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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,)	
)	
Plaintiff/Appellant,	)	Docket No. 44722
)	
vs.	)	Franklin Co. Case No. CV-2016-195
)	
IDAHO COUNTIES RISK)	
MANAGEMENT PROGRAM (ICRMP),)	
)	
Defendant/Respondent.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Franklin

Honorable MITCHELL W. BROWN
District Judge

APPEARANCES:

Counsel for Appellants:

Blake S. Atkin
ATKIN LAW OFFICE
7579 North Westside Highway
Clifton, ID 83228
batkin@atkinlawoffices.net

Counsel for Respondent:

Phillip J. Collaer
ANDERSON, JULIAN & HULL, LLC
POB 7426
Boise, ID 83707-7426
pcollaer@jhlaw.com

Val D Westover vs. Idaho Counties Risk Management Program

Date	Code	User	Judge
6/3/2016	NCOC	HAMPTON	New Case Filed - Other Claims
	SMIS	HAMPTON	Summons Issued
	APER	HAMPTON	Plaintiff: Westover, Val D Appearance Blake S. Atkin
		HAMPTON	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Atkin, Blake S. (attorney for Westover, Val D) Receipt number: 0001289 Dated: 6/3/2016 Amount: \$221.00 (Check) For: Westover, Val D (plaintiff)
6/24/2016	CERT	HAMPTON	Certificate of Service-Atkin
6/27/2016		HAMPTON	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: ANDERSON, JULIAN & HULL, LLP Receipt number: 0001504 Dated: 6/27/2016 Amount: \$136.00 (Check) For: Idaho Counties Risk Management Program, (defendant)
	APER	HAMPTON	Defendant: Idaho Counties Risk Management Program, Appearance Phillip J. Collaer
	ANSW	HAMPTON	Answer filed and Notice of Appearance by Phillip J. Collaer
	RETN	HAMPTON	Return of Service Summons and Complaint
	AFFD	HAMPTON	Affidavit of Service
6/28/2016	ORDR	HAMPTON	Order for Submission of Information for Scheduling Order
7/13/2016	STIP	HAMPTON	Stipulation-Atkin
7/19/2016	MISC	HAMPTON	Joint Statement-Atkin
7/21/2016	MOTN	HAMPTON	Defendant's Motion for Protective Order-Collaer
	MEMO	HAMPTON	Memorandum in Support of Defendant's Motion for Protective Order-Collaer
	NOTC	HAMPTON	Notice of Service-Collaer
	MISC	HAMPTON	Joint Statement-Atkin
	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 07/31/2017 09:00 AM) 1st setting
	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 11/13/2017 09:00 AM) 2nd setting
7/22/2016	ORDR	HAMPTON	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order
8/22/2016	MOTN	HAMPTON	Defendant's Motion for Summary Judgment
	MEMO	HAMPTON	Memorandum in Support of Defendants' Motion for Summary Judgment-Collaer
	AFFD	HAMPTON	Affidavit of Phillip J. Collaer in Support of Defendants' Motion for Summary Judgment-Collaer


Val D Westover vs. Idaho Counties Risk Management Program

Date	Code	User	Judge
8/22/2016	AFFD	HAMPTON	Affidavit of Jeff Boice in Support of Defendants' Motion for Summary Judgment-Collaer
	NOTC	HAMPTON	Notice of Hearing-Collaer
	HRSC	HAMPTON	Hearing Scheduled (Motion for Summary Judgment 09/29/2016 02:00 PM)
9/14/2016	MEMO	HAMPTON	Memorandum in Support of Motion to Compel and in Opposition to Motion for Summary Judgment-Atkin
9/19/2016	STIP	HAMPTON	Stipulation-Atkin
	NOTC	HAMPTON	Notice of Hearing-Atkin
	HRSC	HAMPTON	Hearing Scheduled (Motion to Compel 09/29/2016 02:00 PM)
9/26/2016	REPL	HAMPTON	Reply Brief in Support of Defendants' Motion for Summary Judgment-Collaer
	MEMO	HAMPTON	Response Memorandum in Opposition to Plaintiff's Motion to Compel Reply in Support of Motion for Protective Order-Collaer
9/29/2016	DCHH	HAMPTON	Hearing result for Motion to Compel scheduled on 09/29/2016 02:00 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: less than 100 pages
	DCHH	HAMPTON	Hearing result for Motion for Summary Judgment scheduled on 09/29/2016 02:00 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: less than 100 pages
	MOTN	KARENV	Motion to Compel
10/1/2016	MINE	HAMPTON	Minute Entry & Order for hearing held on Sept 29, 2016
11/1/2016	ORDR	HAMPTON	Order Re Defendants' Motion for Summary Judgment
11/14/2016	MDEC	HAMPTON	Memorandum Decision and Order on ICRMP'S Motion for Summary Judgment
	STAT	HAMPTON	Case Status Changed: closed
	CDIS	HAMPTON	Civil Disposition
11/15/2016	JDMT	HAMPTON	Judgment
11/28/2016	MOTN	HAMPTON	Defendant ICRMP's Motion for Attorneys' Fees and Costs-Collaer
	MEMO	HAMPTON	Defendant ICRMP's Memorandum in Support of Motion for Attorney's Fees and Costs-Collaer
	MEMO	HAMPTON	Verified Memorandum of Costs and Attorneys' Fees-Collaer

