umbrella Policy; and

(4) The Umbrella Policy does not provide coverage for any of the named defendants as a result of the October 24, 2008 automobile accident that is the subject of this declaratory judgment action, and thus is not available to satisfy any claims or suits involving medical expenses or other losses or damages sustained as a result of the October 24, 2008 automobile accident.

The Counterclaim asserted by John Schrock, Lisa Schrock and Christina Monroe against Farm Bureau is dismissed with prejudice. Each party to this matter shall bear their own costs and attorney fees.

DATED this 2 day of November, 2009.



RANDY J. STOKER
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3 day of November, 2009, I caused to be served a true copy of the foregoing **JUDGMENT**, 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, Stacy Schrock and Christina
Monroe and Defendants Michele Runyan
and April Seitzinger*

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Anthony M. Valdez
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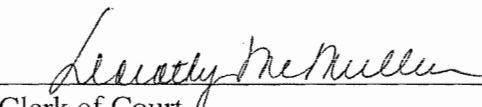
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Clerk of Court

DISTRICT COURT
TWIN FALLS CO. IDAHO
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DEPUTY

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Attorneys for Plaintiff/Counterdefendant/Respondent

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

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO,

Plaintiff/Respondent,

vs.

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

Defendants/Appellants.

JOHN SCHROCK, STACY SCHROCK
and CHRISTINA MONROE,

Counterclaimants/Appellants,

Case No. CV 09-829

**REQUEST FOR ADDITIONAL
DOCUMENTS AND REPORTER'S
TRANSCRIPT**

vs.

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO,

Counterdefendant/Respondent.

COMES NOW plaintiff/counterdefendant/respondent FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO, by and through its counsel, Powers Tolman, PLLC, pursuant to Idaho Appellate Rules 25 and 28, and in response to the defendants/appellants' Notice of Appeal, dated November 25, 2009, hereby requests the following be included with the reporter's transcript and clerk's record on appeal:

1. Complete transcript of the summary judgment hearing held on September 14, 2009;
2. Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment, filed July 28, 2009;
3. Farm Bureau Mutual Insurance Company of Idaho's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, filed July 28, 2009;
4. Memorandum in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment, filed July 28, 2009;
5. Affidavit of James S. Thomson, II in Support of Farm Bureau Mutual Insurance Company of Idaho's Motion for Summary Judgment, filed July 28, 2009;
6. Memorandum in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Summary Judgment Motion, filed August 31, 2009;
7. Defendants John Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe's Motion for Summary Judgment, filed September 2, 2009;

8. Farm Bureau Mutual Insurance Company of Idaho's Statement of Disputed Material Facts in Opposition to Defendants' Motion for Summary Judgment, filed September 8, 2009;

9. 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, filed September 8, 2009; and

10. Memorandum Opinion Re: Cross Motions for Summary Judgment, filed October 26, 2009.

DATED this 30th day of November, 2009.

POWERS TOLMAN, PLLC

By 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 2009, I caused to be served a true copy of the foregoing **REQUEST FOR ADDITIONAL DOCUMENTS AND REPORTER'S TRANSCRIPT**, by the method indicated below, and addressed to each of the following:

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Boise, ID 83702


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Christina Monroe and Defendants Michele
Runyan and April Seitzinger*

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*Attorneys for Defendants Christa Springer
and Michele Runyan*

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Attorney for Defendants/Appellants John Schrock, Stacy
Schrock, April Seitzinger, Michele Runyan and
Christina Monroe and Counterclaimants/Appellants John
Schrock, Stacy Schrock and Christina Monroe

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

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BY _____ CLERK

DEPUTY

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

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO,

Plaintiff/Respondents,

vs.

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

Defendants/Appellants.

JOHN SCHROCK, STACY SCHROCK and
CHRISTINA MONROE,

Counterclaimants/Appellants,

vs.

FARM BUREAU MUTUAL INSURANCE
COMPANY OF IDAHO

Counterdefendant/Respondents.

Case No. CV-09-829

NOTICE OF APPEAL

Category: L

Fees: \$101.00

TO: THE ABOVE NAMED PLAINTIFF, FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO., AND ATTORNEY, RAYMOND POWERS AND JAMES THOMSON, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, John Schrock, Lisa Schrock, Stacy Schrock, April Seitzinger, Michele Runyan and Christina Monroe, appeal against the above named respondent to the Idaho Supreme Court from the final judgment entered in the above entitled action on the 26th day of October, the Honorable Randy J. Stoker presiding.

