

6-8-2011

# Farm Bureau Mutual Insurance Co v. Eisenman Clerk's Record Dckt. 38703

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## Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF IDAHO

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Supreme Court Case No. 38703

Plaintiff-Counterdefendant-Appellant,  
vs.

MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal representatives of  
the ESTATE OF PATRICIA EISENMAN,

Defendants-Counterclaimants-Respondents,

REBECCA L. MCGAVIN and PETER EISENMAN,  
individually,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MICHAEL MCLAUGHLIN

RODNEY R. SAETRUM

MICHAEL W. MOORE

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

BOISE, IDAHO

Farm Bureau Mutual Insurance Company Of Idaho vs. Michael John Eisenman, Kathryn Marie, Rebecca L Mcgavin, Peter Eisenman

Date	Code	User	Judge
5/26/2010	NCOC	CCRANDJD	New Case Filed - Other Claims
	COMP	CCRANDJD	Complaint Filed
	SMFI	CCRANDJD	(4) Summons Filed
6/3/2010	AMCO	MCBIEHKJ	Amended Complaint Filed
6/28/2010	WAVE	CCMASTLW	Waiver of Service of Summons
6/29/2010	NOAP	CCHOLMEE	Notice Of Appearance (Moore for Eisenman, Marie, Estate of Patricia Eisenman, McGavin & Peter Eisenman)
7/9/2010	NOTS	MCBIEHKJ	Notice Of Service
7/29/2010	NOSV	CCGARDAL	Notice Of Service
7/30/2010	ANSW	CCLATICJ	Answer to Amended Complaint, Counterclaim, and Demand for Jury Trial (Michael Moore for Michael Eisenman, Kathryn Marie, Estate of Patricia Eisenman, Rebecca McGavin and Peter Eisenman)
	NOTS	CCLATICJ	Notice Of Service
8/17/2010	HRSC	DCDANSEL	Hearing Scheduled (Status by Phone 09/13/2010 04:45 PM)
	NOTC	DCDANSEL	Notice of Telephonic Status Conference
8/19/2010	ANSW	CCSIMMSM	Answer (Saetrum for Farm Bureau Mutual Insurance Company of Idaho)
9/14/2010	DCHH	TCHOCA	Hearing result for Status by Phone held on 09/13/2010 04:45 PM: District Court Hearing Held Court Reporter: N/A Number of Transcript Pages for this hearing estimated: 0
10/27/2010	HRSC	CCAMESLC	Notice of Hearing (Motion for Summary Judgment 11/29/2010 03:00 PM)
11/1/2010	MOSJ	CCCHILER	The Estate of Patricia Eisenman's Motion For Summary Judgment
	MEMO	CCCHILER	Memorandum in Support of the Estate of Patricia Eisenman's Motion for Summary Judgment
	AFFD	CCCHILER	Affidavit of Counsel Brady J Hall in Support of the Estate of Patricia Eisenman's Motion for Summary Judgment
11/15/2010	RSPS	CCDWONCP	Plaintiff's Response to Defendants' Motion for Summary Judgment
	AFFD	CCDWONCP	Affidavit of Robert R Gates in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment
	MOTN	CCRANDJD	Motion for Summary Judgment
	AFFD	CCRANDJD	Affidavit of Counsel
	MEMO	CCRANDJD	Memorandum in Support of Motion for Summary Judgment

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

Farm Bureau Mutual Insurance Company Of Idaho vs. Michael John Eisenman, Kathryn Marie, Rebecca L Mcgavin, Peter Eisenman

Date	Code	User	Judge
11/15/2010	STIP	CCWRIGRM	Stipulation on Hearing Plaintiffs and Defendants Motions for Summary Judgment Michael McLaughlin
11/16/2010	HRVC	TCHOCA	Hearing result for Motion for Summary Judgment held on 11/29/2010 03:00 PM: Hearing Vacated Michael McLaughlin
11/17/2010	NOHG	CCHOLMEE	Notice Of Hearing Re Motion for Summary Judgment 12.16.10@3PM Michael McLaughlin
	HRSC	CCHOLMEE	Hearing Scheduled (Motion for Summary Judgment 12/16/2010 03:00 PM) Michael McLaughlin
	NOTC	MCBIEHKJ	Notice of Hearing 12/16/10 Michael McLaughlin
12/2/2010	BREF	CCRANDJD	Response Brief in Opposition to Motion for Summary Judgment Michael McLaughlin
12/9/2010	BREF	CCMASTLW	Plaintiff's Reply Brief Michael McLaughlin
12/13/2010	REPL	MCBIEHKJ	Reply Brief in Support of The Estate Motion for Summary Judgment Michael McLaughlin
	HRVC	CCNELSRF	+Hearing result for Motion for Summary Judgment held on 12/16/2010 03:00 PM: Hearing Vacated Michael McLaughlin
	HRSC	CCNELSRF	Hearing Scheduled (Motion for Summary Judgment 01/27/2011 02:30 PM) Michael McLaughlin
12/15/2010	AMEN	CCKINGAJ	Second Amended Notice of Hearing of the Estate of Patricia Eisenman's Motion for Summary Judgment (01/27/2011 @ 2:30 PM) Michael McLaughlin
12/17/2010	AMEN	CCRANDJD	Amended Notice of Hearing re Motion for Summary Judgment (01.27.11@2:30pm) Michael McLaughlin
1/27/2011	DCHH	DCJOHNSI	Hearing result for Motion for Summary Judgment held on 01/27/2011 02:30 PM: District Court Hearing Held Court Reporter: madsen Number of Transcript Pages for this hearing estimated:50 Michael McLaughlin
2/22/2011	DEOP	DCABBOSM	Memorandum Decision re: (1) Plaintiff's Motion for Summary Judgment; and (2) Defendants' Motion for Summary Judgment Michael McLaughlin
3/14/2011	CDIS	DCJOHNSI	Civil Disposition entered for: Eisenman, Michael John, Defendant; Eisenman, Peter, Defendant; Marie, Kathryn, Defendant; Mcgavin, Rebecca L, Defendant; Farm Bureau Mutual Insurance Company Of Idaho, Plaintiff. Filing date: 3/14/2011 Michael McLaughlin
	STAT	DCJOHNSI	STATUS CHANGED: Closed Michael McLaughlin
4/8/2011	APSC	CCTHIEBJ	Appealed To The Supreme Court Michael McLaughlin
4/12/2011	STAT	TCHOCA	STATUS CHANGED: inactive Michael McLaughlin
4/19/2011	AMEN	CCLUNDMJ	Amended Notice of Appeal Michael McLaughlin
6/6/2011	NOTC	CCLUNDMJ	Notice of Transcript Lodged - Supreme Ct. Docket #38703 Michael McLaughlin



Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4

**MAY 26 2010**

**J. DAVID NAVARRO, Clerk**  
By **J. RANDALL**  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No.

**CV 00 1010533**

**COMPLAINT FOR  
DECLARATORY RELIEF**

COMES NOW, Plaintiff Farm Bureau Mutual Insurance Company of Idaho, Inc., through its attorneys of record, Saetrum Law Offices, and makes the following allegations against Defendants Michael John Eisenman, Kathryn Marie, in their individual capacities and as Co-Personal Representatives of the Estate of Patricia Eisenman, Becky McGavin, and Peter Eisenman.

I.

Plaintiff Farm Bureau Mutual Insurance Company of Idaho, Inc. (Farm Bureau) is an Idaho domestic mutual insurance company authorized to do business in the state of Idaho, with a home office in Pocatello, Idaho, whose business includes entering into insurance contracts including Farm and Ranch policies, homeowner's insurance policies, and automobile insurance policies, within the

state of Idaho.

II.

Defendant, Michael John Eisenman, upon information and belief, is a resident of King County, Washington and an adult child of Insured, Patricia Eisenman.

III.

Defendant, Kathryn Marie, upon information and belief, is a resident of Ada County, Idaho and is an adult child of Insured, Patricia Eisenman.

IV.

Defendant Becky McGavin, upon information and belief, is a resident of Ada County, Idaho and is an adult child of Insured, Patricia Eisenman.

V.

Defendant Peter Eisenman, upon information and belief, is a resident of Ada County, Idaho and is an adult child of Insured, Patricia Eisenman.

VI.

Defendants have made a claim for underinsured motorist benefits against the Farm and Ranch insurance policy, number 010977190, the policy sold by Farm Bureau to Patricia Eisenman. Patricia Eisenman died on November 30, 2007 when a car struck her while she was crossing a street in Boise, Idaho. A copy of the Policy is attached hereto as Exhibit "A" and by this reference is made a part hereof.

VII.

The tortfeasor who struck decedent carried auto liability insurance, but the policy limit was \$50,000. This amount was paid to the Estate of Patricia Eisenman.

VIII.

Decedent's Farm and Ranch policy included auto insurance and coverage for underinsured motorists. Under the definitions in the policy, the tortfeasor was driving an underinsured motor vehicle.

IX.

Insureds are defined in the definitions applying to auto coverage and underinsured motorists in Decedent's policy as persons, including relatives, who are residing with the named insured.

X.

Defendants do not fall within the definition of insureds in Decedent's policy as none of them resided with Decedent. The underinsured provisions of the policy agrees to pay damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury, including death, sustained by an insured and caused by an occurrence. Because Defendants are not insureds as defined in the policy, they cannot recover under Decedent's underinsured motorist coverage.

XI.

Defendants claim that they are entitled to underinsured motorist damages under Decedent's policy.

XIII.

Pursuant to IDAHO R. CIV. P. 57, and Title 10, Chapter 12, IDAHO CODE, this Court is vested with the jurisdiction to declare the rights and legal relationships of the parties to the contract of insurance referred to in this Complaint for Declaratory Relief. A real and present controversy exists regarding the issue of whether Defendants are insureds and the extent of the coverage under the underinsured motorist part of Decedent's Farm and Ranch policy.

XIV.

In order to determine and end that controversy, it is necessary that a declaration be made as to the rights and obligations of Farm Bureau under the Policy issued to Decedent Patricia Eisenman.

WHEREFORE, Plaintiff United Heritage Property & Casualty Company respectfully requests this Court to grant the following relief to it:

1. A judgment declaring that Defendants are not insureds under Decedent's policy and that they cannot recover underinsured motorist payments under the underinsured motorist coverage of said policy;
2. A judgment granting Farm Bureau its costs as provided by law and for such other and further relief as this Court deems just and equitable.

DATED this \_\_\_\_ day of May 2010

SAETRUM LAW OFFICES

By



Rodney R. Saetrum  
Attorneys for Plaintiff

Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
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NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 2:10

JUN 03 2010

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. CV OC 1010533

**AMENDED COMPLAINT  
FOR DECLARATORY  
RELIEF**

COMES NOW, Plaintiff Farm Bureau Mutual Insurance Company of Idaho, Inc., through its attorneys of record, Saetrum Law Offices, and makes the following allegations against Defendants Michael John Eisenman, Kathryn Marie, in their individual capacities and as Co-Personal Representatives of the Estate of Patricia Eisenman, Becky McGavin, and Peter Eisenman.

I.

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KB

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IV.

Defendants Michael John Eisenman and Kathryn Marie are co-personal representatives of the Estate of Patricia Eisenman.

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Defendant Becky McGavin, upon information and belief, is a resident of Ada County, Idaho and is an adult child of Insured, Patricia Eisenman.

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Defendant Peter Eisenman, upon information and belief, is a resident of Ada County, Idaho and is an adult child of Insured, Patricia Eisenman.

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1. A judgment declaring that Defendants are not insureds under Decedent's policy and that they cannot recover underinsured motorist payments under the underinsured motorist coverage of said policy;
2. A judgment granting Farm Bureau its costs as provided by law and for such other and further relief as this Court deems just and equitable.

DATED this 3 day of June 2010

SAETRUM LAW OFFICES

By



Rodney R. Saetrum  
Attorneys for Plaintiff



**EXHIBIT "A"**



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 1

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

INSURED: PATRICIA L EISENMAN  
 2988 S OMYHEE ST  
 BOISE ID 83705-4643



POLICY NUMBER: 01--097719-01  
 POLICY PERIOD: 06-15-2007 UNTIL 06-15-2008  
 AT 12:01 AM STANDARO TIME  
 COUNTY: ADA  
 AGENCY: HART AGENCY  
 AGENT: HART THOMAS C  
 EFFECTIVE DATE: 06-15-2007  
 ISSUE DATE: 07-11-2007

SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
20000	A CONDOMINIUM RESIDENCE PREMISE FRAME BUILDING NUMBER: 001 LOCATION: 03 REPLACEMENT COST SEPTIC TANK BACKUP	26	120	LOAN: 36501708 ENDORSEMENT NUMBER: 372 IDAHO BANKING COMPANY LOAN SERVICING DEPT ISAOA PO BOX 44629 BOISE ID 83711	\$362.00
20000	DETACHED GARAGES, SHEDS, SWIMMING POOLS		*125		
20000	LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA		133		
40000	B LOSS OF USE				
140000	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
300000	E SHOP FRAME 7920SFT BUILDING NUMBER: 011 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$1,197.00
			124		
60000	E SHED FRAME 090X100 BUILDING NUMBER: 012 LOCATION: 02	BROAD FORM	146		\$185.00
130000	E SHOP FRAME 040X100 BUILDING NUMBER: 013 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$519.00
			124		
500	FIRE DEPARTMENT SERVICE CHARGE				
	250 DEDUCTIBLE APPLIES TO EACH SECTION I LOSS				
TOTAL SECTION I ANNUAL PREMIUM					\$2,263.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION I IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT 104 - SPECIAL COVERAGE (PRINTED IN THE POLICY BOOKLET)  
 ENDORSEMENT ID-FR-E1-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT  
 ENDORSEMENT 133 - LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA ENDORSEMENT

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	F1 BODILY INJURY G PROPERTY DAMAGE EACH OCCURRENCE		\$538.00
25000	F2 PREMISES MEDICAL EACH PERSON		
125000	EACH OCCURRENCE		

CONTINUED ON PAGE 2

CERTIFIED COPY  
 01-+-097719-01 *CR*  
 POLICY NO. 000013



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 2

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 06-15-2007

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500	M DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE		
75000 75000	LIMITED POLLUTION COVERAGE EACH OCCURRENCE ANNUAL AGGREGATE	223	\$29.00
DESCRIPTION OF PREMISES:			
	LOCATION DESCRIPTION		
	02 640 ACRES SECTION=15 22 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
	00 150 ACRES SECTION=07 18 12 TOWNSHIP=02N RANGE=02E ADA COUNTY		
	00 800 ACRES SECTION=23 32 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
	00 320 ACRES SECTION=23 TOWNSHIP=02S RANGE=04E ADA COUNTY		
	00 245 ACRES SECTION=10 11 TOWNSHIP=02S RANGE=04E ADA COUNTY		
	03 1 RES 2988 S OMYHEE ST BOISE ID		
TOTAL SECTION II ANNUAL PREMILM			\$567.00

SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 220 - COMBINED SINGLE LIMITS ON COVERAGES F1, G, AND H (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E2-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 269 - LIMITED EMPLOYER'S LIABILITY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 282 - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	N BODILY INJURY O PROPERTY DAMAGE EACH OCCURRENCE		
500000	P UNINSURED MOTORIST P1 UNDERINSURED MOTORIST EACH OCCURRENCE		
25000	Q MEDICAL EACH PERSON		
	R FIRE AND THEFT		
	S 100 COMPREHENSIVE DEDUCTIBLE		
	T 250 COLLISION DEDUCTIBLE		
25000 50000 15000	EXCLUSION 12 - FAMILY LIMIT OF LIABILITY BODILY INJURY - EACH PERSON BODILY INJURY - EACH OCCURRENCE PROPERTY DAMAGE - EACH OCCURRENCE		
100	ROADSIDE ASSISTANCE EACH OCCURRENCE		
25 500	CAR RENTAL REIMBURSEMENT PER DAY PER ACCIDENT		



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 3

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 06-15-2007

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
	THE FOLLOWING ARE INSURED UNDER ACCIDENTAL DEATH AND DISMEMBERMENT:  PATRICIA L EISENMAN  INSURED VEHICLES:	*312	\$2.00
DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
03-130-X	1998 BUICK PARKA 1G4CM52KXH4637207 FARM - AGE 80 AND OVER LIABILITY PREMIUM \$277.00 COMP / COLL PREMIUM \$225.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368 \$502.00
03-410-P	1931 FORD PU A4329770 FARM - BASE RATE LIABILITY PREMIUM \$237.00 FIRE AND THEFT PREMIUM \$19.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334 \$256.00
03-092-U	1974 SPEN GENER 96356000216 MOTORHOME LIABILITY PREMIUM \$137.00 FIRE AND THEFT PREMIUM \$35.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334 \$172.00
03-082-R	1962 KENW TRUCK 76489 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$21.00	R	\$21.00
03-410-4	2001 DODG PU 3B7KC23691G712421 FARM - BASE RATE LIABILITY PREMIUM \$237.00 COMP / COLL PREMIUM \$367.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368 \$604.00
03-082-U	1996 KENW TRUCK 1XK0DR9XXNJ575545 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$68.00	R	\$68.00
03-082	1961 INTL SB150486E TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES LIABILITY PREMIUM \$130.00	N, O, P, P1, Q	\$130.00
TOTAL SECTION III ANNUAL PREMIUM			\$1,755.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 313 - COMBINED SINGLE LIMIT ENDRORSEMENT- COVERAGE P AND P-1 (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 320 - COMBINED SINGLE LIMITS DW COVERAGES N AND O (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E3-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 324 - NEW VEHICLE LOAN COVERAGE ENDORSEMENT
- ENDORSEMENT 326 - NEW VEHICLE ADDITIONAL COVERAGE ENDORSEMENT

SECTION IV - INLAND MARINE

NO COVERAGE

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

POLICY BOOKLET ID-FR-02-01-04-00 - FARM AND RANCH POLICY



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

FARM AND RANCH POLICY  
DECLARATIONS  
PAGE 4

POLICY NUMBER: 01--097719-01  
EFFECTIVE DATE: 06-15-2007

TOTAL ANNUAL PREMIUM \$4,585.00

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

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

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

**NOTICE OF ANNUAL MEETING**

THE PARAGRAPH ENTITLED "ANNUAL MEETING" ON THE LAST PAGE OF YOUR POLICY BOOKLET IS CHANGED AS FOLLOWS:

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

*L. Ley Steyer*  
Authorized Representative  
000016

---

# THE FARM AND RANCH SQUIRE

---

## A Package of Protection for Today's Farmer and Rancher

**Farm Bureau Mutual Insurance Company of Idaho**  
P. O. Box 4848 – Pocatello, Idaho 83205-4848



ID-FR-02-01-04-00

**CERTIFIED COPY**  
01-097719-01 *ML*  
POLICY NO. INITIAL 000017

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

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## DEFINITIONS

### DEFINITIONS APPLICABLE TO SECTIONS I, II, and IV

The following definitions apply to Sections I, II, and IV; they do not apply to Section III:

Throughout these Sections we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

**Bodily Injury** means physical injury or death to a person.

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

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

**Business** does not include:

1. The operation of roadside stands principally for the sale of produce raised on the **insured location**;
2. Newspaper delivery, lawn care or similar activities normally performed by minors, when the activity is not the principal occupation of any **insured**; or
3. Child care services provided by any **insured** for less than a total of 31 days during your policy period, or part-time child care services provided by any **insured** who is a minor.

**Custom Farming** means the use of any draft animal or **mobile agricultural machinery** in connection with **farming** operations for others for any charge or other benefit.

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

**Dwelling Premises** means a one-, two-, three-, or four-family **dwelling** listed in the Declarations, including its grounds and private garages.

**Farm Employee** means someone employed by you whose duties are in connection with the maintenance or use of the **insured location** as a farm, including the maintenance or use of your farm equipment. **Farm employee** does not include you, your spouse, or a minor child of either, but does include exchange labor.

**Farm Personal Property** means your personal property which is usual to the operation of a farm and is used on your farm. It includes **livestock**, **mobile agricultural machinery**, tools, supplies, equipment, and harvested crops used in or resulting from your **farming** operation. It includes property being purchased under an installment plan whether or not you have title to the property.

**Farming** means the production of fruit, nut or field crops, or the raising or keeping of **livestock**, fish, fur-bearing animals or bees. It includes wholesale but not retail sales, except incidental retail sales of your unprocessed farm products with the resulting gross income being less than 25% of your combined **farming** gross income.

**Insured** means you or the entity named in the Declarations.

1. If you are an individual, **insured** also means, if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**.
2. If you are a partnership or joint venture, **insured** also means your members and your partners, but only with respect to your partnership or joint venture.
3. If you are an organization other than a sole proprietorship, partnership or joint venture, **insured** also means your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also **insureds** with respect to their liability as stockholders.
4. If you are a limited liability company, **insured** also means your members and managers but only with respect to their duties as members or managers.

Under Section II of this policy, **insured** also means a person while operating machinery, your watercraft, or



in charge of your domestic animals or **livestock**: (a) to which this policy applies; (b) with your permission; and (c) in your activities covered by this policy.

**Insured Location** means:

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

**Insured Location** does not include property on which a **business** is conducted.

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

**Mobile Agricultural Machinery** means a land vehicle, including any machinery or attached apparatus, whether or not self-propelled, usual to the operation of a farm and used primarily for agricultural purposes, not subject to registration or licensing and designed for use principally off public roads. **Mobile agricultural machinery** includes implements of husbandry which are defined as a vehicle or piece of equipment or machinery designed for agricultural purposes, used primarily in the conduct of agricultural operations and used principally off the highway.

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

1. Utility, boat, camping or travel trailer;
2. **Mobile agricultural machinery**;
3. **Recreational motor vehicles**;
4. Any equipment which is designed for use principally off public roads and not subject to registration or licensing.

**Occurrence** means an accident, including continuous or repeated exposure to conditions, which results in unexpected **bodily injury** or **property damage**

during the policy period. All **bodily injury** and **property damage** resulting from a common cause shall be considered the result of one **occurrence**.

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

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

**Recreational Motor Vehicle** means any motorized vehicle designed for recreation, principally used off public roads, and not subject to licensing.

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

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

**Residence Premises** means a one-, two-, three-, or four-family dwelling which is your principal residence, including its grounds, and private garages. **Residence Premises** also means that part of any other building which is your principal residence but does not include any portion used for **business**.

### **DEFINITIONS APPLICABLE TO SECTION III**

The following definitions apply to Section III.

Throughout this Section, we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

**Bodily Injury** means physical injury or death to a person.

**Insured** means:

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

- b. Anyone using an **insured vehicle** within the scope of your permission or within the scope of permission of your adult **relative**. This does not include a passenger;
  - c. Any person or organization legally responsible for the **insured vehicle**, provided the use of the **insured vehicle** is by you or with your permission and within the scope of such permission.
2. Under Coverages N and O with respect to a **nonowned vehicle**, you or your **relatives** when operating a **nonowned vehicle**.

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

**Insured Vehicle** means:

- 1. Any vehicle shown in the Declarations;
- 2. Under Coverages R, S or T, any camper or camper shell shown in the Declarations;
- 3. Under Coverages N, O, P, P-1 and Q, any licensed private passenger automobile, pickup, SUV, farm truck, van, motorcycle or motorhome, ownership of which is acquired by you during the policy period;
- 4. If you have Coverages S and T, any licensed private passenger automobile, pickup, SUV, farm truck, **trailer**, camper, van, motorcycle, or motorhome, ownership of which is acquired by you during the policy period;

The vehicles in 3 and 4 above are not **insured vehicles** unless we insure all of your licensed vehicles and you ask us to insure the newly acquired vehicle during the policy period or within 30 days of its acquisition, whichever is shorter. Coverage P-1 does not apply to a newly acquired vehicle unless Coverage P-1 applies to your other **insured vehicle(s)**. A newly acquired vehicle includes a vehicle which replaces one shown in the Declarations;

- 5. A **temporary substitute vehicle** which is a **motor vehicle** or **trailer** you do not own while temporarily used as a substitute for a vehicle

described in the Declarations when that vehicle cannot be used because of breakdown or servicing. The same coverages apply to the **temporary substitute vehicle** as apply to the **insured vehicle** for which it is being substituted; or

- 6. Under Coverages N and O only, any **trailer** while attached to a vehicle described in the Declarations. Also included is a **trailer** while being used with a **temporary substitute vehicle**.

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

**Nonowned Vehicle** means a **trailer** or **motor vehicle** not exceeding 26,000 lbs. gross vehicle weight operated by you or your **relatives** or in the custody of you or your **relatives** provided the actual use is with the permission of the owner. This vehicle must not be owned by you or your **relatives** or be available for regular use by you or your **relatives**; unless you are driving such vehicle and it is insured by another policy issued by us.

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

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

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

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

**Trailer** means a vehicle designed for towing by a private passenger automobile, pickup, SUV, van or farm truck. It also includes a farm wagon, farm semi-trailer or farm implement while towed by an **insured vehicle**. **Trailer** does not include vehicles used:

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

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## GENERAL CONDITIONS APPLICABLE TO SECTIONS I, II, III, AND IV

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Unless otherwise indicated, the following conditions are applicable to Sections I, II, III, and IV.

1. **Agreement.**

- a. We will provide the insurance described in this policy and Declarations if you have paid the premium and have complied with the policy provisions and conditions. This policy is divided into four sections, some with multiple coverages. You have only the coverages for which you have paid premium. These coverages are indicated in the Declarations and are subject to the indicated limits of insurance. If you have Section III, the coverages which apply to each **insured vehicle** are indicated in the Declarations. You are authorized to act on behalf of all **insureds** with respect to giving or receiving notice of cancellation, receiving refunds, and agreeing to any changes in this policy.

By acceptance of this policy, you agree that the Declarations indicate the coverages you purchased. This policy embodies all agreements existing between you and us or any of our agents relating to this insurance.

- b. The Declarations together with the referenced coverages and endorsements constitute your policy. Upon renewal or change of your policy you will receive an updated Declarations but no new policy booklet unless the policy booklet is being changed. If you have lost your booklet, please contact your agent to request a replacement.

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

2. **Abandonment of Property.** We need not pay for nor accept any property abandoned by an **insured**.
3. **Appraisal** (Not applicable to liability coverages). If you and we disagree on the amount of loss, either one can demand in writing that the amount of loss be set by appraisal. If either makes a written demand for appraisal, each shall then select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial third appraiser. If the two appraisers are

unable to agree upon a third appraiser within 10 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select a third appraiser. The appraisers shall then set the amount of the loss. A decision agreed to and signed by two appraisers will be binding. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the third appraiser shall be shared equally. You are responsible for any attorney fees and related costs you incur.

4. **Assignment.** No assignment of this policy shall be valid.
5. **Audit Premium.** The premium stated in the Declarations shall be computed according to our rules and rating plans. The premium is for insurance from the inception date in the Declarations (12:01 a.m.) to the expiration date in the Declarations (12:01 a.m.) at your residence. This premium, however, is an estimated premium only. We shall be permitted to examine and audit your books and records during the policy period and within 3 years after the final termination of the policy, to obtain information about the premium basis of this insurance. The earned premium for the insurance shall be computed according to our rules and rating plans. If the earned premium exceeds the estimated premium you paid, you shall pay us the excess; if the earned premium is less, we shall return the overpayment to you.
6. **Bankruptcy of An Insured.** Bankruptcy or insolvency of an **insured** shall not relieve us of our obligations under this policy.
7. **Cancellation.** You may cancel this entire policy by mailing to us written notice stating the future date when this cancellation shall be effective. We may change or cancel all or part of Sections I, II or IV by mailing to you at the address shown in the Declarations, written notice stating when not less than 30 days thereafter the change or cancellation shall be effective. When allowed by State law, we may cancel all or part of Section III of this policy by mailing to you at the address shown in the Declarations, written notice stating when the cancellation shall be effective. Our proof of mail shall be sufficient proof of mailing. Any cancellation of Section III will be mailed to you at least:

- a. 10 days before the cancellation effective date if the policy has not been in force for 60 days or if the cancellation is because you did not pay the premium;
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason; or
- c. 30 days before the cancellation effective date if the cancellation pertains to a vehicle which is considered commercial, unless cancellation is because of non-payment of premium. We will then give you 10 days notice of cancellation.

Payment or tender of unearned premium is not a condition of cancellation. The mailing of notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of this written notice, either by you or by us, shall be equivalent to mailing. If you or we cancel, earned premiums shall be computed pro rata based on the effective date of cancellation. Premium adjustment may be made at this time or as soon after as is practical. Our check mailed or delivered shall be sufficient tender of any refund of premium. Our cancellation rights are limited by State insurance law.

- 8. **Concealment or Fraud.** We will not provide coverage if any **insured** has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.
- 9. **Death.** Upon your death, we will continue through the current policy period to insure any member of your household who is an **insured** at the time of your death. We will also insure:
  - a. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative; or
  - b. The legal representative of the deceased, but only with respect to the premises and property of the deceased covered under the policy at the time of death.
- 10. **Deductible Clause.** Loss from each **occurrence** shall be adjusted separately. The deductible stated in the Declarations shall be subtracted from each adjusted loss or the limit of insurance, whichever is less. If a loss involves only property under the special limits applicable to Coverage C, the deductible shall be subtracted from the adjusted loss. We will apply only one deductible (the highest one applicable) to a loss to which more than one section of this policy applies.

11. **Dividends or Credits.** Any obligation of ours for dividend or credit shall not in any way extend or change the policy period.

12. **Inspection and Audit.** We shall be permitted to inspect and audit your insured property and operation at any time. We are not obligated, however, to conduct inspections and any inspection or report shall not be considered a representation that the operation or property is safe.

13. **Liberalization Clause.** If we adopt any revision which would broaden the coverage under this policy without payment of additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy. This clause does not apply to changes implemented through introduction of a new edition of our policy.

14. **Loss Payment** (Not applicable to liability coverages). We will adjust all losses with you. Payment for loss will be made within 60 days after we receive your signed, sworn proof of loss and ascertainment of the loss is made by: (a) agreement with you; (b) entry of a final judgment; or (c) the filing of an appraisal award with us.

15. **Mortgagee Clause** (Limited to Sections I and IV). The word "mortgagee" includes a trustee of a deed of trust. If a mortgagee is named in this policy, any loss payable under Sections I or IV shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order or precedence of the mortgagees.

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

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

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

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

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

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

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.
17. **Nonduplication of Insurance Benefits.** No person entitled to any payment or benefits under any coverage of this policy shall recover any duplicate payment or benefits for the same elements of loss under any other coverage of this policy (including liability coverages) or other policies written by us.
18. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
  - a. Take all or any part of the property at the agreed or appraised value. If we exercise this option you must sign any papers we require for transfer of title;
  - b. Repair or replace any part of the property with equivalent property. We will not be liable for any loss resulting from delay in repair or choice of repairmen.
19. **Policy Period.** This policy applies only to **occurrences** which take place during the policy period. Losses to your insured property are covered only if the peril and loss both occur during the policy period.
20. **Policy Renewals.** Subject to our consent, you may renew this policy for successive periods by payment to us of the premium we require to renew the policy. Premium payment for any renewal period shall be due on the expiration of the preceding policy period. When allowed by State law, we may decline to renew all or part of Section III of this policy. We shall give you 30 days advance notice of any intention to non-renew all or part of this policy. For commercial coverages, we will give you 45 days advance

notice of any intention to non-renew all or part of these coverages.

21. **Policy Termination.** If you fail to pay the premium when due, the policy shall terminate on the expiration date of the policy without any notice or action by us. If you purchase another policy to replace this one, this policy terminates upon the inception of such policy without notice by you or us.

22. **Subrogation—Our Right to Recover Payment.**

- a. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages, we will be subrogated to that right (have that right transferred to us). That person must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights.
- b. If we make a payment under this policy, and the person to or for whom payment was made recovers damages from another, that person must hold the proceeds of the recovery in trust for us and must reimburse us to the extent of our payment.
- c. We may prosecute in the name of any **insured** for the recovery of these payments.

23. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions. No one shall have any right to join us as a party to any action against an **insured**. Further, no action with respect to liability coverages shall be brought against us until the obligation of the **insured** has been determined by final judgment or agreement signed by us.

24. **Terms of Policy to Conform to Statute.** Terms of this policy which are in conflict with the statutes of the state where the policy is issued are hereby amended to conform to such statutes.

25. **Valid Premium Payment.** If your check in payment of any premium for this policy is not honored by your bank when presented for payment, no coverage is afforded for any time period or policy term for which you wrote the check.

26. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

27. **Insurance Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered by this policy, we shall not

be liable to the **insured** for an amount greater than the **insured's** interest up to the applicable limit of liability.

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## SECTION I – PROPERTY INSURANCE

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We cover the property insured under Section I against direct physical loss only for specified perils. The perils and our limit of liability applicable to each coverage are indicated in the Declarations.

### COVERAGE A – YOUR DWELLINGS

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We cover the following:

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

We do not cover field, corral or pasture fences even if attached to a **dwelling**.

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

### COVERAGE B – LOSS OF USE

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1. **Additional Living Expense.** If a loss covered under Coverage A of this policy makes your covered **dwelling** uninhabitable, we will pay any necessary increase in living expenses incurred by you so that your family can maintain its normal

standard of living. Payment shall be for the shortest time required to repair or replace the premises or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy.

2. **Fair Rental Value.** If a loss under Coverage A causes your covered **dwelling** rented to others to become uninhabitable, we will pay the fair rental value of the **dwelling premises**. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expenses that do not continue while part of the **dwelling premises** rented or held for rental is uninhabitable.
3. **Prohibited Use.** If a civil authority prohibits you from use of the **dwelling premises** as a result of direct damage to neighboring premises by a peril insured against in this policy, we cover any resulting additional living expenses or fair rental value loss incurred by you for a period not exceeding two weeks during which use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement. Our limit for this coverage is stated in the Declarations.

### COVERAGE C – PERSONAL PROPERTY

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

If you have more than one **dwelling premises** insured under this policy, a different Coverage C limit of liability applies to each **dwelling premises**. These

limits are stated in the Declarations. The limit applicable to one insured **dwelling premises** cannot be applied to a loss at another insured **dwelling premises**.

1. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability. The special limit for each following category is the total limit for each loss for all property in that category:

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

- i. \$5,000 on electronic data processing equipment and recording or storage media used with that equipment. This equipment or media is not covered while away from the **residence premises** except when removed for the purpose of repair, servicing or temporary use. A student **insured's** equipment and media are covered subject to this limitation while at a residence away from home;
- j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet, tapestry, wall hanging or other similar article;
- k. \$5,000 on your **personal property** which is usually located at your **residence premises** while this property is at any other **dwelling** owned by you and insured by us. This is in addition to any other limit which may apply;
- l. \$7,500 on hand, electronic, power and similar tools; and
- m. \$3,000 in the aggregate on dolls, figurines, decorative plates, or similar collectibles.

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

2. **Property Not Insured.** We do not insure under Coverage C:

- a. **Farm personal property;**
- b. Animals, **livestock**, birds, fish or pets;
- c. **Mobile agricultural machinery**, motorized land vehicles, and their parts, except vehicles designed for assisting the handicapped and vehicles used to service your **dwelling**, provided they cannot be licensed for road use;
- d. Aircraft and parts;
- e. Property of roomers, tenants and boarders not related to an **insured**;
- f. **Recreational motor vehicles**, trailer homes, camper shells and campers;
- g. Any **personal property** located at any **dwelling**, its grounds, garages or sheds, which are owned by you and not insured under Section I;
- h. Articles separately described and specifically insured by this or other insurance;

- i. Materials and supplies on any **dwelling premises** for the construction, alteration or repair of the **dwelling premises** or its private garages.
3. **Supplementary Coverages.** The following supplementary coverages do not increase the applicable limit of liability under this policy:
- a. Consequential loss. We also cover loss to property insured under Coverage C while at the **insured location** due to change in temperature as a result of physical damage to the building or equipment therein caused by a peril insured against.
  - b. Credit Card, Bank Transfer Card, Counterfeit Currency and Forgery. We will pay up to \$1,000 for:
    - (1) The legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or bank transfer cards issued to or registered in any **insured's** name. We do not cover credit card or bank card use if any **insured** has not complied with all terms and conditions under which the card was issued;
    - (2) Loss suffered by an **insured** caused by forgery or alteration of any check or negotiable instrument;
    - (3) Loss suffered by an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover losses resulting from **business** pursuits or dishonesty of any **insured**.

**COVERAGE D – FARM PERSONAL PROPERTY**

We cover your unscheduled **farm personal property** on the **insured location**. This coverage is further extended for your **farm personal property** away from the **insured location** except while:

- 1. Stored in or being processed in manufacturing plants, public elevators, warehouses, seed houses, or drying plants;
- 2. In transit by common or contract carrier; or
- 3. In public sales barns or sales yards.

We will cover **farm personal property** leased or rented by you for the conduct of your **farming** operation only if this property is specifically added to Coverage D by endorsement. Coverage provided on

leased or rented **farm personal property** is excess over any other valid and collectible insurance available to the owner.

- 1. **Livestock Coverage.** Except for the peril of theft, we cover your **livestock** for the specified perils only if death occurs. Our limit of liability shall not exceed the actual cash value of the **livestock** subject to the maximum per head limit stated in the Declarations. Death must result within 30 days from the date of **occurrence**.
- 2. **Limited Crop Coverage.** Hay, straw and fodder are covered for loss caused by Peril 1 (fire) only, not to exceed the amount stated in the Declarations in any one stack or building. If a stack or hay building is exposed within 125 feet by another stack or building, the applicable limit shall apply to the aggregate of all such exposed stacks or buildings. For example, if stack Y is 100 feet from stack X and stack Z is 100 feet from stack Y but 200 feet from stack X, the aggregate limit applicable to stacks X, Y and Z is the Coverage D stack limit stated in the Declarations.
- 3. **Coinsurance Clause.** You must maintain insurance on your unscheduled **farm personal property** insured under Coverage D to the extent of at least 80% of the actual cash value at the time of our auditing or taking inventory. For example, if at the time of loss your unscheduled **farm personal property** is worth \$100,000, then the amount of insurance must be at least \$80,000. If you fail to keep this agreed percentage of coverage, you will share in each loss in addition to the deductible. We will pay the proportion of each loss represented by the amount you did insure at the time of loss divided by the amount you should have insured.

If the aggregate claim for any loss under this coverage is less than 2% of the total amount of insurance under Coverage D, you will not be required to furnish an inventory of the undamaged property. This does not mean we waive any of our rights concerning the application of this coinsurance clause.

- 4. **Inspection and Audit.** We shall be permitted to inspect and audit your insured **farm personal property** at any reasonable time.
- 5. **Coverage Limitation to Records and Electronic Data Processing Property.** Our liability for loss to:
  - a. Books of account, manuscripts, abstracts, drawings, card index systems and other records except electronic data processing records shall not exceed the cost of blank books, cards or other blank material, plus the



cost of labor incurred by you for transcribing or copying such records;

- b. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing shall not exceed the cost of such media in unexposed or blank form.

6. **Exclusions.** Coverage D does not cover:

- a. **Personal property;**
- b. **Animals, other than livestock;**
- c. **Accounts, bills, currency, deeds, evidences of debt, money and securities;**
- d. **Vegetables (except threshed peas and beans), root crops, bulbs, fruits, cotton, tobacco and silage;**
- e. **Irrigation equipment, including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers; and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electric equipment);**
- f. **Fences, sawmill equipment, windmills, wind chargers and their towers, private power, light and telephone poles, radio and television towers and antennas;**
- g. **Vehicles primarily designed and licensed for road use other than wagons and trailers designed for farming purposes and used principally on the insured location;**
- h. **Motor vehicles, housetrailer, motorcycles, watercraft, recreational motor vehicles, ATVs, aircraft, or their parts or accessories;**
- i. **Unharvested or unthreshed crops or stubble;**
- j. **Grain, seed, peas, beans, hay, straw, wood chips, sawdust, and fodder unless loss is caused by Peril 1 (fire);**
- k. **Structures and buildings except portable buildings on skids in an amount not to exceed \$1,000 per building;**
- l. **Any damage arising from wear and tear, freezing, mechanical breakdown or failure;**
- m. **Under collision or overturn coverage, damage to tires, unless damaged by the same cause as other loss covered under Coverage D;**
- n. **Bees, their larvae, bee boards or beehives;**

- o. **Loss to livestock** caused by the direct or indirect result of fright, freezing, running into fences or other objects, running into streams or ditches, or smothering, whether an insured peril is involved or not; or
- p. **Property** which is separately described and specifically insured in whole or in part by this or any other insurance.

**COVERAGE E – ADDITIONAL BUILDINGS**

We cover your **dwelling**s, barns, buildings, fences and structures listed on the schedule of additional buildings.

- 1. **Materials and Supplies.** Coverage on a building or structure is extended to cover all materials and supplies on the premises or adjacent to them intended to be used in the construction, alteration or repair of such building or structure.
- 2. **Coverage on Buildings.** Coverage on buildings includes permanent fixtures and sheds attached to the described buildings, but excluding fences.
- 3. **Utility Poles.** Coverage on private utility poles includes attached switch boxes, fuse boxes, and other electrical equipment mounted on the poles.
- 4. **Fences and Similar Structures.** Our liability for loss to fences, corrals, pens, chutes and feed racks shall not be for a greater proportion of any loss than the amount of insurance bears to the total value of that particular property at the time of loss.

Coverage to outdoor radio and television antennas, aerials, and satellite receivers including their lead-in wiring, masts and towers, is subject to a maximum payment of \$250, unless such equipment is specifically insured for a greater amount. No deductible applies to this \$250 limit.

**SECTION I ADDITIONAL COVERAGES**

- 1. **Debris Removal.** We will pay the reasonable expense incurred by you for the removal of debris of covered property provided coverage is afforded for the peril causing the loss. Debris removal expense is included in the limit of liability applying to the damaged property. When the amount payable for the actual damage to the property plus the expense for debris removal exceeds the limit of liability for the damaged property, an additional 5% of that limit of liability will be available to cover debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from the **residence premises** of:

- a. Your tree(s) felled by the peril of windstorm or hail;
- b. Your tree(s) felled by the peril of weight of ice, snow or sleet; or
- c. A neighbor's tree(s) felled by a peril insured against under Coverage C;

provided the tree(s) damages a covered structure. The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

## 2. Reasonable Repairs.

- a. We will pay the reasonable costs incurred by you for necessary repairs made solely to protect covered property from further damage provided coverage is afforded for the peril causing the loss. This coverage does not increase the limit of liability applicable to the property being repaired.
- b. We will pay up to \$200 for the cost of re-keying or replacing locks to exterior doors on the **residence premises** if your keys have been stolen during the policy period. No deductible applies to this coverage.

3. **Trees, Shrubs and Other Plants** (limited to Coverage A—Your Dwellings). We cover trees, shrubs, plants and lawns on the **dwelling premises** for loss caused by the following perils: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief or theft. The limit of liability for this coverage shall not exceed 5% of the limit of liability specified for the Coverage A **dwelling** at that same **dwelling premises**. The limit of liability for any one tree, shrub or plant is \$500. We do not cover property grown for **business** or **farming** purposes under this paragraph. This coverage shall not increase the applicable Coverage A limit under your policy.

4. **Refrigerated Products.** If Coverage C applies to your policy, we will pay an amount not to exceed the limit of liability stated in the Declarations for loss to contents of a freezer or refrigerator at the **residence premises**. This coverage does not apply to **farm personal property**. The loss or damage must be caused by a change in temperature resulting from:

- a. Interruption of electrical service to refrigeration equipment caused by damage to

the generating or transmission equipment which results in a breakdown in the system;

- b. Mechanical or electrical breakdown of the refrigeration system; or
- c. A tripped breaker or blown fuse.

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

The deductible shall be subtracted from the adjusted loss.

5. **Fire Department Service Charge.** We will pay up to the amount shown in the Declarations for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage. Coverage afforded under this clause applies only if the covered property is not located within the limits of the city, municipality or protection district furnishing such fire department response.

6. **Building Ordinance or Law Coverage.** When your **dwelling** insured under Coverage A sustains a covered loss, we will pay for the increased cost to repair or rebuild your **dwelling** caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same peril and the requirement is in effect at the time the loss occurs. This coverage includes legally required changes to the undamaged portion of your **dwelling** caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same covered loss and the requirement is in effect at the time the covered loss occurs.

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

- a. We will not pay more for a covered upgrade to the undamaged portion of your **dwelling** than the depreciated value of the undamaged portion of the **dwelling**.
- b. We will not pay more for a covered loss than the amount you actually spend to upgrade, repair, or replace your **dwelling**.
- c. The Loss Statement provisions under **Section I Conditions** that apply to **dwellings**

insured under Coverage A also apply to this coverage.

**Limit of Liability.** Our limit of liability under this coverage is included within and does not increase the applicable limit of liability shown in the Declarations for the insured **dwelling** which sustains a loss and shall not exceed 10% of that limit.

## **SECTION I PERILS INSURED AGAINST**

We cover for direct physical loss to property insured caused by the following perils:

1. **Fire or lightning.**

2. **Removal.**

When property is removed because it is endangered by other insured perils, we pay for direct loss from any cause for accidental loss to that property while it is being removed and for 30 days after removal to a proper place.

3. **Windstorm or hail.**

a. This peril does **not** include loss to the interior or contents of a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall through which the rain, snow, sleet, or dust gets in;

b. This peril does **not** include loss caused directly or indirectly by frost, cold weather, ice (other than hail), snowstorm or sleet, all whether driven by wind or not;

c. This peril does **not** include loss to watercraft and their trailers, furnishings, equipment and outboard motors while outside a fully enclosed building.

4. **Explosion.**

This peril does **not** include rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines, or water pipes, if owned by, leased or actually operated under the control of an **insured**.

5. **Riot or civil commotion.**

6. **Aircraft**, including self-propelled missiles and spacecraft.

7. **Vehicles.**

Perils 6 (Aircraft) and 7 (Vehicles) cover only direct loss by actual physical contact of an aircraft

or vehicle or an object thrown up by a vehicle with the covered property.

8. **Smoke**, meaning sudden and accidental damage from smoke.

This peril includes a puff back of smoke from a furnace. This peril does **not** include loss caused by smoke from agricultural smudging or industrial operations.

9. **Vandalism or malicious mischief**, meaning only the willful and malicious damage to or destruction of the property covered.

This peril does **not** cover:

a. Loss if the **dwelling** has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. Any ensuing loss caused by the vandalism or malicious mischief is also not covered. A **dwelling** being constructed is not considered vacant or unoccupied; or

b. Wear and tear caused by tenants or members of their household.

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

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

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

This peril does **not** include loss:

a. Caused by any **insured** or any person residing at your **residence premises** or any **dwelling premises**;

b. In or to a building under construction;

c. Of materials, tools and supplies for use in the construction of a building until it is completed and occupied;

d. From any part of a **dwelling premises** rented by an **insured** to other than an **insured**;

e. Of property while in the custody of the postal service or similar government or private business;

f. Caused by any of your tenants, members of their households, or your employees; or

- g. Caused by someone to whom an insured has entrusted the property.

In the event of loss by theft, you shall give immediate notice to the appropriate law enforcement agency. We will not pay any reward you offer for the return or recovery of any stolen property.

11. **Breakage of glass or safety glazing** material which is part of the covered building. This coverage extends to storm doors and storm windows in summer storage. This peril does not include loss if the building has been vacant more than 30 consecutive days immediately before the loss. A building being constructed is not considered vacant.
12. **Weight of ice, snow, or sleet** which causes damage to a building or property contained in a building. This peril does **not** include loss to an awning, fence, patio, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.
13. **Collapse** of a building or any part of a building.

Collapse means direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

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

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

Collapse does **not** include settling, cracking, shrinking, sagging, bowing, bulging or expansion.

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

This peril does **not** include loss:

- a. On the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant;
- b. To the system or appliance from which the water or steam escaped;
- c. Caused by or resulting from freezing except as provided in the peril of freezing below; or
- d. On the **dwelling premises** caused by accidental discharge or overflow which occurs off the **dwelling premises**.

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

15. **Sudden or accidental tearing apart, cracking, burning or bulging** of a steam or water heating system, an air conditioning system, or an appliance for heating water.

We do **not** cover loss caused by or resulting from freezing under this peril.

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

17. **Freezing of a plumbing, heating or air conditioning** system or of a household appliance.

This peril does **not** include loss on the **dwelling premises** while the **dwelling** is vacant, unoccupied, or being constructed unless you have:

- a. Maintained heat in the building; or

- b. Shut off the water supply and drained the system and appliances of water.

**18. Sudden and accidental damage from artificially generated electrical current.**

This peril does **not** include loss to a tube, transistor, integrated circuit or similar electronic component unless caused by a sudden and accidental increase or decrease of artificially generated electrical current. Our limit of liability under this peril is \$1,000 for each damaged item of **personal property**.

**19. Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.

One or more volcanic eruptions that occur within a 72-hour period are considered one volcanic eruption.

**20. Collision with another object or overturn.** This peril does not apply to **livestock**. Impact with the ground or roadbed is not considered a collision.

**21. Electrocutation.** This peril applies only to **livestock**.

**22. A direct attack by dogs or wild animals** causing mortal wounds. This peril applies only to **livestock**. It does not include attack by dogs owned by you or any person residing on the **insured location**.

**23. Accidental shooting.** This peril applies only to **livestock**. This peril does not include loss caused by any **insured**, employee of an **insured**, or person residing on the **insured location**.

**24. Loading, unloading, collision or overturn while in transit.** This peril applies only to **livestock** and **mobile agricultural machinery**.

**25. Drowning.** This peril applies only to **livestock**.

**26. Special Form.**

We insure for risks of direct physical loss to the property insured **except**:

- a. Those losses excluded under "**Section I Exclusions**";
- b. Collapse, except as provided in Peril 13;
- c. Freezing of a plumbing, heating, automatic fire protection sprinkler, or air conditioning system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the **dwelling** is vacant, unoccupied or

being constructed unless you have used reasonable care to:

- (1) Maintain heat in the building; or

- (2) Shut off the water supply and drained the system and appliances of water;

- d. Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock;

- e. Theft in or to a building under construction, or of materials, tools and supplies for use in the construction until the building is completed and occupied;

- f. Vandalism and malicious mischief or breakage of glass and safety-glazing materials if the building has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant or unoccupied;

- g. Loss caused by continuous or repeated seepage or leakage of water or steam on the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant. We do not cover loss to the system or appliance from which the water or steam escaped;

- h. Wear and tear; marring; deterioration; inherent vice; latent defect; mechanical breakdown; rust or other corrosion; mold; wet or dry rot; contamination; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; loss caused by birds, vermin, rodents, insects or domestic animals. If any of these cause water to escape from a plumbing, heating, fire protection or air conditioning system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a building necessary to replace the system or appliance. We do not cover loss to the system or appliance from which this water escaped. The word vermin includes, but is not limited to, bats, beavers, coyotes, porcupines, raccoons, skunks, snails, snakes, slugs or squirrels;

- i. Loss or damage including loss of use, caused directly or indirectly by any pollution, contamination or environmental impairment, unless said loss or damage follows immediately as a result of a loss caused directly by perils 1 through 10, and then only to the extent of such direct loss; residual or consequential loss not evident immediately at the conclusion of the loss event remains not covered;
- j. Pressure from or presence of tree, plant or shrub roots;

If Peril 26 applies to Coverage C, the following additional exclusions also apply. We do not cover loss resulting directly or indirectly from:

- k. Breakage of eye glasses, glassware, statuary, bric-a-brac, porcelains, and similar fragile articles, other than jewelry, watches, bronzes, cameras, and photographic lenses. These items are covered, however, if breakage results from Perils 1 through 10 or 12 through 19;
- l. Dampness of atmosphere or extremes of temperature unless the direct cause of loss is rain, snow, sleet or hail;
- m. Refinishing, renovating or repairing property other than watches, jewelry and furs;
- n. Collision other than collision with a land vehicle; sinking, swamping or stranding of watercraft, including their trailers, furnishings, equipment and outboard motors.

Under items g and a through e above, any ensuing loss not excluded is covered. We cover under this peril any loss which would have been covered had perils 1-19 applied to your covered property.

## **SECTION I EXCLUSIONS**

We do not cover loss under Section I resulting directly or indirectly from:

- 1. **Ordinance or law**, meaning if because of any loss caused by any covered peril you are required during repairs or replacement to comply with any ordinance or law regulating the construction, repair or demolition of your insured property which increases the cost of repairs or replacement beyond our obligation to repair or replace with like kind and quality, we do not cover that increased cost. Limited ordinance or law coverage, however, may apply under "Section I Additional Coverages" to a Coverage A dwelling.

- 2. **Earth movement**, including but not limited to earthquake, landslide, mine subsidence, mudflow, earth sinking, rising or shifting. Direct loss by fire, explosion, theft, or breakage of glass or safety glazing materials resulting from earth movement is covered.

- 3. **Water damage**, meaning:

- a. Flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or sewage which backs up through sewers, drains or a septic system;
- c. Water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure. Direct loss by fire, explosion or theft resulting from water damage is covered.

- 4. **Neglect**, meaning neglect of an insured to use all reasonable means to save and preserve property at and after the time of loss, or when property is endangered by a peril insured against.

- 5. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military force or military personnel, destruction or seizure of property for use for any military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

- 6. **Power, heating or cooling failure** unless the failure results from physical damage to power, heating or cooling equipment situated on the **dwelling premises** where the loss occurs. This failure must be caused by a peril insured against.

- 7. **Depreciation, decay, deterioration, change in temperature or humidity, loss of market**, or from any other consequential or indirect loss of any kind.

- 8. **Nuclear hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named or otherwise included within the perils insured against in Section I.

The above exclusions apply even if the following contribute to the loss: faulty, inadequate or defective planning; zoning; development; design; workmanship;

construction; weather conditions; materials; or maintenance of property on or off the **insured location** by any person or organization.

We do not cover under Section I:

1. Any sound reproducing, receiving, amplifying, or transmitting equipment, including but not limited to, any eight-track player, cassette player, CD player, citizens band radio, two-way mobile radio or telephone, scanning monitor, radar detection or similar device; or any tape, wire, record, disc, CD, diskette or other medium for use with any such equipment while any of this property is in or upon any motorized vehicle, farm equipment, boat or aircraft, and capable of being operated by power supplied from these vehicles. This equipment is covered if factory installed in **mobile agricultural machinery** insured under Coverage D.
2. Any loss caused intentionally by or at the direction of any **insured**.
3. Any loss caused by the possession or manufacture in a covered **dwelling** of a controlled substance, including, but not limited to, methamphetamines.

#### **SECTION I CONDITIONS**

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1. If we choose to insure a **dwelling premises** under Section I not owned by you, the **insured** and applicable coverages are shown in the Declarations.
2. **Duties after Loss.** In case of a loss to which this insurance may apply, the **insured** must see that the following duties are performed:
  - a. Give notice as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law. In case of loss under the credit or bank card coverage, also notify the issuing card company;
  - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
  - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;

- d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and sign the same;
- e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
  - (1) The time and cause of loss;
  - (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
  - (3) Other insurance which may cover the loss;
  - (4) Changes in title or occupancy of the property during the term of the policy;
  - (5) Specifications of any damaged building and detailed estimates for repair of the damage;
  - (6) An inventory of damaged or stolen property as described above;
  - (7) Receipts for additional living expenses incurred and records supporting any fair rental value loss; and
  - (8) Evidence or affidavit supporting a claim under the credit card coverage stating the amount and cause of loss.

3. **Loss Settlement.** Subject to the applicable limits stated in the Declarations, covered property losses are settled as follows:
  - a. **Personal property**, structures that are not buildings, **farm personal property**, and buildings insured under Coverage E, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace. If repair or replacement results in better than like kind or quality, the **insured** must pay for the amount of the betterment;
  - b. Floor coverings, domestic appliances, awnings, outdoor antennas and outdoor equipment, whether or not attached to the buildings, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace;
  - c. Buildings insured under Coverage A:

- (1) When the full cost of repair or replacement for loss to a building under Coverage A is less than \$2,500, Coverage A is extended to include the full cost of repair or replacement without deduction for depreciation.
  - (2) If the limit of liability on the damaged building is less than 80% of its replacement cost at the time of the loss, we pay the larger of the following:
    - (a) Actual cash value of the damaged part of the buildings; or
    - (b) That proportion of the replacement cost of the damaged part which our limit of liability on the building bears to 80% of the full current cost of the building.
  - (3) If the limit of liability on the damaged building is at least 80% of its replacement cost at the time of loss we pay the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the smallest of the following amounts:
    - (a) The limit of liability applicable to the building;
    - (b) The cost to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practicable; or
    - (c) The amount actually and necessarily spent to repair or replace the damage.
  - (4) When the cost to repair or replace exceeds 5% of the applicable limit of liability on the damaged building, we are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. Such repairs or rebuilding must be made at the same location as where the loss occurred. You may make a claim for the actual cash value amount of the loss before repairs are made. A claim for any additional amount payable under this provision must be made and construction started within 1 year after the loss.
4. **Increased Hazard.** We shall not be liable for any loss to property insured under this policy occurring while the hazard is increased by any means within the control or knowledge of any **insured**.
5. **Loss to a Panel, Section, Pair or Set.** In case of a loss to a panel, section, pair or set, we may elect to:
    - a. Repair or replace any part or restore the panel, section, pair or set to its value before the loss; or
    - b. Pay the difference between the actual cash value of the property before and after the loss; or
    - c. Pay the reasonable cost of providing a substitute to match as closely as practicable the remainder of the panel, section, pair or set.

We do not guarantee the availability of parts or replacements. We are not obligated to repair the entire pair, set, series of objects, outer covering, piece or panel when a part is lost or damaged.
  6. **Glass Replacement.** Covered loss for breakage of glass shall be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
  7. **Waiver of Subrogation.** You may waive in writing before a loss all right of recovery against any person. If not waived, we may require an assignment of rights for a loss to the extent that payment is made by us.
  8. **Other Insurance.** If you are carrying other insurance on the property to which this policy applies, the coverage under this policy is null and void. We may permit other insurance, however, by endorsement to this policy. If other insurance is permitted, we will not be liable for a greater portion of any loss than our pro rata share in excess of any deductible.
  9. **Recovered Property.** If an **insured** or we recover any property for which we have made payment under this policy, the **insured** or we will notify the other of the recovery. At the **insured's** option, the property will be returned to or retained by the **insured** or it will become our property. If the recovered property is returned to or retained by the **insured**, the loss payment will be adjusted based on the amount the **insured** received for the recovered property.

#### **SECTION I ENDORSEMENTS**

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.



**No. 104 (04-00) Property Coverage Endorsement.**

Coverage E, perils 1 through 9, applies to the following property:

1. New buildings, structures, or additions while under construction on the **insured location**. We also cover materials and supplies to be used in construction of these buildings or structures on the **insured location**.
2. Permanent buildings at newly acquired premises not previously covered under this policy. This includes newly acquired buildings, structures, fixtures, fixed equipment, additions, alterations, and construction at these premises.

You must report the new acquisitions on the next audit date and pay the appropriate premium or this endorsement does not apply.

