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5-17-2017

### Eastman v. Farmers Insurance Company Clerk's Record v. 2 Dckt. 44889

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Vol 2 of 2

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

JENNIFER EASTMAN, a single woman,

Plaintiff-Appellant.

v.

FARMERS INSURANCE COMPANY,  
an Idaho coporation,

Defendant-Respondent.

*Appealed from the District Court of the First Judicial District of  
the State of Idaho, in and for the County of Kootenai.*

AARON A. CRARY  
9417 E. Trent Ave.  
Spokane, WA 99206

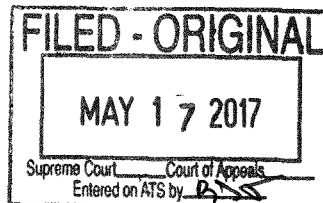
*Attorney for Appellants*

TRUDY HANSON FOUSSER  
PO Box 2387  
Boise, ID 86701

*Attorney for Respondent*

**VOLUME 2**

44889



RECEIVED  
IDAHO SUPREME COURT  
MAY 17 2017  
2:00 PM - 3:00 AM 9-38

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2016 SEP 30 AM 9:46

CLEK DISTRICT COURT  
*[Signature]*  
DEPUTY

ROBERT B. CRARY (ISB#5693)  
AARON A. CRARY (ISB#8517)  
CRARY, CLARK, DOMANICO, & CHUANG P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206  
Tele: (509) 926-4900  
Fax: (509) 924-7771

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman, )  
)  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
FARMERS INSURANCE COMPANY, )  
an Idaho corporation, )  
)  
Defendants. )  
)  
)  
)  
\_\_\_\_\_ )

Case No: CV 16-4603

AFFIDAVIT OF AARON  
A. CRARY IN SUPPORT  
OF MOTION FOR  
SUMMARY JUDGMENT

I, AARON A. CRARY, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and competent to testify in the above-referenced matter.
2. I am the attorney for the plaintiff Jennifer Eastman and duly licensed to practice law in the State of Idaho.
3. Attached to this Affidavit as **Exhibit A** are true and correct copies of Full Release of All Claims and Demands from Progressive Insurance Company and a Declaration Page.

AFFIDAVIT OF AARON A. CRARY IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT - 1

4. Attached to this Affidavit as **Exhibit B** are true and correct copies of Settlement Agreement with Spokane Transit Authority.

5. Attached to this Affidavit as **Exhibit C** are true and correct copies of email dated January 22, 2016.

6. Attached to this Affidavit as **Exhibit D** are true and correct copies of a letter to Farmers Insurance Company dated February 10, 2016.

7. Attached to this Affidavit as **Exhibit E** are true and correct copies of a Settlement Demand/Proof of Loss to Farmers Insurance Company dated April 15, 2016.

8. Attached to this Affidavit as **Exhibit F** are true and correct copies of Ms. Eastman's insurance policy No. 19515-03-78 with Farmers Insurance Company.

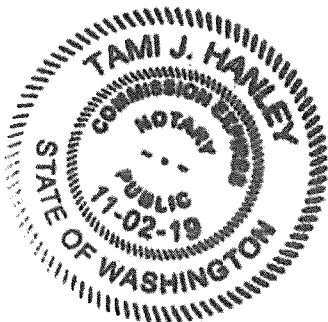
DATED this 27 day of September, 2016.

CRARY, CLARK, DOMANICO & CHUANG, P.S.

BY: \_\_\_\_\_

AARON A. CRARY  
Attorney for Plaintiffs

SUBSCRIBED AND SWORN to me this 27<sup>th</sup> day of September, 2016.



Tami J. Hanley  
NOTARY PUBLIC in and for the State  
of Washington, residing at Spokane  
My Commission Expires: 11/2/19

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27 day of September, 2016, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Ms. Trudy Fouser  
Ms. Julianne S. Hall  
121 N. 9<sup>th</sup> Street, Suite 600  
Boise, ID 83701  
Fax: (208) 336-9177  
Email: [tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)  
[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

U.S. Mail  
 Facsimile  
 Courier Service  
 Overnight Mail  
 Email

# ***EXHIBIT A***

FULL RELEASE OF ALL CLAIMS AND DEMANDS

Claim Number: 14-4113123

For your protection, Washington law requires the following to appear on this form:

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

Know all by these presents, that I (We), Jennifer Eastman, for and in consideration of the sum of Fifty Thousand dollars and 00/100 (\$50,000.00), and the receipt whereof is hereby acknowledged, do (does) individually on my (our) own behalf and as representative of and on behalf of my (our) heirs, executors, administrators, successors, assigns, and any and all other persons, firms, employers, corporations, associations, or partnerships release, acquit and forever discharge Donald Salzman and Sydney Salzman of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, property damage, loss of wages, expenses, hospital medical and nursing expenses, accrued or unaccrued claims for loss of consortium, loss of support or affection, loss of society and companionship on account of or in any way growing out of, any and all known and unknown personal injuries and damages resulting from an automobile accident which occurred on or about March 18, 2014, at or near Liberty Lake, Spokane County, WA.

As a further consideration and inducement for this compromise settlement, and payment, it is expressly warranted and agreed:

- (1) That this is a full and final release of any and all claims arising out of said accident and expressly includes, but is not limited to, all unknown and unanticipated injuries, deaths, loss of services and consortium and damages resulting from said accident, casualty or event, as well as those now disclosed. This includes any and all unknown injuries arising out of any presently known injuries. It further includes any injuries which are unknown at the present time and are unrelated to any known injuries.
(2) That this is a compromise settlement of a doubtful and disputed claim, and the payment of the consideration for this release shall not be deemed or construed as an admission of liability on the part of any and all of the releases herein described, but on the contrary, any such liability is expressly denied.
(3) That the undersigned relies wholly upon the undersigned's judgment, belief, and knowledge of the nature, extent, effect and duration of said injuries and liability therefore and this release is made without reliance upon any statement or representation of the party or parties hereby released or their representative.
(4) That there are not liens, or claims of liens, or assignments in law or equity, or otherwise of or against the claim or cause of action of the undersigned herein; further the undersigned is fully entitled to give complete release and discharge.

The undersigned has (have) read and understand(s) the terms and nature of the foregoing release and warrants the release contains the entire agreement between the parties hereto and no promise, inducement or agreement not expressly contained herein has been made. The undersigned understands and agrees this constitutes a release of any potential claims for unknown injuries.

The undersigned has read this release and understands it.

Signed [Signature]

Date 6/12/15

Signed \_\_\_\_\_

Date \_\_\_\_\_

CMSD0627 /CMSM0627 P A C M A N MAY 08 15 - 11:48  
 OPID: ATM0005 AGY CLAIM POL COVERAGE TERMID: ?0HG  
 INSD: SALZMAN, DONALD M POL: 21349233 -13  
 : MAR 18 14 UT-UT IR1-BRN- CLM: 144113123 OPEN REP: A MCMURRAY  
 EFF DT: SEP 23 13 EXPR DT: MAR 23 14 CO: 16 \* ST\* ID  
 VEHICLE YR: 01 MAKE\* TOYOTA MODEL: TUNDRA VIN: 5TBBT44101S131527

LN/COV/LIM	COVERAGE DESC	LIMITS /	COMMENTS
191006	BI	\$50,000 EACH PERSON-\$100,000	EACH ACCIDENT
198906	UM	\$50,000 EACH PERSON-\$100,000	EACH ACCIDENT
199006	UIM	\$50,000 EACH PERSON-\$100,000	EACH ACCIDENT
200105	PD	\$50,000 EACH ACCIDENT	NO DEDUCTIBLE
280195	MEDPAY	\$10,000 PER PERSON	

DC912747 ONLY PAGE

COMMAND: ATCHMT F10=CLMPOLI F11=PRODSEL F13=CLMSUM

# ***EXHIBIT B***



January 14, 2016

6607 N. Ash, Suite 200  
Spokane, WA 99208

509/465-4492 • Fax 509/465-4509

Received

JAN 15 2016

Crary, Clark & Domanico, PS  
Attorneys at Law  
9417 E. Trent Avenue  
Spokane, WA 99206-4282  
Attn: **Attorney Robert B. Crary**, representing Jennifer Eastman

Crary, Clark & Domanico, PS

Provident Law, PLLC  
16201 E. Indiana Avenue, Suite 2240  
Spokane Valley, WA 99216  
Attn: **Attorney Jason Johnson**, representing Shelley Barclift

Craig Swapp & Associates  
16201 E. Indiana Avenue, Suite 1900  
Spokane Valley, WA 99216-2830  
Attn: **Attorney LeRoy Peterson, Jr.**, representing Sonja LaStage

**Michael Anson**  
1331 N. Glasgow Drive  
Post Falls, ID 83814

Re: Our Member : Spokane Transit Authority  
Date of Loss : 3-18-14  
Our File # : 143578

Dear Sirs:

As you know, we are the appointed field adjusters working on behalf of Washington State Transit Insurance Pool and their member, Spokane Transit Authority, with regard to this matter.

The Washington State Transit Insurance Pool policy covering Spokane Transit Authority on the 3-18-14 loss date provides \$60,000.00 each occurrence bodily injury limit for Underinsured Motorists Coverage.



Attorney Robert B. Crary  
Attorney Jason Johnson  
Attorney LeRoy Peterson, Jr.  
Michael Anson  
January 14, 2016  
Page 2

Based upon our assessment of the total damages, we have been authorized to present the following offers:

Jennifer Eastman	81.41%	\$48,846.00
Shelley Barclift	7.99%	4,794.00
Sonja LaStage	7.22%	4,332.00
Michael Anson	<u>3.38%</u>	<u>2,028.00</u>
	100.00%	\$60,000.00

Please advise if this offer is acceptable. If it is unacceptable to any one party, the matter will be turned over to counsel to file an Interpleader Action so that the Court may decide.

Thank you.

Very truly yours,

**KASSA INSURANCE SERVICES, INC.**



Tanya L. Kassa, AIC  
Adjuster

TLK/jk

cc: Washington State Transit Insurance Pool/#EV2014071507

# *EXHIBIT C*

**Rob Crary**

---

**To:** Mark E Stevens  
**Subject:** RE: Farmers UIM claim - Claim #3002656522-1-1  
**Attachments:** Kassa Letter.pdf

Mark,

Here you go and I think you pretty much have all the records. We are settling for the amounts stated in the letter. You have already waived buying out the claim against the underlying tortfeasor and I can't see any reason you would buyout the STA UIM policy so I think we are ready to go.

Jennifer is back to work full time as a nurse and appears to functioning alright but she still has some residual from the cognitive deficit.

**Robert B. Crary**  
**Crary, Clark & Domanico P.S.**  
**Attorneys at Law**  
**9417 E. Trent**  
**Spokane, WA 99206**  
**Ph: (509) 926-4900**  
**Fax: (509) 924-7771**  
**rccrary@ccdlaw.com**

---

**From:** Mark E Stevens [mailto:mark.stevens@farmersinsurance.com]  
**Sent:** Monday, January 25, 2016 8:50 AM  
**To:** Rob Crary  
**Cc:** ClaimsDocuments  
**Subject:** Re: Farmers UIM claim - Claim #3002656522-1-1

Thanks for the heads up. Got your voice mail as well.

I look forward to receiving any additional meds that we don't have. Also, I don't believe that you attached the letter or my email system didn't register it?

Regardless, I'm sure you'll provide everything in your demand brochure. Thanks again.

Mark E. Stevens, GCA, AIC  
 Special Claims Rep.  
 406-370-2537 (w)  
 mark.stevens@farmersinsurance.com  
 Document Center: claimsdocuments@farmersinsurance.com  
 Fax: 1-877-217-1389

From: "Rob Crary" <rccrary@ccdlaw.com>  
To: <mark.stevens@farmersinsurance.com>,  
Cc: "Jennifer Eastman" <jeneastmanrn@gmail.com>  
Date: 01/22/2016 02:48 PM  
Subject: Farmers UIM claim - Claim #3002656522-1-1

---

Dear Mr. Stevens,

Pursuant to my recent phone call to your office please be advised that we have settled the of UIM claim of the STA policy in the above-mentioned. Please accept this email as notice to your company that we intend to settle the claim with the UIM portion of the STA policy. I don't believe that the opportunity to buy out this claim presents itself given the fact that you've already waived purchasing the underlying claim on the third-party tortfeasor. At this time we are prepared to enter into negotiations regarding the UIM coverage of the farmers policy. I have attached a letter indicating the breakdown of the coverage. Please be advised that this distribution exhausts all STA policy coverage.

I look forward to speaking you regarding this matter.

Sincerely yours,

**Robert B. Crary**  
**Crary, Clark & Domanico P.S.**  
**Attorneys at Law**  
**9417 E. Trent**  
**Spokane, WA 99206**  
**Ph: (509) 926-4900**  
**Fax: (509) 924-7771**  
**rccrary@ccdlaw.com**

\*\*\*\*\* PLEASE NOTE \*\*\*\*\* This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.\*\*\*\*\*

***EXHIBIT D***



Send all correspondence to:  
Email: [claimsdocuments@farmersinsurance.com](mailto:claimsdocuments@farmersinsurance.com)  
National Document Center  
P.O. Box 268994  
Oklahoma City, OK 73126-8994  
Phone: (406) 370-2537  
Fax: (877) 217-1389

February 10, 2016

Received

FEB 16 2016

Crary, Clark & Domanico, PS  
Attorneys at Law  
Attn: Robert Crary  
9417 East Trent Ave.  
Spokane, WA 99206-4282

Crary, Clark & Domanico, PS

Re: Insured: Jennifer Eastman  
Policy #: 75-195150378  
Claim #: 3002656522-1-1 (Underinsured Motorist)  
Date of Loss: 03/18/2014  
Your Client: Jennifer Eastman

**Sent US Regular & Certified Mail – Return Receipt Requested**

Dear Mr. Crary:

This correspondence confirms our receipt of the above referenced claim and acknowledges your representation of our insured, Jennifer Eastman. We have completed our UNDERinsured Motorist Coverage investigation and can assure you we have given this matter careful consideration. With this correspondence we are advising you UNDERinsured Motorist Coverage is not afforded for the injuries/damages sustained by Jennifer Eastman arising from the March 18, 2014 accident.

It is our understanding Jennifer Eastman was injured in an accident while a passenger in a 2009 Chevrolet Van insured by Washington State Transit Insurance Pool. It is further our understanding, the Washington State Transit Insurance Pool policy provides Underinsured Motorist Coverage subject to a \$60,000 limit. Lastly, it is our understanding the liable party was insured by Progressive Insurance who has paid Jennifer Eastman their available policy limits.

The above referenced policy, issued to Jennifer Eastman by Farmers Insurance Company of Idaho, is a Your E-Z Reader Car Policy – Idaho, 1st Edition, providing UNDERinsured Motorist Coverage of \$500,000 per occurrence. The UNDERinsured Motorist Coverage is controlled by endorsement ID021 Idaho, 1<sup>st</sup> Edition. Again, we have determined through our coverage review the UNDERinsured Motorist Coverage provided by Jennifer Eastman's policy will not apply in this instance, for the reasons set forth below.

The policy, as amended by endorsement ID021 (1<sup>st</sup> Edition), provides UNDERinsured Motorist Coverage as follows:

\*\*\*\*\*

### Coverage C – 1 UNDERinsured Motorist Coverage

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

For an additional premium it is agreed that UNDERinsured Motorist Coverage C-1 is added to Part II of your policy.

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **UNDERinsured motor vehicle** because of **bodily injury** sustained by the **insured person**.

\*\*\*\*\*

The endorsement contains the following Other Insurance language which is relevant to our coverage determination:

\*\*\*\*\*

### Other Insurance

3. We will not provide insurance for a vehicle other than **your insured car** or **your insured motorcycle**, unless the owner of that vehicle has no other insurance applicable to this part.

\*\*\*\*\*

As stated earlier, UNDERinsured Motorist Coverage is not afforded the damages claimed by Jennifer Eastman. Specifically, coverage is not afforded as the 2009 Chevrolet Van in which Ms. Eastman was a passenger carried Underinsured Motorist Coverage with the Washington State Transit Insurance Pool and, as a result, the above referenced policy language (Other Insurance #3) applies. Accordingly, UNDERinsured Motorist Coverage is not afforded by this policy and is hereby disclaimed.

The above referenced policy language (Other Insurance) has been reviewed by the Idaho Supreme Court and has been found to be unambiguous (*Purdy vs. Farmers Insurance Company of Idaho*, 138 Idaho 443, 65P.3d 184).

Our right to disclaim coverage is not limited to the reasons set out above, but shall include any additional grounds for non-coverage, or policy breach, which may later be revealed. Farmers Insurance Company of Idaho reserves the right to supplement, modify and/or amend this letter as new facts are learned or allegations are made. Farmers Insurance Company of Idaho does not waive any coverage defenses available; either under the policy or the law; by failing to expressly set this out in this letter.

The decision to disclaim coverage has been made based on the information currently known to us. If you have additional information you believe bears on this decision, please submit it for consideration at this time. However, such review will not constitute a waiver of any of our rights under the law or under the policy.

Farmers Insurance Company of Idaho reserves the right to assert any policy coverage defenses or policy exclusions which may be revealed in the future.

If for any reason you disagree with the contents of this letter, or are aware of additional facts or documents relating to coverage under the policy for this claim, please contact Claims Representative Mark Stevens at (406) 370-2537.

Sincerely,

FARMERS INSURANCE COMPANY OF IDAHO

A handwritten signature in black ink, appearing to read "Bill McCarter". The signature is stylized and cursive.

Bill McCarter GCA  
Liability Claims Manager

C: Agent – Kelly Kimberling-Gilder 75-67-315



# ***EXHIBIT E***



**Crary, Clark & Domanico, PS**

ATTORNEYS AT LAW

**ROBERT B. CRARY\***  
**JOHN R. CLARK (1952 – 2010)**  
**JAMES A. DOMANICO\*\***  
**DEAN T. CHUANG**

LICENSED IN  
IDAHO & WASHINGTON\*  
WISCONSIN & WASHINGTON\*\*

9417 East Trent Avenue  
Spokane, Washington 99206-4282  
(509) 926-4900  
FAX (509) 924-7771  
www.ccdlaw.com

April 15, 2016

Farmers Insurance Company  
PO Box 268994  
Oklahoma City, OK 73126-8994

Attention: Mr. Mark Stevens  
Mr. Bill McCarter

RE: Our Client: Jennifer Eastman  
Your Insured: Jennifer Eastman  
Claim No. 3002656522-1-2  
D/Accident: March 18, 2014

**SETTLEMENT DEMAND/PROOF OF LOSS**

Dear Mr. McCarter and Mr. Stevens:

I have now received sufficient information to make an evaluation of this case for settlement and proof of loss purposes. Please accept this letter as a notice and proof of loss for purposes of Idaho Code 41-1839.

We have previously provided all medical records, medical expenses, collision information and settlement documentation to substantiate this claim. The following is a brief summary of the events leading up to this claim, the injury, and the procedural process. We understand that Farmers Insurance Company is denying coverage for this claim based on policy provisions which we dispute.

### BACKGROUND INFORMATION

Jennifer Eastman is a 35-year old staff registered nurse employed by Providence Sacred Heart Medical Center in Spokane, Washington. She is a single mother of one child, Kayden Eastman. In order to save time and expense Providence provides a Van pool transportation from Post Falls, Idaho to Sacred Heart Medical Center. On March 18, 2014, while traveling from Spokane to Post Falls, they were struck by a vehicle driven by Sydney Salzman. A total of 4 individuals riding the van were injured as a result of this collision. Ms. Eastman is claiming that the injury led to a subsequent surgery and medical care that ~~we~~ resulted in significant medical expenses.

### PAST MEDICAL HISTORY

Prior to the collision, Ms. Eastman was in good health.

### LIABILITY OF COLLISION

Ms. Salzman did not deny liability for the collision and her insurance carrier paid the policy limits on her insurance policy. She had a policy of \$50,000/\$100,000.00 insurance coverage. Fifty thousand (\$50,000.00) of that amount was paid directly to Ms. Eastman.

At the time of this incident Ms. Eastman was a passenger in STA (Spokane Transit Authority) Van which had UIM coverage of \$60,000.00 total. The total \$60,000.00 was tendered to the 4 victims of the crash with Ms. Eastman receiving the majority of those proceeds totaling \$48,846.00.

Ms. Eastman had a policy of insurance with Farmers Insurance Company with a UIM policy limit of \$500,000.00. We hereby make a claim for damages suffered by Ms. Eastman for those amounts minus the amounts that have been previously recovered.

### INJURIES AS A RESULT OF THIS IMPACT

As a result of the automobile collision Ms. Eastman suffered a Venous thrombosis of her right subclavian artery. During the course of her surgery she suffered a stroke and experienced extensive medical treatment and suffered certain cognitive loss as a result of the injury and subsequent surgery.

MEDICAL EXPENSES

The following is a summary of medical expenses Ms. Eastman incurred *to date*.

<u>Dates of Service</u>	<u>Provider</u>	<u>Amount</u>
03/18/2014	Sacred Heart Medical Center	\$ 1,704.24
03/18/2014	Inland Imaging	\$ 48.00
03/18/2014	Spokane Emergency Physician	\$ 590.00
03/29/2014-12/18/2014	Kirk Parge, DC	\$ 587.00
10/27/2014-10/30/2014	Inland Imaging	\$ 8,647.00*
10/27/2014-12/01/2014	Stephen Murray, M.D.	\$ 7,005.00*
10/27/2014-10/31/2014	Sacred Heart Medical Center	\$183,240.36*
10/29/2014	Incyte	\$ 95.00*
10/29/2014-10/31/2014	Anesthesia Associates	\$ 3,690.00*
10/30/2014-10/31/2014	Cynthia Murphy, M.D.	\$ 260.00*
11/07/2014-12/03/2014	St. Luke's Rehabilitation	\$ 1,048.00*
11/18/2014-02/20/2015	Jennifer Pary, M.D.	\$ 505.00*
12/02/2014-12/11/2014	Scott Mabee, PH.D.	\$ 1,550.00*
12/19/2014	Cancer Care Northwest	\$ 268.00*
	<b>TOTAL:</b>	<b>\$209,237.60</b>

**\*Will be updated**

WAGE LOSS

Ms. Eastman missed 224 hours of work due to her injuries. She was making \$37.19 per hour. I have calculated her wage loss to be \$8,330.56.

PRESENT CONDITION

Currently, Ms. Eastman continues to have cognitive deficits as a result of her injury.

April 15, 2016  
Page 4

EVALUATION

The evaluation of this case must not only consider the medical expenses and other expenses. This evaluation must also consider the loss of enjoyment of life Ms. Eastman sustained as a result of this accident and will continue to sustain into the future. We, therefore, are authorized to accept policy limits minus amounts previously paid in the amount of \$98,846.00.

If there is any additional information that you need, please contact our office.

Yours very truly,

CRARY, CLARK & DOMANICO, P.S.

A handwritten signature in cursive script that reads "Robert B. Crary". The signature is written in black ink and is positioned above the printed name of the signatory.

ROBERT B. CRARY  
AARON A. CRARY  
Attorney at Law

RBC:tjh  
Enclosure  
cc: Jennifer Eastman

***EXHIBIT F***

**UNDERWRITTEN BY FARMERS INSURANCE COMPANY OF IDAHO  
A STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY**  
23175 NW Bennett St. Hillsboro, OR 97124

Policy Type: Auto

DECLARATIONS

Transaction Type: OFFER OF RENEWAL

*This Declarations Page contains important information about your policy. Please keep it in a safe place.*

**NAMED INSURED:**

JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903

**This is not a bill**  
Your bill, with the amount of your first scheduled payment, will be mailed separately.

Policy Edition Number: 01  
POLICY NUMBER: 19515-03-78  
Effective: 12:00 Noon on 01-27-2014  
Expiration: 12:00 Noon on 07-27-2014

**YOUR AGENT:**

KELLY M KIMBERLING  
Phone: (208) 687-5525  
Email: kkimberling@farmersagent.com

**Premiums/Fees**

Policy Premium Total \$ 285.60

Fees\* (in addition to premium above)

\*See Information on Additional Fees on the reverse

**YOUR HOUSEHOLD DRIVERS**

Driver on Policy	Driver Status	Marital Status	Date of Birth	Driver License No.
JENNIFER EASTMAN	RATED	SINGLE	01-27-1980	*****5G

**YOUR VEHICLE DESCRIPTIONS**

Details	Vehicle 1
Year	2005
Make	TOYOTA
Model	RAV4 4D 4WD
VIN #	JTEHD20V550070756
Rating ZIP	83854
Garaging ZIP	
Usage	Non-Business
Lienholder or Other Interest	
Discounts	EFT GROUP TRANSFER, AUTO/HOME, EARLY SHOPPING

**YOUR POLICY COVERAGES / FEES**

Coverage/Fees	Limits (these apply at a policy level)	PREMIUMS Vehicle 1
Bodily Injury Liability	\$ 500,000 Each Person/\$ 500,000 Each Occurrence	\$ 69.10
Property Damage Liability	\$ 100,000 Each Occurrence	\$ 44.00
Medical Comprehensive	\$ 10,000 Each Person	\$ 18.10
Collision		\$ 19.40
Towing and Road Service		\$ 64.30
Glass Deductible Buyback		NOT COVERED
Other		\$ 17.90
Fees Per Vehicle		\$ 34.00
Uninsured Motorist Bodily Injury	\$ 500,000 Each Person/\$ 500,000 Each Occurrence	A charge of \$ 14.60 for this coverage applies per policy.
Underinsured Motorist	\$ 500,000 Each Person/\$ 500,000 Each Occurrence	A charge of \$ 4.20 for this coverage applies per policy.
<b>Policy Premium Total* (not including fees)</b>		<b>\$ 285.60</b>

Jennifer Eastman is a Farmers Insurance Company agent. See information on Additional Fees on the reverse.

Docket No. 44889

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**YOUR DEDUCTIBLES AND LIMITS BY VEHICLE**

Coverage	Vehicle 1
Comprehensive	\$ 500
Collision	\$ 500

For any coverage limit not shown, see applicable endorsement.

**ENDORSEMENTS - THESE ARE MODIFICATIONS TO YOUR COVERAGE**

Endorsement	Edition	Title Description	Applies to Vehicle
H1171	1ST	SAFETY GLASS DEDUCTIBLE BUYBACK - COVERAGE F	1
ID008	1ST	END AMENDING PART III - MEDICAL COVERAGE E	1
ID010	1ST	END AMENDING DEFINITION OF UM VEHICLE	1
ID011	1ST	END AMENDING DEFINITIONS, PART 1 - LIABILITY	1
ID021	1ST	COVERAGE C - 1 UNDERINSURED MOTORIST COVERAGE	1
J6275	1ST	ENDORSEMENT AMENDING PART IV - DAMAGE TO YOUR CAR	1
J6279	1ST	LOSS OF USE ENDORSEMENT	1
J6284	1ST	SAFETY GLASS - WAIVER OF DEDUCTIBLE PART IV	1
J6288	1ST	ENDORSEMENT AMENDING PART 1 - LIABILITY	1
J6485	1ST	SCHEDULE FOR HIGHER UNDERINSURED MOTORISTS LIMITS	1
J6489	1ST	AMENDED BUSINESS USE EXCLUSION	1
J6490	1ST	END ADDING REGULAR AND FREQUENT USE EXCLUSION	1
J6491	1ST	END AMENDING CUSTOMIZING EQUIPMENT EXCLUSION	1
J6492	1ST	END AMENDING DEFINITION OF INSURED PERSON	1
J6674	1ST	CUSTOMIZING EQUIPMENT ENDORSEMENT	1
J6683	1ST	HOUSEHOLD PET COVERAGE	1
J6689	1ST	AMENDING DEDUCTIBLE PROVISIONS UNDER PART V	1
J6774	1ST	END AMENDING DEFINITIONS, PART IV - DAMAGE	1
J6934	1ST	LOSS PAYABLE PROVISIONS ENDORSEMENT	1

**OTHER INFORMATION**

**Messages**

PLEASE CONTACT YOUR FARMERS AGENT FOR A FREE FARMERS FRIENDLY REVIEW TO ENSURE THAT YOUR FAMILY IS PROPERLY PROTECTED AND THAT YOU ARE RECEIVING ALL OF THE DISCOUNTS/CREDITS, COVERAGES AND PACKAGE POLICIES AVAILABLE. SEE IT ALL ONLINE. GO TO FARMERS.COM OR CONTACT YOUR FARMERS AGENT AND 'GO PAPERLESS' WITH ELECTRONIC DOCUMENT DELIVERY TO YOUR E-MAIL ADDRESS.

VEHICLE 1 - COVERAGE FOR J6279 IS K5  
 VEHICLE 1 - COVERAGE FOR J6485 IS U11  
 VEHICLE 1 - DED. REDUCED TO \$100 FOR GLASS LOSS

**Information on Additional Fees**

The "Fees" stated in the "Premium/Fees" box in the front apply on a per-policy, not an account basis. The following additional fees also apply:

A. **Installment Service Charge** per installment (In consideration of our agreement to allow you to pay in installments):

- For Monthly Recurring Electronic Funds Transfer (EFT) and fully enrolled online billing (paperless): \$ 0.00 per account
- For other Monthly EFT plans: \$ 2.00 per account
- For all other payment plans: \$ 5.00 per account

If this account is for more than one policy, changes in these fees are not effective until the revised fee information is provided for each policy.

B. **Late Fee:** \$10.00 per account

C. **Returned Payment Charge:** \$20.00 per check, electronic transaction, or other remittance which is not honored by your financial institution for any reason including but not limited to insufficient funds or a closed account

D. **Reinstatement Fee:** \$25.00 per policy

One or more of the fees or charges described above may be deemed a part of premium under applicable state law.

Countersignature

*Malik R. [Signature]*  
 217 of 378  
 000002  
 Authorized Representative



# Farmers® Privacy Notice

*In the course of our business relationship with you, we collect information about you that is necessary to provide you with our products and services. We treat this information as confidential and recognize the importance of protecting it. We value your confidence in us.*

You trust us with an important part of your financial life. We are proud of our privacy policies and procedures and encourage you to review them carefully.