2. That Appellant has a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1) I.A..R.

3. Issue on appeal: Whether the District Court erred in ruling against Defendants' Motion for Summary Judgment and granting Plaintiff's Motion for Summary Judgment.

4. No order has been entered sealing all or any portion of the record.

5. (a) Is a reporter's transcript is requested? Yes.

(b) Appellant requests the entire reporter's transcript supplemented by the following:

1) All documents pertaining to the proceedings of the Summary Judgment Hearing held on September 14, 2009.

6. Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

(a) All exhibits admitted into evidence at trial;

(b) Depositions of Appellant and Respondent;

(c) All pleadings filed in the above-captioned matter;

(d) All orders issued by the District Court in the above-captioned matter.

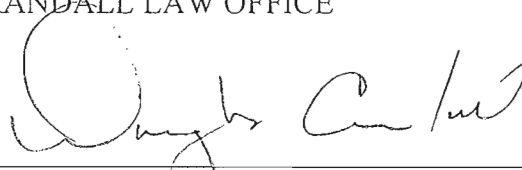
7. I certify:

- (a) That a copy of the notice of appeal has been served on the reporter.
- (b) That the clerk of the district court, Sabrina Vasquez has been paid the estimated fee for preparation of the reporter's transcript of \$250.00.
- (c) That the estimated fee for the clerk's record is \$100.00 and has been paid in addition to the filing fee of \$101.00 to the Clerk of the Twin Falls Court.
- (d) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to Rule 20 I.A.R.

DATED this 25 day of November, 2009.

CRANDALL LAW OFFICE

By



Douglas W. Crandall
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of November, 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:

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

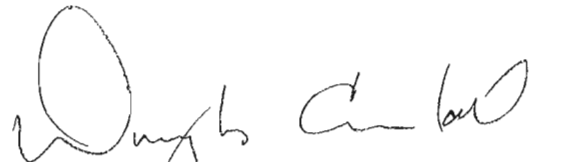
- ☐ US Mail
- ☐ Overnight Mail
- ☐ Hand-Delivery
- ☒ Facsimile Transmission
- ☐ Electronic Transmission

Anthony M. Valdez
Valdez Law Office, PLLC
304 Second Avenue E
Twin Falls, ID 83301
Facsimile No.: (208) 736-8333

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

Sabrina Vasquez Court Reporter
427 Shoshone Street N.
PO Box 126
Twin Falls, Idaho 83303-0126
Facsimile: 208-736-4155

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



Douglas W. Crandall

TO: Clerk of the Court
Idaho Supreme Court
Court of Appeals
P.O. Box 83720
Boise, ID 83720-0101

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2009 DEC 24 AM 11:25

BY _____ CLERK

PC _____ DEPUTY

DOCKET NO. 37172

Farm Bureau Insurance
vs.
John Schrock, et al,

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 24, 2009, I lodged a transcript of 75 pages in length for the above-referenced appeal with the District Court Clerk of the County of Twin Falls in the Fifth Judicial District. The transcript includes: Motion for Summary Judgment hearing on 9/14/09.

Sabrina Vasquez
Signature

Sabrina Vasquez

12/24/09
Date

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. 35218
DISTRICT COURT NO. CV 06-3472

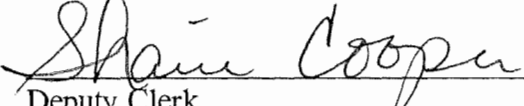
CLERK'S CERTIFICATE

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that there are no exhibits, offered or admitted in the above-entitled cause.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5th day of January, 2010.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

CLERK'S CERTIFICATE

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

FARM BUREAU MUTUAL INSURANCE)
COMPANY OF IDAHO,)

SUPREME COURT NO. 35218
DISTRICT COURT NO. CV 06-3472

Plaintiff/Counterdefendant/)
Respondent)

vs)

CERTIFICATE OF SERVICE

JOHN SCHROCK, STACY SCHROCK,)
CHRISTINA MONROE,)

Defendants/Counterclaimants/)
Appellants,)

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

Defendants/Appellants)

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

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

Raymond Powers
James Thomson
POWERS THOMSON, PC
345 Bobwhite Court, Suite 150
P. O. Box 9756
Boise, ID 83707

303

ATTORNEY FOR APPELLANTS/
DEFENDANTS/
COUNTERCLAIMANTS

ATTORNEY FOR RESPONDENT/
PLAINTIFF/
COUNTERDEFENDANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 11
day of January, 2009.

KRISTINA GLASCOCK
Clerk of the District Court

Shaine Cooper
Deputy Clerk