**Limit of Liability.** The total limit of additional insurance, either singly or for any combination of property covered under this endorsement will not exceed \$300,000 until you report values of the property to us. Additional premium will be due and computed from the date of property acquisition; but at our discretion, the premium may not be charged until the next audit.

**Applicable Conditions.** All Section I policy conditions and exclusions apply to this endorsement.

**Loss Settlement Clause.** Loss covered under this endorsement will be settled at actual cash value at the time of loss.

**No. 109 (01-94) Irrigation Equipment/Spare Truck Parts Endorsement.**

Coverage D is amended to include your irrigation equipment including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers, and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electrical equipment). Spare truck parts are included in this endorsement if indicated in the Declarations. Our limit of liability for this endorsement is indicated in the Declarations. The co-insurance clause under Coverage D applies separately to this endorsement.

**No. 111 (04-00) Replacement Cost—Personal Property.**

Losses under Coverage C shall be settled at replacement cost without deduction for depreciation.

**Property Not Eligible.**

Property listed below is not eligible for replacement cost settlement. Any loss shall be settled at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace.

1. Antiques, fine arts, paintings, statues and other articles which by their inherent nature cannot be replaced with new articles.
2. Articles whose age or history contribute substantially to their value, including but not limited to memorabilia, souvenirs, and collectors items.
3. Personal property of others.
4. Articles not maintained in good or workable condition.
5. Articles that are outdated or obsolete and are stored or not being used.

**Replacement Cost.**

1. We will pay not more than the smallest of the following amounts:
  - a. Replacement cost at time of loss without deduction for depreciation;
  - b. The full cost of repair at time of loss;
  - c. 400% of the actual cash value at time of loss;
  - d. Any special limit of liability applicable under Coverage C;
  - e. The total limit of liability applicable to Coverage C; or
  - f. 200% of the purchase price of any property purchased or acquired used.
2. When the replacement cost for the entire loss under this endorsement exceeds \$500, we will pay no more than the actual cash value for the loss or damage until the actual repair or replacement is completed.
3. An **insured** may make a claim for loss on an actual cash value basis and then make claim within 1 year after the loss for any additional liability in accordance with this endorsement.
4. This endorsement also covers domestic appliances, floor coverings, awnings, outdoor antennas, and outdoor equipment pertaining to a **dwelling** insured under Coverage A.

**No. 114 (01-94) Borrowed Equipment Endorsement.**

We cover under Coverage D loss to **mobile agricultural machinery** in which you have no interest, provided such machinery has been borrowed by either you or your **employees** and is actually being used in the conduct of your own **farming** operation and is not available for your regular use. This coverage, however, shall apply as excess over any insurance which the owner has on this borrowed property. Our limit of liability per **occurrence** under this endorsement is stated in the Declarations.

**No. 118 (01-94) Scheduled Farm Personal Property.**

Coverage D is changed to cover only the scheduled categories of **farm personal property** listed in the Declarations. The coinsurance clause is changed to apply individually to each category.

**No. 125 (04-00) Septic System Backup Endorsement.**

Coverages A and C are amended to include loss caused by the following peril: Sewage backup, meaning sewage or water backup from your septic system or a municipal sewage system into your insured **dwelling**.

This coverage is limited to damage caused to your **dwelling** on the **residence premises**. It does not include service, damage or repair to your sewage system or septic system. This coverage is limited to one loss per policy period.

**No. 130 (01-94) Elimination of Livestock under Coverage D.**

There is no coverage for **livestock** under Coverage D.

**No. 171 (01-94) Glass Deductible Waived.**

No deductible will apply to glass breakage to the building(s) insured under Coverage A of Section I.

**No. 183 (01-94) Increased Replacement Cost Endorsement.**

Our limit of liability applicable to a **dwelling** insured under Coverage A to which this endorsement applies shall be increased to 125% of the amount shown for that **dwelling** on the Declarations provided:

1. You have insured your **dwelling** and other structures to 100% of their replacement cost as we determine based on the accuracy of information you furnish, and you pay the premium we require;
2. You accept the property insurance adjustment condition in Paragraph 1 above, agree to accept any annual adjustment, and pay the additional premium charged;
3. You notify us within 90 days of the start of any additions or other physical changes which increase the value of your **dwelling** or other structures on the **dwelling premises** by \$5,000 or more, and pay the additional premium charged.

Subject to our limit of liability, losses under this endorsement are covered for the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the amount actually and necessarily spent to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practical.

Parts c. (1), (2) and (3) of the loss settlement clause of "**Conditions Applicable to Section I**" are deleted. This endorsement is void if you fail to comply with its provisions.

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## SECTION II—LIABILITY INSURANCE

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**COVERAGE F-1 – BODILY INJURY LIABILITY**

**COVERAGE G – PROPERTY DAMAGE LIABILITY**

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

1. Pay up to our limit of liability for the damages for which the **insured** is legally liable;

2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability shown in the Declarations.

**COVERAGE F-2 – PREMISES MEDICAL**

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of an **occurrence** causing **bodily injury**. This

coverage does not apply to you or residents of your household other than **residence employees**. As to others, this coverage applies only:

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

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

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

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We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of **occurrence** to or for each person named in Coverage J of the Declarations, who sustains **bodily injury** caused by an **occurrence**.

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

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

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We will pay, subject to the limits of liability stated in the Declarations, for loss by death of **livestock** owned by you and not otherwise covered, caused by collision between such animal and a **motor vehicle**, provided:

1. The **motor vehicle** is not owned or operated by an **insured** or any **insured's** employee;

2. The animal is within a public highway and is not being transported;
3. Death to the animal occurs within 30 days after the date of the collision.

We further extend this coverage to include the death of **livestock** when killed by any train, provided you first present a claim in your name to the railroad company involved.

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

#### **COVERAGE L – CUSTOM FARMING**

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Coverages F-1 and G also cover your **custom farming**.

Coverage L does **not** apply to:

1. Any damage or injury to the land or crops upon which the **custom farming** is performed or is to be performed, arising from:
  - a. The mixing or application of fertilizers, herbicides, pesticides, fungicides, or other chemical treatment of real property, seeds or crops; or
  - b. Any goods, products, or their containers manufactured, sold, handled or distributed by or on behalf of any **insured**.
2. Injury or damage resulting from:
  - a. A delay in or lack of performance by or on behalf of any **insured** of any contract or agreement, written or oral; or
  - b. The failure of any **insured's** products or work performed by or on behalf of any **insured** to meet the level of performance, quality, fitness or result warranted or represented by an **insured**.
3. Any **custom farming** conducted more than 100 miles outside the borders of the State where the **insured location** is located.

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

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We will pay for **property damage** to property of others caused by an **insured**. We will **not** pay for **property damage**:

1. Caused intentionally by any **insured** who is 13 years of age or older;

2. To property owned by or rented to any **insured**, a tenant of any **insured**, or a resident of any **insured's** household. This exclusion does not apply to a rented golf cart when it is being used to play golf on a golf course;
3. Arising out of:
  - a. Any **business**;
  - b. The ownership, maintenance, use, loading or unloading of a **motor vehicle**, watercraft, or aircraft;
  - c. Theft, mysterious disappearance, or loss of use;
  - d. Mechanical or electrical breakdown, wear and tear, latent defect or inherent vice;
4. To tires;
5. Arising out of the discharge, dispersal, release or escape of any **pollutants**.

Coverage M is subject only to the above exclusions and Exclusion 11 under Section II exclusions; it is not subject to the remaining Section II exclusions.

**Limit of Liability.** Our limit of liability under Coverage M for **property damage** arising out of any **occurrence** shall not exceed the lesser of:

1. The actual cash value of the damaged property at the time of the loss;
2. What it would then cost to repair or replace the damaged property with other of like kind and quality; or
3. The limit of liability stated in the Declarations for Coverage M.

If Section I of this policy also applies to a loss under Coverage M, Section I is primary and Coverage M is excess. You must pay any applicable Section I deductible before Coverage M applies.

We may pay for the loss in money or may repair or replace the property and may settle the claim for loss to property either with the owner or with you. Any property paid for or replaced shall, at our option, become our property.

We have no obligation under Coverage M to provide a defense against any claim or suit brought against any **insured**.

## SECTION II ADDITIONAL COVERAGES

Section II includes the following:

1. **Fire Legal.** Coverage G is extended to cover **property damage** to a lodging place and its furnishings rented to, occupied or used by or in the care of an **insured** if such **property damage** arises out of fire, smoke or explosion. For purposes of this fire legal coverage, an **insured** shall include only you and those persons listed in Paragraph 1 of the definition of **insured**. The care, custody and control exclusion does not apply to this extension of coverage.
2. **Newly Acquired Locations.** Section II is extended to cover locations you acquire by ownership or leasehold if similar to premises or **dwelling**s described in the Declarations, if you notify us of these acquisitions on or prior to the next renewal date of this policy. The insurance afforded to these acquisitions is limited to the insurance applicable to the locations already described in the Declarations.

This extension of coverage does not apply to loss for which you have other valid and collectible insurance.

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

## SECTION II ADDITIONAL PAYMENTS

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

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;

5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

## **SECTION II EXCLUSIONS**

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

1. Arising from any **insured's business** activities or any professional service;
2. Arising from any location which an **insured** owns, rents, leases, or controls, other than an **insured location**. This exclusion does not apply to **bodily injury** of a **residence employee** arising out of and in the course of employment by an **insured**;
3. Which is intentionally caused by any **insured**;
4. Arising from the maintenance, operation, use, entrustment to others, loading or unloading of any of the following which any **insured** owns, borrows, rents, leases or operates:
  - a. Any aircraft;
  - b. Any **motor vehicle**; coverage, however, applies on the **insured location** if the **motor vehicle** is not licensed for road use because it is used exclusively on the **insured location**;
  - c. Any watercraft if 26 feet or more in overall length;This exclusion does not apply to **bodily injury** sustained by a **residence employee** maintaining, loading or unloading a **motor vehicle** in the course of employment; it also does not apply to Coverage J – Named Persons Medical Payments;
5. Arising out of the use of any aircraft, **motor vehicle**, **mobile agricultural machinery**, watercraft or **recreational motor vehicle**, while being used in or following any prearranged or organized racing, speed or stunting activity or in practice or preparation for any such contest or activity;
6. Which results from liability arising out of any contract or agreement;
7. Arising out of **custom farming** unless coverage is indicated under Coverage L in the Declarations;
8. Caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion,

revolution, warlike act by a military force or military personnel, destruction or seizure or use of property for any military purpose, and including any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;

9. Resulting from any act or omission of a **residence** or **farm employee** who is also an **insured** while away from the **insured location**, if the employee is under the control and direction of some person other than an **insured**;
10. Caused by a substance released or discharged from an aircraft in connection with dusting or spraying operations;
11. Caused by any goods, products or containers manufactured, processed, sold, handled or distributed by an **insured**; except farm products raised on the **insured location**. Loss arising out of the failure of seed sold by an **insured** to conform to the variety, type, purpose, quality or conditions specified by an **insured**, however, is not covered; this includes, but is not limited to, loss caused by any viral, fungal, bacterial or any other type of seed disease. The term "seed" means seeds, bulbs, plants, roots, tubers, cuttings or other similar means of plant propagation;
12. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **pollutants**;
13. Sustained by you or any **insured** as defined in Paragraphs 1, 2, 3 or 4 of the definition of **insured** or by any other resident of your **residence premises**;
14. Arising out of a violation of a criminal law or Youth Rehabilitation Act or similar law, except traffic violations, if committed by any **insured**;
15. With respect to which any **insured** under this policy is also an **insured** under a nuclear energy liability policy issued by a Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any similar organization, or would be an **insured** under any such policy but for its termination upon exhaustion of its limits of liability;
16. Arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person;
17. Arising out of the transmission of or exposure to a communicable disease, bacteria, parasite, virus or other organism by any **insured**; or

**Section II does not cover:**

18. **Property damage** to property owned by, used by, rented to, or in the care, custody or control of any **insured** or his employees, or as to which any **insured** or his employees exercise physical control for any purpose (This exclusion is the care, custody and control exclusion referred to in **Section II Additional Coverages – Fire Legal.**);
19. **Property damage** to work completed by or for an **insured**, any damage arising out of such work, or out of the materials, parts, or equipment furnished in connection with such work;
20. **Property damage** to goods or products, including containers, which an **insured** manufactures, sells, handles, raises or distributes;
21. Damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of an **insured's** products, or work completed by or for an **insured** or for any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency;
22. Punitive or exemplary damages;
23. **Bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under any worker's compensation, non-occupational disease, disability or occupational disease law;
24. **Property damage** to an **insured location** arising out of the alienation (for example; selling, leasing, separating, etc.) of that location;
25. **Bodily injury** under Coverage F-2 sustained by any person residing on the **insured location** except a **residence employee**;
26. Under Coverages F-2 and J:
  - a. **Bodily injury** involving hernia or back injury, unless it is of recent origin, it is accompanied by pain, it was immediately preceded by some accidental strain suffered in the course of employment, and it did not exist prior to the date of the alleged injury;
  - b. Any person while conducting his **business** on the **insured location**, including the employees of that person;
  - c. **Bodily injury** to the extent that any medical expenses are paid or payable under the provision of any worker's compensation or similar law;

27. Under Coverages F-1 and F-2, **bodily injury** sustained by any **farm employee** arising out of employment;
28. Any **occurrence** covered under Section III; or
29. Under Coverages F-2 & J, expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose.

**SECTION II CONDITIONS**

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1. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
  - a. Give written notice to us or our agent as soon as practicable, which sets forth:
    - (1) The identity of the policy and **insured**;
    - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
    - (3) Names and addresses of any claimants and witnesses;
  - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
  - c. At our request, assist in:
    - (1) Making settlement;
    - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
    - (3) The conduct of suits and attend hearings and trials;
    - (4) Securing and giving evidence and obtaining the attendance of witnesses;
  - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **bodily injury**;
  - e. Under Coverage M—Damage to the Property of Others—submit to us within 60 days after the loss, a sworn proof of loss and exhibit the damaged property, if within the **insured's** control.

2. **Duties of an Injured Person—Coverages F-2 and J.** The injured person or someone acting on behalf of the injured person shall:

- a. Give us a written proof of loss, under oath if required, as soon as practicable;
- b. Execute authorization to allow us to obtain copies of medical reports and records; and
- c. Submit to physical examination by a physician selected by us when and as often as we reasonably require.

3. **Cooperation of Insured.** If any insured fails to cooperate with us or send us legal papers as required, we have the right to refuse any further coverage for the **occurrence** or loss.

4. **Payment of Claim.** Any payment under Section II is not an admission of liability by any insured or us.

5. **Limits of Liability—Coverages F-1 and G.**

Regardless of the number of:

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

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

- a. Under Coverage F-1 the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage G the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. **Products Liability Limit.** The per **occurrence** limit of liability for **bodily injury** and **property damage** caused by farm products produced on the **insured location** is also the

total aggregate limit of our liability for all such **occurrences** during the policy period.

6. **Limits of Liability—Coverages F-2 and J.** The limit of liability for Coverages F-2 and J as stated in the Declarations as applicable to each person is our limit of liability for all covered expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**. Subject to the limit of liability for each person, our total limit of liability for each **occurrence** for **bodily injury** sustained by two or more persons is the per **occurrence** limit of liability stated in the Declarations.

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

## SECTION II ENDORSEMENTS

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

### **No. 204 (01-94) Employer's Nonownership Liability Endorsement.**

We agree that Coverages F-1 and G cover the liability of you and any of your executive officers arising out of the use of any **nonowned motor vehicle** used in your **farming** or household activities by any person other than you.

#### 1. **Definitions.**

In this endorsement only, **nonowned motor vehicle** means a land motor vehicle, trailer or semi-trailer not owned by, registered in the name of, hired by, leased by, or loaned to you or your executive officers.

#### 2. **Application of Insurance.**

- a. This endorsement does not apply to any **motor vehicle** owned by any of your executive officers or their spouses.
- b. This insurance does not apply to any **motor vehicle** owned by or registered in the name of a partner if your **business** is in the form of a partnership.

#### 3. **Other Insurance.**

This insurance shall be excess insurance over any other valid and collectible insurance.

**No. 220 (04-00) Combined Single Limit Endorsement.**

The limits of liability paragraph pertaining to Coverages F-1 and G under **Section II Conditions** is changed to read as follows:

**Limit of Liability—Coverages F-1 and G.**

Regardless of the number of:

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

Our limit for each **occurrence** is subject to the following limitations:

- a. Our total combined single limit of liability under Coverages F-1 and G for all **bodily injury** and **property damage** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.
- b. **Products Liability Limit.** The per **occurrence** combined single limit of liability for **bodily injury** and **property damage** caused by farm products produced on the **insured location** is also the total limit of our liability for all **occurrences** during the policy period.

**No. 269 (07-99) Limited Employer's Liability Endorsement.**

Coverages F-1 and F-2 are extended to apply to **bodily injury** caused by an **occurrence** and sustained by a person performing labor for you in your **farming** operation, but only if you are not required by Idaho Law to provide worker's compensation benefits or coverage for this **bodily injury**. Coverage F-2 does not apply to a person or their employees while they conduct their **business** on the **insured location**.

**No. 282 (04-00) Personal Injury Endorsement.**

Under Coverage F-1, **bodily injury** liability, we cover personal injury. Personal injury means injury other than **bodily injury** arising out of one or more of the following offenses:

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

Section II exclusions do not apply to this endorsement, but this endorsement does not cover:

- 1. Liability arising out of any contract or agreement;
- 2. Injury caused by a violation of a criminal law or ordinance committed by or with the knowledge or consent of any **insured**;
- 3. Injury sustained by any person as a result of an offense directly or indirectly related to the employment of this person by the **insured**;
- 4. An injury arising out of the **business** pursuits of any **insured**;
- 5. Civic or public activities performed for pay by any **insured**;
- 6. Injury arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person; or
- 7. Any injury arising out of the discharge, dispersal, release or escape of any **pollutants**.

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**SECTION III—AUTOMOBILE INSURANCE**

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**COVERAGE N – BODILY INJURY**

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**COVERAGE O – PROPERTY DAMAGE**

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

- 1. Pay up to our limit of liability for the damages for which the **insured** is legally liable;
- 2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability.



### **Additional Payments.**

We will pay the following in addition to our limit of liability, but our obligation for these payments ceases when our obligation to defend ends:

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We will also pay up to \$250 for the premium of any bail bond required of an **insured** because of an arrest in connection with an accident resulting from the use of an **insured vehicle**. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;
5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

### **COVERAGE P – UNINSURED MOTORIST**

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

### **COVERAGE P-1 – UNDERINSURED MOTORIST**

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

The following additional definitions apply to Coverages P & P-1:

1. **Insured** means:

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

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

4. An **uninsured** or **underinsured motor vehicle** does not include any **motor vehicle**:
  - a. Owned or operated by a self-insured as defined by any applicable **motor vehicle** law;
  - b. Owned by any governmental unit or agency;
  - c. Used as a residence;
  - d. Owned by or furnished for the regular use of you or any **relative**; or
  - e. Which is an **insured vehicle**.

**Exclusions.** The following additional exclusions apply to Coverages P & P-1.

Coverages P & P-1 do not apply to:

1. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle or trailer** without the permission of the owner;
  2. The direct or indirect benefit of any insurer or self-insured under any worker's compensation, disability benefits or similar law;
  3. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle** owned by or available for the regular use of any **insured** which is not an **insured vehicle**. Any Coverage P or P-1 under your policy applies to you, however, while driving a **motor vehicle** owned by a **relative** which is insured by us;
  4. **Bodily injury** sustained by a passenger of an **insured vehicle** as a result of a claim the passenger may have against the operator of an **insured vehicle** or **nonowned vehicle**; or
  5. **Bodily injury** for which a claim against the owner or driver of the **uninsured** or **underinsured motor vehicle** is barred by the applicable statute of limitations, unless we received notice of the claim before the statute of limitations has run.
3. **Reduction of Amounts Payable.** The amount payable under this coverage shall be the lesser of our limit of liability stated in the Declarations reduced by a. and b. below, or the total damages for **bodily injury** reduced by a. and b. below:
    - a. All sums paid or payable by or on behalf of persons or organizations who may be legally responsible for the **bodily injury** to which this coverage applies. This includes all amounts paid under the liability coverage of this policy;
    - b. The sums of all amounts payable under any worker's compensation, disability, or similar law; and

Any payment under this coverage to or for an **insured** will reduce any amount that person is entitled to receive under this policy's liability coverages.
  4. **Payment of Loss.** We will pay only after all applicable liability bonds or policies have been exhausted by judgments or payments and the amount of damages has been determined by agreement, arbitration or other method agreed to by us. We have the option to pay any amount due under this coverage as follows:
    - a. To the **insured**;
    - b. If the **insured** is deceased, to the **insured's** surviving spouse; or
    - c. To a person authorized by law to receive such payment, or to a person who is legally entitled to recover the damages which the payment represents.
  5. **Hit-and-Run Accident.** At our request, the **insured** shall make available for inspection any **motor vehicle** or **trailer** which the **insured** occupied at the time of a hit-and-run accident. The **insured** must notify the police within 24 hours of a hit-and-run accident.
  6. **Mediation.** After the **insured** submits a proof of loss with the information requested by us, either the **insured** or we may make a written demand on the other for mediation to resolve a claim. After mediation has been demanded, the parties shall attempt to agree on a competent, impartial mediator. In the event they cannot agree on a mediator within 10 days, either may request that a mediator be selected by a judge of a court having jurisdiction. Both parties shall make disclosure to each other of all required information at least 20 days prior to mediation. Each party shall pay one-half of the cost of the mediator; except if the claim is settled through mediation, **insurer** shall pay the mediator's full cost. A request for

#### Conditions Applicable to Coverages P & P-1.

The following additional conditions apply to Coverages P & P-1:

1. **Limits of Liability.** Under Coverages P & P-1, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**. If both Coverages P and P-1 apply to the same **occurrence** our combined limit of liability for all damages payable under both coverages for: (1) each person shall be the applicable coverage P limit of liability for each person; (2) each **occurrence** shall be the applicable Coverage P limit of liability for each **occurrence**.
2. **Nonstacking of Limits.** Regardless of the number of **insured vehicles**, **insureds**, policies of insurance with us, claims made or vehicles involved in the **occurrence**, the most we will pay for all damages resulting from any **occurrence** is the limit of liability shown in the Declarations, subject to reduction as outlined in the next paragraph.

mediation can be made within 10 days after a request for arbitration and supersedes a request for arbitration.

7. **Arbitration.** If we and an **insured** disagree whether the **insured** is legally entitled to recover damages from the owner or driver of an **uninsured** or **underinsured motor vehicle** or disagree as to the amount of damages, either party may make a written demand for arbitration. In this event, each party will select a competent, impartial arbitrator within 20 days of receipt of the written demand. The two arbitrators will select a third arbitrator. If they cannot agree upon a third arbitrator within 10 days, either may request that a judge of a court having jurisdiction select a third arbitrator. Both parties shall make disclosure to each other of all information as required by the arbitrator(s) in the scheduling and discovery order. Each party will pay the expenses it incurs, including attorney's fees and related costs, and bear the expenses of the third arbitrator equally. Arbitration will take place in the county in which the **insured** lives unless both parties agree otherwise. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.
8. **Trust Agreement.** If a claim or payment is made under this coverage:
  - a. We will be entitled to reimbursement of payments we have made to an **insured** to be taken from the proceeds of any judgment or settlement;
  - b. An **insured** must hold in trust all rights of recovery for us against any person or organization. That person must also do whatever is proper to secure those rights and do nothing after the loss to prejudice any rights of recovery;
  - c. If we make the request in writing, the **insured** must take any necessary or appropriate action to recover damages from any other person or organization through any representative we designate. Any action may be taken in the **insured's** name and in the event of recovery, we will be reimbursed for any expenses, costs, and attorney fees we incur; and
  - d. The **insured** must execute and deliver any document to us that may be appropriate for the purpose of securing the rights and obligations for the **insured** and for us as established by this provision.
9. **Nonbinding Judgment.** No judgment resulting from a suit brought without our written consent is

binding on us, either in determining the liability of the **uninsured** or **underinsured motor vehicle** operator or owner or the amount of damages to which the **insured** is entitled.

10. **Interest.** The term damages does not include interest. We are not liable for any interest on any payment we make under this coverage.

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

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

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

1. Any person **occupying** an **insured vehicle** with your permission or the permission of an adult **relative** and sustaining **bodily injury** caused by an **occurrence** resulting from the use of this **insured vehicle**;
2. You or your **relatives** sustaining **bodily injury** caused by an **occurrence** while **occupying** an **insured vehicle** or a **motor vehicle** not owned by any **insured**;
3. Any person sustaining **bodily injury** while **occupying** a **nonowned vehicle**, if the **bodily injury** results from:
  - a. Its operation by you or on your behalf by a private chauffeur or domestic servant;
  - b. Its operation by a **relative**;
4. You or your **relatives** sustaining **bodily injury** while a pedestrian or a bicyclist when struck by a **motor vehicle** or **trailer**.

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

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

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

1. Fire, lightning or windstorm;
2. Smoke or smudge due to a sudden, unusual and faulty operation of any heating equipment serving the premises in which the vehicle is located;

3. The stranding, sinking, burning, collision or derailment of any conveyance in or upon which the vehicle is being transported; or
4. Theft.

#### **COVERAGE S – COMPREHENSIVE**

We will pay for any direct and accidental loss of, or damage to, your **insured vehicle** and its equipment not caused by collision or rollover. Loss or damage from missiles, falling objects, theft, collision with animals, or accidental glass breakage are comprehensive losses.

#### **COVERAGE T – COLLISION AND ROLL OVER**

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

#### **SECTION III ADDITIONAL PAYMENTS**

1. **Loss to Personal Property.** If as a result of other loss covered under Coverages R, S, or T, loss results to personal property being transported by the **insured vehicle**, we will pay up to \$500 for this loss. We do not cover cash or securities under this paragraph. We do not cover loss by theft of any personal property unless the loss is caused by the **insured vehicle** being stolen. Exclusion 13 does not apply to this coverage.
2. **Loss of Use by Theft—Reimbursement.** Following a theft of an **insured vehicle** covered under Coverages R or S, we will reimburse you for expenses up to \$25 a day to a maximum of \$500 incurred for the rental of a substitute automobile including taxi cabs.  
  
This reimbursement is limited to such expense incurred during the period commencing 48 hours after the theft has been reported to us and the police, and terminating, regardless of expiration of the policy period, on the date the **insured vehicle** is returned to you or on such earlier date as we make or offer settlement for this theft.
3. **Rental Car Coverage.** If Coverages S and T apply to an **insured vehicle** they also apply to a private passenger car driven by an **insured** which is rented by an **insured** for a period of less than three weeks.

#### **SECTION III EXCLUSIONS**

Section III does not cover:

1. Any **insured** while using any vehicle to carry persons for a fee. This exclusion does not apply to a share-the-expense car pool;
2. Any **insured** for any vehicle rented or leased to others;
3. Any **insured** while using any vehicle in a pre-arranged race, speed contest, or other competition, or preparation for any of these activities;
4. Damages which are intentionally caused by any **insured**;
5. Any **nonowned vehicle** while an **insured** is using it in the business of selling, repairing, servicing, storing or parking **motor vehicles**, including road testing and delivery;
6. Damages caused by nuclear reaction, radiation, or radioactive contamination;
7. Any radar or similar detection device; any device or instrument designed for the recording, reproduction, amplification, receiving, or transmitting of sound, radio waves, microwaves, or television signals; or tapes, records, CDs, discs or other medium designed for use with this equipment. This exclusion does not apply to a device or instrument if it is permanently installed in the dash, trunk or console opening at the time of manufacture or by a dealer when the **insured vehicle** is purchased new;
8. Damages caused directly or indirectly by declared or undeclared war, invasion, insurrection, rebellion, revolution, civil war, other assumption of power, or confiscation by a duly constituted governmental or civil authority;
9. Exemplary or punitive damages;
10. **Bodily injury** to anyone eligible to receive benefits which an **insured** either provides or is required to provide under any worker's compensation or occupational disease law;
11. Damages arising out of the ownership, maintenance or use of any type of emergency vehicle; gas, oil, or newspaper delivery truck; logging truck; or any non-farm commercial truck;

12. Under Coverages N and O, **bodily injury** or **property damage** sustained by:

- a. You;
- b. Residents of the household of the operator of an **insured vehicle** or **nonowned vehicle** who are related to the operator by blood, marriage, or adoption, including a ward or foster child; or
- c. The minor children of the operator of an **insured vehicle** or **nonowned vehicle**;

This exclusion, however, does not apply to the extent such coverage is required by state law, but the limits of such coverage shall then be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility or similar law affecting motor vehicle insurance requirements. These limits for the State of Idaho are stated in the Declarations.

13. Under Coverage O, damage to property owned or transported by any **insured**;
14. Under Coverage O, damage to property rented to, used by, or in the care, custody or control of an **insured**. This exclusion does not apply to **property damage** to:
  - a. A residence or private garage rented to an **insured**; or
  - b. A **nonowned vehicle** if there is no comprehensive or collision coverage on the vehicle;
15. Under Coverages N, O, P & P-1, liability arising out of any contract or agreement;
16. Under Coverage Q, **bodily injury** sustained while an **insured vehicle** is used as a residence or temporary living quarters;
17. Under Coverage Q, **bodily injury** sustained by a person engaged in the maintenance or repair of an **insured vehicle**;
18. Under Coverage Q, **bodily injury** to anyone eligible to receive benefits under any worker's compensation or similar law;
19. Under Coverage Q, any expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose;

20. Under Coverages R, S and T, any loss by collapse, explosion or implosion of any tank or container;

21. Under Coverages R, S and T, any camper or camper shell unless listed on the Declarations for these coverages;

22. Under Coverages R, S and T, any equipment or accessories contained in an insured motorhome, camper unit or trailer unless the equipment or accessories are built in and form a permanent part of the vehicle;

23. Under Coverages R, S and T, loss caused by recall of an **insured vehicle**;

24. Tires, unless damaged concurrent with other loss covered under Coverages R, S, or T. This exclusion does not apply to loss caused by vandalism;

25. Damages caused by wear and tear, freezing, mechanical or electrical breakdown or failure other than burning of wiring, unless the damage results from other loss covered under Coverages R, S, or T;

26. Under Coverages R, S, or T, any loss resulting from conversion, embezzlement or secretion by any person possessing the vehicle under any lien, rental or sales agreement; or

27. Under Coverage S any loss resulting from defective title or failure to obtain proper title.

### **SECTION III CONDITIONS**

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1. **Out of State Insurance.** If you have liability insurance under this policy and if an **insured** is traveling in a state or province outside the state of Idaho which has a compulsory insurance, financial responsibility, or similar law affecting nonresidents, we will automatically provide the required minimum amounts and types of coverages if your policy does not already provide these coverages, but only to the extent required by law and only with respect to the operation or use of the **insured vehicle** in that state or province. The required coverage, however, will be excess over any other collectible insurance.

2. **Two or More Vehicles.** A vehicle and an attached **trailer** will be considered one vehicle under Coverages N, O, P, P-1, and Q and separate vehicles under Coverages R, S, and T. The maximum applicable limits of liability in this policy shall not be increased in any way by this paragraph.

3. **Other Vehicle Insurance in the Company.** If this policy and any other vehicle insurance policy issued to you or your **relative** by us apply to the same **occurrence**, the maximum limit of our liability under all of the policies will not exceed the highest applicable limit of liability under any one policy. This is the most we will pay regardless of the number of **insureds**, claims made, **insured vehicles** or premiums.
4. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
  - a. Give written notice to us or our agent as soon as practicable, which sets forth:
    - (1) The identity of the policy and the **insured**;
    - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
    - (3) Names and addresses of any claimants and available witnesses;
  - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
  - c. At our request, assist in:
    - (1) Making settlement;
    - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
    - (3) The conduct of suits and attend hearings and trials;
    - (4) Securing and giving evidence and obtaining the attendance of witnesses;
  - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **occurrence**.
5. **Duties after Loss—Coverages R, S, and T.** In the case of loss to which this insurance applies, the **insured** shall perform the following duties:
  - a. Give notice, as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law;
    - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
    - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;
    - d. As often as we may require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and subscribe the same;
    - e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
      - (1) The time and cause of loss;
      - (2) The interest of the **insured** and all others in the **insured vehicle** involved and all encumbrances on the **insured vehicle**;
      - (3) Other insurance which may cover the loss;
      - (4) Changes in title of the **insured vehicle** during the term of the policy.
6. **Duties of an Injured Person—Coverages P, P-1 and Q.** The injured person or someone acting on behalf of the injured person shall:
  - a. Give us written proof of loss containing the information we request, under oath if required, as soon as practicable;
  - b. Execute authorization to allow us to obtain copies of medical reports and records; and
  - c. The injured person shall submit to physical examination by a physician selected by us when and as often as we reasonably require.
7. **Cooperation of Insured.** If any **insured** fails to cooperate or send us legal papers as required, we have the right to refuse any further protection for the **occurrence** or loss.
8. **Territory.** This policy applies only to **occurrences** within the United States of America and Canada. If applicable to your **insured vehicle**,

Coverages R, S, and T only are extended for trips into that part of the Republic of Mexico lying not more than 100 miles from the boundary line of the United States of America. Our liability will be determined on the basis of cost at the nearest United States point.

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

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

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

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

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

- a. Under Coverage N, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage O, the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. Under Coverage Q, the medical limit stated in the Declarations for each person is our limit of liability for all expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**;
- d. Our limit of liability under Coverages R, S, and T is the lesser of:

(1) The actual cash value of the **insured vehicle** or covered property; or

(2) The cost of repair or replacement using parts of like kind and quality.

Actual cash value is determined by the market value, age and condition at the time the loss occurred. We do not cover any reduction in value to your **insured vehicle** after repairs are completed. The cost of repair or replacement is based on the cost of repair agreed upon by us or an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, parts, and material prices charged by a substantial number of repair facilities in the area where the **insured vehicle** is to be repaired.

Under Coverages R, S and T, we have the right to base our payment on the cost of non-original equipment manufacturer parts provided they are C.A.P.A. certified as being equivalent to or better than original equipment.

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

- a. Pay up to the actual cash value;
- b. Pay to repair or replace the property or part with like kind and quality. If the repair or replacement results in better than like kind and quality, you must pay for the amount of the betterment;
- c. Return the stolen property and pay for any damage due to the theft; or
- d. Take the property at an agreed value, but it cannot be abandoned to us.

12. **Other Insurance.** The insurance under Section III is excess over any other valid and collectible insurance. Coverage Q, however, is primary coverage.

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

- a. We will pay you and the lienholder named in the policy for loss to an **insured vehicle**, as interests may appear.
- b. Section III covers the interest of the lienholder unless the loss results from fraudulent acts or omissions on your part.

- c. We may cancel the policy during the policy period. Notice of cancellation shall be mailed to the lienholder at least 10 days before the date the cancellation takes effect.
- d. If we make any payment to the lienholder, we will obtain his rights against any other party.
- e. We will pay the lienholder for their interest directly if your car has been repossessed.

**SECTION III ENDORSEMENTS**

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

**No. 312 (04-00) Automobile Accidental Death and Indemnity (AD&D) and Specific Disability Benefits Endorsement.**

- 1. **Death Benefit.** We agree to pay \$5,000 if an **insured** dies solely as the result of **bodily injury** caused by an **occurrence** while **occupying** or struck by a **motor vehicle**. Death of the **insured** must occur within 90 days after the date of the **occurrence**.
- 2. **Specific Disability Benefits.** We agree to pay the amount stated in the Schedule of Benefits for the specific injury listed as the result of **bodily injury** sustained by an **insured** caused by an **occurrence** while **occupying** a **motor vehicle**. The specific injury must be medically treated within 90 days from the date of **occurrence**. Any sum paid under this paragraph shall reduce the amount to which the **insured** is entitled under Coverage A—Death Benefit. Payment of the death benefit shall terminate our obligation to pay any further sum.

**SCHEDULE OF BENEFITS**

FOR LOSS OF

Both hands; both feet; sight of both eyes;  
 one hand and one foot; or either hand or foot and  
 sight of one eye \$5,000

FOR LOSS OF

Either hand or foot; sight of one eye; thumb and finger  
 of one hand; or any three fingers \$1,500

FOR LOSS OF

Any two fingers \$1,000

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

**Exclusions**

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

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

**Conditions**

The following additional conditions apply to this endorsement.

- 1. **Insured** means only those persons listed in the Declarations as persons to whom this endorsement applies.
- 2. **Notice of Claim—Death Benefit**  
 The injured person, the **insured's** beneficiary, or someone acting on behalf of such person shall:
  - a. Give us a written proof of claim, under oath if required, as soon as practical;
  - b. Execute authorization to allow us to obtain copies of medical reports and records; and
  - c. The injured person shall submit to a physical examination by a physician selected by us



when and as often as we may reasonably require.

### 3. Payment of Death Benefit—Autopsy

a. If the insured decedent is survived by a spouse who is a resident of the same household at the time of the accident, the death benefit is payable to the decedent's spouse. If the insured decedent was a minor, the death benefit is payable to any parent who was a resident of the same household at the time of the accident; otherwise, the death benefit is payable to the insured decedent's estate.

b. We shall have the right to have an autopsy performed where it is not forbidden by law.

4. The Conditions labeled "Other Insurance," "Nonduplication of Insurance Benefits" and "Subrogation—Our Right to Recover Payment" do not apply to this endorsement.

### No. 313 (04-00) Combined Single Limit Endorsement-Coverages P and P-1.

The limits of liability paragraph pertaining to Coverages P and P-1 under **Conditions Applicable to Coverages P & P-1** is changed to read as follows:

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

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

### No. 320 (04-00) Combined Single Limit Endorsement-Coverages N and O.

The limits of liability paragraph pertaining to Coverages N and O under **Section III Conditions** is changed to read as follows:

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

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

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

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

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

### No. 323 (01-94) Drive Other Car Endorsement.

Coverages N and O of Section III are amended to cover you while you are operating a **motor vehicle** that does not qualify as a **nonowned vehicle**, provided you have the permission of the owner of the vehicle. This endorsement does not cover a **motor vehicle**:

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

This endorsement shall not cover the owner of the **motor vehicle** you are driving.

### No. 334 (04-00) Roadside Assistance Endorsement.

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

1. Unlocking the **insured vehicle** if the keys have been locked inside the vehicle or if the keys have been lost;
2. Flat tire repair;
3. Labor for on site mechanical repairs;
4. Battery jump;
5. Towing or winch out service; or
6. Delivery of up to 3 gallons of gasoline, antifreeze or other **motor vehicle** fluids.

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

**No. 368 (04-00) Car Rental Reimbursement Endorsement.**

If a loss exceeds the applicable deductible to the **insured vehicle** under Coverages S or T, we agree to reimburse you for:

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

Coverage applies during a period starting on:

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

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

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

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

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

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

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## SECTION IV—INLAND MARINE INSURANCE

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

### SECTION IV CONDITIONS

1. **Duties after Loss.** In case of a loss to which this insurance may apply, the **insured** must see that the following duties are performed:
  - a. Give notice, as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law;
  - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
  - c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value and amount of loss and ownership of property. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;
  - d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the

presence of any other **insured** and subscribe the same;

- e. Within 60 days after our request, submit to us the **insured's** signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:

- (1) The time and cause of loss;
- (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title during the term of the policy;
- (5) Specifications of any damaged property and detailed estimates for repair of the damage;
- (6) An inventory of damaged property as described above.

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

- a. Repair or replace any part of or restore the pair or set to its value before the loss; or

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

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

- 3. **Valuation.** We shall not be liable beyond the actual cash value of the property at the time of any loss or the applicable endorsement limit, whichever is less. In no event shall we be liable for more than what it would cost to repair or replace the property with material of like kind and quality.
- 4. **Other Insurance.** The insurance under Section IV is excess over any other valid and collectible insurance.

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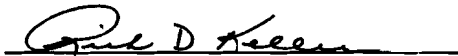
#### MUTUAL CONDITIONS

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- 1. **Membership.** While this policy is in force, you become a member of Farm Bureau Mutual Insurance Company of Idaho with all the rights and privileges of members as provided by the bylaws of the company in force at the time this policy takes effect, or that may become in force during the continuance of this policy. This policy is on a mutual and participating basis. This means that while this policy is in force, you will be entitled to participate in dividends of the company as the board of directors in their discretion may determine to distribute to policyholders.
- 2. **No Contingent Liability.** The policy is without contingent liability and is nonassessable.

- 3. **Annual Meeting.** The annual meeting of the members will be held at our principal or home office unless a different place is fixed by the board of directors. The annual meeting will be held on the fourth Friday of January of each year unless a different time is fixed by the board of directors. A notice of this meeting shall be published in the Idaho Farm Bureau News or mailed to each member at his last known address at least 45 days prior to the meeting.

IN WITNESS WHEREOF, the Farm Bureau Mutual Insurance Company of Idaho has caused this policy to be signed by its Secretary at Pocatello, Idaho, and countersigned on the Declarations by a duly authorized representative of the company.



Rick D. Keller, Secretary





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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 2

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 08-15-2007

**SECTION II - LIABILITY**

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
25000 125000	F2 PREMISES MEDICAL EACH PERSON EACH OCCURRENCE		
500	M DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE		
75000 75000	LIMITED POLLUTION COVERAGE EACH OCCURRENCE ANNUAL AGGREGATE	223	\$29.00
DESCRIPTION OF PREMISES:			
LOCATION DESCRIPTION			
02	640 ACRES SECTION=15 22 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
00	150 ACRES SECTION=07 18 12 TOWNSHIP=02N RANGE=02E ADA COUNTY		
00	800 ACRES SECTION=23 32 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
00	320 ACRES SECTION=23 TOWNSHIP=02S RANGE=04E ADA COUNTY		
00	245 ACRES SECTION=10 11 TOWNSHIP=02S RANGE=04E ADA COUNTY		
03	1 RES 2988 S OHYHEE ST BOISE ID		
SECTION II ADDITIONAL INSURED(S):			\$84.00
JUNIPER STATION PROPERTIES LLC JUNIPER STATION FARM LP			
TOTAL SECTION II ANNUAL PREMIUM			\$651.00

**SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:**

- ENDORSEMENT 205 - SPECIAL ENDORSEMENT FOR LIABILITY
- ENDORSEMENT 220 - COMBINED SINGLE LIMITS ON COVERAGES F1, G, AND H (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E2-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 269 - LIMITED EMPLOYER'S LIABILITY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 282 - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

**SECTION III - AUTOMOBILE**

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	N BODILY INJURY O PROPERTY DAMAGE EACH OCCURRENCE		
500000	P UNINSURED MOTORIST P1 UNDERINSURED MOTORIST EACH OCCURRENCE		
25000	Q MEDICAL EACH PERSON		
	R FIRE AND THEFT		
	S 100 COMPREHENSIVE DEDUCTIBLE		
	T 250 COLLISION DEDUCTIBLE		
25000 50000 15000	EXCLUSION 12 - FAMILY LIMIT OF LIABILITY BODILY INJURY - EACH PERSON BODILY INJURY - EACH OCCURRENCE PROPERTY DAMAGE - EACH OCCURRENCE		



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 3

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 08-15-2007

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
100	ROADSIDE ASSISTANCE EACH OCCURRENCE		
25	CAR RENTAL REIMBURSEMENT PER DAY		
500	PER ACCIDENT		
	THE FOLLOWING ARE INSURED UNDER ACCIDENTAL DEATH AND DISMEMBERMENT:	*312	\$2.00
	PATRICIA L EISENMAN		
	INSURED VEHICLES:		
	DESCRIPTION	APPLICABLE COVERAGES	ANNUAL PREMIUM
03-130-X	1998 BUICK PARKA 1G4CW52KXM4637207 FARM - AGE 80 AND OVER LIABILITY PREMIUM \$277.00 COMP / COLL PREMIUM \$225.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE *334 CAR RENTAL REIMBURSEMENT *368	\$502.00
03-410-P	1931 FORD PU A4329770 FARM - BASE RATE LIABILITY PREMIUM \$237.00 FIRE AND THEFT PREMIUM \$19.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE *334	\$256.00
03-092-U	1974 SPCN GENER 96356000216 MOTORHOME LIABILITY PREMIUM \$137.00 FIRE AND THEFT PREMIUM \$35.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE *334	\$172.00
03-082-R	1962 KENW TRUCK 76489 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$21.00	R	\$21.00
03-410-4	2001 DODG PU 3B7KC23691G712421 FARM - BASE RATE LIABILITY PREMIUM \$237.00 COMP / COLL PREMIUM \$367.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE *334 CAR RENTAL REIMBURSEMENT *368	\$604.00
03-082-U	1996 KENW TRUCK 1XKDDR9XXNJ575545 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$68.00	R	\$68.00
03-082	1961 INTL SB150486E TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES LIABILITY PREMIUM \$130.00	N, O, P, P1, Q	\$130.00
TOTAL SECTION III ANNUAL PREMIUM			\$1,755.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 313 - COMBINED SINGLE LIMIT ENDORSEMENT- COVERAGE P AND P-1 (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 320 - COMBINED SINGLE LIMITS ON COVERAGES N AND Q (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E3-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 324 - NEW VEHICLE LOAN COVERAGE ENDORSEMENT
- ENDORSEMENT 326 - NEW VEHICLE ADDITIONAL COVERAGE ENDORSEMENT



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

FARM AND RANCH POLICY  
DECLARATIONS  
PAGE 4

POLICY NUMBER: 01--097719-01  
EFFECTIVE DATE: 08-15-2007

**SECTION IV - INLAND MARINE**

**NO COVERAGE**

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

**POLICY BOOKLET ID-FR-02-01-04-00 - FARM AND RANCH POLICY**

**TOTAL ANNUAL PREMIUM \$4,669.00**

**LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS**

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

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

**NOTICE OF ANNUAL MEETING**

**THE PARAGRAPH ENTITLED "ANNUAL MEETING" ON THE LAST PAGE OF YOUR POLICY BOOKLET IS CHANGED AS FOLLOWS:**

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

*L. Leydeger*  
Authorized Representative  
000058

RI VE/INTERIM/CLOSING REPORT RM

PAY RECOMMENDATION

Check One:  Yes  No

TO: Drue FROM: Mike DATE: 3/14/08

INSURED: Eisenman D.O.L.: 11/30/07 CLAIM NO: 0109771901

Claim Adjustment Activity: \_\_\_\_\_

Remaining to be Done: \_\_\_\_\_

Reserves: (Check Box) Change  No Change

Name:	Line:	Amount:	Name:	Line:	Amount:
1			5		
2			6		
3			7		
4			8		

Subrogation: Lines \_\_\_\_\_ Set up  Close

Salvage: Lines \_\_\_\_\_ Set up  Close

Attachments: \_\_\_\_\_

Recommendation for Payments:

1. Pay	Patricia L Eisenman Estate	Amount	\$	5000.00
Address	16011 194 <sup>th</sup> Ave SE	Type Payment		87
City	Renton, WA 98058-0901	Code		01
Payment of	accidental death limit	TIN:		

2. Pay		Amount	\$	
Address		Type Payment		
City		Code		
Payment of		TIN:		

3. Pay		Amount	\$	
Address		Type Payment		
City		Code		
Payment of		TIN:		

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Adjuster's Signature: \_\_\_\_\_



FILED 2:10 P.M. A.M.

JUL 30 2010

J. DAVID NAVARRO, Clerk  
By CARLY LATIMORE  
DEPUTY

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

Attorneys for Defendants and Counter-claimant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO, )  
Plaintiff, )

Case No. CV OC 10-10533

vs. )

**ANSWER TO AMENDED COMPLAINT,  
COUNTERCLAIM, AND DEMAND FOR  
JURY TRIAL**

MICHAEL JOHN EISENMAN and )  
KATHRYN MARIE, individually, and co- )  
personal representatives of the ESTATE )  
OF PATRICIA EISENMAN; REBECCA )  
L. McGAVIN and PETER EISENMAN, )  
individually, )  
Defendants. )

ESTATE OF PATRICIA EISENMAN, by )  
and through Michael John Eisenman and )  
Kathryn Marie, personal representatives, )  
Counter-claimant )

vs. )

FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO )  
Counter-defendant )

ANSWER TO AMENDED COMPLAINT,  
COUNTERCLAIM, AND DEMAND FOR  
JURY TRIAL

AK

**I. ANSWER**

COME NOW the above-named Defendants, by and through their attorneys of record, Moore & Elia, and in response to Plaintiff's Amended Complaint for Declaratory Relief ("Amended Complaint"), admit, deny and allege as follows:

1. Plaintiff's Amended Complaint fails to state a claim against these Defendants upon which relief can be granted.

2. Defendants deny all allegations of Plaintiff's Amended Complaint not specifically admitted herein.

3. Defendants admit the allegations contained in Paragraphs I, II, III, IV, V, and VI of Plaintiff's Amended Complaint, except that Michael John Eisenman is now a resident of Ada County, Idaho.

4. As to the allegations contained in Paragraph VII of Plaintiff's Amended Complaint, Defendants admit that the Estate of Patricia Eisenman, by and through its personal representatives, Defendants Michael John Eisenman and Kathryn Marie, has made a claim for insurance benefits against the Farm and Ranch insurance policy (No. 010977190) (the "Policy"), which Plaintiff Farm Bureau sold to Patricia Eisenman and was in effect at the time of her death. Upon Defendants' best information and belief, a copy of the Policy is attached as "Exhibit A" to Plaintiff's Amended Complaint. Defendants also admit that Patricia Eisenman died on November 30, 2007 when a car struck her while she was crossing Hayes Street in Boise, Idaho.

5. Defendants admit the allegations contained in Paragraphs VIII and IX of Plaintiff's Amended Complaint.

6. As to the allegations contained in Paragraph X of Plaintiff's Amended Complaint, Defendants admit that the term "insured" is defined in the Policy.

7. As to the allegations contained in Paragraph XI of Plaintiff's Amended Complaint, Defendants admit that Defendants Michael John Eisenman, Kathryn Marie, Becky McGavin, and Peter Eisenman, were the natural children of Patricia Eisenman, and, that they did not reside with Patricia Eisenman at the time of her death. Defendants also admit that under the Policy, Farm Bureau agreed to pay damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury, including death, sustained by an insured and caused by an occurrence.

8. The allegations contained in Paragraph XII of Plaintiff's Amended Complaint do not properly characterize the claims being made by the estate of Patricia Eisenman under the Policy including the underinsured motorist claim. The Estate of Patricia Eisenman, through its personal representatives, Michael John Eisenman and Kathryn Marie, is claiming that it is legally entitled to recover insurance benefits under the Policy. A portion of the Estate's claim under the policy has previously been paid by Farm Bureau. However, under Idaho law, the Estate is also legally entitled to recover wrongful death damages pursuant to Idaho Code §5-311 on behalf of the insured's heirs, Michael John Eisenman, Kathryn Marie, Becky McGavin and Peter Eisenman. Said damages are also sought by the estate under the underinsured motorist's provision of the Policy which have not been paid by Farm Bureau.

9. As to the allegations in Paragraph XIII of Plaintiff's Amended Complaint, Defendants admit that this Court has jurisdiction to hear the instant lawsuit but deny that Plaintiff's allegations properly characterize the issue in dispute.

**WHEREFORE**, Defendants pray for the following relief:

10. Judgment against Plaintiff Farm Bureau dismissing Plaintiff's Amended Complaint with prejudice and granting Plaintiff none of the relief prayed for therein;

11. Pursuant to Idaho Code 41-1839 and other applicable law, granting Defendants their attorneys' fees and costs; and

12. Granting Defendants such other and further relief as this Court deems just.

13. Defendants request a jury trial in this matter.

## **II. COUNTERCLAIM**

COMES NOW Counter-claimant, the Estate of Patricia Eisenman, by and through the personal representatives Michael John Eisenman and Kathryn Marie, and hereby brings this counterclaim for breach of contract and damages against Counter-defendant Farm Bureau Mutual Insurance Company of Idaho.

### **Parties, Jurisdiction and Venue**

1. Counter-claimant is the Estate of Patricia Eisenman, which was created pursuant to Idaho law following the death of Patricia Eisenman. The personal representatives of the Estate of Patricia Eisenman are Michael John Eisenman and Kathryn Marie, and both are currently residents of Ada County, Idaho.

2. Counter-defendant Farm Bureau Mutual Insurance Company of Idaho, Inc. ("Farm Bureau") is an Idaho domestic mutual insurance company authorized to do business in the state of Idaho, which has a home office in Pocatello, Idaho, and whose business includes entering into insurance contracts including Farm and Ranch policies, homeowner's insurance policies, and automobile insurance policies, within the state of Idaho.

3. This Court has jurisdiction over this action and over Farm Bureau pursuant to Idaho Code §§ 1-705 and 5-514(d).

4. The amount in controversy exceeds \$10,000, which is the jurisdictional limit of this Court.

5. Venue is appropriate pursuant to Idaho Code §§ 5-404 and 41-1838.

### **General Allegations**

6. On November 30, 2007, Patricia Eisenman was crossing Hayes Street in Boise, Idaho when she was struck and killed by a vehicle owned and operated by Mary Zahm. Ms. Zahm's negligence and/or recklessness in operating her vehicle was the sole cause of Ms. Eisenman's death.

7. At the time of the incident, Ms. Zahm had an automobile liability insurance policy with American International Group (AIG) with policy limits of \$50,000. Notice of the existence of this coverage was served on Farm Bureau and Farm Bureau consented to the settlement of any claims against Ms. Zahm for the AIG policy limits. AIG paid the policy limits to the Estate of Patricia Eisenman, which Estate was created pursuant to Idaho law following Ms. Eisenman's death.

8. At the time of her death, Patricia Eisenman had an insurance policy (No. 0109977190) with Farm Bureau ("the Policy"). To the best of Counterclaimant's information and belief, attached to Plaintiff's Amended Complaint as "Exhibit A" is a true and correct copy of the Policy. Pursuant to the Policy, Patricia Eisenman paid premiums in exchange for Farm Bureau's promise to provide insurance coverage, including underinsured motorist coverage upon her bodily injury and/or death. The exact language of the underinsured motorist coverage reads in pertinent part as follows:

We [Farm Bureau] will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of bodily injury sustained by an **insured** and caused by an **occurrence**.

9. At the time of her death, Patricia Eisenman was a named “insured” as defined under the Policy. Farm Bureau has admitted that Ms. Eisenman was an “insured”.

10. The vehicle Mary Zahm was driving at the time of the incident was an “underinsured motor vehicle” as defined by the Policy. Farm Bureau has admitted that Ms. Zahm’s vehicle was an “underinsured motor vehicle”.

11. Under the Farm Bureau policy “bodily injury”, is defined as “personal injury or death”. Patricia Eisenman’s death was the result of the November 30, 2010 accident, which falls within the Policy’s definition of an “occurrence”.

12. Pursuant to Idaho Code § 5-311, the Estate of Patricia Eisenman, through her personal representatives, is legally entitled to recover wrongful death damages against Ms. Zahm on behalf of Ms. Eisenman’s heirs. As the children of Ms. Eisenman, Michael John Eisenman, Kathryn Marie, Rebecca McGavin, and Peter Eisenman are “heirs” as defined by Idaho Code §5-311.

13. Because the Estate of Patricia Eisenman is legally entitled to recover wrongful death damages on behalf of her heirs as against Ms. Zahm pursuant to Idaho Code §5-311, Farm Bureau is contractually obligated to pay those damages to the Estate of Patricia Eisenman pursuant to the underinsured motorist provision of the Policy.

14. On April 28, 2010, the Estate of Patricia Eisenman, through her personal representatives, furnished a Proof of Loss to Farm Bureau for various damages including the wrongful death damages that the Estate is legally entitled to recover on behalf of her heirs against Ms. Zahm pursuant to Idaho Code §5-311. The Proof of Loss complied with the requirements for submitting a Proof of Loss as provided under the Policy.

15. As of the date of the commencement of this Counterclaim, Farm Bureau has failed to pay to the Estate of Patricia Eisenman the amount that is justly due under the underinsured motorist provision of the Policy. To date, Farm Bureau has only paid the Estate of Patricia Eisenman an accidental death benefit of \$5,000 and has tendered to the Estate a check in the amount of \$22,941.40 for medical expenses and funeral expense, copies of which are attached hereto as “**Exhibit 1**”.

**Breach of Contract Claim**

16. Counter-claimant re-alleges and incorporates all preceding paragraphs of this Counterclaim, as if they were fully set forth herein.

17. Counter-defendant Farm Bureau breached its contract with its insured, Patricia Eisenman and the Estate of Patricia Eisenman, by failing to pay those wrongful death damages which the Estate of Patricia Eisenman is legally entitled to recover from the actions of underinsured motorist Mary Zahm upon Patricia Eisenman’s death pursuant to Idaho Code §5-311.

**WHEREFORE**, Counter-claimant prays for judgment against Counter-defendant as follows:

18. For money justly due pursuant to the underinsured motorists provision of the Policy in the amount of \$500,000 or for an amount to be proven at trial;

19. For reasonable attorneys’ fees that Counter-claimant is legally entitled to collect under Idaho Code §§ 41-1839 and 12-120;

20. For costs incurred in prosecuting this action;

21. For pre-judgment interest pursuant to Idaho Code §28-22-104; and

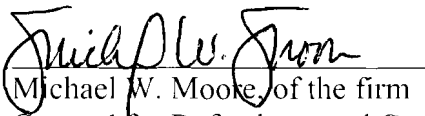
22. For such other and further relief that this Court deems just and equitable under the facts and circumstances.

**III. DEMAND FOR JURY TRIAL**

Counter-claimant requests that Plaintiff's Amended Complaint and Defendants' Counterclaim be tried by Jury

DATED this 30 day of July, 2010.

MOORE & ELIA, LLP.

  
Michael W. Moore, of the firm  
Counsel for Defendants and Counter-claimant

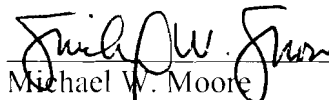


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of July, 2010, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Rodney R. Saetrum  
Robert R. Gates  
Saetrum Law Offices  
P.O. Box 7425  
Boise, Idaho 83707

U.S. Mail, postage prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile Transmission 336-0448  
 E-Mail

  
\_\_\_\_\_  
Michael W. Moore



# SAETRUM LAW OFFICES

ATTORNEYS AT LAW

RODNEY R. SAETRUM  
ROBERT R. GATES  
KARYN WHYCHELL  
RYAN B. PECK  
OF COUNSEL:  
ROBERT L. JACKSON

3046 S. BOWN WAY BOISE, ID 83706  
P.O. BOX 7425  
BOISE, ID 83707  
TELEPHONE: (208) 336-0484  
FACSIMILE: (208) 336-0448  
EMAIL: [general@saetrumlaw.com](mailto:general@saetrumlaw.com)

May 24, 2010

Michael W. Moore  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

SCANNED

RE: Insured:	Patricia Eisenman
Claim No.	01097719012007113001
Date of Loss:	November 30, 2007
Claimant:	Michael Eisenman

Dear Mike:

Enclosed is a check for the undisputed amount of money which Farm Bureau can determine that it owes your clients for their proof of loss submitted under the underinsured motorist provisions of Mrs. Eisenman's Farm and Ranch policy. We have also enclosed a copy of a check for \$5,000 which had already been paid to the Estate of Patricia L. Eisenman on March 18, 2008. This check cleared the bank on June 20, 2008.