This notice from the member companies of the Farmers Insurance Group of Companies\* listed on the back of this notice\* describes our privacy practices regarding information about our customers and former customers that obtain financial products or services from us for personal, family or household purposes. *When state law is more protective of individuals than federal privacy law, we will protect information in accordance with state law consistent with the requirements of federal preemption.*

## Information we collect

We collect and maintain information about you to provide you with the coverage, product or service you request and to service your account.

We collect certain information ("nonpublic personal information") about you and the members of your household ("you") from the following sources:

- Information we receive from you on applications or other forms, such as your social security number, assets, income and property information;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history;
- Information we receive from a consumer reporting agency or insurance support organization, such as motor vehicle records, credit report information and claims history; and
- If you obtain a life, long-term care or disability product, information we receive from you, medical professionals who have provided care to you and insurance support organizations regarding your health.

## How we protect your information

At Farmers, our customers are our most valued assets. Protecting your privacy is important to us. We restrict access to personal information about you to those individuals, such as our employees and agents, who provide you with our products and services. We require those individuals to whom we permit access to your customer information to protect it and keep it confidential. We maintain physical, electronic, and procedural safeguards that comply with applicable regulatory standards to guard your nonpublic personal information.

We do not disclose any nonpublic personal information about you, as our customer or former customer, except as described in this notice.

## Information we disclose

We may disclose the nonpublic personal information we collect about you, as described above, to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and to other third parties, all as permitted by law.

Many employers, benefit plans or plan sponsors restrict the information that can be shared about their employees or members by companies that provide them with products or services. If you have a relationship with Farmers or one of its affiliates as a result of products or services provided through an employer, benefit plan or plan sponsor, we will abide by the privacy restrictions imposed by that organization.

We are permitted to disclose personal health information (1) to process your transaction with us, for instance, to determine eligibility for coverage, to process claims or to prevent fraud; (2) with your written authorization, and (3) otherwise as permitted by law.

## Sharing information with affiliates

The Farmers family encompasses various affiliates that offer a variety of financial products and services in addition to insurance. Sharing information enables our affiliates to offer you a more complete range of products and services.

We may disclose nonpublic personal information, as described under **Information we collect**, to our affiliates, which include:

- Financial service providers such as insurance companies and reciprocals, investment companies, underwriters and brokers/dealers; and
- Non-financial service providers, such as management companies, attorneys-in-fact and billing companies.

We are permitted by law to share with our affiliates information about our transactions and experiences with you.

In addition, we may share with our affiliates consumer report information, such as information from credit reports and certain application information, that we have received from you and from third parties, such as consumer reporting agencies and insurance support organizations.

### **Your choice**

If it is your decision not to opt-out and to allow sharing of your information with our affiliates, you do not need to request an Opt-Out Form or respond to us in any way.

**If you have previously submitted a request to opt-out on each of your policies, no further action is required.**

If you prefer that we not share consumer report information with our affiliates, except as otherwise permitted by law, you may request an Opt-Out Form by calling toll free, 1-800-327-6377, (please have all of your policy numbers available when requesting Opt-Out Forms). A form will be mailed to your attention. Please verify that all of your Farmers policy numbers are listed. If not, please add the policy numbers on the form and mail to the return address printed on the form. We will implement your request within a reasonable time after we receive the form.

### **Modifications to our privacy policy**

We reserve the right to change our privacy practices in the future, which may include sharing nonpublic personal information about you with nonaffiliated third parties. Before we do that, we will provide you with a revised privacy notice and give you the opportunity to opt-out of that type of information sharing.

### **Website**

Our website privacy notices, such as the one located at farmers.com, contain additional information particular to website use. Please pay careful attention to those notices if you transmit personal information to Farmers over the Internet.

### **Recipients of this notice**

We are providing this notice to the named policyholder residing at the mailing address to which we send your policy information. If there is more than one policyholder on a policy, only the named policyholder on that policy will receive this notice, though any policyholder may request a copy of this notice. You may receive more than one copy of this notice if you have more than one policy with Farmers. You also may receive notices from affiliates, other than those listed below. Please read those notices carefully to determine your rights with respect to those affiliates' privacy practices.

### **More information about the federal laws**

This notice is required by federal law. If you would like additional information about these federal laws, please visit our website at farmers.com.

### **Signed:**

Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, Farmers Insurance Company, Inc. (A Kansas Corp.); Farmers Insurance Company of Arizona, Farmers Insurance Company of Idaho, Farmers Insurance Company of Oregon, Farmers Insurance Company of Washington, Farmers Insurance of Columbus, Inc.; Farmers New Century Insurance Company, Farmers Group, Inc.; Farmers Reinsurance Company, Farmers Services Insurance Agency, Farmers Services Corporation, Farmers Texas County Mutual Insurance Company, Farmers Underwriters Association, Farmers Value Added, Inc.; Farmers Financial Solutions, LLC member FINRA & SIPC<sup>1</sup>; FFS Holding, LLC; Farmers Services, LLC; ZIUS Services, LLC; Jeschi Life Assurance Company, FIG Holding Company, FIG Leasing Co., Inc.; Fire Underwriters Association, Illinois Farmers Insurance Company, Mid-Century Insurance Company of Texas, Prematic Service Corporation (California), Prematic Service Corporation (Nevada), Texas Farmers Insurance Company, Farmers New World Life Insurance Company, Truck Underwriters Association, Civic Property and Casualty Company, Exact Property and Casualty Company and Neighborhood Spirit Property and Casualty Company.

<sup>1</sup>The above is a list of the affiliates on whose behalf this privacy notice is being provided. It is not a comprehensive list of all affiliates of the Farmers Insurance Group of Companies.

<sup>1</sup>You may obtain more information about the Securities Investor Protection Corporation (SIPC) including the SIPC brochure by contacting SIPC at (202) 371-8300 or via the internet at www.sipc.org. For information about FINRA and Broker Check you may call the FINRA Broker Check hotline at (800) 289-9999 or access the FINRA website at www.finra.org.



FARMERS

**CERTIFICATE OF LIABILITY INSURANCE - STATE OF IDAHO**

**Named insured**

JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903

**Policy number:** 195150378

**Effective date:** 01-27-2014

**Expiration date:** 07-27-2014

**NAIC number:** 21601

FARMERS INSURANCE COMPANY OF IDAHO, POCATELLO, IDAHO, an authorized Idaho Insurer, in compliance with Section 49-1231, *Idaho Code*, certifies that it has issued a policy of motor vehicle liability insurance in an amount not less than that required by Section 49-117, *Idaho Code*, for the described motor vehicle(s).

**Vehicle description:**

2005 TOYOTA RAV4 4D 4WD

**Registered Owner:**

JTEHD20V550070756 JENNIFER EASTMAN

Agent name: KELLY M KIMBERLING

Phone no: (208) 687-5525

OFFICE ISSUING THIS CARD: 23175 NW Bennett St. Hillsboro, OR 97124

25-6420 8-12 **Keep this certificate in your vehicle at all times. Read reverse side carefully.**

**KEEP WITH VEHICLE**

A6420311



Our award-winning **HelpPoint® Claim Services by Farmers** team is available 24 hours a day, seven days a week to handle your auto claim loss report, arrange roadside assistance, towing, or even coordinate auto glass repair or replacement at your request.

**Please contact us at:**

**For English: 1 800 HelpPoint (1-800-435-7764); or**

**Pura Español: 1 877 Reclamo (1-877-732-5266)**

**WHAT TO DO IN CASE OF AN ACCIDENT:**

1. Be aware of your personal safety and that of others at the accident scene. Check for injuries and call 911, if needed.
2. Warn other drivers to prevent further damage. Turn on your flashers and set flares, if available. Signal with flashlight at night.
3. Notify the police. Many times a passing driver or bystander will do this for you.
4. Gather the facts. Get the names of witnesses, along with other pertinent information like driver's license and phone numbers, accident scene and vehicle damage photos, insurance information and vehicle descriptions.
5. Be careful what you say - an investigation may later show you were not responsible for the accident.
6. Report the accident to proper authorities. Each state has its own requirements for such reports. Know and comply with your state's law.
7. **CONTACT HELPPPOINT® CLAIM SERVICES IMMEDIATELY! CALL US 24-HOURS A DAY AT (800) HELPPPOINT (800-435-7764). FOR ASSISTANCE PARA ESPAÑOL, LLAME AL (877) RECLAMO.**

Visit [www.hpcs.com](http://www.hpcs.com) to learn more about your claim self-service options. It's quick, convenient and always open! See policy for actual coverage language.

A6420312

KELLY M KIMBERLING  
PO BOX 1252  
RATHDRUM ID 83858



JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903



## YOUR E-Z-READER CAR POLICY IDAHO

Farmers Insurance Group of Companies®  
4680 Wilshire Boulevard, Los Angeles, California 90010

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Dear Customer,

The member Companies and Exchanges of the Farmers Insurance Group of Companies take this opportunity to say "Thank You" for your recent business.

Your needs for insurance protection are very important to us. We are committed to providing you with the best customer service at the lowest cost possible.

If you haven't already done so, please take a moment to review your policy to assure you understand the coverages. This is a very important document that you'll want to keep in a safe place.

If you have any questions regarding your policy or if you would like information about other coverages, feel free to contact us.

Again, thank you for choosing us for your insurance protection. We look forward to serving you.

Sincerely,

***KELLY M KIMBERLING***

(208) 687-5525

<http://www.farmersinsurance.com>

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FARMERS

**CERTIFICATE OF LIABILITY INSURANCE - STATE OF IDAHO**

**Named insured**

JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903

**Policy number:** 195150378

**Effective date:** 01-27-2012

**Expiration date:** 07-27-2012

**NAIC number:** 21601

FARMERS INSURANCE COMPANY OF IDAHO, POCATELLO, IDAHO, an authorized Idaho Insurer, in compliance with Section 49-1231, *Idaho Code*, certifies that it has issued a policy of motor vehicle liability insurance in an amount not less than that required by Section 49-117, *Idaho Code*, for the described motor vehicle(s).

**Vehicle description:**

2005 TOYOTA RAV4 4D 4WD

**Registered Owner:**

JTEHD20V550070756 JENNIFER EASTMAN

Agent name: KELLY M KIMBERLING

Phone no: (208) 687-5525

OFFICE ISSUING THIS CARD: 23175 NW Bennett St. Hillsboro, OR 97124

25-6420 10-10 **Keep this certificate in your vehicle at all times. Read reverse side carefully.**

**KEEP WITH VEHICLE**

A6420211





### What to do in case of accident

1. **Stop and check for injuries.** Call an ambulance, if anyone is injured.
2. **Warn other drivers to prevent further damage.** Set flares. Signal with flashlight at night.
3. **Notify the police.** Many times a passing driver or bystander will do this for you.
4. **Gather the facts.** Be sure to get the names of witnesses, as well as other pertinent information.  
(i.e. driver's license number, insurance information and description of the other vehicle)
5. **Be careful what you say.** Don't admit responsibility. Investigation may show you were not responsible.
6. **Report to proper authorities.** Each state has its own requirements for such reports. Know the law for your state and comply.
7. **CONTACT HELPPPOINT® IMMEDIATELY! FOR 24-HOUR CLAIMS SERVICE, CALL US TOLL FREE AT 1-800-HELPPPOINT (1-800-435-7764) FOR ASSISTANCE. PARA ESPAÑOL LLAME AL 1-877-RECLAMO (1-877-732-5266).**

A6420212

**UNDERWRITTEN BY:**

FARMERS INSURANCE COMPANY OF IDAHO, POCA TELLO, IDAHO  
 A STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY

**DECLARATIONS**

**Transaction type:** NEW BUSINESS

The Effective date is from TIME APPLIED FOR. \* \* \* \* The policy may be renewed for an additional policy term, as specified in the renewal offer, each time the Company offers to renew by sending a bill for the required renewal premium, and the insured pays said premium in advance of the respective renewal date. The Policy is issued in reliance upon the statements in the Declarations.

<b>Insured's name and address:</b> JENNIFER EASTMAN PO BOX 1903 POST FALLS ID 838771903		Policy number: 75 19515-03-78 Policy edition: 01 Effective date: 01-27-2012 Expiration date: 07-27-2012 Expiration time: 12:00 NOON Standard Time Account number: D541556514
<b>Issuing office:</b> 23175 NW Bennett St. Hillsboro, OR 97124		Agent: KELLY M KIMBERLING Agent no: 75 67 315 Agent phone: (208) 687-5525

**Description of vehicles**

Veh.	Year	Make	Model	Vehicle Identification Number
1	2005	TOYOTA	RAV4 4D 4WD	JTEHD20V550070756

**COVERAGES**

**PREMIUMS**

Coverage	Limits/Deductible		Vehicle 1		
Liability Bodily Injury Property Damage	Each Person	Each Occurrence			
	\$ 500,000	\$ 500,000	\$ 45.80		
		\$ 100,000	\$ 32.70		
Medical/No-Fault	\$ 10,000		\$ 17.30		
Comprehensive Deductible	Vehicle 1 \$ 500 DEDUCTIBLE		\$ 24.10		
Collision Deductible	Vehicle 1 \$ 500 DEDUCTIBLE		\$ 84.30		
Towing			NOT COVERED		
Other			\$ 49.40		
	Premium Per Vehicle		\$ 253.60		
<b>Total Fees for this Transaction</b>	\$ 15.00	<b>Fees Per Vehicle</b>	\$ 15.00		
UNINSURED MOTORIST Bodily Injury	Each Person	Each Occurrence	The charge for this coverage applies on a per policy basis.		
	\$ 500,000	\$ 500,000	\$ 13.20		
UNDERINSURED MOTORIST Bodily Injury	Each Person	Each Occurrence	The charge for this coverage applies on a per policy basis.		
	\$ 500,000	\$ 500,000	\$ 3.60		
	<b>Total Policy Premium</b>		\$ 270.40		

Countersignature

*Melinda R. [Signature]*  
 Authorized Representative

000012

**ENDORSEMENTS - ENDORSEMENTS ARE PART OF THE POLICY AND AMEND THE POLICY.**

ENDORSEMENT NUMBER	EDITION NUMBER	TITLE AND DESCRIPTION	Applies to the following Vehicle(s):
H1171	1ST	SAFETY GLASS DEDUCTIBLE BUYBACK - COVERAGE F	1
ID008	1ST	END AMENDING PART III - MEDICAL COVERAGE E	1
ID010	1ST	END AMENDING DEFINITION OF UM VEHICLE	1
ID011	1ST	END AMENDING DEFINITIONS, PART 1 - LIABILITY	1
ID021	1ST	COVERAGE C - 1 UNDERINSURED MOTORIST COVERAGE	1
J6275	1ST	ENDORSEMENT AMENDING PART IV - DAMAGE TO YOUR CAR	1
J6279	1ST	LOSS OF USE ENDORSEMENT	1
J6284	1ST	SAFETY GLASS - WAIVER OF DEDUCTIBLE PART IV	1
J6288	1ST	ENDORSEMENT AMENDING PART 1 - LIABILITY	1
J6485	1ST	SCHEDULE FOR HIGHER UNDERINSURED MOTORISTS LIMITS	1
J6489	1ST	AMENDED BUSINESS USE EXCLUSION	1
J6490	1ST	END ADDING REGULAR AND FREQUENT USE EXCLUSION	1
J6491	1ST	END AMENDING CUSTOMIZING EQUIPMENT EXCLUSION	1
J6492	1ST	END AMENDING DEFINITION OF INSURED PERSON	1
J6674	1ST	CUSTOMIZING EQUIPMENT ENDORSEMENT	1
J6683	1ST	HOUSEHOLD PET COVERAGE	1
J6689	1ST	AMENDING DEDUCTIBLE PROVISIONS UNDER PART V	1
J6774	1ST	END AMENDING DEFINITIONS; PART IV - DAMAGE	1

**MESSAGES / RATING INFORMATION**

SEE IT ALL ONLINE. GO TO FARMERS.COM OR CONTACT YOUR FARMERS AGENT AND 'GO PAPERLESS' WITH ELECTRONIC DOCUMENT DELIVERY TO YOUR E-MAIL ADDRESS. PLEASE CONTACT YOUR FARMERS AGENT FOR A FREE FARMERS FRIENDLY REVIEW TO ENSURE THAT YOUR FAMILY IS PROPERLY PROTECTED AND THAT YOU ARE RECEIVING ALL OF THE DISCOUNTS/CREDITS, COVERAGES AND PACKAGE POLICIES AVAILABLE.

**LIENHOLDER OR OTHER INTEREST:**

Veh.		Veh.	
Veh.		Veh.	

**POLICY ACTIVITY** Do not pay - Invoice sent separately

	Previous Balance
\$ 270.40	Premium
\$ 15.00	Fees
	Payments or Credits
<hr/>	
N/A	Total

ANY "TOTAL" BALANCE OR CREDIT OF \$11.00 OR LESS WILL BE APPLIED TO YOUR NEXT BILLING. BALANCES OVER \$11.00 ARE DUE UPON RECEIPT.

## Coverage Designations

Coverages — We provide insurance only for those coverages indicated by a specific limit, deductible or other notation, and for which a premium for the coverage is shown.

Bodily Injury	— Bodily Injury Liability	<b>Coverage Shown By Premium</b>	
Property Damage	— Property Damage Liability	Towing	— A premium amount shown reflects the charge for Towing and Road Service Coverage.
Uninsured/Underinsured Motorist	— Benefits for Bodily Injury caused by Uninsured/Underinsured Motorists	Other	— A premium amount shown reflects the charge for one or more miscellaneous coverages added by endorsement to the policy.
Medical	— Medical Expense Insurance, Family Medical Expense, and Guest Medical Expense - See Policy Provision.		
No-Fault	— See Endorsement or coverage D if applicable.		
Comprehensive	— Comprehensive Car Damage		
Collision	— Collision - Upset		

If a refund is due under this policy and the insured cannot be located, we may deduct a handling charge.

Subject to the Loss Payable Provisions or any other loss payable endorsement attached to the policy, payment for loss thereunder is payable as interest may appear to the named insured and the Lienholder or Other Interest on the reverse side.

### Loss payable provisions

**(Applicable only if lienholder is named, and no other Automobile loss payable endorsement is attached to the policy)**

It is agreed that any payment for loss or damage to the vehicle described in this policy shall be made on the following basis:

- (1) At our option, loss or damage shall be paid as interest may appear to the policyholder and the lienholder shown in the Declarations, or by repair of the damaged vehicle.
- (2) Any act or neglect of the policyholder or a person acting on his behalf shall not void the coverage afforded to the lienholder.
- (3) Change in title or ownership of the vehicle, or error in its description shall not void coverage afforded to the lienholder.

The policy does not cover conversion, embezzlement or secretion of the vehicle by the policyholder or anyone acting in his behalf while in possession under a contract with the lienholder.

A payment may be made to the lienholder which we would not have been obligated to make except for these terms. In such event, we are entitled to all the rights of the lienholder to the extent of such payment. The lienholder shall do whatever is necessary to secure such rights. No subrogation shall impair the right of the lienholder to recover the full amount of its claim.

We reserve the right to cancel this policy at any time as provided by its terms. In case of cancellation or lapse we will notify the lienholder at the address shown in the Declarations. We will give the lienholder advance notice of not less than 10 days from the effective date of such cancellation or lapse as respects his interest. Mailing notice to the loss payee is sufficient to effect cancellation.

The following applies as respects any loss adjusted with the mortgage interest only:

- (1) Any deductible applicable to Comprehensive Coverage shall not exceed \$250.
- (2) Any deductible applicable to Collision Coverage shall not exceed \$250.

This Declarations page when signed by us, becomes part of the policy. It supersedes and controls anything to the contrary. It is subject to all the other terms of the policy.

**UNDERWRITTEN BY:**

FARMERS INSURANCE COMPANY OF IDAHO, POCA TELLO, IDAHO  
 A STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY

**Policy Summary**

Household Drivers				
Name	Rated	Marital Status	Date of Birth	Driver License No.
JENNIFER EASTMAN	RATED	SINGLE	** - ** - 1980	*****5G
Vehicles				
Vehicle 1				
2005 TOYOTA RAV4 4D 4WD				
Usage: Non-Business	Usage:	Usage:	Usage:	
ZIP Code: 83854	ZIP Code:	ZIP Code:	ZIP Code:	
Additional Coverages/Messages: DED. REDUCED TO \$100 FOR GLASS LOSS COVERAGE FOR J6279 IS K5 COVERAGE FOR J6485 IS U11	Additional Coverages/Messages:	Additional Coverages/Messages:	Additional Coverages/Messages:	
New Business/Add Date: 01-27-2012	New Business/Add Date:	New Business/Add Date:	New Business/Add Date:	

# Supplemental Declarations Page

Dates of Losses or Citations

Operators:

Losses:

Citations:

.....

**UNDERWRITTEN BY:**

FARMERS INSURANCE COMPANY OF IDAHO, POCATELLO, IDAHO  
A STOCK INSURANCE COMPANY, HEREBIN CALLED THE COMPANY

**Supplemental Declarations Page**

Named Insured:

JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903

Policy Number:

75 19515-03-78

**Discounts:**

AUTO/RENTER	INCLUDED
TRANSFER	INCLUDED
EARLY SHOPPING	INCLUDED
EFT	INCLUDED
GROUP	INCLUDED

**Additional Information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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ANY ADDITIONAL PROVISIONS AFFECTING YOUR POLICY ARE ATTACHED AS "ENDORSEMENTS."

This policy is a legal contract between you (the policyholder) and us (the Company).  
IT CONTAINS CERTAIN EXCLUSIONS.

**READ YOUR POLICY CAREFULLY.**



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## AGREEMENT

We agree with you, in return for your premium payment, to insure you subject to all the terms of this policy. We will insure you for the coverages and the limits of liability shown in the Declarations of this policy.

## DEFINITIONS

Throughout this policy "you" and "your" mean the "named insured" shown in the Declarations and spouse if a resident of the same household. "We" "us" and "our" mean the Company named in the Declarations which provides this insurance. In addition, certain words appear in bold type. They are defined as follows:

**Accident or occurrence** means a sudden event, including continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage** neither expected nor intended by the insured person.

**Bodily Injury** means bodily injury to or sickness, disease or death of any person.

**Damages** are the cost of compensating those who suffer **bodily injury** or **property damage** from an **accident**.

**Family member** means a person related to you by blood, marriage or adoption, who is a resident of your household.

**Occupying** means in, on, getting into or out of.

**Private Passenger Car** means a four wheel land motor vehicle of the private passenger or station wagon type actually licensed for use upon public highways. It includes any motor home with no more than six wheels and not used for business purposes.

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

**State** means the District of Columbia and any state, territory or possession of the United States, or any province of Canada.

**Utility car** means a land motor vehicle having at least four wheels actually licensed for use upon public highways, with a rated load capacity of not more than 2,000 pounds, of the pickup, panel or van type. This does not mean a vehicle used in any business or occupation other than farming or ranching. However, it does include a newly acquired or replacement vehicle of the same type if its usage is the same as the **utility car** described in the Declarations.

**Utility trailer** means a vehicle designed to be towed by a **private passenger car** and includes a farm wagon or farm implement while towed by a **private passenger car** or **utility car**. It does not include a trailer used as an office, store, display or passenger trailer.

**Your insured car** means:

1. The vehicle described in the Declarations of this policy or any **private passenger car** or **utility car** with which you replace it. You must advise us within 30 days of any change of **private passenger car** or **utility car**. If your policy term ends more than 30 days after the change, you can advise us anytime before the end of that term.
2. Any additional **private passenger car** or **utility car** of which you acquire ownership during the policy period. Provided that:
  - a. You notify us within 30 days of its acquisition, and
  - b. As of the date of acquisition, all **private passenger** and **utility cars** you own are insured with a member company of the Farmers Insurance Group of Companies.

Ownership shall include the written leasing of a **private passenger** or **utility car** for a continuous period of at least six months.

3. Any **utility trailer**:
  - a. That you own, or
  - b. While attached to **your insured car**.
4. Any **private passenger car**, **utility car** or **utility trailer** not owned by you or a **family member** while being temporarily used as a substitute for any other vehicle described in this definition because of its withdrawal from normal use due to breakdown, repair, servicing, loss or destruction.

## WHAT TO DO IN CASE OF ACCIDENT

### Notice

In the event of an **accident**, or loss, notice must be given to us promptly. The notice must give the time, place and circumstances of the **accident**, or loss, including the names and addresses of injured persons and witnesses.

## Other Duties

A person claiming any coverage of this policy must also:

1. Cooperate with us and assist us in any matter concerning a claim or suit.
2. Send us promptly any legal papers received relating to any claim or suit.
3. Submit to physical examinations at our expense by doctors we select as often as we may reasonably require.
4. Authorize us to obtain medical and other records.
5. Provide any written proofs of loss we require.
6. Notify police within 24 hours and us within 30 days if a hit-and-run motorist is involved and an uninsured motorist claim is to be filed.
7. If claiming car damage coverage:
  - a. Take reasonable steps after loss to protect the vehicle and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
  - b. Promptly report the theft of the vehicle to the police.
  - c. Allow us to inspect and appraise the damaged vehicle before its repair or disposal.
8. Submit to examination under oath upon our request.

## PART I - LIABILITY

### Coverage A - Bodily Injury

### Coverage B - Property Damage

We will pay **damages** for which any **insured person** is legally liable because of **bodily injury** to any person and **property damage** arising out of the ownership, maintenance or use of a **private passenger car**, a **utility car**, or a **utility trailer**.

We will defend any claim or suit asking for these **damages**. We may settle when we consider it appropriate.

We will not defend any suit or make additional payments after we have paid the limit of liability for the coverage.

### Additional Definitions Used In This Part Only

**Insured person** as used in this part means:

1. You or any **family member**.
2. Any person using **your insured car**.
3. Any other person or organization with respect only to legal liability for acts or omissions of:
  - a. Any person covered under this part while using **your insured car**.
  - b. You or any **family member** covered under this part while using any **private passenger car**, **utility car** or **utility trailer** other than **your insured car** if not owned or hired by that person or organization.

**Insured person** does not mean:

1. The United States of America or any of its agencies.
2. Any person for **bodily injury** or **property damage** arising from the operation of a vehicle by that person as an employee of the United States Government when the provisions of the Federal Tort Claims Act apply.
3. Any person who uses a vehicle without having sufficient reason to believe that the use is with the permission of the owner.

**Your insured car** as used in this part shall also include any other **private passenger car**, **utility car** or **utility trailer** not owned by or furnished or available for the regular use of you or a **family member**. But no vehicle shall be considered as **your insured car** unless there is sufficient reason to believe that the use is with permission of the owner, and unless it is used by you or a **family member**.

### Supplementary Payments

In addition to our limit of liability, we will pay these benefits as respects an **insured person**:

1. All costs we incur in the settlement of any claim or defense of any suit
2. Interest after entry of judgment on any amount that does not exceed our limit of liability.
3. a. Premiums on appeal bonds on any suit we defend.

- b. Premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy.
- c. Up to \$300 for the cost of bail bonds required because of **accident** or traffic law violation arising out of use of **your insured car**.

We are not obligated to apply for or furnish any of the above bonds.

4. Actual loss of wages or salary up to \$50 a day, but not other income, when we ask you to attend a trial or hearing.
5. Expenses you incur for immediate medical and surgical treatment for others necessary at the time of the **accident** resulting in **bodily injury** covered by this part.
6. Other reasonable expenses incurred at our request.

### Exclusions

This coverage does not apply to:

1. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. **Bodily injury** or **property damage**;
  - a. Caused intentionally by or at the direction of an **insured person**, or
  - b. Arising from any **occurrence** caused by an intentional act of an **insured person** where the results are reasonably foreseeable.
3. **Bodily injury** or **property damage** with respect to which any person is an insured under nuclear energy insurance. This exclusion applies even if the limits of that insurance are exhausted.
4. **Bodily injury** to an employee of an **insured person** arising in the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' or workmen's compensation benefits are required.
5. **Bodily injury** or **property damage** for any person while employed or otherwise engaged in the business or occupation of transporting, selling, repairing, servicing, storing or parking of vehicles designed for use mainly on public highways, including road testing or delivery.

This exclusion does not apply to the ownership, maintenance or use of **your insured car** by you, any **family member**, or any partner, agent, or employee of you or any **family member**. This exclusion also does not apply to any other person who does not have other insurance available to him with limits equal to at least those of the Idaho Financial Responsibility Law. In such event, the insurance afforded that person will be limited to the requirements of the Idaho Financial Responsibility Law.

6. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle by any person employed or otherwise engaged in a business other than the business described in Exclusion 5. This exclusion does not apply to the maintenance or use of a:
  - a. **Private passenger car**.
  - b. **Utility car** that you own, if rated as a **private passenger car**, or
  - c. **Utility trailer** used with a vehicle described in a. or b. above.
7. Damage to property owned or being transported by an **insured person**.
8. Damage to property rented to, or in the charge of, an **insured person** except a residence or private garage not owned by that person.
9. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any motorized vehicle with less than four wheels.
10. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle other than **your insured car**, which is owned by or furnished or available for regular use by you or a **family member**.
11.
  - a. Liability for **bodily injury** to an **insured person** other than you or a **family member**.
  - b. Liability to any person or organization because of **bodily injury** to you.
12. Liability assumed under any contract or agreement except liability of others you assume in a written contract relating to the use of an auto you do not own.
13. Liability arising from the sponsoring or taking part in any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.

14. **Bodily injury or property damage** arising out of the ownership, maintenance, or use by any person of a vehicle in which you have transferred full ownership interest but the transfer does not comply with the transfer of ownership provisions of the **state** motor vehicle law.
15. Punitive or exemplary **damages** or the cost of defense related to such **damages**.

