

3-3-2011

# Farber v. Idaho State Ins. Fund Augmentation Record Dckt. 38140

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In the Supreme Court of the State of Idaho

DATED this 3<sup>rd</sup> day of March 2011.

For the Supreme Court

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

Plaintiffs-Appellants,

v.

THE IDAHO STATE INSURANCE FUND, JAMES M. ALCORN, its manager, and WILLIAM DEAL, WAYNE MEYER, MARGUARITE McLAUGHLIN, GERALD GEDDES, MILFORD TERRELL, JUDI DANIELSON, JOHN GOEDDE, ELAINE MARTIN, MARK SNODGRASS, RODNEY A. HIGGINS, TERRY GESTRIN, MAX BLANCK and STEVE LANDON in their capacity as members of the Board of Directors of the State Insurance Fund,

Defendants-Respondents.

ORDER GRANTING MOTION TO AUGMENT THE RECORD

Supreme Court Docket No. 38140-2010  
Canyon County No. 2006-7877

cc: Counsel of Record

  
Stephen W. Kenyon, Clerk

LAW CLERK

AUGMENTATION RECORD

A MOTION TO AUGMENT THE RECORD was filed by counsel for Appellants on February 3, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Class Action Complaint and Demand for Jury Trial, file-stamped July 21, 2006;
2. Answer to Plaintiffs' Class Action Complaint and Demand for Jury Trial, file-stamped October 2, 2006;
3. First Amended Class Action Complaint and Demand for Jury Trial, file-stamped July 10, 2007;
4. Answer to Plaintiffs' First Amended Class Action Complaint and Demand for Jury Trial, file-stamped July 20, 2007; and
5. Order Granting Defendants' Motion for Summary Judgment on the issue of Statute of Limitation, file-stamped April 30, 2007.

ORDER GRANTING MOTION TO AUGMENT THE RECORD - Docket No. 38140-2010

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# In the Supreme Court of the State of Idaho

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

Plaintiffs-Appellants, )

v. )

THE IDAHO STATE INSURANCE FUND, )  
 JAMES M. ALCORN, its manager, and )  
 WILLIAM DEAL, WAYNE MEYER, )  
 MARGUARITE McLAUGHLIN, GERALD )  
 GEDDES, MILFORD TERRELL, JUDI )  
 DANIELSON, JOHN GOEDDE, ELAINE )  
 MARTIN, MARK SNODGRASS, RODNEY )  
 A. HIGGINS, TERRY GESTRIN, MAX )  
 BLANCK and STEVE LANDON in their )  
 capacity as members of the Board of Directors )  
 of the State Insurance Fund, )

Defendants-Respondents. )

ORDER GRANTING MOTION TO  
 AUGMENT THE RECORD

Supreme Court Docket No. 38140-2010  
 Canyon County No. 2006-7877


A MOTION TO AUGMENT THE RECORD was filed by counsel for Appellants on February 3, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Class Action Complaint and Demand for Jury Trial, file-stamped July 21, 2006;
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4. Answer to Plaintiffs' First Amended Class Action Complaint and Demand for Jury Trial, file-stamped July 20, 2007; and
5. Order Granting Defendants' Motion for Summary Judgment on the Issue of Statute of Limitation, file-stamped April 30, 2007.

DATED this 3<sup>rd</sup> day of March 2011.

For the Supreme Court

A handwritten signature in cursive script that reads "Stephen Kenyon". The signature is written in black ink and is positioned above a horizontal line.

Stephen W. Kenyon, Clerk

cc: Counsel of Record

JUDGE  
JAMES C MORFITT

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**FILED**  
A.M. 2:06 P.M.

**JUL 21 2006**

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

Attorneys for Plaintiffs and the Class

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

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

**Plaintiffs,**

vs.

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

**Defendants.**

Case No. C 206-7877

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

**RECEIVED**  
JUL 28 2006

**GORDON LAW OFFICES**

**COPY**

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

### INTRODUCTION

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

of \$2,500.00.

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

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

#### **PART ONE: PARTIES**

1.

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

2.