We realize that it is your clients' position that they are entitled to the policy limits of Mrs. Eisenman's underinsured motorist coverage minus the \$50,000 received from the tortfeasor's insurer. However, it is Farm Bureau's position that because the adult children were not insureds as defined in the policy, they are not eligible to receive any compensation for their noneconomic damages under the terms of the underinsured motorist portion of the policy.

The amount of the check represents the special damages submitted by the estate through the proof of loss. Farm Bureau Insurance personal recognize that your clients have suffered an emotional loss. The policy of insurance, however, specifies insureds that can recover under the

RECEIVED  
MAY 25 2010

ATTORNEYS LICENSED IN IDAHO, OREGON AND UTAH

000070

Mr. Michael Moore

Page 2

May 24, 2010

coverage provisions of Ms. Eisenman's policy. Unfortunately, the provisions do not extend to your client's loss of society claims. The estates' claim has, therefore, been accepted only in part as reflected in the payment. We have previously provided a copy of the policy, if you need an additional copy please advise.

If you have any legal authority to support your claim for loss of society and other non-economic losses, Farm Bureau is willing to revisit its decision in light of that authority.

Very truly yours,

SAETRUM LAW OFFICES\

A handwritten signature in black ink, appearing to read "Rodney R. Saetrum", written over a faint rectangular stamp or box.

Rodney R. Saetrum

c: Steve Johnson

000071



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO  
 PO BOX 4848 POCATELLO ID 83205-4848

01-+-097719-01 11-30-2007

346668

KEY BANK OF IDAHO  
 POCATELLO IDAHO

92-155  
 1241

PAY  
 FIVE THOUSAND DOLLARS AND 00 CENTS

DATE AMOUNT

03-18-2008 \$\*\*\*\*5,000.00

FARM BUREAU MUTUAL INSURANCE COMPANY

NON-NEGOTIABLE

TO EISENMAN PATRICIA L ESTATE  
 THE % MIKE EISENMAN  
 ORDER 16011 194TH AVE SE  
 OF RENTON WA 98058-0901

03-18-2008

PLEASE DETACH AND RETAIN THIS STATEMENT

01-+-097719-01 11-30-2007

12-3-005-9995

FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO  
 PO BOX 4848 POCATELLO ID 83205-4848

956

346668

INSURED EISENMAN PATRICIA L ESTATE	POLICY NUMBER 01-+-097719-01	CTY 001	AGT 701	ADJ 461	ASJ 000	LOSS DATE 11-30-2007	REPORT DATE 12-21-2007			
IN PAYMENT OF LIMIT OF ACCIDENTAL DEATH -DRD	TC 87	LM 39	T 1	CW A	A CONTROL # 00599950010	DED 99	SR 01	YR DODG	MAKE VIN 12421	AMOUNT 5,000.00

checked by RMAXWELL 03/19/2008

See notes of support on pay rec per Mike M 3-19-08 rm

*Cleared our Bank 6-20-08  
 per attached*

TOTAL----->

5,000.00

NOTE: THIS CHECK IS NOT VALID UNLESS PROPERLY ENDORSED BY ALL PARTIES.

CC-08-01-09-02

000072

CHECK CONTROL PANEL  
TRANSACTION MASTER

DRUE DANA  
HAVE A NICE DAY

\*\*\*\*\*

14:02:22 05/20/10

\*\*\*\*\*

KEY: 01 225 346668 0001

STATUS: 6 PAYBL: CYCL: PTYP: BCH:

- 1 = UNISSUED
- 2 = CLEARED/NOT ISSUED
- 3 = OUTSTANDING
- 4 = PAID/NOT CLEARED
- 5 = CLEARED/NOT PAID
- 6 = CLEARED/ISSUED
- 7 = REVERSED
- 8 = UNCLAIMED PROPERTY
- 9 = DESTROYED
- 0 = CLEARED BANK ERROR

PAYEE:  
EISENMAN PATRICIA L ESTATE  
% MIKE EISENMAN  
16011 194TH AVE SE  
RENTON WA 98058-0901

ISSUE DATE: 3-18-2008      CLEARED DATE: 6-20-2008      CK CLEAR NO: 000000  
FED NUMBER: 000000      TAX ID NUMBER: 888880000      CK CLEAR AMT:  
POLICY NO: 01-097719-01      JOURNAL/SOURCE: 000 346668      DEBIT/CREDIT:  
AMOUNT: 5000.00      CHECK SOURCE:

000073



KEY BANK National Association

B1300

F1243

DATE

5-19-2012

No. 083904

P.O. Box 4848 • Pocatello Idaho 83205-4848 • Phone: 208-242-2914

CHECK AMOUNT

PAY Twenty Two Thousand Nine Hundred Forty One and 40/100 DOLLARS 22,941<sup>40</sup>

In Payment Of Undisputed claim covered for estate

INSURED	DATE OF ACCIDENT	POLICY NUMBER	NO. REYS	CLASS	SHIP	RE-PA
Patricia Eisenman	2011-11-30	010171901	UN	FB	461	

THIS DRAFT MUST BE PROPERLY ENCLOSED ON THE REVERSE SIDE

LOSS DRAFT

IMPORTANT: UPON ACCEPTANCE THE COMPANY WILL PAY TO THE WITHIN NAME FOR PAYEE THROUGH THE COLLECTIONS/TELLER AT KEY BANK OF IDAHO P.O. BOX 1788 Pocatello, ID 83204

TO THE ORDER OF

Notice to All: If you are the  
 Estate of Patricia Eisenman through  
 its Personal Representative Michael E. Benin  
 and Kathryn Marie  
 PO Box 6756 Boise ID 83709

CONDITIONS

*[Signature]*

AUTHORIZED SIGNATURE

⑈083904⑈ ⑆12503007⑆ 440991200062⑈

**AUG 19 2010**

**J. DAVID NAVARRO, Clerk**  
By **A. GARDEN**

Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,**

**Plaintiff,**

v.

**MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,**

**Defendants.**

**ESTATE OF PATRICIA EISENMAN; by  
and through Michael John Eisenman and  
Kathryn Marie, personal representatives,**

**Counter-claimant,**

v.

**FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,,**

**Counter-defendant.**

Case No. CV OC 1010533

**ANSWER TO  
COUNTERCLAIM**

Comes now Plaintiff Farm Bureau Mutual Insurance Company of Idaho, Inc., through their attorneys of record, Saetrum Law Offices, and answers Defendants' counterclaim as follows.





I.

Defendants' Counterclaim fails to state a claim upon which relief may be granted.

II.

Plaintiff denies each and every allegation which is not specifically admitted in this Answer.

III.

Plaintiff admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Counterclaim.

IV.

Answering paragraph 11, Plaintiff admits only that the auto accident was an occurrence as defined in the policy, and that death is included in the definition of bodily injury. Plaintiff denies the remainder of paragraph 11.

V.

Answering paragraph 12, Plaintiff admits only that the Idaho Wrongful Death Act provides a cause of action for the recovery of damages from the tortfeasor causing the death of the Decedent. Plaintiff further admits that the individual Defendants are defined as heirs under Idaho Code § 5-311, and denies the remainder of paragraph 12.

VI.

Answering paragraph 13, Plaintiff admits only that the Wrongful Death Act states, "When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death . . . ." However, Plaintiff denies that the Estate is an insured who is covered under the underinsured motorist coverage of the policy. Plaintiff denies the remainder of paragraph 13.

VII.

Answering paragraph 14, Plaintiff admits only that a sufficient proof of loss was presented to Farm Bureau many months after initially requested by Plaintiff.

VIII.

Answering paragraph 15, Plaintiff denies that Farm Bureau has failed to pay the amount justly due under the policy. Plaintiff admits that the other two payments were made under other provisions of the policy, not specifically under the underinsured motorist coverage

IX.

Answering paragraph 16, Plaintiff realleges all previous admissions and denials.

X.

Answering paragraph 17, Plaintiff denies that Farm Bureau breached its insurance contract which was sold to Patricia Eisenman as the named insured. Plaintiff denies the remainder of the Counterclaim.

**AFFIRMATIVE DEFENSES**

That at the time of the filing of this answer, Plaintiff, Counter-Defendant Farm Bureau Mutual Insurance Company of Idaho, have not been able to engage in discovery and lack information sufficient to form a belief as to all of the affirmative defenses that might apply in this instance. At this time, pursuant to I.R.C.P. 12, Plaintiff is asserting the following affirmative defenses so that the same are not waived. If factual information is not developed sufficient to assert any specific affirmative defense, the affirmative defense in question will be withdrawn.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff alleges that none of the Defendants are defined as insureds under the policy, and none of the Defendants fall within the category and that only insureds are allowed to recover under the policy.

**SECOND AFFIRMATIVE DEFENSE**


Plaintiff alleges that there is no contractual agreement between it and counter-claimant, so counter-claimant cannot collect any benefits under the policy of insurance owned by decedent Patricia Eisenman.

**WHEREFORE**, Plaintiff requests the Court grant it the following relief:

1. Judgment against Defendant Counter-Claimant Estate of Patricia Eisenman and dismissal of the counter-claim;
2. Grant Plaintiff it's costs and attorney's fees under I.C. § 41-1839, and
3. Such other and further relief as the Court deems to be just and proper in the premises.

DATED this 19 day of August 2010.

SAETRUM LAW OFFICES

By   
Rodney R. Saetrum  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 19 day of August 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Michael W. Moore  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile



Rodney R. Saetrum

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

NOV 01 2010

J. DAVID NAVARRO, Clerk  
By DAYSHA CSBORN  
DEPUTY

Attorneys for Defendants and Counter-claimant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

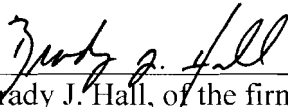
FARM BUREAU MUTUAL	)	Case No. CV OC 10-10533
INSURANCE COMPANY OF IDAHO,	)	
	)	<b>THE ESTATE OF PATRICIA</b>
Plaintiff,	)	<b>EISENMAN'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
vs.	)	
	)	
MICHAEL JOHN EISENMAN and	)	
KATHRYN MARIE, individually, and co-	)	
personal representatives of the ESTATE	)	
OF PATRICIA EISENMAN; REBECCA	)	
L. McGAVIN and PETER EISENMAN,	)	
individually,	)	
	)	
Defendants.	)	
_____	)	
ESTATE OF PATRICIA EISENMAN, by	)	
and through Michael John Eisenman and	)	
Kathryn Marie, personal representatives,	)	
	)	
Counter-claimant	)	
	)	
vs.	)	
	)	
FARM BUREAU MUTUAL	)	
INSURANCE COMPANY OF IDAHO	)	
	)	
Counter-defendant	)	
_____	)	

*EW*

COME NOW, Michael Eisenman and Kathryn Marie, in their capacity as co-personal representatives of the Estate of Patricia Eisenman, by and through their counsel of record, Moore & Elia, LLP, and hereby respectfully request that this Court rule as a matter of law that Farm Bureau Mutual Insurance Company of Idaho's ("Farm Bureau") underinsured motorist provision provides coverage for the wrongful death damages that Ms. Eisenman is "legally entitled" to recover through her estate pursuant to Idaho Code §5-311. Filed contemporaneously herewith are the *Affidavit of Counsel Brady J. Hall* and the *Memorandum in Support of the Estate of Patricia Eisenman's Motion for Summary Judgment*.

DATED this 1<sup>st</sup> day of November, 2010.

MOORE & ELIA, LLP.


  
\_\_\_\_\_  
Brady J. Hall, of the firm  
Counsel for Defendants/Counter-claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1<sup>st</sup> day of November, 2010, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Rodney R. Saetrum  
Robert R. Gates  
Saetrum Law Offices  
P.O. Box 7425  
Boise, Idaho 83707  
*Attorneys for Farm Bureau*

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Mail
- Facsimile Transmission 336-0448
- E-Mail

  
\_\_\_\_\_  
Brady J. Hall

NOV 01 2010

J. DAVID NAVARRO, Clerk  
BY DAYSHA OSBORN  
DEPUTY

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

Attorneys for Defendants and Counter-claimant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FARM BUREAU MUTUAL  
INSURANCE COMPANY OF IDAHO,  
  
Plaintiff,

vs.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE  
OF PATRICIA EISENMAN; REBECCA  
L. McGAVIN and PETER EISENMAN,  
individually,  
  
Defendants.

\_\_\_\_\_  
ESTATE OF PATRICIA EISENMAN, by  
and through Michael John Eisenman and  
Kathryn Marie, personal representatives,  
  
Counter-claimant

vs.

FARM BUREAU MUTUAL  
INSURANCE COMPANY OF IDAHO  
  
Counter-defendant  
\_\_\_\_\_

) Case No. CV OC 10-10533  
)  
) **MEMORANDUM IN SUPPORT OF THE**  
) **ESTATE OF PATRICIA EISENMAN'S**  
) **MOTION FOR SUMMARY JUDGMENT**

EU



## INTRODUCTION

COME NOW Michael Eisenman and Kathryn Marie, as co-personal representatives of the Estate of Patricia Eisenman, by and through their counsel of record, Moore & Elia, LLP, and hereby submit this memorandum in support of *The Estate of Patricia Eisenman's Motion for Summary Judgment*. For the reasons set forth herein below, Ms. Eisenman's estate respectfully submits that this Court should rule as a matter of law that Farm Bureau's underinsured motorist provision requires Farm Bureau to pay those wrongful death damages that Ms. Eisenman's estate is legally entitled to recover pursuant to Idaho Code §5-311.

## STATEMENT OF UNDISPUTED FACTS

On November 30, 2007, Patricia Eisenman was walking across Hayes Street near downtown Boise when she was struck and killed by a drunk driver. (*Affidavit of Counsel Brady J. Hall* ("Hall Aff."), Exh. B, pp. 30-33.) Ms. Eisenman was survived by her four adult children: Michael Eisenman, Kathryn Marie, Rebecca McGavin, and Peter Eisenman. (*Hall Aff.*, Exh. B, p. 1.) After obtaining their mother's Certificate of Death (*Id.* at p. 13.), Michael and Kathryn created the Estate of Patricia Eisenman and volunteered to serve as personal representatives of Ms. Eisenman's estate. (*Hall Aff.*, Exh. B, pp. 15-18.)

Mary Zahm was the drunk driver who fatally hit Ms. Eisenman. (*Hall Aff.*, Exh. B, pp. 30-33.) She was charged criminally and eventually pled guilty to vehicular manslaughter. (*Id.* at pp. 35-37.) Ms. Zahm was sentenced and ordered to pay restitution of only several thousand dollars for Ms. Eisenman's death. (*Id.*) Ms. Zahm did have automobile liability insurance with American International Group ("AIG"), but the AIG policy was limited to only \$50,000 in coverage. (*Hall Aff.*, Exh. B, at p. 1.) On behalf of their mother's estate, Michael and Kathryn

filed a claim for damages under Ms. Zahm's policy and AIG subsequently paid the policy limits to Ms. Eisenman's estate. (*Id.*)

At the time of her death, Ms. Eisenman had home and auto insurance with Farm Bureau Mutual Insurance Company of Idaho ("Farm Bureau"). (*Hall Aff.*, Exh. A.) Pursuant to the policy, Ms. Eisenman paid monthly premiums to Farm Bureau as consideration for \$500,000 in underinsured motorist coverage in the event she was injured or killed by an underinsured driver. (*Id.* at p. 39.) The precise language of Farm Bureau's underinsured motorist provision reads in pertinent part as follows:

We [Farm Bureau] will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of bodily injury sustained by an **insured** and caused by an **occurrence**.

(*Hall Aff.*, Exh. A, p. 27.)

On April 28, 2010, Michael Eisenman and Kathryn Marie, in their capacity as personal representatives of their mother's estate, submitted a sworn proof of loss with Farm Bureau. (*Hall Aff.*, Exh. B.) In addition to medical and funeral expenses, the proof of loss requested that Farm Bureau pay the wrongful death damages that Ms. Eisenman's estate is entitled to collect pursuant to Idaho Code §5-311. (*Id.* at p. 1) ("The Estate of Patricia Eisenman and its personal representatives make claims for all losses suffered by the Estate either for special damage expense or wrongful death claims which the Estate is authorized to make under I.C. §5-311 for the loss suffered by the Heirs of Patricia Eisenman.")

On April 30, 2010, Farm Bureau acknowledged receipt of the sworn proof of loss (*Hall Aff.*, Exh. C, p. 1), but nonetheless made payment for only \$22,941.40 to the order of "Patricia Eisenman Estate" for what Farm Bureau described as the "undisputed amount of money" it owed Ms. Eisenman's estate pursuant to the underinsured motorist provision. (*Hall Aff.*, Exh. D, pp. 1,

5) Farm Bureau has repeatedly refused to pay the wrongful death damages that Ms. Eisenman's estate could have recovered against Ms. Zahm pursuant to Idaho Code §5-311. (*Hall Aff.*, Exh. C and D)

On May 26, 2010, Farm Bureau commenced this action by filing a *Complaint for Declaratory Relief* ("Complaint"). Farm Bureau filed an *Amended Complaint for Declaratory Relief* ("Amended Complaint") on June 3, 2010 in order to provide the Court with a copy of the applicable insurance policy that Ms. Eisenman had with Farm Bureau. Farm Bureau brought the declaratory action against the representatives of Ms. Eisenman's estate and against each of Ms. Eisenman's four children in their individual capacities. (*Amended Complaint*, p. 1) By way of its *Amended Complaint*, Farm Bureau requests this Court to declare that neither of Ms. Eisenman's children are "insureds" and thus not entitled to recover anything pursuant to the underinsured motorist provision. (*Amended Complaint*, pp. 4)

On July 30, 2010, the Estate of Patricia Eisenman and Ms. Eisenman's four children filed an answer to Farm Bureau's declaratory action. (*Answer to Amended Complaint, Counterclaim, and Demand for Jury Trial* ("Answer and Counterclaim"), pp. 1-4.) They reiterated that the April 28, 2010 proof of loss was made by the Estate of Patricia Eisenman, through Ms. Eisenman's personal representatives, for medical and funeral expenses, as well as for the Idaho Code §5-311 wrongful death damages suffered by Ms. Eisenman's four children. (*Id.*, at p. 2) The proof of loss was not made by Ms. Eisenman's four children in their individual capacities. (*Id.*) In addition, the Estate of Patricia Eisenman filed a counterclaim against Farm Bureau for breach of contract damages, attorney fees, costs, and interest for failing to pay Ms. Eisenman's estate the wrongful death damages that Ms. Eisenman is entitled to recover against Ms. Zahm. (*Answer and Counterclaim*, pp. 4-8)

## STATEMENT OF THE LAW

When interpreting insurance policies, Idaho courts are to apply the general rules of contract law subject to certain special canons of construction. *Brinkman v. Aid Ins. Co.*, 115 Idaho 346, 352 (1988). Insurance policies are like any other bilateral contract; they are a matter of contract between the insurer and the insured. *Id.* Beginning with the plain language of the insurance policy, the first step is to determine whether or not there is an ambiguity. *Martinez v. Idaho Counties Reciprocal Management Program*, 134 Idaho 247, 250 (2000). Whether an ambiguity exists is a question of law. *DeLancey v. DeLancey*, 110 Idaho 63, 65 (1986).

Interpretation of an unambiguous written contract is also a question of law over which an appellate court will exercise free review. *St. Clair v. Krueger*, 115 Idaho 702 (1989). “Where the policy language is clear and unambiguous, coverage must be determined, as a matter of law, according to the plain meaning of the words used.” *Clark v. Prudential Property and Cas. Ins. Co.*, 138 Idaho 538, 541 (2003). More importantly, where the policy language is unambiguous, Idaho courts must “construe the policy as written” and “cannot create a liability not assumed by the insurer nor make a new contract for the parties or one different from that plainly intended, nor add words to the contract of insurance to either create or avoid liability.” *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 70 (2009) (emphasis added).

Where the policy is ambiguous its meaning is a question of fact. *DeLancey*, 110 Idaho at 65 (1986). In a declaratory judgment action, a district court may resolve issues of fact incidental to the determination of rights and duties under the contract. See *I.C. 10-1209*. See also, *Farmers Ins. Exchange v. Tucker*, 142 Idaho 191, 194 (2005). An ambiguity exists where the “policy is reasonably subject to conflicting interpretations.” *Arreguin v. Farmers Ins. Co.*, 145 Idaho 459, 461 (2008). When confronted with ambiguous language in an insurance contract, Idaho courts

must determine what a reasonable person would have understood the language to mean. *Mutual of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235 (1996). The words used in the insurance policy must then be construed in their ordinary meaning. *Id.* However, as contracts of adhesion, not typically subject to negotiation between the parties, an ambiguity “must be construed most strongly against the insurer.” See *Moss v. Mid-American Fire and Marine Ins. Co.*, 103 Idaho 298, 300 (1982). The burden is on the insurer to use clear and precise language if it wishes to restrict the scope of coverage. *Id.*

### ANALYSIS

Farm Bureau’s underinsured motorist provision clearly and unambiguously promises to pay any and all “damages” that Ms. Eisenman would be legally entitled to recover against Ms. Zahm. Here, Ms. Eisenman is entitled to recover her children’s wrongful death damages against Ms. Zahm pursuant to Idaho Code §5-311. Again, the text of the underinsured motorist provision reads as follows:

We [Farm Bureau] will pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of bodily injury sustained by an **insured** and caused by an **occurrence**.

(*Hall Aff.*, Exh. A, p. 27.)

It is undisputed that Ms. Eisenman was an “insured” and that the November 30, 2007 incident amounted to an “occurrence” under the policy. It is also undisputed that Ms. Eisenman sustained “bodily injury” as a result of the collision. Farm Bureau expressly included “death” within the definition of “bodily injury.” (*Hall Aff.*, Exh. A, p. 3.) Further, Farm Bureau concedes that Ms. Zahm was operating an “underinsured motor vehicle” when she struck Ms. Eisenman. (*Amended Complaint*, p. 3, ¶ 9.) Regardless, it goes without saying that the limit of Ms. Zahm’s AIG policy (i.e. \$50,000) is significantly less than the limit of Ms. Eisenman’s

underinsured motorist coverage with Farm Bureau (i.e. \$500,000). (See, *Hall Aff.*, Exh. A, p. 27. Coverage P-1, ¶ 3.)

Moreover, Ms. Eisenman, through her estate, is “legally entitled” to recover wrongful death damages from Ms. Zahm. It is well settled that Idaho Code §5-311 authorizes Ms. Eisenman’s personal representatives to maintain an action for damages against Ms. Zahm in her name and on behalf of her four children. *I.C. 5-311(1)*. See also, *Turpen v. Granieri*, 133 Idaho 244 (1999); *Russell v. Cox*, 65 Idaho 534 (1994). Because Ms. Eisenman is “legally entitled” to recover her heirs’ wrongful death damages from Ms. Zahm, Farm Bureau is required to pay those damages to Ms. Eisenman’s estate as it promised pursuant to the underinsured motorist provision of Ms. Eisenman’s policy. (*Hall Aff.*, Exh. A, p. 27.)

Farm Bureau may argue in response that its underinsured motorist provision did not expressly promise to pay wrongful death damages or that the meaning of “damages” is ambiguous. This Court should disregard both arguments. Farm Bureau did not restrict the type of damages or otherwise limit whose damages it would pay. In drafting its underinsured motorist provision, Farm Bureau broadly promised to pay all damages that Ms. Eisenman could legally recover against Ms. Zahm. (*Hall Aff.*, Exh. A, p. 27.) The only limitation imposed by the underinsured motorist provision is that Ms. Eisenman must be “legally entitled” to recover the damages. (*Id.*)

This Court must apply the plain meaning of the provision and broadly construe the policy as written. *Clark v. Prudential Property and Cas. Ins. Co.*, 138 Idaho 538, 540 (2003). This Court cannot apply a limited definition of “damages” or otherwise create exceptions that Farm Bureau did not expressly include in its policy. See *Armstrong v. Farmers Ins. Co. of Idaho*, 205 P.3d 1203 (2009). Even if the meaning of “damages” is ambiguous, any such ambiguity must be

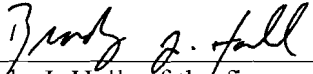
construed strongly against Farm Bureau. See e.g. *Moss v. Mid-America Fire and Marine Ins. Co.*, 1-3 Idaho 298, 300 (1982).

### CONCLUSION

For the foregoing reasons, the Estate of Patricia Eisenman respectfully requests this Court to declare as a matter of law that Farm Bureau's underinsured motorist provision provides coverage for the wrongful death damages because Ms. Eisenman is "legally entitled" to recover those damages against Ms. Zahm pursuant to Idaho Code §5-311.

DATED this 1<sup>st</sup> day of November, 2010.

MOORE & ELIA, LLP

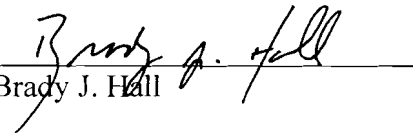
  
\_\_\_\_\_  
Brady J. Hall, of the firm  
Counsel for Defendants/Counter-claimant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1<sup>st</sup> day of November, 2010, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Rodney R. Saetrum  
Robert R. Gates  
Saetrum Law Offices  
P.O. Box 7425  
Boise, Idaho 83707  
*Attorneys for Farm Bureau*

U.S. Mail, postage prepaid  
 Hand Delivered  
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 Facsimile Transmission 336-0448  
 E-Mail

  
\_\_\_\_\_  
Brady J. Hall



AM \_\_\_\_\_ PM 7:40

NOV 01 2010

J. DAVID NAVARRO, Clerk  
By DAYSHA OSBORN  
DEPUTY

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

Attorneys for Defendants and Counter-claimant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FARM BUREAU MUTUAL	)	Case No. CV OC 10-10533
INSURANCE COMPANY OF IDAHO,	)	
	)	<b>AFFIDAVIT OF COUNSEL BRADY J.</b>
Plaintiff,	)	<b>HALL IN SUPPORT OF THE ESTATE</b>
	)	<b>OF PATRICIA EISENMAN'S MOTION</b>
vs.	)	<b>FOR SUMMARY JUDGMENT</b>
	)	
MICHAEL JOHN EISENMAN and	)	
KATHRYN MARIE, individually, and co-	)	
personal representatives of the ESTATE	)	
OF PATRICIA EISENMAN; REBECCA	)	
L. McGAVIN and PETER EISENMAN,	)	
individually,	)	
	)	
Defendants.	)	
_____	)	
ESTATE OF PATRICIA EISENMAN, by	)	
and through Michael John Eisenman and	)	
Kathryn Marie, personal representatives,	)	
	)	
Counter-claimant	)	
	)	
vs.	)	
	)	
FARM BUREAU MUTUAL	)	
INSURANCE COMPANY OF IDAHO	)	
	)	
Counter-defendant	)	
_____	)	

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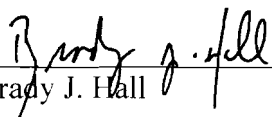


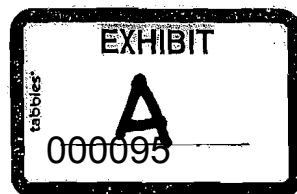
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*Attorneys for Farm Bureau*

U.S. Mail, postage prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile Transmission 336-0448  
 E-Mail

  
\_\_\_\_\_  
Brady J. Hall



## TABLE OF CONTENTS

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

<b>Definitions</b> .....	1
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## DEFINITIONS

### DEFINITIONS APPLICABLE TO SECTIONS I, II, and IV

The following definitions apply to Sections I, II, and IV; they do not apply to Section III:

Throughout these Sections we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

**Bodily Injury** means physical injury or death to a person.

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

1. Your **residence premises** if rented occasionally;
2. Garages or stables, if not more than 3 car spaces or stalls are rented or held for rental;
3. One-, two-, three-, or four-family **dwelling**s described in the Declarations; or
4. Your farm.

**Business** does not include:

1. The operation of roadside stands principally for the sale of produce raised on the **insured location**;
2. Newspaper delivery, lawn care or similar activities normally performed by minors, when the activity is not the principal occupation of any **insured**; or
3. Child care services provided by any **insured** for less than a total of 31 days during your policy period, or part-time child care services provided by any **insured** who is a minor.

~~**Custom Farming** means the use of any draft animal or mobile agricultural machinery in connection with farming operations for others for any charge or other benefit.~~

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

**Dwelling Premises** means a one-, two-, three-, or four-family **dwelling** listed in the Declarations, including its grounds and private garages.

**Farm Employee** means someone employed by you whose duties are in connection with the maintenance or use of the **insured location** as a farm, including the maintenance or use of your farm equipment. **Farm employee** does not include you, your spouse, or a minor child of either, but does include exchange labor.

**Farm Personal Property** means your personal property which is usual to the operation of a farm and is used on your farm. It includes **livestock**, **mobile agricultural machinery**, tools, supplies, equipment, and harvested crops used in or resulting from your **farming** operation. It includes property being purchased under an installment plan whether or not you have title to the property.

**Farming** means the production of fruit, nut or field crops, or the raising or keeping of **livestock**, fish, fur-bearing animals or bees. It includes wholesale but not retail sales, except incidental retail sales of your unprocessed farm products with the resulting gross income being less than 25% of your combined **farming** gross income.

**Insured** means you or the entity named in the Declarations.

1. If you are an individual, **insured** also means, if residents of your household, your spouse, your **relatives**, or minors in the care of you or your **relatives**.
2. If you are a partnership or joint venture, **insured** also means your members and your partners, but only with respect to your partnership or joint venture.
3. If you are an organization other than a sole proprietorship, partnership or joint venture, **insured** also means your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also **insureds** with respect to their liability as stockholders.
4. If you are a **limited liability company**, **insured** also means your members and managers but only with respect to their duties as members or managers.

Under Section II of this policy, **insured** also means a person while operating machinery, your watercraft, or

in charge of your domestic animals or **livestock**: (a) to which this policy applies; (b) with your permission; and (c) in your activities covered by this policy.

**Insured Location** means:

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

**Insured Location** does not include property on which a **business** is conducted.

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

**Mobile Agricultural Machinery** means a land vehicle, including any machinery or attached apparatus, whether or not self-propelled, usual to the operation of a farm and used primarily for agricultural purposes, not subject to registration or licensing and designed for use principally off public roads. **Mobile agricultural machinery** includes implements of husbandry which are defined as a vehicle or piece of equipment or machinery designed for agricultural purposes, used primarily in the conduct of agricultural operations and used principally off the highway.

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

1. Utility, boat, camping or travel trailer;
2. **Mobile agricultural machinery**;
3. **Recreational motor vehicles**;
4. ~~Any equipment which is designed for use principally off public roads and not subject to registration or licensing.~~

**Occurrence** means an accident, including continuous or repeated exposure to conditions, which results in unexpected **bodily injury** or **property damage**

during the policy period. All **bodily injury** and **property damage** resulting from a common cause shall be considered the result of one **occurrence**.

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

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

**Recreational Motor Vehicle** means any motorized vehicle designed for recreation, principally used off public roads, and not subject to licensing.

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

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

**Residence Premises** means a one-, two-, three-, or four-family dwelling which is your principal residence, including its grounds, and private garages. **Residence Premises** also means that part of any other building which is your principal residence but does not include any portion used for **business**.

#### **DEFINITIONS APPLICABLE TO SECTION III**

The following definitions apply to Section III.

Throughout this Section, we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

**Bodily Injury** means physical injury or death to a person.

**Insured** means:

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

- b. Anyone using an **insured vehicle** within the scope of your permission or within the scope of permission of your adult **relative**. This does not include a passenger;
  - c. Any person or organization legally responsible for the **insured vehicle**, provided the use of the **insured vehicle** is by you or with your permission and within the scope of such permission.
2. Under Coverages N and O with respect to a **nonowned vehicle**, you or your **relatives** when operating a **nonowned vehicle**.

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

**Insured Vehicle** means:

1. Any vehicle shown in the Declarations;
2. Under Coverages R, S or T, any camper or camper shell shown in the Declarations;
3. Under Coverages N, O, P, P-1 and Q, any licensed private passenger automobile, pickup, SUV, farm truck, van, motorcycle or motorhome, ownership of which is acquired by you during the policy period;
4. If you have Coverages S and T, any licensed private passenger automobile, pickup, SUV, farm truck, **trailer**, camper, van, motorcycle, or motorhome, ownership of which is acquired by you during the policy period;

The vehicles in 3 and 4 above are not **insured vehicles** unless we insure all of your licensed vehicles and you ask us to insure the newly acquired vehicle during the policy period or within 30 days of its acquisition, whichever is shorter. Coverage P-1 does not apply to a newly acquired vehicle unless Coverage P-1 applies to your other **insured vehicle(s)**. A newly acquired vehicle includes a vehicle which replaces one shown in the Declarations;

5. A **temporary substitute vehicle** which is a **motor vehicle** or **trailer** you do not own while temporarily used as a substitute for a vehicle

described in the Declarations when that vehicle cannot be used because of breakdown or servicing. The same coverages apply to the **temporary substitute vehicle** as apply to the **insured vehicle** for which it is being substituted; or

6. Under Coverages N and O only, any **trailer** while attached to a vehicle described in the Declarations. Also included is a **trailer** while being used with a **temporary substitute vehicle**.

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

**Nonowned Vehicle** means a **trailer** or **motor vehicle** not exceeding 26,000 lbs. gross vehicle weight operated by you or your **relatives** or in the custody of you or your **relatives** provided the actual use is with the permission of the owner. This vehicle must not be owned by you or your **relatives** or be available for regular use by you or your **relatives**; unless you are driving such vehicle and it is insured by another policy issued by us.

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

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

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

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

**Trailer** means a vehicle designed for towing by a private passenger automobile, pickup, SUV, van or farm truck. It also includes a farm wagon, farm semi-trailer or farm implement while towed by an **insured vehicle**. **Trailer** does not include vehicles used:

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



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## GENERAL CONDITIONS APPLICABLE TO SECTIONS I, II, III, AND IV

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Unless otherwise indicated, the following conditions are applicable to Sections I, II, III, and IV.

### 1. Agreement.

- a. We will provide the insurance described in this policy and Declarations if you have paid the premium and have complied with the policy provisions and conditions. This policy is divided into four sections, some with multiple coverages. You have only the coverages for which you have paid premium. These coverages are indicated in the Declarations and are subject to the indicated limits of insurance. If you have Section III, the coverages which apply to each **insured vehicle** are indicated in the Declarations. You are authorized to act on behalf of all **insureds** with respect to giving or receiving notice of cancellation, receiving refunds, and agreeing to any changes in this policy.

By acceptance of this policy, you agree that the Declarations indicate the coverages you purchased. This policy embodies all agreements existing between you and us or any of our agents relating to this insurance.

- b. The Declarations together with the referenced coverages and endorsements constitute your policy. Upon renewal or change of your policy you will receive an updated Declarations but no new policy booklet unless the policy booklet is being changed. If you have lost your booklet, please contact your agent to request a replacement.

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

2. **Abandonment of Property.** We need not pay for nor accept any property abandoned by an **insured**.
3. **Appraisal** (Not applicable to liability coverages). If you and we disagree on the amount of loss, either one can demand in writing that the amount of loss be set by appraisal. If either makes a ~~written demand for appraisal, each shall then~~ select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial third appraiser. If the two appraisers are

unable to agree upon a third appraiser within 10 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select a third appraiser. The appraisers shall then set the amount of the loss. A decision agreed to and signed by two appraisers will be binding. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the third appraiser shall be shared equally. You are responsible for any attorney fees and related costs you incur.

4. **Assignment.** No assignment of this policy shall be valid.
5. **Audit Premium.** The premium stated in the Declarations shall be computed according to our rules and rating plans. The premium is for insurance from the inception date in the Declarations (12:01 a.m.) to the expiration date in the Declarations (12:01 a.m.) at your residence. This premium, however, is an estimated premium only. We shall be permitted to examine and audit your books and records during the policy period and within 3 years after the final termination of the policy, to obtain information about the premium basis of this insurance. The earned premium for the insurance shall be computed according to our rules and rating plans. If the earned premium exceeds the estimated premium you paid, you shall pay us the excess; if the earned premium is less, we shall return the overpayment to you.
6. **Bankruptcy of An Insured.** Bankruptcy or insolvency of an **insured** shall not relieve us of our obligations under this policy.
7. **Cancellation.** You may cancel this entire policy by mailing to us written notice stating the future date when this cancellation shall be effective. We may change or cancel all or part of Sections I, II or IV by mailing to you at the address shown in the Declarations, written notice stating when not less than 30 days thereafter the change or cancellation shall be effective. When allowed by State law, we may cancel all or part of Section III of this policy by mailing to you at the address ~~shown in the Declarations, written notice stating~~ when the cancellation shall be effective. Our proof of mail shall be sufficient proof of mailing. Any cancellation of Section III will be mailed to you at least:

- a. 10 days before the cancellation effective date if the policy has not been in force for 60 days or if the cancellation is because you did not pay the premium;
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason; or
- c. 30 days before the cancellation effective date if the cancellation pertains to a vehicle which is considered commercial, unless cancellation is because of non-payment of premium. We will then give you 10 days notice of cancellation.

Payment or tender of unearned premium is not a condition of cancellation. The mailing of notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of this written notice, either by you or by us, shall be equivalent to mailing. If you or we cancel, earned premiums shall be computed pro rata based on the effective date of cancellation. Premium adjustment may be made at this time or as soon after as is practical. Our check mailed or delivered shall be sufficient tender of any refund of premium. Our cancellation rights are limited by State insurance law.

- 8. **Concealment or Fraud.** We will not provide coverage if any insured has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.
- 9. **Death.** Upon your death, we will continue through the current policy period to insure any member of your household who is an insured at the time of your death. We will also insure:
  - a. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative; or
  - b. The legal representative of the deceased, but only with respect to the premises and property of the deceased covered under the policy at the time of death.
- 10. **Deductible Clause.** Loss from each occurrence shall be adjusted separately. The deductible stated in the Declarations shall be subtracted from each adjusted loss or the limit of insurance, whichever is less. If a loss involves only property under the special limits applicable to Coverage C, the deductible shall be subtracted from the adjusted loss. We will apply only one deductible (the highest one applicable) to a loss to which more than one section of this policy applies.

11. **Dividends or Credits.** Any obligation of ours for dividend or credit shall not in any way extend or change the policy period.

12. **Inspection and Audit.** We shall be permitted to inspect and audit your insured property and operation at any time. We are not obligated, however, to conduct inspections and any inspection or report shall not be considered a representation that the operation or property is safe.

13. **Liberalization Clause.** If we adopt any revision which would broaden the coverage under this policy without payment of additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy. This clause does not apply to changes implemented through introduction of a new edition of our policy.

14. **Loss Payment** (Not applicable to liability coverages). We will adjust all losses with you. Payment for loss will be made within 60 days after we receive your signed, sworn proof of loss and ascertainment of the loss is made by: (a) agreement with you; (b) entry of a final judgment; or (c) the filing of an appraisal award with us.

15. **Mortgagee Clause** (Limited to Sections I and IV). The word "mortgagee" includes a trustee of a deed of trust. If a mortgagee is named in this policy, any loss payable under Sections I or IV shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order or precedence of the mortgages.

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

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

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

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

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

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

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.
17. **Nonduplication of Insurance Benefits.** No person entitled to any payment or benefits under any coverage of this policy shall recover any duplicate payment or benefits for the same elements of loss under any other coverage of this policy (including liability coverages) or other policies written by us.
18. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
  - a. Take all or any part of the property at the agreed or appraised value. If we exercise this option you must sign any papers we require for transfer of title;
  - b. Repair or replace any part of the property with equivalent property. We will not be liable for any loss resulting from delay in repair or choice of repairmen.
19. **Policy Period.** This policy applies only to **occurrences** which take place during the policy period. Losses to your insured property are covered only if the peril and loss both occur during the policy period.
20. **Policy Renewals.** Subject to our consent, you may renew this policy for successive periods by payment to us of the premium we require to renew the policy. Premium payment for any renewal period shall be due on the expiration of the preceding policy period. When allowed by State law, we may decline to renew all or part of Section. III of this policy. We shall give you 30 days advance notice of any intention to non-renew all or part of this policy. For commercial coverages, we will give you 45 days advance

notice of any intention to non-renew all or part of these coverages.

21. **Policy Termination.** If you fail to pay the premium when due, the policy shall terminate on the expiration date of the policy without any notice or action by us. If you purchase another policy to replace this one, this policy terminates upon the inception of such policy without notice by you or us.

**22. Subrogation—Our Right to Recover Payment.**

- a. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages, we will be subrogated to that right (have that right transferred to us). That person must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights.
- b. If we make a payment under this policy, and the person to or for whom payment was made recovers damages from another, that person must hold the proceeds of the recovery in trust for us and must reimburse us to the extent of our payment.
- c. We may prosecute in the name of any **insured** for the recovery of these payments.

23. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions. No one shall have any right to join us as a party to any action against an **insured**. Further, no action with respect to liability coverages shall be brought against us until the obligation of the **insured** has been determined by final judgment or agreement signed by us.

24. **Terms of Policy to Conform to Statute.** Terms of this policy which are in conflict with the statutes of the state where the policy is issued are hereby amended to conform to such statutes.

25. **Valid Premium Payment.** If your check in payment of any premium for this policy is not honored by your bank when presented for payment, no coverage is afforded for any time period or policy term for which you wrote the check.

26. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

27. **Insurance Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered by this policy, we shall not

be liable to the **insured** for an amount greater than the **insured's** interest up to the applicable limit of liability.

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## SECTION I – PROPERTY INSURANCE

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We cover the property insured under Section I against direct physical loss only for specified perils. The perils and our limit of liability applicable to each coverage are indicated in the Declarations.

### COVERAGE A – YOUR DWELLINGS

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We cover the following:

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

We do not cover field, corral or pasture fences even if attached to a **dwelling**.

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

### COVERAGE B – LOSS OF USE

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1. **Additional Living Expense.** If a loss covered under Coverage A of this policy makes your covered **dwelling** uninhabitable, we will pay any necessary increase in living expenses incurred by you so that your family can maintain its normal

standard of living. Payment shall be for the shortest time required to repair or replace the premises or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy.

2. **Fair Rental Value.** If a loss under Coverage A causes your covered **dwelling** rented to others to become uninhabitable, we will pay the fair rental value of the **dwelling premises**. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expenses that do not continue while part of the **dwelling premises** rented or held for rental is uninhabitable.
3. **Prohibited Use.** If a civil authority prohibits you from use of the **dwelling premises** as a result of direct damage to neighboring premises by a peril insured against in this policy, we cover any resulting additional living expenses or fair rental value loss incurred by you for a period not exceeding two weeks during which use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement. Our limit for this coverage is stated in the Declarations.

### COVERAGE C – PERSONAL PROPERTY

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

If you have more than one **dwelling premises** insured under this policy, a different Coverage C limit of liability applies to each **dwelling premises**. These

limits are stated in the Declarations. The limit applicable to one insured **dwelling premises** cannot be applied to a loss at another insured **dwelling premises**.

1. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability. The special limit for each following category is the total limit for each loss for all property in that category:

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

- i. \$5,000 on electronic data processing equipment and recording or storage media used with that equipment. This equipment or media is not covered while away from the **residence premises** except when removed for the purpose of repair, servicing or temporary use. A student **insured's** equipment and media are covered subject to this limitation while at a residence away from home;
- j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet, tapestry, wall hanging or other similar article;
- k. \$5,000 on your **personal property** which is usually located at your **residence premises** while this property is at any other **dwelling** owned by you and insured by us. This is in addition to any other limit which may apply;
- l. \$7,500 on hand, electronic, power and similar tools; and
- m. \$3,000 in the aggregate on dolls, figurines, decorative plates, or similar collectibles.

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

2. **Property Not Insured.** We do not insure under Coverage C:

- a. **Farm personal property;**
- b. Animals, **livestock**, birds, fish or pets;
- c. **Mobile agricultural machinery**, motorized land vehicles, and their parts, except vehicles designed for assisting the handicapped and vehicles used to service your **dwelling**, provided they cannot be licensed for road use;
- d. Aircraft and parts;
- e. Property of roomers, tenants and boarders not related to an **insured**;
- f. **Recreational motor vehicles**, trailer homes, camper shells and campers;
- g. **Any personal property** located at any **dwelling**, its grounds, garages or sheds, which are owned by you and not insured under Section I;
- h. Articles separately described and specifically insured by this or other insurance;

- i. Materials and supplies on any **dwelling premises** for the construction, alteration or repair of the **dwelling premises** or its private garages.

3. **Supplementary Coverages.** The following supplementary coverages do not increase the applicable limit of liability under this policy:

- a. **Consequential loss.** We also cover loss to property insured under Coverage C while at the **insured location** due to change in temperature as a result of physical damage to the building or equipment therein caused by a peril insured against.
- b. **Credit Card, Bank Transfer Card, Counterfeit Currency and Forgery.** We will pay up to \$1,000 for:
  - (1) The legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or bank transfer cards issued to or registered in any **insured's** name. We do not cover credit card or bank card use if any **insured** has not complied with all terms and conditions under which the card was issued;
  - (2) Loss suffered by an **insured** caused by forgery or alteration of any check or negotiable instrument;
  - (3) Loss suffered by an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover losses resulting from **business** pursuits or dishonesty of any **insured**.

#### **COVERAGE D – FARM PERSONAL PROPERTY**

We cover your unscheduled **farm personal property** on the **insured location**. This coverage is further extended for your **farm personal property** away from the **insured location** except while:

- 1. Stored in or being processed in manufacturing plants, public elevators, warehouses, seed houses, or drying plants;
- 2. In transit by common or contract carrier; or
- 3. In public sales barns or sales yards.

We will cover **farm personal property** leased or rented by you for the conduct of your **farming** operation only if this property is specifically added to Coverage D by endorsement. Coverage provided on

leased or rented **farm personal property** is excess over any other valid and collectible insurance available to the owner.

- 1. **Livestock Coverage.** Except for the peril of theft, we cover your **livestock** for the specified perils only if death occurs. Our limit of liability shall not exceed the actual cash value of the **livestock** subject to the maximum per head limit stated in the Declarations. Death must result within 30 days from the date of **occurrence**.
- 2. **Limited Crop Coverage.** Hay, straw and fodder are covered for loss caused by Peril 1 (fire) only, not to exceed the amount stated in the Declarations in any one stack or building. If a stack or hay building is exposed within 125 feet by another stack or building, the applicable limit shall apply to the aggregate of all such exposed stacks or buildings. For example, if stack Y is 100 feet from stack X and stack Z is 100 feet from stack Y but 200 feet from stack X, the aggregate limit applicable to stacks X, Y and Z is the Coverage D stack limit stated in the Declarations.
- 3. **Coinsurance Clause.** You must maintain insurance on your unscheduled **farm personal property** insured under Coverage D to the extent of at least 80% of the actual cash value at the time of our auditing or taking inventory. For example, if at the time of loss your unscheduled **farm personal property** is worth \$100,000, then the amount of insurance must be at least \$80,000. If you fail to keep this agreed percentage of coverage, you will share in each loss in addition to the deductible. We will pay the proportion of each loss represented by the amount you did insure at the time of loss divided by the amount you should have insured.

If the aggregate claim for any loss under this coverage is less than 2% of the total amount of insurance under Coverage D, you will not be required to furnish an inventory of the undamaged property. This does not mean we waive any of our rights concerning the application of this coinsurance clause.

- 4. **Inspection and Audit.** We shall be permitted to inspect and audit your insured **farm personal property** at any reasonable time.
- 5. **Coverage Limitation to Records and Electronic Data Processing Property.** Our liability for loss to:
  - a. Books of account, manuscripts, abstracts, drawings, card index systems and other records except electronic data processing records shall not exceed the cost of blank books, cards or other blank material, plus the

cost of labor incurred by you for transcribing or copying such records;

- b. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing shall not exceed the cost of such media in unexposed or blank form.

6. **Exclusions.** Coverage D does not cover:

- a. **Personal property;**
- b. **Animals, other than livestock;**
- c. **Accounts, bills, currency, deeds, evidences of debt, money and securities;**
- d. **Vegetables (except threshed peas and beans), root crops, bulbs, fruits, cotton, tobacco and silage;**
- e. **Irrigation equipment, including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers; and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electric equipment);**
- f. **Fences, sawmill equipment, windmills, wind chargers and their towers, private power, light and telephone poles, radio and television towers and antennas;**
- g. **Vehicles primarily designed and licensed for road use other than wagons and trailers designed for farming purposes and used principally on the insured location;**
- h. **Motor vehicles, housetrailer, motorcycles, watercraft, recreational motor vehicles, ATVs, aircraft, or their parts or accessories;**
- i. **Unharvested or unthreshed crops or stubble;**
- j. **Grain, seed, peas, beans, hay, straw, wood chips, sawdust, and fodder unless loss is caused by Peril 1 (fire);**
- k. **Structures and buildings except portable buildings on skids in an amount not to exceed \$1,000 per building;**
- l. **Any damage arising from wear and tear, freezing, mechanical breakdown or failure;**
- m. **Under collision or overturn coverage, damage to tires, unless damaged by the same cause as other loss covered under Coverage D;**
- n. **Bees, their larvae, bee boards or beehives;**

- o. **Loss to livestock caused by the direct or indirect result of fright, freezing, running into fences or other objects, running into streams or ditches, or smothering, whether an insured peril is involved or not; or**

- p. **Property which is separately described and specifically insured in whole or in part by this or any other insurance.**

**COVERAGE E – ADDITIONAL BUILDINGS**

We cover your **dwelling**s, barns, buildings, fences and structures listed on the schedule of additional buildings.

1. **Materials and Supplies.** Coverage on a building or structure is extended to cover all materials and supplies on the premises or adjacent to them intended to be used in the construction, alteration or repair of such building or structure.
2. **Coverage on Buildings.** Coverage on buildings includes permanent fixtures and sheds attached to the described buildings, but excluding fences.
3. **Utility Poles.** Coverage on private utility poles includes attached switch boxes, fuse boxes, and other electrical equipment mounted on the poles.
4. **Fences and Similar Structures.** Our liability for loss to fences, corrals, pens, chutes and feed racks shall not be for a greater proportion of any loss than the amount of insurance bears to the total value of that particular property at the time of loss.

Coverage to outdoor radio and television antennas, aerials, and satellite receivers including their lead-in wiring, masts and towers, is subject to a maximum payment of \$250, unless such equipment is specifically insured for a greater amount. No deductible applies to this \$250 limit.

**SECTION I ADDITIONAL COVERAGES**

1. **Debris Removal.** We will pay the reasonable expense incurred by you for the removal of debris of covered property provided coverage is afforded for the peril causing the loss. Debris removal expense is included in the limit of liability applying to the damaged property. When the amount payable for the actual damage to the property plus the expense for debris removal exceeds the limit of liability for the damaged property, an additional 5% of that limit of liability will be available to cover debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from the residence premises of:

- a. Your tree(s) felled by the peril of windstorm or hail;
- b. Your tree(s) felled by the peril of weight of ice, snow or sleet; or
- c. A neighbor's tree(s) felled by a peril insured against under Coverage C;

provided the tree(s) damages a covered structure. The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

2. **Reasonable Repairs.**

- a. We will pay the reasonable costs incurred by you for necessary repairs made solely to protect covered property from further damage provided coverage is afforded for the peril causing the loss. This coverage does not increase the limit of liability applicable to the property being repaired.
- b. We will pay up to \$200 for the cost of re-keying or replacing locks to exterior doors on the residence premises if your keys have been stolen during the policy period. No deductible applies to this coverage.

3. **Trees, Shrubs and Other Plants** (limited to Coverage A—Your Dwellings). We cover trees, shrubs, plants and lawns on the dwelling premises for loss caused by the following perils: fire or lightning, explosion, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief or theft. The limit of liability for this coverage shall not exceed 5% of the limit of liability specified for the Coverage A dwelling at that same dwelling premises. The limit of liability for any one tree, shrub or plant is \$500. We do not cover property grown for business or farming purposes under this paragraph. This coverage shall not increase the applicable Coverage A limit under your policy.

4. **Refrigerated Products.** If Coverage C applies to your policy, we will pay an amount not to exceed the limit of liability stated in the Declarations for loss to contents of a freezer or refrigerator at the residence premises. This coverage does not apply to farm personal property. The loss or damage must be caused by a change in temperature resulting from:

- a. Interruption of electrical service to refrigeration equipment caused by damage to

the generating or transmission equipment which results in a breakdown in the system;

- b. Mechanical or electrical breakdown of the refrigeration system; or
- c. A tripped breaker or blown fuse.

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

The deductible shall be subtracted from the adjusted loss.

5. **Fire Department Service Charge.** We will pay up to the amount shown in the Declarations for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage. Coverage afforded under this clause applies only if the covered property is not located within the limits of the city, municipality or protection district furnishing such fire department response.

6. **Building Ordinance or Law Coverage.** When your dwelling insured under Coverage A sustains a covered loss, we will pay for the increased cost to repair or rebuild your dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same peril and the requirement is in effect at the time the loss occurs. This coverage includes legally required changes to the undamaged portion of your dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same covered loss and the requirement is in effect at the time the covered loss occurs.

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

- a. We will not pay more for a covered upgrade to the undamaged portion of your dwelling than the depreciated value of the undamaged portion of the dwelling.
- b. We will not pay more for a covered loss than the amount you actually spend to upgrade, repair, or replace your dwelling.
- c. The Loss Statement provisions under Section I Conditions that apply to dwellings



insured under Coverage A also apply to this coverage.

**Limit of Liability.** Our limit of liability under this coverage is included within and does not increase the applicable limit of liability shown in the Declarations for the insured **dwelling** which sustains a loss and shall not exceed 10% of that limit.

#### SECTION I PERILS INSURED AGAINST

We cover for direct physical loss to property insured caused by the following perils:

1. **Fire or lightning.**

2. **Removal.**

When property is removed because it is endangered by other insured perils, we pay for direct loss from any cause for accidental loss to that property while it is being removed and for 30 days after removal to a proper place.

3. **Windstorm or hail.**

a. This peril does **not** include loss to the interior or contents of a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall through which the rain, snow, sleet, or dust gets in;

b. This peril does **not** include loss caused directly or indirectly by frost, cold weather, ice (other than hail), snowstorm or sleet, all whether driven by wind or not;

c. This peril does **not** include loss to watercraft and their trailers, furnishings, equipment and outboard motors while outside a fully enclosed building.

4. **Explosion.**

This peril does **not** include rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines, or water pipes, if owned by, leased or actually operated under the control of an **insured**.

5. **Riot or civil commotion.**

6. **Aircraft**, including self-propelled missiles and spacecraft.

7. **Vehicles.**

Perils 6 (Aircraft) and 7 (Vehicles) cover only direct loss by actual physical contact of an aircraft

or vehicle or an object thrown up by a vehicle with the covered property.

8. **Smoke**, meaning sudden and accidental damage from smoke.

This peril includes a puff back of smoke from a furnace. This peril does **not** include loss caused by smoke from agricultural smudging or industrial operations.

9. **Vandalism or malicious mischief**, meaning only the willful and malicious damage to or destruction of the property covered.

This peril does **not** cover:

a. Loss if the **dwelling** has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. Any ensuing loss caused by the vandalism or malicious mischief is also not covered. A **dwelling** being constructed is not considered vacant or unoccupied; or

b. Wear and tear caused by tenants or members of their household.

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

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

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

This peril does **not** include loss:

a. Caused by any **insured** or any person residing at your **residence premises** or any **dwelling premises**;

b. In or to a building under construction;

c. Of materials, tools and supplies for use in the construction of a building until it is completed and occupied;

d. From any part of a **dwelling premises** rented by an **insured** to other than an **insured**;

e. Of property while in the custody of the postal service or similar government or private business;

f. Caused by any of your tenants, members of their households, or your employees; or

- g. Caused by someone to whom an insured has entrusted the property.

In the event of loss by theft, you shall give immediate notice to the appropriate law enforcement agency. We will not pay any reward you offer for the return or recovery of any stolen property.

11. **Breakage of glass or safety glazing material** which is part of the covered building. This coverage extends to storm doors and storm windows in summer storage. This peril does not include loss if the building has been vacant more than 30 consecutive days immediately before the loss. A building being constructed is not considered vacant.
12. **Weight of ice, snow, or sleet** which causes damage to a building or property contained in a building. This peril does **not** include loss to an awning, fence, patio, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.
13. **Collapse of a building or any part of a building.**

Collapse means direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

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

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

Collapse does **not** include settling, cracking, shrinking, sagging, bowing, bulging or expansion.

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

This peril does **not** include loss:

- a. On the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant;
- b. To the system or appliance from which the water or steam escaped;
- c. Caused by or resulting from freezing except as provided in the peril of freezing below; or
- d. On the **dwelling premises** caused by accidental discharge or overflow which occurs off the **dwelling premises**.

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

15. **Sudden or accidental tearing apart, cracking, burning or bulging** of a steam or water heating system, an air conditioning system, or an appliance for heating water.

We do **not** cover loss caused by or resulting from freezing under this peril.

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

17. **Freezing of a plumbing, heating or air conditioning** system or of a household appliance.

This peril does **not** include loss on the **dwelling premises** while the **dwelling** is vacant, unoccupied, or being constructed unless you have:

- a. Maintained heat in the building; or

b. Shut off the water supply and drained the system and appliances of water.

18. **Sudden and accidental damage from artificially generated electrical current.**

This peril does not include loss to a tube, transistor, integrated circuit or similar electronic component unless caused by a sudden and accidental increase or decrease of artificially generated electrical current. Our limit of liability under this peril is \$1,000 for each damaged item of **personal property**.

19. **Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.

One or more volcanic eruptions that occur within a 72-hour period are considered one volcanic eruption.

20. **Collision with another object or overturn.** This peril does not apply to **livestock**. Impact with the ground or roadbed is not considered a collision.

21. **Electrocution.** This peril applies only to **livestock**.

22. **A direct attack by dogs or wild animals** causing mortal wounds. This peril applies only to **livestock**. It does not include attack by dogs owned by you or any person residing on the **insured location**.

23. **Accidental shooting.** This peril applies only to **livestock**. This peril does not include loss caused by any **insured**, employee of an **insured**, or person residing on the **insured location**.

24. **Loading, unloading, collision or overturn while in transit.** This peril applies only to **livestock** and **mobile agricultural machinery**.

25. **Drowning.** This peril applies only to **livestock**.