### Limits of Liability

The limits of liability shown in the Declarations apply subject to the following:

1. The **bodily injury** liability limit for "each person" is the maximum for **bodily injury** sustained by one person in any **occurrence**. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit.  
If the financial responsibility law of the place of the **accident** treats the loss of consortium as a separate claim, financial responsibility limits will be furnished.
2. Subject to the **bodily injury** liability limit for "each person" the **bodily injury** liability limit for "each **occurrence**" is the maximum combined amount for **bodily injury** sustained by two or more persons in any **occurrence**.
3. The **property damage** liability limit for "each **occurrence**" is the maximum for all **damages** to all property in any one **occurrence**.
4. We will pay no more than the maximum limits provided by this policy regardless of the number of vehicles insured, **insured person**, claims, claimants, policies, or vehicles involved in the **occurrence**.
5. Any amount payable by us to an **insured person** shall be reduced by any amount payable under any workers' or workmen's compensation or any similar medical or disability law.

### Out of State Coverage

An **insured person** may become subject to the financial responsibility law, compulsory insurance law or similar law of another **state** or in Canada. This can happen because of the ownership, maintenance or use of **your insured car** when you travel outside of Idaho. We will interpret this policy to provide any broader coverage required by those laws, except to the extent that other liability insurance applies. No person may collect more than once for the same elements of loss.

### Conformity with Financial Responsibility Laws

When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by the law.

### Other Insurance

If there is other applicable Auto Liability Insurance on any other policy that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.

We will provide insurance for an **insured person**, other than you or a **family member**, up to the limits of the Idaho Financial Responsibility Law only.

Any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

## PART II - UNINSURED MOTORIST

### Coverage C - Uninsured Motorist Coverage (Including Underinsured Motorist Coverage)

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

Determination as to whether an **insured person** is legally entitled to recover **damages** or the amount of **damages** shall be made by agreement between the **insured person** and us. If no agreement is reached, the decision will be made by arbitration.

## Additional Definitions Used In This Part Only

As used in this part:

1. **Insured person** means:

- a. You or a **family member**.
- b. Any other person while **occupying your insured car**.
- c. Any person for **damages** that person is entitled to recover because of **bodily injury** to you, a **family member**, or another occupant of **your insured car**.

But, no person shall be considered an **insured person** if the person uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.

2. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a vehicle:

- a. Operated on rails or crawler-treads.
- b. Which is a farm type tractor, or any equipment designed or modified for use principally off public roads while not on public roads.
- c. Located for use as a residence or premises.

3. **Uninsured motor vehicle** means a **motor vehicle** which is:

- a. Not insured by a **bodily injury** liability bond or policy at the time of the **accident**.
- b. Insured by a **bodily injury** liability bond or policy at the time of the **accident** which provides coverage in amounts less than the limits of Uninsured Motorist Coverage shown in the Declarations.
- c. A hit-and-run vehicle whose operator or owner has not been identified and which strikes:
  - (1) You or any **family member**.
  - (2) A vehicle which you or a **family member** are **occupying**.
  - (3) **Your insured car**.

- d. Insured by a **bodily injury** liability bond or policy at the time of the **accident** but the Company denies coverage or is or becomes insolvent.

4. **Uninsured motor vehicle**, however, does not mean a vehicle:

- a. Owned by or furnished or available for the regular use of you or any **family member**.
- b. Owned or operated by a self-insured as contemplated by any financial responsibility law, motor carrier law, or similar law.
- c. Owned by a governmental unit or agency.

## Exclusions

This coverage shall not apply to the benefit of any insurer or self-insurer under any workers' or workmen's compensation law, or directly to the benefit of the United States, or any **state** or any political subdivision.

This coverage shall not apply to punitive or exemplary **damages** or the cost of defense related to such **damages**.

This coverage does not apply to **bodily injury** sustained by a person:

1. While **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle.
2. If that person or the legal representative of that person makes a settlement without our written consent.
3. While **occupying your insured car** when used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
4. If the injured person was **occupying** a vehicle you do not own which is insured for this coverage under another policy.

## Limits of Liability

The limits of liability shown in the Declarations apply subject to the following:

1. The limit for "each person" is the maximum for **bodily injury** sustained by any person in any one **occurrence**. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit.

If the financial responsibility law of the place of the **accident** treats the loss of consortium as a separate claim, financial responsibility limits will be furnished.

2. Subject to the limit for "each person", the limit for "each **occurrence**" is the maximum combined amount for **bodily injury** sustained by two or more persons in any one **occurrence**.
3. Subject to the law of the **state** of the **occurrence**, we will pay no more than these maximums regardless of the number of vehicles insured, **insured persons**, claims, claimants, policies, or vehicles involved in the **occurrence**.

### **Other Insurance**

1. We will pay under this coverage only after the limits of liability under any applicable **bodily injury** liability bonds or policies have been exhausted by payment of judgments or settlements.
2. The amount of Uninsured Motorist Coverage we will pay under Additional Definitions 3b shall be reduced by the amount of any other **bodily injury** coverage available to any party held to be liable for the **accident**.
3. Except as provided in paragraph 2 above, if any other collectible insurance applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.
4. We will not provide insurance for a vehicle other than **your insured car**, unless the owner of that vehicle has no other insurance applicable to this part.
5. If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

### **Arbitration**

If an **insured person** and we do not agree (1) that the person is legally entitled to recover **damages** from the owner or operator of an **uninsured motor vehicle**, or (2) as to the amount of payment under this part, either that person or we may demand that the issue be determined by arbitration.

In that event, an arbitrator will be selected by the **insured person** and us. If agreement on an arbitrator cannot be reached within (30) days, the judge of a court having jurisdiction will appoint the arbitrator. The expense of the arbitrator and all other expenses of arbitration will be shared equally. Attorney's fees and fees paid for the witnesses are not expenses of arbitration and will be paid by the party incurring them.

The arbitrator shall determine (1) the existence of the operator of an **uninsured motor vehicle**, (2) that the **insured person** is legally entitled to recover **damages** from the owner or operator of an **uninsured motor vehicle**, and (3) the amount of payment under this part as determined by this policy or any other applicable policy.

Arbitration will take place in the county where the **insured person** lives. Local court rules governing procedures and evidence will apply. The decision in writing of the arbitrator will be binding subject to the terms of this insurance.

Formal demand for arbitration shall be filed in a court of competent jurisdiction. The court shall be located in the county and **state** of residence of the party making the demand. Demand may also be made by sending a certified letter to the party against whom arbitration is sought, with a return receipt as evidence.

## **PART III - MEDICAL**

### **Coverage E - Medical Expense Coverage**

We will pay reasonable expenses incurred within three years from the date of **accident** for necessary **medical services** and funeral expenses because of **bodily injury** sustained by an **insured person**.

### **Additional Definitions Used In This Part Only**

As used in this part, **insured person** or **insured persons** means:

1. You or any **family member** while **occupying**, or through being struck by, a motor vehicle or trailer, designed for use on public roads.
2. Any other person while **occupying your insured car** while the car is being used by you, a **family member** or another person if that person has sufficient reason to believe that the use is with permission of the owner.

**Medical services** means necessary medical, surgical, dental, x-ray, ambulance, hospital, professional nursing and funeral services, and includes the cost of pharmaceuticals, orthopedic and prosthetic devices, eyeglasses and hearing aids.

**Medical services** does not include the cost of any of the following:

1. Hot tubs, spas, water beds,
2. Exercise equipment, heating or vibrating devices,
3. Membership in health clubs,
4. Medical reports unless requested by us.

### **Exclusions**

This coverage does not apply for **bodily injury** to any person:

1. Sustained while **occupying your insured car** when used to carry persons for a charge. This exclusion does not apply to shared-expense car pools.
2. Sustained while **occupying** any vehicle while located for use as a residence or premises.
3. Sustained while **occupying** a motorized vehicle with less than four wheels.
4. Sustained while **occupying** or, when struck by, any vehicle (other than **your insured car**) which is owned by or furnished or available for the regular use of you or any **family member**.
5. Sustained while **occupying** a vehicle other than the car described in the Declarations while the vehicle is being used in the business or occupation of an **insured person**.
6. Occurring during the course of employment if workers' or workmen's compensation benefits are required.
7. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
8. During active participation in any organized or agreed-upon racing or speed contest or demonstration, or in practice or preparation for any such contest.

### **Limit of Liability**

Regardless of the number of vehicles insured, **insured persons**, claims or policies, or vehicles involved in the **accident**, we will pay no more for medical expenses, including funeral expenses, than the limit of liability shown for this coverage in the Declarations for each person injured in any one **accident**. In no event shall the limit of liability for funeral expenses exceed \$2,000 each person.

### **Other Insurance**

If there is other applicable automobile medical insurance on any other policy that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

Any insurance we provide to any **insured person** for a substitute or non-owned motor vehicle or trailer shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

## **PART IV - DAMAGE TO YOUR CAR**

### **Coverage F - Comprehensive**

We will pay for **loss** to **your insured car** caused by any accidental means except **collision**, less any applicable deductibles. Any deductible amount will apply separately to each **loss**.

**Loss** caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not deemed **loss** caused by **collision**. If breakage of glass results from a **collision**, you may elect to have it treated as **loss** caused by **collision**.



## Coverage G - Collision

We will pay for **loss** to **your insured car** caused by **collision** less any applicable deductibles. Any deductible shall apply separately to each **loss**.

## Coverage H - Towing and Road Service

We will pay for reasonable and necessary towing and labor costs incurred because of disablement of **your insured car**. The labor must be performed at the place of disablement.

## Additional Definitions Used In This Part Only

As used in this part:

1. **Collision** means collision of **your insured car** with another object or upset of **your insured car**.
2. **Loss** means direct and accidental loss of or damage to **your insured car**, including its equipment.
3. **Your insured car** shall also include any other **private passenger car, utility car, or utility trailer** not owned by or furnished or available for the regular use of you or a **family member**. But no vehicle shall be considered as **your insured car** unless there is sufficient reason to believe that the use is with permission of the owner, and unless it is used by you or a **family member**.

## Supplementary Payments

1. If you have comprehensive coverage, we will pay for transportation expenses incurred by you because of the total theft of **your insured car**. We will pay up to \$15 per day, but no more than \$450. This coverage begins 48 hours after the theft has been reported to us and to the police and ends when the car is returned to use or when we offer settlement for the **loss**.
2. We will pay up to, but not more than, \$200 for **loss** of clothing or luggage in **your insured car** and belonging to you or a **family member** if the **loss** is caused by:
  - a. **Collision** of **your insured car** while covered by this policy.
  - b. Fire, lightning, flood, earthquake, explosion, falling aircraft, or theft of the entire insured car; and **loss** occurs to **your insured car** from the same cause while covered for comprehensive by this policy.

## Exclusions

This coverage does not apply to **loss**:

1. To **your insured car** while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
3. Caused by theft to equipment designed for the reproduction of sound, or any radio receiving or radio receiving and transmitting equipment. This applies to such equipment as a tape player, tape recorder, citizens band radio and two-way mobile radio, telephone, radar detector, television or scanning monitor receiver. It also applies to any electronic device incorporating any of this equipment, as well as accessories and antennas. This exclusion does not apply to that equipment which is permanently installed in the opening of the dash or console of **your insured car** normally used by the motor vehicle manufacturer for the installation of a radio or sound reproducing device.
4. Caused by theft to tapes, records, reels, cassettes, cartridges, carrying cases or other devices for use with equipment designed for the reproduction of sound.
5. To a camper body, canopy or **utility trailer** owned by you or a **family member** and not described in the Declarations. But, coverage does apply to a camper body, canopy or **utility trailer** ownership of which you acquire during the policy period if you ask us to insure it within 30 days after you acquire it.
6. To awnings, cabanas or equipment designed to provide additional living facilities.

7. Due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. But coverage does apply if the **loss** results from burning of wiring. Also coverage does apply if the **loss** results from the total theft of **your insured car**.
8. To a vehicle not owned by you when used in auto business operations.
9. During any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.
10. To a van, pickup, or panel truck due to increased cost of repair or replacement of the following furnishings or equipment:
  - a. special carpeting, insulation, wall paneling, furniture or bars.
  - b. facilities for cooking and sleeping including enclosures or bathroom facilities.
  - c. height-extending roofs.
  - d. murals, paintings or other decals or graphics.

### Limits of Liability

Our limits of liability for **loss** shall not exceed the lowest of:

1. The actual cash value of the stolen or damaged property.
2. The amount necessary to repair or replace the property or parts with other of like kind and quality, less depreciation.
3. \$500 for a **utility trailer** not owned by you or a **family member**.

### Payment of Loss

We may pay the **loss** in money or repair or replace damaged or stolen property. We may, at any time before the **loss** is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown in the Declarations, with payment for the resulting damage. We may keep all or part of the property at the agreed or appraised value.

### Appraisal

You or we may demand appraisal of the **loss**. Each will appoint and pay a competent and disinterested appraiser and will equally share other appraisal expenses. The appraisers, or a judge of a court having jurisdiction, will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of **loss**. An award in writing by any two appraisers will determine the amount payable, which shall be binding subject to the terms of this insurance.

### No Benefit to Bailee

This coverage shall not directly or indirectly benefit any carrier or other bailee for hire liable for **loss** to **your insured car**.

### Other Insurance

If there is other applicable similar insurance on any other policy that applies to a **loss** covered by this part, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. This coverage does not apply to any substitute or non-owned car if there is similar coverage on it.

Any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

## PART V - CONDITIONS

### 1. Policy Period and Territory

This policy applies only to **accidents, occurrences**, and losses during the policy period shown in the Declarations which occur within the United States, its territories or possessions, or Canada, or while the car is being shipped between their ports.

## 2. Changes

This policy with the Declarations includes all agreements between you and us relating to this insurance. No other change or waiver may be made in this policy except by endorsement or new declarations or new policy issued by us.

The premium for each term of this policy is determined by information in our possession at the inception of that term. Any changes in this information which would affect the rating of your policy will allow us to make an additional charge or refund on a pro rata basis. If a premium adjustment is necessary we will make the adjustment as of the effective date of the change.

When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective in your **state**. We may make other changes or replace this policy, to conform to coverage currently in use at the next policy period. The change or new policy will be delivered to you, or mailed to you at your mailing address shown in the Declarations at least 30 days before the effective date of the new policy period.

Policy terms which conflict with laws of Idaho are hereby amended to conform to such laws.

## 3. Legal Action Against Us

We may not be sued unless there is full compliance with all the terms of this policy. We may not be sued under the Liability Coverage until the obligation of a person we insure to pay is finally determined either by judgment against that person at the actual trial or by written agreement of that person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of a person we insure.

## 4. Transfer Of Your Interest

Interest in this policy, may not be assigned without our written consent. But, if the insured named in the Declarations, or the spouse of the insured resident in the same household dies, the policy will cover:

- a. The survivor.
- b. The legal representative of the deceased person while acting within the scope of duties of a legal representative.
- c. Any person having proper custody of **your insured car** until a legal representative is appointed.

## 5. Our Right to Recover Payment

In the event of any payment under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid **damages** by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

This condition does not apply if prohibited by **state** law.

It may be necessary for us to make payment under the Uninsured Motorist Coverage due to the insolvency of another insurance carrier. In such a case, our right to recover payment is limited to proceedings directly against the insolvent insurer or receiver. We will exercise those rights which the person insured by the insolvent insurer might otherwise have had, if he or she had personally made the payment.

## 6. Two or More Cars Insured

With respect to any **accident** or **occurrence** to which this and any other auto policy issued to you by any member company of the Farmers Insurance Group of Companies applies, the total limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

## 7. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of any insured person.

## 8. Termination or Reduction of Coverage

- a. Cancellation, nonrenewal or reduction of coverage:

(1) You may cancel this policy by advising us in writing when at a future date the cancellation is to be effective.

- (2) We may cancel, change the renewal date, or cancel or reduce all or any portion of any coverage by mailing notice to you, your representative, or any lienholder shown in the policy at the address shown in the Declarations or by delivering the notice:
- (a) Not less than 10 days prior to the effective date of such cancellation, reduction, or change of renewal date:
    - (i) For nonpayment of premium, or
    - (ii) If the policy has been in force less than 60 days.
  - (b) Not less than 20 days prior to the effective date of cancellation for all other cases.

If we cancel or reduce all or any portion of any coverage, the notice we send you will describe that portion we are cancelling or reducing.

- (3) Our right to cancel is limited only if this policy has been in force for 60 days, or is a renewal. We can cancel or nonrenew this policy if it has been in effect more than 60 days only if any of the following apply:
- (a) You fail to pay the premium when due.
  - (b) The insurance was obtained through material misrepresentation.
  - (c) Any insured person made a false or fraudulent claim or knowingly aided another person in making such a claim.
  - (d) You fail to disclose fully your motor vehicle **accidents** and moving violations, or losses covered under any automobile physical damage or comprehensive coverage for the preceding 36 months if called for in the application.
  - (e) You fail to disclose in the application any information necessary for acceptance or proper rating.
  - (f) You violate any terms and conditions of this policy.
  - (g) You, any resident of your household, or any person who regularly and frequently operates **your insured car**:
    - (i) has had his or her driver's license suspended or revoked within the 36 months prior to the notice of cancellation or nonrenewal of coverage.
    - (ii) is or becomes subject to epilepsy or heart attacks, and does not produce a physician's certificate stating that he or she can operate a motor vehicle safely.
    - (iii) has an **accident** or conviction record, physical or mental condition which are such that his or her operation of an automobile might endanger the public safety.
    - (iv) has been convicted, or forfeited bail, during the 36 months immediately preceding the notice of cancellation or nonrenewal of coverage for:
      - (aa) Criminal negligence resulting in death or homicide arising out of the operation of a motor vehicle.
      - (ab) assault arising out of the operation of a motor vehicle.
      - (ac) operating a motor vehicle while intoxicated or under the influence of drugs.
      - (ad) leaving the scene of an **accident** without stopping to report it.
      - (ae) making false statements in an application for a driver's license.
      - (af) theft or unlawful taking of a motor vehicle.
      - (ag) any felony.
    - (v) has been convicted of, or forfeited bail for, three or more violations within the 36 months immediately preceding the notice of cancellation or nonrenewal, of any law, ordinance or regulation limiting the speed of motor vehicles, or any of the provisions of the motor vehicle laws of any **state**. Violations may be repetitions of the same offenses or different offenses.
    - (vi) has, while this policy is in force, engaged in a prearranged speed contest while operating or riding in **your insured car**.
    - (vii) has, within 36 months prior to the notice of cancellation or nonrenewal been addicted to the use of narcotics or other drugs.
    - (viii) uses alcoholic beverages to excess.

(h) **Your insured car** is:

- (i) so mechanically defective that its operation might endanger public safety.
  - (ii) used in carrying passengers for hire or compensation. This does not include car pools.
  - (iii) used in the business of transportation of flammables or explosives.
  - (iv) an authorized emergency vehicle.
  - (v) subject to an inspection law and has not been inspected or, if inspected, has failed to qualify within the period specified under such inspection law.
  - (vi) substantially changed in type or condition during the policy period, increasing the risk substantially, or so as to give clear evidence of a use other than the original use.
- (4) Part 3 above does not limit our right to add a deductible not exceeding \$100 under Coverage F of this policy as a condition to renewal.
- (5) We will not cancel or nonrenew if:
- (a) You agree in writing to exclude a person other than you by name from operation of **your insured car**.
  - (b) You also agree to exclude coverage to yourself for any negligence which may be imputed by law to you, which may arise out of the maintenance, operation or use of a motor vehicle by such excluded person.

Notice of cancellation or nonrenewal for nonpayment of premium must be mailed or delivered to you with the reason for cancellation or nonrenewal. If cancellation or nonrenewal is for any other circumstance, we will send you the reason for such cancellation or nonrenewal with the notice or we will send you a statement of your right to request the reason.

A written request must be mailed or delivered to us not less than 10 days prior to the effective date of cancellation. We will furnish you with a statement giving the reason or grounds for the notice of cancellation.

### **Nonrenewal**

If we mail or deliver a notice of nonrenewal to you, we will send you either the reason for nonrenewal or a statement of your right to request the reason for such nonrenewal. A written request must be made not less than 15 days prior to the effective date of nonrenewal.

We will mail to you at the address shown in the Declarations, or deliver to you, notice of nonrenewal not less than 30 days before the end of the policy period, if we decide not to renew or continue this policy.

This provision shall not apply in any of the following cases:

1. You fail to pay the premium when due.
2. We show a willingness to renew.

If your policy is renewed, we still may cancel it at our option, if grounds for cancellation existed before the effective date of the renewal.

#### b. Automatic Termination

This policy will automatically terminate at the end of the policy period if you or your representative do not accept our offer to renew it. Your failure to pay the required renewal premium as we require means that you have declined our offer.

If other insurance is obtained on **your insured car**, any similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.

#### c. Other Provisions

- (1) If different requirements for cancellation and nonrenewal or termination of policies become applicable because of the laws of Idaho, we will comply with those requirements.
- (2) Proof of mailing shall be sufficient proof of notice. We may deliver a notice instead of mailing it.
- (3) The effective date and hour stated on the notice for cancellation of the entire policy shall become the end of the policy period.

- (4) The effective date and time stated on the notice for reductions of coverage or cancellation of a portion of the coverage, shall be the effective date of the change. The notice shall be part of the policy. It is an endorsement.
- (5) Termination or change may result in a premium refund. If so, we will send it to you. Our making or offering of a refund is not a condition of cancellation.

If you cancel, the refund will be computed in accordance with the customary short rate table and procedure.  
 If we cancel or reduce coverage, the refund will be computed on a pro rata basis.

**9. No Duplication of Benefits**

Any amount paid under Coverage E will be applied against any other coverage of this policy applicable to the loss so that there is no duplication of Coverage E benefits. In no event shall a coverage limit be reduced below any amount required by law.

**Optional Payment Plan on Renewal of Policy**

If we send you an offer to renew any or all of the coverages in your policy, we will send you a Renewal Premium Notice. You may pay the premium either in full or in two equal installments.

If paid in installments, we will add a service charge when the policy is renewed.

The first premium installment, including the service charge, shall be payable on or before the policy renewal date. The second installment shall be payable not later than 60 days after the renewal date.

**SPECIAL PROVISIONS**

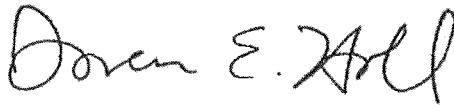
Policy fees which you pay are not part of the premium, but are fully earned when coverage is effective. They are not refundable (except as noted in a. and b. below), but may be applied as a credit to policy fees required for other insurance accepted by us.

- a. If we cancel this policy during or at the end of the first policy period, we shall refund all policy fees.
- b. If you cancel this policy during or at the end of the first policy period because it does not agree with the application and is not as represented by the agent, we shall refund all policy fees.

This policy shall not be effective unless countersigned on the Declarations Page by a duly authorized representative of the Company named on the Declarations Page.

The Company named on the Declarations has caused this policy to be signed by the officers shown below.

FARMERS INSURANCE COMPANY OF IDAHO  
 MID-CENTURY INSURANCE COMPANY



Secretary



Vice-President

**No Mexico Coverage**  
**Read This Warning Carefully**

No Coverage under this policy is provided while in Mexico. The Republic of Mexico considers an automobile accident a criminal offense as well as a civil matter. Coverage can be obtained through a Mexican insurance company when needed.

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**ENDORSEMENT  
AMENDING PART IV - DAMAGE TO YOUR CAR**

**J6275**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that your policy is amended as follows:

Under Part IV - Damage to Your Car, Limits of Liability, item 1. (Item 2. in AZ, ID, IA, MI, MO, MT, OH, OK and WI) is deleted and replaced by the following:

1. The amount necessary to repair or replace the property or parts with other of like kind and quality; or with new property less an adjustment for physical deterioration and/or depreciation. Property of like kind and quality includes, but is not limited to, parts made for or by the vehicle manufacturer. It also includes parts from other sources such as rebuilt parts, quality recycled (used) parts and parts supplied by non-original equipment manufacturers.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

93-6275 1ST EDITION 2-07

J6275101

**SAFETY GLASS - WAIVER OF DEDUCTIBLE  
PART IV - DAMAGE TO YOUR CAR - COVERAGE F**

**J6284**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that if a loss to auto safety glass is repaired rather than replaced, the deductible applying to Coverage F - Comprehensive under Part IV - Damage to Your Car is waived. If the auto safety glass is replaced, the deductible applying to Comprehensive will remain in force.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.



**AMENDED BUSINESS USE EXCLUSION**  
(Your E - Z Reader Car Policy)

**J6489**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that Exclusion 6. Under PART I - LIABILITY is deleted and replaced with the following:

**Bodily injury or property damage** arising out of the ownership, maintenance or use of any vehicle by any person employed or otherwise engaged in a business other than the business described in Exclusion 5.

This exclusion does not apply to the maintenance or use of a:

- a. **Private passenger car.**
- b. **Utility car** that you own, if rated as a **private passenger car**, or
- c. **Utility trailer** used with a vehicle described in a. or b. above.

However, this exclusion does apply to any vehicle:

1. While used in employment by any person whose primary duties are the delivery of products or services; or,
2. While used in any employment in an emergency occupation on a full-time, part-time, or volunteer basis. Such occupations include, but are not limited to, Fire Fighting, Ambulance, or Police activities. However, this exclusion does not apply to the vehicle described in the Declarations or any **private passenger car** or **utility car** with which you replace it.
3. Which is one of a fleet or pool of vehicles which are provided for the use of an **insured person** in the course of his or her employment, unless such vehicle is specifically listed in the Declarations.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

93-6489 1ST EDITION 5-07

J6489101

**ENDORSEMENT AMENDING DEFINITION**  
**OF INSURED PERSON UNDER PART I - LIABILITY**

**J6492**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that under Part I - Liability, items 2 and 3 under "**Insured Person** does not mean:" are amended to read as follows:

2. Any person, including but not limited to a **family member**, for **bodily injury or property damage** arising from the operation of a vehicle by that person as an employee of the United States Government when the provisions of the Federal Tort Claim Act apply.
3. Any person, including but not limited to a **family member**, who uses a vehicle without having sufficient reason to believe that the use is with the permission of the owner.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**J6485**  
1st Edition

**SCHEDULE FOR HIGHER  
UNDERINSURED MOTORIST LIMITS**

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

For an additional premium, it is agreed that the following optional limits are added to UNDERinsured Motorist Coverage C-1, Part II of the policy. We will pay up to the limits of liability shown in the Declarations:

Coverage Designation	Limits
U11	500/500
U12	500,000 Combined Single Limit

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

93-6485 1ST EDITION 5-07

J6485101

**ENDORSEMENT  
AMENDING CUSTOMIZING EQUIPMENT EXCLUSION  
YOUR E-Z READER CAR POLICY**

**J6491**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that your policy is amended as follows:

Under PART IV - DAMAGE TO YOUR CAR, Exclusion number 10 is deleted and replaced with:

To a van, pick-up or panel truck due to increased cost of repair or replacement of the following furnishings or equipment:

- Special carpeting, insulation, wall covering, furniture or bars.
- Dining, kitchen and sleeping facilities including enclosures or bathroom facilities.
- Height-extending roofs.
- Murals, specials paint and/or methods of painting, decals or graphics.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**000036**

**ENDORSEMENT ADDING REGULAR AND FREQUENT  
USE EXCLUSION TO PART II**

**J6490**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that the following exclusion is added to the Exclusions under Part II of your policy.

Uninsured Motorist Coverage (and Underinsured Motorist Coverage if applicable) does not apply to **damages** arising out of the ownership, maintenance, or use of any vehicle other than **your insured car** (or **your insured motorcycle** if this is a motorcycle policy), which is owned by or furnished or available for the regular use by you or a **family member**.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

93-6490 1ST EDITION 5-07

J6490101

**ENDORSEMENT AMENDING PART I - LIABILITY  
(Your E-Z Reader Car Policy)**

**J6288**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that Your E-Z Reader Car Policy is amended as follows:

PART I Liability, "Other Insurance" is deleted and replaced with the following:

**OTHER INSURANCE**

If there is other applicable Auto Liability Insurance on any other policy that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.

Any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**ENDORSEMENT AMENDING  
DEDUCTIBLE PROVISIONS UNDER PART V  
(E - Z READER CAR POLICY)**

**J6689**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that provisions contained in Part V - Conditions, Section 8. - Termination or Reduction of Coverage, which pertain to our right to add a \$100 deductible under Coverage F or G are deleted and replaced with the following:

"Subject to any applicable state law, Section 8. does not limit our right to add or increase a deductible under Coverage F and/or G of this policy as a condition to renewal."

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

93-6689 1ST EDITION 6-08

J6689101

**Endorsement Amending Part IV - Damage To Your Car  
Excluding Coverage for Diminished Value  
(Your E-Z Reader Car Policy)**

**J6774**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

Under **Part IV - DAMAGE TO YOUR CAR, Additional Definitions Used In This Part Only**, the following definition is added:

**Diminution in value** means the actual or perceived loss in market or resale value which results from a direct and accidental loss.

Under **Part IV - DAMAGE TO YOUR CAR, Exclusions**, the following is added:

To **your insured car** due to "diminution in value".

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**ENDORSEMENT AMENDING DEFINITION  
OF UNINSURED MOTOR VEHICLE**

**ID 010**  
**IDAHO**  
**1st Edition**

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that under Part II - Uninsured Motorist, the following changes apply:

1. The words "(Including Underinsured Motorist Coverage)," if shown in the title "Coverage C," are deleted from the title "Coverage C." (Does not apply to E-Z Reader Motorcycle Policy.)
2. Item 3b of "Additional Definitions Used In This Part Only" is deleted.
3. Paragraph 2 (paragraph 1-Your E-Z Reader Motorcycle Policy) under "Other Insurance" is deleted.
4. The words "Except as provided in paragraph 2 above" (paragraph 1-Your E-Z Reader Motorcycle Policy) are deleted from paragraph 3 (paragraph 2-Your E-Z Reader Motorcycle Policy) under "Other Insurance."

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

94-1823 1ST EDITION 9-08

W1823101

## Your Policy is on a Farmers® Billing Plan

Any increase or reduction in premium has been, or will be included as an adjustment to your billing statement. This billing statement may be enclosed or it may be mailed to you separately.

*Please pay the amount due shown on any outstanding Farmers billing statement.*

## LOSS OF USE ENDORSEMENT

**6279**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

For an additional premium, we will pay your extra expense arising from any of the options you have purchased as described in the schedule below and designated in the Declarations. The chosen option applies when the loss exceeds the deductible amount applicable under PART IV of your E-Z Reader Car Policy.