Plaintiffs reside and do business in Idaho as follows:

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

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

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

3.

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

4.

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

5.

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



noted) as members of the Board.

6.

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

**PART ONE: FACTUAL ALLEGATIONS**

7.

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

8.

Idaho Code § 72-915 provides as follows:

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

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

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

PART III: CLASS ACTION ALLEGATIONS

15.

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

16.

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

17

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

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

18.

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

19.

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

20.

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

a class action.

21.

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

22.

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

23.

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

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

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

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

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

**COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS**

24.

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

25.

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

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



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

26.

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

27.

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

28.

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

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

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

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

29.

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

30.

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

31.

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

**COUNT II: DECLARATORY RELIEF — INJUNCTION**

32.

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

33.

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

34.

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

### **COUNT III: DAMAGES**

35.

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

36.

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

37.

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

38.

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

WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

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

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

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

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

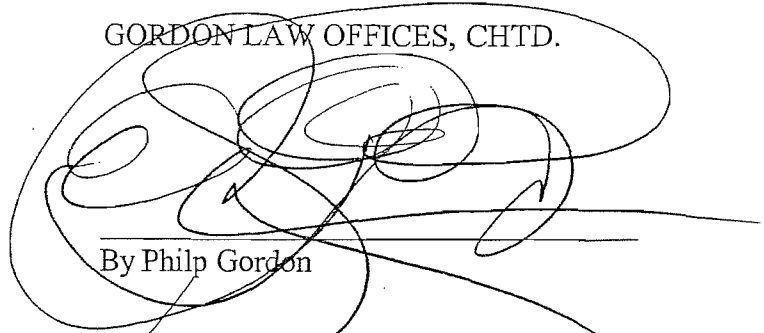
DATED: this 20<sup>th</sup>, day of July, 2006.

LOJEK LAW OFFICES, CHTD.

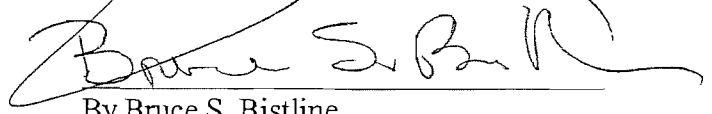


By Donald W. Lojek

GORDON LAW OFFICES, CHTD.



By Philip Gordon

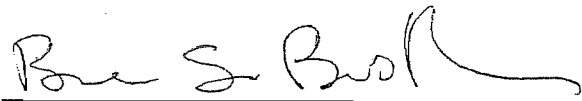


By Bruce S. Bistline

Attorneys for Plaintiffs and the Class

**DEMAND FOR JURY TRIAL**

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



Bruce S. Bistline  
Attorney for Plaintiff

## Kimber Grove

---

**From:** Elaine <esangiorgi@gordonlawoffices.com>  
**Sent:** Thursday, February 17, 2011 10:58 AM  
**To:** Kimber Grove  
**Cc:** Bryan A. Nickels; Bruce Bistline; Philip Gordon  
**Subject:** Docket # 38140-2010: Farber v. State Insurance Fund RE Motion to Augment the record  
**Attachments:** Answer.pdf; Answer Amended.pdf

Dear Kimber: Please see attached. In keeping with Defendants' request, we request that these documents be submitted in their entirety, not "slip-sheeted" (please see Defendants' request below).

**"In providing these, however, we do so with the expectation that the first page of these documents will not simply be "slip-sheeted" with plaintiffs' prior filings; instead, to avoid confusion regarding the record on appeal at a later date, these documents should be submitted in their entirety to the Supreme Court."**

Thank you for your help in this matter if you have any questions, please give me a call. Elaine

*Elaine Sangiorgi  
Paralegal to  
Bruce S. Bistline*

**GORDON LAW OFFICES, CHTD**  
623 West Hays Street  
Boise, Idaho 83702-5512  
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W:\313-461.2\Answer.doc

**FILED**  
A.M. P.M.

**OCT - 2 2006**

**CANYON COUNTY CLERK  
K CANO, DEPUTY**

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

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

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

Plaintiffs,

vs.