26. **Special Form.**

We insure for risks of direct physical loss to the property insured **except**:

a. Those losses excluded under "**Section I Exclusions**";

b. Collapse, except as provided in Peril 13;

c. Freezing of a plumbing, heating, automatic fire protection sprinkler, or air conditioning system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the **dwelling** is vacant, unoccupied or

being constructed unless you have used reasonable care to:

(1) Maintain heat in the building; or

(2) Shut off the water supply and drained the system and appliances of water;

d. Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock;

e. Theft in or to a building under construction, or of materials, tools and supplies for use in the construction until the building is completed and occupied;

f. Vandalism and malicious mischief or breakage of glass and safety-glazing materials if the building has been vacant or unoccupied for more than 60 consecutive days immediately before the loss. A building being constructed is not considered vacant or unoccupied;

g. Loss caused by continuous or repeated seepage or leakage of water or steam on the **dwelling premises** if the **dwelling** has been vacant for more than 30 consecutive days immediately before the loss. A **dwelling** being constructed is not considered vacant. We do not cover loss to the system or appliance from which the water or steam escaped;

h. Wear and tear; marring; deterioration; inherent vice; latent defect; mechanical breakdown; rust or other corrosion; mold; wet or dry rot; contamination; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; loss caused by birds, vermin, rodents, insects or domestic animals. If any of these cause water to escape from a plumbing, heating, fire protection or air conditioning system or household appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of a building necessary to replace the system or appliance. We do not cover loss to the system or appliance from which this water escaped. The word vermin includes, but is not limited to, bats, beavers, coyotes, porcupines, raccoons, skunks, snails, snakes, slugs or squirrels;

- i. Loss or damage including loss of use, caused directly or indirectly by any pollution, contamination or environmental impairment, unless said loss or damage follows immediately as a result of a loss caused directly by perils 1 through 10, and then only to the extent of such direct loss; residual or consequential loss not evident immediately at the conclusion of the loss event remains not covered;
- j. Pressure from or presence of tree, plant or shrub roots;

If Peril 26 applies to Coverage C, the following additional exclusions also apply. We do not cover loss resulting directly or indirectly from:

- k. Breakage of eye glasses, glassware, statuary, bric-a-brac, porcelains, and similar fragile articles, other than jewelry, watches, bronzes, cameras, and photographic lenses. These items are covered, however, if breakage results from Perils 1 through 10 or 12 through 19;
- l. Dampness of atmosphere or extremes of temperature unless the direct cause of loss is rain, snow, sleet or hail;
- m. Refinishing, renovating or repairing property other than watches, jewelry and furs;
- n. Collision other than collision with a land vehicle; sinking, swamping or stranding of watercraft, including their trailers, furnishings, equipment and outboard motors.

Under items g and a through e above, any ensuing loss not excluded is covered. We cover under this peril any loss which would have been covered had perils 1-19 applied to your covered property.

#### **SECTION I EXCLUSIONS**

We do not cover loss under Section I resulting directly or indirectly from:

- 1. **Ordinance or law**, meaning if because of any loss caused by any covered peril you are required during repairs or replacement to comply with any ordinance or law regulating the construction, repair or demolition of your insured property which increases the cost of repairs or replacement beyond our obligation to repair or replace with like kind and quality, we do not cover that increased cost. Limited ordinance or law coverage, however, may apply under "Section I Additional Coverages" to a Coverage A **dwelling**.

- 2. **Earth movement**, including but not limited to earthquake, landslide, mine subsidence, mudflow, earth sinking, rising or shifting. Direct loss by fire, explosion, theft, or breakage of glass or safety glazing materials resulting from earth movement is covered.

- 3. **Water damage**, meaning:

- a. Flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or sewage which backs up through sewers, drains or a septic system;
- c. Water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure. Direct loss by fire, explosion or theft resulting from water damage is covered.

- 4. **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of loss, or when property is endangered by a peril insured against.

- 5. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military force or military personnel, destruction or seizure of property for use for any military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

- 6. **Power, heating or cooling failure** unless the failure results from physical damage to power, heating or cooling equipment situated on the **dwelling premises** where the loss occurs. This failure must be caused by a peril insured against.

- 7. **Depreciation, decay, deterioration, change in temperature or humidity, loss of market**, or from any other consequential or indirect loss of any kind.

- 8. **Nuclear hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named or otherwise included within the perils insured against in Section I.

The above exclusions apply even if the following contribute to the loss: faulty, inadequate or defective planning; zoning; development; design; workmanship;

construction; weather conditions; materials; or maintenance of property on or off the **insured location** by any person or organization.

We do not cover under Section I:

1. Any sound reproducing, receiving, amplifying, or transmitting equipment, including but not limited to, any eight-track player, cassette player, CD player, citizens band radio, two-way mobile radio or telephone, scanning monitor, radar detection or similar device; or any tape, wire, record, disc, CD, diskette or other medium for use with any such equipment while any of this property is in or upon any motorized vehicle, farm equipment, boat or aircraft, and capable of being operated by power supplied from these vehicles. This equipment is covered if factory installed in **mobile agricultural machinery** insured under Coverage D.
2. Any loss caused intentionally by or at the direction of any **insured**.
3. Any loss caused by the possession or manufacture in a covered **dwelling** of a controlled substance, including, but not limited to, methamphetamines.

#### **SECTION I CONDITIONS**

1. If we choose to insure a **dwelling premises** under Section I not owned by you, the **insured** and applicable coverages are shown in the Declarations.
2. **Duties after Loss.** In case of a loss to which this insurance may apply, the **insured** must see that the following duties are performed:
  - a. Give notice as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law. In case of loss under the credit or bank card coverage, also notify the issuing card company;
  - b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
  - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;

d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and sign the same;

e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:

- (1) The time and cause of loss;
- (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title or occupancy of the property during the term of the policy;
- (5) Specifications of any damaged building and detailed estimates for repair of the damage;
- (6) An inventory of damaged or stolen property as described above;
- (7) Receipts for additional living expenses incurred and records supporting any fair rental value loss; and
- (8) Evidence or affidavit supporting a claim under the credit card coverage stating the amount and cause of loss.

3. **Loss Settlement.** Subject to the applicable limits stated in the Declarations, covered property losses are settled as follows:

a. **Personal property**, structures that are not buildings, **farm personal property**, and buildings insured under Coverage E, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace. If repair or replacement results in better than like kind or quality, the **insured** must pay for the amount of the betterment;

b. **Floor coverings, domestic appliances, awnings, outdoor antennas and outdoor equipment**, whether or not attached to the buildings, at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace;

c. Buildings insured under Coverage A:

- (1) When the full cost of repair or replacement for loss to a building under Coverage A is less than \$2,500, Coverage A is extended to include the full cost of repair or replacement without deduction for depreciation.
- (2) If the limit of liability on the damaged building is less than 80% of its replacement cost at the time of the loss, we pay the larger of the following:
  - (a) Actual cash value of the damaged part of the buildings; or
  - (b) That proportion of the replacement cost of the damaged part which our limit of liability on the building bears to 80% of the full current cost of the building.
- (3) If the limit of liability on the damaged building is at least 80% of its replacement cost at the time of loss we pay the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the smallest of the following amounts:
  - (a) The limit of liability applicable to the building;
  - (b) The cost to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practicable; or
  - (c) The amount actually and necessarily spent to repair or replace the damage.
- (4) When the cost to repair or replace exceeds 5% of the applicable limit of liability on the damaged building, we are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. Such repairs or rebuilding must be made at the same location as where the loss occurred. You may make a claim for the actual cash value amount of the loss before repairs are made. A claim for any additional amount payable under this provision must be made and construction started within 1 year after the loss.

4. **Increased Hazard.** We shall not be liable for any loss to property insured under this policy occurring while the hazard is increased by any means within the control or knowledge of any insured.

5. **Loss to a Panel, Section, Pair or Set.** In case of a loss to a panel, section, pair or set, we may elect to:
  - a. Repair or replace any part or restore the panel, section, pair or set to its value before the loss; or
  - b. Pay the difference between the actual cash value of the property before and after the loss; or
  - c. Pay the reasonable cost of providing a substitute to match as closely as practicable the remainder of the panel, section, pair or set.

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

6. **Glass Replacement.** Covered loss for breakage of glass shall be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
7. **Waiver of Subrogation.** You may waive in writing before a loss all right of recovery against any person. If not waived, we may require an assignment of rights for a loss to the extent that payment is made by us.
8. **Other Insurance.** If you are carrying other insurance on the property to which this policy applies, the coverage under this policy is null and void. We may permit other insurance, however, by endorsement to this policy. If other insurance is permitted, we will not be liable for a greater portion of any loss than our pro rata share in excess of any deductible.
9. **Recovered Property.** If an insured or we recover any property for which we have made payment under this policy, the insured or we will notify the other of the recovery. At the insured's option, the property will be returned to or retained by the insured or it will become our property. If the recovered property is returned to or retained by the insured, the loss payment will be adjusted based on the amount the insured received for the recovered property.

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#### SECTION 1 ENDORSEMENTS

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Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

**No. 104 (04-00) Property Coverage Endorsement.**

Coverage E, perils 1 through 9, applies to the following property:

1. New buildings, structures, or additions while under construction on the **insured location**. We also cover materials and supplies to be used in construction of these buildings or structures on the **insured location**.
2. Permanent buildings at newly acquired premises not previously covered under this policy. This includes newly acquired buildings, structures, fixtures, fixed equipment, additions, alterations, and construction at these premises.

You must report the new acquisitions on the next audit date and pay the appropriate premium or this endorsement does not apply.

**Limit of Liability.** The total limit of additional insurance, either singly or for any combination of property covered under this endorsement will not exceed \$300,000 until you report values of the property to us. Additional premium will be due and computed from the date of property acquisition; but at our discretion, the premium may not be charged until the next audit.

**Applicable Conditions.** All Section I policy conditions and exclusions apply to this endorsement.

**Loss Settlement Clause.** Loss covered under this endorsement will be settled at actual cash value at the time of loss.

**No. 109 (01-94) Irrigation Equipment/Spare Truck Parts Endorsement.**

Coverage D is amended to include your irrigation equipment including irrigation pumps, buried water lines, electric pump motors, panels, wiring, transformers, and permanently installed or portable sprinkler lines and sprinkler equipment (including any sprinkler's electrical equipment). Spare truck parts are included in this endorsement if indicated in the Declarations. Our limit of liability for this endorsement is indicated in the Declarations. The co-insurance clause under Coverage D applies separately to this endorsement.

**No. 111 (04-00) Replacement Cost—Personal Property.**

Losses under Coverage C shall be settled at replacement cost without deduction for depreciation.

**Property Not Eligible.**

Property listed below is not eligible for replacement cost settlement. Any loss shall be settled at actual cash value at the time of loss but not exceeding the amount necessary to repair or replace.

1. Antiques, fine arts, paintings, statues and other articles which by their inherent nature cannot be replaced with new articles.
2. Articles whose age or history contribute substantially to their value, including but not limited to memorabilia, souvenirs, and collectors items.
3. Personal property of others.
4. Articles not maintained in good or workable condition.
5. Articles that are outdated or obsolete and are stored or not being used.

**Replacement Cost.**

1. We will pay not more than the smallest of the following amounts:
  - a. Replacement cost at time of loss without deduction for depreciation;
  - b. The full cost of repair at time of loss;
  - c. 400% of the actual cash value at time of loss;
  - d. Any special limit of liability applicable under Coverage C;
  - e. The total limit of liability applicable to Coverage C; or
  - f. 200% of the purchase price of any property purchased or acquired used.
2. When the replacement cost for the entire loss under this endorsement exceeds \$500, we will pay no more than the actual cash value for the loss or damage until the actual repair or replacement is completed.
3. An insured may make a claim for loss on an actual cash value basis and then make claim within 1 year after the loss for any additional liability in accordance with this endorsement.
4. This endorsement also covers domestic appliances, floor coverings, awnings, outdoor antennas, and outdoor equipment pertaining to a dwelling insured under Coverage A.

**No. 114 (01-94) Borrowed Equipment Endorsement.**

We cover under Coverage D loss to mobile **agricultural machinery** in which you have no interest, provided such machinery has been borrowed by either you or your **employees** and is actually being used in the conduct of your own **farming** operation and is not available for your regular use. This coverage, however, shall apply as excess over any insurance which the owner has on this borrowed property. Our limit of liability per occurrence under this endorsement is stated in the Declarations.

**No. 118 (01-94) Scheduled Farm Personal Property.**

Coverage D is changed to cover only the scheduled categories of **farm personal property** listed in the Declarations. The coinsurance clause is changed to apply individually to each category.

**No. 125 (04-00) Septic System Backup Endorsement.**

Coverages A and C are amended to include loss caused by the following peril: Sewage backup, meaning sewage or water backup from your septic system or a municipal sewage system into your insured **dwelling**.

This coverage is limited to damage caused to your **dwelling** on the **residence premises**. It does not include service, damage or repair to your sewage system or septic system. This coverage is limited to one loss per policy period.

**No. 130 (01-94) Elimination of Livestock under Coverage D.**

There is no coverage for **livestock** under Coverage D.

**No. 171 (01-94) Glass Deductible Waived.**

No deductible will apply to glass breakage to the building(s) insured under Coverage A of Section I.

**No. 183 (01-94) Increased Replacement Cost Endorsement.**

Our limit of liability applicable to a **dwelling** insured under Coverage A to which this endorsement applies shall be increased to 125% of the amount shown for that **dwelling** on the Declarations provided:

1. You have insured your **dwelling** and other structures to 100% of their replacement cost as we determine based on the accuracy of information you furnish, and you pay the premium we require;
2. You accept the property insurance adjustment condition in Paragraph 1 above, agree to accept any annual adjustment, and pay the additional premium charged;
3. You notify us within 90 days of the start of any additions or other physical changes which increase the value of your **dwelling** or other structures on the **dwelling premises** by \$5,000 or more, and pay the additional premium charged.

Subject to our limit of liability, losses under this endorsement are covered for the full cost of repair or replacement of the damaged part without deduction for depreciation, but not more than the amount actually and necessarily spent to repair or replace the damage on the same premises using materials of equivalent kind and quality to the extent practical.

Parts c. (1), (2) and (3) of the loss settlement clause of "**Conditions Applicable to Section I**" are deleted. This endorsement is void if you fail to comply with its provisions.

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## SECTION II—LIABILITY INSURANCE

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**COVERAGE F-1 – BODILY INJURY LIABILITY**

**COVERAGE G – PROPERTY DAMAGE LIABILITY**

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

1. Pay up to our limit of liability for the damages for which the insured is legally liable;

2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability shown in the Declarations.

**COVERAGE F-2 – PREMISES MEDICAL**

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of an occurrence causing **bodily injury**. This



coverage does not apply to you or residents of your household other than **residence employees**. As to others, this coverage applies only:

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

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

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

We will pay the reasonable and necessary medical and funeral expenses incurred within 3 years from the date of **occurrence** to or for each person named in Coverage J of the Declarations, who sustains **bodily injury** caused by an **occurrence**.

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

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

We will pay, subject to the limits of liability stated in the Declarations, for loss by death of **livestock** owned by you and not otherwise covered, caused by collision between such animal and a **motor vehicle**, provided:

1. The **motor vehicle** is not owned or operated by an **insured** or any **insured's** employee;

2. The animal is within a public highway and is not being transported;
3. Death to the animal occurs within 30 days after the date of the collision.

We further extend this coverage to include the death of **livestock** when killed by any train, provided you first present a claim in your name to the railroad company involved.

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

#### **COVERAGE L – CUSTOM FARMING**

Coverages F-1 and G also cover your **custom farming**.

Coverage L does **not** apply to:

1. Any damage or injury to the land or crops upon which the **custom farming** is performed or is to be performed, arising from:
  - a. The mixing or application of fertilizers, herbicides, pesticides, fungicides, or other chemical treatment of real property, seeds or crops; or
  - b. Any goods, products, or their containers manufactured, sold, handled or distributed by or on behalf of any **insured**.
2. Injury or damage resulting from:
  - a. A delay in or lack of performance by or on behalf of any **insured** of any contract or agreement, written or oral; or
  - b. The failure of any **insured's** products or work performed by or on behalf of any **insured** to meet the level of performance, quality, fitness or result warranted or represented by an **insured**.
3. Any **custom farming** conducted more than 100 miles outside the borders of the State where the **insured location** is located.

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

We will pay for **property damage** to property of others caused by an **insured**. We will **not** pay for **property damage**:

1. Caused intentionally by any **insured** who is 13 years of age or older;

2. To property owned by or rented to any **insured**, a tenant of any **insured**, or a resident of any **insured's** household. This exclusion does not apply to a rented golf cart when it is being used to play golf on a golf course;
3. Arising out of:
  - a. Any **business**;
  - b. The ownership, maintenance, use, loading or unloading of a **motor vehicle**, watercraft, or aircraft;
  - c. Theft, mysterious disappearance, or loss of use;
  - d. Mechanical or electrical breakdown, wear and tear, latent defect or inherent vice;
4. To tires;
5. Arising out of the discharge, dispersal, release or escape of any **pollutants**.

Coverage M is subject only to the above exclusions and Exclusion 11 under Section II exclusions; it is not subject to the remaining Section II exclusions.

**Limit of Liability.** Our limit of liability under Coverage M for **property damage** arising out of any **occurrence** shall not exceed the lesser of:

1. The actual cash value of the damaged property at the time of the loss;
2. What it would then cost to repair or replace the damaged property with other of like kind and quality; or
3. The limit of liability stated in the Declarations for Coverage M.

If Section I of this policy also applies to a loss under Coverage M, Section I is primary and Coverage M is excess. You must pay any applicable Section I deductible before Coverage M applies.

We may pay for the loss in money or may repair or replace the property and may settle the claim for loss to property either with the owner or with you. Any property paid for or replaced shall, at our option, become our property.

We have no obligation under Coverage M to provide a defense against any claim or suit brought against any **insured**.

## SECTION II ADDITIONAL COVERAGES

Section II includes the following:

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

This extension of coverage does not apply to loss for which you have other valid and collectible insurance.

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

## SECTION II ADDITIONAL PAYMENTS

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

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;

5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

## SECTION II EXCLUSIONS

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

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

This exclusion does not apply to **bodily injury** sustained by a **residence employee** maintaining, loading or unloading a **motor vehicle** in the course of employment; it also does not apply to Coverage J – Named Persons Medical Payments;
5. Arising out of the use of any aircraft, **motor vehicle**, **mobile agricultural machinery**, watercraft or **recreational motor vehicle**, while being used in or following any prearranged or organized racing, speed or stunting activity or in practice or preparation for any such contest or activity;
6. Which results from liability arising out of any contract or agreement;
7. Arising out of **custom farming** unless coverage is indicated under Coverage L in the Declarations;
8. Caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion,

revolution, warlike act by a military force or military personnel, destruction or seizure or use of property for any military purpose, and including any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;

9. Resulting from any act or omission of a **residence** or **farm employee** who is also an **insured** while away from the **insured location**, if the employee is under the control and direction of some person other than an **insured**;
10. Caused by a substance released or discharged from an aircraft in connection with dusting or spraying operations;
11. Caused by any goods, products or containers manufactured, processed, sold, handled or distributed by an **insured**; except farm products raised on the **insured location**. Loss arising out of the failure of seed sold by an **insured** to conform to the variety, type, purpose, quality or conditions specified by an **insured**, however, is not covered; this includes, but is not limited to, loss caused by any viral, fungal, bacterial or any other type of seed disease. The term "seed" means seeds, bulbs, plants, roots, tubers, cuttings or other similar means of plant propagation;
12. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **pollutants**;
13. Sustained by you or any **insured** as defined in Paragraphs 1, 2, 3 or 4 of the definition of **insured** or by any other resident of your **residence premises**;
14. Arising out of a violation of a criminal law or Youth Rehabilitation Act or similar law, except traffic violations, if committed by any **insured**;
15. With respect to which any **insured** under this policy is also an **insured** under a nuclear energy liability policy issued by a Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any similar organization, or would be an **insured** under any such policy but for its termination upon exhaustion of its limits of liability;
16. Arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person;
17. Arising out of the transmission of or exposure to a communicable disease, bacteria, parasite, virus or other organism by any **insured**; or

**Section II does not cover:**

18. **Property damage** to property owned by, used by, rented to, or in the care, custody or control of any **insured** or his employees, or as to which any **insured** or his employees exercise physical control for any purpose (This exclusion is the care, custody and control exclusion referred to in **Section II Additional Coverages – Fire Legal.**);
19. **Property damage** to work completed by or for an **insured**, any damage arising out of such work, or out of the materials, parts, or equipment furnished in connection with such work;
20. **Property damage** to goods or products, including containers, which an **insured** manufactures, sells, handles, raises or distributes;
21. Damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of an **insured's** products, or work completed by or for an **insured** or for any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency;
22. Punitive or exemplary damages;
23. **Bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under any worker's compensation, non-occupational disease, disability or occupational disease law;
24. **Property damage** to an **insured location** arising out of the alienation (for example; selling, leasing, separating, etc.) of that location;
25. **Bodily injury** under Coverage F-2 sustained by any person residing on the **insured location** except a **residence employee**;
26. Under Coverages F-2 and J:
  - a. **Bodily injury** involving hernia or back injury, unless it is of recent origin, it is accompanied by pain, it was immediately preceded by some accidental strain suffered in the course of employment, and it did not exist prior to the date of the alleged injury;
  - b. Any person while conducting his **business** on the **insured location**, including the employees of that person;
  - c. **Bodily injury** to the extent that any medical expenses are paid or payable under the provision of any worker's compensation or similar law;

27. Under Coverages F-1 and F-2, **bodily injury** sustained by any farm employee arising out of employment;
28. Any **occurrence** covered under Section III; or
29. Under Coverages F-2 & J, expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose.

**SECTION II CONDITIONS**

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1. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
  - a. Give written notice to us or our agent as soon as practicable, which sets forth:
    - (1) The identity of the policy and **insured**;
    - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
    - (3) Names and addresses of any claimants and witnesses;
  - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
  - c. At our request, assist in:
    - (1) Making settlement;
    - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
    - (3) The conduct of suits and attend hearings and trials;
    - (4) Securing and giving evidence and obtaining the attendance of witnesses;
  - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **bodily injury**;
  - e. Under Coverage M—Damage to the Property of Others—submit to us within 60 days after the loss, a sworn proof of loss and exhibit the damaged property, if within the **insured's** control.

2. **Duties of an Injured Person—Coverages F-2 and J.** The injured person or someone acting on behalf of the injured person shall:

- a. Give us a written proof of loss, under oath if required, as soon as practicable;
- b. Execute authorization to allow us to obtain copies of medical reports and records; and
- c. Submit to physical examination by a physician selected by us when and as often as we reasonably require.

3. **Cooperation of Insured.** If any insured fails to cooperate with us or send us legal papers as required, we have the right to refuse any further coverage for the **occurrence** or loss.

4. **Payment of Claim.** Any payment under Section II is not an admission of liability by any insured or us.

5. **Limits of Liability—Coverages F-1 and G.**

Regardless of the number of:

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

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

- a. Under Coverage F-1 the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage G the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. **Products Liability Limit.** The per **occurrence** limit of liability for **bodily injury** and **property damage** caused by farm products produced on the insured location is also the

total aggregate limit of our liability for all such **occurrences** during the policy period.

6. **Limits of Liability—Coverages F-2 and J.** The limit of liability for Coverages F-2 and J as stated in the Declarations as applicable to each person is our limit of liability for all covered expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**. Subject to the limit of liability for each person, our total limit of liability for each **occurrence** for **bodily injury** sustained by two or more persons is the per **occurrence** limit of liability stated in the Declarations.

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

## SECTION II ENDORSEMENTS

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

### No. 204 (01-94) Employer's Nonownership Liability Endorsement.

We agree that Coverages F-1 and G cover the liability of you and any of your executive officers arising out of the use of any **nonowned motor vehicle** used in your **farming** or household activities by any person other than you.

#### 1. Definitions.

In this endorsement only, **nonowned motor vehicle** means a land motor vehicle, trailer or semi-trailer not owned by, registered in the name of, hired by, leased by, or loaned to you or your executive officers.

#### 2. Application of Insurance.

- a. This endorsement does not apply to any **motor vehicle** owned by any of your executive officers or their spouses.
- b. This insurance does not apply to any **motor vehicle** owned by or registered in the name of a partner if your **business** is in the form of a partnership.

#### 3. Other Insurance.

This insurance shall be excess insurance over any other valid and collectible insurance.

**No. 220 (04-00) Combined Single Limit Endorsement.**

The limits of liability paragraph pertaining to Coverages F-1 and G under Section II Conditions is changed to read as follows:

**Limit of Liability—Coverages F-1 and G.**

Regardless of the number of:

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

Our limit for each **occurrence** is subject to the following limitations:

- a. Our total combined single limit of liability under Coverages F-1 and G for all **bodily injury and property damage** resulting from one **occurrence** shall not exceed the applicable limit of liability stated in the Declarations.
- b. **Products Liability Limit.** The per **occurrence** combined single limit of liability for **bodily injury and property damage** caused by farm products produced on the **insured location** is also the total limit of our liability for all **occurrences** during the policy period.

**No. 269 (07-99) Limited Employer's Liability Endorsement.**

Coverages F-1 and F-2 are extended to apply to **bodily injury** caused by an **occurrence** and sustained by a person performing labor for you in your **farming** operation, but only if you are not required by Idaho Law to provide worker's compensation benefits or coverage for this **bodily injury**. Coverage F-2 does not apply to a person or their employees while they conduct their **business** on the **insured location**.

**No. 282 (04-00) Personal Injury Endorsement.**

Under Coverage F-1, **bodily injury** liability, we cover personal injury. Personal injury means injury other than **bodily injury** arising out of one or more of the following offenses:

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

Section II exclusions do not apply to this endorsement, but this endorsement does not cover:

- 1. Liability arising out of any contract or agreement;
- 2. Injury caused by a violation of a criminal law or ordinance committed by or with the knowledge or consent of any **insured**;
- 3. Injury sustained by any person as a result of an offense directly or indirectly related to the employment of this person by the **insured**;
- 4. An injury arising out of the **business** pursuits of any **insured**;
- 5. Civic or public activities performed for pay by any **insured**;
- 6. Injury arising out of the molesting, corporal punishment, physical, sexual, emotional or mental abuse of any person; or
- 7. Any injury arising out of the discharge, dispersal, release or escape of any **pollutants**.

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**SECTION III—AUTOMOBILE INSURANCE**

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**COVERAGE N – BODILY INJURY**

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**COVERAGE O – PROPERTY DAMAGE**

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

- 1. Pay up to our limit of liability for the damages for which the **insured** is legally liable;
- 2. Provide a defense at our expense by counsel of our choice. We may investigate and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages equals our limit of liability.

### Additional Payments.

We will pay the following in addition to our limit of liability, but our obligation for these payments ceases when our obligation to defend ends:

1. Expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**;
2. Expenses incurred by us and costs taxed against any **insured** in any suit we defend;
3. Premiums on bonds required in a suit defended by us, but not for bond amounts greater than the limit of liability provided by this policy. We will also pay up to \$250 for the premium of any bail bond required of an **insured** because of an arrest in connection with an accident resulting from the use of an **insured vehicle**. We are not obligated to apply for or furnish any bond;
4. Reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$75 per day for assisting us in the investigation or defense of any claim or suit;
5. Interest on the entire judgment which accrues after entry of the judgment in any suit we defend and before we pay, tender or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

### COVERAGE P – UNINSURED MOTORIST

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

### COVERAGE P-1 – UNDERINSURED MOTORIST

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

The following additional definitions apply to Coverages P & P-1:

1. **Insured** means:

- a. You and any **relative**;
- b. Anyone **occupying** an **insured vehicle**; or
- c. Anyone **occupying** a **nonowned vehicle** while operated by you or your **relative**.

2. **Uninsured motor vehicle** means a **motor vehicle**:

- a. To which a **bodily injury** liability bond or policy does not apply at the time of the **occurrence**;
- b. For which an insuring or bonding company denies coverage or is or becomes insolvent; or
- c. Which is a hit-and-run motor vehicle and neither the driver nor the owner can be identified. The hit-and-run vehicle must hit an **insured**, an **insured vehicle** or a vehicle which an **insured** is **occupying**.

3. **Underinsured motor vehicle** means a **motor vehicle** for which the sum of liability limits of all applicable liability bonds or policies at the time of an **occurrence** is less than the limits of this coverage. For an **occurrence** involving only one **insured** this means the sum of all applicable per person limits compared to the per person limit of this coverage. For an **occurrence** involving 2 or more **insureds**, this means the sum of all applicable per **occurrence** limits compared to the per **occurrence** limit of this coverage.

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

4. An **uninsured** or **underinsured motor vehicle** does not include any **motor vehicle**:

- a. Owned or operated by a self-insured as defined by any applicable **motor vehicle** law;
- b. Owned by any governmental unit or agency;
- c. Used as a residence;
- d. Owned by or furnished for the regular use of you or any **relative**; or

- e. Which is an **insured vehicle**.

**Exclusions.** The following additional exclusions apply to Coverages P & P-1.

Coverages P & P-1 do not apply to:

1. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle** or trailer without the permission of the owner;
2. The direct or indirect benefit of any insurer or self-insured under any worker's compensation, disability benefits or similar law;
3. **Bodily injury** sustained by an **insured** while **occupying a motor vehicle** owned by or available for the regular use of any **insured** which is not an **insured vehicle**. Any Coverage P or P-1 under your policy applies to you, however, while driving a **motor vehicle** owned by a **relative** which is insured by us;
4. **Bodily injury** sustained by a passenger of an **insured vehicle** as a result of a claim the passenger may have against the operator of an **insured vehicle** or **nonowned vehicle**; or
5. **Bodily injury** for which a claim against the owner or driver of the **uninsured** or **underinsured motor vehicle** is barred by the applicable statute of limitations, unless we received notice of the claim before the statute of limitations has run.

#### Conditions Applicable to Coverages P & P-1.

The following additional conditions apply to Coverages P & P-1:

1. **Limits of Liability.** Under Coverages P & P-1, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**. If both Coverages P and P-1 apply to the same **occurrence** our combined limit of liability for all damages payable under both coverages for: (1) each person shall be the applicable coverage P limit of liability for each person; (2) each **occurrence** shall be the applicable Coverage P limit of liability for each **occurrence**.
2. **Nonstacking of Limits.** Regardless of the number of **insured vehicles, insureds, policies** of insurance with us, claims made or vehicles involved in the **occurrence**, the most we will pay for all damages resulting from any **occurrence** is the limit of liability shown in the Declarations, subject to reduction as outlined in the next paragraph.

3. **Reduction of Amounts Payable.** The amount payable under this coverage shall be the lesser of our limit of liability stated in the Declarations reduced by a. and b. below, or the total damages for **bodily injury** reduced by a. and b. below:

- a. All sums paid or payable by or on behalf of persons or organizations who may be legally responsible for the **bodily injury** to which this coverage applies. This includes all amounts paid under the liability coverage of this policy;
- b. The sums of all amounts payable under any worker's compensation, disability, or similar law; and

Any payment under this coverage to or for an **insured** will reduce any amount that person is entitled to receive under this policy's liability coverages.

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

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

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

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



mediation can be made within 10 days after a request for arbitration and supersedes a request for arbitration.

7. **Arbitration.** If we and an **insured** disagree whether the **insured** is legally entitled to recover damages from the owner or driver of an **uninsured or underinsured motor vehicle** or disagree as to the amount of damages, either party may make a written demand for arbitration. In this event, each party will select a competent, impartial arbitrator within 20 days of receipt of the written demand. The two arbitrators will select a third arbitrator. If they cannot agree upon a third arbitrator within 10 days, either may request that a judge of a court having jurisdiction select a third arbitrator. Both parties shall make disclosure to each other of all information as required by the arbitrator(s) in the scheduling and discovery order. Each party will pay the expenses it incurs, including attorney's fees and related costs, and bear the expenses of the third arbitrator equally. Arbitration will take place in the county in which the **insured** lives unless both parties agree otherwise. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.
8. **Trust Agreement.** If a claim or payment is made under this coverage:
  - a. We will be entitled to reimbursement of payments we have made to an **insured** to be taken from the proceeds of any judgment or settlement;
  - b. An **insured** must hold in trust all rights of recovery for us against any person or organization. That person must also do whatever is proper to secure those rights and do nothing after the loss to prejudice any rights of recovery;
  - c. If we make the request in writing, the **insured** must take any necessary or appropriate action to recover damages from any other person or organization through any representative we designate. Any action may be taken in the **insured's** name and in the event of recovery, we will be reimbursed for any expenses, costs, and attorney fees we incur; and
  - d. The **insured** must execute and deliver any document to us that may be appropriate for the purpose of securing the rights and obligations for the **insured** and for us as established by this provision.
9. **Nonbinding Judgment.** No judgment resulting from a suit brought without our written consent is

binding on us, either in determining the liability of the **uninsured or underinsured motor vehicle** operator or owner or the amount of damages to which the **insured** is entitled.

10. **Interest.** The term damages does not include interest. We are not liable for any interest on any payment we make under this coverage.

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

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

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

1. Any person **occupying** an **insured vehicle** with your permission or the permission of an adult **relative** and sustaining **bodily injury** caused by an **occurrence** resulting from the use of this **insured vehicle**;
2. You or your **relatives** sustaining **bodily injury** caused by an **occurrence** while **occupying** an **insured vehicle** or a **motor vehicle** not owned by any **insured**;
3. Any person sustaining **bodily injury** while **occupying a nonowned vehicle**, if the **bodily injury** results from:
  - a. Its operation by you or on your behalf by a private chauffeur or domestic servant;
  - b. Its operation by a **relative**;
4. You or your **relatives** sustaining **bodily injury** while a pedestrian or a bicyclist when struck by a **motor vehicle** or trailer.

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

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

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

1. Fire, lightning or windstorm;
2. Smoke or smudge due to a sudden, unusual and faulty operation of any heating equipment serving the premises in which the vehicle is located;

3. The stranding, sinking, burning, collision or derailment of any conveyance in or upon which the vehicle is being transported; or

4. Theft.

#### COVERAGE S – COMPREHENSIVE

We will pay for any direct and accidental loss of, or damage to, your **insured vehicle** and its equipment not caused by collision or rollover. Loss or damage from missiles, falling objects, theft, collision with animals, or accidental glass breakage are comprehensive losses.

#### COVERAGE T – COLLISION AND ROLL OVER

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

#### SECTION III ADDITIONAL PAYMENTS

1. **Loss to Personal Property.** If as a result of other loss covered under Coverages R, S, or T, loss results to personal property being transported by the **insured vehicle**, we will pay up to \$500 for this loss. We do not cover cash or securities under this paragraph. We do not cover loss by theft of any personal property unless the loss is caused by the **insured vehicle** being stolen. Exclusion 13 does not apply to this coverage.
2. **Loss of Use by Theft—Reimbursement.** Following a theft of an **insured vehicle** covered under Coverages R or S, we will reimburse you for expenses up to \$25 a day to a maximum of \$500 incurred for the rental of a substitute automobile including taxi cabs:

This reimbursement is limited to such expense incurred during the period commencing 48 hours after the theft has been reported to us and the police, and terminating, regardless of expiration of the policy period, on the date the **insured vehicle** is returned to you or on such earlier date as we make-or-offer settlement for this theft.

3. **Rental Car Coverage.** If Coverages S and T apply to an **insured vehicle** they also apply to a private passenger car driven by an **insured** which is rented by an **insured** for a period of less than three weeks.

#### SECTION III EXCLUSIONS

Section III does not cover:

1. Any **insured** while using any vehicle to carry persons for a fee. This exclusion does not apply to a share-the-expense car pool;
2. Any **insured** for any vehicle rented or leased to others;
3. Any **insured** while using any vehicle in a pre-arranged race, speed contest, or other competition, or preparation for any of these activities;
4. Damages which are intentionally caused by any **insured**;
5. Any **nonowned vehicle** while an **insured** is using it in the business of selling, repairing, servicing, storing or parking **motor vehicles**, including road testing and delivery;
6. Damages caused by nuclear reaction, radiation, or radioactive contamination;
7. Any radar or similar detection device; any device or instrument designed for the recording, reproduction, amplification, receiving, or transmitting of sound, radio waves, microwaves, or television signals; or tapes, records, CDs, discs or other medium designed for use with this equipment. This exclusion does not apply to a device or instrument if it is permanently installed in the dash, trunk or console opening at the time of manufacture or by a dealer when the **insured vehicle** is purchased new;
8. Damages caused directly or indirectly by declared or undeclared war, invasion, insurrection, rebellion, revolution, civil war, other assumption of power, or confiscation by a duly constituted governmental or civil authority;
9. Exemplary or punitive damages;
10. **Bodily injury** to anyone eligible to receive benefits which an **insured** either provides or is required to provide under any worker's compensation or occupational disease law;
11. Damages arising out of the ownership, maintenance or use of any type of emergency vehicle; gas, oil, or newspaper delivery truck; logging truck; or any non-farm commercial truck;

12. Under Coverages N and O, **bodily injury** or **property damage** sustained by:

- a. You;
- b. Residents of the household of the operator of an **insured vehicle** or **nonowned vehicle** who are related to the operator by blood, marriage, or adoption, including a ward or foster child; or
- c. The minor children of the operator of an **insured vehicle** or **nonowned vehicle**;

This exclusion, however, does not apply to the extent such coverage is required by state law, but the limits of such coverage shall then be the minimum limits prescribed by the applicable compulsory insurance, financial responsibility or similar law affecting motor vehicle insurance requirements. These limits for the State of Idaho are stated in the Declarations.

13. Under Coverage O, damage to property owned or transported by any **insured**;

14. Under Coverage O, damage to property rented to, used by, or in the care, custody or control of an **insured**. This exclusion does not apply to **property damage** to:

- a. A residence or private garage rented to an **insured**; or
- b. A **nonowned vehicle** if there is no comprehensive or collision coverage on the vehicle;

15. Under Coverages N, O, P & P-1, liability arising out of any contract or agreement;

16. Under Coverage Q, **bodily injury** sustained while an **insured vehicle** is used as a residence or temporary living quarters;

17. Under Coverage Q, **bodily injury** sustained by a person engaged in the maintenance or repair of an **insured vehicle**;

18. Under Coverage Q, **bodily injury** to anyone eligible to receive benefits under any worker's compensation or similar law;

19. Under Coverage Q, any expenses for any treatment administered by anyone not subject to state licensing and any expense for the purchase or rental of equipment not primarily designed to serve a medical purpose;

20. Under Coverages R, S and T, any loss by collapse, explosion or implosion of any tank or container;

21. Under Coverages R, S and T, any camper or camper shell unless listed on the Declarations for these coverages;

22. Under Coverages R, S and T, any equipment or accessories contained in an insured motorhome, camper unit or trailer unless the equipment or accessories are built in and form a permanent part of the vehicle;

23. Under Coverages R, S and T, loss caused by recall of an **insured vehicle**;

24. Tires, unless damaged concurrent with other loss covered under Coverages R, S, or T. This exclusion does not apply to loss caused by vandalism;

25. Damages caused by wear and tear, freezing, mechanical or electrical breakdown or failure other than burning of wiring, unless the damage results from other loss covered under Coverages R, S, or T;

26. Under Coverages R, S, or T, any loss resulting from conversion, embezzlement or secretion by any person possessing the vehicle under any lien, rental or sales agreement; or

27. Under Coverage S any loss resulting from defective title or failure to obtain proper title.

### SECTION III CONDITIONS

1. **Out of State Insurance.** If you have liability insurance under this policy and if an **insured** is traveling in a state or province outside the state of Idaho which has a compulsory insurance, financial responsibility, or similar law affecting nonresidents, we will automatically provide the required minimum amounts and types of coverages if your policy does not already provide these coverages, but only to the extent required by law and only with respect to the operation or use of the **insured vehicle** in that state or province. The required coverage, however, will be excess over any other collectible insurance.

2. **Two or More Vehicles.** A vehicle and an attached **trailer** will be considered one vehicle under Coverages N, O, P, P-1, and Q and separate vehicles under Coverages R, S, and T. The maximum applicable limits of liability in this policy shall not be increased in any way by this paragraph.

3. **Other Vehicle Insurance in the Company.** If this policy and any other vehicle insurance policy issued to you or your **relative** by us apply to the same **occurrence**, the maximum limit of our liability under all of the policies will not exceed the highest applicable limit of liability under any one policy. This is the most we will pay regardless of the number of **insureds**, claims made, **insured vehicles** or premiums.
4. **Duties after Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties:
  - a. Give written notice to us or our agent as soon as practicable, which sets forth:
    - (1) The identity of the policy and the **insured**;
    - (2) Reasonably available information on the time, place and circumstances of the accident or **occurrence**;
    - (3) Names and addresses of any claimants and available witnesses;
  - b. Immediately forward to us every notice, demand, summons or other process relating to the accident or **occurrence**;
  - c. At our request, assist in:
    - (1) Making settlement;
    - (2) The enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
    - (3) The conduct of suits and attend hearings and trials;
    - (4) Securing and giving evidence and obtaining the attendance of witnesses;
  - d. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **occurrence**.
5. **Duties after Loss—Coverages R, S, and T.** In the case of loss to which this insurance applies, the **insured** shall perform the following duties:
  - a. Give notice, as soon as practicable to us, and also to the police if the loss is suspected to be caused by someone's violation of law;
    - b. Protect the property from further damage; make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
    - c. Prepare an inventory of damaged or stolen property showing in detail, the quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;
    - d. As often as we may require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the presence of any other **insured** and subscribe the same;
    - e. Within 60 days after our request, submit to us a signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:
      - (1) The time and cause of loss;
      - (2) The interest of the **insured** and all others in the **insured vehicle** involved and all encumbrances on the **insured vehicle**;
      - (3) Other insurance which may cover the loss;
      - (4) Changes in title of the **insured vehicle** during the term of the policy.
6. **Duties of an Injured Person—Coverages P, P-1 and Q.** The injured person or someone acting on behalf of the injured person shall:
  - a. Give us written proof of loss containing the information we request, under oath if required, as soon as practicable;
  - b. Execute authorization to allow us to obtain copies of medical reports and records; and
  - c. The injured person shall submit to physical examination by a physician selected by us when and as often as we reasonably require.
7. **Cooperation of Insured.** If any **insured** fails to cooperate or send us legal papers as required, we have the right to refuse any further protection for the **occurrence** or loss.
8. **Territory.** This policy applies only to **occurrences** within the United States of America and Canada. If applicable to your **insured vehicle**,

Coverages R, S, and T only are extended for trips into that part of the Republic of Mexico lying not more than 100 miles from the boundary line of the United States of America. Our liability will be determined on the basis of cost at the nearest United States point.

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

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

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

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

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

- a. Under Coverage N, the **bodily injury** liability limit for each person stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by one person resulting from an **occurrence**. Subject to the **bodily injury** limitation for each person, the **bodily injury** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all damages arising out of **bodily injury** sustained by two or more persons resulting from an **occurrence**;
- b. Under Coverage O, the **property damage** liability limit for each **occurrence** stated in the Declarations is the maximum amount we will pay for all **property damage** resulting from an **occurrence**;
- c. Under Coverage Q, the medical limit stated in the Declarations for each person is our limit of liability for all expenses incurred by or on behalf of each person who sustains **bodily injury** resulting from an **occurrence**;
- d. Our limit of liability under Coverages R, S, and T is the lesser of:

(1) The actual cash value of the **insured vehicle** or covered property; or

(2) The cost of repair or replacement using parts of like kind and quality.

Actual cash value is determined by the market value, age and condition at the time the loss occurred. We do not cover any reduction in value to your **insured vehicle** after repairs are completed. The cost of repair or replacement is based on the cost of repair agreed upon by us or an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, parts, and material prices charged by a substantial number of repair facilities in the area where the **insured vehicle** is to be repaired.

Under Coverages R, S and T, we have the right to base our payment on the cost of non-original equipment manufacturer parts provided they are C.A.P.A. certified as being equivalent to or better than original equipment.

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

- a. Pay up to the actual cash value;
- b. Pay to repair or replace the property or part with like kind and quality. If the repair or replacement results in better than like kind and quality, you must pay for the amount of the betterment;
- c. Return the stolen property and pay for any damage due to the theft; or
- d. Take the property at an agreed value, but it cannot be abandoned to us.

12. **Other Insurance.** The insurance under Section III is excess over any other valid and collectible insurance. Coverage Q, however, is primary coverage.

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

- a. We will pay you and the lienholder named in the policy for loss to an **insured vehicle**, as interests may appear.
- b. Section III covers the interest of the lienholder unless the loss results from fraudulent acts or omissions on your part.

- c. We may cancel the policy during the policy period. Notice of cancellation shall be mailed to the lienholder at least 10 days before the date the cancellation takes effect.
- d. If we make any payment to the lienholder, we will obtain his rights against any other party.
- e. We will pay the lienholder for their interest directly if your car has been repossessed.

**SECTION III ENDORSEMENTS**

Each of the following endorsements applies to your policy only when it is listed in the Declarations. All policy provisions apply to these endorsements unless an endorsement specifically states otherwise.

**No. 312 (04-00) Automobile Accidental Death and Indemnity (AD&D) and Specific Disability Benefits Endorsement.**

- 1. **Death Benefit.** We agree to pay \$5,000 if an **insured** dies solely as the result of **bodily injury** caused by an **occurrence** while **occupying** or struck by a **motor vehicle**. Death of the **insured** must occur within 90 days after the date of the **occurrence**.
- 2. **Specific Disability Benefits.** We agree to pay the amount stated in the Schedule of Benefits for the specific injury listed as the result of **bodily injury** sustained by an **insured** caused by an **occurrence** while **occupying a motor vehicle**. The specific injury must be medically treated within 90 days from the date of **occurrence**. Any sum paid under this paragraph shall reduce the amount to which the **insured** is entitled under Coverage A—Death Benefit. Payment of the death benefit shall terminate our obligation to pay any further sum.

**SCHEDULE OF BENEFITS**

FOR LOSS OF

Both hands; both feet; sight of both eyes;  
one hand and one foot; or either hand or foot and  
sight of one eye \$5,000

FOR LOSS OF

Either hand or foot; sight of one eye; thumb and finger  
of one hand; or any three fingers \$1,500

FOR LOSS OF

Any two fingers \$1,000

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

**Exclusions**

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

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

**Conditions**

The following additional conditions apply to this endorsement.

- 1. **Insured** means only those persons listed in the Declarations as persons to whom this endorsement applies.
- 2. **Notice of Claim—Death Benefit**

The injured person, the **insured's** beneficiary, or someone acting on behalf of such person shall:

- a. Give us a written proof of claim, under oath if required, as soon as practical;
- b. Execute authorization to allow us to obtain copies of medical reports and records; and
- c. The injured person shall submit to a physical examination by a physician selected by us

when and as often as we may reasonably require.

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

a. If the insured decedent is survived by a spouse who is a resident of the same household at the time of the accident, the death benefit is payable to the decedent's spouse. If the insured decedent was a minor, the death benefit is payable to any parent who was a resident of the same household at the time of the accident; otherwise, the death benefit is payable to the insured decedent's estate.

b. We shall have the right to have an autopsy performed where it is not forbidden by law.

4. The Conditions labeled "Other Insurance," "Nonduplication of Insurance Benefits" and "Subrogation—Our Right to Recover Payment" do not apply to this endorsement.

**No. 313 (04-00) Combined Single Limit Endorsement-Coverages P and P-1.**

The limits of liability paragraph pertaining to Coverages P and P-1 under **Conditions Applicable to Coverages P & P-1** is changed to read as follows:

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

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

**No. 320 (04-00) Combined Single Limit Endorsement-Coverages N and O.**

The limits of liability paragraph pertaining to Coverages N and O under **Section III Conditions** is changed to read as follows:

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

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

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

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

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

**No. 323 (01-94) Drive Other Car Endorsement.**

Coverages N and O of Section III are amended to cover you while you are operating a **motor vehicle** that does not qualify as a **nonowned vehicle**, provided you have the permission of the owner of the vehicle. This endorsement does not cover a **motor vehicle**:

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

This endorsement shall not cover the owner of the **motor vehicle** you are driving.

**No. 334 (04-00) Roadside Assistance Endorsement.**

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

- 1. Unlocking the **insured vehicle** if the keys have been locked inside the vehicle or if the keys have been lost;
- 2. Flat tire repair;
- 3. Labor for on site mechanical repairs;
- 4. Battery jump;
- 5. Towing or winch out service; or
- 6. Delivery of up to 3 gallons of gasoline, antifreeze or other **motor vehicle** fluids.

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

**No. 368 (04-00) Car Rental Reimbursement  
Endorsement.**

If a loss exceeds the applicable deductible to the **insured vehicle** under Coverages S or T, we agree to reimburse you for:

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

Coverage applies during a period starting on:

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

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

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

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

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

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

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## SECTION IV—INLAND MARINE INSURANCE

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

### SECTION IV CONDITIONS

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

- a. Give notice, as soon as practicable to us; and also to the police if the loss is suspected to be caused by someone's violation of law;
- b. Protect the property from further damage, make reasonable and necessary repairs required to protect the property and keep an accurate record of repair expenditures;
- c. Prepare an inventory of damaged or stolen property showing in detail the quantity, description, actual cash value and amount of loss and ownership of property. Attach to the inventory all bills, receipts, and related documents that substantiate the figures and ownership of property in the inventory;

- d. As often as we may reasonably require: (1) exhibit the damaged property; (2) provide us with records and documents we request and allow us to make copies; and (3) submit to examination under oath while not in the

presence of any other **insured** and subscribe the same;

- e. Within 60 days after our request, submit to us the **insured's** signed, sworn proof of loss which sets forth the following information to the best of the **insured's** knowledge and belief:

- (1) The time and cause of loss;
- (2) The interest of the **insured** and all others in the property involved and all encumbrances on the property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title during the term of the policy;
- (5) Specifications of any damaged property and detailed estimates for repair of the damage;
- (6) An inventory of damaged property as described above.

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

- a. Repair or replace any part of or restore the pair or set to its value before the loss; or



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

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

- 3. **Valuation.** We shall not be liable beyond the actual cash value of the property at the time of any loss or the applicable endorsement limit, whichever is less. In no event shall we be liable for more than what it would cost to repair or replace the property with material of like kind and quality.
- 4. **Other Insurance.** The insurance under Section IV is excess over any other valid and collectible insurance.

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#### MUTUAL CONDITIONS

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- 1. **Membership:** While this policy is in force, you become a member of Farm Bureau Mutual Insurance Company of Idaho with all the rights and privileges of members as provided by the bylaws of the company in force at the time this policy takes effect, or that may become in force during the continuance of this policy. This policy is on a mutual and participating basis. This means that while this policy is in force, you will be entitled to participate in dividends of the company as the board of directors in their discretion may determine to distribute to policyholders.
- 2. **No Contingent Liability.** The policy is without contingent liability and is nonassessable.
- 3. **Annual Meeting.** The annual meeting of the members will be held at our principal or home office unless a different place is fixed by the board of directors. The annual meeting will be held on the fourth Friday of January of each year unless a different time is fixed by the board of directors. A notice of this meeting shall be published in the Idaho Farm Bureau News or mailed to each member at his last known address at least 45 days prior to the meeting.

IN WITNESS WHEREOF, the Farm Bureau Mutual Insurance Company of Idaho has caused this policy to be signed by its Secretary at Pocatello, Idaho, and countersigned on the Declarations by a duly authorized representative of the company.

  
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Rick D. Keller, Secretary



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 1

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

INSURED: PATRICIA L EISENMAN  
 2988 S OHYHEE ST  
 BOISE ID 83705-4643  
 [Barcode]

POLICY NUMBER: 01--097719-01  
 POLICY PERIOD: 06-15-2007 UNTIL 06-15-2008  
 AT 12:01 AM STANDARD TIME  
 COUNTY: ADA  
 AGENCY: HART AGENCY  
 AGENT: HART THOMAS C  
 EFFECTIVE DATE: 08-15-2007  
 ISSUE DATE: 08-29-2007

SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
200000	A CONDOMINIUM RESIDENCE PREMISE FRAME BUILDING NUMBER: 001 LOCATION: 03 REPLACEMENT COST SEPTIC TANK BACKUP	26	120	LOAN: 36501708 ENDORSEMENT NUMBER: 372 IDAHO BANKING COMPANY LOAN SERVICING DEPT ISAOA LOAN SERVICING DEPT ISAOA PO BOX 44629 BOISE ID 83711	\$362.00
20000	DETACHED GARAGES, SHEDS, SWIMMING POOLS		*125		
20000	LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA		133		
40000	B LOSS OF USE				
140000	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
300000	E SHOP FRAME 7920SFT BUILDING NUMBER: 011 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$1,197.00
60000	E SHED FRAME 090X100 BUILDING NUMBER: 012 LOCATION: 02	BROAD FORM	146		\$185.00
130000	E SHOP FRAME 040X100 BUILDING NUMBER: 013 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$519.00
500	FIRE DEPARTMENT SERVICE CHARGE				
250 DEDUCTIBLE APPLIES TO EACH SECTION I LOSS					
SECTION I ADDITIONAL INSURED(S): JUNIPER STATION PROPERTIES LLC JUNIPER STATION FARM LP					
TOTAL SECTION I ANNUAL PREMIUM					\$2,263.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION I IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 104 - SPECIAL COVERAGE (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E1-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 133 - LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA ENDORSEMENT

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	F1 BODILY INJURY G PROPERTY DAMAGE EACH OCCURRENCE		\$538.00



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 2

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 08-15-2007

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
25000 125000	F2 PREMISES MEDICAL EACH PERSON EACH OCCURRENCE		
500	H DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE		
75000 75000	LIMITED POLLUTION COVERAGE EACH OCCURRENCE ANNUAL AGGREGATE	223	\$29.00

DESCRIPTION OF PREMISES:

LOCATION DESCRIPTION

- 02 640 ACRES SECTION=15 22 TOWNSHIP=01S RANGE=04E ELMORE COUNTY
- 00 150 ACRES SECTION=07 18 12 TOWNSHIP=02N RANGE=02E ADA COUNTY
- 00 800 ACRES SECTION=23 32 TOWNSHIP=01S RANGE=04E ELMORE COUNTY
- 00 320 ACRES SECTION=23 TOWNSHIP=02S RANGE=04E ADA COUNTY
- 00 245 ACRES SECTION=10 11 TOWNSHIP=02S RANGE=04E ADA COUNTY
- 03 1 RES 2988 S OWYHEE ST BOISE ID

SECTION II ADDITIONAL INSURED(S): \$84.00

JUNIPER STATION PROPERTIES LLC JUNIPER STATION FARM LP

TOTAL SECTION II ANNUAL PREMIUM \$651.00

SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 205 - SPECIAL ENDORSEMENT FOR LIABILITY
- ENDORSEMENT 220 - COMBINED SINGLE LIMITS ON COVERAGES F1, G, AND H (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E2-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 269 - LIMITED EMPLOYER'S LIABILITY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 282 - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	N BODILY INJURY O PROPERTY DAMAGE EACH OCCURRENCE		
500000	P UNINSURED MOTORIST P1 UNDERINSURED MOTORIST EACH OCCURRENCE		
25000	Q MEDICAL EACH PERSON		
	R FIRE AND THEFT		
<hr/>			
	S 100 COMPREHENSIVE DEDUCTIBLE		
<hr/>			
	T 250 COLLISION DEDUCTIBLE		
25000	EXCLUSION 12 - FAMILY LIMIT OF LIABILITY		
50000	BODILY INJURY - EACH PERSON		
15000	BODILY INJURY - EACH OCCURRENCE PROPERTY DAMAGE - EACH OCCURRENCE		



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 3

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 08-15-2007

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
100	ROADSIDE ASSISTANCE EACH OCCURRENCE		
25	CAR RENTAL REIMBURSEMENT PER DAY		
500	PER ACCIDENT		
	THE FOLLOWING ARE INSURED UNDER ACCIDENTAL DEATH AND DISMEMBERMENT:	*312	\$2.00
	PATRICIA L EISENMAN		
	INSURED VEHICLES:		
DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
03-130-X	1998 BUICK PARKA 1G4CH52KXM4637207 FARM - AGE 80 AND OVER LIABILITY PREMIUM \$277.00 COMP / COLL PREMIUM \$225.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368 \$502.00
03-410-P	1931 FORD PU A4329770 FARM - BASE RATE LIABILITY PREMIUM \$237.00 FIRE AND THEFT PREMIUM \$19.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334 \$256.00
03-092-U	1974 SPCH GENER 96356000216 MOTORHOME LIABILITY PREMIUM \$137.00 FIRE AND THEFT PREMIUM \$35.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334 \$172.00
03-082-R	1962 KENW TRUCK 76489 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$21.00	R	\$21.00
03-410-4	2001 DODG PU 387KC23691G712421 FARM - BASE RATE LIABILITY PREMIUM \$237.00 COMP / COLL PREMIUM \$367.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368 \$604.00
03-082-U	1996 KENW TRUCK 1XKDDR9XXN1575545 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$68.00	R	\$68.00
03-082	1961 INTL SB150486E TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES LIABILITY PREMIUM \$130.00	N, O, P, P1, Q	\$130.00
TOTAL SECTION III ANNUAL PREMIUM			\$1,755.00

\*ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 313 - COMBINED SINGLE LIMIT ENDORSEMENT- COVERAGE P AND P-1 (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 320 - COMBINED SINGLE LIMITS ON COVERAGES N AND O- (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E3-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 324 - NEW VEHICLE LOAN COVERAGE ENDORSEMENT
- ENDORSEMENT 326 - NEW VEHICLE ADDITIONAL COVERGE ENDORSEMENT

CONTINUED ON PAGE 4



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

FARM AND RANCH POLICY  
DECLARATIONS  
PAGE 4

POLICY NUMBER: 01--097719-01  
EFFECTIVE DATE: 08-15-2007

SECTION IV - INLAND MARINE

NO COVERAGE

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

POLICY BOOKLET ID-FR-02-01-04-00 - FARM AND RANCH POLICY

TOTAL ANNUAL PREMIUM \$4,669.00

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

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

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

NOTICE OF ANNUAL MEETING

THE PARAGRAPH ENTITLED "ANNUAL MEETING" ON THE LAST PAGE OF YOUR POLICY BOOKLET IS CHANGED AS FOLLOWS:

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

*L. Lee Keyser*  
Authorized Representative

EXHIBIT

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000187



## UNINSURED/UNDERINSURED MOTORIST PROOF OF LOSS

The insured named below makes claim for bodily injury under the uninsured/underinsured motorist coverage as indicated below:

**1. Name of Insured(s):** As of November 30, 2007, Farm Bureau Insurance Company had issued automobile liability coverage including underinsured motorist under Policy No. 01-07719-01 to Patricia Eisenman as Named Insured. A copy of the Dec Page is attached hereto as presented by Counsel for Farm Bureau.

Patricia Eisenman died as a result of the accident on November 30, 2007. (See attached Certificate of Death).

The Farm Bureau policy provides coverage for both underinsured motorist and accidental death benefit to the Estate of Patricia Eisenman through Personal Representatives Michael John Eisenman and Kathryn Marie (see attached Letters of Administration). The Estate of Patricia Eisenman and its personal representatives make claim for all losses suffered by the Estate either for special damage expense or wrongful death claims which the Estate is authorized to make under I.C. §5-311 for the loss suffered by the Heirs of Patricia Eisenman. Those Heirs would include: Michael John Eisenman, Kathryn Marie, Rebecca McGavin and Peter Eisenman. The Estate and Heirs are making claim for underinsured motorist and accidental death coverage. Claim is also made for any other benefits payable under the foregoing policy, on account of the death of Patricia Eisenman.