### OPTION SCHEDULE

#### COVERAGE DESIGNATION

#### COVERAGE DESCRIPTION

- K-1 We will pay you \$10 per day while **your insured car** is in the custody of a garage for repairs resulting from a **collision**. The maximum payable is \$100. If **your insured car** is a total loss (regardless of salvage value) we will pay you \$100.
- K-2 We will pay you \$15 per day while **your insured car** is in the custody of a garage for repairs resulting from a **Collision** or **Comprehensive loss**. The maximum payable is \$300. If **your insured car** is a total loss (regardless of salvage value) we will pay you \$300. This option does not cover total theft of **your insured car**.
- K-3 Car Return Expenses: If Coverage K-1, K-2 or K-4 loss occurs more than 50 miles from your residence, we will pay you for the reasonable and necessary extra expense for commercial transportation, gasoline, lodging and meals incurred to return **your insured car**, after it is repaired, to your residence or destination. The maximum payable for car return expenses is \$200.
- K-4 We will pay you \$25 per day while **your insured car** is in the custody of a garage for repairs resulting from a **Collision** or **Comprehensive loss**. If **your insured car** is a total loss (regardless of salvage value) we will pay you \$500.  
We will pay you an amount in excess of the amount paid per day under paragraph 1 of Supplementary Payments in Part IV of this policy, resulting from total theft of **your insured car**. The maximum we will pay for the combined total of paragraph 1 of Supplementary Payments and K4 is \$25 per day.  
The maximum payable under K-4 is \$500.
- K-5 We will pay you \$50 per day while **your insured car** is in the custody of a garage for repairs resulting from a **Collision** or **Comprehensive loss**. If **your insured car** is a total loss (regardless of salvage value) we will pay you \$1000.  
If loss occurs more than 50 miles from your residence we will also pay your car return expenses for the reasonable and necessary extra expense for commercial transportation, gasoline, lodging and meals incurred to return **your insured car**, after it is repaired, to your residence or destination. The maximum payable for car return expenses is \$500.  
We will pay you an amount in excess of the amount paid per day under paragraph 1 of Supplementary Payments in Part IV of this policy resulting from the total theft of **your insured car**. The maximum we will pay for the combined total of paragraph 1 of Supplementary Payments and K5 is \$50 per day.  
The maximum payable under K-5 is \$1,000.

The insurance afforded by this endorsement does not apply to any **collision** or comprehensive loss occurring before the effective date of this endorsement as shown in the Declarations.

This endorsement is also subject to the following provisions:

1. Coverage applies only to **your insured car** other than a **private passenger car, utility car, or utility trailer** not owned by you or a **family member** while being temporarily used as a substitute vehicle.
2. If you are paid under this endorsement, we shall have your rights to seek recovery. You shall do whatever is necessary to secure such rights. You shall do nothing to prejudice these rights.
3. The premium charged for this insurance is fully earned unless the entire policy is cancelled. (Not applicable in Michigan).

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

**ENDORSEMENT AMENDING DEFINITIONS, PART I - LIABILITY,  
PART II - UNINSURED MOTORISTS AND PART V - CONDITIONS  
(Your E-Z Reader Car Policy)**

**ID011**  
1st Edition

It is agreed that the initial paragraph of the Definitions section of Your E-Z Reader Car Policy is amended to read as follows.

Throughout this policy, "you" and "your" mean the named insured shown in the Declarations or renewal notice and your spouse or registered domestic partner under applicable state law if a resident of the same household with you. Any domestic partner must be registered as required by state law prior to the date of a loss. "We", "us", and "our" mean the Company named in the Declarations which provides this insurance. In addition, certain words appear in bold type. They are defined as follows:

It is agreed that the definition of **your insured car** in the Definitions section of Your E-Z Reader Car Policy, is amended to read as follows:

**Your insured car** means:

1. Any **private passenger car** or **utility car** described in the Declarations of this policy;
2. A **replacement vehicle**;
3. A **substitute vehicle**;
4. A **rental vehicle**;
5. An **additional vehicle**;
6. Any **utility trailer**:
  - a. That you own, or
  - b. If not owned by you, while attached to **your insured vehicle**.

It is further agreed that the following definitions for **Replacement vehicle**, **Substitute vehicle**, **Additional vehicle** and **Rental vehicle** are added to the Definitions section of Your E-Z Reader Car Policy:

**Replacement vehicle** means a **private passenger car** or **utility car** that you acquire as a replacement of any vehicle described in the Declarations, either by purchase, or by a written lease of at least six continuous months. This definition applies only if you:

1. Acquire the **replacement vehicle** during the policy period; and
2. Notify us within 30 days of its acquisition, or before the end of the policy period, whichever is less.

A **replacement vehicle** will have the same coverage as the vehicle it replaces.

**Substitute vehicle** means a **private passenger car** or **utility car**, not owned by you, but being temporarily used by you as a substitute for any vehicle described in the Declarations. This applies only while the vehicle described in the Declarations is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

**Additional vehicle** means a **private passenger car** or **utility car** of which you acquire possession either by purchase, or by a written lease of at least six continuous months. This definition applies only if you:

1. Acquire the **additional vehicle** during the policy period; and
2. Notify us within 30 days of its acquisition, or before the end of the policy period, whichever is less.

**Rental vehicle** means a **private passenger car**, **utility car**, or **utility trailer** having a gross vehicle weight of 12,000 pounds (lbs.) or less rented by you on a daily or weekly basis not to exceed 30 consecutive days, provided that this car or trailer is not owned by, furnished or available for regular use by you or a **family member**.



Part 1 - LIABILITY, Coverage A - Bodily Injury, Coverage B - Property Damage, Limits of Liability, is deleted and replaced with the following:

The amounts shown in the Declarations for **bodily injury** liability and **property damage** liability are the limits of liability which apply to the insurance provided by Part I, subject further to the following:

1. The **bodily injury** liability limit for each person is the maximum we will pay for all **damages** resulting from **bodily injury** sustained by any one person in any one **accident** or **occurrence**. Included in the limit, but not as a separate claim or claims, are all consequential **damages** sustained by other persons, such as loss of services, loss of support, loss of consortium, wrongful death, grief, sorrow and emotional distress.
2. The **bodily injury** liability limit for each **occurrence** is the maximum we will pay for all claims by two or more persons for all **damages** for **bodily injury** arising out of any one **accident** or **occurrence**, subject to the per person limit.
3. The **property damage** liability limit for each **accident** or **occurrence** is the maximum we will pay for all damages to all property arising out of any one **accident** or **occurrence**.
4. An insured person's **damages** paid or payable under this policy shall be reduced by any amount paid or payable under any workers' compensation law, disability benefit law, benefit of the United States, or any state or any political subdivision, or any similar medical or disability law.
5. If you or a **family member** have two or more automobile insurance policies with any members of the Farmers Insurance Group of Companies that provide coverage for an **accident** or **occurrence**, the insurance coverage we provide through any or all of those policies for a non-owned vehicle involved in that **accident** or **occurrence** shall not exceed the highest limit of coverage you have on any one of those policies.
6. We will pay no more than the maximum limits, as shown in the Declarations of this policy, for any one vehicle or person insured by this policy for any one **accident** or **occurrence** involving **your insured car** as defined by this policy, regardless of the number of:
  - a. vehicles or premiums shown in the Declarations;
  - b. vehicles insured;
  - c. insured persons;
  - d. claims or claimants;
  - e. policies; or
  - f. vehicles involved in the **occurrence**.

The limits of liability provided by this policy may not be stacked or combined with the liability limits provided by any other policy issued to **you** or a **family member** by any member of the Farmers Insurance Group of Companies.

7. If the coverage limit on the Declarations or renewal notice is stated as a Combined Single Limit, then the limit of liability shown is our maximum limit of liability for all **bodily injury** and **property damage** resulting from any one **occurrence**. This is the most we will pay regardless of the number of:
  - a. vehicles or premiums shown in the Declarations;
  - b. vehicles insured;
  - c. insured persons;
  - d. claims or claimants;
  - e. policies; or
  - f. vehicles involved in the **accident** or **occurrence**.

We will apply the stated combined single limit to provide the minimum limits required by law for **bodily injury** and **property damage** liability. However, this Provision will not change our total limit of liability.

Part II - UNINSURED MOTORIST, Coverage C - Uninsured Motorist Coverage, Limits of Liability, item 3 is deleted and replaced with the following:

3. We will pay no more than the maximum limits of this coverage, as shown in the Declarations of this policy, for any person or vehicle insured under this Part for any one **accident** or **occurrence** regardless of the number of:
  - a. vehicles or premiums shown in the Declarations;
  - b. vehicles insured;
  - c. insured persons;
  - d. claims or claimants;
  - e. policies; or
  - f. vehicles involved in the **accident** or **occurrence**.

The limits provided by this policy for this coverage may not be stacked or combined with the limits provided by any other policy issued to you or a **family member** by any of the Farmers Insurance Group of Companies.

Part II - UNINSURED MOTORIST, Coverage C - Uninsured Motorist Coverage, Limits of Liability, item 4 is added and made a part of this policy:

4. The limits are not increased by insuring additional vehicles, even though a separate premium for each vehicle is shown on the Declarations page.

Part V - Conditions, item 10 is added and made a part of this policy:

10. Even if separate premiums are shown for different vehicles insured under this policy, payment of any premium will apply to the entire policy, and thus payment of less than the minimum amount due will not be sufficient to keep the policy in force as to fewer than all vehicles shown in the Declarations.

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**ENDORSEMENT AMENDING PART III - MEDICAL  
Coverage E - Medical Expense Coverage  
Your EZ Reader Car Policy**

**ID 008  
IDAHO  
1st Edition**

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

It is agreed that your policy is amended as described below:

Part III - MEDICAL is deleted and replaced with the following:

**PART III - MEDICAL**

**Coverage E - Medical Expense Coverage**

We will pay **reasonable expenses** for **necessary medical services** incurred within three years from the date of the **accident** because of **bodily injury** sustained by an **insured person** which was discovered and treated within one year of the **accident**.

**Additional Definitions Used In This Part Only**

As used in this part, **insured person** means:

1. You or any **family member** while **occupying**, or through being struck by, a motor vehicle or trailer, designed for use on public roads.
2. Any other person while **occupying your insured car** while the car is being used by you, a **family member** or another person if that person has sufficient reason to believe that the use is with permission of the owner.

**Necessary Medical Services** means medical services which are usual and customary for treatment of the injury, including the number or duration of treatments, in the county in which those services are provided.

**Necessary Medical Services** are limited to necessary medical, surgical, dental, x-ray, ambulance, hospital, professional nursing and funeral services, and include the cost of pharmaceuticals, orthopedic and prosthetic devices, eyeglasses, and hearing aids. We will reimburse you for any **necessary medical services** already paid by you.

**Necessary Medical Services** do not include:

1. Treatment, services, products or procedures that are:
  - a. Experimental in nature, for research, or not primarily designed to serve a medical purpose; or
  - b. Not commonly and customarily recognized throughout the medical profession and within the United States as appropriate for the treatment of **bodily injury**; or
2. The use of:
  - a. Thermography or other related procedures of a similar nature; or
  - b. Acupuncture or other related procedures of a similar nature.
3. Purchase, rental cost, or use of:
  - a. Hot tubs, spas, water beds,
  - b. Exercise equipment,
  - c. Heating or vibrating devices,
  - d. Furniture or equipment not primarily designed to serve a medical purpose,
  - e. Memberships in health clubs,
  - f. Medical reports unless requested by us.

**Reasonable Expenses** means expenses which are usual and customary for **necessary medical services** in the county in which those services are provided. We will reimburse you for any **reasonable expenses** already paid by you.

**Exclusions**

This coverage does not apply for **bodily injury** to any person:

1. Sustained while **occupying your insured car** when used to carry persons for a charge. This exclusion does not apply to shared-expense car pools.
2. Sustained while **occupying** any vehicle while located for use as a residence or premises.
3. Sustained while **occupying** a motorized vehicle other than a **private passenger car** or **utility car**.

4. Sustained while **occupying** or when struck by any vehicle (other than **your insured car**) which is owned by or furnished or available for the regular use of you or any **family member**.
5. Sustained while **occupying** a vehicle other than the car described in the Declarations while the vehicle is being used in the business or occupation of an **insured person**.
6. Due to heart attacks, strokes, and other medical conditions or illnesses not causally related to an **accident**.
7. Occurring during the course of employment if workers' compensation benefits are required.
8. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation, or radioactive contamination, or any consequence of any of these.
9. During active participation in any organized or agreed-upon racing or speed contest or demonstration, or in practice or preparation for any such contest.
10. Where medical expenses are paid or payable by any governmental entity.

### **Determination of Coverage**

Determination of what are **reasonable expenses** and/or **necessary medical services** may be submitted to an independent medical consultant. Determination as to whether an **insured person** is legally entitled to recover, and in what amount shall be made by agreement between the **insured person** and us. If no agreement is reached, the decision will be made by arbitration.

### **Arbitration**

If an **insured person** and we do not agree, (1) that the person is entitled to recover for medical services, (2) that the medical services are a result of a covered **accident**, or (3) as to the nature, frequency, or cost of the medical services, either that person or we may demand that the issue be determined by arbitration.

In that event, an arbitrator will be selected by the **insured person** and us. If agreement on an arbitrator cannot be reached within 30 days, the judge of a court having jurisdiction will appoint the arbitrator. The expense of the arbitrator and all other expenses of the arbitration will be shared equally. Attorney fees and fees paid for the witnesses are not expenses of arbitration and will be paid by the party incurring them.

The arbitrator shall determine (1) if the medical services are as a result of a covered **accident**, (2) if the medical services incurred are reasonable and necessary, and (3) the amount of any payment under this part as determined by this policy.

Arbitration will take place in the county where the **insured person** lives. Local court rules governing procedures and evidence will apply. The decision in writing of the arbitrator will be subject to the terms of this insurance.

### **Limit of Liability**

We will pay no more for medical expenses, including funeral expenses, than the maximum limits of this coverage, as shown in the Declarations of this policy, for any one person insured under this Part for any one **accident** regardless of the number of:

- a. vehicles described in the Declarations;
- b. vehicles insured;
- c. **insured person(s)**;
- d. claims;
- e. claimants;
- f. policies; or
- g. vehicles involved in the **accident** or **occurrence** that triggers this coverage.

In no event shall the limit of liability for funeral expenses exceed \$2,000 each person.

The limits of this coverage as provided by this policy may not be stacked, aggregated, or otherwise combined with the limits of this or similar coverage provided by any other policy issued to **you** or a **family member** by us or by any other member of the Farmers Insurance Group of Companies.

The limits are not increased by insuring additional vehicles, even though a separate premium for each vehicle is shown on the Declarations page.

#### **Other Insurance**

If there is other applicable automobile medical insurance on any other policy that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

Any insurance we provide to any **insured person** for a substitute or non-owned motor vehicle or trailer, shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

#### **Our Right to Recover Payment**

When a person has been paid **damages** by us under this policy and also recovers from another, the amount recovered from the other will be held by that person in trust for us and reimbursed to us to the extent of our payment.

This condition does not apply if prohibited by **state** law.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

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## LOSS PAYABLE PROVISIONS

**J6934**  
1st Edition

Subject to the Loss Payable Provisions or any other loss payable endorsement attached to the policy, payment for loss thereunder is payable as interest may appear to the named insured and the Lienholder or Other Interest in the Declarations.

### Loss Payable Provisions

It is agreed that any payment for loss or damage to the vehicle described in this policy shall be made on the following basis:

- (1) At our option, loss or damage shall be paid as interest may appear to the policyholder and the lienholder shown in the Declarations, or by repair of the damaged vehicle.
- (2) Any act or neglect of the policyholder or a person acting on his behalf shall not void the coverage afforded to the lienholder.
- (3) Change in title or ownership of the vehicle, or error in its description shall not void coverage afforded to the lienholder.

The policy does not cover conversion, embezzlement or secretion of the vehicle by the policyholder or anyone acting in his behalf while in possession under a contract with the lienholder.

A payment may be made to the lienholder which we would not have been obligated to make except for these terms. In such event, we are entitled to all the rights of the lienholder to the extent of such payment. The lienholder shall do whatever is necessary to secure such rights. No subrogation shall impair the right of the lienholder to recover the full amount of its claim.

We reserve the right to cancel this policy at any time as provided by its terms. In case of cancellation or lapse we will notify the lienholder at the address shown in the Declarations. We will give the lienholder advance notice of not less than 10 days from the effective date of such cancellation or lapse as respects his interest. Mailing notice to the loss payee is sufficient to effect cancellation.

The following applies as respects any loss adjusted with the mortgagee interest only:

- (1) Any deductible applicable to Comprehensive Coverage shall not exceed \$250.
- (2) Any deductible applicable to Collision Coverage shall not exceed \$250.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.



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## CUSTOMIZED EQUIPMENT ENDORSEMENT

**J6674**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

Under **PART IV - DAMAGE TO YOUR CAR, Coverage F - Comprehensive, and Coverage G - Collision**, the following is added:

We will also pay for repair or replacement of **customized equipment** up to a total of \$1,000 for any one **loss** event. Multiple items of **customized equipment** lost or damaged in the same event are considered to be one **loss**.

The following definition is added to **PART IV - DAMAGE TO YOUR CAR, Additional Definitions Used In This Part Only**:

**Customized equipment** means any furnishings or equipment, which is permanently attached to **your insured car** and common to its use, which is not the vehicle's factory available furnishings or equipment. This includes, but is not limited to:

- a. any video, electronic sound reproducing or transmitting equipment, and its component parts, media and data, including but not limited to DVD, Game System or MP3 player;
- b. any painted, chrome or finished surface, whether refinished in whole or in part, of any automobile insured under this Part where the claim exceeds the cost of duplicating the vehicle's factory applied surface finish;
- c. tires, wheels, rims, spinners, grilles, louvers, side pipes, hood scoops or spoilers or any exterior surface, body or exhaust equipment, or modification thereto, which exceeds the cost of repairing or replacing the vehicle's factory available equipment;
- d. any engine, transmission or suspension parts, or modification thereto, which exceeds the cost of repairing or replacing the vehicle's factory available equipment;
- e. GPS navigational systems;
- f. special carpeting, insulation, wall paneling, furniture or bars;
- g. facilities for cooking or sleeping including enclosures or bathroom facilities;
- h. height-extending roofs; or
- i. custom murals, paintings or other decals or graphics.

Under **Additional Definitions Used In This Part Only, 2.**, **loss** is deleted and replaced with:

2. **Loss** means direct and accidental **loss** of or damage to **your insured car**, including its **customized equipment**.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

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## Household Pet Coverage

**J6683**  
1st Edition

This endorsement applies only to the vehicle(s) for which this Endorsement is listed on the Declarations page of this policy.

Your policy is amended as follows:

Under Part IV Damage To Your Car, the following is added to Additional Definitions Used in This Part Only:

4. "**Household pet**" means a fully domesticated animal owned by **you** for personal companionship, such as a dog, a cat, a reptile, a bird or a rodent. Household Pet does not include any type of horse, cow, pig, sheep, goat, chicken, turkey, or captive fur-bearing animal, or any animal commonly kept for food or profit.

Under Part IV Damage To Your Car, the following is added to Supplementary Payments:

3. If you have Coverage F - Comprehensive coverage for **your insured car** and your **Household Pets** are inside that insured car during its covered total theft, we will pay reasonable amounts up to \$600 for the loss, veterinary care, burial, or disposal of any and all such **Household Pets** because of that covered total theft loss. Theft of **Household Pets** will be paid based upon their actual cash value to a maximum of \$600 per covered total theft loss for any and all **Household Pets**.
4. If you have Coverage G - Collision and your **Household Pets** are inside that insured car at the time of a covered loss under Coverage G - Collision, we will pay reasonable amounts up to a total of \$600 for the loss, veterinary care, burial, and/or disposal of all such **Household Pets** arising out of their theft, injury or death during a covered loss. Loss of **Household Pets** will be paid based upon its their actual cash value to a maximum of \$600 per covered loss for any and all **Household Pets**.

Under Part IV Damage To Your Car, the following is added to Exclusions:

12. To **Household Pets** that are injured or die from heat, dehydration, or exposure to weather or to other animals from any covered loss under Coverage F or Coverage G.

Under Part IV Damage To Your Car, the following is added to Limits of Liability:

3. Under Coverage F and Coverage G, \$600 for any one covered loss, for any and all **Household Pets** stolen, injured or killed as a result of that covered loss.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

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## Notice of Underwriting Decision

Policy Number: 19515-03-78

Dear Valued Customer,

In addition to the information you provided us when you applied for insurance, we have considered the consumer report(s) indicated below in connection with your insurance transaction with us, which we obtained from the consumer reporting agency or agencies indicated below:

Current Carrier  
LexisNexis Consumer Center  
P.O. Box 105108  
Atlanta, GA 30348-5108  
1-800-456-6004  
www.consumerdisclosure.com

Current Carrier

We are writing to inform you that while you may have received a lower rate on your insurance based in whole or in part on your history of prior liability insurance coverage, we were unable to offer you our lowest rate based on that information. This decision included consideration of lapses in coverage, amount and duration of prior liability coverage, type of prior carrier or an absence of prior liability insurance coverage. In this situation, we are required to send you this "adverse action notice," in accordance with the federal Fair Credit Reporting Act.

This action was taken, in whole or in part, on the basis of information supplied to us by the consumer reporting agency shown above. You have the right to obtain a free copy of your loss history report from the consumer reporting agency shown above. This request must be made no later than 60 days after you receive this notice. In addition, if you find any inaccurate or incomplete information contained in the report you receive, you have the right to dispute the matter with the consumer reporting agency. The consumer reporting agency did not make the decision regarding your policy and is unable to explain why the decision is made. If you have any questions, please contact your agent.

If you would like more information about how Farmers uses insurance scores, please visit our website at [www.farmers.com](http://www.farmers.com). Select the Products link and click either Auto or Home, select the FAQ link and click Insurance Risk Indicators. You are also welcome to contact your agent. Once again, let us say we appreciate your business.

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**SAFETY GLASS  
DEDUCTIBLE BUYBACK - COVERAGE F**

**H1171**  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

For an additional premium, it is agreed that the deductible applying to Coverage F - Comprehensive is replaced by a \$100 deductible for a covered loss to safety glass.

Our limit of liability for loss is the amount necessary to replace safety glass.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

92-1171 1ST EDITION 1-05

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## Idaho Uninsured Motorist and Underinsured Motorist Disclosure Statement

Farmer Insurance Company of Idaho

Mid-Century Insurance Company

State/District/Agent 75 67 315

Policy Number: 75 19515-03-78

Effective Date: 01-27-2012

Name Insured: JENNIFER EASTMAN

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** coverage and **Underinsured Motorist (UIM)** bodily injury coverage, unless a named insured has rejected these coverages in writing. If the insured is not provided a copy of the written rejection at the time it is made, the insured may receive a copy from the insurer upon request.

**UM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle that has no insurance, or from a hit-and-run vehicle where the owner or operator is unknown.

**UIM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

**UIM** coverage is offered in different forms by different insurers, and insurers are not required to offer more than one type of UIM coverage. There are two commonly available forms of UIM coverage - "Difference in Limits" (or "Offset") Coverage and "Excess" Coverage. Your insurance policy offers "Difference in Limits" which is briefly explained below:

- **"Difference in Limits" (or "Offset") Coverage** - The policy's UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured owner(s) or operator(s).
- **"Excess Coverage"** The policy's **UIM** coverage limits are not reduced by the amount of damages recovered from any underinsured owner(s) or operator(s). **UIM** coverage limits are available to pay damages when the insured's damages exceed what can be recovered from the owner(s) or operator(s) of an underinsured vehicle.

**This general explanation is NOT an insurance agreement. All auto liability insurance policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. For a more detailed explanation of these coverages, refer to your policy. The Idaho Department of Insurance can also provide assistance with insurance related questions. Call 800-721-3272 or visit the Department's website at [www.doi.idaho.gov](http://www.doi.idaho.gov).**

**UNINSURED AND UNDERINSURED MOTORIST COVERAGE WAIVER**

I have read the above explanation of uninsured motorist and underinsured motorist coverages. I understand that I have the right to reject either or both uninsured motorist coverage or underinsured motorist coverages. I also understand that by signing the rejection below I am informing my insurer that I do not want the rejected coverage(s) to be included under my automobile liability policy, or under any renewal or replacement of my policy. I choose to reject the coverage(s) identified below:

- I hereby reject Uninsured Motorist Bodily Injury Coverage
- I hereby reject Underinsured Motorist Bodily Injury Coverage

\_\_\_\_\_  
Named Insured's Signature

\_\_\_\_\_  
Date

**ELECTION AGREEMENT REDUCING UNINSURED/UNDERINSURED MOTORIST COVERAGE**

I have read the above explanation of uninsured motorist and underinsured motorist coverages and I have been offered the opportunity to purchase these coverages in an amount equal to my automobile liability limits. I understand that I have the right to reduce both coverages in consideration of a reduction of the premium. By checking the appropriate box, and signing below, I am informing my insurer that I want reduced coverage(s) to be included under my automobile liability policy, or under any renewal or replacement of my policy. I choose to reduce the coverage(s) identified below:

- I am selecting reduced Uninsured Motorists Bodily Injury Coverage limits of \_\_\_\_\_ per person and \_\_\_\_\_ per occurrence and I choose to reject Underinsured Motorists Bodily Injury Coverage, as I have indicated above.
- I am selecting reduced Uninsured and Underinsured Motorists Bodily Injury Coverage limits of \_\_\_\_\_ per person and \_\_\_\_\_ per occurrence. (Policy must be written for coverage limits equal to, or greater than the Minimum Financial Responsibility requirements)

\_\_\_\_\_  
Named Insured's Signature

\_\_\_\_\_  
Date

## Coverage C - 1 UNDERinsured Motorist Coverage

ID021  
IDAHO  
1st Edition

This coverage applies only to the vehicle(s) for which this endorsement is listed on the Declarations page.

For an additional premium it is agreed that UNDERinsured Motorist Coverage C-1 is added to Part II of your policy.

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **UNDERinsured motor vehicle** because of **bodily injury** sustained by the **insured person**.

### Limits of Liability

- a. Our liability under the UNDERinsured Motorist Coverage cannot exceed the limits of the UNDERinsured Motorist Coverage stated in this policy, and our maximum liability under the UNDERinsured Motorist Coverage is the lesser of:
1. The difference between the amount paid in **damages** to the **insured person** by and for any person or organization who may be legally liable for the **bodily injury**, and the limit of UNDERinsured Motorist Coverage; or
  2. The amount of **damages** established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the **bodily injury**.
- b. We will pay up to the limits of liability shown in the schedule below as shown in the Declarations. (Note: Not all of these limits may be available.)

<u>Coverage Designation</u>	<u>Limits</u>
U1	10/20
U2	15/30
U3	20/40
U4	25/50
U5	30/60 (Not available in Mid-Century)
U6	35/70
U7	50/100
U8	100/200
U9	100/300
U10	250/500

- c. The limit for "each person" is the maximum for **bodily injury** sustained by any person in any one **occurrence**. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit.

If the financial responsibility law of the place of the **accident** treats the loss of consortium as a separate claim, financial responsibility limits will be furnished.

- d. Subject to the limit for "each person," the limit for "each **occurrence**" is the maximum combined amount for **bodily injury** sustained by two or more persons in any one **occurrence**.

### Additional Definitions Used In This Part Only

- a. **Insured person** means:
1. You or a **family member**.
  2. Any other person while **occupying your insured car or your insured motorcycle**.
  3. Any person for **damages** that person is entitled to recover because of **bodily injury** to you, a **family member**, or other occupant of **your insured car or your insured motorcycle**.

But, no person shall be considered an **insured person** if the person uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.

b. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a vehicle:

1. Operated on rails or crawler-treads.
2. Which is a farm type tractor or any equipment designed or modified for use principally off public roads while not on public roads.
3. Located for use as a residence or premises.

c. **Underinsured Motor Vehicle** - means a land **motor vehicle** when:

1. the ownership, maintenance or use is insured or bonded for **bodily injury** liability at the time of the **accident**; and
2. its limit for **bodily injury** liability is less than the amount of the **insured person's damages**.

An **underinsured motor vehicle** does not include a land **motor vehicle**:

- (a) insured under the liability coverage of this policy;
- (b) furnished or available for the regular use of you or any **family member**;
- (c) owned by any governmental unit or agency;
- (d) which are farm tractors and other off road designed vehicles and equipment;
- (e) defined as an "uninsured motor vehicle" in your policy;
- (f) which is self insured within the meaning of any financial responsibility law which applies.

#### **Other Insurance**

1. The amount of UNDERinsured Motorist Coverage we will pay shall be reduced by the full amount of any **bodily injury** liability bonds or policies available to any party held liable for the **accident** regardless of the **insured person's** actual recovery from the liable party.
2. If any other collectible insurance applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.
3. We will not provide insurance for a vehicle other than **your insured car** or **your insured motorcycle**, unless the owner of that vehicle has no other insurance applicable to this part.
4. If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies,<sup>®</sup> the total amount payable among all such policies shall not exceed the limits provided for the single vehicle with the highest limits of liability.

Under Part II of the policy the provisions that apply to Exclusions and Arbitration remain the same and apply to this endorsement.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.



KELLY M KIMBERLING  
PO BOX 1252  
RATHDRUM ID 83858

JENNIFER EASTMAN  
PO BOX 1903  
POST FALLS ID 838771903



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# Farmers® Privacy Notice

*In the course of our business relationship with you, we collect information about you that is necessary to provide you with our products and services. We treat this information as confidential and recognize the importance of protecting it. We value your confidence in us.*

You trust us with an important part of your financial life. We are proud of our privacy policies and procedures and encourage you to review them carefully.

This notice from the member companies of the Farmers Insurance Group of Companies® listed on the back of this notice\* describes our privacy practices regarding information about our customers and former customers that obtain financial products or services from us for personal, family or household purposes. *When state law is more protective of individuals than federal privacy law, we will protect information in accordance with state law consistent with the requirements of federal preemption.*

## Information we collect

We collect and maintain information about you to provide you with the coverage, product or service you request and to service your account.