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

Defendants.

Case No. CV06-7877

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

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

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

**FIRST DEFENSE**

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

**SECOND DEFENSE**

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

**INTRODUCTION**

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

**PART ONE: PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS**

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

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

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

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

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

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

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

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

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

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

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



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

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

### **COUNT II: DECLARATORY RELIEF - INJUNCTION**

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

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

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

### **COUNT III: DAMAGES**

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

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

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

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

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

**THIRD DEFENSE**

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

**FOURTH DEFENSE**

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

**FIFTH DEFENSE**

Plaintiffs have failed to mitigate their damages.

**SIXTH DEFENSE**

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

**SEVENTH DEFENSE**

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

**EIGHTH DEFENSE**

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

**NINTH DEFENSE**

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

**TENTH DEFENSE**

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

**ELEVENTH DEFENSE**

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

**TWELTH DEFENSE**

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

**THIRTEENTH DEFENSE**

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

**RESERVATION OF DEFENSES**

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

**REQUEST FOR ATTORNEY FEES**

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

**PRAYER FOR RELIEF**

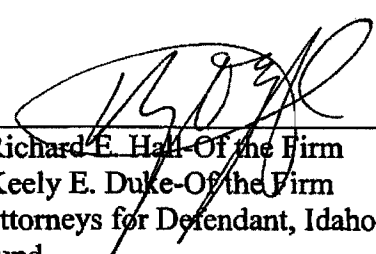
Wherefore, the SIF prays for judgment as follows:

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

DATED this 7<sup>th</sup> day of October, 2006.

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

By

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

CERTIFICATE OF SERVICE

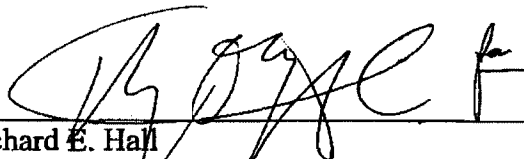
I HEREBY CERTIFY that on the 2<sup>nd</sup> day of October, 2006, I caused to be served a true copy of the foregoing ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL, by the method indicated below, and addressed to each of the following:

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

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

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

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

  
\_\_\_\_\_  
Richard E. Hall  
Keely E. Duke

Donald W. Lojek ISBN 1395  
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**FILED**  
A.M. 11:15 P.M.

JUL 10 2007

CANYON COUNTY CLERK  
D. BUTLER, DEPUTY

Attorneys for Plaintiffs and the Class

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

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

**Plaintiffs,**

vs.

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

**Defendants.**

Case No. CV 06-7877

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

**RECEIVED**  
JUL 11 2007

GORDON LAW OFFICES

**COPY**

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

### INTRODUCTION

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

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

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

### **PART I: PARTIES**

1.

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

2.

Plaintiffs reside and do business in Idaho as follows:

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



Ada County, Idaho.

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

3.

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

4.

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

5.

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

6.

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

## **PART II: FACTUAL ALLEGATIONS**

7.

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

8.

Idaho Code § 72-915 provides as follows:

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

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

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

### PART III: CLASS ACTION ALLEGATIONS

15.

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

16.

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

17.

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

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

18.

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

19.

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

20.

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

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

21.

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

22.

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

23.

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

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

equaled or was less than \$2,500.00 even though

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



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

**COUNT I: DECLARATORY RELIEF — PAYMENT OF DIVIDENDS**

24.

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

25.

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

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

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

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

26.

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

27.

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

28.

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

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

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

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

29.

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

30.

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

31.

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

**COUNT II: DECLARATORY RELIEF — INJUNCTION**

32.

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

33.

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

34.

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

**COUNT III: DAMAGES**

35.

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

36.

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

37.

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

38.

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

WHEREFORE, THE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

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

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

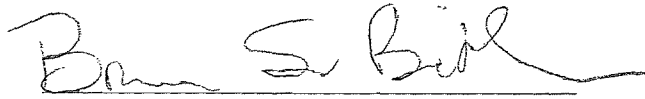
6. That the Court order, adjudge, decree and declare, pursuant to Idaho Code §§10-1201 & 10-1205 that, for each year during the class period, as herein defined, that one or more of the Defendants must pay to the Plaintiffs and the members of the class, pre-judgment interest on such sums as the Fund should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

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

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

DATED: This 6<sup>th</sup> day of July, 2007.