**2. Company and Policy No.:** Farm Bureau Mutual Insurance Company of Idaho, Policy No. 01-097719-01. (See Dec Page attached).

**3. Other applicable insurance (including medical or worker's compensation):** As is reflected in our April 6, 2010 letter previously submitted to Farm Bureau, the Estate pursued a claim for damages against the Tort Feasor responsible for the subject accident. The Insurer of that Tort Feasor tendered its liability limits of \$50,000. Farm Bureau Representatives approved that settlement previously. (See Proof of Loss dated April 6, 2010).

**4. Date and time of loss:** November 30, 2007

**5. Description of accident; providing diagram, police report and any photographs:** Refer to Proof of Loss dated April 6, 2010 and the accompanying police reports. A copy of that letter is attached. Also see photographs submitted herewith.

**6. Names and addresses of all persons involved in accident and witnesses:** Refer to Proof of Loss dated April 6, 2010 and the accompanying police report.

**7. Names and addresses of all uninsured/underinsured drivers and owners:** The underinsured driver was Mary Zahm. Refer to subject police report.

**8. Description of injuries (attach supporting medical records or provide written authorization):** In the accident, Patricia Eisenman sustained head injuries and fractures to both legs. It is believed that she may have also sustained a broken pelvis. Patricia Eisenman passed away at St. Alphonsus later in the evening of November 30, 2007. Attached hereto is a Death Certificate of Patricia Eisenman. Also

submitted herewith are medical expenses and funeral expenses in connection with Patricia Eisenman's passing.

**9. Date and description of similar injuries, conditions or medical treatment:** We are unaware of Patricia Eisenman ever sustaining any injuries of this type prior to November 30, 2007.

**10. Total related medical bills to date (attach copies):** Ada County Paramedics - \$1,422.00; St. Alphonsus Regional Medical Center - \$12,785.40; Idaho Emergency Physicians - \$940.00; Total: \$15,147.40; Funeral Expense at Cloverdale Funeral Home - \$7,255.00 (plus additional \$85.00 – see statement).

**11. Estimated future related medical bills (attach support):** None that we are aware of.

**12. Name of all physicians, hospital or other medical providers giving you treatment for this injury (attach copies of all reports):** Refer to medical expense and funeral expense.

**13. Total claimed lost income giving dates unable to work (attach medical support and wage/lost income verification):** N/A

**14. Total other damages claimed:** In addition to the special expense described in Response to Question No. 10, the Estate of Patricia Eisenman, through its Personal Representatives, make claim for loss of support, comfort, services and other general damages authorized to be sought under I.C. §5-311 by the Heirs of Patricia Eisenman as a result of the loss of their Decedent. In this regard, the full amount of the available underinsured motorist coverage in the sum of \$500,000 and the accidental death benefit is claimed. If there is additional benefits available for the death of Patricia Eisenman and the loss suffered by the Estate and the Heirs, claim is made for those sums as well.

**15. Total amount claimed:** See No. 14.

**16. Other information to support your claim:** Refer to Proof of Loss dated April 6, 2010, which is attached hereto.











Exhibit 1 to  
Proof of Loss Submission

Dec Page  
(Referenced in Paragraph 1)



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 1

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

INSURED: PATRICIA L EISENMAN  
 2988 S OWYHEE ST  
 BOISE ID 83705-4643

POLICY NUMBER: 01-097719-01  
 POLICY PERIOD: 06-15-2007 UNTIL 06-15-2008  
 AT 12:01 AM STANDARD TIME  
 COUNTY: ADA  
 AGENCY: HART AGENCY  
 AGENT: HART THOMAS C  
 EFFECTIVE DATE: 06-15-2007  
 ISSUE DATE: 07-11-2007



SECTION I - PROPERTY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE PERILS	APPLICABLE ENDORSEMENTS	MORTGAGEE	ANNUAL PREMIUM
200000	A CONDOMINIUM RESIDENCE PREMISE FRAME BUILDING NUMBER: 001 LOCATION: 03 REPLACEMENT COST SEPTIC TANK BACKUP	26	120	LOAN: 36501708 ENDORSEMENT NUMBER: 372 IDAHO BANKING COMPANY LOAN SERVICING DEPT ISADA PO BOX 44629 BOISE ID 83711	\$362.00
20000	DETACHED GARAGES, SHEDS, SWIMMING POOLS		*125		
20000	LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA		133		
40000	B LOSS OF USE				
140000	C PERSONAL PROPERTY REPLACEMENT COST	1-19	*111		
500	REFRIGERATED PRODUCTS				
300000	E SHOP FRAME 7920SFT BUILDING NUMBER: 011 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$1,197.00
			124		
60000	E SHED FRAME 090X100 BUILDING NUMBER: 012 LOCATION: 02	BROAD FORM	146		\$185.00
130000	E SHOP FRAME 040X100 BUILDING NUMBER: 013 LOCATION: 02 REPLACEMENT COST	BROAD FORM	146		\$519.00
			124		
500	FIRE DEPARTMENT SERVICE CHARGE				
	250 DEDUCTIBLE APPLIES TO EACH SECTION I LOSS				
TOTAL SECTION I ANNUAL PREMIUM					\$2,263.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION I IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 104 - SPECIAL COVERAGE (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-F1-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 133 - LIMITED FUNGI, WET OR DRY ROT, OR BACTERIA ENDORSEMENT

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	F1 BODILY INJURY G PROPERTY DAMAGE EACH OCCURRENCE		\$538.00
25000	F2 PREMISES MEDICAL EACH PERSON		
125000	EACH OCCURRENCE		

CONTINUED ON PAGE 2

CERTIFIED COPY  
 01-097719-01 CNR  
 POLICY NO. INITIAL



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 2

8

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 06-15-2007

SECTION II - LIABILITY

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500	M DAMAGE TO PROPERTY OF OTHERS EACH OCCURRENCE		
75000	LIMITED POLLUTION COVERAGE EACH OCCURRENCE	223	\$29.00
75000	ANNUAL AGGREGATE		
DESCRIPTION OF PREMISES:			
LOCATION DESCRIPTION			
	02 640 ACRES SECTION=15 22 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
	00 150 ACRES SECTION=07 18 12 TOWNSHIP=02N RANGE=02E ADA COUNTY		
	00 800 ACRES SECTION=23 32 TOWNSHIP=01S RANGE=04E ELMORE COUNTY		
	00 320 ACRES SECTION=23 TOWNSHIP=02S RANGE=04E ADA COUNTY		
	00 245 ACRES SECTION=10 11 TOWNSHIP=02S RANGE=04E ADA COUNTY		
	03 1 RES 2988 S OHYHEE ST BOISE ID		
TOTAL SECTION II ANNUAL PREMIUM			\$567.00

SECTION II IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

ENDORSEMENT 220 - COMBINED SINGLE LIMITS ON COVERAGES F1, G, AND H (PRINTED IN THE POLICY BOOKLET)  
 ENDORSEMENT ID-FR-E2-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT  
 ENDORSEMENT 269 - LIMITED EMPLOYER'S LIABILITY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)  
 ENDORSEMENT 282 - PERSONAL INJURY ENDORSEMENT (PRINTED IN THE POLICY BOOKLET)

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY	COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
500000	N BODILY INJURY O PROPERTY DAMAGE EACH OCCURRENCE		
500000	P UNINSURED MOTORIST P1 UNDERINSURED MOTORIST EACH OCCURRENCE		
25000	Q MEDICAL EACH PERSON		
	R FIRE AND THEFT		
	S 100 COMPREHENSIVE DEDUCTIBLE		
	T 250 COLLISION DEDUCTIBLE		
25000	EXCLUSION 12 - FAMILY LIMIT OF LIABILITY BODILY INJURY - EACH PERSON		
50000	BODILY INJURY - EACH OCCURRENCE		
15000	PROPERTY DAMAGE - EACH OCCURRENCE		
100	ROADSIDE ASSISTANCE EACH OCCURRENCE		
25	CAR RENTAL REIMBURSEMENT PER DAY		
500	PER ACCIDENT		

CONTINUED ON PAGE 3



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

FARM AND RANCH POLICY  
 DECLARATIONS  
 PAGE 3

8

POLICY NUMBER: 01--097719-01  
 EFFECTIVE DATE: 06-15-2007

SECTION III - AUTOMOBILE

LIMITS OF LIABILITY COVERAGE	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
THE FOLLOWING ARE INSURED UNDER ACCIDENTAL DEATH AND DISMEMBERMENT:	*312	\$2.00

PATRICIA L EISENMAN

INSURED VEHICLES:

DESCRIPTION	APPLICABLE COVERAGES	APPLICABLE ENDORSEMENTS	ANNUAL PREMIUM
03-130-X 1998 BUICK PARKA 1G4CW52KXH4637207 FARM - AGE 80 AND OVER LIABILITY PREMIUM \$277.00 COMP / COLL PREMIUM \$225.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368	\$502.00
03-410-P 1931 FORD PU A4329770 FARM - BASE RATE LIABILITY PREMIUM \$237.00 FIRE AND THEFT PREMIUM \$19.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334	\$256.00
03-092-U 1974 SPCN GEMER 96356000216 MOTORHOME LIABILITY PREMIUM \$137.00 FIRE AND THEFT PREMIUM \$35.00	N, O, P, P1, Q, R ROADSIDE ASSISTANCE	*334	\$172.00
03-082-R 1962 KENW TRUCK 76489 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$21.00	R		\$21.00
03-410-4 2001 DODG PU 387KC23691G712421 FARM - BASE RATE LIABILITY PREMIUM \$237.00 COMP / COLL PREMIUM \$367.00	N, O, P, P1, Q, S, T ROADSIDE ASSISTANCE CAR RENTAL REIMBURSEMENT	*334 *368	\$604.00
03-082-U 1996 KENW TRUCK 1XKDDR9XXHJ575545 TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES FIRE AND THEFT PREMIUM \$68.00	R		\$68.00
03-082 1961 INTL SB150486E TRUCK 1 TO 6 TON - FARM USE ONLY; 7,500 TO 24,999 MILES LIABILITY PREMIUM \$130.00	N, O, P, P1, Q		\$130.00

TOTAL SECTION III ANNUAL PREMIUM \$1,755.00

\* ENDORSEMENT PRINTED IN THE POLICY BOOKLET

SECTION III IS SUBJECT TO THE FOLLOWING ADDITIONAL ENDORSEMENTS:

- ENDORSEMENT 313 - COMBINED SINGLE LIMIT ENDORSEMENT- COVERAGE P AND P-1 (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT 320 - COMBINED SINGLE LIMITS ON COVERAGES N AND O (PRINTED IN THE POLICY BOOKLET)
- ENDORSEMENT ID-FR-E3-21(10-03) - TERRORISM EXCLUSION ENDORSEMENT
- ENDORSEMENT 324 - NEW VEHICLE LOAN COVERAGE ENDORSEMENT
- ENDORSEMENT 326 - NEW VEHICLE ADDITIONAL COVERGE ENDORSEMENT

SECTION IV - INLAND MARINE

NO COVERAGE

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

POLICY BOOKLET ID-FR-02-01-04-00 - FARM AND RANCH POLICY

CONTINUED ON PAGE 4





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

FARM AND RANCH POLICY  
DECLARATIONS  
PAGE 4

POLICY NUMBER: 01--097719-01  
EFFECTIVE DATE: 06-15-2007

TOTAL ANNUAL PREMIUM \$4,585.00

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

LIMITS OF LIABILITY ARE SHOWN IN WHOLE DOLLARS

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

NOTICE OF ANNUAL MEETING

THE PARAGRAPH ENTITLED "ANNUAL MEETING" ON THE LAST PAGE OF YOUR POLICY BOOKLET IS CHANGED AS FOLLOWS:

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

*L. Leyke*  
Authorized Representative

Exhibit 2 to  
Proof of Loss Submission

Certificate of Death  
(Referenced in Paragraph 1)

# STATE OF IDAHO CERTIFICATION OF VITAL RECORD

## STATE OF IDAHO IDAHO DEPARTMENT OF HEALTH AND WELFARE BUREAU OF HEALTH POLICY AND VITAL STATISTICS

DATE FILED BY STATE REGISTRAR:

State of Idaho

STATE FILE NO.

### CERTIFICATE OF DEATH

ONLY A COPY OF THIS DOCUMENT, CERTIFIED BY THE STATE REGISTRAR WITH THE DEPARTMENT OF HEALTH AND WELFARE  
REGISTERED SEAL, SHALL BE USED AS PROOF OF THE DEATH FOR ANY AND ALL PURPOSES

Local Reg. No.

2597-07

TYPE OR PRINT IN PERMANENT BLACK INK DO NOT USE FELT TIP PEN  FOR INSTRUCTIONS SEE HANDBOOKS	* 1. DECEDENT'S LEGAL NAME (include AKA's if any) (First, Middle, Last, Suffix) <b>Patricia Louise Eisenman</b>	2. SEX <b>Female</b>	3. SOCIAL SECURITY NUMBER <b>522-24-6957</b>
	4a. AGE Last Birthday <b>83</b>	4b. UNDER 1 YEAR Months: _____ Days: _____	4c. UNDER 1 DAY Hours: _____ Minutes: _____
6. BIRTHPLACE (City and State, Territory, or Foreign Country) <b>Sterling, Colorado</b>		7a. RESIDENCE - STATE OR FOREIGN COUNTRY <b>Idaho</b>	
7b. COUNTY <b>Ada</b>		7c. CITY OR TOWN <b>Boise</b>	
7d. STREET AND NUMBER <b>2888 S. Cwyhee</b>		7e. APT. NO. <b>83705</b>	7f. ZIP CODE <b>83705</b>
7g. INSIDE CITY LIMITS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
8. MARITAL STATUS AT TIME OF DEATH <input type="checkbox"/> Married <input type="checkbox"/> Married, but separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Never married <input type="checkbox"/> Unknown			
9. SURVIVING SPOUSE'S NAME (if wife, give maiden name)			
10. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
11a. FATHER'S NAME (First, Middle, Last, Suffix) <b>Roy Alfred Courley</b>		11b. BIRTHPLACE (State, Territory, or Foreign Country) <b>Nebraska</b>	
12a. MOTHER'S MAIDEN NAME (First, Middle, Last, Suffix) <b>Marguerite Mallion</b>		12b. BIRTHPLACE (State, Territory, or Foreign Country) <b>Nebraska</b>	
13a. INFORMANT'S NAME (Type or print) <b>Becky McGowan</b>		13b. RELATIONSHIP TO DECEDENT <b>Daughter</b>	
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) <b>2417 Manlo Dr., Boise, ID, 83702</b>			
14. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Donation <input type="checkbox"/> Entombment <input type="checkbox"/> Removal from Idaho <input type="checkbox"/> Other (Specify)		15. PLACE OF DISPOSITION (Name and address of cemetery, crematory, other place) <b>Cloverdale Crematory 83713</b>	
16. NAME AND COMPLETE ADDRESS OF FUNERAL FACILITY <b>Cloverdale Funeral Home 1200 N Cloverdale Rd, Boise, ID, 83713</b>			
17a. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH 		17b. LICENSE NUMBER (Of licensee) <b>M-1014</b>	
18. WAS CORONER CONTACTED DUE TO CAUSE OF DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
PLACE OF DEATH (19-22) * 19a. IF DEATH OCCURRED IN A HOSPITAL: <input type="checkbox"/> Inpatient <input checked="" type="checkbox"/> Outpatient <input type="checkbox"/> OOA <input type="checkbox"/> Hospice facility <input type="checkbox"/> Nursing home/Long term care facility <input type="checkbox"/> Decedent's home <input type="checkbox"/> Other (Specify)			
* 20. FACILITY NAME (if not facility, give street and number) <b>SARMC</b>		* 21. CITY, TOWN, OR LOCATION OF DEATH, AND ZIP CODE <b>Boise 83706</b>	
* 22. COUNTY OF DEATH <b>ADA</b>			
* 23. DATE OF DEATH (Mo/Day/Yr) (Spec. month) <b>November 30, 2007</b>		24. TIME OF DEATH (24hr) <b>1905</b>	
25. DATE PRONOUNCED DEAD (Mo/Day/Yr) (Spec. month) <b>November 30, 2007</b>		26. TIME PRONOUNCED DEAD (24hr) <b>1935</b>	
PART I: Enter the direct cause(s) — disease, injuries, or complications — that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventilator withdrawal without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. IMMEDIATE CAUSE (Final cause of condition) resulting in death: a. <b>BEUNT FOU CRUUNO</b> DUE TO (or as a consequence of): b. <b>motor vehicle / pedestrian accident</b> DUE TO (or as a consequence of): c. _____ DUE TO (or as a consequence of): d. _____			
PART II: Enter other significant conditions contributing to death but not resulting in the underlying cause given in Part I			
29. DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown		30. IF FEMALE (Aged 10-54): <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 49 days to 1 year before death <input type="checkbox"/> Unknown if pregnant within the past year	
31. MANNER OF DEATH <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Homicide <input checked="" type="checkbox"/> Accidents <input type="checkbox"/> Pending investigation <input type="checkbox"/> Suicide <input type="checkbox"/> Could not be determined		32. DATE OF INJURY (Mo/Day/Yr) (Spec. month) <b>November 30, 2007</b>	
33. TIME OF INJURY (24hr) <b>14h</b>		34. PLACE OF INJURY (Decedent's home, farm, street, construction site, nursing home, restaurant, forest, etc.) <b>street</b>	
35. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
36. LOCATION OF INJURY: State <b>Idaho</b> City/Town or County <b>BOISE</b> Zip Code _____			
Street and Number or Location: <b>Intersecton of 12<sup>th</sup> &amp; Hoyt St</b> Apartment Number: _____			
37. DESCRIBE HOW INJURY OCCURRED. IF TRANSPORTATION INJURY, STATE THE TYPE(S) OF VEHICLE(S) INVOLVED (Automobile, pickup, motorcycle, ATV, bicycle, etc.) SPECIFY WHICH VEHICLE DECEDENT OCCUPIED, if applicable. <b>pedestrian struck by a car</b>			
TRANSPORTATION INJURY ONLY: <input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Driver/Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Other (Specify)			
38. WHAT SAFETY DEVICE(S) DID DECEDENT USE/EMPLOY? <input type="checkbox"/> Seat Belt <input type="checkbox"/> Child safety seat <input type="checkbox"/> Helmet <input type="checkbox"/> Air bag <input type="checkbox"/> None <input type="checkbox"/> Unknown			
39a. CERTIFIER (Check only one, based on official capacity for this certificate) <input type="checkbox"/> PHYSICIAN <input type="checkbox"/> PHYSICIAN ASSISTANT <input type="checkbox"/> ADVANCED PRACTICE PROFESSIONAL NURSE To the best of my knowledge, death occurred at the time, date, and place, and due to the natural cause(s) (prior or stated). <input checked="" type="checkbox"/> CORONER On the basis of examination and/or investigation, my opinion is that death occurred at the time, date, and place, and due to the cause(s) and manner stated. Signature and Title of Certifier: * 39b. HOME ADDRESS AND ZIP CODE OF CERTIFIER (Type or print) <b>OLEN GROBEN 5856 Morris Hill BOISE ID 83706</b>		39c. LICENSE NUMBER _____	
40a. CORONER'S SUBSEQUENT SIGNATURE IF NECESSARY: The coroner's signature in this form supersedes that of the physician, physician assistant, or advanced practice professional nurse, and the coroner becomes the certifier of record. I have reviewed and if necessary amended the medical section		39c. DATE SIGNED <b>12.03.2007</b> MM DD YYYY	
40b. DATE SIGNED MM DD YYYY			
41b. DATE SIGNED <b>12.21.2007</b> MM DD YYYY			
41a. REGISTRAR'S SIGNATURE 			

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF HEALTH POLICY AND VITAL STATISTICS.

DATE ISSUED: **DEC 21 2007**

This copy not valid unless prepared on engraved border displaying state seal and signature of the Registrar.

JANE S. SMITH  
STATE REGISTRAR



STATE OF IDAHO County of Ada

This copy of a death certificate was issued by the District Health Department prior to filing with the Idaho Bureau of Health Policy and Vital Statistics.

*Dana Cline*

Local Vital Statistics Registration Official

000223562

Exhibit 3 to  
Proof of Loss Submission

Letters of Administration  
(Referenced in Paragraph 1)

RICHARD A. CUMMINGS, ISB #1815  
CUMMINGS LAW OFFICES  
412 East Parkcenter Boulevard, Suite 325  
P.O. Box 1545  
Boise, Idaho 83701  
Telephone: (208) 367-0722  
Facsimile: (208) 367-0892  
E-mail: rcummings@cummingslawidaho.com

NO. \_\_\_\_\_  
AM. \_\_\_\_\_

DEC 18 2007

J. DAVID NAVARRO, Clerk  
By E. CHILD  
DEPUTY

Attorney for Petitioners

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

In the Matter of the Estate of:

PATRICIA L. EISENMAN,

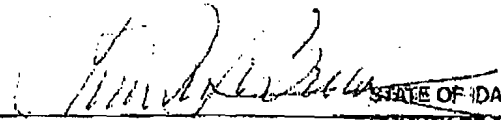
Deceased.

Case No. CV 1E 0722398

LETTERS TESTAMENTARY

MICHAEL JOHN EISENMAN and KATHRYN MARIE were duly appointed and qualified as the Co-Personal Representatives of the Estate of Patricia L. Eisenman on the 17<sup>th</sup> day of Dec, 20 07, by the court, with all authority pertaining thereto to act on behalf of the estate. Administration of the estate is unsupervised. These letters are issued to evidence the appointment, qualification, and authority of the Co-Personal Representatives.

WITNESS My signature and the seal of this court, this 17<sup>th</sup> day of Dec, 20 07.

  
STATE OF IDAHO }  
COUNTY OF ADA } ss.  
Christopher M. Bieter, Magistrate

J. David Navarro, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original on file in this office. In witness whereof, I have hereunto set my hand and affixed by official seal this 18 day of Dec, 20 07.  
J. DAVID NAVARRO, Clerk  
By E. Child Deputy

NO. \_\_\_\_\_  
A.M. FILED P.M. \_\_\_\_\_

DEC 18 2007

J. DAVID NAVARRO, Clerk  
BY E. CHILD  
DEPUTY

RICHARD A. CUMMINGS, ISB #1815  
CUMMINGS LAW OFFICES  
412 East Parkcenter Boulevard, Suite 325  
P.O. Box 1545  
Boise, Idaho 83701  
Telephone: (208) 367-0722  
Facsimile: (208) 367-0892  
E-mail: [rcummings@cummingslawidaho.com](mailto:rcummings@cummingslawidaho.com)

Attorney for Petitioners

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

In the Matter of the Estate of:	)	Case No. <u>CV IE 0722398</u>
	)	
PATRICIA L. EISENMAN,	)	STATEMENT OF INFORMAL
	)	PROBATE OF WILL AND
Deceased.	)	APPOINTMENT OF CO-PERSONAL
	)	REPRESENTATIVES

Upon consideration of the Application for Informal Probate of Will and Informal Appointment of Co-Personal Representatives filed by Michael John Eisenman and Kathryn Marie, by and through their attorney, Richard A. Cummings, the court finds that:

1. The Application is complete.
2. Applicants have made an oath or affirmation that the statements contained in the Application are true to the best of Applicants' knowledge and belief.
3. Applicants appear from the Application to be interested persons as defined by the Idaho Uniform Probate Code.
4. Decedent, Patricia L. Eisenman, died on November 30, 2007, at the age of 88 years.

COPY

000154

5. Based on the statements made in the Application, it appears that venue is proper; that any required notice has been given or waived; no Personal Representative has been appointed in this state or elsewhere, Applicants are designated as Co-Personal Representatives, and the time limit for informal probate and appointment has not expired.

6. An original, duly executed, and apparently unrevoked Will for decedent, Patricia L. Eisenman, dated March 15, 2002, is in the court's possession. Based on the statements made in the Application, neither the Will to which this Application relates nor any other Will of the decedent has been subject of a previous probate order in this state.

7. The Application does not indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state and which is not filed for probate in this court.

8. Based on the statements made in the Application, Michael John Eisenman and Kathryn Marie are qualified to act as Co-Personal Representatives and have priority entitling them to the appointment of Co-Personal Representatives, to act without bond.

9. The applicable time period within which no action can be taken on an application for informal appointment has elapsed.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Will of the decedent, Patricia L. Eisenman, dated March 15, 2002, is hereby informally probated.

2. MICHAEL JOHN EISENMAN and KATHRYN MARIE are hereby appointed Co-Personal Representatives of the Estate of Patricia L. Eisenman, deceased, to act without bond.

3. Upon qualification and acceptance, Letters Testamentary shall be issued.

4. Notice shall be given in accordance with Idaho Code section 15-3-705.

DATED This 17 day of Dec, 20 07.

CHRISTOPHER M. BIETER

Christopher M. Bieter, Magistrate

STATEMENT OF INFORMAL PROBATE OF WILL AND  
APPOINTMENT OF CO-PERSONAL REPRESENTATIVES - Page 2

[C:\121307\Client Files\817\817.008\stmt-open.testate]



Exhibit 4 to  
Proof of Loss Submission

Proof of Loss Dated 04/06/10  
(Referenced in Paragraph 3)

Law Offices of  
**MOORE & ELIA, LLP**

1001 West Idaho, Suite 400  
Mailing Address: P. O. Box 6756  
Boise, Idaho 83707

Michael W. Moore

Telephone (208) 336-6900  
Toll Free 800-346-4896  
Facsimile (208) 336-7031  
E-mail: [mike@mbelaw.net](mailto:mike@mbelaw.net)

April 6, 2010

Farm Bureau Mutual Insurance Company  
Of Idaho  
275 Tierra Vista Drive  
P.O. Box 4848  
Pocatello, Idaho 83205-4848

Via Certified Mail  
Return Receipt Requested

Re: Insured: Heirs and Estate of Patricia Eisenman  
DOA: 11/30/2007  
Policy No.: 01-097719-01  
Policy Period: 06/15/2007 - 06/15/2008  
Issue Date: 07/11/2007

Gentlemen:

On November 30, 2007 Patricia Eisenman died as a result of being struck by an automobile driven by an underinsured drunk driver. Our office has been retained by the natural children/heirs of Patricia L. Eisenman: Kathryn Marie, Becky McGavin, Michael Eisenman and Peter Eisenman. Pursuant to Idaho Code §41-1839, this letter and accompanying materials are submitted to you as demand and proof of loss under the underinsured motorist insurance coverage of your insurance policy.

Accident of November 30, 2007

On the evening of November 30, 2007, the Boise Master Chorale was performing at the Cathedral of the Rockies at 11<sup>th</sup> and Hays Street in Boise. Patricia Eisenman, a long-time singer with that group, went to hear the performance, which included her close friend Mardi Stenkamp. November 30 was Pat Eisenman's birthday, but at Pat's request, family members had agreed to postpone her birthday celebration to the next day, so that Pat could go to the concert.

Pat drove to the Cathedral of the Rockies and parked on 12th Street, a short distance from the northeast corner of 12<sup>th</sup> and Hays Street. Pat walked to the intersection of 12<sup>th</sup> and Hays Street, which is illuminated with street lights. While lawfully crossing the intersection, Pat was struck by a westbound vehicle driven by Mary Zahm. Ms. Zahm had been drinking at O'Michael's Bar off of Hill Road. Despite many pedestrians in the area, Ms. Zahm negligently failed to yield. Pat was struck by the vehicle, thrown into the hood and windshield of the vehicle, and then fell to the ground. Paramedics responded to the scene, attempted to treat Pat's multiple injuries, and transported her to St. Alphonsus. She passed away later that evening.

Police were called to the scene of the accident and began conducting an investigation into charging Ms. Zahm with Driving While Intoxicated.<sup>1</sup> Upon Patricia's death, the charges were elevated to Vehicular Manslaughter. The Ada County Prosecuting Attorney filed criminal charges against Ms. Zahm, known as *State v. Mary Zahm, Case No. CR-FE-2008-0008052*, Fourth Judicial District Court, Ada County, Idaho. On October 22, 2008 Ms. Zahm pled guilty to Vehicular Manslaughter.<sup>2</sup> Ms. Zahm is completely at fault for the accident, and her plea of guilty will be admissible in all subsequent proceedings relating to this incident.<sup>3</sup>

### Insurance Coverage

At the time of the accident, Patricia Eisenman was insured under an automobile insurance policy issued by your company referenced above. Under that policy, your company extended underinsured motorist coverage insurance.

Under the Farm Bureau policy the term "**Insured**" is defined as follows:

1. *Insured means:*
  - a. *if you are an individual, you and any relative;*

The term "you" refers to Patricia and the term "**relative**" would include each of the above-referenced children/heirs of Patricia. The policy further provides:

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<sup>1</sup> Attached as Exhibit 1 is a copy of the motor vehicle report prepared by police in connection with the accident itself.

<sup>2</sup> Attached hereto is a copy of the Docket Sheet from those proceedings (Exhibit 2).

<sup>3</sup> See generally *Kuhn v. Proctor*, 141 Idaho 449, 111 P.3d 144 (2005)

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

Underinsured motorist coverage exists for each of the above-referenced claims of Patricia's children/heirs.

Previously, demand was made on Ms. Zahm and her insurance carrier for all insurance monies available insuring Ms. Zahm at the time of the accident. The policy limits under the policy were \$50,000. Your company has previously consented to that settlement, and those funds have been demanded and received.

As Ms. Zahm was woefully underinsured for the damages that she caused, this letter hereby submits a claim to you under the Underinsured Motorist provisions of the above-referenced insurance policy. The instant Farm Bureau policy provided limits of \$500,000 per person/per accident. The subject accident occurred during the term of your insurance policy, such that your policy provides coverage for the subject incident.

**Plaintiff's Decedent – Patricia Eisenman**

All that knew Pat Eisenman will confirm that she was a kind, caring, fun loving individual. Despite the fact that [REDACTED] was her 83rd birthday, Pat was quite active and enjoyed a happy, full life through her close relationships with family and friends. Pat resided in a condominium at 2988 South Owyhee Street, Boise, Idaho. Since the passing of her husband in December 2001, Pat had lived alone and was self-sufficient. Over the years, Pat had developed a habit of walking everyday, and most of those walks were taken in the morning with her friend, Judith Allen. On bad weather days, she had a treadmill at home to allow her to get her daily exercise. During seasons, she played golf with friends and enjoyed watching Tiger Woods on television. Pat enjoyed playing Bridge with friends, lunch with friends, and movies with friends and family. She loved to can fruit, bake and cook, particularly for grandkids and her son, Mike, when he came to town.

All of her life, Pat enjoyed music. She had a wonderful voice and was a long-time choir member with different groups throughout Boise. She has sung in the choir at various parishes, including St. John's and Sacred Heart. For many years Pat was a singer

in the Boise Master Chorale. She was a regular attendee of all of the Boise Philharmonic events. Her close relations with the Boise music community was shown by the fact that at her funeral, music was handled by the Boise Philharmonic and singing was performed by the Boise Master Chorale.

Pat Eisenman had four children: Kathryn Marie; Becky McGavin; Mike Eisenman; and Pete Eisenman. Under Idaho law, each of these individuals are the statutory heirs of Patricia Eisenman and are insureds under your policy.

Kathryn Marie is a massage therapist, who resides in Boise. Kathryn and her mom were quite close. They talked almost everyday, and saw each other often. Kathryn enjoyed quiet times with her mom, doing such things as jigsaw puzzles, playing cards, or just talking. These two enjoyed family meals, holidays and birthdays, going out to lunch, or the annual trip to the Oregon Coast. The night of the accident and her mother's sudden death, had a devastating impact on Kathryn. Kathryn went to counseling for over a year, trying to cope with the problems associated with her mother's passing.<sup>4</sup>

Becky was also quite close to her mother. Becky is a grade school teacher with the Boise School District. Becky saw her mother several times a week and Pat supported Becky in all of Becky's different activities, whether it was Becky's playing flute with different Boise musical groups or participating in activities with the grandchildren. Becky weekly went to her mom's house to be with her mom. While grandmother played with the kids, Becky would help Pat with any more difficult housecleaning chores. Pat was a regular for Sunday night dinner to be with Becky, her grandkids, and other family. With Pat's passing, Becky no longer had the chance to help Pat out every week, have visits on Sunday, invite Pat over for meals, share holidays, or watch Pat love Becky's children.

Mike Eisenman was born and raised in Boise, graduated from the University of Idaho, and has thereafter followed a business career outside the Boise area. At the time of the incident accident, Mike lived and worked in Seattle, Washington as President of Premium ATM, an organization that marketed ATM machines throughout the Pacific Northwest. Mike was close with his mom, and spoke with her weekly. Pat handled the financial books on a number of the family's local business matters, and Mike assisted her on those issues. Whenever Mike came to town, Mike always stayed with Pat. When in

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<sup>4</sup> Kathryn incurred counseling expenses in the year following this incident in the amount of \$2,264.91. The Victim's Compensation Fund paid \$500 of the initial expense, and are subrogated to that sum.

Boise, they would go out to dinner, go on drives, play a round of golf, and discuss ongoing events in their lives.

As with all of the Eisenman children, Pete Eisenman was born and raised in Boise, Idaho. Pete was the family member that followed in the father's (Leonard Eisenman's) business, Trinity Trailers. Trinity is a manufacturer of long haul trailers and related equipment. Pete is quite active in his business and has a wife and four children. While Pete admittedly did not see his mom as often as the others, Pete and Pat made a point of seeing and speaking with each other three or four times a year. Both loved each other and Pete is grateful for all that his mother and father did and meant to him.

### Conclusion

This was a sad and tragic accident. Pat Eisenman was a kind and caring individual who had many close relationships, closest of which were with her family. While difficult to put in words, the victim impact statement prepared by Becky McGavin and submitted to the Court at the criminal process, attempts to convey the significant loss.

At the time of the accident, Patricia and her family were Insureds under the Farm Bureau Policy. At this time demand is hereby made on Farm Bureau for payment of all underinsured motorist benefits available under this policy and this proof of loss is made pursuant to the provisions of I.C. §41-1839.

We look forward to your response.

Very truly yours,

  
Michael W. Moore

MWM:dk

Enclosures    Photo of Patricia Eisenman  
                  Patricia Eisenman Obituary  
                  1. Police Report  
                  2. Docket Sheet  
                  3. Victim Impact Statement  
                  4. Family Photographs

Photo of Patricia Eisenman

000162

Hall Aff., Exh. B, p. 25





Obituary

000164

Hall Aff., Exh. B p. 2

## Patricia Louise Counley Eisenman

Patricia Louise Counley Eisenman was born in Sterling, Colo. on Nov. 30, 1924.

Please join family and friends to celebrate the life of Pat at the Prayer Vigil at Cloverdale Funeral Home on Wednesday, Dec. 5, 2007



at 7 p.m. or at the funeral which will be held at Sacred Heart Catholic Church on Thursday, Dec. 6, 2007 at 10:30am. She died tragically on Nov. 30, 2007 in a pedestrian/car accident upon attending one of her greatest passions.

Following her childhood in Sterling, Pat attended University of Nebraska, pledged KKG, and graduated from the specialized field of dietitian. There she met and later married her beloved Leonard Eisenman (deceased) on June 16, 1951. From there they began a wonderful life together. From the beginning they lived in Denver, later moving to Idaho in 1951, where they have lived with the same phone number since 1956. Pat was the loving mother of Kathryn Marie, Peter Eisenman, Michael Eisenman, and Rebecca Eisenman McGavin.

Throughout her life she has been involved with KKG, Choristers, Boise Master Chorale, Sacred Heart Choir, the Birthday Group, and within that the Merry Widows Bridge Group. During her 55 years in Boise, she has maintained and nurtured many lasting friendships. She was known for her compassionate, open, enduring heart and nature, and her exemplary listening skills. One could truly say that she touched our hearts and has left her loving memory imprinted on them forever.

Patricia really loved living. She enjoyed snickers, a good book, puzzles, tea parties with her granddaughters, playing cards, good humor, and music, but she cherished her family above all. There are far too many impressionable experiences to fit in one tiny section of newspaper but she was a living angel.

She is survived by her children: Kathryn Marie, Peter Eisenman, Michael Eisenman, Rebecca Louise Eisenman McGavin, and their families: Mathew, David, Wilhelm, Mathew, David, Wilhelm, Jr., Jim, Luzzi, Loren, Luzzi, Brooke Luzzi, Dana Eisenman, Cameron Eisenman, John Eisenman, Maggie Eisenman, Avery Eisenman, Alora McGavin, Tira McGavin, Tyler Carson, and Denae Carson.

In lieu of flowers, please send memorials to the US Bank, they will be going to a vocal music performance scholars ip at BSU.

Services are under the direction of Cloverdale Funeral Home.

Exhibit I  
Motor Vehicle Collision Report

# Idaho Vehicle Collision Report

ITD-90 5-95M 27-010500-0 Revised 11/29/95

K

Agency Code	0101	Officer #	433	Report District	12	Case No.	738817
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Page 1

Date of Collision	11/30/2007	Day of Collision	Friday (6)	Time	19:19	Police Dispatched	19:19	Police Arrived	19:21	EMS Dispatched	19:19	EMS Arrived	19:23	Location	Boise
If Collision location is in: <input type="checkbox"/> Intersection of 2 streets <input type="checkbox"/> Intersection of Street and: Parking Lot / Driveway / Alley <input type="checkbox"/> Non-Intersection															
Name of Street: <b>W Hayes St</b> # of Lanes: <b>2</b> Posted Speed: <b>30</b>															
In the Intersection with: <b>N 12th St</b> Posted Speed: <b>20</b>															
Outside an Intersection: <input type="checkbox"/> Miles <input type="checkbox"/> Feet <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/> OF															

UNIT 1	<input checked="" type="checkbox"/> Vehicle	<input type="checkbox"/> Pedestrian	<input type="checkbox"/> Pedalcyclist	Vehicle Owner	Last	First	M.I.	Unit Type	
Driver				<input checked="" type="checkbox"/> Same as Driver	Zahm	Mary	E	6	
<input type="checkbox"/> Hit & Run	Zahm Mary E			Address: 6610 N. Prescott Boise, ID 83703				Unit Use	
Street Address: 6610 N. Prescott				Vehicle Year	Make (Dodge-Chev.)	Model (Dart-Nova)	Style (2 Dr.)	0	
City: Boise State: ID Zip Code: 83703				Vehicle Color	License Plate No.	State		0	
Driver's License No. [Redacted] State: ID Idaho Code # / Violation: 18-8004				Vehicle Identification No. [Redacted]		Est. Cost of Damage		0	
Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported	Insurance	Carrier Name	Policy Number
F	[Redacted]	10	O	1	1	5	<input checked="" type="checkbox"/> Yes	AIG	AIG0057114

Passenger Names and Addresses	(Unit 1 only, additional passengers on page 3)	Same Address as Driver	Seating	Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported
[Empty rows for passenger data]										

UNIT 2	<input type="checkbox"/> Vehicle	<input checked="" type="checkbox"/> Pedestrian	<input type="checkbox"/> Pedalcyclist	Vehicle Owner	Last	First	M.I.	Unit Type	
Driver				<input type="checkbox"/> Same as Driver	Eisenman	Patricia	L	1	
<input type="checkbox"/> Hit & Run	Eisenman Patricia L			Address: [Redacted]				Unit Use	
Street Address: 2988 S. Owyhee St				Vehicle Year	Make (Dodge-Chev.)	Model (Dart-Nova)	Style (2 Dr.)	Non-Vehicle	
City: Boise State: ID Zip Code: 83705				Vehicle Color	License Plate No.	State		0	
Driver's License No. ZB155872E State: ID Idaho Code # / Violation: [Redacted]				Vehicle Identification No. [Redacted]		Est. Cost of Damage		0	
Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported	Insurance	Carrier Name	Policy Number
F	[Redacted]	6	K	1	1	1	<input type="checkbox"/> Yes		

Passenger Names and Addresses	(Unit 2 only, additional passengers on page 3)	Same Address as Driver	Seating	Sex	Date of Birth	Prot Dev.	Injury	Ejection	Trapped	Transported
[Empty rows for passenger data]										

Injured Transported To: St. Alphonsus Medical Center - Boise By: Ada County Paramedics - Boise

<table border="1"> <tr> <th>Front</th> <th>Seating</th> <th>Front</th> </tr> <tr> <td>1 2 3</td> <td>Vehicle</td> <td>1</td> </tr> <tr> <td>4 5 6</td> <td></td> <td>4</td> </tr> <tr> <td>7 8 10</td> <td>Motorcycle</td> <td>7</td> </tr> </table> <p>14 Trailing Unit 16 Pedestrian 17 Pedalcycle</p> <p>Passenger Codes - Non Trailing Unit 11 Sleeper Sect.(Truck Cab) 12 Other enclosed Passngr./Cargo area 13 Unenclosed Passngr./Cargo area 15 Riding on Vehicle Exterior</p>	Front	Seating	Front	1 2 3	Vehicle	1	4 5 6		4	7 8 10	Motorcycle	7	<p><b>Protective Devices</b></p> <p>0 None 1 Shoulder Belt Only 2 Lap Belt Only 3 Shoulder &amp; Lap 4 Child Safety Seat 5 Helmet Used 6 Nonmotorist 7 Non-Activated Air Bag, Belts in Use 8 Non-Activated Air Bag, No Belts in Use 10 Air Bag Activated, Belts in Use 11 Air Bag Activated, No Belts in Use</p> <p><b>Ejection</b></p> <p>1 Not Ejected 2 Totally Ejected 3 Partially Ejected T Thrown from cycle etc.</p> <p><b>Trapped</b></p> <p>1 Not Trapped 2 Trapped / Extrication unit used 3 Trapped / other extrication method</p>	<p><b>Injury</b></p> <p>K Dead A Incapacitating B Non-Incapacitating C Possible G None Evident U Unknown</p> <p><b>Unit Type</b></p> <p>1 Pedestrian 2 Pedalcycle 3 Motorcycle 4 Moped 6 Car 8 Pickup with Camper 7 Pickup / Van / Panel / Sport Utility Vehicle 12 Equestrian 30 Farm Equipment (List) 40 Construction Equip. (List)</p> <p><b>Commercial</b></p> <p>15 Bus 21 Single Unit Truck - 2 axle/6 Tires 22 Single Unit Truck - 3 axle 23 Truck with Trailer</p> <p><b>Attachments</b></p> <p>10 Motorhome 11 Snowmobile 5 ATV 28 Train 99 Other Non-Motor Veh.</p> <p>24 Bobtail 25 Tractor w/Semi Trailer 26 Tractor w/Double Trailer 27 Tractor w/Triple Trailer</p> <p><b>Unit Use</b></p> <p>1 Police 2 Ambulance 3 Driver Trng. 4 Government 5 Taxi 6 Fire 7 Wrecker 8 School Bus</p> <p><b>Attachments</b></p> <p>1 Boat Trailer 2 Utility Trailer 3 Travel Trailer 4 Towed Vehicle 5 Mobile Home 9 Other</p>
Front	Seating	Front												
1 2 3	Vehicle	1												
4 5 6		4												
7 8 10	Motorcycle	7												

Note: -U indicates Unknown

433071130215100194344V200

3963129

Locality		Officer # 433	Case No. 738817	Page 2
7	1 Business/Commercial 2 Industrial/Manufacturing	3 School/Playground 4 Recreational Area	5 Agricultural 6 Undeveloped	7 Residential
3	Light Conditions			
1	Weather Conditions - Two Selections Possible			
1	Road Surface Conditions			
0	Other Road Conditions			
Road Type		Road Surface Type		
Roadway Geometrics		Traffic Control		

UNIT # 1	CONTRIBUTING CIRCUMSTANCES - 3 Possible			UNIT # 2
21	0 None	5 Improper Lane Change	11 Improper Turn	17 Wheel Defect
0	VISION OBSTRUCTION			

12	INITIAL Point of Impact	POINT OF IMPACT			INITIAL Point of Impact
12	PRINCIPLE Point of Impact	PRINCIPLE Point of Impact			PRINCIPLE Point of Impact

2	EXTENT OF DEFORMITY						
Towed Due to Damage							

2	Driver of UNIT # 1 ALCOHOL / DRUG INVOLVEMENT				Driver of UNIT # 2			
3	Alcohol Test				Alcohol Test			
1	Drug Test				Drug Test			
BAC Test Results: 0.09/ -U		Drug Used (if known):		BAC Test Results:		Drug Used (if known):		

UNIT # 1	COMMERCIAL VEHICLE										UNIT # 2
Cargo Body											
# Axles					# Axles						
Hazardous Material					Hazardous Material						
Carrier Name & ICC# or DOT# for Load obtained from...											
(If Carrier different from Vehicle Owner)					(If Carrier different from Vehicle Owner)						

Note: -U indicates Unknown



Narrative / Additional Information / Additional Passengers:

Case No. 738817

001 Eisenman was crossing West Hayes Street from the northeast corner with North  
002 12th Street going toward the southeast corner.

003 Zahm was west bound on West Hayes Street operating a 1998 Dodge Stratus. She  
004 had passed a group of people in the street east of this intersection and was  
005 getting back into the west bound lane. She stated that Eisenman was walking  
006 briskly cutting the corner going toward the church on the south side of the  
007 street.

008 Zahm saw her late and hit her brakes hard. She hit Eisenman. Eisenman went up  
009 onto Zahm's car and into her windshield. Eisenman was thrown off the car when  
010 the car began braking and came to a stop. Eisenman's glasses were found inside  
011 Zahm's car.

012 Eisenman landed on the west side middle of the intersection on her face.  
013 Eisenman was transported to the hospital and was declared deceased shortly  
014 afterward.

015 Zahm admitted consuming two glasses of wine prior to the crash. She had  
016 dropped off a co-worker nearby and was on her way home.

**Additional Witnesses**

017 Williams, Tamara \* 400 Bitterroot Boise, ID 83709 \* 377-1307 \*

Note: -U indicates Unknown



Exhibit 2  
Docket Sheet



Case History

Ada

2 Cases Found.

State of Idaho vs. Mary E Zahm  
No hearings scheduled

Case: CR-FE-2008-0008052 District Judge: Michael McLaughlin Amount: \$7,473.81 Closed pending clerk action

Charges:	Violation Date	Charge	Citation	Disposition
	11/20/2007	I18-4006-3(A) Manslaughter-vehicular Arresting Officer: Lee, Brian, BO		Finding: Guilty Disposition date: 12/18/2008 Fines/fees: \$1,118.50  Jail: 180 days Det Penitentiary: 3 years Indet Penitentiary: 7 years

Register of actions:

Date	Description
05/27/2008	New Case Filed - Felony
05/27/2008	Prosecutor assigned JILL LONGHURST
05/27/2008	Charge Filed - Cause Found
05/27/2008	Hearing Scheduled (Arraignment 06/03/2008 09:30 AM)
05/30/2008	Continued (Arraignment 06/05/2008 09:30 AM)
06/02/2008	Notice of Appear/Bartlett
06/02/2008	Defendant's Request for Discovery
06/02/2008	Invocation of Rights
06/05/2008	Hearing result for Arraignment held on 06/05/2008 09:30 AM: Hearing Held
06/05/2008	Judge Change: Adminsitrative
06/05/2008	Hearing Scheduled (Preliminary 06/26/2008 08:30 AM)
06/05/2008	Warrant Issued - Arrest Bond amount: .00 Defendant: Zahm, Mary E
06/05/2008	STATUS CHANGED: Inactive
06/06/2008	Warrant Returned Defendant: Zahm, Mary E
06/06/2008	STATUS CHANGED: Activate (previously inactive)
06/06/2008	Booked into Jail on: 06 05 08
06/06/2008	Notice Of Hearing
06/25/2008	Stipulation to Continue
06/26/2008	Hearing result for Preliminary held on 06/26/2008 08:30 AM: Continued
06/26/2008	Hearing Scheduled (Preliminary 07/22/2008 08:30 AM)
07/22/2008	Hearing result for Preliminary held on 07/22/2008 08:30 AM: Continued
07/22/2008	Hearing Scheduled (Preliminary 08/07/2008 09:30 AM)
08/07/2008	Hearing result for Preliminary held on 08/07/2008 09:30 AM: Continued
08/07/2008	Hearing Scheduled (Prelliminary 09/02/2008 08:30 AM)
09/02/2008	Hearing result for Preliminary held on 09/02/2008 08:30 AM: Preliminary Hearing Waived (bound Over)
09/02/2008	Hearing Scheduled (Arraignment 09/10/2008 09:00 AM)

09/02/2008 Commitment  
 09/02/2008 Information  
     Hearing result for Arraignment held on 09/10/2008 09:00 AM:  
 09/10/2008 District Court Arraignment- Court Reporter: Nancy Christensen  
     Number of Pages: less than 50  
 09/10/2008 Hearing Scheduled (Entry of Plea 09/24/2008 09:00 AM)  
     Hearing result for Entry of Plea held on 09/24/2008 09:00 AM:  
 09/24/2008 District Court Hearing Held Court Reporter: Gosney Number of  
     Transcript Pages for this hearing estimated: less than 50  
 09/24/2008 Hearing Scheduled (Entry of Plea 10/22/2008 09:00 AM)  
     Hearing result for Entry of Plea held on 10/22/2008 09:00 AM:  
 10/22/2008 District Court Hearing Held Court Reporter: Hohenleitner  
     Number of Transcript Pages for this hearing estimated: less  
     than 50  
 10/22/2008 Hearing Scheduled (Entry of Plea 10/29/2008 09:00 AM)  
     Hearing result for Entry of Plea held on 10/29/2008 09:00 AM:  
 10/29/2008 District Court Arraignment- Court Reporter: Hohenleitner  
     Number of Pages: less than 50  
 10/29/2008 Hearing Scheduled (Sentencing 12/17/2008 03:00 PM)  
 10/29/2008 A Plea is entered for charge: - GT (I18-4006-3(A)  
     Manslaughter-vehicular)  
 10/29/2008 Guilty plea form  
 10/29/2008 Continued (Sentencing 12/18/2008 01:30 PM)  
 12/17/2008 Materials for Consideration at Sentencing  
 12/17/2008 Corrections and Additions to PSI  
     Hearing result for Sentencing held on 12/18/2008 01:30 PM:  
 12/18/2008 District Court Hearing Held Court Reporter: Hohenleitner  
     Number of Transcript Pages for this hearing estimated: less  
     than 50  
 12/18/2008 Finding of Guilty (I18-4006-3(A) Manslaughter-vehicular)  
     Sentenced to Jail or Detention (I18-4006-3(A) Manslaughter-  
 12/18/2008 vehicular) Confinement terms: Jail: 180 days. Penitentiary  
     determinate: 3 years. Penitentiary indeterminate: 7 years.  
     Probation Ordered (I18-4006-3(A) Manslaughter-vehicular)  
 12/18/2008 Probation term: 10 years 0 months 0 days. (Felony Probation &  
     Parole)  
 12/18/2008 STATUS CHANGED: closed pending clerk action  
 12/18/2008 Sentenced To Pay Fine 2100.50 charge: I18-4006-3(A)  
     Manslaughter-vehicular  
 12/18/2008 Hearing Scheduled (Hearing Scheduled 02/25/2009 11:00 AM)  
 12/19/2008 Judgment of Conviction and Order Suspending Sentence  
 01/07/2009 Stipulation for restitution  
 01/20/2009 Order for Restitution & Judgment  
 01/22/2009 Restitution Recommended by the Prosecutor's office. 50.00  
     victim # 2  
 01/22/2009 Restitution Recommended by the Prosecutor's office. 6530.31  
     victim # 1  
 02/23/2009 Hearing result for Hearing Scheduled held on 02/25/2009  
     11:00 AM: Hearing Vacated  
 04/14/2009 Motion for Early Release  
 04/14/2009 Affidavit of Counsel in Support of Motion for Early Release  
 04/17/2009 Hearing Scheduled (Hearing Scheduled 04/29/2009 09:00 AM)  
     Motion for Early Release  
 04/27/2009 Order for Good Time - 30 days  
 04/28/2009 Hearing result for Hearing Scheduled held on 04/29/2009  
     09:00 AM: Hearing Vacated Motion for Early Release

In The Matter Of The Application of Mary E Garcia For A Change Of Name

CV-NC-2004-

21583

Case: Old Case: SP-OT- Magistrate Filed: 04/23/2004 Subtype: Name Change Judge: Tim Hansen Status: Closed  
04-00339\*M 07/01/2004

Subjects: Garcia, Mary E

Other Parties: Zahm, Mary E

Register Date  
of  
actions:

04/23/2004 New Case Filed

04/23/2004 All Other Actions Or Petitions Not Demanding Dollar Amounts

04/28/2004 Hearing Scheduled - Name Change (07/01/2004) Tim Hansen

07/01/2004 Hearing Held - Name Change

07/01/2004 Proof Of Publication

07/01/2004 Order For Name Change

Connection: Public

Exhibit 3  
Victim Impact Statement - Becky McGavin

December 6, 2008

Your Honor,

The purpose of this letter is to inform you of the emotional impact as a result of the death of my mother, Pat Eisenman, caused by Mary Zahm, who was driving while intoxicated. Ms. Zahm hit and killed my Mom as she walked across the street to attend a Boise Master Chorale Concert at the Cathedral of the Rockies on her birthday: [REDACTED].

Imagine driving across town to visit your mother. The kids are all in the car and everyone is excited to visit Grandma. Every visit to Grandma was something special. When we arrive and walked up to the front door "Beary", Mom's carved bear, is holding a new bouquet of seasonal flowers, the door is covered with a beautiful wreath, and when we enter the house the wonderful smell of Shalimar gently floats into our nostrils. We walk down the hall and there she is: pattering in the kitchen, making some fun surprise for our visit. In the living room, carefully strung across the mantel piece are a string of twinkling lights, you know hearts, pumpkins, butterflies, paper balls, whatever fits the season; she had them all. Tiger Woods is putting on the green as the TV is quickly turned off and time stands still. Mom drinks in the conversation of her three beautiful granddaughters. The interrogation of what is going on, what is important, and how and what everyone is doing begins. After the conversation lulls, out comes some wonderful snack, maybe a homemade cookie, fresh popcorn, or a special pudding cup. Always something special. Never a wasted moment. Next, it's time to play: maybe a game of Uno, or a game of Rummy (no one could beat Mom), maybe Mom was in the middle of a puzzle and needed an extra set of hands. The hours go quickly and then it is time to go home. Wait, before we left there was always a treasure for the kids or myself; a few choice pieces of candy, an extra coupon for free beef, several note pads- one for each girl, of course, a can of corn because she got a buy one/get one free and wanted to share with us. Always thinking of us, caring for us, showing her love for us in every single thing she said and did. This was an average visit with Pat Eisenman, Grandma, Mom.

It was not a day like any other day. The warm autumn sun was shining as I walked to a doctor appointment after recently being diagnosed with epilepsy. I remember the sound my feet made as I crunched through the leaves and drew in a deep breath of fresh air. I remember thinking how Mom loved to walk through the fallen leaves and delighted in the crunching sounds under her feet. My phone rang as I walked, it was Mom. She was a dear that way -always looking out for me. As we shared pleasantries I broke out into a loud chorus of Happy Birthday. It was Mom's birthday. We reconfirmed that she really *did* want to go to the Boise Master Choral Concert that night, we would celebrate her birthday tomorrow with prime rib and a special Blitz Tort cake: she was coming to my house for a family celebration of her birthday. That day she had a luncheon with her lady friends and she said, and I must say these words will ring forever in my ears, "This is the best day of my life!" Then we closed our conversation as we always did during our daily check-in calls, "I love you, Honey." Little did I know that these would be the last words I would ever hear my mom say.

Later that day, life was unfolding in a very normal way. My children came home from school and we began preparations for the big birthday celebration. After a lifetime of watching my mother elegantly entertaining others, the chapter in our lives had now turned so that I was blessed to serve and entertain in honor of my mother. Other people were celebrating the holidays, some were having work parties. People everywhere were making decisions that would not only affect their lives but also the lives of others. One person in particular, Mary Zahm, made the decision to celebrate by having 4 glasses of wine and then drive home. That decision has changed the lives of many.

After I went to a movie with my family, we returned home and called it a night. The night was dark and the hour late, a knock at the door at this hour? I went to the door to see my sister and Jim's, faces contorted with an expression that was indescribable, Kathryn then told me that Mom had been killed. Oh my God, please no. At that moment the air was gone from the room and a bombastic wall of rage filled me. I was livid, Where was she? How could I get to her? This couldn't be. I was having her over for her birthday party tomorrow. If she was hurt, why wasn't I called? I was her living power

of attorney. I was the one that was blessed to take care of her. I was the one that should have been with her when she passed on. I was robbed of my privilege, my right, my honor.

The next few months I lived in a daze of sadness and disbelief. I was unable to carry on my normal life. It was beyond my capabilities to do the normal day to day things like, cook, do laundry, shop, sleep, and care for my house and yard. I lived with a loss so deep that felt like the world around me had stopped, and my sadness was as vast as the ocean.

As many families do, each person in our family has a role. My role was caretaker of Mom. Last September 2007, Mom had shoulder surgery. Her independent nature lead us into several conversation where she thought she would be home right after the sugary and I could just come over to help out. However, the realities of the surgery allowed her to come live with us for several weeks. During this time I was gifted with the opportunity to care for her during her recovery. I could repay a miniscule amount of the loving care she provided me throughout her life. I cooked, bathed, dressed her and cherished every minute of it. I was sad when she had convalesced enough to return home, she was prepared again to cook, clean, exercise daily, drive and carry on her normal, active life. We loved having her live with us. I had always hoped, prayed and spoke with her about when the day came and she needed more care- when she was ready of course, that she would consider living with us. This time, she agreed to consider the possibility, something to look forward to. Sadly, I will never have this opportunity.

Pat Eisenman had the grace and eloquence of the queen. She was the one that her friends looked to for the proper way to conduct one's self. She had an air about her that made everyone feel like she was *their* best friend, only to find out during the funeral that Mom had many best friends, she regularly joined her group of friends that had been celebrating life and living since 1954. She was a woman that truly loved unconditionally. I spent a lifetime in the loving glow of a mother that would love, respect and support me during every road I traveled. She was the type of mother that stood by and gave support every step of the way. She never dispensed advice on how anyone should manage their life. She empowered me with tools to entertain, communicate, and love myself. She created a beautiful home through her intentional decorations, delicious cooking and family traditions that we still cherish.

The deep soul wrenching remorse that reaches every molecule of my being is still poignant. We will never again gather to can fruit in the fall. We will never again have our favorite yearly beach visit, sit and watch the waves, and eat hot dogs and marshmallows in Pacific City, Oregon. We will never experience Christmas cookie baking of 12 different types of cookies, relaxing dinners and an intense game of cards, nor trick or treat for a cherished Snickers bar. Never again will she attend a school choir concert or soccer game. The actions of Mary Zahm terminated all of it.