We collect certain information ("nonpublic personal information") about you and the members of your household ("you") from the following sources:

- Information we receive from you on applications or other forms, such as your social security number, assets, income and property information;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history;
- Information we receive from a consumer reporting agency or insurance support organization, such as motor vehicle records, credit report information and claims history; and
- If you obtain a life, long-term care or disability product, information we receive from you, medical professionals who have provided care to you and insurance support organizations regarding your health.

## How we protect your information

At Farmers, our customers are our most valued assets. Protecting your privacy is important to us. We restrict access to personal information about you to those individuals, such as our employees and agents, who provide you with our products and services. We require those individuals to whom we permit access to your customer information to protect it and keep it confidential. We maintain physical, electronic, and procedural safeguards that comply with applicable regulatory standards to guard your nonpublic personal information.

We do not disclose any nonpublic personal information about you, as our customer or former customer, except as described in this notice.

## Information we disclose

We may disclose the nonpublic personal information we collect about you, as described above, to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and to other third parties, all as permitted by law.

Many employers, benefit plans or plan sponsors restrict the information that can be shared about their employees or members by companies that provide them with products or services. If you have a relationship with Farmers or one of its affiliates as a result of products or services provided through an employer, benefit plan or plan sponsor, we will abide by the privacy restrictions imposed by that organization.

We are permitted to disclose personal health information (1) to process your transaction with us, for instance, to determine eligibility for coverage, to process claims or to prevent fraud; (2) with your written authorization, and (3) otherwise as permitted by law.

## Sharing information with affiliates

The Farmers family encompasses various affiliates that offer a variety of financial products and services in addition to insurance. Sharing information enables our affiliates to offer you a more complete range of products and services.



We may disclose nonpublic personal information, as described under **Information we collect**, to our affiliates, which include:

- Financial service providers such as insurance companies and reciprocals, investment companies, underwriters and brokers/dealers; and
- Non-financial service providers, such as management companies, attorneys-in-fact and billing companies.

We are permitted by law to share with our affiliates our transaction and experience information with you.

In addition, we may share with our affiliates consumer report information, such as information from credit reports and certain application information, that we have received from you and from third parties, such as consumer reporting agencies and insurance support organizations.

### **Your choice**

If it is your decision not to opt-out and to allow sharing of your information with our affiliates, you do not need to request an Opt-Out Form or respond to us in any way.

**If you have previously submitted a request to opt-out on each of your policies, no further action is required.**

If you prefer that we not share consumer report information with our affiliates, except as otherwise permitted by law, you may request an Opt-Out Form by calling toll free, 1-888-327-6335, (please have all of your policy numbers available when requesting Opt-Out Forms). A form will be mailed to your attention. Please verify that all of your Farmers policy numbers are listed. If not, please add the policy numbers on the form and mail to the return address printed on the form. We will implement your request within a reasonable time after we receive the form.

### **Modifications to our privacy policy**

We reserve the right to change our privacy practices in the future, which may include sharing nonpublic personal information about you with nonaffiliated third parties. Before we do that, we will provide you with a revised privacy notice and give you the opportunity to opt-out of that type of information sharing.

### **Website**

Our website privacy notices, such as the one located at farmers.com, contain additional information particular to website use. Please pay careful attention to those notices if you transmit personal information to Farmers over the Internet.

### **Recipients of this notice**

We are providing this notice to the named policyholder residing at the mailing address to which we send your policy information. If there is more than one policyholder on a policy, only the named policyholder on that policy will receive this notice, though any policyholder may request a copy of this notice. You may receive more than one copy of this notice if you have more than one policy with Farmers. You also may receive notices from affiliates, other than those listed below. Please read those notices carefully to determine your rights with respect to those affiliates' privacy practices.

### **More information about the federal laws**

This notice is required by federal law. If you would like additional information about these federal laws, please visit our website at farmers.com.

### **Signed:**

Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, Farmers Insurance Company, Inc. (A Kansas Corp.); Farmers Insurance Company of Arizona, Farmers Insurance Company of Idaho, Farmers Insurance Company of Oregon, Farmers Insurance Company of Washington, Farmers Insurance of Columbus, Inc.; Farmers New Century Insurance Company, Farmers Group, Inc.; Farmers Reinsurance Company, Farmers Services Insurance Agency, Farmers Services Corporation, Farmers Texas County Mutual Insurance Company, Farmers Underwriters Association, Farmers Value Added, Inc.; Farmers Financial Solutions, LLC member FINRA & SIPC<sup>1,2</sup>; FFS Holding, LLC; Farmers Services, LLC; ZHUS Services, LLC; Leschi Life Assurance Company, FIG Holding Company, FIG Leasing Co., Inc.; Fire Underwriters Association, Illinois Farmers Insurance Company, Mid-Century Insurance Company of Texas, Promatic Service Corporation (California), Promatic Service Corporation (Nevada), Texas Farmers Insurance Company, Farmers New World Life Insurance Company, Truck Underwriters Association, Civic Property and Casualty Company, Exact Property and Casualty Company and Neighborhood Spirit Property and Casualty Company.

<sup>1</sup>The above is a list of the affiliates on whose behalf this privacy notice is being provided. It is not a comprehensive list of all affiliates of the Farmers Insurance Group of Companies.

<sup>2</sup>You may obtain more information about the Securities Investor Protection Corporation (SIPC) including the SIPC brochure by contacting SIPC at (202) 371-8300 or via the internet at www.sipc.org. For information about FINRA and Broker Check you may call the FINRA Broker Check hotline at (800) 289-9999 or access the FINRA website at www.finra.org.

## Important policyholder message

Your policy has been issued with Uninsured Motorist and Underinsured Motorist Coverage limits equal to your Bodily Injury Liability Limits unless your agent receives a signed Disclosure Statement wherein you have either

- a) rejected either or both Uninsured Motorist and or Underinsured Motorists Coverage or
- b) signed an Election to reduce Uninsured and Underinsured Motorists Coverage.

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COUNTY OF KOOTENAI } SS  
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CLERK DISTRICT COURT  
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DEPUTY

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*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant.

Case No. CV 16-4603

**OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Defendant Farmers Insurance Company of Idaho ("Defendant"), by and through its undersigned counsel of record, Gjording Fouser, PLLC, and hereby submits the following Opposition to Plaintiff's Motion for Summary Judgment.

As an initial clarification point, it is undisputed that the subject case involves a declaratory judgment action on an Idaho policy of insurance issued to an Idaho resident for an accident occurring in the State of Washington. It is the Defendant's position that Idaho

law applies to this case under the most significant relationship test. *See Unigard Insurance Group v. Royal Globe Insurance Co.*, 100 Idaho 123, 594 P.2d 633 (1979). *See also Draper v. Draper*, 115 Idaho 973, 975, 772 P.2d 180, 182 (1989). It appears that Plaintiff similarly agrees as she cites to Idaho case law throughout her brief.

**I. NEITHER THE “DISCLOSURE STATEMENT” NOR THE “OUT OF STATE COVERAGE” PROVIDE UIM COVERAGE UNDER THE TERMS OF PLAINTIFF’S POLICY.**

In Section B of her Memorandum in Support of Motion for Summary Judgment, Plaintiff suggests that she is entitled to coverage under the “Disclosure Statement” and under the “Out of State Coverage.” However, neither provision is relevant to the disputed policy language in this case. Additionally, neither provision addresses the terms of the underinsured motorist (UIM) clause in Plaintiff’s policy. Similarly, neither provision provides any UIM coverage to Plaintiff.

**A. Disclosure Statement is not part of the UIM insurance agreement.**

The Disclosure Statement expressly, and in bold letters, states “[t]his general explanation is NOT an insurance agreement.” The Disclosure Statement continues “[a]ll auto liability policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage.” Simply said, the Disclosure Statement does not alter or change the terms of the underinsured motorist clause/endorsement in the subject policy. This Disclosure Statement merely provides an explanation of the two types of underinsured motorist coverage that are available for purchase under Idaho law. Specifically, underinsured motorist coverage is explained in this Disclosure Statement. The Disclosure Statement states “UIM coverage may pay for bodily

injury to an insured person who is legally *entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.*" (Emphasis added.)

The italicized words above are of high importance. First, UIM coverage is limited to circumstances where the owner or operator of a vehicle has inadequate limits of liability insurance coverage. This is fundamental to the purpose of underinsured motorist coverage. In Plaintiff's brief, she suggests that if a vehicle owner is "underinsured," then Plaintiff's own policy of insurance should apply to provide underinsured insured motorist benefits to her in this case. However, the critical flaw in Plaintiff's argument is that both the Disclosure Statement and the actual UIM language of her insurance policy provide that UIM payments are for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

Hence, while Plaintiff is correct that it does not matter if the individual who is underinsured is the operator or the owner, the type of insurance that is insufficient does matter. Here, Plaintiff is not arguing that the owner of the van she was riding in had any liability for proximately causing the subject. Nor has there has been any suggestion that the van's liability policy was inadequate. Rather, Plaintiff's argument is that the van's underinsured motorist coverage for Plaintiff was inadequate. Said differently, to implicate an underinsured motorist policy, the owner of the vehicle must have a legal liability to the injured person and there must be an inadequate liability policy to cover the damages of the injured person.

Despite Plaintiff's suggestion to the contrary, the phrase "offset" coverage does not mean that limits of two underinsured motorist policies are "offset" or, more specifically, "stacked." Additionally, the description in the Disclosure Statement does not alter the terms of the policy and the off-set is between the tortfeasor's liability policy and Plaintiff's underinsured motorist clause.

Accordingly, under the terms of Plaintiff's underinsured motorist policy in this case, her "off-set" or "difference in limits" argument based on the Disclosure Statement lacks merit.

**B. "Out of State Coverage" is irrelevant to the terms of Plaintiff's UIM insurance policy.**

Plaintiff next argues that the "out of state coverage" provision in the liability insurance section of the policy should apply to the terms of the underinsured motorist provision/endorsement. When read in context, the "out of state coverage" clearly addresses liability coverage exclusively and is irrelevant to her underinsured motorist coverage. The important phrase in the "out of state coverage" clause includes "because of the ownership, maintenance or use of your insured car."

The purpose of this clause, with respect to liability insurance, is to expressly state that if the insured is involved in a claim where he or she may be liable to another party in a state outside of Idaho, the liability policy will be expanded so that the insured has the minimum coverage required in that jurisdiction. For example, if an insured rear-ends someone in Oregon and Oregon requires liability policies of at least \$35,000, yet the insured only purchased Idaho's minimum of \$25,000, his or her policy will provide liability coverage up to the required Oregon amount of \$35,000.

In this case, in advancing her argument that she should be entitled to the highest UIM policy that was available to her based on Washington law, she fails to consider that this clause is only applicable to liability coverage, which is not at issue in this case. Moreover, Plaintiff is not involved in the subject claim “because of the ownership, maintenance or use of her insured car.” Accordingly, nothing about the “Out of State Coverage” clause, found under her liability coverage, extends her underinsured motorist coverage. Plaintiff’s argument that she should be entitled to \$500,000 under her Farmers’ policy under Washington R.C.W. 48.22.030(6) should be disregarded as a matter of law.

II. *Purdy v. Farmers Ins. Co. remains sound law and the “Other Insurance” clause limiting Plaintiff’s UIM coverage remains valid.*

UIM benefits do not “follow the person” in the same manner as first party insurance benefits, rather UIM benefits are tied to the vehicle being insured. UIM insurance is in part underwritten based on risk calculations by the insurance company in states with statutory schemes like Idaho. In writing underinsured motorist coverage benefits, the company may consider the type of car; the safety features of the car; the miles regularly logged on the car; etc. For example, if a vehicle offered only nominal safety features, the risk of injury would be far greater than if the insured were driving such vehicle as opposed to a vehicle that boasted state-of-the-art safety features. The heightened risks of nominal safety features increase the probability that damages will exceed a tortfeasor’s liability policy and, thereby, trigger an insured’s UIM coverage; once UIM coverage is invoked, the risks then increase the amount payable under the coverage. Additionally, analysis of Plaintiff’s policy reveals that Plaintiff’s UIM policy is expressly tied to the insured vehicle. See the definition of “insured person” and “underinsured motor vehicle.”



As discussed previously, the Idaho Supreme Court addressed the subject “Other Insurance” clause in a Farmers’ underinsured motorist policy. *Purdy v. Farmers Ins. Co.*, 138 Idaho 443, 446, 65 P.3d 184, 187 (2003).<sup>1</sup> This “Other Insurance” clause provides that if the insured is injured in a vehicle, which is not his or her insured vehicle and that vehicle owner carries UIM insurance, then only the other vehicle owner’s UIM policy applies. *Purdy*, 138 Idaho at 446, 65 P.3d at 187. The Purdys challenged this “non-owned” but insured UIM clause in a Farmers’ policy. *Id.* Ultimately, in *Purdy*, the Idaho Supreme Court concluded that the language in the Farmers’ policy was unambiguous and there was no coverage under the Purdys’ Farmers policy because Ms. Purdy was injured in a vehicle that was not her insured vehicle and the owner had an underinsured motorist policy. *Id.*

Despite this clear holding from the Idaho Supreme Court, Plaintiff suggests that the Idaho legislature’s adoption of a statutory requirement, Idaho Code §41-2502, requiring insurance companies to “offer” underinsured motorist benefits to an insured and obtain a written waiver if the benefits are not purchased in 2008, should invalidate *Purdy* on public policy grounds.

This argument is incorrect on several grounds. First, the Director of the Department of Insurance is the person entrusted by the legislature to determine whether or not given policies comport with the public interest and policies approved by the Director are thus presumed to be in harmony with public policy. *Hansen v. State Farm Mut. Auto Ins. Co.*, 112 Idaho 663, 667-68, 735 P.2d 974, 978-79 (1987). The Director's approval of an insurance policy form is an administrative determination that the policy form is in the

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<sup>1</sup> Of note, in the Purdys’ Farmers policy, this clause was found in paragraph 4, but otherwise was identically worded to the subject policy.

"public interest" in the absence of proof that a policy contains provisions which conflict with express legislative directives. I.C. § 41-113. *Hansen*, 112 Idaho at 667-68, 735 P.2d at 978-79.

In this case, the Director of Insurance approved the subject policy. Accordingly, the policy is presumptively in compliance with the prevailing public policy in Idaho because there is no proof that a policy contains provisions which conflicts with express legislative directives (*i.e.*, that underinsured motorist coverage be offered to all purchasing insurance).

Second, the public policy underlying Idaho's 2008 underinsured motorist statutory amendment is not well defined by case law. Under Idaho law, "public policy" is not something that a court can, by some feat of prestidigitation, conjure up from thin air. *Sloviaczek v. Estate of Puckett*, 98 Idaho 371, 377, 565 P.2d 564, 570 (1977) (dissenting opinion). Additionally, whether an insurance contract is against public policy "is to be determined from all the facts and circumstances of each case." *Hill v. Am. Family Mut. Ins. Co.*, 150 Idaho 619, 623, 249 P.3d 812, 816 (2011) citing *Foremost Ins. Co. v. Putzier*, 100 Idaho 883, 887, 606 P.2d 987, 991 (1980). A court may only defeat a contract provision limiting insurance coverage if the contract violates a policy clearly set forth by the legislature. *Sloviaczek*, 98 Idaho at 377, 565 P.2d at 570 (dissenting opinion).

The first case, *Hill*, invalidating an insurance clause on "public policy" grounds after the 2008 amendment is distinguishable from the subject case. *Hill*, 150 Idaho at 619, 249 P.3d at 812. Additionally, *Hill* does not provide any clear public policy directives with respect to UIM insurance in Idaho. *Id. at* 625. In *Hill*, the Court stated it must evaluate whether requiring insureds to comply with UIM exhaustion clauses would thwart the

Legislature's goal of protecting motorists from underinsured drivers. *Id.* The majority in *Hill* held that the exhaustion clause in the American Family policy was void based on Idaho's "public policy aimed at protecting its citizens from underinsured drivers" and "based on the doctrine of judicial economy, which includes shielding parties from excessive litigation and preventing unnecessary demands on the judicial system." *Id.*

However, the "public policy" used by the majority in the *Hill* decision is muddled and unclear. As pointed out by the dissent in *Hill*, the 2008 amendment merely requires insurance companies to "offer" underinsured motorist coverage in their motor vehicle liability policies. *Id.* at 632. However, the majority appears to suggest that UIM coverage is mandatory, rather than coverage that the insured has the option to purchase. Said differently, with a waiver, any insurance purchaser could simply opt to bear the risk of injury from an underinsured motorist, rather than to pay a policy premium to obtain such coverage for protection from underinsured motorists. As the dissent in *Hill* notes, the "majority's hyperbole indicates it believes that a statute simply requiring insurance companies to offer UIM coverage will somehow magically reduce accidents caused by underinsured motorists." *Id.*

The dissent continues to point out that the majority does not explain where this alleged doctrine of "favoring UIM coverage" arises, since the legislature only required that insurance companies offer such coverage and expressly provided that insureds can reject it. *Id.* Because the insured has the right to reject UIM coverage entirely in Idaho, the dissent notes that it is difficult to see how prohibiting an insured from entering into an insurance

contract for UIM benefits that requires exhaustion of the limits of the tortfeasor's liability policy as a precondition to recovering UIM benefits actually violates the public policy. *Id.*

The dissent further points out that the 2008 amendment does not expressly or implicitly address exhaustion clauses nor does the 2008 amendment address any of the procedures applicable to making a claim under UIM coverage. *Id.*

In 2016, the Idaho Supreme Court invalidated an anti-stacking provision in an Enumclaw UIM policy. *Gearhart v. Mut. of Enumclaw Ins. Co.*, 378 P.3d 454 (2016). Specifically, in *Gearhart*, the Court held that the “actual language employed in the Enumclaw policies was confusing to the extent that it is ineffective to establish a barrier to recovery of Trent's (the insured's) actual damages in the full amount of the limit provided in each of the two Enumclaw policies.” *Id.* at 456. The end result in *Gearhart* was that a child with damages in excessive \$600,000 was able to recover under two UIM insurance policies to make his recovery \$600,000, as opposed to just \$300,000. *Id.*

In *Gearhart*, the Court generically justified its result orientated decision noting that the barrier imposed by the anti-stacking provision “caused the insured to be undercompensated” and did not advance the public policy enunciated in *Hill*. Importantly, lacking in the majority opinion in *Gearhart* is analysis of how it was necessary to invalidate the anti-stacking provision because it violated a policy clearly set forth by the legislature. *Id.*

As the dissent in *Gearhart* aptly pointed out, the majority's vague reliance on the “public policy” should be disregarded for two reasons. *Id.* at 460. First, *Hill* dealt only with an exhaustion clause. It is difficult, if not impossible, to see how an exhaustion clause is

relevant to the analysis of an anti-stacking clause. *Id.* Second, in *Hill*, the exhaustion clause functioned as a complete barrier to UIM coverage, whereas the anti-stacking clause only limited the scope of the insured's UIM coverage (*i.e.*, adhering to the policy language of the anti-stacking clause still resulted in \$300,000 of UIM coverage to the insured). *Id.*

Given the limited scope of Idaho's 2008 UIM legislative amendment and the vague and unclear public policy grounds, the Court's decisions in *Hill* and *Gearhart* should be limited to the facts and contract provisions addressed in those decisions. Another distinguishing factor is that the policy provision addressed in *Hill* acted as a complete bar to obtaining UIM coverage, whereas the policy provision in this case merely provides for an election of UIM policies or a limitation on UIM.

Additionally, the goal orientated remedy fashioned under the umbrella of "public policy" in the majority's opinion *Gearhart* should not serve as persuasive authority for the Court in this case. Moreover, unlike *Gearhart*, this case does not involve interpretation of an anti-stacking provision. Nor is the non-owned auto provision limiting UIM coverage in this case "confusing" as the Court stated in *Gearhart*. In fact, the Idaho Supreme Court has already expressly concluded that the subject "Other Insurance" clause is unambiguous.

Hence, in this case, the Court should be guided by the clear opinion issued by the Supreme Court in *Purdy*, and reject Plaintiff's suggestion that the previously reviewed provision should now be invalidated as against public policy. Furthermore, the two cases decided after 2008 addressing public policy and underinsured motorist coverage are distinguishable from the present case. Plus, as addressed herein, the case law discussion of

public policy as it relates to underinsured motorist insurance is convoluted and unclear, especially when considered in relationship to the actual scope of Idaho's statute.

Moreover, the Court should use extreme caution in considering whether to invalidate a contract provision limiting UIM insurance coverage because Idaho law clearly provides that a contract provisions should only be defeated if it violates a policy clearly set forth by the legislature. Here, there is no evidence that the subject insurance clause violates a clearly established public policy with respect to Idaho's UIM statute. In sum, Idaho case law does not support a finding in Plaintiff's favor.

**III. Case law from other jurisdictions with dissimilar underinsured motorist statutes is not persuasive.**

Plaintiff argues that the Court should look to case law from Nebraska and Illinois in deciding a case involving Idaho public policy. However, it is important to note that both of these jurisdictions have very different underinsured motorist statutory schemes than Idaho. Both Illinois and Nebraska require that an insurance company include underinsured motorist coverage in every policy and there is no provision allowing the insured to opt out such coverage like Idaho. See 215 Ill. Comp. Stat. Ann. 5/143A-2 and Neb. Rev. Stat. Ann § 44-6408. Thus, the case law from these jurisdictions carries no persuasive authority.

**CONCLUSION**

For the reasons set forth herein, the Court should grant Defendant's Motion for Summary Judgment and deny Plaintiff's Cross-Motion for Summary Judgment as a matter of law because *Purdy v. Farmers Ins. Co.* has not been, and should not be, overruled. The "Other Insurance" provision at issue in this case is unambiguous and enforceable.

DATED this 17 day of October, 2016

GJORDING FOUSER, PLLC

By Julianne S. Hall  
Trudy Hanson Fouser – Of the Firm  
Julianne S. Hall – Of the Firm  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17 day of October, 2016, a true and correct copy of the foregoing was served on the following by the manner indicated:

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Aaron A. Crary  
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Spokane, WA 99206

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- Hand-Delivery
- Overnight Delivery
- Facsimile – 509/924-7771
- Email
- Electronic Transmission (File & Serve)

Julianne S. Hall  
Julianne S. Hall

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]* #249

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CLERK DISTRICT COURT  
*[Signature]*  
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*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant.

Case No. CV 16-4603

**REPLY IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW Defendant Farmers Insurance Company of Idaho, by and through its undersigned counsel of record, Gjording Fouser, PLLC, and hereby submits the following Reply in support of its Motion for Summary Judgment.

As discussed in Defendant's Motion for Summary Judgment and the Memorandum in Support of the Motion, as a matter of law, the Court should grant Defendant's Motion for Summary Judgment based on *Purdy v. Farmers Ins. Co. Purdy v. Farmers Ins. Co.*, 138



Idaho 443, 446, 65 P.3d 184, 187 (2003). *Purdy* has not been overruled and remains binding precedent that must be followed. The "Other Insurance" provision at issue in this case is unambiguous and enforceable.

Additionally, as discussed in Defendant's Opposition to Plaintiff's Motion for Summary Judgment, there is no Idaho case law specifically providing a public policy which would invalidate the subject "Other Insurance" provision. The Idaho Supreme Court has not revisited the subject policy provision since issuing its decision in *Purdy*.

Furthermore, the 2008 legislative addition of mandatory "offering" of UIM insurance by companies cannot be equated with or construed as Idaho mandating the purchase by all of UIM insurance.

### CONCLUSION

For the foregoing reasons and the reasons set forth in the Defendant's Memorandum in Support and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, Farmers Insurance Company of Idaho respectfully requests the Court grant its motion for summary judgment and find that coverage is excluded under the terms of the Policy.

DATED this 25<sup>th</sup> day of October, 2016

GJORDING FOUSER, PLLC

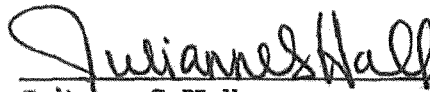
By Julianne Hall  
Trudy Hanson Fouser – Of the Firm  
Julianne S. Hall – Of the Firm  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25 day of October, 2016, a true and correct copy of the foregoing was served on the following by the manner indicated:

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\_\_\_\_\_  
Julianne S. Hall

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CLERK DISTRICT COURT

DEPUTY

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman,

Plaintiff,

v.

FARMERS INSURANCE COMPANY,  
an Idaho corporation,,

Defendants.

Case No. CV 16-4603

**REPLY MEMORANDUM IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**I. REPLY**

Recent Idaho Supreme Court case law confirms that the contract language of the insurance agreement, and public policy supports granting Plaintiff UIM coverage in this case. These recent cases are very favorable to Plaintiff's claim. Farmer's is attempting to distinguish the recent controlling case law by relying on arguments from these dissents. The dissents do not contain any precedential value. The court should disregard these arguments, and follow the majority decision in these cases—rulings that grant Plaintiff UIM coverage.

### **A. The Disclosure Statement Is Part Of The UIM Insurance Policy**

Farmers sets forth two arguments as to why the Disclosure Statement (Disclosure) is not part of the UIM policy. These arguments are not correct. The Disclosure is required to be included with the UIM insurance policy. *See* I.C. § 41-2502 (3); Department of Insurance Bulletin No. 08-08. *See* Affidavit of Aaron A. Crary, Exhibit G. If the Disclosure was not part of the policy, as Farmer's argues, the mandatory language of the statute requiring its inclusion would be meaningless. The Disclosure explains and modifies Plaintiff's UIM policy.

In addition, the actual disclosure statement is modified as to Jennifer Eastman. In Exhibit F page 60, Farmers elected under the definition of UIM **to include the statement that "Your insurance policy offers "Difference in Limits" which is explained as follows...."**

Farmers affirmatively represented that Ms. Eastman's **"UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured owner(s) or operator(s)."** Exhibit G at Page 60. (Emphasis added). The policy and disclosures indicated the limits are reduced and not eliminated if there are any other insureds. Farmers by representation defined how recoveries for underinsured owners and operators are to be considered under the terms of her policy. Farmers should be estopped from denying coverage.

Farmer's also argues that the Disclosure limits UIM coverage to situations where there is only "inadequate limits of *liability coverage*", arguing this

provision is not meant to apply to inadequate UIM or UM coverage. This is also wrong. The 2008 amendments made UIM and UM part of “liability coverage”:

**UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE FOR AUTOMOBILE INSURANCE -- EXCEPTIONS. (1) Except as otherwise provided in subsection (2) of this section, no owner's or operator's policy of motor vehicle liability insurance that is subject to the requirements of section 49-1212(1) or (2), Idaho Code, shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death as set forth in section 49-117, Idaho Code, as amended from time to time, under provisions approved by the director of the department of insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured and underinsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.**

I.C. 41-2502(1). “Liability insurance” is defined as including UIM and UM. Thus, when the Disclosure identifies that UIM kicks in when there is “inadequate limits of liability coverage”, by statute, UIM coverage is included in this definition.

**B. Unless There Is “Clear And Precise Language” Restricting Coverage, UIM Coverage Is Available To Plaintiff.**

Based on the Disclosure Statement and the insurance policy language, a reasonable insurance buyer would believe she had UIM coverage in this case. As the Idaho Supreme Court has recently stated, “[t]he burden is on the insurer to use clear and precise language if it wishes to restrict the scope of its coverage.” *Gearhart v. Mutual of Enumclaw Insurance Company*, 160 Idaho 666, \*457 (2016); citing *Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 320-21 (2010). Farmer’s has not restricted UIM coverage.

In *Gearhart*, the Idaho Supreme Court found that the insurance company failed to “clearly and precisely” restrict UIM coverage in its anti-stacking provision. In that case, a divorced couple owned separate, identical \$300,000 UIM policies on their child who was severely injured while riding in a third party vehicle. The child sought to recover \$300,000 under each policy, for a total of \$600,000 in coverage. The insurance company argued that the anti-stacking provision precluded the child from stacking the limits. The court reviewed the insurance policy language and concluded the anti-stacking language did not “clearly and precisely” restrict UIM coverage:

The language employed in the Other Insurance provision of the two Enumclaw policies is confusing to the extent of being an ineffective barrier to the coverage afforded by both policies. The provision reads:

If there is other applicable similar insurance we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. If this policy and any other policy providing similar insurance apply to the accident, the maximum limit of liability under all the policies shall be the highest applicable limit of liability under any one policy. However, insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

Good luck to the average insurance buyer in deciphering the meaning of this provision.

*Gearhart*, 160 Idaho at \*457. The Plaintiff in *Gearhart* was able to stack both UIM benefits for a total of \$600,000 coverage.

In our case, Farmer’s has not “clearly and precisely” restricted Plaintiff’s UIM coverage. Farmer’s points to an “Other Insurance” sentence as somehow limiting UIM coverage in this case:

### Other Insurance

3. We will not provide insurance for a vehicle other than your insured car or your insured motorcycle, unless the owner of that vehicle has no other insurance applicable to this part.

Crary Aff., Exhibit 2. But this provision doesn't identify what "no other insurance applicable to this part" means. To a reasonable insurance purchaser, this provision could provide a limit to coverage when traveling in a vehicle other than the insured vehicle in a variety of circumstances: the driver/owner doesn't have any liability insurance available, the driver/owner is uninsured, the driver/owner is underinsured, or merely the driver/owner has inadequate liability or underinsurance coverage. This language does not "clearly and precisely" restrict Plaintiff from stacking her own UIM coverage on top of UIM coverage from a third party.

The situation is made worse for the Plaintiff and other insureds when considering confusing and conflicting portions of Farmer's UIM policy. For instance, the C-1 Underinsured Motorist Coverage supplement appears to extend coverage resulting from injury to the insured from *any* underinsured vehicle:

We will pay all sums which an insured person is legally entitled to recover as damages from the owner or operator of an UNDERinsured motor vehicle because of bodily injury sustained by the insured person.