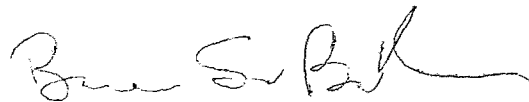
GORDON LAW OFFICES, CHTD.



By Bruce S. Bistline

**DEMAND FOR JURY TRIAL**

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



Bruce S. Bistline  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

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

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

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



## Kimber Grove

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**From:** Elaine <esangiorgi@gordonlawoffices.com>  
**Sent:** Thursday, February 17, 2011 10:58 AM  
**To:** Kimber Grove  
**Cc:** Bryan A. Nickels; Bruce Bistline; Philip Gordon  
**Subject:** Docket # 38140-2010: Farber v. State Insurance Fund RE Motion to Augment the record  
**Attachments:** Answer.pdf; Answer Amended.pdf

Dear Kimber: Please see attached. In keeping with Defendants' request, we request that these documents be submitted in their entirety, not "slip-sheeted" (please see Defendants' request below).

**"In providing these, however, we do so with the expectation that the first page of these documents will not simply be "slip-sheeted" with plaintiffs' prior filings; instead, to avoid confusion regarding the record on appeal at a later date, these documents should be submitted in their entirety to the Supreme Court."**

Thank you for your help in this matter if you have any questions, please give me a call. Elaine

*Elaine Sangiorgi  
Paralegal to  
Bruce S. Bistline*

**GORDON LAW OFFICES, CHTD**  
623 West Hays Street  
Boise, Idaho 83702-5512  
Phone: (208) 345-7100  
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[esangiorgi@gordonlawoffices.com](mailto:esangiorgi@gordonlawoffices.com)

*Confidentiality Notice: This email message may contain confidential and privileged information exempt from disclosure under applicable law. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning us, and do not review, disclose, copy, or distribute this message. Thank you.*

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W:\3\3-461.2\Answer to First Amended Complaint.doc

FILED  
A.M. 3:40 P.M.

JUL 20 2007

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*J. Onake*

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

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

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

Plaintiffs,

vs.

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

Defendants.

Case No. CV06-7877

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

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

**FIRST DEFENSE**

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

**SECOND DEFENSE**

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

**INTRODUCTION**

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

**PART ONE: PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**COUNT I: DECLARATORY RELIEF – PAYMENT OF DIVIDENDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **COUNT II: DECLARATORY RELIEF - INJUNCTION**

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

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

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

### **COUNT III: DAMAGES**

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

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

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

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

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

### **THIRD DEFENSE**

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

### **FOURTH DEFENSE**

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

### **FIFTH DEFENSE**

Plaintiffs have failed to mitigate their damages.

**SIXTH DEFENSE**

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

**SEVENTH DEFENSE**

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

**EIGHTH DEFENSE**

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

**NINTH DEFENSE**

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

**TENTH DEFENSE**

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

**ELEVENTH DEFENSE**

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

**TWELFTH DEFENSE**

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

**THIRTEENTH DEFENSE**

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

**RESERVATION OF DEFENSES**

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

**REQUEST FOR ATTORNEY FEES**

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

**PRAYER FOR RELIEF**

Wherefore, the SIF defendants pray for judgment as follows:

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

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

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

DATED this 20<sup>th</sup> day of July, 2007.

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

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

CERTIFICATE OF SERVICE

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

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

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

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

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

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

*Handwritten mark*

FILED  
APR 30 3:20 PM

APR 30 2007

CANYON COUNTY CLERK  
D. CULLEN, DEPUTY

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

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

Case No. CV 2006-07877\*C

-vs-

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

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

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GORDON LAW OFFICES



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

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

Good Cause Appearing,

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

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

DATED: APR 8 0 2007

**JAMES C MORFITT**

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James C. Morfitt  
District Judge