Mom was a woman that loved her friends and children freveriently, and she also loved her grandchildren. I have 3 beautiful daughters that now have a canyonous void where Grandma was. Gone are the days of Grandma having tea parties on tiny plastic and cups with vanilla wafers and juice. Gone is the grandma at every single school function for the girls, soccer games, dance recitals and more. Gone are the special trips to the mall to buy a special this or that. Gone is the opportunity for Grandma to celebrate first boyfriends, first days of Junior High, high school graduation, college, weddings and being a great- grandma. Mom was an inspiration and role model for her grandchildren. Through her natural grace and beauty, my children learned to act like ladies, she was so easy to watch and see her elegance. When I recently asked my girls why they don't ask about the trial, are they not interested? The simple, yet startling answer from my 12 year old was "It hurts too much to talk or think about it," As the tears started to flow, "You know I don't have a grandma any more."

Mom lived with a voracious passion for music. It is ironic that she died while going to enjoy one of her great passions. Her voice was that of an angel, and she played the piano every Christmas as we all gathered around and sang. She attended every single Boise Philharmonic Concert and loved to attend the education class before every concert. Her generous heart bought two extra tickets so we could all be her guest at the concerts. She devoted her life to singing in the Catholic Church choir. She sang as a member of the Saint John's choir for 10 years and then committed the next 6 years to singing weekly in the Sacred Heart Choir. She went to the Boise Master Chorale Concerts and loved

to go to the Messiah Sign-Along. After Dad died she bought a Bose alarm clock and we would catch her blasting a symphony or requiem as she worked on a project. During her funeral celebration the church was overflowing with friends gathered to honor the life of this loving soul. I was honored to play my flute during her Memorial and members of the Boise Philharmonic, Boise Master Chorale and the Sacred Heart choir raised their voices in celebration of her life's commitment to caring and compassion.

Independent and head strong: she was determined to live alone for as long as she could. She met the modern world head on and how we miss the constant calls asking how to do this or that on the computer, program the TV remote, listen to her cell phone messages. She was committed to exercise and walked daily with her neighbor, Judith. Her education as a dietician focused her life on eating healthy and exercise. She loved to golf and recently bought a tread mill so she could walk when the weather was bad. She was a woman that loved life and lived it fully, right up to her last minute.

Oddly enough, I am not saying that Mary Zahm is a bad person. We grew up going to the same high school, she was several years younger than me. I knew her and her family as part of the Boise High community. She dated my brother's best friend in high school. We are both teachers and are passionate about teaching. It is sadly ironic that through the course of the last year, I have only spoken with 3 people that knew both of us and 2 of the people mentioned the possibility that she had a problem with drinking. Of course this is all hearsay, however it feels sad and infuriating that both of them had an awareness and shared this concern with me. I remember both times feeling angry and thinking how insensitive their comments were to me; the victim of her negligence. I am thinking that this person made a series of terrible mistakes that deserve a stringent series of consequences.

When considering the sentence for Mary Zahm, I ask you to consider these thoughts. Among the many gifts that Mom possessed, she was a wonderful Mother, always kind, loving and supportive. It was through her that I learned that being a good mother meant setting boundaries and having consequences, not only for children but also for me. As a teacher and a mother myself, I know that setting consequences for children helps set them up to be successful adults: *adults* that are self responsible and make responsible choices. Recently, one of my daughters told a series of lies and was grounded for 2 weeks: no TV, computer, phone privileges, hanging out with friends. This was a time for my 11 year old to slow down and reevaluate her choices and motivation, a chance to earn back all these privileges. As you consider what the sentencing for this adult, Mary Zahm, I can't help think of the scenario with my 11 year old. But this was an adult who consciously drank 4 glasses of wine and then drove a vehicle, which was then, in turn, a weapon. That weapon was driven by Mary Zahm and killed a human being, Pat Eisenman. The consequence should surely fit the crime. It is the goal of our society that each person be self responsible in a world where our decisions do affect others. The sentencing must reflect the reality that one person took the life of another through careless, self indulgent choices. I feel an acceptable sentence could include 1 year jail time, probation, loss of driver's license indefinitely, Alcohol rehabilitation, financial responsibility for the funeral, community service, education about gastric bypass and an apology to me and my family, for our loss as a repercussion of her selfish, dangerous choices. A beautiful, loving, life-filled person: Pat Eisenman, Grandmother, Mom is dead.

Thank you for reading and respecting my thoughts and comments. Writing this letter was by far the most difficult thing I have done in my life up to this point. I am grateful for the opportunity to share my broken heart. Thank you for your consideration.

Sincerely,  
Becky McGavin  
Daughter of diseased Pat Eisenman

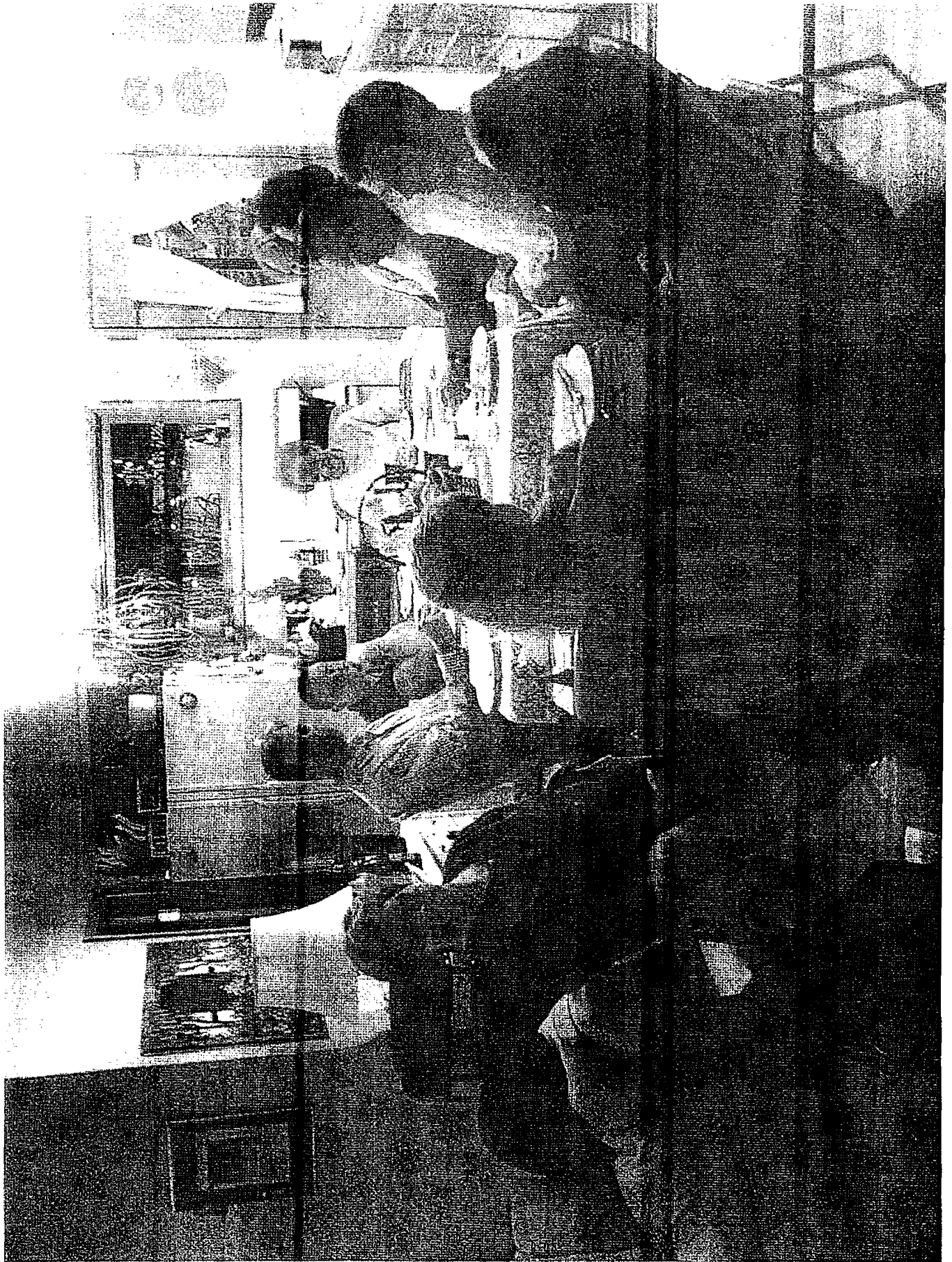


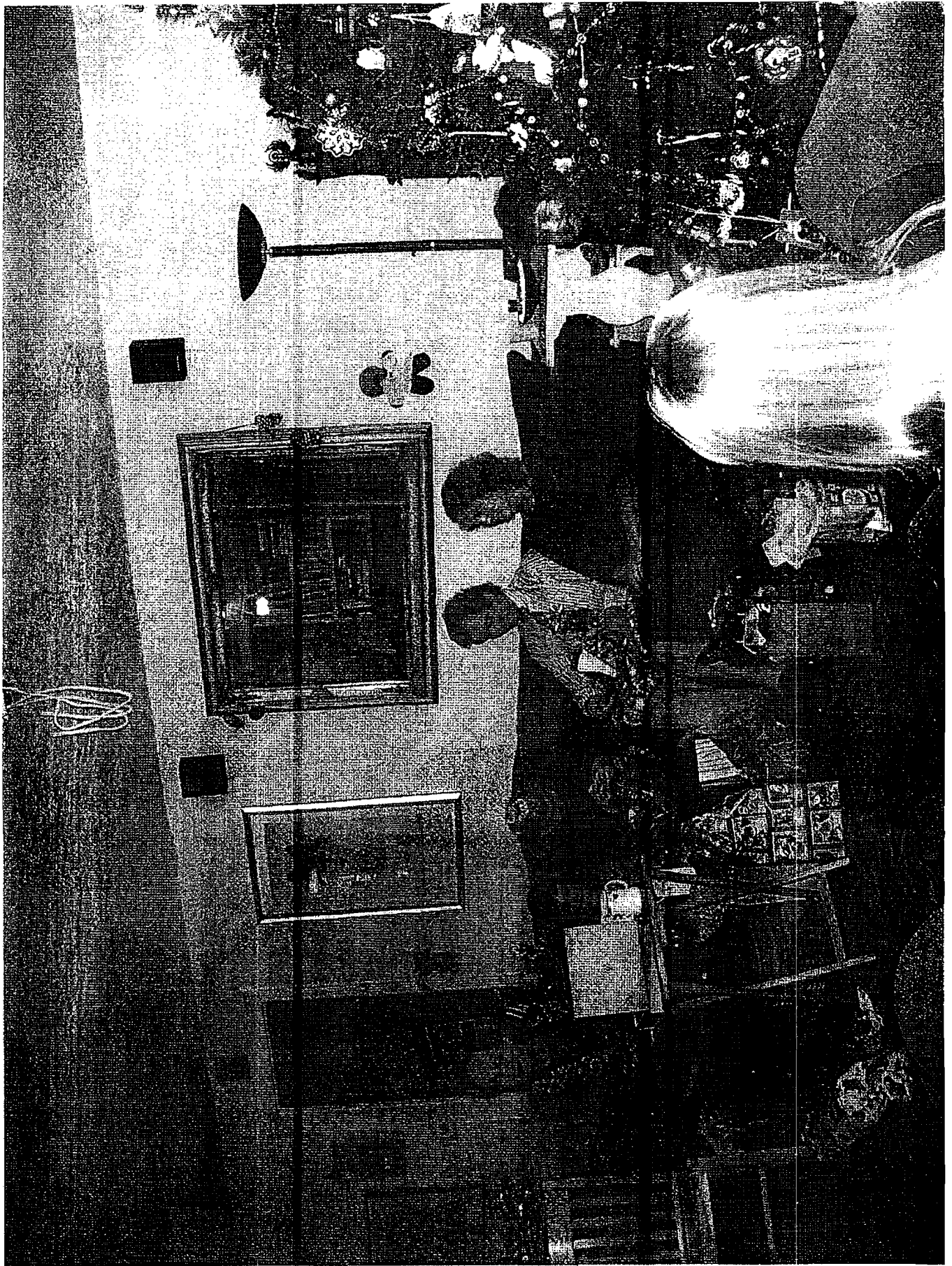
Exhibit 4  
Family Photos

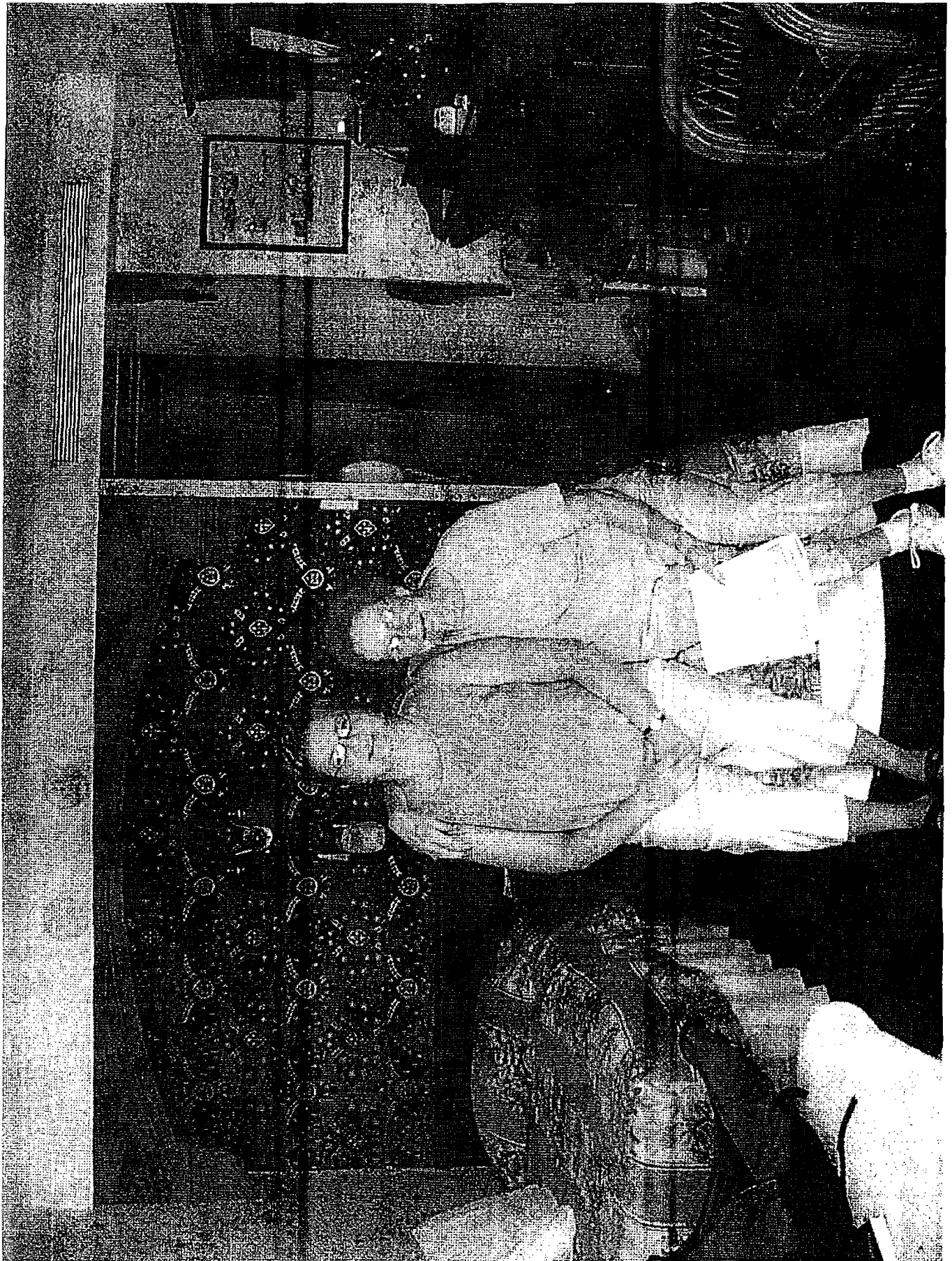
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Hall Aff., Exh. B. p 42

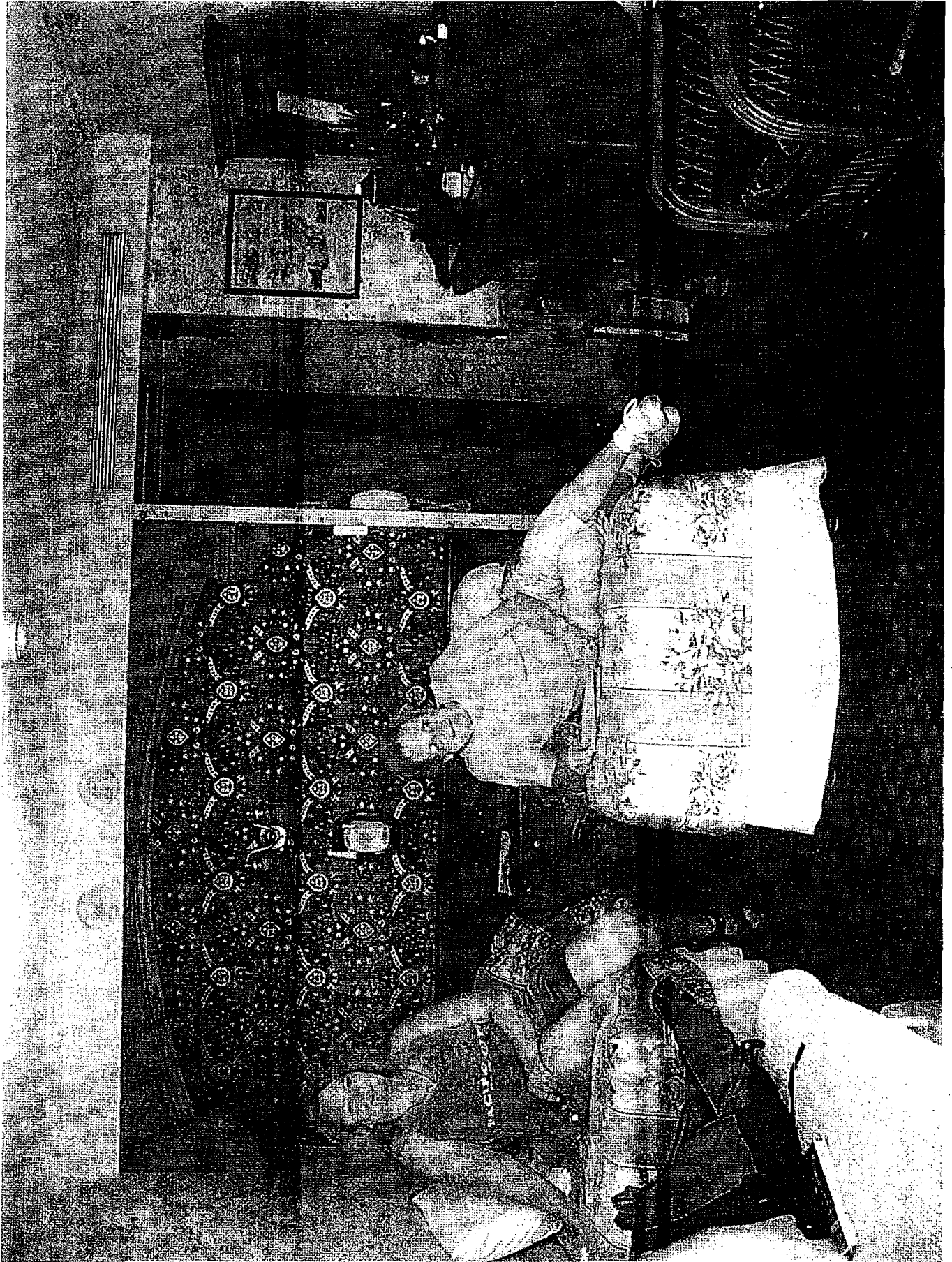


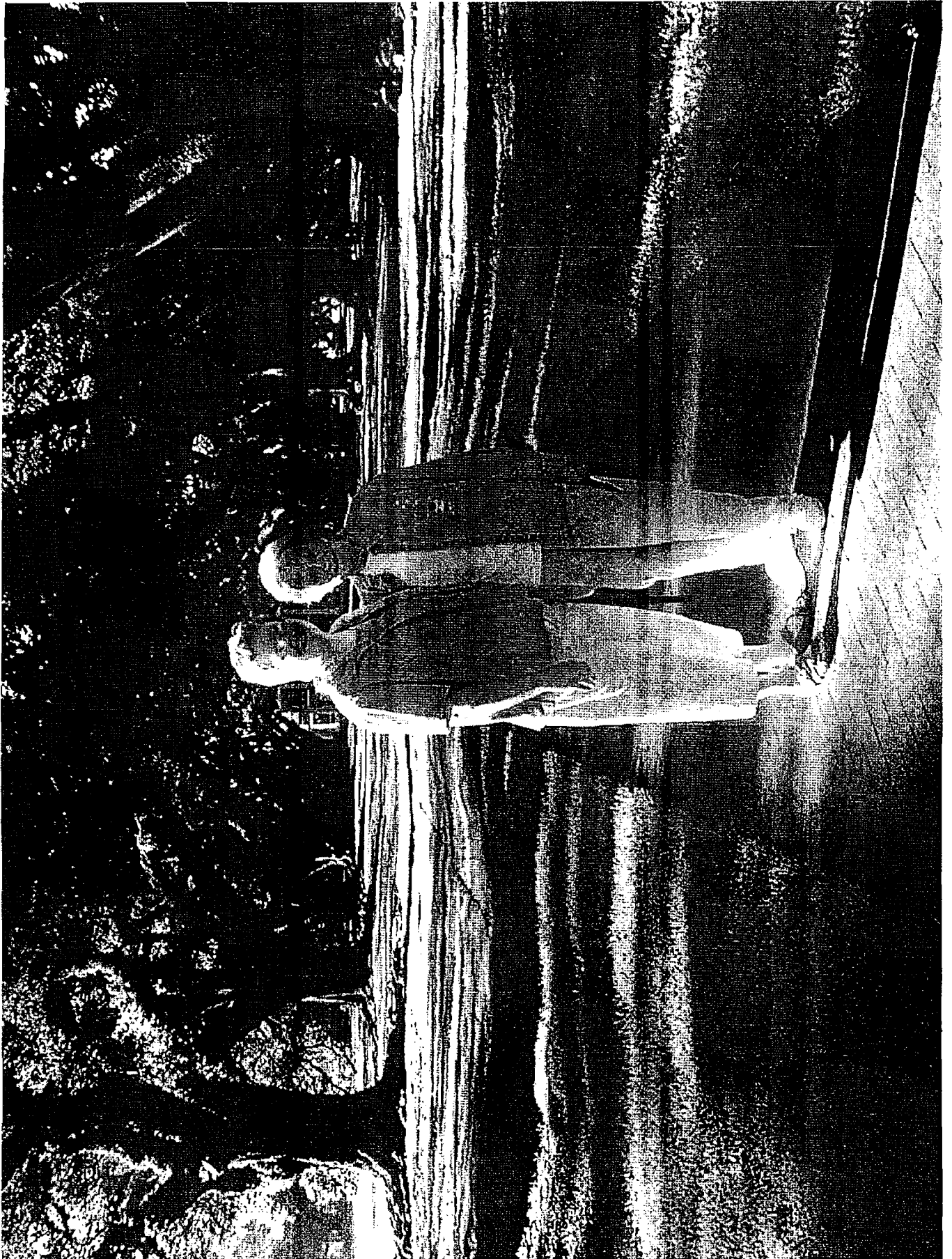








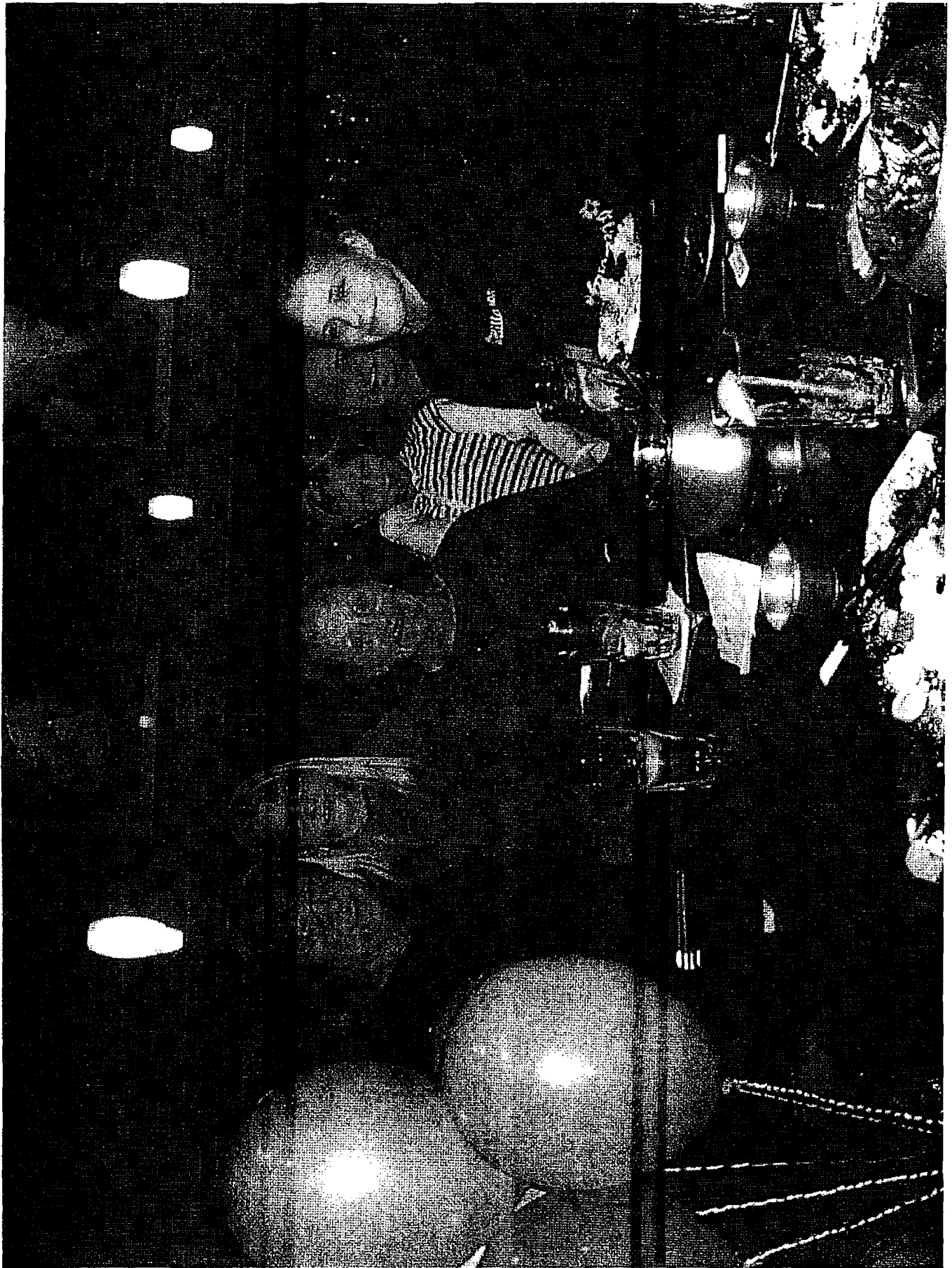




















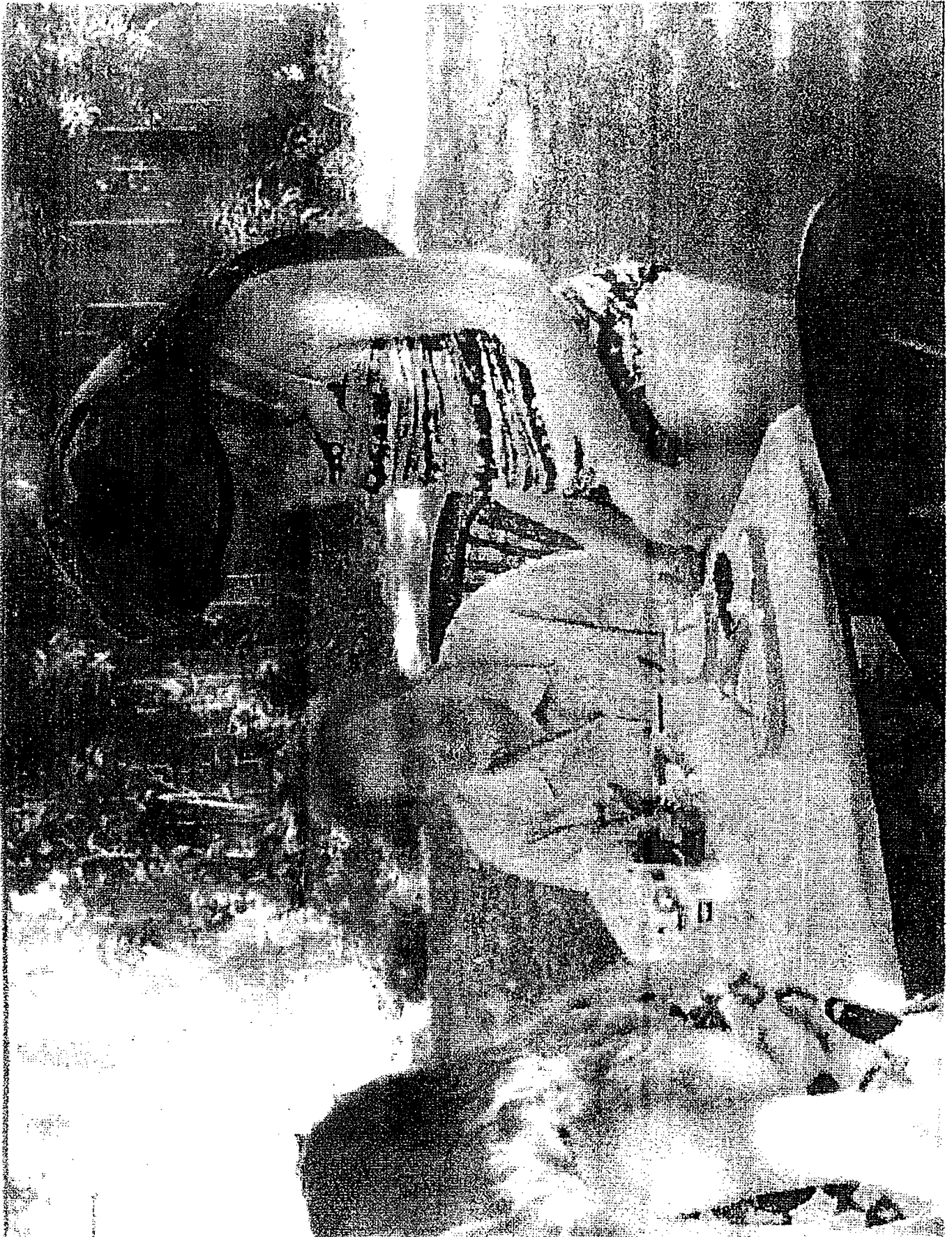
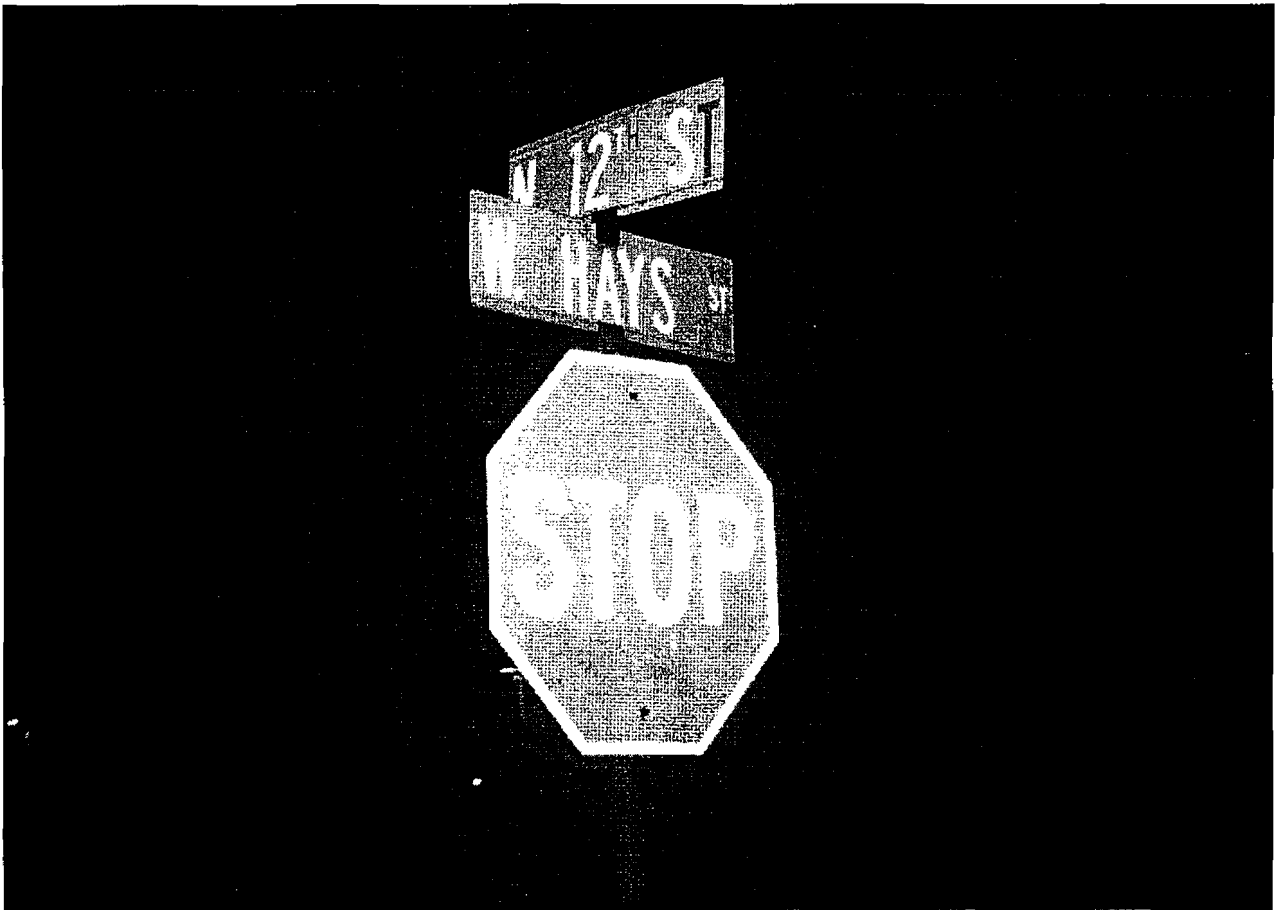




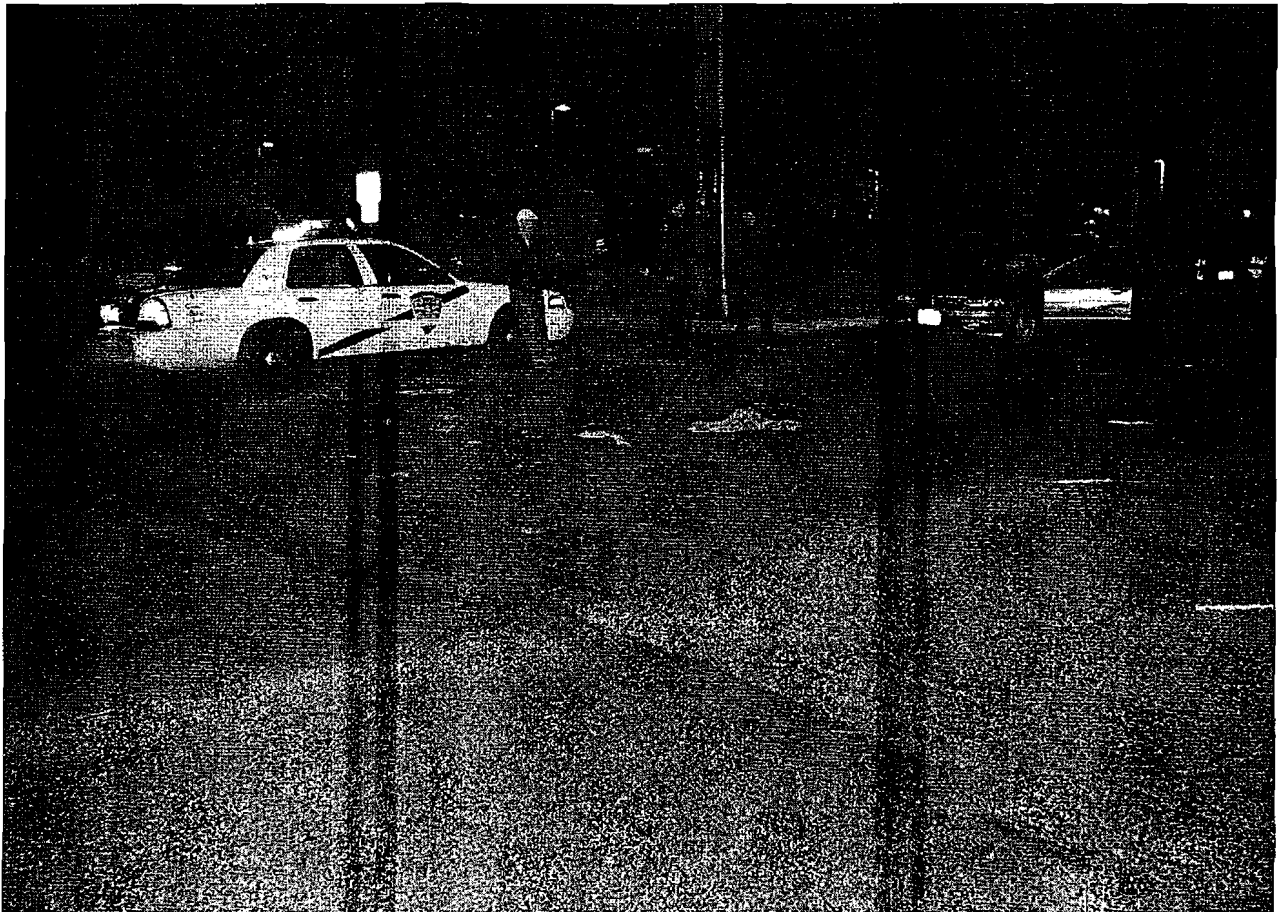
Exhibit 5 to  
Proof of Loss Submission

Police Photos  
(Referenced in Paragraph 5)



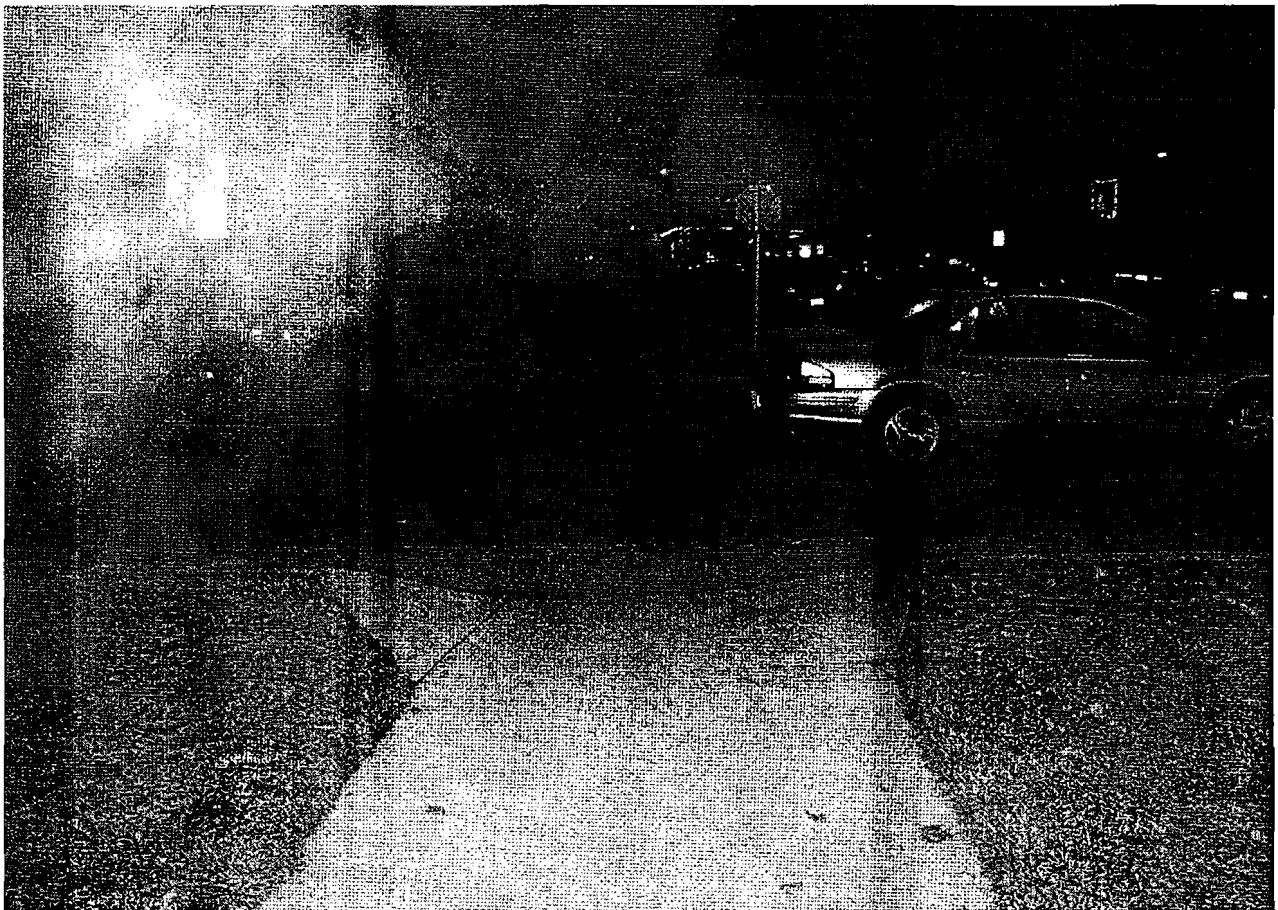
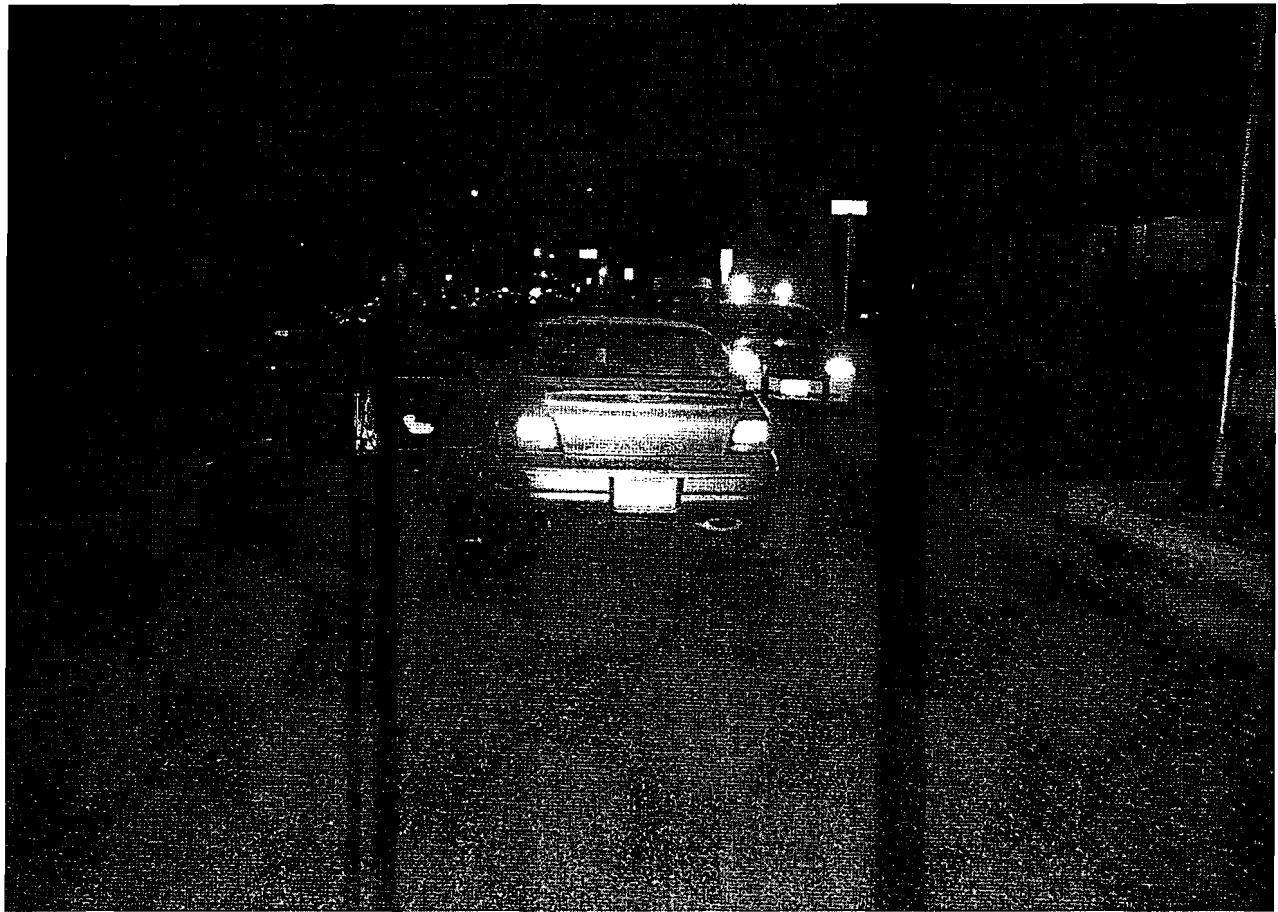






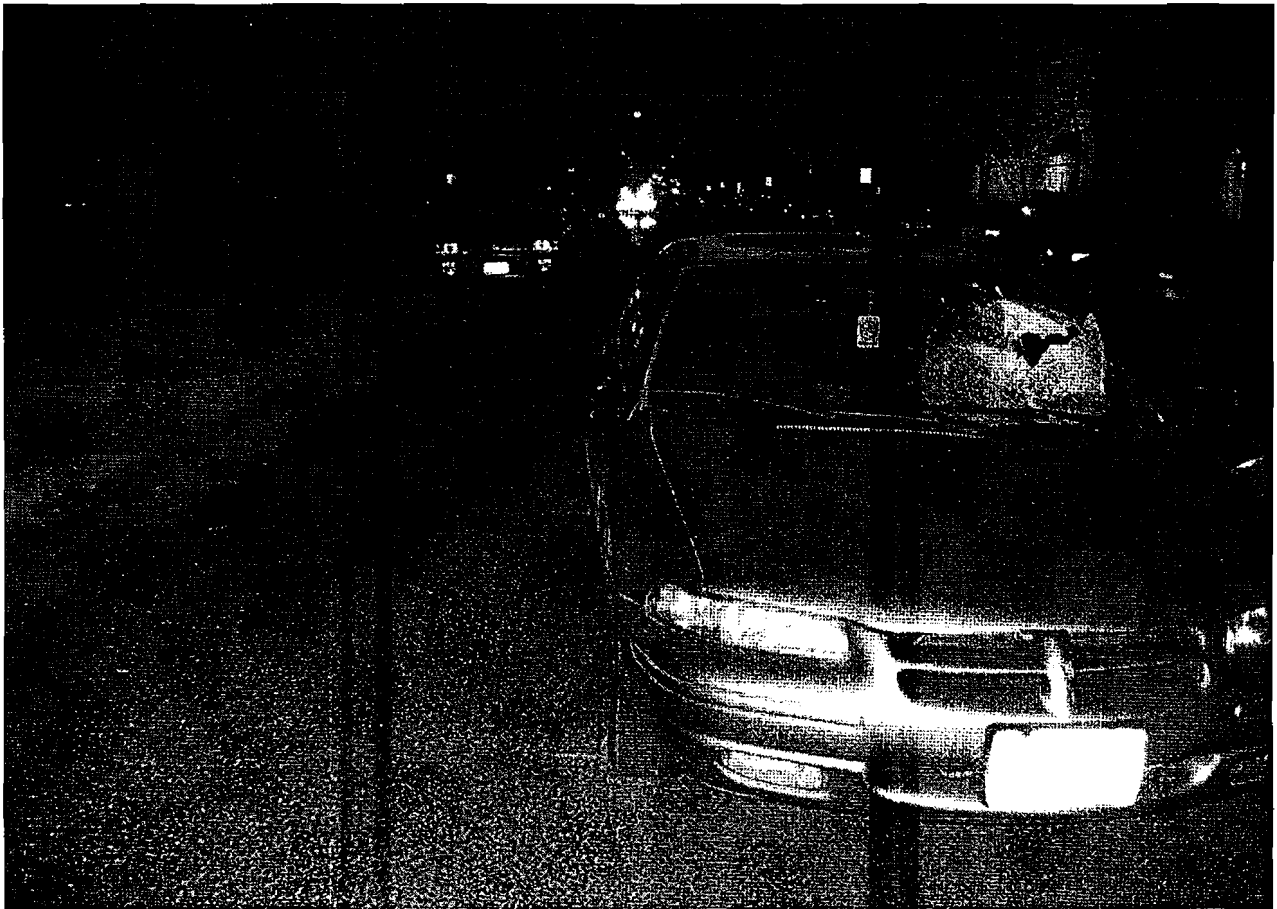
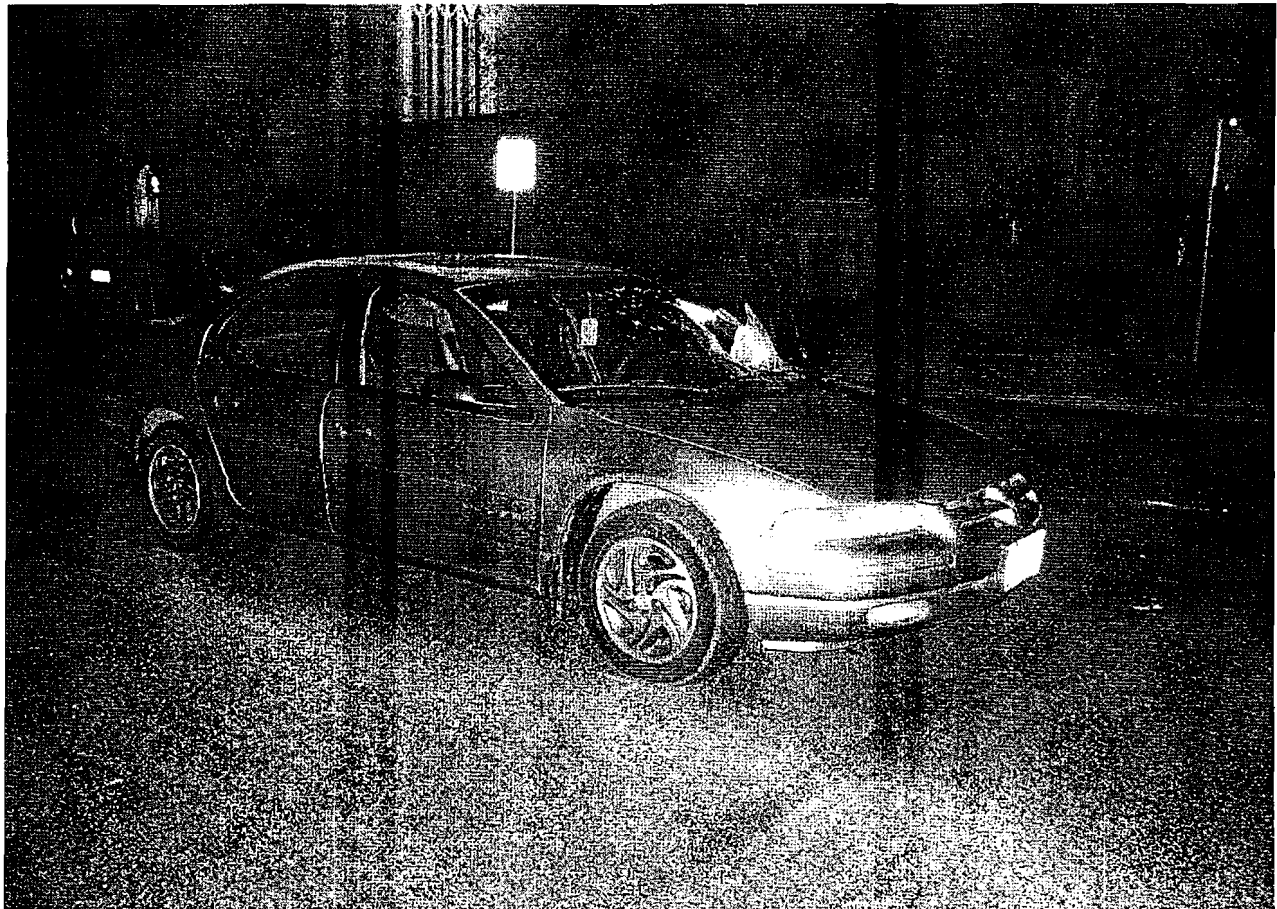


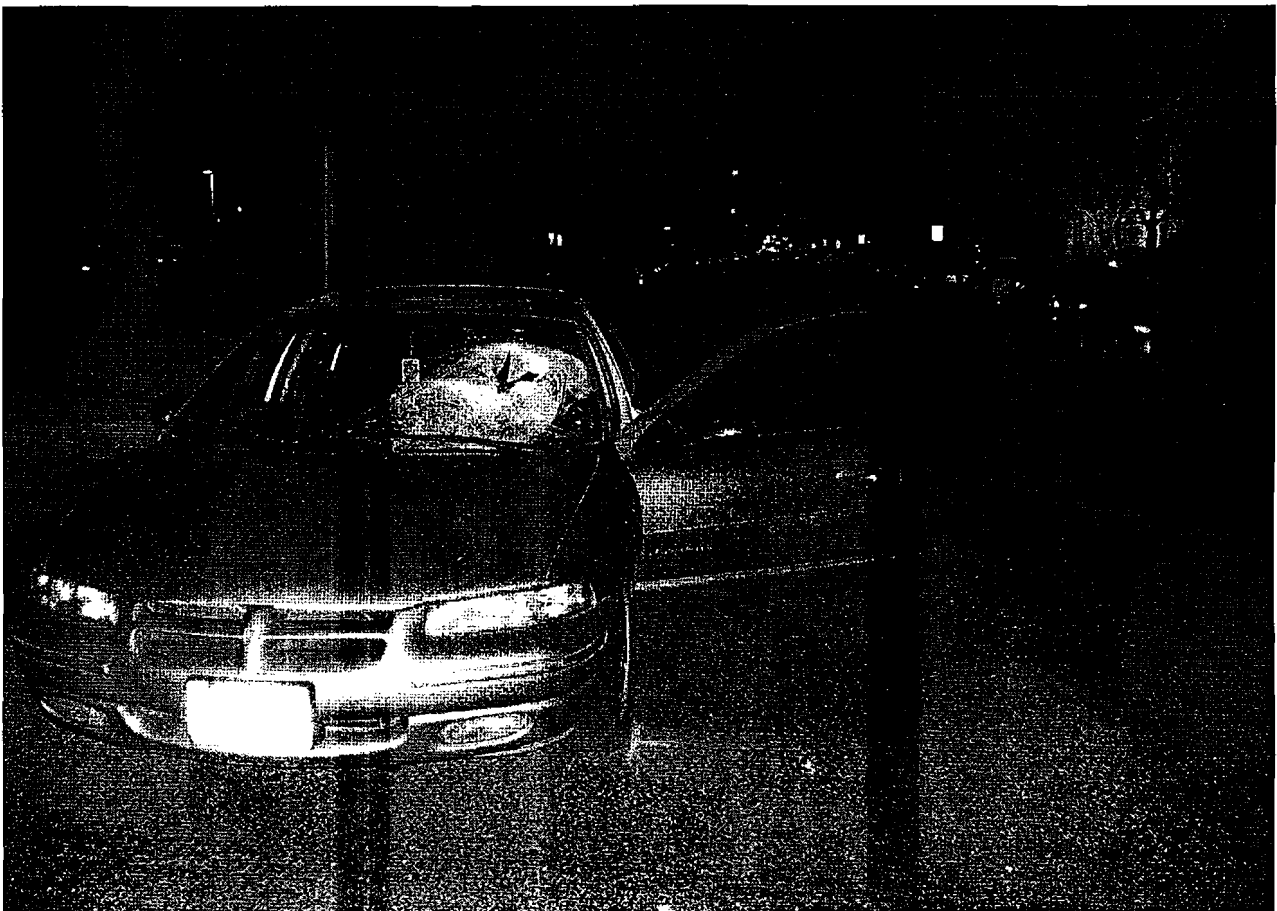
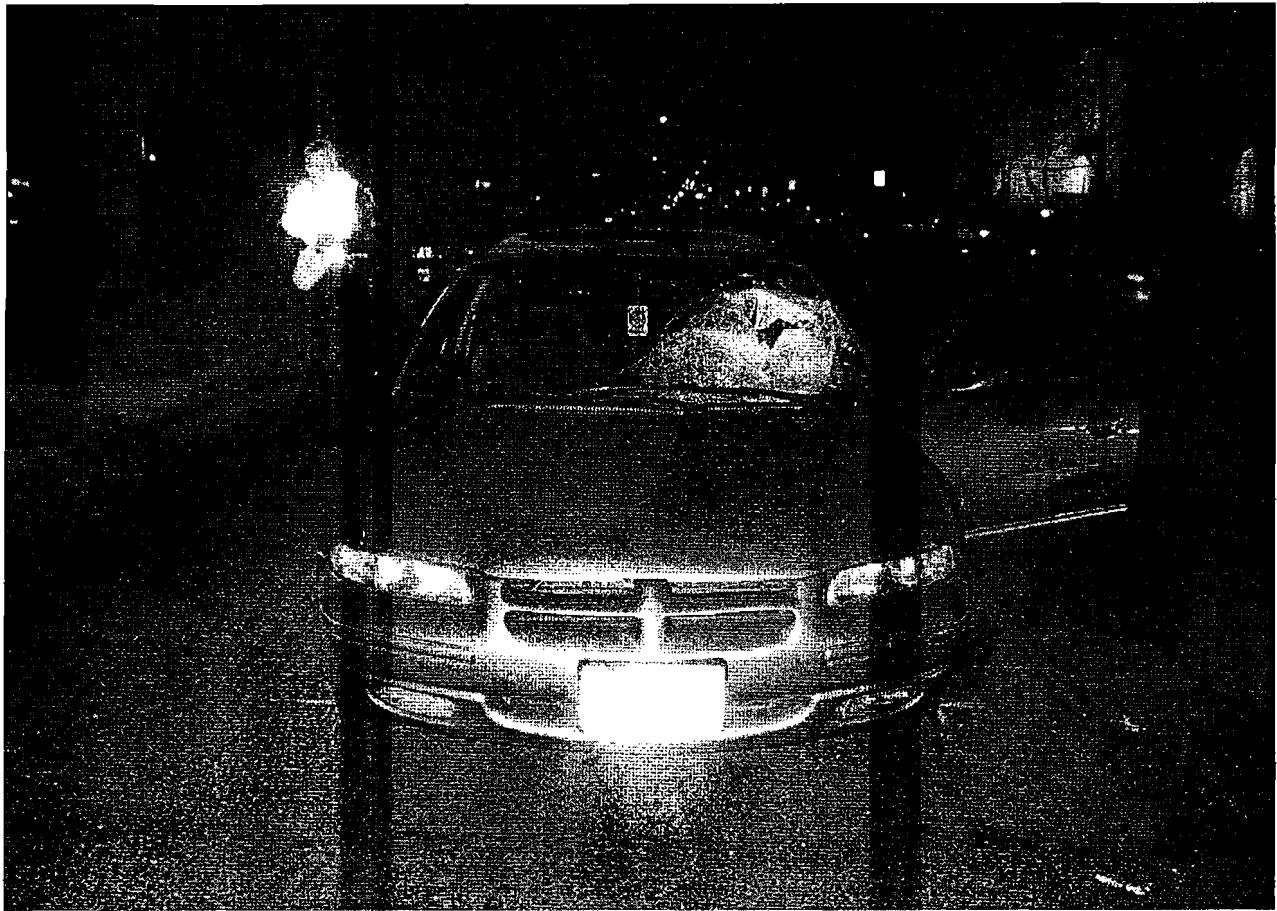