Affidavit of AAC, Exhibit 2, pg. 62. Furthermore, the Disclosure Statement (Disclosure) defines UIM as affirmatively providing additional coverage, which is offset by payment from other insurance:

UIM coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

UIM coverage is offered in different form by different insurers, and insurers are not required to offer more than one type of UIM coverage. There are two commonly available forms of UIM coverage - "Difference in limits" (or "Offset") Coverage and "Excess" Coverage. Your insurance policy offers "Difference in Limits" which is briefly explained below:

- **"Difference in Limits" (or "Offset") Coverage** – The policy's UIM coverage limits are reduced or eliminated by the amount of any damages *recovered by any insured, from or on behalf of any underinsured(s) owner or operator(s).*

Affidavit of Aaron A. Crary, Exhibit A (emphasis added). As the Disclosure states, the UIM is only reduced or "offset" by insurance recovered from other underinsured. Nothing in the C-1 supplement or the Disclosure eliminates Plaintiff's UIM just because there is UIM from other sources.

Echoing the words of Justice Burdick, in regards to these seemingly conflicting UIM policy provisions, "[g]ood luck to the average insurance buyer in deciphering the meaning of th[ese] provision[s]." *Gearhart*, 160 Idaho at \*457. In summary, the Disclosure indicates that your UIM coverage will only be "offset" by limits paid by other policies for your claims. The C-1 UIM supplement indicates UIM is available to *any insured* when an owner or operator is underinsured. This language would lead a reasonable insurance buyer to believe she would have UIM coverage while traveling in another vehicle if there was insufficient insurance to cover her injuries. Farmer's has not clearly and precisely



restricted coverage—in fact the language indicates the contrary, that there is coverage.

### C. Public Policy Against Anti-Stacking Applies In This Case.

UIM Public policy supports fully compensating tort victims. *Gearhart*, 160 Idaho at \*458. In *Gearhart*, the Supreme Court applied the policy considerations addressed in the *Hill* case and found that allowing an insured to stack UIM coverage supported public policy. 160 Idaho \*454. The public policy factual analysis in *Gearhart* is almost identical to the analysis in our case.

In *Gearhart* the plaintiff was injured while traveling in a vehicle not owned by his parents and made a claim under each parents' separate UIM policy of \$300,000 each. The insurance company tried to argue that policy reasons supported rejecting the stacking of two \$300,000 UIM policies: anti-stacking should be upheld to make insurance available to other prospective insured. The Court found this argument unpersuasive:

**It is posited that the anti-stacking provisions must be upheld in order to make insurance affordable and available to other prospective insureds. However, it is not clear that this is particularly accurate under the circumstances of this case.** Both of Trent's parents bought Enumclaw policies that purportedly covered their child for up to \$300,000 in UIM benefits in the event of an accident. If the parents had decided to purchase just one policy with a much higher UIM benefit, it is debatable that the premium would have been more than twice as much. Indeed, it is intuitive that one single policy with a substantially higher limit would have likely been less than the cost of two separate policies with lower limits. Since the record does not disclose the premium costs that might have been involved under either scenario, it is debatable as to whether or not public policy would be better served by enforcing the anti-stacking limit contended for by Enumclaw under the facts of this case. **What we do know with some certainty, however, is that reversal of the district court's judgment would result in Trent being substantially undercompensated**

**for his injuries, even though reasonable insurance buyers would be excused if they were to conclude that two separate \$300,000 UIM policies purchased by two separate purchasers would be available to cover injuries exceeding \$600,000. We therefore affirm the district court's holding, but on the ground that the actual language employed in the Enumclaw policies is confusing to the extent that it is ineffective to establish a barrier to recovery of Trent's actual damages in the full amount of the limit provided in each of the two Enumclaw policies**

*Gearhart*, 160 Idaho at \*458-59 (emphasis added). Premiums were paid for both policies and public policy supported stacking both UIM limits to fully compensate the Plaintiff.

The *Gearhart* Court reiterated the public policy that supports fully compensating tort victims:

**It is difficult to see how the public policy enunciated in *Hill* is advanced by allowing Enumclaw to cause Trent to be undercompensated for his injuries by imposing the barrier of the anti-stacking provision under the circumstances of this case. It must be recalled that Trent's parents each purchased an Enumclaw policy, each paying the required premium in order to obtain \$300,000 in UIM benefits for the protection of their child. As noted above, Enumclaw concedes for purposes of this action that Trent's damages "exceeded the coverages available under all policies at issue in this case." **If the barrier sought to be imposed by Enumclaw is allowed to be imposed, Trent will end up getting undercompensated by more than half. Thus, either his parents or perhaps the taxpayers will end up having to bear the additional costs for his medical care.****

*Id.* at \*45 (emphasis added).

The analysis in *Gearhart*, relying on *Hill*, is spot on to our case. Plaintiff asserts damages (in excess of \$209,237.60) well above the total recoverable insurance of \$98,846.00, which includes considerable amounts of income and incurred medical expenses. Just like in *Gearhart*, Farmer's is trying to avoid stacking UIM benefits in this case. As *Gearhart* emphasized, Plaintiff paid for UIM coverage of \$500,000 under her policy. If she is denied the right to recover UIM benefits *she paid for* she will be

undercompensated for her injury. The public policy identified in *Hill* and *Gearhart* supports Plaintiff's UIM coverage in this case.

IV. CONCLUSION

The recent Idaho Supreme Court case law confirms that Plaintiff is entitled to UIM coverage in this matter and summary judgment should be granted finding coverage.

DATED this 25 day of October, 2016.

CRARY, CLARK, DOMANICO & CHUANG

By: \_\_\_\_\_

AARON A. CRARY

Attorney for Jennifer Eastman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25 day of October, 2016, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Ms. Trudy Fouser  
Ms. Julianne S. Hall  
121 N. 9<sup>th</sup> Street, Suite 600  
Boise, ID 83701  
Fax: (208) 336-9177  
Email: [tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)  
[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

  x   U.S. Mail  
       Facsimile  
       Courier Service  
       Overnight Mail  
  x   Email

2016 OCT 31 AM 11:20

CLERK DISTRICT COURT

DEPUTY

*Marc M. [Signature]*

ROBERT B. CRARY (ISB#5693)  
AARON A. CRARY (ISB#8517)  
CRARY, CLARK, DOMANICO, & CHUANG P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206  
Tele: (509) 926-4900  
Fax: (509) 924-7771

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman, )  
)  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
FARMERS INSURANCE COMPANY, )  
an Idaho corporation, )  
)  
Defendants. )  
)  
)  
)  
\_\_\_\_\_ )

Case No: CV 16-4603

AFFIDAVIT OF AARON  
A. CRARY IN SUPPORT  
OF PLAINTIFF'S  
REPLY TO  
DEFENDANT'S  
MOTION FOR  
SUMMARY JUDGMENT

I, AARON A. CRARY, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and competent to testify in the above-referenced matter.
2. I am the attorney for the plaintiff Jennifer Eastman and duly licensed to practice law in the State of Idaho.

AFFIDAVIT OF AARON A. CRARY IN SUPPORT OF  
PLAINTIFF'S REPLY TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT - 1

3. Attached to this Affidavit as **Exhibit G** are true and correct copies of Idaho Uninsured Motorist and Underinsured Motorist Disclosure Statement and Bulletin 08-08. Idaho Code § 41-2502.

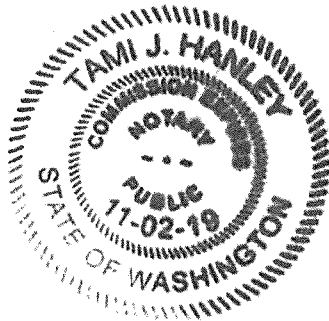
DATED this 25 day of October, 2016.

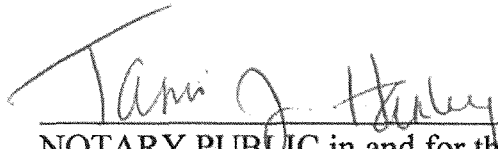
CRARY, CLARK, DOMANICO & CHUANG, P.S.

BY: 

AARON A. CRARY  
Attorney for Plaintiffs

SUBSCRIBED AND SWORN to me this 25<sup>th</sup> day of October, 2016.



  
NOTARY PUBLIC in and for the State  
of Washington, residing at Spokane  
My Commission Expires: 11/2/19

AFFIDAVIT OF AARON A. CRARY IN SUPPORT OF  
PLAINTIFF'S REPLY TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT - 2

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25 day of October, 2016, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Ms. Trudy Fouser  
Ms. Julianne S. Hall  
121 N. 9<sup>th</sup> Street, Suite 600  
Boise, ID 83701  
Fax: (208) 336-9177  
Email: [tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)  
[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

U.S. Mail  
 Facsimile  
 Courier Service  
 Overnight Mail  
 Email

AFFIDAVIT OF AARON A. CRARY IN SUPPORT OF  
PLAINTIFF'S REPLY TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT - 3

# EXHIBIT G



**SAMPLE DISCLOSURE STATEMENT AND REJECTION FORM**

**IDAHO UNINSURED MOTORIST AND UNDERINSURED MOTORIST  
DISCLOSURE STATEMENT**

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** coverage and **Underinsured Motorist (UIM) bodily injury** coverage, unless a named insured has rejected these coverages in writing. If the insured is not provided a copy of the written rejection at the time it is made, the insured may receive a copy from the insurer upon request.

**UM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle that has no insurance, or from a hit-and-run vehicle where the owner or operator is unknown.

**UIM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

**UIM** coverage is offered in different forms by different insurers, and insurers are not required to offer more than one type of UIM coverage. The two most commonly available forms of UIM coverage - "Difference in Limits" (or "Offset") Coverage and "Excess" Coverage – are briefly explained as follows:

- **"Difference in Limits" (or "Offset") Coverage** – The policy's UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured owner(s) or operator(s).
- **"Excess" Coverage** – The policy's UIM coverage limits are **not** reduced by the amount of damages recovered from any underinsured owner(s) or operator(s). UIM coverage limits are available to pay damages when the insured's damages exceed what can be recovered from the owner(s) or operator(s) of an underinsured vehicle.

**This general explanation is NOT an insurance agreement. All auto liability insurance policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. For a more detailed explanation of these coverages, refer to your policy. The Idaho Department of Insurance can also provide assistance with insurance related questions. Call 800-721-3272 or visit the Department's website at [www.doi.idaho.gov](http://www.doi.idaho.gov).**

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**UNINSURED AND UNDERINSURED MOTORIST COVERAGE WAIVER**

I have read the above explanation of uninsured motorist and underinsured motorist coverages. I understand that I have the right to reject either or both coverages. I also understand that by signing the rejection below I am informing my insurer that I do not want the rejected coverage(s) to be included under my automobile liability policy, or under any renewal or replacement of my policy. I choose to reject the coverage(s) identified below:

**INSURER:** \_\_\_\_\_ **POLICY NUMBER:** \_\_\_\_\_

- I hereby reject Uninsured Motorist Bodily Injury Coverage
- I hereby reject Underinsured Motorist Bodily Injury Coverage

*State of Idaho*  
**DEPARTMENT OF INSURANCE**

C.L. "BUTCH" OTTER  
Governor

700 West State Street, 3rd Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Phone (208) 334-4250 Fax (208) 334-4298  
<http://www.doi.idaho.gov>

WILLIAM W. DEAL  
Director

**BULLETIN NO. 08-08**

**DATE:** July 24, 2008

**TO:** Insurers offering Motor Vehicle Liability Insurance Policies in Idaho.

**FROM:** William W. Deal, Director

**SUBJECT:** New Requirements for Underinsured Motorist Coverage for Motor Vehicle Liability Policies – Idaho Code § 41-2502

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The 2008 Legislature enacted House Bill 429, which makes important changes to Idaho law relating to the offer of underinsured and uninsured motorist coverage. The purpose of this bulletin is to inform insurers of the new requirements and to set forth wording that has been approved by the Director as meeting the new law's requirement for a standard statement that must be provided to insureds explaining uninsured and underinsured motorist coverage. This bulletin provides only a limited overview of the requirements of the new law. Affected carriers are responsible for meeting all requirements of the new law and should carefully review the entire bill, which can be accessed at the following internet link: <http://www3.state.id.us/oasis/H0429.html>.

House Bill 429 amends Idaho Code § 41-2502 to require that motor vehicle liability policies sold or renewed on and after January 1, 2009 include underinsured motorist (UIM) bodily injury coverage in addition to uninsured motorist (UM) coverage unless the coverage has been expressly rejected in writing by a named insured. A named insured has the right to reject either or both UM or UIM coverage. The rejection must be in writing or in an electronic form that complies with Idaho's Uniform Electronic Transactions Act (Chapter 50 of Title 28, Idaho Code). Once a coverage rejection is obtained, the rejection applies to any renewal or replacement policy. **UM and UIM coverage must be included in a policy unless and until the insurer receives the named insured's written rejection.**

The uninsured motorist and underinsured motorist coverages must be at no less than the minimum limits required by Idaho Code § 49-117. The new law does not prohibit an insurer from requiring that the UM and UIM coverage limits be equal.

House Bill 429 also requires that insurers provide a named insured a "standard statement" approved by the Director of the Department of Insurance "explaining in summary form, both uninsured and underinsured motorist coverage, and the different forms of underinsured motorist coverage that might be available from insurers in Idaho." Accompanying this bulletin is the standard statement language that has been approved by the Director as meeting the requirements of House Bill 429. Any insurer that wishes to use a statement that contains substantive differences from the standard statement

accompanying this bulletin must submit the proposed wording to the Department of Insurance for approval prior to use in this state. For new policies with an effective date on or after January 1, 2009, the named insured must be provided with the standard statement prior to the issuance of a new policy.

The new law also requires that the standard statement be provided to an insurer's existing policyholders upon their first renewal on or after January 1, 2009. Therefore, even if an existing policyholder has previously waived either or both UM and UIM coverage, a named insured must still be provided the standard statement upon the first renewal in 2009. Once an insured has received the standard statement and made a decision regarding UM and UIM coverage, no further notices are required.

Each insurance carrier must establish a procedure that is in compliance with the new statute for existing policies in the case where the named insured has already signed a rejection form for UM and/or UIM coverage. For example, a carrier may elect to have existing insureds complete a new written statement rejecting coverage, or it would be acceptable for the carrier to replace the rejection statement portion of the standard statement form set forth below with a statement similar to the following: "According to our records you have previously provided us with a written rejection of uninsured motorist and underinsured motorist coverage and these coverages are therefore not included in your policy." If an existing insured previously provided a written rejection of UM coverage, but not UIM coverage, the policy must include UIM coverage until the insured has been provided the standard statement and the insurer has received a written rejection of the coverage from a named insured.

Casualty insurers selling motor vehicle liability policies in the state of Idaho should update their forms as well as new business and renewal processes to assure they are in compliance with the changes to Idaho Insurance Code § 41-2502. Insureds who have not previously rejected UM or UIM coverage must be provided the standard summary statement prior to deciding whether to reject coverage, and each insurer must be able to demonstrate that the insured was provided the summary statement at the time of or prior to being provided the opportunity to reject coverage. For this reason, the Department recommends, but does not require, that the rejection form be included as a part of the standard summary in a manner similar to that shown below.

Persons with questions about compliance with the new law or questions regarding filings affected by this bulletin should contact the Department of Insurance, Rates & Forms Section at (208)334-4250.

STATE OF IDAHO  
 COUNTY OF KOOTENAI  
 FILED: 1/15/16  
 AT: O'ROCK, IDAHO  
 CLERK, DISTRICT COURT  
 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

<b>JENNIFER EASTMAN, a single woman,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 2016-4603</b>
	)	
v.	)	<b>MEMORANDUM DECISION AND</b>
	)	<b>ORDER ON THE PARTIES' CROSS-</b>
<b>FARMER INSURANCE COMPANY, an</b>	)	<b>MOTIONS FOR SUMMARY</b>
<b>Idaho corporation</b>	)	<b>JUDGMENT</b>
	)	
<b>Defendant.</b>	)	

This case is about an insured motorist (Plaintiff) who sustained substantial injury from a car accident while riding as a passenger in a van as part of a carpool program. Plaintiff seeks for her insurance provider (Defendant) to cover her for her injuries. Specifically, Plaintiff argues that the underinsured motorist coverage she maintains with Defendant entitles her to compensation minus that which she has already recovered from the insurance provider of the van and the other vehicle that collided with the van. Both parties moved for summary judgment. The hearing on the parties' cross-motions for summary judgment was held on November 1, 2016. For the reasons set forth below, the Court grants Defendant's motion for summary judgment and denies Plaintiff's motion for summary judgment.

**I. FACTS AND PROCEDURE**

**A. Plaintiff's insurance.**

Plaintiff, a 35-year-old nurse who lives in Post Falls, Idaho and works in Spokane,

Washington, was the named insured on an automobile policy issued by Defendant for her 2005 Toyota RAV 4. Aff. Mark Stevens (“Steven’s Aff.”) Ex. A at FAR48.<sup>1</sup> The relevant provisions of Part II of Plaintiff’s automobile insurance policy read:

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

....

4. We will not provide insurance for a vehicle other than **your insured car**, unless the owner of that vehicle has no other insurance applicable to this part.

Aff. Aaron Crary Supp. Mot. Summ. J. (“Crary’s Aff.”) ¶ 8, Ex. F at pp. 23, 25 (alterations omitted)<sup>2</sup>. Plaintiff directs the Court’s attention to other documents, generally referred to by the parties as the disclosure statement and supplemental endorsements. The disclosure statement, in pertinent part, reads:

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** coverage and **Underinsured Motorist (UIM)** bodily injury coverage, unless a named insured has rejected these coverages in writing. .

..

....

**UIM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

....

. . . Your insurance policy offers “Difference in Limits” which is briefly explained below:

“**Difference in Limits**” (or “**Offset**”) Coverage – The policy’s UIM coverage limits are reduced or eliminated by the amount of any damages

<sup>1</sup> Plaintiff’s Policy Number is 195150378, which was effective January 27, 2014– July 27, 2014. Answer & Demand Jury Trial 2, ¶ 6.

<sup>2</sup> Generally, the bold font indicates that the word is defined in the insurance contract and is bolded in the original.

recovered by an insured, from or on behalf of any underinsured owner(s) or operators(s).

....

**This general explanation is NOT an insurance agreement. All auto liability insurance policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. . . .**

Crary's Aff. ¶ 8, Ex. F at p. 60 (alterations omitted).

Although the parties have not established how, when, or in what order Plaintiff received the documents the parties agree the supplemental endorsements are part of the policy.<sup>3</sup> The relevant endorsement, identified as ID021, Idaho, 1st edition (Coverage C-1 Underinsured Motorist Coverage), in pertinent part, reads:

For an additional premium it is agreed that UNDERinsured Motorist Coverage C-1 is added to Part II of your policy.

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **UNDERinsured motor vehicle** because of **bodily injury** sustained by the **insured person**.

Crary's Aff. ¶ 8, Ex. F at p. 62. The liability coverage under the endorsement is limited to the lessor of:

1. The difference between the amount paid in **damages** to the **insured person** by and for any person or organization who may be legally liable for the **bodily injury**, and the limit of UNDERinsured Motorist Coverage, or
2. The amount of **damages** established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the **bodily injury**.

Crary's Aff. ¶ 8, Ex. F at p. 62. Liability is also limited by, *inter alia*, paragraph four of the "other insurance" portion of the endorsement: "We will not provide insurance for a vehicle other than **your insured car** or **your insured motorcycle**, unless the owner of that vehicle has no

---

<sup>3</sup> Compare Steven's Aff. 2, ¶ 2, Ex. A *with* Crary's Aff. 2, ¶ 8, Ex. F.

other insurance applicable to this part.” Crary’s Aff. ¶ 8, Ex. F at p. 63. The endorsement provides that it is “part of [Plaintiff’s] policy. It supersedes and controls anything to the contrary.” Crary’s Aff. ¶ 8, Ex. F at p. 63.

The insurance contract defines nearly every term that appears in bold font. Crary’s Aff. ¶ 8, Ex. F at p. 20. Additionally, portions of the insurance contract include definitions that (most often) apply only to that part or section. *See* Crary’s Aff. ¶ 8, Ex. F at pp. 20–32. Many of the supplemental endorsements also contain definitions that only apply within that endorsement provision as well. *See* Crary’s Aff. ¶ 8, Ex. F at pp. 34–64. Generally, the terms relevant here are defined within the policy, as follows:

**Accident** . . . means a sudden event, including continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage** neither expected nor intended by the insured person.

**Bodily injury** means bodily injury to or sickness, disease or death of any person.

**Damages** are the cost of compensating those who suffer **bodily injury** or **property damage** from an **accident**.

...

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

Crary’s Aff. ¶ 8, Ex. F at p. 20. Moreover, the policy sets forth general exclusions: “This coverage shall not apply to bodily injury sustained by a person: . . . If the injured person was **occupying** a vehicle you do not own which is insured for this coverage under another policy.” Crary’s Aff. ¶ 8, Ex. F at p. 24. The parties agree that the relevant documents were delivered to Plaintiff. The parties’ substantive contentions rest, primarily, on whether the disclosure statement is part of the insurance contract as opposed to a general informational statement.

## B. The automobile accident

Generally, both parties agree on the material facts relating to Plaintiff's injuries.<sup>4</sup> On March 18, 2014, a 2009 Chevrolet Van was carrying passengers when it was rear-ended by "the other driver" on Interstate 90 in Washington state. Pl.'s Compl. ¶ 4; Mem. Supp. Def.'s Mot. Summ. J. ("Def.'s Br."), 2. The van was owned by Spokane Transit Authority and insured with Washington State Transit Insurance. Pl.'s Compl. ¶¶ 5, 6; Def.'s Br. 2. The driver of the other vehicle was also insured. Pl.'s Compl. ¶ 6; Def.'s Br. 2; Answer & Demand Jury Trial ("Answer"), 2, ¶ 6.

As a result of the automobile accident, Plaintiff suffered damages in excess of the \$98,846 she has recovered thus far. Pl.'s Compl. ¶¶ 5–6; Def.'s Br. 2. The van, through Washington State Transit Insurance, was covered for \$60,000. Pl.'s Compl. ¶ 6; Def.'s Br. 2. Due to multiple claimants, Plaintiff received a portion somewhat less than the \$60,000 limit – \$48,846. Pl.'s Compl. ¶ 6; Def.'s Br. 2. Additionally, Plaintiff recovered the other driver's policy limit of \$50,000. Pl.'s Compl. ¶ 6; Def.'s Br. 2. Thus far, Plaintiff has recovered \$98,846 from both the other driver and Washington State Transit Insurance. Pl.'s Compl. ¶¶ 5–6; Def.'s Br. 2. Plaintiff requested coverage from Defendant but was denied. Pl.'s Compl. ¶¶ 5–6; Def.'s Br. 2. Defendant's denial of Plaintiff's request for coverage is the basis for this declaratory action.

## II. STANDARD OF REVIEW

"The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

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<sup>4</sup> Defendant's Counsel stated that, "[u]nlike some motions for summary judgment, this does not involve a heavy factual dispute. This is more of a legal question . . ." Mot. Hr'g Nov. 1, 2016 at 3:13 p.m.; *compare* Pl.'s Mem. Support Mot. Summ. J. 2–4 *with* Def.'s Mem. Support Mot. Summ. J. 2–3 (noting that the parties' statements of facts do not genuinely conflict in any material way regarding the Plaintiff and the automobile accident).



I.R.C.P. 56(a) (2016). Once the movant has properly supported the motion for summary judgment, the non-moving party must come forward with evidence contradicting the evidence submitted by the movant to establish the existence of a material issue of disputed fact. *Zehm v. Associated Logging Contractors, Inc.*, 116 Idaho 349, 350, 775 P.2d 1191, 1192 (1988). If the record contains conflicting inferences or if reasonable minds might reach different conclusions, summary judgment must be denied. *Roell v. City of Boise*, 130 Idaho 199, 200, 938 P.2d 1237, 1238 (1997).

However, not all evidence in the record will raise genuine issues: “[T]o withstand a motion for summary judgment, the [non-moving party’s] case must be anchored in something more solid than speculation. A mere scintilla of evidence is not enough to create a genuine issue.” *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct. App. 1986). The facts in the record are to be liberally construed in favor of the party opposing the motion. *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). Additionally, the opposing party cannot rest upon mere allegations or denials; instead, the party’s response, by way of affidavits or otherwise, must set forth specific facts showing that there is a genuine issue of material fact. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996).

“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion; . . .” I.R.C.P. 56(e). Rule 56(f) provides that, “[i]f the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.” I.R.C.P. 56(f). Where parties have filed cross-

motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude summary judgment. *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001).

### III. ANALYSIS

Plaintiff argues that the Idaho Supreme Court's ruling in *Purdy v. Farmers Ins. Co. of Idaho*, 138 Idaho 443, 65 P.3d 184 (2002) is no longer good law in light of recent cases and legislative amendments and thus is entitled to coverage here. Specifically, the Plaintiff raises two arguments: that the terms of the insurance agreement entitle her to UIM coverage and that Idaho public policy prohibits Defendant from denying her coverage notwithstanding the interpretation. Defendant responds that *Purdy* is still good law and that the insurance contract unambiguously denies Plaintiff coverage.

#### A. As a matter of interpretation, Defendant is not liable on the insurance contract.

A court reviewing a claim based on a contract begins with the language of the contract itself. *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (citing *Indep. Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006)). If the court finds that the language is unambiguous "then its meaning and legal effect must be determined from its words." *Id.* (citing *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004)). Conversely, the language of the contract is ambiguous if it is "reasonably subject to conflicting interpretations." *Id.* (quoting *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 185, 75 P.3d 743, 746 (2003)). Whether an insurance policy is ambiguous is a question of law. *Mut. Of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235, 912 P.2d 119, 122 (1996).

When deciding whether a provision within an insurance policy is ambiguous, courts must consider the provision within the context in which it occurs. *North Pac. Ins. Co. v. Mai*, 130 Idaho 251, 253, 939 P.2d 570, 572 (1997). Undefined terms in the insurance policy must be construed in their ordinary meaning. *Id.* Additionally, “[t]he general rule is that, because insurance contracts are adhesion contracts, typically not subject to negotiation between the parties, any ambiguity that exists in the contract must be construed strongly against the insurer.” *Arreguin v. Farmers Ins. Co. of Idaho*, 145 Idaho 459, 461, 180 P.3d 498, 500 (2008). “A provision that seeks to exclude the insurer’s coverage must be strictly construed in favor of the insured.” *Id.* “The burden is on the insurer to use clear and precise language if it wishes to restrict the scope of its coverage.” *Id.*

In *Purdy*, the Court affirmed a district court’s ruling that certain insurance provisions were unambiguous. *Purdy*, 138 Idaho at 448, 65 P.3d at 189. There, the insured was injured while a passenger in someone else’s car. *Id.* at 445, 65 P.3d at 186. The car she was hit in was covered under a policy that provided UIM coverage to her as a passenger, and the car she was hit with also provided her some coverage. *Id.* Coupled together, her recovery from both was insufficient to cover her injuries so she pursued a claim with her own automobile-insurance provider. *Id.*

The unambiguous provisions in *Purdy* include:

Subject to the Limits of Liability we will pay all sums which an **insured person** is legally entitled to recover as damages from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** sustained by the insured person while **occupying your insured car**.

If other than **your insured car**, underinsured motorist coverage applies only if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of this policy.

....

**Other insurance**

....

4. We will not provide insurance under this part for a vehicle other than **your insured car**.

[the endorsement]

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **UNDERinsured motor vehicle** because **bodily injury** sustained by the **insured person**.

....

**Other Insurance**

....

3. If any other collectible insurance applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.

4. We will not provide insurance for a vehicle other than **your insured car** or **your insured motor cycle**, unless the owner of that vehicle has no other insurance applicable to this part.

*Purdy*, 138 Idaho at 446–47, 65 P.3d at 186–87. Regarding this policy, the Court heard several arguments as to its clarity.

First, the Court heard the argument that paragraph four of the endorsement was ambiguous because the UIM policy provides bodily injury coverage. The Court dismissed that argument because the policy “obviously does not refer to property damage coverage for the vehicle.” *Id.* at 446, 65 P.3d at 186. Accordingly, the following provisions read together are unambiguous:

We will pay all sums which an **insured person** is legally entitled to recover as damages from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** sustained by the **insured person** . . . [but] we will not provide insurance for a vehicle other than **your insured car** or **your insured motor cycle**,

unless the owner of that vehicle has no other insurance applicable to this part.

*Id.* In fact, according to the Court, those provisions unambiguously mean that “there is no UIM coverage if [an insured] were injured while in a vehicle other than one insured under the policy, unless that vehicle was not covered by UIM coverage.” *Id.* Although the Court did not interpret these provisions by applying ordinary meaning to the provision’s undefined terms, it did hold them to unambiguously decline coverage to the insured/plaintiff because such an interpretation was reasonable and the insured/plaintiff failed to offer a reasonable and opposing interpretation. *Id.*

Second, the Court heard the argument that paragraph four was redundant in light of the policy’s exclusions. *Id.* at 447, 65 P.3d 187. The Court was not persuaded by this argument because, “[a]lthough redundancy may be considered when interpreting an ambiguous provision in an insurance policy, redundancy does not by itself make a policy provision ambiguous.” *Id.*

Third, the Court heard the argument that paragraph four was ambiguous because it is unclear whether a *vehicle other than your insured car* refers to the insured’s car or a third parties’ car. *Id.* There, the Court applied the policy’s definition and noted that the insured/plaintiff did not assert it was ambiguous in light of such definition. *Id.* Next, the Court disagreed that the *no other insurance applicable to this part* was ambiguous because it concluded that provision unambiguously meant, “no other UIM coverage.” *Id.*

Finally, the Court heard the argument that the policy was ambiguous—or that it unambiguously provided the insured/plaintiff coverage—when paragraphs three and four were read together. *Id.* at 448, 65 P.3d at 188. The Court was not persuaded by this argument either. The Court reasoned that in order for coverage to trigger under paragraph three, there must first “be other collectible insurance that applies ‘to a loss covered by this part.’” *Id.*

Here, the policy unambiguously provides that Plaintiff is not entitled to recovery. To begin, Plaintiff agrees that the other insurance provision in this case is identical to the provision in *Purdy*. Mot. Hr'g Nov. 1, 2016 at 3:23 p.m. Yet, the Plaintiff asserts that the disclosure statement distinguishes *Purdy* because the Court there held that the other insurance provision was only unambiguous because the plaintiff there could not identify a reasonable alternative (to defendant's) explanation. Plaintiff here believes adding the disclosure statement renders it unambiguous. This Court disagrees.

