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### Dahmer v. Blackburn Appellant's Reply Brief Dckt. 44917

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IN THE SUPREME COURT OF THE  
STATE OF IDAHO

MICHAEL D. DAHMER, P. E.,  
Plaintiff, Appellant

JONATHAN BLACKBURN,  
Defendant, Respondent

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, an Illinois  
Corporation,  
Defendant, Respondent

DAVID E. BICE, personally and in his  
capacity as Claims Adjuster for defendant,  
STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,  
Defendant, Respondent,

\* \* \* \* \*

SC Case No. 44917

**REPLY BRIEF**

Appeal from the Fifth Judicial District

Honorable G Richard Bevan, Fifth Judicial District, Administrative District Judge

Honorable Jon M Brody, Fifth Judicial District Judge

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## TABLE OF CASES AND AUTHORITIES

### Cases

- Bean v. Allstate Insurance Co., 285 Md. 572, 403 A.2d 793 (1979)
- Duff v. Draper, 96 Idaho 299, 527 P.2d 1257 (1974); (2d ed. 1965)
- Day v. CIBA Geigy Corp., 115 Idaho 1015, 772 P.2d 222, 224-225 (1989)
- Gaige v City of Boise, 91 Idaho 481, 425 P.2d 52 (1967)
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- Idaho State Insurance Fund v. Kerby Van Tine, 132 Idaho 108, 980 P.2d 572 (1999)
- Intermountain Food Equipment Co. v. Waller, 86 Idaho 94, 383 P.2d 612 (1963)
- James And Tamala Hettwer, Plaintiffs–Appellants, v. Farmers Insurance Company Of Idaho, dba Farmers Insurance Group, 118 Idaho 373 22, 1990
- Pocatello Industrial Park Co., v. Steel West, Inc., 101 Idaho 783, 621 P.2d 399 (1980)
- Stonewall Surplus Lines Insurance Company v. Farmers Insurance Company Of Idaho, 132 Idaho 318, 971 P.2d (1998).
- Systems Associates, Inc., V. Motorola Communications And Electronics, Inc., 116 Idaho 615 778 P.2d 737 (1989)
- Wickstrom v. North Idaho College, 111 Idaho 450, 453, 725 P.2d 155, 158 (1986)

### Other Authorities

- Constitution of the State of Idaho Section 22 (7)
- Constitution of the United States Fifth and Fourteenth Amendments (due process).
- Idaho Code. 41-1839 et.sec.
- 1B Moore's Federal Practice P 0.443(5)
- Idaho Rules of Civil Procedure, inclusive
- Rule 11(a) of the Idaho Rules of Civil Procedure
  - Rule 11(b) of the Idaho Rules of Civil Procedure
  - Rule 15(a) of the Idaho Rules of Civil Procedure
  - Rule 26(4)(v), Rule 37(f) of the Idaho Rules of Civil Procedure

## INTRODUCTION

Respondents argue that a “mountain of case law ...” exists to preclude Appellant's appeal and may not prevail. Once again, ***State Farm insurance Company” et al, defendant / respondent and their agent David Bice defendant / respondent may not contract with Mr Blackburn, defendant / respondent to engage in criminal conduct in contravention to Idaho Code 54-1200 (emphasis added)***. The trial court erred in dismissing State Farm Insurance and David Bice as their conduct grossly exceeds any reasonable standard contractual immunity currently established by Respondents' “mountain of case law”. The Idaho Supreme Court recognized this possible condition in In James And Tamala Hettwer, Plaintiffs–Appellants, v. Farmers Insurance Company Of Idaho, dba Farmers Insurance Group, 118 Idaho 373 22, 1990. “The trial court granted the motion of Farmers for summary judgment, stating that a tort victim may not sue a tortfeasor's insurer directly unless one of the factors enumerated in Bean v. Allstate Insurance Co., 285 Md. 572, 403 A.2d 793 (1979) exists. At the same time the trial court denied the motion to amend of the Hettwers, stating that misjoinder would occur if the amendment were allowed. The Hettwers appealed the summary judgment granting dismissal, but did not appeal the Whether the Hettwers have a valid first-party claim against Farmers is not presented to us in this appeal. ... Justice Johnson's opinion gains my concurrence insofar as it affirms Judge Magnuson's dismissal of the