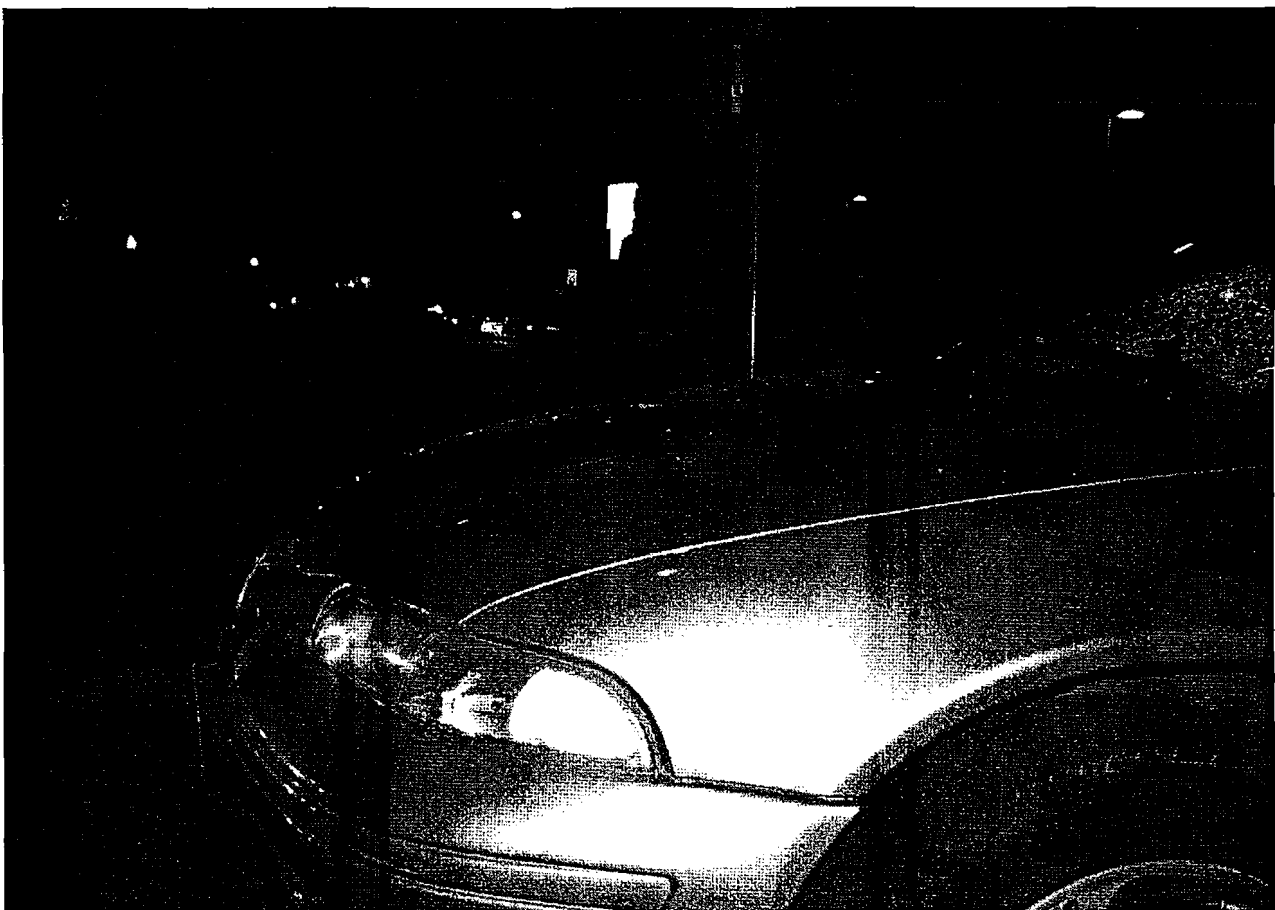
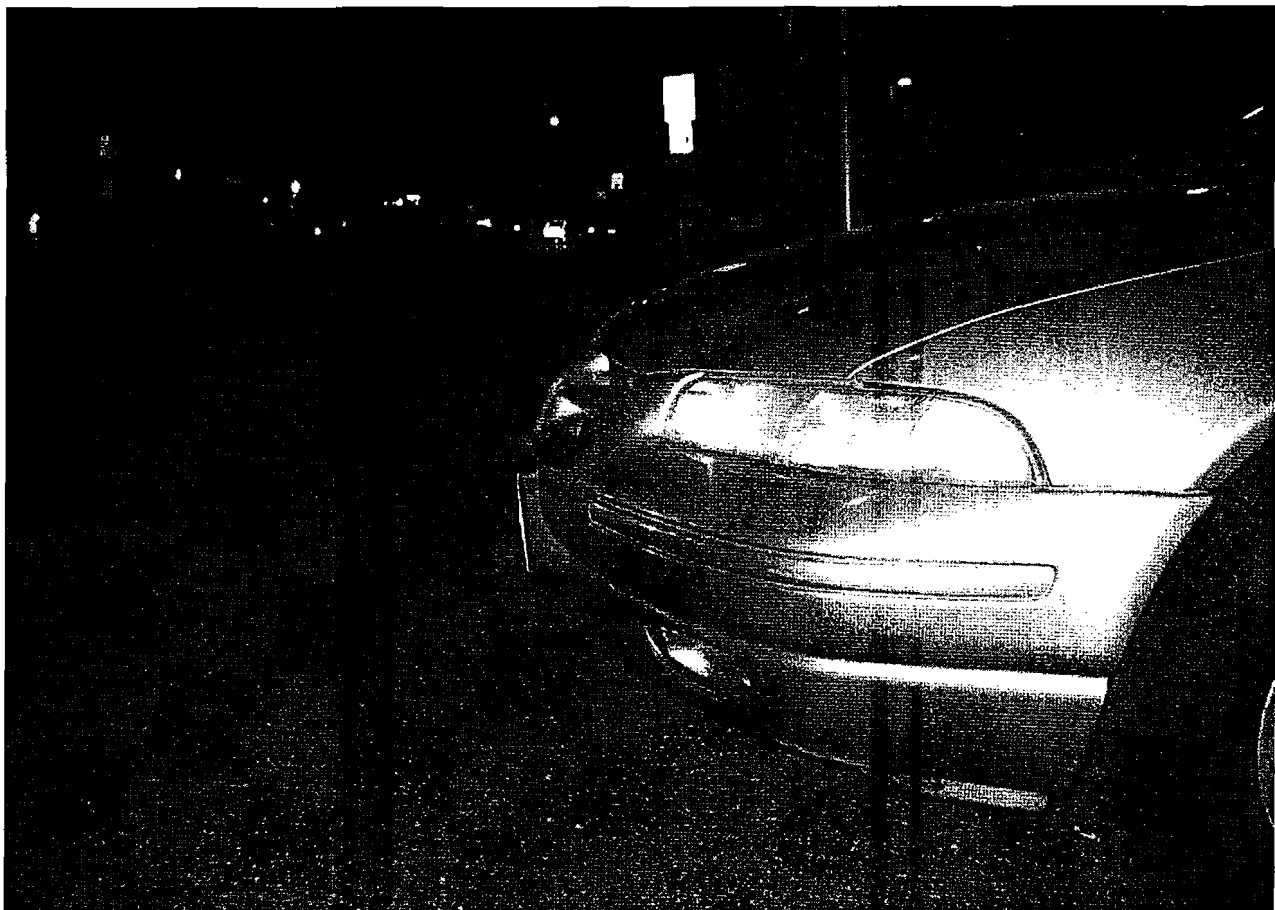


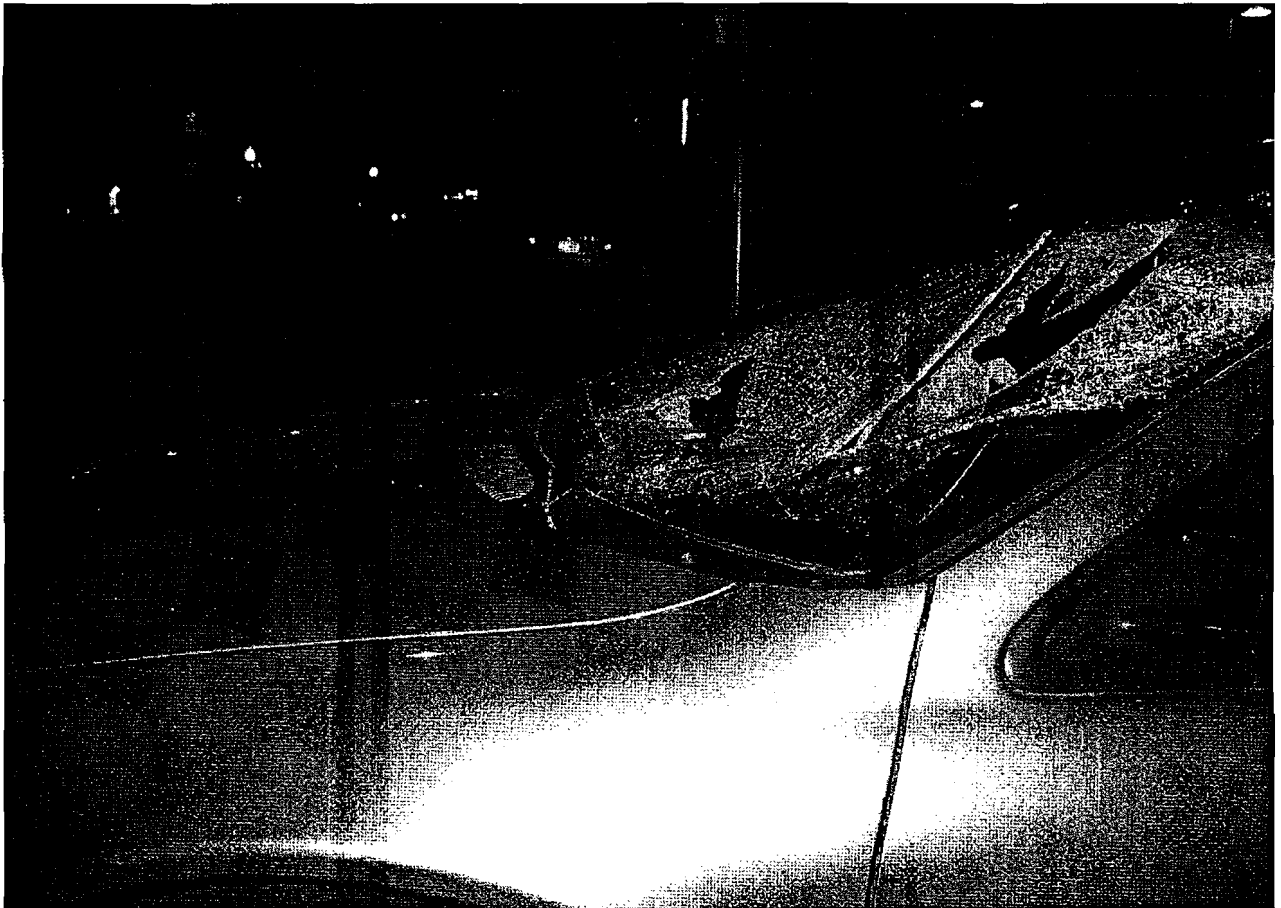
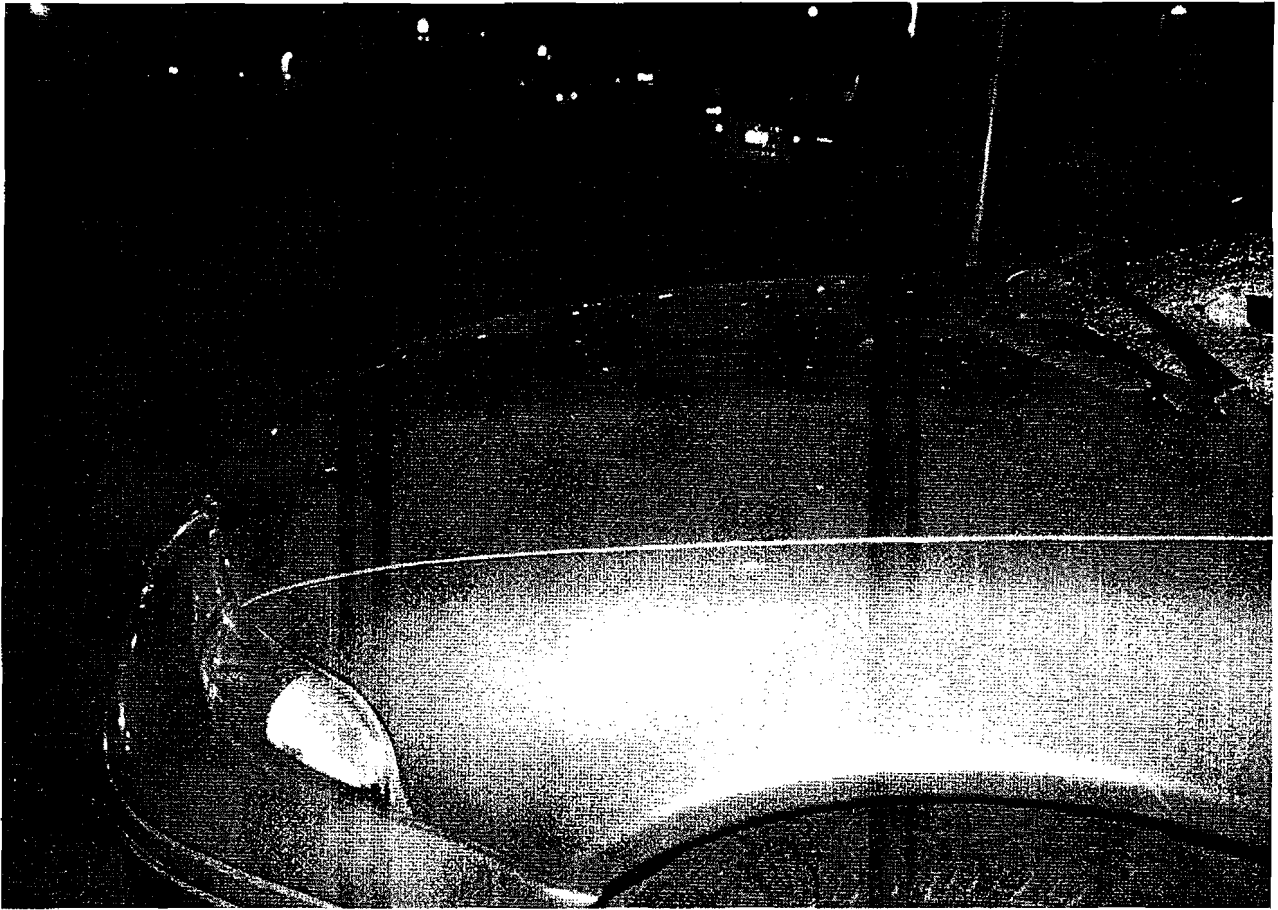




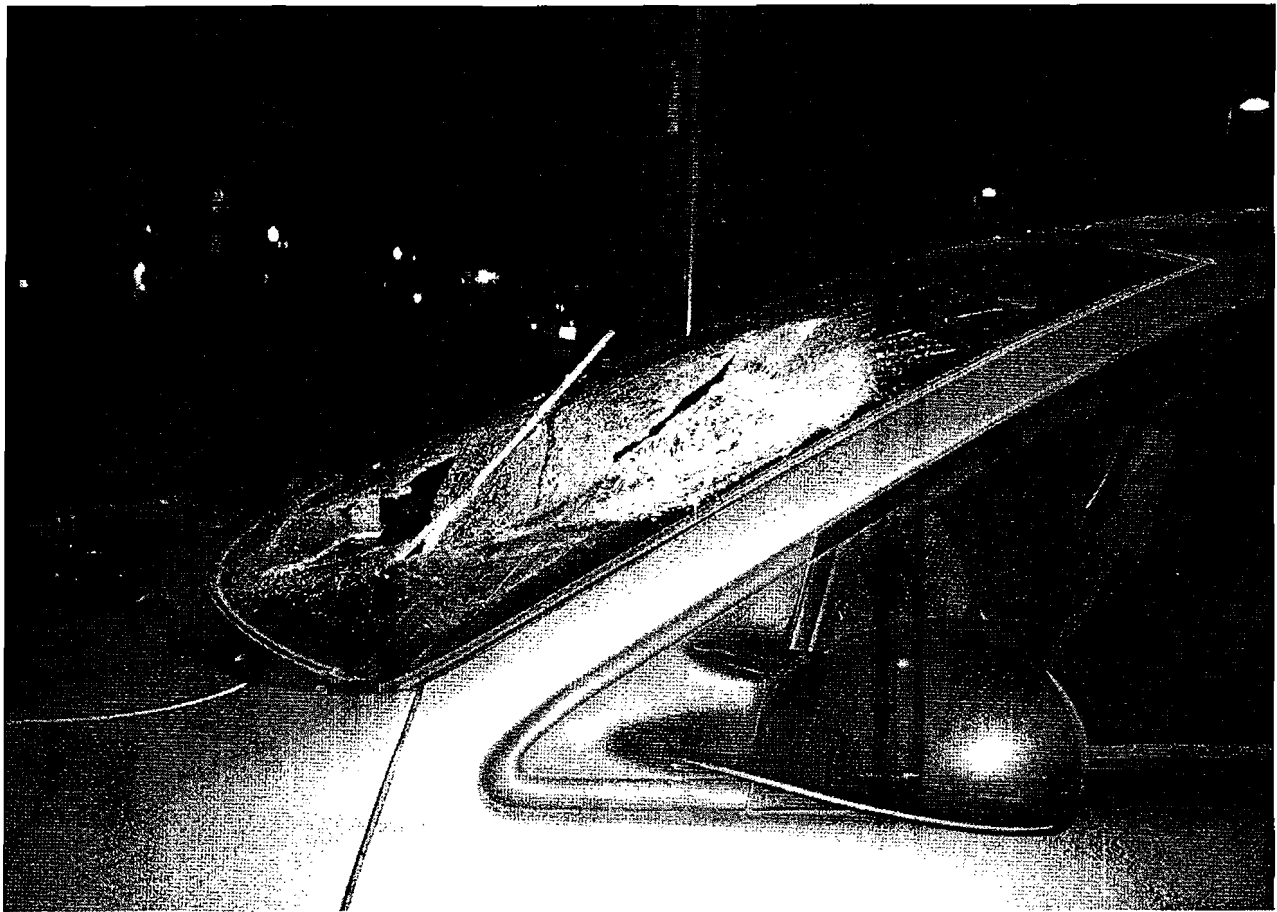


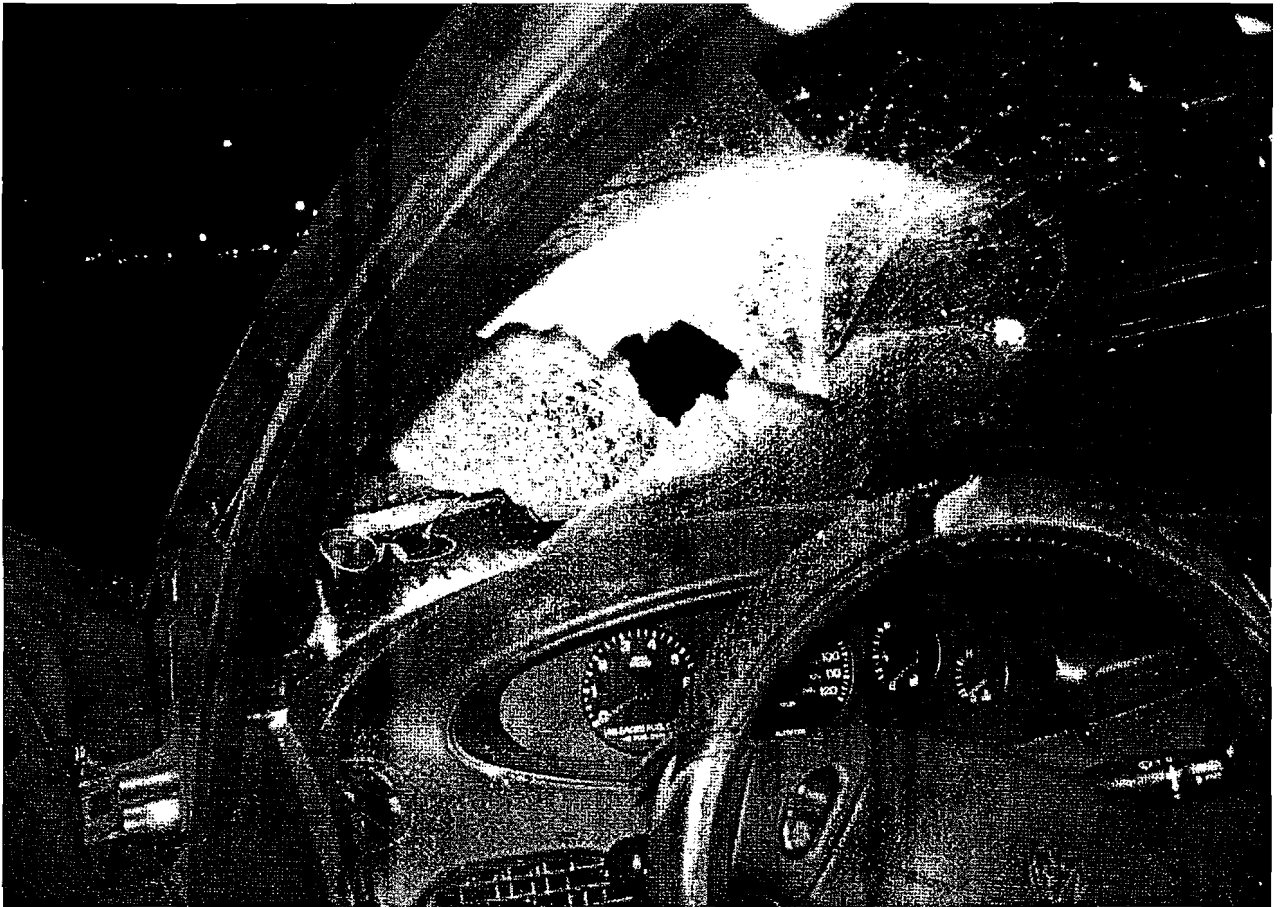


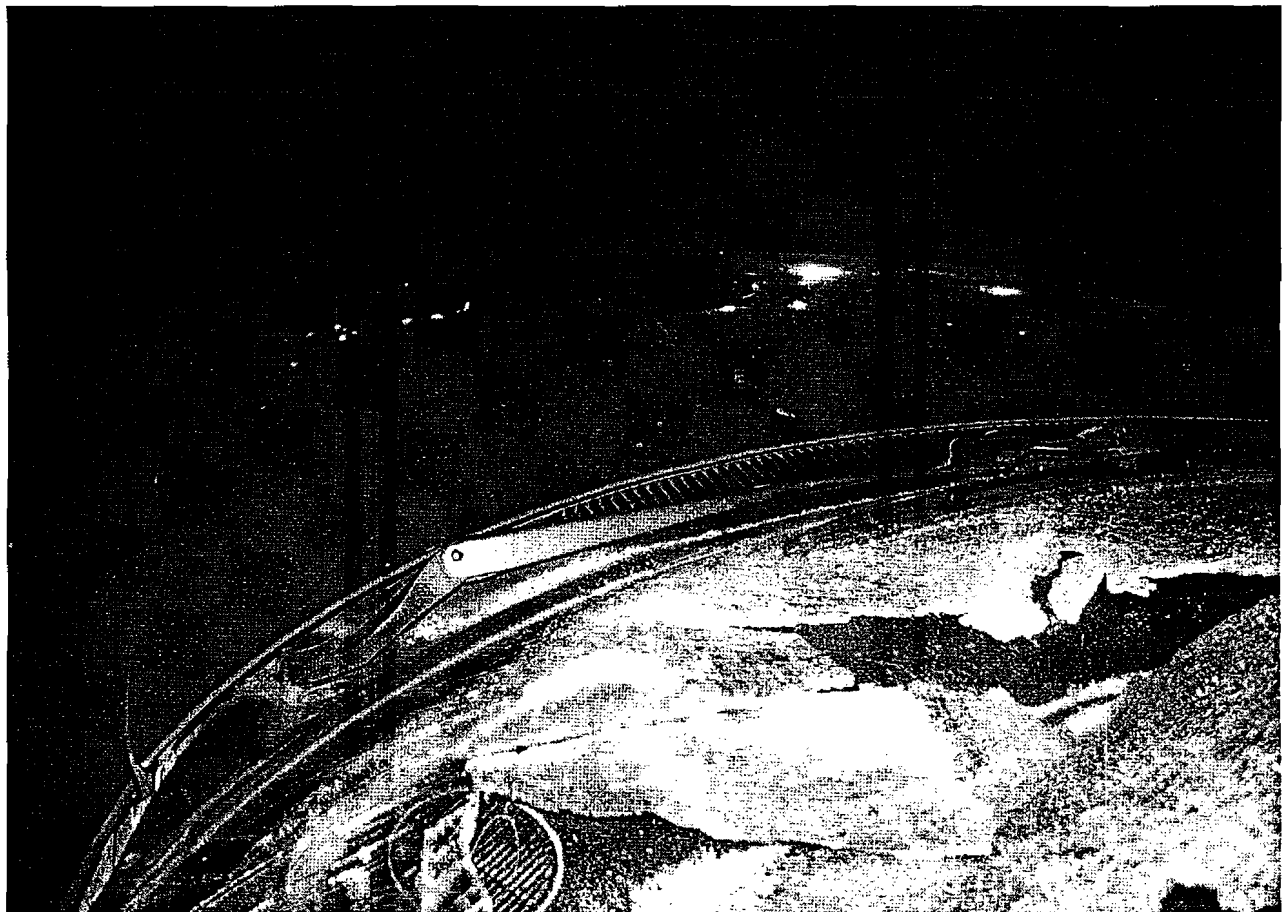
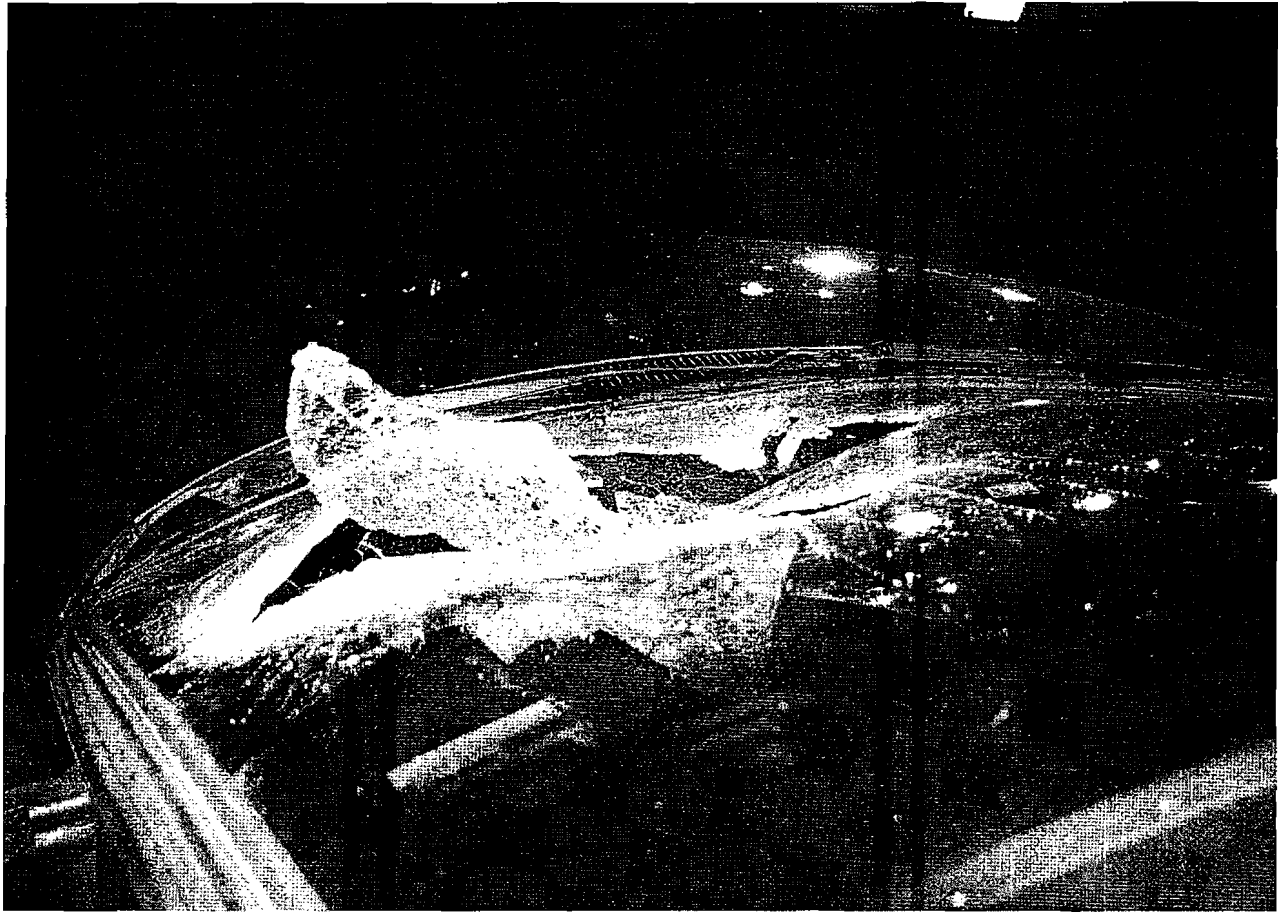


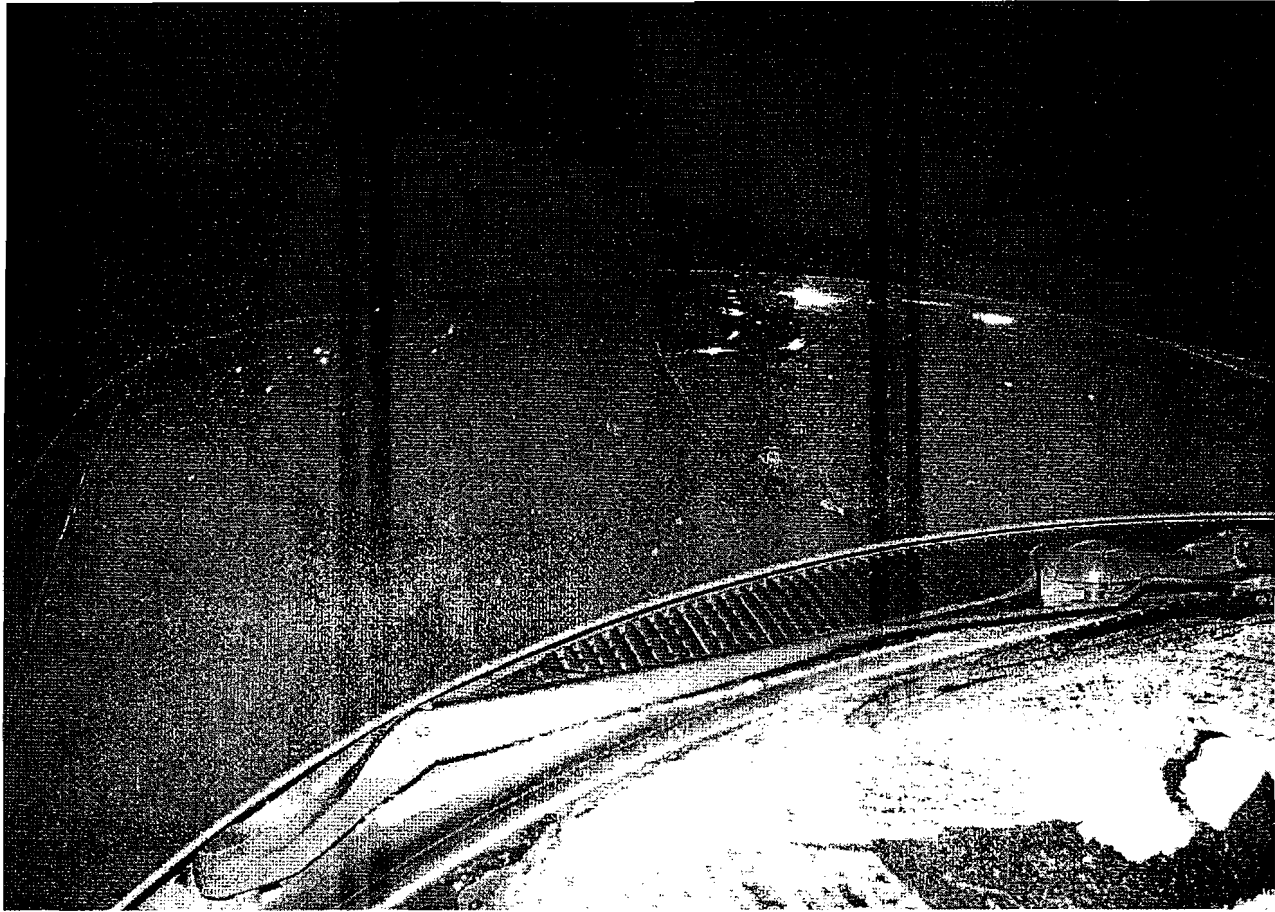






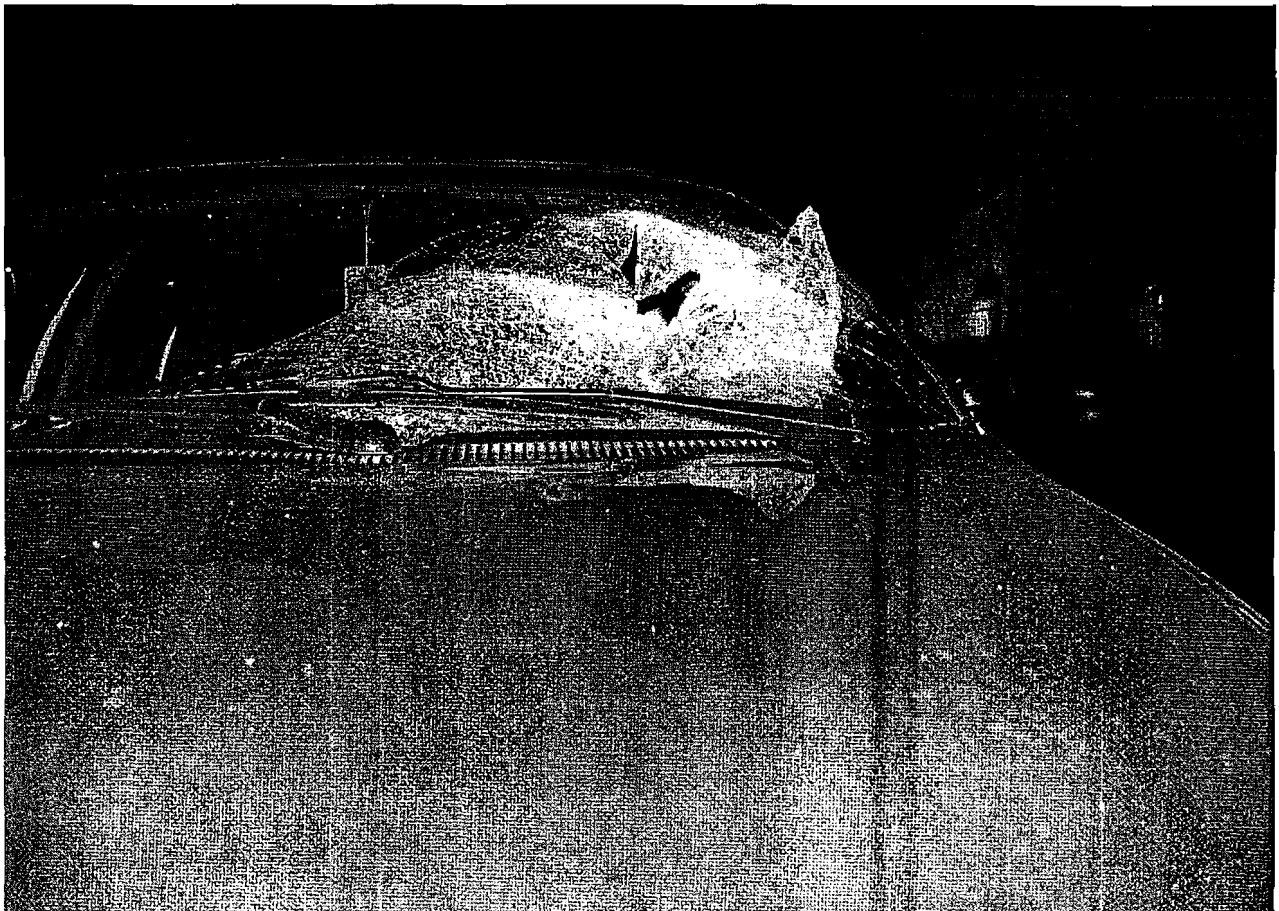


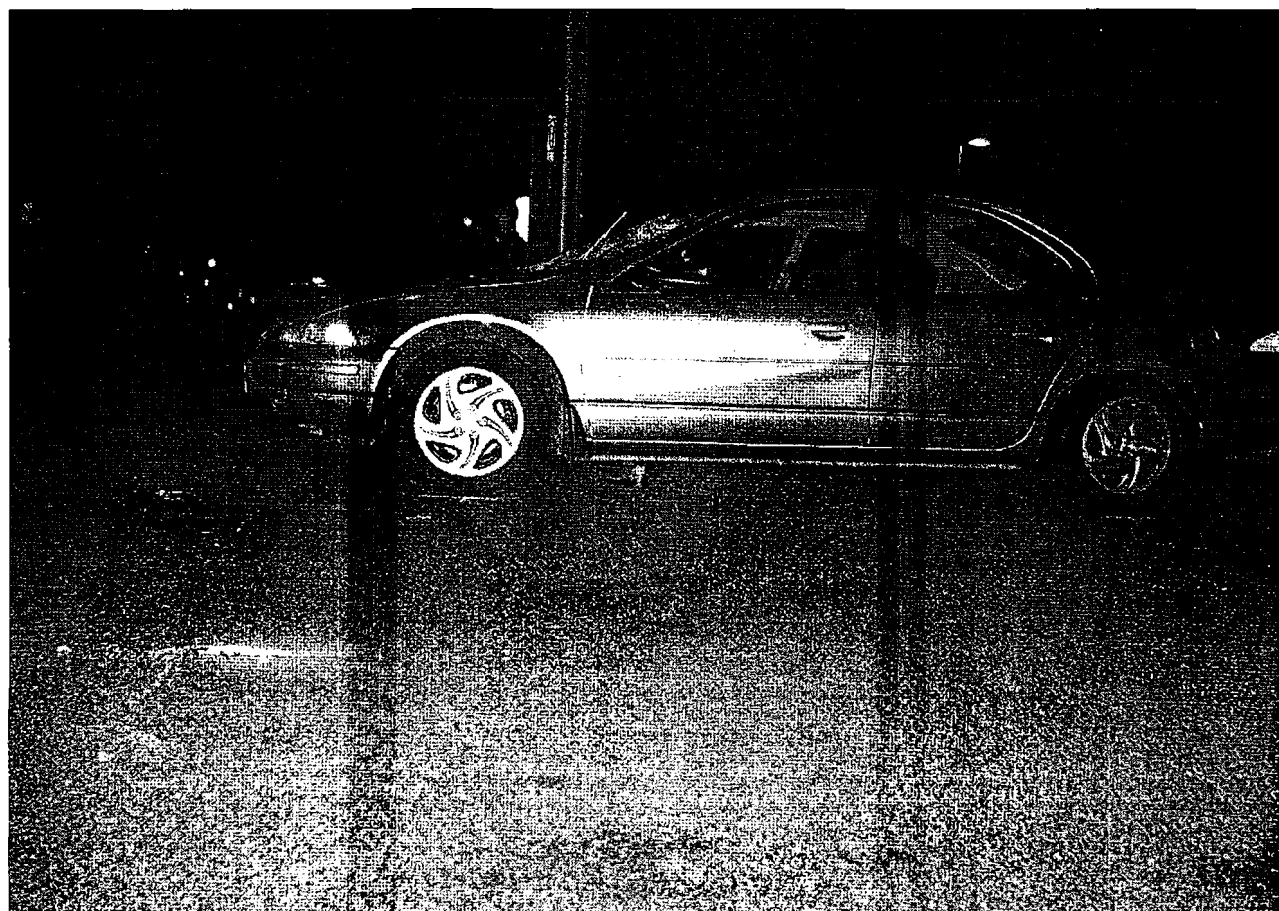
















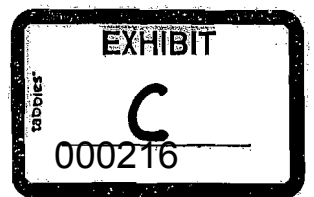












# SAETRUM LAW OFFICES

ATTORNEYS AT LAW

RODNEY R. SAETRUM  
ROBERT R. GATES  
KARYN WHYCHELL  
RYAN B. PECK  
OF COUNSEL:  
ROBERT L. JACKSON

3046 S. BOWN WAY BOISE, ID 83706  
P.O. BOX 7425  
BOISE, ID 83707  
TELEPHONE: (208) 336-0484  
FACSIMILE: (208) 336-0448  
EMAIL: [general@saetrumlaw.com](mailto:general@saetrumlaw.com)

April 30, 2010

Michael W. Moore  
Moore & Elia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

Via Facsimile: 208-336-7031

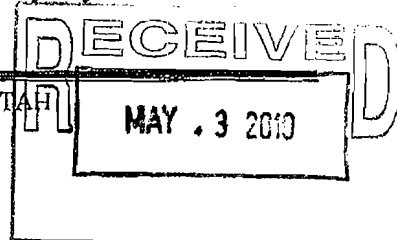
RE: Insured:	Patricia Eisenman
Claim No.	01097719012007113001
Date of Loss:	November 30, 2007
Claimant:	Michael Eisenman

Dear Mike:

This letter acknowledges receipt of the sworn proof of loss delivered to our office on April 28, 2010. Thank you for your cooperation in providing us with the information we requested. We note that we have received a letter from Richard Cummings indicating that he no longer represents your clients. On the phone, you indicated that there was a \$5,000.00 accidental death benefit on Mrs. Eisenman's policy. We have checked the declarations pages, and premium for that endorsement was paid. We note further that the underinsured motorist claim which is being made by your clients is controlled by the language of Mrs. Eisenman's Farm Bureau Farm and Ranch insurance policy. We note that Medicare paid for most of the hospital charges. Please advise us if the Medicare subrogation lien has been paid to the Centers for Medicare Services.

Regarding our letter raising the issue of who is an "insured" under the policy, that is also controlled by the Farm and Ranch policy in the definitions applicable to Section III and in Section III of the policy itself. If you have any research or case law on why anyone other than the

ATTORNEYS LICENSED IN IDAHO, OREGON AND UTAH



Mr. Michael Moore  
Page 2  
April 30, 2010

estate of Mrs. Eisenman has a claim against the underinsured motorist coverage in Section III of the Farm and Ranch policy, please advise us.

Very truly yours,

SAETRUM LAW OFFICES

  
Robert R. Gates

c: Steve Johnson





# SAETRUM LAW OFFICES

ATTORNEYS AT LAW

RODNEY R. SAETRUM  
ROBERT R. GATES  
KARYN WHYCHELL  
RYAN B. PECK  
OF COUNSEL:  
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P.O. BOX 7425  
BOISE, ID 83707  
TELEPHONE: (208) 336-0484  
FACSIMILE: (208) 336-0448  
EMAIL: [general@saetrumlaw.com](mailto:general@saetrumlaw.com)

May 24, 2010

Michael W. Moore  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

RE:	Insured:	Patricia Eisenman
	Claim No.	01097719012007113001
	Date of Loss:	November 30, 2007
	Claimant:	Michael Eisenman

Dear Mike:

Enclosed is a check for the undisputed amount of money which Farm Bureau can determine that it owes your clients for their proof of loss submitted under the underinsured motorist provisions of Mrs. Eisenman's Farm and Ranch policy. We have also enclosed a copy of a check for \$5,000 which had already been paid to the Estate of Patricia L. Eisenman on March 18, 2008. This check cleared the bank on June 20, 2008.

We realize that it is your clients' position that they are entitled to the policy limits of Mrs. Eisenman's underinsured motorist coverage minus the \$50,000 received from the tortfeasor's insurer. However, it is Farm Bureau's position that because the adult children were not insureds as defined in the policy, they are not eligible to receive any compensation for their noneconomic damages under the terms of the underinsured motorist portion of the policy.

The amount of the check represents the special damages submitted by the estate through the proof of loss. Farm Bureau Insurance personal recognize that your clients have suffered an emotional loss. The policy of insurance, however, specifies insureds that can recover under the

RECEIVED  
MAY 25 2010

ATTORNEYS LICENSED IN IDAHO, OREGON AND UTAH

Mr. Michael Moore  
Page 2  
May 24, 2010

coverage provisions of Ms. Eisenman's policy. Unfortunately, the provisions do not extend to your client's loss of society claims. The estates' claim has, therefore, been accepted only in part as reflected in the payment. We have previously provided a copy of the policy, if you need an additional copy please advise.

If you have any legal authority to support your claim for loss of society and other non-economic losses, Farm Bureau is willing to revisit its decision in light of that authority.

Very truly yours,

SAETRUM LAW OFFICES\

A handwritten signature in black ink, appearing to read "Rodney R. Saetrum", written over a rectangular stamp or box.

Rodney R. Saetrum

c: Steve Johnson



FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO

PO BOX 4848 POCATELLO ID 83205-4848

01-+-097719-01 11-30-2007

346668

KEY BANK OF IDAHO  
POCATELLO IDAHO

92-155  
1241

PAY  
FIVE THOUSAND DOLLARS AND 00 CENTS

DATE AMOUNT

03-18-2008 \$\*\*\*\*5,000.00

FARM BUREAU MUTUAL INSURANCE COMPANY

TO THE ORDER OF EISENMAN PATRICIA L ESTATE  
% MIKE EISENMAN  
16011 194TH AVE SE  
RENTON WA 98058-0901

NON-NEGOTIABLE

03-18-2008

12-3-005-9995

PLEASE DETACH AND RETAIN THIS STATEMENT

FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO

PO BOX 4848 POCATELLO ID 83205-4848

01-+-097719-01 11-30-2007

956

346668

INSURED EISENMAN PATRICIA L ESTATE	POLICY NUMBER 01-+-097719-01	CTY 001	AGT 701	ADJ 461	ASJ 000	LOSS DATE 11-30-2007	REPORT DATE 12-21-2007			
IN PAYMENT OF LIMIT OF ACCIDENTAL DEATH -DRD	TC 87	LM 39	T 1	CW A	CONTROL # 00599950010	DED 99	SR 01	YR DODG	MAKE VIN 12421	AMOUNT 5,000.00

checked by RMAXWELL 03/19/2008

See notes of support on pay rec per Mike M 3-19-08 rm

*Cleared our Bank 6-20-08  
per attached*

TOTAL----->

5,000.00

NOTE: THIS CHECK IS NOT VALID UNLESS PROPERLY ENDORSED BY ALL PARTIES.

CC-08-01-09-02

CHECK CONTROL PANEL  
TRANSACTION MASTER

DRUE DANA  
HAVE A NICE DAY

\*\*\*\*\*

14:02:22 05/20/10

\*\*\*\*\*

KEY: 01 225 346668 0C01

STATUS: 6 PAYBL: CYCL: PTYP: BCH:

PAYEE:  
EISENMAN PATRICIA L ESTATE  
% MIKE EISENMAN  
16011 194TH AVE SE  
RENTON WA 98058-0901

- 1 = UNISSUED
- 2 = CLEARED/NOT ISSUED
- 3 = OUTSTANDING
- 4 = PAID/NOT CLEARED
- 5 = CLEARED/NOT PAID
- 6 = CLEARED/ISSUED
- 7 = REVERSED
- 8 = UNCLAIMED PROPERTY
- 9 = DESTROYED
- C = CLEARED BANK ERROR

ISSUE DATE: 3-18-2008      CLEARED DATE: 6-20-2008      CK CLEAR NO: 000000  
FED NUMBER: 000000      TAX ID NUMBER: 888880000      CK CLEAR AMT:  
POLICY NO: 01-097719-01      JOURNAL/SOURCE: 000 346668      DEBIT/CREDIT:  
AMOUNT: 5000.00      CHECK SOURCE:



50th Anniversary National Association

31-300

1243

DATE 5-19-2012

No. 083904

P.O. Box 4848 • Pocatello, Idaho 83205-4848 • Phone: (208) 232-7914

CHECK AMOUNT

PAY Twenty Two Thousand Nine hundred Forty one and 40/100 DOLLARS 22,941.40

In Payment Of Undisputed Wm owed to estate

INSURED	DATE OF ACCIDENT	POLICY NUMBER	TYPE	CO	ADJ	SHP	TYPE/PAY
Patricia Eisenman Estate	2007.11.30	0109771901	WIN	FB	461		1

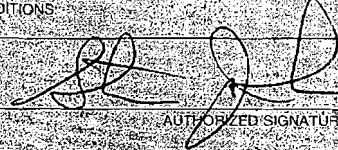
THIS DRAFT MUST BE PROPERLY ENDORSED ON THE REVERSE SIDE

LOSS DRAFT

IMPORTANT: UPON ACCEPTANCE THE COMPANY WILL PAY TO THE WITHIN NAME OF PAYEE THROUGH THE COLLECTIONS TELLER AT KEY BANK OF IDAHO P.O. Box 1788 Pocatello, ID 83204

CONDITIONS

TO THE ORDER OF  
 Moore & Ellis LLP in trust for the  
 Estate of Patricia Eisenman through  
 its Personal Representatives Michael Eisenman  
 and Kathryn Marie  
 P.O. Box 6756 Boise, ID 83707

  
 AUTHORIZED SIGNATURE

⑈083904⑈ ⑆125303007⑆ 440991200062⑈

RECEIVED

NOV 15 2010

Ada County Clerk  
Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:20 P.M. \_\_\_\_\_

NOV 15 2010

J. DAVID NAVARRO, Clerk  
By PATRICIA A DWONCH  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. CV OC 1010533

**RESPONSE TO  
DEFENDANTS' MOTION  
FOR SUMMARY  
JUDGMENT**

ESTATE OF PATRICIA EISENMAN; by  
and through Michael John Eisenman and  
Kathryn Marie, personal representatives,

Counter-claimant,

v.

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,,

Counter-defendant.

This is Plaintiff Farm Bureau Mutual Insurance Company of Idaho's [Farm Bureau] response to Defendants' motion for summary judgment. Farm Bureau has filed a complaint and subsequently, an amended complaint for declaratory relief. The amended complaint requested this Court to declare whether there was coverage for Defendants under the underinsured motorist

coverage provisions of a Farm and Ranch Squire policy it sold to Patricia L. Eisenman. Ms. Eisenman was the victim of a tragic motor vehicle accident in which she was struck as she crossed a street. Ms. Eisenman died of her injuries. Defendants, the Estate and adult children of Patricia L. Eisenman, filed their answer and counterclaim. Farm Bureau has filed its answer to the counterclaim. The issue in this case is a matter of first impression in Idaho.

### **FACTS OF THE CASE**

Farm Bureau agrees with the undisputed facts as enumerated in Defendants' Memorandum in Support of Summary Judgment, except for the following additions and exceptions to which it does not agree.

Defendants have admitted in their responses to Plaintiff's requests for admission that none of the adult children of Ms. Eisenman were residents of Ms. Eisenman's household at the time of her death. See Affidavit of Robert R. Gates, Exhibit 1, Responses to Plaintiff's Requests for Admission, Response No. 2.

Plaintiff adds to the facts the following statement in the sworn proof of loss dated April 28, 2010 listed in the Hall Affidavit, Exhibit B. P.1, the third paragraph under 1. Name of Insured(s) , which includes the following statement: "Those Heirs [of Ms. Eisenman] would include: Michael John Eisenman, Kathryn Marie, Rebecca McGavin and Peter Eisenman. The Estate and Heirs are making claim for underinsured motorist and accidental death coverage. Claim is also made for any other benefits payable under the foregoing policy, on account of the death of Patricia Eisenman."

Plaintiff disputes Defendants' allegation of fact that the Estate of Patricia Eisenman is entitled to collect wrongful death damages pursuant to Idaho Code § 5-311 under the terms of Ms. Eisenman's policy. This statement is a conclusion of law which must be decided by this

Court. Plaintiff also disputes Defendant's allegation of fact that medical and funeral expenses were paid under the underinsured motorist part of the policy. This was a misstatement, as the medical and funeral expenses were actually paid under Coverage Q – Medical Payments. Policy, Hall Affidavit, Exhibit A, p. 29, Coverage Q. This was made clear in the paragraphs two and three of the May 24, 2010 letter from Saetrum Law Offices to Michael W. Moore, Hall Affidavit, Exhibit D., p. 1-2. Coverage Q also states that, "No payment under this coverage shall be subject to duplicate payment under Coverages P, P-1 or any liability coverage of this policy." Policy, Hall Affidavit, Exhibit A, p. 29, Coverage Q. Coverages P and P-1 are the uninsured and underinsured motorist coverages.

### **IDAHO LAW ON INTERPRETING CONTRACTS OF INSURANCE**

Plaintiff is asking this Court to determine, as a matter of law, that the estate and adult children of a deceased insured are not defined as insureds under the underinsured motorist coverage part of a Farm Bureau Farm and Ranch policy.

The Idaho Supreme Court has stated the rules for reviewing insurance policies.

Insurance policies are contracts, and "the parties' rights and remedies are primarily established within the four corners of the policy." *Featherston By and Through Featherston v. Allstate Ins. Co.*, 125 Idaho 840, 843, 875 P.2d 937, 940 (1994). Whether a contract is ambiguous is a question of law upon which this Court exercises free review. *Martinez v. Idaho Counties Reciprocal Mgmt. Program*, 134 Idaho 247, 250, 999 P.2d 902, 905 (2000). Like other contracts, insurance policies "are to be construed as a whole and the courts will look to the plain meaning and ordinary sense in which words are used in a policy." *Miller v. Farmers Ins. Co. of Idaho*, 108 Idaho 896, 899, 702 P.2d 1356, 1359 (1985). Finally, where the "policy language is clear and unambiguous, coverage must be determined in accordance with the plain meaning of the words used." *Mut. of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235, 912 P.2d 119, 122 (1996).

*Andrae v. Idaho Counties Risk Management Program Underwriters*, 145 Idaho 33, 36-37, 175 P.3d 195, 198-99 (2007).



## ANALYSIS OF THE POLICY LANGUAGE

The Farm and Ranch policy owned by Ms. Eisenman has underinsured motorist coverage, and the insuring agreement or coverage clause reads as follows:

### COVERAGE P-1 – UNDERINSURED MOTORIST

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

Coverage P-1 is part of Section III – Automobile Insurance in the policy.

Coverage P-1 has its own definition of an insured which is separate from the rest of Section III. The definition reads as follows:

The following additional definitions apply to Coverages P & P-1:

1. **Insured** means:
  - a. You and any **relative**;
  - b. Anyone **occupying an insured vehicle**; or
  - c. Anyone **occupying a nonowned vehicle** while operated by you or your **relative**.

Hall Affidavit, Exhibit A, p. 27.

Relative is defined in the Definitions Applicable to Section III in the policy. There are special definitions for the automobile insurance part of the policy. "Relative" is defined as follows:

The following definitions apply to Section III.

Throughout this Section, we, us, and our mean the Company named in the Declarations. You and your mean the person named in the Declarations and that person's spouse if a resident of the same household. You and your also refer to a partnership, corporation, limited liability company, estate, or trust named in the Declarations. The following defined words appear in bold print in the policy.

\* \* \*

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

Hall Affidavit, Exhibit A, p. 3-4.

The definitions which apply to the underinsured motorist coverage define that the named insured is provided coverage under the policy terms as are the insured's relatives who live in the same residence as insured. Defendants adult children are related by blood to Ms. Eisenman. They have admitted that they were not residents of Mrs. Eisenman's household at the time of the occurrence. See Exhibit 1, Affidavit of Robert R. Gates. Because Ms. Eisenman's adult children do not meet the definition of relative, they are not defined as insureds under the underinsured motorist coverage provision of the policy. Ms. Eisenman's estate or personal representatives are not insureds either; neither the estate or the personal representatives meet the definition of an insured for the underinsured motorist coverage provision.

In addition to the previous discussion, the following analysis also applies to this case. Ms. Eisenman was the named insured under her policy. However, because she died in the accident, she was not legally entitled to recover damages from the tortfeasor operator of the vehicle which hit her. Pursuant to Idaho law, actions for personal injury die when the victim dies. Idaho's Wrongful Death Act, Idaho Code §5-311, and the cases decided under it, make clear that the Act creates a new cause of action for the benefit of the decedent's heirs as defined in the Act. *Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990); *Russell v. Cox*, 65 Idaho 534, 539-542, 148 P.2d 221, 223-224 (1944). The wrongful death action against the tortfeasor may be brought by either the estate of the decedent on behalf of the heirs or by the heirs themselves.

Defendants' argument focuses on the words, "legally entitled." Defendants argue that because Ms. Eisenman was an insured, that she, through her estate, is legally entitled to recover

wrongful death damages from the tortfeasor. This argument is flawed because, although Ms. Eisenman's estate's personal representatives, or her heirs, can bring their statutorily created action for wrongful death against the tortfeasor, the damages must be paid to the heirs, as the personal injury damage action which Ms. Eisenman would have had, if she had survived the accident, is gone.

Idaho's Wrongful Death Act, Idaho Code §5-311, states:

(1) When the death of a person is caused by the wrongful act or neglect of another, **his or her heirs or personal representatives on their behalf** may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case as may be just. (Emphasis supplied.)

As the Act clearly states in the bolded words, Ms. Eisenman's personal representatives could not sue the tortfeasor for Ms. Eisenman's pain and suffering damages after her death. The insured in the Farm and Ranch policy, Ms. Eisenman, was not legally entitled recover damages from the owner/operator of the underinsured motor vehicle. So, while Ms. Eisenman's adult children, as the heirs of her estate, are legally entitled to bring suit against the tortfeasor, the suit is for their loss and not that of Ms. Eisenman. Since Ms. Eisenman, is not legally entitled to recover from the owner or operator of an underinsured motor vehicle under Idaho law, her estate cannot receive underinsured motorist benefits under the policy.