The portion of the disclosure form Plaintiff relies on provides that "[t]he policy's UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured(s) owner or operator(s)." Cray's Aff. ¶ 8, Ex. F at p. 60. To the Plaintiff, this provision is included in the parties' agreement and means that whenever the insured recovers an amount, Defendant's liability is reduced or off-set by that recovery. Mot. Hr'g Nov. 1, 2016 at 3:23 p.m. Meaning, Plaintiff reads the policy as follows:

We will pay all sums which an insured person is legally entitled to recover as damages from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by the insured person [but] the policy's UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured(s) owner or operator(s).

Mot. Hr'g Nov. 1, 2016 at 3:23 p.m. However, the dispositive issue with this argument is that the disclosure statement is not part of the insurance contract. The disclosure statement reads, in pertinent part, as follows:

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** coverage and **Underinsured Motorist (UIM)** bodily injury coverage, unless a named insured has rejected these coverages in writing. If the insured is not provided a copy of the written rejection at the time it is made, the insured may receive a copy from the insurer upon request.

**UM** coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle

that has no insurance, or from a hit-and-run vehicle where the owner or operator is unknown.

UIM coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

UIM coverage is offered in different forms by different insurers, and insurers are not required to offer more than one type of UIM coverage. There are two commonly available forms of UIM coverage – “Difference in Limits” (or “Offset”) Coverage and “Excess” Coverage. Your policy offers “Difference in Limits” which is briefly explained below:

**“Difference in Limits” (or “Offset”) Coverage** – The policy’s UIM coverage limits are reduced or eliminated by the amount of any damages recovered by an insured, from or on behalf of any underinsured owner(s) or operators(s).

....

**This general explanation is NOT an insurance agreement. All auto liability insurance policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. . . .**

Crary’s Aff. ¶ 8, Ex. F at p. 60.

Rather than establishing terms between Defendant and Plaintiff, this language reads much more like a general explanation, as indicated. The disclosure statement explains what the law requires, explains what may be provided to the insured, briefly explains how it may be provided, and then unambiguously provides: “This general explanation is NOT an insurance agreement. All auto liability insurance policies that include . . . UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. . . .” Crary’s Aff. ¶ 8, Ex. F at p. 60. Thus, to find that this disclosure statement was part of the contract would defy the plain language of the document.

Plaintiff attempts to counter this reading by noting that Idaho law requires that insurance providers, like Defendant, provide its insured, like Plaintiff, with a disclosure statement.

Plaintiff argues that because Defendant is required to provide her with a disclosure statement and that this disclosure statement includes greater information than the statute requires somehow establishes liability or creates ambiguity. The Court is not persuaded. Again, a document that sets forth in no uncertain terms it is not part of the agreement cannot, by its very own language, establish terms to a contract it is not a part of. The Court finds that the disclosure statement is separate from the insurance contract and therefore it cannot be used to interpret it.<sup>5</sup>

Moreover, even if the disclosure statement were part of the insurance contract, its very language indicates that other terms and conditions may affect or limit availability of coverage—including the unambiguous and identical language from *Purdy*. Here, Plaintiff has failed to distinguish the policy language and facts from *Purdy* and, consequently, this Court is bound to interpret the same provision in the same fashion.

**B. This Court is bound by *stare decisis* and cannot prematurely depart from it here.**

When there is controlling precedent on questions of law, such as whether a particular insurance contract provision is ambiguous, the rule of *stare decisis* dictates that courts follow it. *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 77, 803, P.2d 978, 983 (1990). Courts are bound by *stare decisis* with very limited exceptions—where the law is manifestly wrong, where the law has proven over time to be unjust or unwise, or where overruling the law is necessary to “vindicate plain, obvious principles of law and remedy continued injustice.” *Greenough v. Farm Bureau Mut. Ins. Co. of Idaho*, 142 Idaho 589, 592, 130 P.3d 1127, 1130 (2006) (citing *Houghland Farms, Inc.*, 119 Idaho at 77, 803 P.3d at 983).

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<sup>5</sup> Plaintiff does not argue the writing is incorporated by reference. “A signed agreement may incorporate by reference to another agreement, which is not signed by the parties, if the terms to be incorporated are adequately identified and readily available for inspect by the parties.” *Harris, Inc. v. Foxhollow Constr. & Trucking, Inc.*, 151 Idaho 761, 777, 264 P.3d 400, 416 (2011) (citing *Wattenbarger v. A. G. Edwards & Sons, Inc.*, 150 Idaho 308, 320, 246 P.3d 961, 973 (2010)).



Whether a contract is against public policy is a question of law for the court to be determined from all the facts and circumstances of each case. *Stearns v. Williams*, 72 Idaho 276, 283, 240 P.2d 833, 837 (1952). “An agreement voluntarily made between competent persons is not lightly to be set aside on the grounds of public policy, or because it has turned out unfortunately for one party.” *Id.* (citing *Crimmins & Peirce Co. v. Kidder Peabody Acceptance Corp.*, 282 Mass. 367, 185 N.E. 383 (1933)). “However, such contracts are subject to the limitation that they must not contravene public policy.” *Id.* (citing *Huey v. Brand*, 92 S.W.2d 505 (Tex. Civ. App. 1936); AM. JUR. §§ 167, 172, pp. 662, 670).

To hold that an agreement violates public policy, a court must find that the agreement has a tendency toward such an evil: Meaning, “opposed to the interest of the public, or has a tendency to offend public policy.” *Id.*; *Gunderson v. Golden*, 159 Idaho 344, 346, 360 P.3d 353, 356 (2015) (invalidating parties’ stipulation—analyzed like contract provision—to apply divorce law where the parties did not marry because Idaho legislature abolished common-law marriage in 1996); *Worlton v. Davis*, 73 Idaho 217, 221–23, 249 P.2d 810, 812–14 (1952) (invalidating a contract between employed physician and partnership as violating public policy); *Hill v. Am. Family Mut. Ins. Co.*, 150 Idaho 619, 249 P.3d 812 (2011) (3–2 decision) (invalidating an exhaustion clause in an insurance agreement).

Plaintiff directs the Court to *Hill*, 150 Idaho 619, 249 P.3d 812, *Gearhart v. Mut. of Enumclaw Ins. Co.*, 160 Idaho 619, 378 P.3d 454 (2016) (3–2 decision), and to the 2008 amendments to Idaho Code § 41-2502 in order to assert that a potential trend in Idaho law invalidates *Purdy’s* interpretation of the policy provisions in this case. In *Hill*, the Court invalidated the following exhaustion clause as violative of Idaho public policy:

We will pay compensatory damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle . . . .

. . . .

We will pay under this coverage only after the limits of liability under any bodily liability bonds or policies have been exhausted by payment of judgments or settlements.

*Hill*, 150 Idaho at 623, 249 P.3d at 816. First, the Court found the language to unambiguously create a condition precedent to UIM benefits (insured is only entitled to recover if she settles or receives a payment for tortfeasor's policy limits). *Id.* Then, the Court found that the unambiguous provision violated public policy. *Id.* In doing so, the Court acknowledged its previous restraint in finding a public policy and noted that such restraint was founded upon a lack of Idaho legislation regulating UIM coverage. *Id.* However, since the 2008 amendment to I.C. § 41-2502(1) expressly required insurance companies to offer UIM coverage, the Court was satisfied that "[t]he Legislature accordingly intends to protect Idaho's citizens from drivers carrying policies above the statutorily required policy levels but who have insurance insufficient to compensate their tort victims." *Id.*

In finding that the exhaustion clauses were void, the Court identified two reasons for the 2008 legislative amendments: Underinsured motorists pose a threat to public safety and Idahoans suffering catastrophic injuries from drivers carrying insufficient coverage could find themselves without redress if they have no UIM policy. *Id.* at 624, 249 P.3d at 817. The Court held that the 2008 amendment was remedial in nature, and as such, was "to be liberally construed to give effect to the intent of the legislature." *Id.* at 625, 249 P.3d at 818 (quoting *State v. Hobby Horse Ranch Tractor & Equip. Co.*, 129 Idaho 565, 567, 929 P.2d 741, 743 (1996)). However, Justices Eismann and Horton were not convinced a public policy invalidating exhaustion clauses flowed

from the 2008 amendments because, *inter alia*, the statute permits insureds the right to reject either, or both, underinsured and uninsured coverage. *Hill*, 150 Idaho 632, 249 P.3d at 823 (Eismann, J., dissenting).

In *Gearhart*, the Court affirmed the district court's holding that anti-stacking provisions within insurance contracts were invalid. 160 Idaho at \_\_\_, 378 P.3d at 459. The insurance provision reads:

If there is other applicable similar insurance **we** will pay only **our** share. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. If this policy and any other policy providing similar insurance apply to the **accident**, the maximum limit of liability under all the policies shall be the highest applicable limit of liability under any one policy. However, insurance **we** provide with respect to a vehicle **you** do not own shall be excess over any other collectible insurance.

*Id.* at \_\_\_, 378 P.3d at 457. There, the Court reasoned that, “[i]t is difficult to see how the public policy enunciated in *Hill* is advanced by allowing [the insurance provider] to cause [the insured] to be undercompensated for his injuries by imposing the barrier of the anti-stacking provision under the circumstances of this case.” *Id.* However, the Court affirmed the district court's holding on the grounds that the policy was confusing and thus could not serve as a barrier to recovery. *Id.* at \_\_\_, 378 P.3d at 459. Notably, the dissent distinguished *Gearhart* in two respects: *Hill* dealt only with an exhaustion clause, and, the exhaustion clause functioned as a complete barrier to UIM coverage. *Id.* at \_\_\_, 378 P.3d at 460 (W. Jones, J., dissenting).

Certainly, the Idaho Supreme Court has affixed public policy to the 2008 amendments, and that public policy is, to some degree, at issue in this case. But what is uncertain, is the limit, scope, and breadth of the Supreme Court's established public policy. It is too uncertain to comfortably stretch such policy to mandate that an insurer provides coverage for injuries occurring in a vehicle not covered in the parties' agreement when the vehicle the Plaintiff was hit

with and the vehicle Plaintiff was hit in provided her coverage. In addition, this Court notes there is no mention of *Purdy* in *Gearhart* or *Hill* that provides guidance on the scope of the Court's enunciated public policy as it would apply to the instant case.

As of yet, *Purdy* remains good law. As between controlling and undoubtedly applicable precedent in *Purdy* and two uncertain and divided holdings in *Hill* and *Gearhart*, this Court resorts to *stare decisis* and relies on *Purdy*. The Court is not convinced that *Purdy* is manifestly wrong or has been proven over time to be unjust or unwise. Neither is the Court convinced that the application of *Purdy* here is a plain, obvious and continued injustice to principles of law and remedy. However, to the extent there is merit in Plaintiff's construction and policy arguments, such arguments are proper before this State's appellate courts. In the absence of guidance indicating *Purdy* is no longer good law, this Court is bound by principles of *stare decisis* to follow it. See *Houghland Farms, Inc.*, 119 Idaho at 77, 803 P.3d at 983. Accordingly, Plaintiff's motion is denied and Defendant's motion is granted.


#### IV. CONCLUSION

For the reasons set forth above, Plaintiff's motion for summary judgment is DENIED and Defendant's is GRANTED. Therefore, based upon the foregoing and good caused appearing therefore, THE COURT FINDS, as follows:

1. The disclosure statement is not a part of the parties' insurance contract.
2. The parties' insurance contract is unambiguous.
3. Specifically, paragraph four of the 'other insurance' provision within the Part II-endorsement requires that before Defendant is obligated to provide coverage to Plaintiff the owner of the vehicle must not have UIM coverage.
4. The Spokane Transit Authority, as well as the other insurance carrier that the vehicle that collided with the van was covered by, provided Plaintiff with UIM coverage and therefore Defendant's liability is not triggered.

5. Although there is a trend in Idaho public policy to compensate motorists for their injuries, that policy trend has not been established definitively and clearly enough for this Court to invalidate that paragraph four of the 'other insurance' provision as a matter of law.

SO ORDERED this 1<sup>st</sup> day of December, 2016



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Rich Christensen,  
DISTRICT JUDGE

**Certificate of Service**

I HEREBY CERTIFY that on the 1st day of December, 2016, a true and correct copy of the foregoing was served on the following by the manner indicated:

Robert B. Crary,  
Aaron A. Crary  
**CRARY, CLARK, DOMANICO & CHAUNG P.S.**  
9417 E. Trent Avenue  
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- U.S. Mail
- Hand-Delivery
- Overnight Delivery
- Facsimile – (509) 924-7771
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Trudy Hanson Fouser,  
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[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

Judge Christensen's Clerk  
KATHY BOOTH

*e-mailed 12/7/16 to both by fax & letter.*

*#2109*

ROBERT B. CRARY (ISB#5693)  
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STATE OF IDAHO  
 COUNTY OF KOOTENAI } SS  
 FILED:  
 2016 DEC 14 PM 4:07  
 CLERK DISTRICT COURT  
*M. M. M.*  
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman,  
  
 Plaintiff,  
  
 v.  
  
 FARMERS INSURANCE COMPANY,  
 an Idaho corporation,,  
  
 Defendants.

Case No. CV 16-4603

**MOTION FOR RECONSIDERATION**

COMES NOW, Plaintiff, by and through her attorneys, and moves this court pursuant to I.R.C.P. Rule 11.2 to reconsider its ruling granting Defendant's motion for summary judgment. This motion is supported by the Memorandum in Support of Motion for Reconsideration. Unless requested by the Court, Plaintiff does not request oral argument and asks the court to decide the motion based upon the parties' briefing.

DATED this 14 day of December, 2016.

CRARY, CLARK, DOMANICO & CHUANG

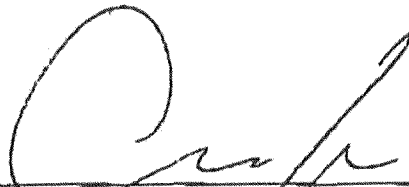
By:   
 AARON A. CRARY  
 Attorney for Jennifer Eastman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14 day of December, 2016, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Ms. Trudy Fouser  
Ms. Julianne S. Hall  
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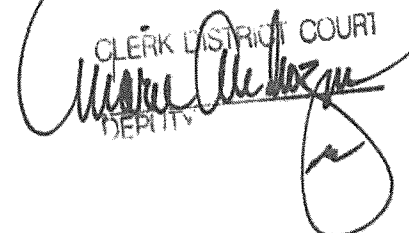
U.S. Mail  
 Facsimile  
 Courier Service  
 Overnight Mail  
 Email



\_\_\_\_\_  
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STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
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 450  
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 CLERK DISTRICT COURT  
 DEPTTY  


IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman,  
  
 Plaintiff,  
  
 v.  
  
 FARMERS INSURANCE COMPANY,  
 an Idaho corporation.,  
  
 Defendants.

Case No. CV 16-4603

**MEMORANDUM IN SUPPORT OF  
 MOTION FOR RECONSIDERATION**

The Court granted Defendant's summary judgment motion, finding that neither the terms of the insurance policy, nor public policy provided Plaintiff UIM coverage in this case. Regarding the terms included in the UIM policy, the Court found the "dispositive issue with this argument is that the disclosure statement is not part of the insurance contract." Plaintiff asks this Court to reconsider this finding.

**ARGUMENT**

1. Defendant admits that the disclosure statement is part of the insurance policy.

The primary objective in construing a contract is to discover the intent of the parties and, in order to effectuate this objective; the contract must be viewed as a whole

and considered in its entirety. *Bondy v. Levy*, 121 Idaho 993, 996 (1992); citing *Luzar v. Western Surety Co.*, 107 Idaho 693, 692 P.2d 337 (1984). Mark Stevens, the agent for Defendant, confirms and certifies in his affidavit that the disclosure statement is part of the policy. Mr. Stevens states under penalty of perjury that a true and correct copy of the insurance policy is attached to his affidavit as Exhibit A. See Defendants Affidavit of Mark E. Stevens. The disclosure statement is included on page FAR 26 of Exhibit A. The intent is clear: by Defendant's own admission the disclosure statement is part of the policy. While the disclosure statement is not an insurance agreement by itself, it is included to explain and define coverage and is therefore—a part of—the insurance policy.

2. The disclosure statement is incorporated into the policy by reference.

A signed agreement may incorporate by reference to another agreement, which is not signed by the parties, if the terms to be incorporated are adequately identified and readily available for inspection by the parties. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 320, 246 P.3d 961, 973 (2010). The disclosure statement was identified in the policy (actually included) and was available for inspection. On top of that, Defendant actually modified the language of the disclosure, evidencing its awareness of the disclosure and binding it to the terms contained therein. Accordingly, the terms of the disclosure statement are incorporated into and define terms in the insurance policy. The insurance company identified the page in question as being part of the policy and modified the language, from the state required disclosure statement, to explain the type of coverage Mr. Eastman had. The modified language actually,

affirmatively states, "Your insurance policy offers "Difference in Limits" which is explained below. See Defendants Exhibit A at Page FAR 26; Crary Exhibit F at page 60.

3. The language in Plaintiff's policy invalidating her UIM claim has been changed by Idaho law.

Subsequent changes in state law that are designed to protect the public welfare can invalidate a contract provision on public policy grounds. *Hill v. American Family Mut. Ins. Co.*, 150 Idaho 619, 623 (2010). In 2008, the legislature added language to I.C. § 41-2502 mandating that every UIM policy contain a form defining UIM coverage. The definition of UIM, approved by the Director of Insurance, reads:

**IDAHO UNINSURED MOTORIST & UNDERINSURED MOTORIST  
DISCLOSURE STATEMENT (FORM 8169101)**

UIM coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

UIM coverage is offered in different form by different insurers, and insurers are not required to offer more than one type of UIM coverage. There are two commonly available forms of UIM coverage - "Difference in limits" (or "Offset") Coverage and "Excess" Coverage. *Your insurance policy offers "Difference in Limits" which is briefly explained below:*

- **"Difference in Limits" (or "Offset") Coverage** – The policy's UIM coverage limits are reduced or eliminated by the amount of any damages recovered by any insured, from or on behalf of any underinsured(s) owner or operator(s).

Affidavit of Mark E. Stevens, Exhibit A, FAR 26. Crary Exhibit F at page 60. This definition is mandated by the 2008 amendments. See I.C. 41-2502(3) but the representation of the type of coverage Ms. Eastman's had is an affirmative representation of the type of coverage she had above and beyond that which was required by law. This

change in the definition of UIM directly conflicts with the UIM definition and explanation in *Purdy*.

Both the *Purdy* court and this court denied Plaintiff's UIM claim based on the following language:

**Other Insurance**

3. We will not provide insurance for a vehicle other than your insured car or your insured motorcycle, unless the owner of that vehicle has no other insurance applicable to this part.

The *Purdy* court and this court interpret this exemption to state that “[w]e will not provide insurance for a vehicle other than your insured car or your insured motorcycle, unless the owner of that vehicle has no *UIM coverage*.” Reading Plaintiff's UIM policy as *Purdy* advocates would directly conflict with the 2008 UIM definition. According to the legislature, UIM is to be “reduced” by coverage from other sources. Under *Purdy*, UIM would be eliminated when there is UIM from another source. The legislature specifically modified the definition of UIM to merely require a reduction, or offset, when other coverage is available. This legislative change in the definition of UIM invalidates the *Purdy* language, which would eliminate UIM entirely when there is recovery from another source.

4. The disclosure is part of the UIM policy, which creates illusory coverage if the *Purdy* interpretation prevails.

An insurance policy that grants coverage, and then takes away the same coverage through exclusions, creates an illusion of coverage. *Martinez v. Idaho Counties Reciprocal Management Program*. 134 Idaho 247, 251-52 (1999). An illusion of

coverage is ineffective in limiting that coverage. *Id.* The *Martinez* court invalidated attempted UIM exclusion in a city insurance policy:

**“2. By use of definitions and exclusions, the policy creates only an illusion of uninsured motorist coverage.**

While *Martinez* agrees that he was excluded from uninsured/underinsured motorist coverage because of the employee exclusion, he urges that the coverage is illusory because every possible claimant can be excluded. Upon reviewing the policy, we find merit to this argument.

To maintain a claim under this policy, a claimant injured in an accident with an uninsured motorist would first need to fit within the definition of an insured under the policy. In the policy issued to the City, the general insuring agreement defines who is an insured for uninsured/ underinsured motorist protection.

**Policy Provisions:** (specifically set forth previously)

1. **Using the vehicle.** To be covered under the uninsured/underinsured motorist section, the claimant must have been using the automobile at the time of the accident.
2. **Legally responsible for the automobile.** In addition to using the automobile, the injured party must also have been legally responsible for the use of the vehicle at the time of the accident.

Once both of these requirements have been met, a claimant must then demonstrate that the exclusions do not apply. The exclusions to the uninsured/underinsured motorist coverage are as follows:

**Exclusions:** (specifically set forth previously)

- (a) **Reasonably expected.** Any bodily injury or property damage which the City expected or reasonably could have expected is excluded.
- (b) **Insured's property.** Any property owned by the City which is damaged in an accident is excluded from uninsured/underinsured motorist coverage.
- (c) **Bodily injuries to Employees.** This excludes any person who could file a claim under workers' compensation, unemployment compensation, disability benefits, employers liability, or for indemnity or contribution by any person for bodily injuries to an employee.

Upon review of these requirements and exclusions, it appears that if any actual coverage does exist it is extremely minimal and affords no realistic protection to any group or class of injured persons. The declarations page of the policy contains language and words of coverage, then by definition and exclusion takes away the coverage. The fact that there might be some small circumstance where coverage could arguably exist does not change the reality that, when the policy is considered in its entirety, the City was receiving only an illusion of coverage for its premiums. This Court will not allow policy limitations and exclusions to defeat the precise purpose for which the insurance is purchased. *Bonner County v. Panhandle Rodeo Ass'n, Inc.*, 101 Idaho 772, 776, 620 P.2d 1102, 1106 (1980) ([T]he ambiguous circumstance in which a policy has been issued purportedly providing coverage but with exclusionary provisions which, if applied, would narrow that coverage to "defeat the very purpose or object of the insurance.")"

Similar to the *Martinez* court, the policy in this case creates an illusion of UIM coverage and is ineffective in excluding UIM coverage. As identified in section 3 above, the disclosure statement mandated by the 2008 amendment defines UIM to be "reduced" by coverage from other sources. Under the exclusion, using the *Purdy* interpretation UIM would be eliminated when there is UIM from another source (e.g., any UIM from another vehicle). The disclosure statement strictly establishes an "offset" for the remaining recovery, whereas the exclusion completely eliminates recovery. If the court were to apply the exemption as interpreted by *Purdy*, the "difference in limits" becomes an illusory coverage: if another vehicle has UIM, the exclusion eliminates recovery and does not provide a "difference in limits." As the *Martinez* court explained, this is not permissible.

**CONCLUSION**

Based on the arguments made herein, this court should reconsider its prior ruling and find that the disclosure statement was part of the UIM insurance policy, and that the *Purdy* exclusion is no longer good law.

DATED this 14 day of December, 2016.

CRARY, CLARK, DOMANICO & CHUANG

By: \_\_\_\_\_

AARON A. CRARY

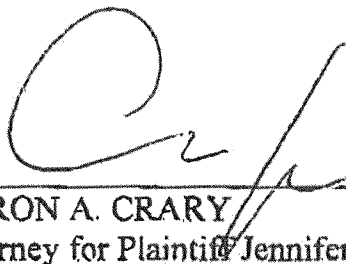
Attorney for Jennifer Eastman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14 day of December, 2016, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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AARON A. CRARY  
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*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant.

Case No. CV 16-4603

**MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF THE  
COURT'S MEMORANDUM  
DECISION AND ORDER ON THE  
PARTIES' CROSS MOTIONS FOR  
SUMMARY JUDGMENT**

Defendant, Farmers Insurance Company, by and through its attorney of record, Gjording Fouser, PLLC, respectfully submits this *Memorandum in Opposition to Plaintiff's Motion For Reconsideration of the Court's Memorandum Decision and Order on the Parties' Cross Motions for Summary Judgment.*

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF  
THE COURT'S MEMORANDUM DECISION AND ORDER ON THE PARTIES' CROSS MOTIONS  
FOR SUMMARY JUDGMENT, Page 1

15017.286

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS

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I. INTRODUCTION

As set forth in the underlying briefing on the cross motions for summary judgment, Plaintiff contended that the subject policy should be invalidated under Idaho law on two grounds: 1) the inclusion in her policy of a generic disclosure statement explaining the types of underinsured motorist insurance after the 2008 statutory amendment requiring insurance companies to "offer" underinsured motorist (UIM) and, 2) changes in public policy allegedly occurring after the 2008 UIM statutory amendment.

As outlined by this Court in its Order, the generic disclosure statement does not alter the terms of the underinsured motorist policy of insurance issued by Farmers to Plaintiff nor does case law dictate the Court abandon the clear and on-point ruling issued by the Idaho Supreme Court in *Purdy v. Farmers Ins. Co. of Idaho*, 138 Idaho 443, 65 P.3d 184 (2002).

II. STANDARD

Idaho Rule of Civil Procedure 11(a)(2)(B) governs motions for reconsideration. Rule 11(a)(2)(B) authorizes a motion for reconsideration as follows:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

*Id.* Under this rule, a motion for reconsideration allows the court to reconsider the correctness of an interlocutory order. *Johnson v. North Idaho College*, 153 Idaho 58, 278

Motion for Reconsideration, sets forth the same arguments and positions as she did in her initial briefing.

**B. The "Disclosure Statement" Does Not Set Forth the Terms of the Subject Policy.**

Plaintiff suggests that she is entitled to coverage under the "Disclosure Statement." As previously outlined, the Disclosure Statement expressly, and in bold letters, states "[t]his general explanation is NOT an insurance agreement." The Disclosure Statement continues "[a]ll auto liability policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage." The Disclosure Statement specifically states "UIM coverage may pay for bodily injury to an insured person who is legally *entitled to collect damages from the owner* or operator of a vehicle with *inadequate limits of liability insurance coverage.*" (Emphasis added.) The italicized words above are of high importance. First, UIM coverage is limited to circumstances where the owner or operator of a vehicle has inadequate limits of liability insurance coverage. This is fundamental to the purpose of underinsured motorist coverage. In Plaintiff's brief, she suggests that if a vehicle owner is "underinsured," then Plaintiff's policy of insurance should apply to provide underinsured insured motorist benefits to her in this case. However, the critical flaw in Plaintiff's argument is that both the Disclosure Statement and the actual UIM language of her insurance policy provide that UIM payments are for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

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The purpose of the Disclosure Statement was to include the Department of Insurance's Bulletin explaining the types of underinsured motorist coverage to consumers and to identify the type of underinsured motorist coverage the Farmers policy offered – a difference in limits policy. This Disclosure Statement merely provides an explanation of the two types of underinsured motorist coverage that are available under Idaho law for purchase.

In a South Carolina case, a party to a lawsuit tried to rely on a Department of Insurance bulletin to contend coverage was limited to situations where the insured's underinsurance coverage was greater than the at fault motorist's liability coverage because the amount of the recovery from the insured's underinsurance coverage was offset by the amount of recovery from the at-fault motorist. *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 153-54, 311 S.E.2d 723, 725-26 (1984). The South Carolina Court explained, “an interpretive bulletin is not binding on the courts.” *Garris*, 280 S.C. at 153-54, 311 S.E.2d at 725-26. Rather, the court continued, underinsured motorist coverage is controlled by and subject to the underinsured motorist statutory act. *Id.* Ultimately, the South Carolina court held that underinsured motorist coverage was an optional coverage provided by an insurance carrier in the event damages are sustained by the insured in excess of the at-fault driver's liability coverage and recovery therefrom is additional to any recovery from the at-fault motorist, and that the total recovery not to exceed the damages sustained.

Similarly, in this case, the inclusion of explanatory information contained in an Insurance Bulletin with the terms of the Farmers' UIM Policy does not alter or change these contractual UIM terms. The explanatory information is just that - a description of

the types of underinsured motorist available and does not establish new terms or dictate the parameters of underinsured motorist coverage offered by the subject Farmers' policy. This Court correctly concluded that the disclosure statement is separate from the insurance contract and therefore cannot be used to interpret it.

**C. The Court has correctly determined that *stare decisis* binds its decision.**

As noted in its decision, *Purdy v. Farmers* has not been expressly overruled by the Idaho Supreme Court in any recent case addressing underinsured motorist coverage. Additionally, no case since *Purdy* has addressed the subject policy in this case. Moreover, this Court correctly noted that the holdings in *Hill v. Am. Family Mut. Ins. Co.* and *Gearhart v. Mut. of Enumclaw Ins. Co.* raise uncertainties with respect to the limit, the scope and breadth of any public policy established by the Idaho Supreme Court. The Court correctly held it was bound by the principles of *stare decisis* in the absence of any appellate guidance indicting that *Purdy* is no longer good law. Thus, Plaintiff's Motion was properly denied and Defendant's Motion was soundly granted.

**IV. CONCLUSION**

In sum, under Rule 1111(a)(2)(B), Plaintiff has not made any new or viable legal argument that requires this Court to change the Order. The legal arguments advanced in the Motion for Reconsideration have already been presented to the Court and the Court has already ruled on these arguments. Plaintiff's Motion for Reconsideration should be denied.

DATED this 12 day of January, 2017.