Hettwers' third party action against Farmers Insurance. **Nevertheless, on a careful perusal of the authority relied on by the Hettwers, including our own White v. Uniguard Mut. Ins. Co., 112 Idaho 94, 730 P.2d 1014 (1986), and our own Chancler v. American Hardware Mut. Ins. Co., 109 Idaho 841, 712 P.2d 542 (1985), I am persuaded that one day this Court, differently constituted one may be certain, will see merit in the Hettwers' contention that their action against Farmers is not so far fetched as others may think.” (emphasis added)denial.**

Respondents' counsel for State Farm / Bice filed a patently false answer in their initial answer (Pocatello Industrial Park Co., v. Steel West, Inc., 101 Idaho 783, 621 P2d 399 (1980) ) defense counsel argues that plaintiff is collaterally estopped from proceeding as the matter has already been litigated. “In order for the doctrine of collateral estoppel to apply, the issue in question must have actually been litigated and resolved in the prior suit. See Duff v. Draper, a96 Idaho 299, 527 P.2d 1257 (1974); 1B Moore's Federal Practice P 0.443(5) z(2d ed. 1965). Cf. Green v. Gough, 96 Idaho 927, 539 P.2d 280 (1975); Gaige v. City of Boise, 91 Idaho 481, 425 P.2d 52 (1967); Intermountain Food Equipment Co. v. Waller, 86 Idaho 94, 383 P.2d 612 (1963). ” This conduct alone should require the trial court to impose sanctions against the respondents /defendants. Request for sanction was made to be taxed against respondents / defendants but the electronic filing system for the pleadings lost the original documents.

Anthony Valdez, ESQ, argues that his conduct may not be appealed as the issue was not raised in court. Not only was the improper conduct raised in court but a third party witness came forward after trial, in either case, witness tampering is egregious conduct at any time to be investigated reviewed by the higher court. This conduct is a major denial of due process to Appellant / Plaintiff Dahmer. Court Records have been tampered with respect to the dismissal of Officer Wagner's citation. The Idaho Supreme court should take judicial notice of the record and the due process effects upon appellant / plaintiff Dahmer.

## CONCLUSION

By law or case precedent, defendant, respondent Blackburn cannot benefit from fraud or criminal actions of defendant, respondent State Farm, its agents and / or defendant respondent David Bice. That both Judge Bevan and Judge Brody abused their discretion by refusing to enforce Appellant / Plaintiff Dahmer motion for sanctions not be calendared and further abused their discretion by; Judge Brody applying sanction without proper knowledge of Judge Bevan's acknowledgment of the errors in the electronic record; and Judge Bevan's dismissing ***with prejudice*** defendants/respondents State Farm and Bice. The cause of action should stand as both parties acted beyond a respondents' continuous claim of a mere contractual status claiming total sovereign immunity in the Idaho Court System. Plaintiff, appellant Dahmer was denied due process and guaranteed constitutional rights and was unfairly impeded by the prototype e-filing system that should never have mingled a Jerome County Case, with the Twin Falls County Prototype e-filing system. Respondent/Defendant's attorney, at trial, breached and violated Respondent/defendant's own "Motion in Limine" by inquiring on direct examination as to Defendant's driving record. The trial court erred in refusing to allow plaintiff to further examine on cross as to the opinion of officer as to Respondent/Blackburn's failure to yield and/or the issuance of a citation to defendant Blackburn in the instant case after defense



counsel broached the topic.

1. Virginia M. Bailey, RPR, CSR No. 262
2. **1** THE COURT: All right. Well, typically,
3. **2** counsel -- and again I'm at a loss as to why
4. **3** this never happened -- I will send out a
5. **4** stipulation for scheduling for the two of you
6. **5** to put together a request for some trial dates
7. **6** and just give me three weeks where you are
8. **7** available, and I'll set it in one of those
9. **8** three weeks.

Records have been tampered with and Officer Wagner was intimidated by Defense attorney Valdez and also conducted ex-parte discovery, in violation of the Idaho Rules of Civil Procedure, with Officer Wagner just prior to Wagner's testimony/ The trial court judge abused his discretion in preparation final jury instructions and allow adequate time for Appellant to review their preparation for presentation despite multiple objections from appellant.

The Appellant requests that the judgment for sanctions be overturned, that the defendants, respondents State Farm be reinstated as defendants and a new trial should be ordered.

Dated this 31 of December, 2017

Respectfully Submitted

/Michael D. Dahmer/

Michael D. Dahmer, P. E.