Had one or more of Defendants been living with Ms. Eisenman on the date of her death, they would be defined as relatives, and thus insureds under the policy. In that case, they would be legally entitled to recover underinsured motorist benefits under the policy language. But, this is not the case under the facts of this matter.

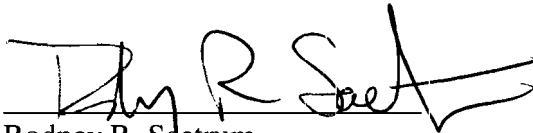
**CONCLUSION**

Because neither the estate nor the adult children of Ms. Eisenman qualify as insureds under the policy, and because Ms. Eisenman is not legally entitled to bring a personal injury action against the tortfeasor after her death, Plaintiff Farm Bureau respectfully requests this Court to deny Defendants' motion for summary judgment.

DATED this 11 day of November 2010

SAETRUM LAW OFFICES

By

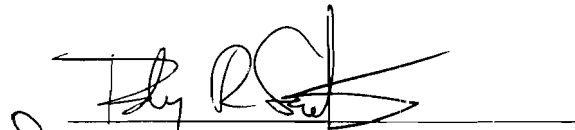
  
Rodney R. Saetrum  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 11 day of November 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Michael W. Moore  
Brady J. Hall  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Robert R. Gates

RECEIVED

NOV 15 2010

Ada County Clerk

Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:20 P.M. \_\_\_\_\_

NOV 15 2010

J. DAVID NAVARRO, Clerk  
By PATRICIA A DWONCH  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. CV 0410/05 23

**AFFIDAVIT OF ROBERT R.  
GATES IN SUPPORT OF  
PLAINTIFF'S RESPONSE  
TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Robert R. Gates, being duly sworn upon his oath and deposes and says as follows:

1. That I am a licensed attorney, am familiar with the facts of this matter, and make this affidavit upon my own personal knowledge.
2. That attached as Exhibit 1 is a true and correct copy of the Defendants' Responses to Plaintiff's Requests for Admission.

*Handwritten initials*

Further sayeth your affiant not.

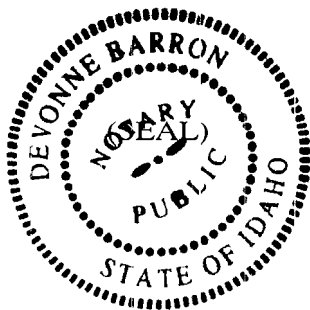
DATED this 11 day of November 2010.

By *Robert R. Gates*  
Robert R. Gates

STATE OF IDAHO )  
                          : ss.  
County of Ada        )

On this 11 day of November 2010 before me, Notary Public, personally appeared ROBERT R. GATES, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written.



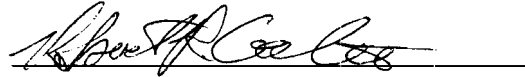
*Devonne Barron*  
Notary Public, State of Idaho  
Residing at *Henry*, Idaho  
My Commission Expires: *8-18-11*

**CERTIFICATE OF MAILING**

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Boise, Idaho 83707

U.S. Mail  
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 Facsimile

  
Robert R. Gates



***EXHIBIT “1”***

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
1001 West Idaho, Suite 400  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

Attorneys for Defendants

---

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO, )

Plaintiff, )

vs. )

MICHAEL JOHN EISENMAN and )  
KATHRYN MARIE, individually, and co- )  
personal representatives of the ESTATE )  
OF PATRICIA EISENMAN; REBECCA )  
L. McGAVIN and PETER EISENMAN, )  
individually, )

Defendants. )

Case No. CV OC 10-10533

**DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUEST  
FOR ADMISSIONS**

---

COME NOW the Defendants, by and through their counsel of record, Moore & Elia, LLP, and pursuant to Rule 36 of the Idaho Rules of Civil Procedure, hereby provides their responses to Plaintiff's First Set of Requests for Admissions.

DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
REQUEST FOR ADMISSIONS

**REQUEST FOR ADMISSION NO. 1:** Admit that each and every individual defendant is a relative of decedent Patricia Eisenman.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Defendants object to this Request because the undefined word “relative” makes this request vague, ambiguous, and subject to being misconstrued. Without waiving the foregoing objection, Defendants Michael John Eisenman, Kathryn Marie, Rebecca L. McGavin and Peter Eisenman admit that they are the natural children of Patricia Eisenman, and in that context are thus relatives of Ms. Eisenman.

**REQUEST FOR ADMISSION NO. 2:** Admit that none of the individual defendants were residing with decedent Patricia Eisenman at her residence on the date of the accident on November 30, 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Admit.

**REQUEST FOR ADMISSION NO. 3:** Admit that none of the individual defendants were named insureds under Patricia Eisenman’s Farm Bureau Farm and Ranch policy in effect on the date of the accident, November 30, 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Defendants admit that the Farm Bureau policy was issued to Patricia Eisenman and that she was the sole named insured and remains the sole named insured by way of the Estate of Patricia Eisenman. Michael John Eisenman, Kathryn Marie, Rebecca L. McGavin and Peter Eisenman, individually, were not named insureds when the policy was issued and subsequently renewed.

**REQUEST FOR ADMISSION NO. 4:** Admit that none of the individual defendants were present with Patricia Eisenman at the time of the accident on November 30, 2007.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Admit.

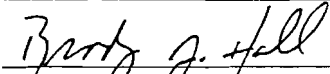
REQUEST FOR ADMISSION NO. 5: Admit that none of the individual defendants witnessed the accident involving Patricia Eisenman on November 30, 2007.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Admit.

DATED this 29<sup>th</sup> day of July, 2010.

MOORE & ELIA, LLP

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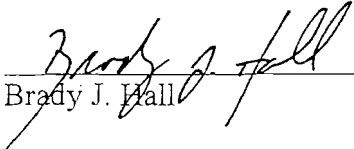
  
Brady J. Hall, of the firm  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of July, 2010, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Rodney R. Saetrum  
Robert R. Gates  
Saetrum Law Offices  
P.O. Box 7425  
Boise, Idaho 83707

U.S. Mail, postage prepaid  
 Hand Delivered  
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 Facsimile Transmission 336-0448  
 E-Mail

  
Brady J. Hall

RECEIVED

NOV 15 2010

Rodney R. Saetrum ISBN: 2921  
Robert R. Gates ISBN: 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

NO. 11/10 FILED  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

NOV 15 2010

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. CV061010533


**PLAINTIFF'S MOTION  
FOR SUMMARY  
JUDGMENT**

COMES NOW, Plaintiff Farm Bureau Mutual Insurance Company of Idaho, Inc., through its attorneys of record, Saetrum Law Offices, and moves this Court for summary judgment pursuant to I.R.C.P. 56(a). Plaintiff asks this Court to grant it summary judgment on the issue of no coverage for the claim made by Defendants against the insurance policy at issue in this case. This motion is supported by a Memorandum in Support of Summary Judgment and Affidavit of Counsel filed separately.

DATED this 10 day of November 2010.

Respectfully submitted,

SAETRUM LAW OFFICES

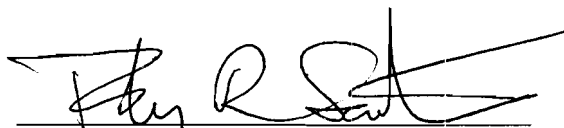
By   
Rodney R. Saetrum  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING**

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Rodney R. Saetrum

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NOV 15 2010

Ada County Clerk

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Robert R. Gates ISBN: 2045  
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Boise, Idaho 83707  
Telephone: (208) 336-0484

NO. 1110 FILED  
A.M. P.M.

NOV 15 2010

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
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PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. CWOC 1016533

**AFFIDAVIT OF COUNSEL**

COMES NOW Robert R. Gates, being duly sworn upon his oath and deposes and says as follows:

1. That I am a licensed attorney, am familiar with the facts of this matter, and make this affidavit upon my own personal knowledge.
2. That attached as Exhibit 1 is a true and correct copy of the Defendants' Responses to Plaintiff's Requests for Admission.

↑

Further sayeth your affiant not.

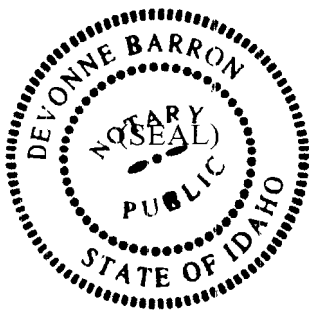
DATED this 10 day of November 2010.

By *Robert R. Gates*  
Robert R. Gates

STATE OF IDAHO )  
: ss.  
County of Ada )

On this 10<sup>th</sup> day of November 2010 before me, Notary Public, personally appeared ROBERT R. GATES, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written.



*Devonne Barron*  
Notary Public, State of Idaho  
Residing at *Nampa*, Idaho  
My Commission Expires: *8/18/16*



**CERTIFICATE OF MAILING**

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
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FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO, )

Plaintiff, )

vs. )

MICHAEL JOHN EISENMAN and )  
KATHRYN MARIE, individually, and co- )  
personal representatives of the ESTATE )  
OF PATRICIA EISENMAN; REBECCA )  
L. McGAVIN and PETER EISENMAN, )  
individually, )

Defendants. )

Case No. CV OC 10-10533

**DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUEST  
FOR ADMISSIONS**

COME NOW the Defendants, by and through their counsel of record, Moore & Elia, LLP, and pursuant to Rule 36 of the Idaho Rules of Civil Procedure, hereby provides their responses to Plaintiff's First Set of Requests for Admissions.

DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
REQUEST FOR ADMISSIONS

7/29

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**REQUEST FOR ADMISSION NO. 2:** Admit that none of the individual defendants were residing with decedent Patricia Eisenman at her residence on the date of the accident on November 30, 2007.

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**REQUEST FOR ADMISSION NO. 3:** Admit that none of the individual defendants were named insureds under Patricia Eisenman’s Farm Bureau Farm and Ranch policy in effect on the date of the accident, November 30, 2007.

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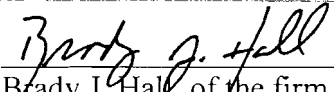
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DATED this 29<sup>th</sup> day of July, 2010.

MOORE & ELIA, LLP

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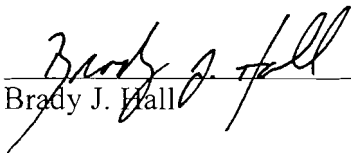
  
Brady J. Hall, of the firm  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:16 P.M.

NOV 15 2010

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

v.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE OF  
PATRICIA EISENMAN; REBECCA L.  
McGAVIN AND PETER EISENMAN  
individually,

Defendants.

Case No. WOC 10/0533

**MEMORANDUM IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

**INTRODUCTION**

Plaintiff Farm Bureau's Motion for Summary Judgment is, essentially, a cross-motion for summary judgment made in conjunction with Defendants' Motion for Summary Judgment. This Court has been asked to rule on the coverage provision of the underinsured motorist provisions of the Farm Bureau Farm and Ranch policy. The policy was held by Patricia Eisenman prior to her untimely death as a result of a pedestrian v. auto collision on November 30, 2007. Specifically, this Court is asked to rule on whether the insuring, or coverage clause, of the underinsured motorist coverage in the Farm Bureau policy provides no coverage for Ms. Eisenman's adult children.



## THE FACTS OF THE CASE

Defendants have filed a Motion for Summary Judgment and have listed a statement of undisputed facts in their Memorandum. Plaintiff agrees with the statement of undisputed facts with some additions and exceptions.

Plaintiff adds to the statement of undisputed facts as follows: Defendants have admitted in their responses to Plaintiff's requests for admission that none of the adult children of Ms. Eisenman were residents of Ms. Eisenman's household at the time of her death. See Affidavit of Robert R. Gates, Exhibit 1, Responses to Plaintiff's Requests for Admission, Response No. 2.

Plaintiff adds to the facts the following statement in the sworn proof of loss dated April 28, 2010 listed in the Hall Affidavit, Exhibit B. P.1, the third paragraph under 1. Name of Insured(s) , which includes the following statement: "Those Heirs [of Ms. Eisenman] would include: Michael John Eisenman, Kathryn Marie, Rebecca McGavin and Peter Eisenman. The Estate and Heirs are making claim for underinsured motorist and accidental death coverage. Claim is also made for any other benefits payable under the foregoing policy, on account of the death of Patricia Eisenman."

Plaintiff disputes Defendants' allegation of fact that the Estate of Patricia Eisenman is entitled to collect wrongful death damages pursuant to Idaho Code § 5-311 under the terms of Ms. Eisenman's policy. Plaintiff believes that is more properly a conclusion of law which this Court must decide. Plaintiff also disputes Defendant's allegation of fact that medical and funeral expenses were paid pursuant to the underinsured motorist provisions of the policy. This is a misstatement, as the medical and funeral expenses were paid under Coverage Q – Medical Payments. Policy, Hall Affidavit, Exhibit A, p. 29, Coverage Q. The letter states that the payment was the undisputed amount owed for Defendants' proof of loss submitted under the

underinsured motorist provisions of the policy. This was made clear in the second paragraphs two and three of the May 24, 2010 letter from Saetrum Law Offices to Michael W. Moore, Hall Affidavit, Exhibit D., p. 1-2. The letter states clearly that the provisions of the policy do not extend to Defendants' loss of society claims. Coverage Q also states that, "No payment under this coverage shall be subject to duplicate payment under Coverages P, P-1 or any liability coverage of this policy." Policy, Hall Affidavit, Exhibit A, p. 29, Coverage Q. Coverages P and P-1 are the uninsured and underinsured motorist coverages.

The question raised by this case is a matter of first impression in Idaho as far as reported cases can be found. Plaintiff has been unable to find any other Idaho appellate opinion which has a similar legal and factual pattern as the facts in this case.

#### **STANDARD FOR SUMMARY JUDGMENT**

Summary judgment may be granted when the pleadings, affidavits, and discovery documents before the court indicate no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Baster v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000). The moving party carries the burden of proving the absence of a genuine issue of material fact. *Id.*

In construing the record on a motion for summary judgment, all reasonable inferences and conclusions must be drawn in favor of the party opposing the motion for summary judgment. *Student Loan Fund of Idaho, Inc. v. Duerner*, 131 Idaho 45, 49, 951 P.2d 1272, 1276 (1997). All doubts are to be resolved against the moving party. *Collord v. Cooley*, 92 Idaho 789, 795, 451 P.2d 535, 541 (1969). The evidence offered in support of or in opposition to a motion for summary judgment must be admissible. *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999).



When questions of law are presented on a motion for summary judgment, the court must determine, “whether a genuine issue of material fact exists and whether the prevailing party was entitled to judgment as a matter of law.” *Doe v. City of Elk River*, 144 Idaho 337, 338, 160 P.3d 1272, 1273 (2007). “If uncontroverted facts exist which lead to a definite disposition as a matter of law, summary judgment is appropriate.” *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 524, 808 P.2d 851, 861 (1991).

### **LEGAL FRAMEWORK FOR REVIEWING INSURANCE POLICIES**

The Idaho Supreme Court follows several well established rules for the interpretation of insurance policies. Insurance policies are interpreted the same as other contracts. If there is no ambiguous language in the policy provisions, applicable to the facts of the case, the rules of contract interpretation are followed. When ambiguous language in the applicable provisions is encountered, special rules of interpretation are followed, and the policy is construed against the insurer. *Arreguin v. Farmers Insurance Co. of Idaho*, 145 Idaho 459, 461, 180 P.3d 489, 500 (2006). If confronted with ambiguous language, the reviewing court must determine what a reasonable person would understand the language to be. *Allstate Insurance Co. v. Mocaby*, 133 Idaho 593, 597, 990 P.2d 1204, 1208 (1999).

A district court must construe the policy as a whole, not focusing on any isolated phrase. *Cascade Auto Glass, Inc. v. Farm Bureau Insurance Co.*, 141 Idaho 660, 663, 115 P.3d 751, 754 (2005). If the policy language is clear and unambiguous, then its coverage is determined as a matter of law in accordance with the plain meaning of the words used. *Id.* 116 Idaho at 662. If two or more reasonable, but conflicting interpretations may be derived from the policy language, the language is ambiguous. *Id.*, 141 Idaho at 663, 115 P.3d at 754.

Furthermore, every word and phrase in an insurance contract does not need to be defined in the contract. *Nat'l Union Fire Insurance Co. of Pittsburgh, PA v. Dixon*, 141 Idaho 537, 540, 112 P.3d 825, 828 (2005). An ambiguity is not established merely because the parties present differing interpretations to the court. *Payette River Property Owners Ass'n. v. Board of Com'rs of Valley County*, 1323 Idaho 551, 556, 976 P.2d 477, 483 (1999).

Finally, where policy language is found to be unambiguous, the court is to construe the policy as written, since the court will not construct or write a new policy for the parties, nor add words to, "create or avoid liability." *Purvis v. Progressive Casualty Insurance Co.*, 142 Idaho 213, 216, 127 P.3d 116, 118 (2005).

If a court finds the policy language to be ambiguous, then special rules of interpretation apply: any ambiguity is construed against the insurer. *Hall v. Farmers Alliance Mut. Insurance Co.*, 145 Idaho 313, 318, 179 P.3d 276, 281(2008), *Cascade Auto Glass, Inc. v. Farm Bureau Insurance Co.*, 141 Idaho 660, 663, 115 P.3d 751, 754 (2005).

### ANALYSIS

The Farm and Ranch policy owned by Ms. Eisenman has underinsured motorist coverage, and has the following grant of coverage:

#### COVERAGE P-1 – UNDERINSURED MOTORIST

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

Coverage P-1 – Underinsured Motorist is part of Section III – Automobile Insurance, in the policy. That coverage part has separate definitions for an insured. The named insured is covered as are the insured's relatives who live in the same residence as insured. Hall Affidavit, Exhibit A, p. 27, Coverage P-1 Underinsured Motorist, paragraph 1., a. Under the Definitions

Applicable to Section III, a “relative” means a person related to the named insured by blood, marriage, or adoption who is a resident of insured’s household, including a ward or foster child. Hall Affidavit, Exhibit A, p. 4, Definitions Applicable to Section III, Relative. Defendants adult children of Ms. Eisenman have admitted that they were not residents of Mrs. Eisenman’s household at the time of the occurrence. Affidavit of Robert R. Gates, Exhibit 1, Responses to Requests for Admission, Response No. 2.

Farm Bureau contends that neither the estate of Ms. Eisenman or her adult children are insureds under the underinsured motorist insuring clause. It makes no difference if Ms. Eisenman’s estate or her adult children made the claim under the underinsured motorist provisions because neither the estate or the adult children are defined as insureds. Therefore, this Court need look no further than the insuring clause in the policy. If there is no initial grant of coverage, there can not be a payment under that part of the policy. The insuring clause is unambiguous as to its definition of an insured. Insured is defined clearly in the definitions section of P-1. Insured does not include the insured’s estate, and it does not include relatives who are not residing with insured.

Because the definition of insured is not ambiguous, there is nothing in the policy for the Court to construe or to interpret against Farm Bureau. The Court must look at the plain language of the definition of insured. The plain language is unambiguous. The insuring clause is not a limitation or an exclusion in the policy which would have to be strictly construed. Only a provision that seeks to exclude the insurer's coverage should be strictly construed in favor of the insured. *Moss v. Mid-America Fire & Marine Ins. Co.*, 103 Idaho 298, 300, 647 P.2d 754, 756 (1982).

Defendants have argued that Ms. Eisenman is entitled to recover her adult children's wrongful death damages against the tortfeasor, Ms. Zahm. In Idaho, a tort claim for personal injury damages dies with the person. *Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990). Ms. Eisenman died as a result of the accident. Any cause of action she herself had against the tortfeasor was extinguished at that time. Idaho's Wrongful Death Act is not a so-called survivor statute. The Act creates a new cause of action on behalf of the heirs as defined in the Act. *Russell v. Cox*, 65 Idaho 534, 539-542, 148 P.2d 221, 223-224 (1944). The wrongful death action against the tortfeasor may be brought by either the estate of the decedent on behalf of the heirs or by the heirs themselves.

Idaho's Wrongful Death Act, Idaho Code §5-311, states:

(1) When the death of a person is caused by the wrongful act or neglect of another, **his or her heirs or personal representatives on their behalf** may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case as may be just. (Emphasis supplied.)

Therefore, Ms. Eisenman's personal representatives could not sue the tortfeasor, Zahm, for Ms. Eisenman's pain and suffering damages after her death. The insured in the Farm and Ranch policy, Ms. Eisenman, is not legally entitled recover damages from the owner/operator of the underinsured motor vehicle. The new cause of action created by the Wrongful Death Act is held by the personal representatives, or heirs, for the benefit of Ms. Eisenman's heirs

In *Baker v. Farm Bureau Mut. Ins. Co. of Idaho, Inc.*, 130 Idaho 415, 417, 941 P.2d 1316, 1318 (Ct. App. 1997), the Idaho Court of Appeals examined the coverage clause of Farm Bureau's underinsured motorist coverage. The Court of Appeals stated:

Coverage P of the policy defines the underinsured motorist coverage and provides, in part:

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

*Baker v. Farm Bureau Mut. Ins. Co. of Idaho, Inc.*, 130 Idaho 415, 417, 941 P.2d 1316, 1318 (Ct. App. 1997).

Note that the policy language in *Baker* is nearly identical to that of the underinsured motorist coverage part of the Farm and Ranch policy at issue in this case. This language was not challenged as being ambiguous. The same result should apply in the present case. The Idaho Wrongful Death Act does not state that it is applicable to insurance policies. It simply supplies a new cause of action to the heirs of a decedent that was not available at common law.

Defendants have not claimed that the definition of insured is ambiguous. Using the definition of insured for underinsured motorist coverage in the Farm Bureau Farm and Ranch Policy, and applying it to the facts of this case, insured means only the person whose name is on the policy (named insured) or a relative residing with insured. Neither an insured's estate, her adult children, nor her heirs as defined in the Wrongful Death Act (who are not residing with insured) are included in the definition of insured. Under the facts of this case, Ms. Eisenman was living by herself and was the named insured on her policy. Since Ms. Eisenman's cause of action against the tortfeasor did not survive her death, she was not legally entitled to recover damages from the tortfeasor. There is no underinsured motorist coverage for Defendants under the terms of the Farm Bureau policy, under the facts of this case.

The facts of this case show that the accident occurred in 2007 before the most recent changes in the underinsured motorist statute, Idaho Code § 41-2502. The version of the statute

which was in effect at the time of the accident did not require underinsured motorist coverage to be part of every policy of auto insurance issued in Idaho. Only uninsured motorist coverage was required to be offered, and it could be declined in writing. In *Farmers Ins. Co. of Idaho v. Buffa*, 119 Idaho 345, 347, 806 P.2d 438, 440 (1991), claimants argued that the insurer's construction of the underinsured motorist provisions of that policy were void as against public policy. The Court stated:

This argument ignores the fact that our statutes do not require an automobile insurer to include underinsured vehicle coverage in its policies or even to offer this coverage to its insureds. Underinsured coverage in this state is a matter of contract law, not public policy. *Scarlett*, 116 Idaho at 822, 780 P.2d at 144; *Meckert v. Transamerica Ins. Co.*, 108 Idaho 597, 701 P.2d 217 (1985); *Blackburn v. State Farm Mut. Auto. Ins. Co.*, 108 Idaho 85, 697 P.2d 425 (1985).

*Farmers Ins. Co. of Idaho v. Buffa*, 119 Idaho 345, 347, 806 P.2d 438, 440 (1991).

Because underinsured motorist coverage was not required at the time of the accident in this case, the *Buffa* decision is still good law as applied to this case. Underinsured coverage is a matter of contract law in Idaho, not public policy. Therefore, this Court must focus on the plain language of the policy, and not on the language of the Wrongful Death Act or the underinsured motorist coverage act.

In conclusion, the Farm Bureau Farm and Ranch policy's underinsured motorist coverage part, which is at issue in this case, clearly defines insureds in the policy definitions. The Farm and Ranch policy owned by Ms. Eisenman did not provide underinsured motorist coverage for either her estate or for her adult children. This is because Ms. Eisenman would not legally be entitled to damages under the policy. Furthermore, Ms. Eisenman could not recover for her personal injury under Idaho's Wrongful Death act.

Plaintiff Farm Bureau respectfully asks this Court to grant summary judgment in its favor finding that there is no coverage under the terms of the underinsured motorist insuring or coverage clause.

DATED this 10 day of November 2010.

Respectfully submitted,

SAETRUM LAW OFFICES

By



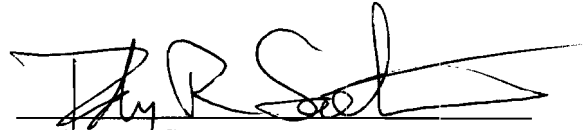
Rodney R. Saetrum  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 10 day of November 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Michael W. Moore  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Rodney R. Saetrum



NO. \_\_\_\_\_  
A.M. 8:19 FILED PM

DEC 13 2010

J. DAVID NAVARRO, Clerk  
By KATHY BIEHL  
DEPUTY

MICHAEL W. MOORE (ISBN 1919)  
BRADY J. HALL (ISBN 7873)  
MOORE & ELIA, LLP  
Post Office Box 6756  
Boise, Idaho 83707  
Telephone: (208) 336-6900  
Facsimile: (208) 336-7031

Attorneys for Defendants and Counter-claimant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FARM BUREAU MUTUAL  
INSURANCE COMPANY OF IDAHO,

Plaintiff,

vs.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE  
OF PATRICIA EISENMAN; REBECCA  
L. McGAVIN and PETER EISENMAN,  
individually,

Defendants.

ESTATE OF PATRICIA EISENMAN, by  
and through Michael John Eisenman and  
Kathryn Marie, personal representatives,

Counter-claimant

vs.

FARM BUREAU MUTUAL  
INSURANCE COMPANY OF IDAHO

Counter-defendant

) Case No. CV OC 10-10533

) **REPLY BRIEF IN SUPPORT OF THE**  
) **ESTATE OF PATRICIA EISENMAN'S**  
) **MOTION FOR SUMMARY JUDGMENT**

KP

COMES NOW Defendant/Counter-claimant the Estate of Patricia Eisenman (“the Estate”), by and through its counsel of record, Moore & Elia, LLP, and hereby submits this Reply brief in support of its motion for summary judgment. As a preliminary matter, the Estate adopts and incorporates all of its prior briefing submitted in this matter, including its *Response Brief in Opposition to Farm Bureau’s Motion for Summary Judgment*. This Court and Farm Bureau are kindly referred to such prior briefing.

In addition to the prior briefing on file, the Estate feels it is necessary in this Reply brief to address two arguments made by Farm Bureau in its *Response to Defendant’s Motion for Summary Judgment* (“*Farm Bureau’s Response*”).

First, Farm Bureau has stated that the prior payment of \$22,941.40 was made pursuant to “Coverage Q – Medical Payments” of the Farm Bureau policy and that paragraphs two and three of their May 24, 2010 letter “made clear” that fact. *Farm Bureau’s Response*, p. 3. The Estate does not believe such representation is correct. Paragraphs two and three from the subject letter read as follows:

We realize that it is your clients’ position that they are entitled to the policy limits of Mrs. Eisenman’s underinsured motorist coverage minus the \$50,000 received from the tortfeasor’s insurer. However, it is Farm Bureau’s position that because the adult children were not insureds as defined in the policy, they are not eligible to receive any compensation for their noneconomic damages under the terms of the underinsured motorist portion of the policy.

The amount of the check represents the special damages submitted by the estate through the proof of loss. Farm Bureau Insurance personal [sic] recognize that your clients have suffered an emotional loss. The policy of insurance, however, specifies insureds that can recover under the coverage provisions of Ms. Eisenman’s policy. Unfortunately, the provisions do not extend to your client’s loss of society claims. The estates’ claim has, therefore, been accepted only in part as reflected in the payment.

We have previously provided a copy of the policy, if you need an additional copy please advise.

*Hall Aff.*, Exh. D, p. 1.

Contrary to what Farm Bureau has argued, it is not clear in the above paragraphs that the payment was made pursuant to "Coverage Q". In fact, a review of paragraph one of the same letter and the payment itself suggest that the payment was actually made pursuant to the underinsured motorist provision. Paragraph one reads in part: "Enclosed is a check for the undisputed amount of money which Farm Bureau can determine that it owes your clients for their proof of loss submitted under the underinsured motorist provisions of Mrs. Eisenman's Farm and Ranch Policy." *Hall Aff.*, Exh. D, p. 1 (emphasis added). Further, the check itself reveals that payment was made for "undisputed UIM owed to estate" and to "The Estate of Patricia Eisenman through its Personal Representatives Michael Eisenman and Kathryn Marie." *Hall Aff.*, Exh. D, p. 5. Likewise, the policy "type" referenced on the check is written as "UIM". *Id.* Even if Farm Bureau made the payment of \$22,941.40 to the Estate pursuant to "Coverage Q", such would not change the fact that the Estate is duly owed additional monies pursuant to the underinsured motorist provision of Ms. Eisenman's policy.

Second, Farm Bureau notes that "Ms. Eisenman's personal representatives could not sue the tortfeasor for Ms. Eisenman's pain and suffering damages after her death." *Farm Bureau's Response*, p. 6. This statement is irrelevant to the issue at hand and reveals that Farm Bureau may not fully understand the Estate's claim. The Estate of Patricia Eisenman is not trying to collect Ms. Eisenman's own pain and suffering damages from Farm Bureau. The Estate agrees that such damages did not survive Ms. Eisenman's unfortunate death. Rather, the damages that

the Estate believes Farm Bureau must pay pursuant to the underinsured motorist provision are the wrongful death damages suffered by Ms. Eisenman's "heirs" as a result of her death.

The underinsured motorist provision of the Farm Bureau policy states that Farm Bureau promises to "pay damages which an **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of bodily injury sustained by an **insured** and caused by an **occurrence**." *Hall Aff.*, Exh. A, p. 27. Pursuant to Idaho Code §5-311, Ms. Eisenman, through her Estate, is "legally entitled" to recover wrongful death damages on behalf of her "heirs" against Ms. Zahm, the owner and operator of an underinsured motor vehicle. See e.g. *Turpen v. Granieri*, 133 Idaho 244 (1999); *Russell v. Cox*, 65 Idaho 534 (1994). See also Idaho Code §17-3-703 (recognizing that a decedent, through his or her Estate, is entitled to claim and bring suit to enforce his or her legal rights).

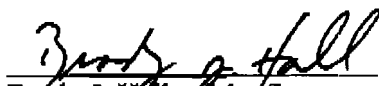
Farm Bureau would like this Court to read a requirement into the underinsured motorist provision that does not exist – *i.e.* that the damages Ms. Eisenman can recover must be her own. However, there is no such requirement in the provision that Farm Bureau wrote and Idaho courts are forbidden from "add[ing] words to the contract of insurance to either create or avoid liability." See *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 70 (2009). The Courts must instead apply the plain meaning of the language chosen in the policy. See *Clark v. Prudential Property and Cas. Ins. Co.*, 138 Idaho 538, 541 (2003). The underinsured motorist provision only requires that the insured, Ms. Eisenman, be "legally entitled" to recover damages sustained because of bodily injury (including death) of an insured. *Hall Aff.*, Exh. A, p. 27. There is no doubt that Ms. Eisenman's adult children suffered "damages" as a result of her death, and that Ms. Eisenman, through her Estate, is legally entitled to recover the same from Ms. Zahm pursuant to Idaho Code §5-111.

**CONCLUSION**

For the following reasons, the Estate of Patricia Eisenman respectfully requests that this Court grant its motion for summary judgment and rule as a matter of law that the damages the Estate seeks are covered by way of Farm Bureau's underinsured motorist provision.

DATED this 10<sup>th</sup> day of December, 2010.

MOORE & ELIA, LLP.

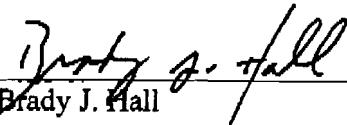
  
\_\_\_\_\_  
Brady J. Hall, of the firm  
Counsel for the Estate of Patricia Eisenman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of December, 2010, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Rodney R. Saetrum  
Robert R. Gates  
Saetrum Law Offices  
P.O. Box 7425  
Boise, Idaho 83707  
*Attorneys for Farm Bureau*

U.S. Mail, postage prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile Transmission 336-0448  
 E-Mail

  
\_\_\_\_\_  
Brady J. Hall

FEB 22 2011

CHRISTOPHER D. RICH, Clerk  
By SHARY ABBOTT  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff,

vs.

MICHAEL JOHN EISENMAN and  
KATHRYN MARIE, individually, and co-  
personal representatives of the ESTATE  
OF PATRICIA EISENMAN; REBECCA L.  
McGAVIN and PETER EISENMAN,  
individually,

Defendants.

Case No. CVOC 10-10533

MEMORANDUM DECISION RE:  
(1) PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT; AND  
(2) DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

ESTATE OF PATRICIA EISENMAN, by  
and through Michael John Eisenman and  
Kathryn Marie, personal representatives,

Counterclaimants,

vs.

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Counterdefendant.

**APPEARANCES**

For Plaintiff: Rodney R. Saetrum and Robert R. Gates of Saetrum Law Offices

For Defendants: Michael W. Moore and Brady J. Hall of Moore and Ellia





1 We will pay damages which an insured is legally entitled to recover from  
2 the owner or operator of an underinsured motor vehicle because of bodily  
injury sustained by an insured and caused by an occurrence.

3 The term "bodily injury" is defined as "physical injury or death to a person." The  
4 policy goes on to define the term "insured" as "[y]ou and any relative; [a]nyone  
5 occupying an insured vehicle; or [a]nyone occupying a nonowned vehicle while  
6 operated by you or your relative." The terms "you" and "your" are defined as "the  
7 person named in the Declarations and that person's spouse if a resident of the same  
8 household." The terms "you" and "your" are also defined as "a partnership, corporation,  
9 limited liability company, estate, or trust named in the Declarations."  
10

11 The policy then defines the term "relative" as "a person related to you by blood,  
12 marriage or adoption who is a resident of your household, including a ward or foster  
13 child." Ms. Eisenman's children were not "relatives" under the policy because they did  
14 not reside with Ms. Eisenman at the time of her death. However, the policy provides  
15 "any amount due under this coverage" may be paid "[t]o a person authorized by law to  
16 receive such payment, or to a person who is legally entitled to recover the damages  
17 which the payment represents."  
18

### 19 **LEGAL STANDARD**

20 Summary judgment will be granted only "if the pleadings, depositions, and  
21 admissions on file, together with the affidavits, if any, show that there is no genuine  
22 issue as to any material fact and that the moving party is entitled to a judgment as a  
23 matter of law." I.R.C.P. 56(c). When considering a summary judgment motion, the trial  
24 court must construe the record liberally in favor of the non-moving party and draw all  
25 reasonable factual inferences in favor of such party. *Bear Lake West Homeowner's*  
26

1 *Ass'n. v. Bear Lake County*, 118 Idaho 343, 346, 796 P.2d 1016, 1019 (1990). Since  
2 filing cross-motions for summary judgment does not change the standard of review, the  
3 Court evaluates each motion on its merits. *Stafford v. Klosterman*, 134 Idaho 205, 206,  
4 998 P.2d 1118, 1119 (2000). The motion will be denied if conflicting inferences may be  
5 drawn from the evidence or if reasonable people might reach different conclusions.  
6 *Parker v. Kokot*, 117 Idaho 963, 793 P.2d 195 (1990).

7 The initial burden of establishing the absence of a genuine issue of material fact  
8 rests with the moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 531,  
9 887 P.2d 1034, 1038 (1994). If the moving party meets that burden, the party who  
10 resists summary judgment has the responsibility to place in the record before the court  
11 the existence of controverted material facts that require resolution at trial. *Sparks v. St.*  
12 *Luke's Reg'l Med. Ctr., Ltd.*, 115 Idaho 505, 508, 768 P.2d 768, 771 (1988). The non-  
13 moving party may not rely on his pleadings or merely assert the existence of facts which  
14 might support his legal theory. *Id.* The existence of those facts by deposition, affidavit,  
15 or otherwise. *Id.*; I.R.C.P. 56(e). Supporting and opposing affidavits must be made on  
16 personal knowledge and must set forth such facts as would be admissible in evidence.  
17 I.R.C.P. 56(e). A mere scintilla of evidence or a slight doubt as to the facts is not  
18 sufficient to withstand summary judgment. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85,  
19 87, 730 P.2d 1005, 1007 (1986). Moreover, the existence of disputed facts will not  
20 defeat summary judgment when the plaintiff fails to make a showing sufficient to  
21 establish the existence of an element essential to his case, and on which he will bear  
22 the burden of proof at trial. *Pounds v. Denison*, 120 Idaho 425, 426, 816 P.2d 982, 983  
23 (1991).  
24  
25  
26

**DISCUSSION**

1  
2 Farm Bureau is correct that the issue in this case is essentially a matter of first  
3 impression in Idaho. Farm Bureau argues that the Ms. Eisenman's estate is not entitled  
4 to receive underinsured motorist benefits under the insurance policy because Ms.  
5 Eisenman was not legally entitled to recover from the owner of the underinsured  
6 motorist in this case based on Idaho's Wrongful Death Act, Idaho Code § 5-311(1)  
7 which states that:

8       When the death of a person is caused by the wrongful act or neglect of  
9 another, his or her heirs or personal representatives on their behalf may  
10 maintain an action for damages against the person causing the death, or  
11 in case of the death of such wrongdoer, against the personal  
12 representative of such wrongdoer, whether the wrongdoer dies before or  
13 after the death of the person injured. If any other person is responsible for  
14 any such wrongful act or neglect, the action may also be maintained  
against such other person, or in case of his or her death, his or her  
personal representatives. In every action under this section, such  
damages may be given as under all the circumstances of the case as may  
be just.

15 I.C. § 5-311(1).

16 Idaho's uninsured motorist and underinsured motorist statute provides that:

17       A named insured shall have the right to reject either or both uninsured  
18 motorist coverage or underinsured motorist coverage, which rejection  
19 must be in writing or in an electronic record as authorized by the uniform  
electronic transactions act, chapter 50, title 28, Idaho Code, and such  
20 rejection shall be effective as to all other insureds and named insureds;  
and after which such rejected coverage need not be provided in or  
21 supplemental to a renewal or replacement policy issued by the same  
insurer or an affiliate of that insurer.

22 I.C. 41-2502(2).

23       The Defendants argue that Farm Bureau's underinsured motorist provision  
24 clearly and unambiguously promises to pay any and all damages that Ms. Eisenman  
25 would be legally entitled to recover against Ms. Zahm. Furthermore, the Defendants  
26

1 assert that Ms. Eisenman is entitled to recover her children's wrongful death damages  
2 pursuant to I.C. § 5-311. The legal issues in this case are substantial. However, there  
3 appear to be no genuine issues of fact before the Court. Although there is an issue  
4 regarding the meaning of a provision of the insurance policy, the dispute is about how  
5 the language in the insurance policy interacts with Idaho's Wrongful Death Act. As  
6 such, the question is a matter of statutory construction which is a matter of law that can  
7 be determined by this Court on summary judgment.

8         The Defendants in this case are the personal representatives of Ms. Eisenman's  
9 estate and they have brought this action on her behalf pursuant to I.C. § 5-311 which  
10 was appropriate. The next step in the analysis is to look at the language of the  
11 insurance policy to see if Ms. Eisenman's personal representatives are entitled to  
12 recover pursuant to I.C. § 5-311 and it appears that they are. In *Sprouse v. Hawk*, 574  
13 So.2d 754, 756-57 (Ala. 1990), the Alabama Supreme Court held that uninsured  
14 motorist benefits under an insurance policy represented damages recoverable under  
15 the wrongful death statute and were to be distributed in accordance with the wrongful  
16 death statute, even though no wrongful death action was brought against uninsured  
17 motorist to determine liability. The Alabama Wrongful Death Statute provides that:

18  
19             A personal representative may commence an action and recover such  
20 damages as the jury may assess in a court of competent jurisdiction within  
21 the State of Alabama, and not elsewhere, for the wrongful act, omission,  
22 or negligence of any person, persons, or corporation, his or their servants  
23 or agents, whereby the death of his testator or intestate was caused,  
provided the testator or intestate could have commenced an action for  
such wrongful act, omission, or negligence if it had not caused death.

24 Ala. Code 1975 § 6-5-410. The insurance policy at issue in *Sprouse* provided that "[w]e  
25 [the insurer] will pay damages for bodily injury an insured is legally entitled to collect  
26

1 from the owner or driver of an uninsured motor vehicle." 574 So.2d at 757 n.3. Based  
2 on the language in the Alabama Wrongful Death Statute and the language of the  
3 insurance policy at issue, the Court determined that the personal representatives of the  
4 deceased's estate were entitled to recover amounts paid under the underinsured  
5 motorist insurance policy. *Id.* at 756-57.

6 Similarly, the insurance policy at issue here provides that "any amount due under  
7 this coverage" may be paid "[t]o a person authorized by law to receive such payment, or  
8 to a person who is legally entitled to recover the damages which the payment  
9 represents." As such, the question then becomes whether the Defendants are entitled  
10 authorized by law to recover damages under the insurance policy pursuant to Idaho's  
11 Wrongful Death Act. Idaho Code § 5-311(1) provides that:  
12

13 When the death of a person is caused by the wrongful act or neglect of  
14 another, his or her heirs or personal representatives on their behalf may  
15 maintain an action for damages against the person causing the death, or  
16 in case of the death of such wrongdoer, against the personal  
17 representative of such wrongdoer, whether the wrongdoer dies before or  
18 after the death of the person injured. If any other person is responsible for  
19 any such wrongful act or neglect, the action may also be maintained  
20 against such other person, or in case of his or her death, his or her  
21 personal representatives. In every action under this section, such  
22 damages may be given as under all the circumstances of the case as may  
23 be just.

19 I.C. § 5-311(1).

20 All of the Defendants in this case meet the definition of persons entitled to  
21 recover pursuant to Idaho's Wrongful Death Act. Michael Eisenman and Kathryn Marie  
22 are personal representatives of the Estate of Patricia Eisenman and they are her heirs.  
23 Rebecca McGavin and Peter Eisenman are also entitled to recover under the statute  
24 because they are Patricia Eisenman's heirs. Furthermore, the underinsured motorist  
25  
26

1 provision of the insurance policy provides that:

2 We will pay damages which an insured is legally entitled to recover from  
3 the owner or operator of an underinsured motor vehicle because of bodily  
injury sustained by an insured and caused by an occurrence.

4 The insurance policy in this case specifically provided insurance coverage for  
5 Patricia Eisenman in the event of physical injury or death. Furthermore, the Defendants  
6 are entitled to recover those damages pursuant to Idaho's Wrongful Death Act.  
7 Therefore, the Court grants the Defendants' Motion for Summary Judgment and denies,  
8 the Plaintiff's Motion for Summary Judgment.

9 **CONCLUSION**

10 The Court GRANTS the Defendants' Motion for Summary Judgment and  
11 DENIES the Plaintiff's Motion for Summary Judgment. The Defendant will prepare a  
12 judgment pursuant to IRCP Rule 54(b).  
13

14 DATED this 22<sup>nd</sup> day of February 2011.

15   
16 MICHAEL McLAUGHLIN  
17 DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26

CERTIFICATE OF MAILING

I hereby certify that on the 22<sup>nd</sup> day of February 2011, I mailed (served) a true and correct copy of the within instrument to:

Michael W. Moore  
MOORE & ELIA, LLP  
1001 W Idaho St, Ste 400  
PO Box 6756  
Boise, ID 83707  
Fax: (208) 336-7031

Rodney R. Saetrum  
SAETRUM LAW OFFICES  
3046 S Bown Wy  
PO Box 7425  
Boise, ID 83707  
Fax: (208) 336-0448

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Clerk

RECEIVED  
MAR 01 2011  
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
Ada County Clerk

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. *2:18*

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MAR 14 2011

CHRISTOPHER D. RICH, Clerk  
By CINDY HO  
DEPUTY

FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO, )

Case No. CV OC 10-10533

Plaintiff, )

vs. )

**RULE 54(b) CERTIFICATE OF FINAL  
JUDGMENT**

MICHAEL JOHN EISENMAN and )  
KATHRYN MARIE, individually, and co- )  
personal representatives of the ESTATE )  
OF PATRICIA EISENMAN; REBECCA )  
L. McGAVIN and PETER EISENMAN, )  
individually, )

Defendants. )

ESTATE OF PATRICIA EISENMAN, by )  
and through Michael John Eisenman and )  
Kathryn Marie, personal representatives, )

Counter-claimant )

vs. )

FARM BUREAU MUTUAL )  
INSURANCE COMPANY OF IDAHO )

Counter-defendant )

**WITH RESPECT TO** the issues determined and ordered by way of this Court's February 22, 2011, *Memorandum Decision RE: (1) Plaintiff's Motion for Summary Judgment and (2) Defendants' Motion for Summary Judgment*, and for good cause appearing herein:

**IT IS HEREBY CERTIFIED**, in accordance with Rule 54(b) of the Idaho Rules of Civil Procedure, that this Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court does hereby direct that the above-referenced order shall be

*PHO*



a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 3 day of MARCH, 2011.



MICHAEL McLAUGHLIN  
DISTRICT JUDGE


**CERTIFICATE OF MAILING**

I hereby certify that on the 15 day of March, 2011, I mailed (served) a true and correct copy of the within instrument to:

Michael W. Moore  
Brady J. Hall  
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Rodney R. Saetrum  
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3046 S. Bown Way.  
P.O. Box 7425  
Boise, ID 83707  
Fax: (208) 336.0448

CHRISTOPHER D. RICH  
Clerk of the District Court

  
Deputy Clerk

APR 08 2011

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

Rodney R. Saetrum, ISB No. 2921  
Robert R. Gates, ISB No. 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

Attorneys for Defendant Farm Bureau  
Mutual Insurance Company of Idaho

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Appellant,

v.

MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal  
representatives of the ESTATE OF PATRICIA  
EISENMAN; REBECCA L. McGAVIN AND  
PETER EISENMAN individually,

Respondent.

Case No. CV OC 1010533

**NOTICE OF APPEAL**

**Fee Category T: \$101.00**  
**(\$15.00 District Court)**  
**(\$86.00 Idaho Supreme Court)**

TO: THE ABOVE NAMED RESPONDENTS, MICHAEL JOHN EISENMAN AND  
KATHRYN MARIE, INDIVIDUALLY, AND CO-PERSONAL REPRESENTATIVES  
OF THE ESTATE OF PATRICIA EISENMAN; REECCA L. McGAVIN AND PETER  
EISENMAN, INDIVIDUALLY, AND THEIR ATTORNEYS, MICHAEL W. MOORE  
AND BRADY J. HALL, MOORE & ELIA, LLP, P.O. BOX 6756, BOISE, IDAHO  
83707, AND THE CLERK OF THE ABOVE-ENTITLED COURT, CHRISTOPHER D.  
RICH

NOTICE IS HEREBY GIVEN THAT:

1. Appellant, Farm Bureau Mutual Insurance Company of Idaho appeals against  
Respondents to the Idaho Supreme Court from the Memorandum Decision re: (1) Plaintiff's Motion  
for Summary Judgment; and (2) Defendants' Motion for Summary Judgment entered on February

BT

22, 2011; and the Rule 54(b) Certificate of Final Judgment, entered in the above-entitled declaratory judgment action on the 14<sup>th</sup> day of March, 2011, the Honorable Michael McLaughlin, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable under and pursuant to Rule 11(a)(1) and (3) I.A.R.

3. The following are a preliminary statement of the issues on appeal which appellant intends to assert in the appeal.

a. Whether the district court erred as a matter of law in finding that the personal representatives of Ms. Eisenman's estate and her heirs, were entitled to recover damages from the underinsured motorist part of Ms. Eisenman's Farm Bureau automobile insurance policy because the personal representatives and heirs were authorized by law to recover damages under the policy pursuant to Idaho's Wrongful Death Act.

b. Whether Farm Bureau's uninsured motorist policy provides for the recovery of damages only to persons defined as insureds under the insuring clause of the underinsured motorist part of Ms. Eisenman's Farm Bureau automobile insurance policy.

c. Whether the district court erred in finding that the personal representatives of Ms. Eisenman's estate and her heirs were entitled to recover damages under the underinsured motorist loss payable clause of Ms. Eisenman's Farm Bureau automobile insurance policy rather than under the insuring clause.

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

5. (a) A partial reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in hard copy and electronic format.

6. 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. Estate of Patricia Eisenman's motion for summary judgment;
- b. Memorandum in support of estate of Patricia Eisenman's motion for summary judgment;
- c. Affidavit of counsel Brady Hall in support of estate of Patricia Eisenman's motion for summary judgment;
- d. Response to Defendants' motion for summary judgment;
- e. Affidavit of Robert R. Gates in support of Plaintiff's Response to Defendants' motion for summary judgment;
- f. Plaintiff's motion for summary judgment;
- g. Plaintiff's memorandum in support of summary judgment;
- h. Affidavit of Counsel; Response brief in opposition to Farm Bureau's motion for summary judgment;
- i. Plaintiff's reply brief; Reply in support of estate of Eisenman's motion for summary judgment; and
- j. Memorandum decision re: (1) Plaintiff's motion for summary judgment; and (2) Defendants' motion for summary judgment.

7. No additional charts or pictures offered or admitted as exhibits are to be copied and sent to the Supreme Court.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Kim Madsen  
Ada County Courthouse  
200 West Front St.  
Boise, Idaho 83702-7300  
Phone: 208/287-7583

(b) That the Clerk of the Fourth District Court, Ada County has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation 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 I.A.R.

DATED THIS 17 day of April, 2011.

SAETRUM LAW OFFICES



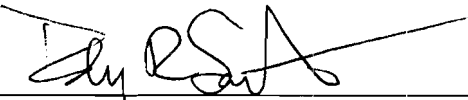
Rodney R. Saetrum  
Attorneys for Plaintiff Farm Bureau  
Mutual Insurance Company of Idaho

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 7 day of April 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Michael W. Moore  
Brady J. Hall  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Rodney R. Saetrum

Rodney R. Saetrum, ISB No. 2921  
Robert R. Gates, ISB No. 2045  
SAETRUM LAW OFFICES  
P.O. Box 7425  
Boise, Idaho 83707  
Telephone: (208) 336-0484

FILED  
APR 19 2011  
CHRISTOPHER D. RICH, CLERK  
DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IDAHO

Attorneys for Defendant Farm Bureau  
Mutual Insurance Company of Idaho

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Appellant,

v.

MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal  
representatives of the ESTATE OF PATRICIA  
EISENMAN; REBECCA L. McGAVIN AND  
PETER EISENMAN individually,

Respondent.

Case No. CV OC 1010533

**AMENDED NOTICE OF  
APPEAL**

TO: THE ABOVE NAMED RESPONDENTS, MICHAEL JOHN EISENMAN AND KATHRYN MARIE, INDIVIDUALLY, AND CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF PATRICIA EISENMAN; REECCA L. McGAVIN AND PETER EISENMAN, INDIVIDUALLY, AND THEIR ATTORNEYS, MICHAEL W. MOORE AND BRADY J. HALL, MOORE & ELIA, LLP, P.O. BOX 6756, BOISE, IDAHO 83707, AND THE CLERK OF THE ABOVE-ENTITLED COURT, CHRISTOPHER D. RICH

NOTICE IS HEREBY GIVEN THAT:

1. Appellant, Farm Bureau Mutual Insurance Company of Idaho appeals against Respondents to the Idaho Supreme Court from the Memorandum Decision re: (1) Plaintiff's Motion for Summary Judgment; and (2) Defendants' Motion for Summary Judgment entered on February 22, 2011; and the Rule 54(b) Certificate of Final Judgment, entered in the above-entitled declaratory

*MK*



judgment action on the 14<sup>th</sup> day of March, 2011, the Honorable Michael McLaughlin, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable under and pursuant to Rule 11(a)(1) and (3) I.A.R.

3. The following are a preliminary statement of the issues on appeal which appellant intends to assert in the appeal.

a. Whether the district court erred as a matter of law in finding that the personal representatives of Ms. Eisenman's estate and her heirs, were entitled to recover damages from the underinsured motorist part of Ms. Eisenman's Farm Bureau automobile insurance policy because the personal representatives and heirs were authorized by law to recover damages under the policy pursuant to Idaho's Wrongful Death Act.

b. Whether Farm Bureau's uninsured motorist policy provides for the recovery of damages only to persons defined as insureds under the insuring clause of the underinsured motorist part of Ms. Eisenman's Farm Bureau automobile insurance policy.

c. Whether the district court erred in finding that the personal representatives of Ms. Eisenman's estate and her heirs were entitled to recover damages under the underinsured motorist loss payable clause of Ms. Eisenman's Farm Bureau automobile insurance policy rather than under the insuring clause.

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

5. (a) A partial reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in hard copy and electronic format. The hearing on the motions for

summary judgment conducted before Judge Michael McLaughlin on January 27, 2011.

6. 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. Estate of Patricia Eisenman's motion for summary judgment;
- b. Memorandum in support of estate of Patricia Eisenman's motion for summary judgment;
- c. Affidavit of counsel Brady Hall in support of estate of Patricia Eisenman's motion for summary judgment;
- d. Response to Defendants' motion for summary judgment;
- e. Affidavit of Robert R. Gates in support of Plaintiff's Response to Defendants' motion for summary judgment;
- f. Plaintiff's motion for summary judgment;
- g. Plaintiff's memorandum in support of summary judgment;
- h. Affidavit of Counsel; Response brief in opposition to Farm Bureau's motion for summary judgment;
- i. Plaintiff's reply brief; Reply in support of estate of Eisenman's motion for summary judgment; and
- j. Memorandum decision re: (1) Plaintiff's motion for summary judgment; and (2) Defendants' motion for summary judgment.

7. No additional charts or pictures offered or admitted as exhibits are to be copied and sent to the Supreme Court.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Kim Madsen  
Ada County Courthouse  
200 West Front St.  
Boise, Idaho 83702-7300  
Phone: 208/287-7583

(b) That the Clerk of the Fourth District Court, Ada County has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation 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 I.A.R.

DATED THIS 19 day of April, 2011.

SAETRUM LAW OFFICES



Robert R. Gates  
Attorneys for Plaintiff Farm Bureau  
Mutual Insurance Company of Idaho

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 19 day of April 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below and addressed to:

Michael W. Moore  
Brady J. Hall  
Moore & Ellia, LLP  
1001 W. Idaho Suite 400  
P.O. Box 6756  
Boise, Idaho 83707

U.S. Mail  
 Hand Delivery  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Robert R. Gates

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:01

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TO: Clerk of the Court  
Idaho Supreme Court  
451 West State Street  
Boise, Idaho 83720

JUN 06 2011


CHRISTOPHER D. RICH, Clerk  
By MARGARET LUNDQUIST  
DEPUTY

(  
( SC No. 38703-2011  
(  
(  
( FARM BUREAU  
(  
( vs.  
(  
( EISENMAN

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on April 28, 2011, I lodged an appeal transcript of 38 pages in length for the above-referenced appeal with the District Court Clerk of the County of Ada in the 4th Judicial District

This transcript contains hearings held on  
.....January 27, 2011

  
KIM I. MADSEN  
Ada County Courthouse  
200 West Front Street  
Boise, Idaho 83702  
(208) 287-7583

*live*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff-Counterdefendant-Appellant,  
vs.

MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal representatives of  
the ESTATE OF PATRICIA EISENMAN,

Defendants-Counterclaimants-Respondents,

REBECCA L. MCGAVIN and PETER EISENMAN,  
individually,

Defendants-Respondents.

Supreme Court Case No. 38703

CERTIFICATE OF EXHIBITS

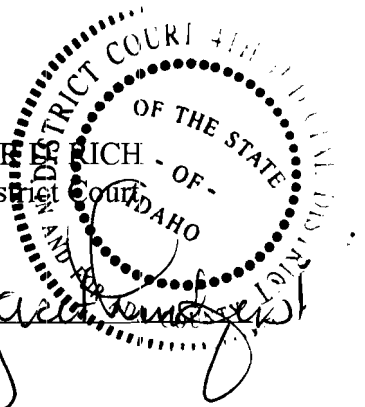
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of  
the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the  
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said  
Court this 7th day of June, 2011.

CHRISTOPHER D. RICH - OF -  
Clerk of the District Court

By *Margaret Sandberg*  
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,  
  
Plaintiff-Counterdefendant-Appellant,  
vs.  
  
MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal representatives of  
the ESTATE OF PATRICIA EISENMAN,  
  
Defendants-Counterclaimants-Respondents,  
  
REBECCA L. MCGAVIN and PETER EISENMAN,  
individually,  
  
Defendants-Respondents.

Supreme Court Case No. 38703

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

RODNEY R. SAETRUM  
ATTORNEY FOR APPELLANT  
BOISE, IDAHO

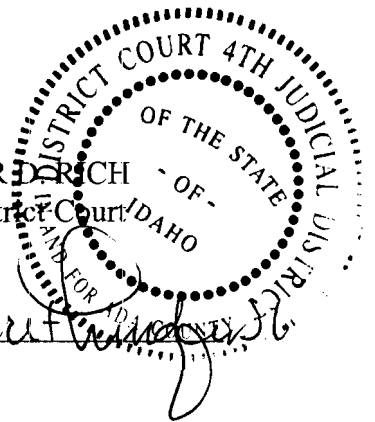
MICHAEL W. MOORE  
ATTORNEY FOR RESPONDENT  
BOISE, IDAHO

JUN 08 2011

Date of Service: \_\_\_\_\_

CHRISTOPHER D. RICH - OF -  
Clerk of the District Court IDAHO

By *Margaret...*  
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF IDAHO,

Plaintiff-Counterdefendant-Appellant,  
vs.

MICHAEL JOHN EISENMAN and KATHRYN  
MARIE, individually, and co-personal representatives of  
the ESTATE OF PATRICIA EISENMAN,

Defendants-Counterclaimants-Respondents,

REBECCA L. MCGAVIN and PETER EISENMAN,  
individually,

Defendants-Respondents.

Supreme Court Case No. 38703

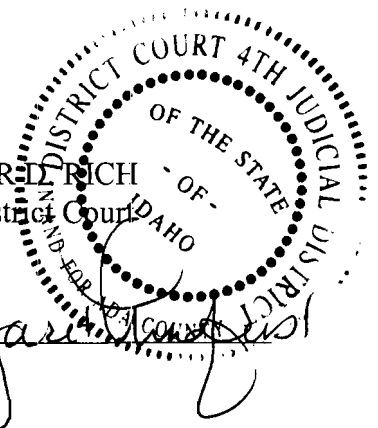
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 8th day of April, 2011.

CHRISTOPHER D. RICH - OF -  
Clerk of the District Court OF THE STATE  
IDAHO

By *Margaret [Signature]*  
Deputy Clerk



CERTIFICATE TO RECORD

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