GJORDING FOUSER, PLLC

By Julianne Hall  
Trudy Hanson Fouser – Of the Firm  
Julianne S. Hall – Of the Firm  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12 day of January, 2017, a true and correct copy of the foregoing was served on the following by the manner indicated:

Robert B. Crary  
Aaron A. Crary  
CRARY, CLARK, DOMANICO &  
CHUANG, P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206

- U.S. Mail
- Hand-Delivery
- Overnight Delivery
- Facsimile – 509/924-7771
- Email: acrary@ccdlaw.com
- Electronic Transmission (File & Serve)

Julianne Hall  
Julianne S. Hall

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED 8/31/17  
AT 10:00 CLOCK  
CLERK DISTRICT COURT  
IDAHO

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

<b>JENNIFER EASTMAN, a single woman,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 2016-4603</b>
	)	
<b>v.</b>	)	<b>MEMORANDUM AND DECISION</b>
	)	<b>ON PLAINTIFF'S MOTION FOR</b>
<b>FARMER INSURANCE COMPANY, an</b>	)	<b>RECONSIDERATION</b>
<b>Idaho corporation</b>	)	
	)	
<b>Defendant.</b>	)	

On December 1, 2016, this Court issued a Memorandum Decision and Order on the parties' cross-motions for summary judgment, granting Defendant's motion and denying Plaintiff's. The central issue was whether Defendant (Plaintiff's automobile insurance provider) was liable for injuries Plaintiff suffered from an automobile accident while a passenger in a third parties' motor vehicle. One of the grounds supporting Plaintiff's theory that Defendant was liable for her injuries was that a disclosure statement—a paper accompanying the documents delivered to her by Defendant—was binding and part of the insurance policy contract. The Court found that it was not. Now, Plaintiff moves for this Court to reconsider that finding. No oral argument has been requested by the parties. After careful review of this Court's previous Order, the parties' previous briefings, and the parties' current briefings this Court denies Plaintiff's motion.

## I. FACTS AND PROCEDURE

The parties having brought forward no new evidence, the Court recites the facts set forth in its previous Decision.

### A. Plaintiff's Insurance.

Plaintiff, a 35-year-old nurse who lives in Post Falls, Idaho and works in Spokane, Washington, was the named insured on an automobile policy issued by Defendant for her 2005 Toyota RAV 4. (Aff. Mark Stevens ("Steven's Aff.") Ex. A at FAR48).<sup>1</sup> The relevant provisions of Part II of Plaintiff's automobile insurance policy read:

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

....

4. We will not provide insurance for a vehicle other than **your insured car**, unless the owner of that vehicle has no other insurance applicable to this part.

(Aff. Aaron Crary Supp. Mot. Summ. J. ("Crary's Aff.") ¶ 8, Ex. F at pp. 23, 25 (alterations omitted))<sup>2</sup>. Plaintiff directs the Court's attention to other documents, generally referred to by the parties as the disclosure statement and supplemental endorsements. The disclosure statement, in pertinent part, reads:

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** coverage and **Underinsured Motorist (UIM)** bodily injury coverage, unless a named insured has rejected these coverages in writing. .

..

....

---

<sup>1</sup> Plaintiff's Policy Number is 195150378, which was effective January 27, 2014– July 27, 2014. (Answer & Demand Jury Trial 2, ¶ 6).

<sup>2</sup> Generally, the bold font indicates that the word is defined in the insurance contract and is bolded in the original.



UIM coverage may pay damages for bodily injury to an insured person who is legally entitled to collect damages from the owner or operator of a vehicle with inadequate limits of liability insurance coverage.

....

. . . Your insurance policy offers “Difference in Limits” which is briefly explained below:

“Difference in Limits” (or “Offset”) Coverage – The policy’s UIM coverage limits are reduced or eliminated by the amount of any damages recovered by an insured, from or on behalf of any underinsured owner(s) or operators(s).

....

**This general explanation is NOT an insurance agreement. All auto liability insurance policies that include UM and/or UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. . . .**

(Crary’s Aff. ¶ 8, Ex. F at p. 60 (alterations omitted)).

Although the parties have not established how, when, or in what order Plaintiff received the documents the parties agree the supplemental endorsements are part of the policy.<sup>3</sup> The relevant endorsement, identified as ID021, Idaho, 1st edition (Coverage C-1 Underinsured Motorist Coverage), in pertinent part, reads:

For an additional premium it is agreed that UNDERinsured Motorist Coverage C-1 is added to Part II of your policy.

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **UNDERinsured motor vehicle** because of **bodily injury** sustained by the **insured person**.

(Crary’s Aff. ¶ 8, Ex. F at p. 62). The liability coverage under the endorsement is limited to the lessor of:

---

<sup>3</sup> Compare Steven’s Aff. 2, ¶ 2, Ex. A *with* Crary’s Aff. 2, ¶ 8, Ex. F.

1. The difference between the amount paid in **damages** to the **insured person** by and for any person or organization who may be legally liable for the **bodily injury**, and the limit of UNDERinsured Motorist Coverage, or

2. The amount of **damages** established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the **bodily injury**.

(Crary's Aff. ¶ 8, Ex. F at p. 62). Liability is also limited by, *inter alia*, paragraph four of the "other insurance" portion of the endorsement: "We will not provide insurance for a vehicle other than **your insured car** or **your insured motorcycle**, unless the owner of that vehicle has no other insurance applicable to this part." (Crary's Aff. ¶ 8, Ex. F at p. 63). The endorsement provides that it is "part of [Plaintiff's] policy. It supersedes and controls anything to the contrary." (Crary's Aff. ¶ 8, Ex. F at p. 63).

The insurance contract defines nearly every term that appears in bold font. (Crary's Aff. ¶ 8, Ex. F at p. 20). Additionally, portions of the insurance contract include definitions that (most often) apply only to that part or section. (*See* Crary's Aff. ¶ 8, Ex. F at pp. 20–32). Many of the supplemental endorsements also contain definitions that only apply within that endorsement provision as well. (*See* Crary's Aff. ¶ 8, Ex. F at pp. 34–64). Generally, the terms relevant here are defined within the policy, as follows:

**Accident** . . . means a sudden event, including continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage** neither expected nor intended by the insured person.

**Bodily injury** means bodily injury to or sickness, disease or death of any person.

**Damages** are the cost of compensating those who suffer **bodily injury** or **property damage** from an **accident**.

...

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

(Crary's Aff. ¶ 8, Ex. F at p. 20). Moreover, the policy sets forth general exclusions: "This coverage shall not apply to bodily injury sustained by a person: . . . If the injured person was **occupying** a vehicle you do not own which is insured for this coverage under another policy." (Crary's Aff. ¶ 8, Ex. F at p. 24). The parties agree that the relevant documents were delivered to Plaintiff. The parties' substantive contentions rest, primarily, on whether the disclosure statement is part of the insurance contract as opposed to a general informational statement.

**B. The Automobile Accident.**

Generally, both parties agree on the material facts relating to Plaintiff's injuries.<sup>4</sup> On March 18, 2014, a 2009 Chevrolet Van was carrying passengers when it was rear-ended by "the other driver" on Interstate 90 in Washington state. (Pl.'s Compl. ¶ 4; Mem. Supp. Def.'s Mot. Summ. J. ("Def.'s Br."), 2). The van was owned by Spokane Transit Authority and insured with Washington State Transit Insurance. (Pl.'s Compl. ¶¶ 5, 6; Def.'s Br. 2). The driver of the other vehicle was also insured. (Pl.'s Compl. ¶ 6; Def.'s Br. 2; Answer 2, ¶ 6).

As a result of the automobile accident, Plaintiff suffered damages in excess of the \$98,846 she has recovered thus far. (Pl.'s Compl. ¶¶ 5–6; Def.'s Br. 2). The van, through Washington State Transit Insurance, was covered for \$60,000. (Pl.'s Compl. ¶ 6; Def.'s Br. 2). Due to multiple claimants, Plaintiff received a portion somewhat less than the \$60,000 limit – \$48,846. (Pl.'s Compl. ¶ 6; Def.'s Br. 2). Additionally, Plaintiff recovered the other driver's policy limit of \$50,000. (Pl.'s Compl. ¶ 6; Def.'s Br. 2). Thus far, Plaintiff has recovered \$98,846 from both the other driver and Washington State Transit Insurance. (Pl.'s Compl. ¶¶ 5–

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<sup>4</sup> Defendant's Counsel stated that, "[u]nlike some motions for summary judgment, this does not involve a heavy factual dispute. This is more of a legal question . . ." (Mot. Hr'g Nov. 1, 2016 at 3:13 p.m.; *compare* Pl.'s Mem. Support Mot. Summ. J. 2–4 *with* Def.'s Mem. Support Mot. Summ. J. 2–3 (noting that the parties' statements of facts do not genuinely conflict in any material way regarding the Plaintiff and the automobile accident)).

6; Def.'s Br. 2). Plaintiff requested coverage from Defendant but was denied. (Pl.'s Compl. ¶¶ 5–6; Def.'s Br. 2). Defendant's denial of Plaintiff's request for coverage is the basis for this declaratory action. On November 1, 2016 the hearing on the parties' cross-motions for summary judgment was heard. On December 1, 2016, this Court granted Defendant's motion and denied Plaintiff's. The Court found that the disclosure statement was not part of the contract. On December 14, 2016, Plaintiff moved for this Court to reconsider that finding and its corresponding holding. On January 12, Defendant opposed. Oral argument was not requested for this motion.

## II. STANDARD OF REVIEW

Motions to reconsider may be made any time before the entry of final judgment or within 14 days after final judgment is entered. I.R.C.P. 11.2(b). A trial court must apply the same standard of review to a motion for reconsideration that it applied in the original motion. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). There is no requirement that the trial court make new findings of fact as part of the motion to reconsider. *Id.* The party that files a motion to reconsider may present new evidence to the court in support of its original motion, but it is not required to. *Johnson v. Lambros*, 143 Idaho 468, 14 P.3d 100 (Ct. App. 2006).

The Court must grant summary judgment when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Navo v. Bingham Memorial Hosp.*, 160 Idaho 363, \_\_\_, 373 P.3d 681, 688 (2016); I.R.C.P. 56(a). In making the determination, all facts are construed in the light most favorable to the non-moving party. *Parks v. Safeco Ins. Co. of Illinois*, 160 Idaho 556, 561, 376 P.3d 760, 765 (2016).

However, a “mere scintilla of evidence or only slight doubt as to the facts is insufficient to withstand summary judgment; there must be sufficient evidence upon which a jury could reasonably return a verdict resisting the motion.” *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). Where parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude summary judgment. *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001).

### III. ANALYSIS

For purposes of this motion, Plaintiff focuses on one aspect of this Court’s previous decision: Plaintiff argues that the disclosure statement is part of the insurance contract. Yet, this Court previously noted that “even if the disclosure statement were part of the insurance contract, its very language indicates that other terms and conditions may affect or limit [the] availability of coverage— including the unambiguous and identical language from *Purdy [v. Farmers Ins. Co. of Idaho]*, 138 Idaho 443, 65 P.3d 184 (2003).” (Dec. 1, 2016 Order at p. 13). Plaintiff responds that if *Purdy* applies and the disclosure statement is part of the contract then the coverage provided by the disclosure statement would be illusory. (Pl.’s. Mot. Reconsider 4–5). Thus, the issue before the Court is whether the disclosure statement is part of the insurance contract, and if so whether Plaintiff’s coverage is illusory.

#### A. The Disclosure Statement is not Part of the Contract.

Previously, this Court found that the disclosure statement was not part of the contract. (Dec. 1, 2016 Order, at pp. 12–13). Plaintiff moves for the Court to reconsider that finding for two reasons: the language of an affidavit and an incorporation-by-reference argument.

***1. The Claim Representative's General Averment Does Not Affect the Court's Findings.***

First, Plaintiff contends that Mark Stevens' affidavit contains a statement that shows he believes that the disclosure statement is part of the contract, and because of that belief Defendant is bound by it (Pl.'s Mot. Reconsider 1–2). Mark Stevens is a Special Claims Representative for Defendant and was the primary claims representative for Plaintiff. (Stevens' Aff. ¶ 1). Paragraph two of his affidavit provides, “[a]ttached hereto as Exhibit A is a true and correct copy of the Farmers policy of insurance issued to Jennifer Eastman.” (Stevens' Aff. ¶ 2 (emphasis in original)). Plaintiff argues that, “by Defendant’s own admission the disclosure statement is part of the policy.” (Pl.'s Mot. Reconsider 2).

However, Defendant does not dispute that the disclosure statement accompanied the documents within the envelope issued to Plaintiff. Instead, Defendant responds that the “purpose of the Disclosure Statement was to include the Department of Insurance’s Bulletin explaining the types of underinsured motorist coverage to consumers and to identify the type of underinsured motorist coverage the Farmers policy offered – a different in limits policy.” (Def.'s Opp'n 5). In addition, if everything attached within exhibit A was part of the contract then so too is the envelope, pages intentionally left blank, accident information form, and every other document copied therein. More importantly, the disclosure reads: “This general explanation is NOT an insurance agreement. All auto liability insurance policies that include . . . UIM coverage have other terms and conditions that may affect or limit the availability of either coverage. . . . For a more detailed explanation of these coverages, refer to your policy.” (Crary's Aff. ¶ 8, Ex. F at p. 60). The disclosure indicates the actual insurance policy affects or limits the availability of either coverage. (*Id.*). Put another way, the statement “merely provides an explanation for the two types of underinsured motorist coverage that are available under Idaho law . . .” purchasable

from Farmers, and then directs the insured to the terms of the contract governing that which they did purchase. (Def's Opp'n 4-5; Crary's Aff. ¶ 8, Ex. F at p. 60).

***2. The Disclosure Statement Is Not an Agreement but a General Statement; Thus, There Is Nothing Within It to Incorporate.***

Second, Plaintiff argues that the disclosure statement was incorporated into the insurance contract by reference. “[T]erms of another agreement not signed by the parties can be incorporated into the signed agreement by reference when the unsigned terms are readily available for inspection by the parties.” *Wattenbarger v. A. G. Edwards & Sons, Inc.*, 150 Idaho 308, 320, 246 P.3d 961, 973 (2010) (citing *Loomis v. Cudahy*, 104 Idaho 106, 118-119, 656 P.2d 1359, 1371-72 (1982)). In *Wattenbarger*, the Court held a document was incorporated by reference where one party signed an agreement that included a provision that read: “I hereby adopt the [other agreement]; provided, that the [other agreement] shall be in force if and only if [this agreement] is accepted below.” 150 Idaho at 313, 246 P.3d at 966.

Here, Plaintiff argues that the disclosure statement is referenced in the terms of the signed agreement because it was included in the same package of papers delivered to her by Defendant. (Pl.'s Mot. Reconsider 2). This Court disagrees. Unlike in *Wattenbarger* where one party signed a document acknowledging the existence of, and intent to be bound by, the other; here, Plaintiff has identified no provision in the signed document acknowledging the existence of, or intent to be bound by, the disclosure statement. An additional document accompanying a contract when both are delivered together is not, in it of itself, a mechanism for incorporating the additional document into the signed agreement. Accordingly, the general statement does not contain terms to incorporate and therefore it is not part of the parties' insurance contract.

Next, Plaintiff renews her argument that the 2008 Amendment to I.C. § 41-2502(3) invalidates the other insurance provision of the parties' contract because the disclosure statement

form approved by the director of the department of insurance sets forth an explanation of coverage that Plaintiff argues is incompatible with the other insurance provision in the contract at issue in this case. However, Defendant complied with § 41-2502(3) by providing Plaintiff with a statement, “explaining in summary form,” the “different forms of underinsured motorist coverage that might be available from insurers in Idaho.” *See* I.C. § 41-2502(3). Then, Defendant highlighted the disclosure statement by providing that it “is NOT an insurance agreement,” that such policies “have other terms and conditions that may affect or limit” coverage, and that the insured should “refer to [her] policy,” for a more detailed explanation. (Crary’s Aff. ¶ 8, Ex. F at p. 60) (bold omitted)). Thus, Defendant complied with the Code and then directed Plaintiff to her policy for additional terms and conditions. The additional terms and conditions hold that Plaintiff cannot recover from Defendant unless the owner or operator of the other vehicles did not have underinsured motorist coverage.

Plaintiff is not contending that the “difference in limits” is included in her policy. Plaintiff contends that because it is in the disclosure statement it is therefore in the policy. The plain language of the disclosure statement form not only indicates it is not part of the policy but the portion Plaintiff relies on states that, “Your insurance policy offers ‘Difference in Limits.’” (Crary’s Aff. ¶ 8, Ex. F at p. 60 (emphasis added)). Simply stating that Defendant offers a policy provision is insufficient to bind Defendant in contract.

Similarly, Plaintiff’s reliance on *Martinez v. Idaho Crys. Reciprocal Mgmt. Program*, 134 Idaho 247, 999 P.2d 902 (2000) is misplaced. There, the Court held that by the use of definitions and exclusions the policy created illusory uninsured motorist coverage. *Martinez*, 134 Idaho at 251, 999 P.2d at 906. Here, the illusory argument is only at play if the disclosure statement—not definitions and exclusions within the undisputed portions of the policy—is included in the parties’

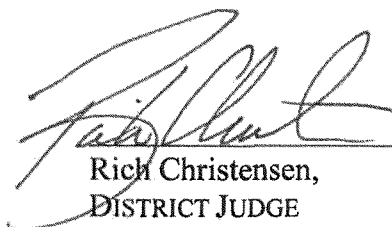


insurance contract. The Court found and now affirms its finding that the disclosure statement is not part of the contract. Thus, Plaintiff's motion is denied.

#### IV. CONCLUSION

For the reasons set forth above, Plaintiff's motion for summary judgment is DENIED.

SO ORDERED this 31<sup>st</sup> day of January, 2017.



---

Rich Christensen,  
DISTRICT JUDGE


31<sup>st</sup>

I hereby certify that on the \_\_\_\_\_ day of January, 2017, a true and correct copy of the foregoing MEMORANDUM AND DECISION ON PLAINTIFF'S MOTION FOR RECONSIDERATION was delivered as follows:

Trudy Hanson Fouser  
Attorney at Law  
FAX 208-336-9177

Robert Crary  
Attorney at Law  
FAX 509-924-7771

*- Fax filed  
sent e-mail 1/31/17  
Houser@gtidahobw.ca*

JIM BRANNON, Clerk of the Court, by  Deputy Clerk

2017 FEB -3 AM 8:18

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

**Trudy Hanson Fouser, ISB No. 2794**

[tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)

**Julianne S. Hall, ISB No. 8076**

[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

**GJORDING FOUSER, PLLC**

Plaza One Twenty One

121 North 9<sup>th</sup> Street, Suite 600

P.O. Box 2837

Boise, Idaho 83701-2837

Telephone: 208.336.9777

Facsimile: 208.336.9177

*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant.

Case No. CV 16-4603

**FINAL JUDGMENT**

Judgment is entered in favor of Farmers Insurance Company declaring that Plaintiff Jennifer Eastman's Farmers Policy No. 195150378 does not provide Underinsured Motorist Coverage to Plaintiff for the accident set forth in the Complaint for Declaratory Judgment.

DATED this 1<sup>st</sup> day of February, 2017.

By *[Signature]*  
Judge

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3 day of Feb, 2017, a true and

correct copy of the foregoing was served on the following by the manner indicated:

Robert B. Crary  
Aaron A. Crary  
CRARY, CLARK, DOMANICO &  
CHUANG, P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206

- U.S. Mail
- Hand-Delivery
- Overnight Delivery
- Facsimile – 509-924-7771
- Email: rcrary@ccdlaw.com
- Electronic Transmission (File & Serve)

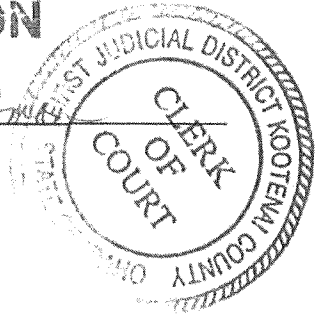
Trudy Hanson Fouser  
Julianne S. Hall  
GJORDING FOUSER, PLLC  
121 N. 9<sup>th</sup> St., Ste. 600  
Boise, ID 83702

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- Overnight Delivery
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- Email: gfcases@gfidaholaw.com
- Electronic Transmission (File & Serve)

**JIM BRANNON**

Clerk

*Sherry Huff*



STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 4579 #451 deb

2017 FEB 10 PM 3: 21

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

ROBERT B. CRARY (ISB#5693)  
AARON A. CRARY (ISB#8517)  
CRARY, CLARK, DOMANICO,  
& CHUANG P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206  
Tele: (509) 926-4900  
Fax: (509) 924-7771  
*Attorneys for Plaintiff*

**DISTRICT COURT FIRST JUDICIAL DISTRICT  
KOOTENAI COUNTY IDAHO**

JENNIFER EASTMAN, a single  
woman,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY,  
an Idaho corporation

Defendant.

Case No.: CV 16-4603

NOTICE OF APPEAL

Confirmation: 610102

Fax: (509) 924,7771

TO: THE RESPONDENT FARMERS INSURANCE COMPANY AND THEIR  
ATTORNEY LOCATED AT 121 N. 9<sup>th</sup> Street, Suite 600, Boise, ID  
83701, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant Jennifer Eastman ("Appellant"), appeals  
against the above named Respondent Farmers Insurance Company ("Respondent")  
to the Idaho Supreme Court from the Final Judgment granting Defendant's Motion  
for Summary Judgment, issued on or about February 1, 2017 in front of Judge Rich  
Christensen. A copy of the order being appealed is attached to this notice.

2. That the party has a right to appeal to the Supreme Court, and the judgements or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule 11(a).

3. Preliminary statement of the issues on appeal: any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal pursuant to Rule 17, I.A.R., and include the following:

A. Public policy supports Appellant's claim for underinsured motorist benefits from her own insurance while she was traveling in another vehicle that carried insufficient underinsured motorist coverage.

B. The contract language and 2008 legislative amendments support Appellant's claim for underinsured motorist benefits from her own insurance when she was traveling in another vehicle that carried insufficient underinsured motorist coverage.

4. There has been no order sealing any portion of the record.

5. The reporter's transcript is not requested.

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

A. 9-1-16: Defendant's Motion for Summary Judgment.

B. 9-1-16: Memorandum in Support of Defendant's Motion for Summary Judgment.

C. 9-1-16: Affidavit of Mark E. Stevens in Support of Defendant's Motion for Summary Judgment.

D. 9-14-16: Defendant's Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment.

E. 9-30-16: Plaintiff's Motion for Summary Judgment

F. 9-30-16: Memorandum in Support of Cross Motion for Summary Judgment and Opposition to Defendant's Summary Judgment.

G. 9-30-16: Affidavit of Aaron A. Crary in Support of Motion for Summary Judgment.

H. 10-18-16: Opposition to Plaintiff's Motion for Summary Judgment.

I. 10-25-16: Reply in Support of Defendant's Motion for Summary Judgment.

J. 10-31-16: Reply Memorandum in Support of Motion for Summary Judgment.

K. 10-31-16: Affidavit of Aaron A. Crary in Support of Plaintiff's Reply to Defendant's Motion for Summary Judgment.

L. 12-14-16: Motion for Reconsideration.

M. 12-14-16: Memorandum in Support of Motion for Reconsideration.

N. 1-12-17: Memorandum in Opposition to Plaintiff's Motion for Reconsideration of the Court's Memorandum Decision and Order on the Parties' Cross Motions for Summary Judgment.

7. I certify that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

A. That service of the notice of appeal has been made upon the reporter of the proceeding.

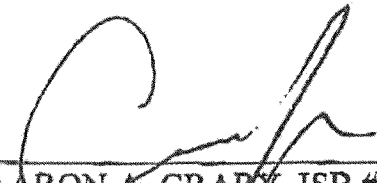
B. That the clerk of of the district court has not been paid the estimated fee for preparation of the reporter's transcript because no transcript is requested.

C. That the estimated fee for prepration of the clerk's record has been paid.

D. That the appellate filing fee has been paid.

E. That service has been made upon all parties required to be served pursuant to Rule 20.

Dated this \_\_\_ day of February, 2017.

By:   
AARON A. CRARY, ISB #8517  
CRARY, CLARK, DOMANICO, & CHUANG, P.S.  
Attorneys for Appellant




### CERTIFICATE OF SERVICE

I certify that I am a licensed attorney in the State of Idaho, have my office located in Spokane, Washington and on February 10<sup>th</sup>, 2017, I served a true and correct copy of the Notice of Appeal on the following individuals by the method of delivery designated:

Ms. Trudy Fouser  
Ms. Julianne S. Hall  
121 N. 9<sup>th</sup> Street, Suite 600  
Boise, ID 83701  
Fax: (208) 336-9177  
Email: [tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)  
[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

U.S. Mail  
 Facsimile  
 Courier Service  
 Overnight Mail  
 Email

By:   
AARON A. CRARY, #8517  
CRARY, CLARK, DOMANICO &  
CHUANG, P.S.  
Attorney for Appellant

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED

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CLERK DISTRICT COURT

**Trudy Hanson Fouser, ISB No. 2794**

tfouser@gfidaholaw.com

**Julianne S. Hall, ISB No. 8076**

jhall@gfidaholaw.com

**GJORDING FOUSER, PLLC**

Plaza One Twenty One

121 North 9<sup>th</sup> Street, Suite 600

P.O. Box 2837

Boise, Idaho 83701-2837

Telephone: 208.336.9777

Facsimile: 208.336.9177

Received

FEB 06 2017

DEPUTY

Crary, Clark & Domanico, PS

*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant.

Case No. CV 16-4603

**FINAL JUDGMENT**

Judgment is entered in favor of Farmers Insurance Company declaring that Plaintiff Jennifer Eastman's Farmers Policy No. 195150378 does not provide Underinsured Motorist Coverage to Plaintiff for the accident set forth in the Complaint for Declaratory Judgment.

DATED this 1 day of Feb, 2017.

By \_\_\_\_\_  
Judge

**RICH CHRISTENSEN**

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3 day of Feb, 20 17, a true and correct copy of the foregoing was served on the following by the manner indicated:

Robert B. Crary  
Aaron A. Crary  
CRARY, CLARK, DOMANICO &  
CHUANG, P.S.  
9417 E. Trent Avenue  
Spokane, WA 99206

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- Hand-Delivery
- Overnight Delivery
- Facsimile - 509-924-7771
- Email: [rcrary@ccdlaw.com](mailto:rcrary@ccdlaw.com)
- Electronic Transmission (File & Serve)

Trudy Hanson Fouser  
Julianne S. Hall  
GJORDING FOUSER, PLLC  
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Boise, ID 83702

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- Email: [gfcases@gfidaholaw.com](mailto:gfcases@gfidaholaw.com)
- Electronic Transmission (File & Serve)

**Sherry Huffman**

\_\_\_\_\_  
Clerk

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: H/V

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CLERK DISTRICT COURT  
DEPTTY

**Trudy Hanson Fouser, ISB No. 2794**  
[tfouser@gfidaholaw.com](mailto:tfouser@gfidaholaw.com)

**Julianne S. Hall, ISB No. 8076**  
[jhall@gfidaholaw.com](mailto:jhall@gfidaholaw.com)

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Plaza One Twenty One  
121 North 9<sup>th</sup> Street, Suite 600  
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[gfcases@gfidaholaw.com](mailto:gfcases@gfidaholaw.com)

*Attorneys for Defendant Farmers Insurance  
Company of Idaho*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN,

Plaintiff - Appellant,

vs.

FARMERS INSURANCE COMPANY, an  
Idaho corporation,

Defendant - Respondent.

Case No. CV 16-4603

**REQUEST FOR ADDITIONAL  
CLERK'S RECORD**

**TO: THE ABOVE NAMED APPELLANT AND THE PARTY'S ATTORNEY AND  
THE CLERK OF THE ABOVE ENTITLED COURT**

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal. Respondent hereby requests the additions to the Clerk's Record:

**REQUEST FOR ADDITIONAL CLERK'S RECORD, Pg. 1**

15017.266





IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

JENNIFER EASTMAN, a single woman,	)	
	)	SUPREME COURT
PLAINTIFF/APPELLANT,	)	CASE NO. 44889
	)	
VS.	)	
	)	
FARMERS INSURANCE COMPANY,	)	
an Idaho corporation,	)	
	)	
DEFENDANT/RESPONDENT.	)	


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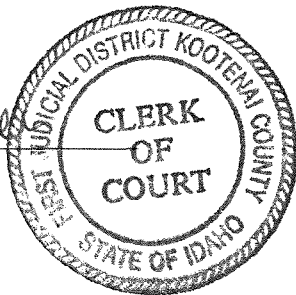
**CLERK'S CERTIFICATE OF EXHIBITS**

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that there were no exhibits offered or admitted in this case.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 17<sup>th</sup> day of April, 2017.

Jim Brannon  
Clerk of the District Court

  
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

JENNIFER EASTMAN, a single woman, )  
 )  
 PLAINTIFF/APPELLANT, )  
 )  
 VS. )  
 )  
 FARMERS INSURANCE COMPANY, )  
 an Idaho corporation, )  
 )  
 DEFENDANT/RESPONDENT. )  
 \_\_\_\_\_ )

SUPREME COURT  
CASE NO. 44889

CLERK'S CERTIFICATE OF SERVICE

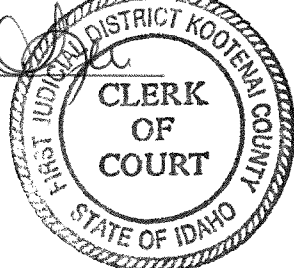
I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the Attorneys of record in this cause as follows:

AARON A. CRARY  
9417 E. Trent Ave.  
Spokane, WA 99206

TRUDY HANSON FOUSSER  
PO Box 2837  
Boise, ID 83701

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 17<sup>th</sup> day of April, 2017.

Jim Brannon  
Clerk of District Court

By: Jim Brannon  




IN THE SUPREME COURT OF THE STATE OF IDAHO

JENNIFER EASTMAN, a single woman, )  
 )  
 PLAINTIFF/APPELLANT, )  
 )  
 VS. )  
 )  
 FARMERS INSURANCE COMPANY, )  
 an Idaho corporation, )  
 )  
 DEFENDANT/RESPONDENT. )  
 \_\_\_\_\_ )

SUPREME COURT  
CASE NO. 44889

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record was complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 17<sup>th</sup> day of April, 2017.

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 17<sup>th</sup> day of April, 2017.

JIM BRANNON  
Clerk of the District Court

By: [Signature]  
Deputy Clerk