Val D Westover vs. Idaho Counties Risk Management Program

Date	Code	User	Judge
12/12/2016	OPPO	HAMPTON	Opposition to ICRMP's Motion for Attorney's Fees and Costs-Atkin
12/13/2016		DANAL	Filing: L3 - Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court Paid by: Atkin, Blake S. (attorney for Westover, Val D) Receipt number: 0003037 Dated: 12/13/2016 Amount: \$221.00 (Check) For: Westover, Val D (plaintiff)
	APSC	HAMPTON	Appealed To The Supreme Court
	STAT	HAMPTON	Case Status Changed: Inactive
12/20/2016	BNDC	HAMPTON	Bond Posted - Cash (Receipt 3096 Dated 12/20/2016 for 100.00)
12/21/2016	MEMO	HAMPTON	ICRMP'S Reply Memorandum in Support of Motion for Attorney's Fees and Costs-Collaer
12/23/2016	CLCERT	HAMPTON	Clerk's Certificate of Appeal
12/29/2016	HRSC	HAMPTON	Hearing Scheduled (Motion for Attorney fees and Costs 01/26/2017 02:30 PM) ICRMP Motion
1/3/2017	NOTC	HAMPTON	Notice of Telephonic Hearing RE Defendants' Motion for Attonreys Fees and Costs-Collaer
1/26/2017	DCHH	HAMPTON	Hearing result for Motion for Attorney fees and Costs scheduled on 01/26/2017 02:30 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: less than 100 pages ICRMP Motion
2/2/2017	MEOR	HAMPTON	Minute Entry And Order held January 26, 2017

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7579 North Westside Highway
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FILED
16 JUN -3 AM 11:34
FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)
)
)

Plaintiff)
)
)

v.)
)
)

Idaho Counties Risk Management Program)
(ICRMP),)
)

Defendant.)
)

COMPLAINT
(Jury Trial Demanded)

Case No. CV-2016-195

Judge: Mitchell W. Brown
Judge _____

Plaintiff complains of Defendant as follows:

PARTIES

1. Plaintiff is a citizen of this state and a resident of Franklin County, State of Idaho who has been aggrieved by the existence and unlawful actions of the Defendant in this matter.
2. Defendant, Idaho Counties Management Program (ICRMP) is an entity purportedly organized pursuant to Idaho Code Sections 67-2326 through 67-2333 that purports to exercise the authority of its local government members to conduct litigation brought against its local government members and to pay judgments on behalf of those members.

FACTS

1. On April 20, 2015, Plaintiff granted an easement to the power company over property owned by the Plaintiff as part of an agreement to obtain service to his property.
2. Without authority to do so the Franklin County Assessor wrote a letter to the power company asserting that Plaintiff did not own the property, thus slandering Plaintiff's title to the property.
3. On July 30, 2015, Plaintiff filed a lawsuit against the Franklin County Assessor because the Assessor had illegally slandered Plaintiff's title to property owned by him in Franklin County.
4. On January 15, 2016, the parties met in court-ordered mediation.
5. The focus of that mediation was how much the county assessor would pay in attorney fees to the Plaintiff because the county assessor had retracted its slanderous letter before the mediation.
6. The Franklin County Assessor announced during the mediation that he could not offer anything in way of settlement of Plaintiff's claims for attorney fees because he had no authority from ICRMP to offer anything in settlement.
7. Plaintiff was then informed that ICRMP controlled the litigation, provided the lawyers who were defending the Franklin County Assessor, would ultimately be responsible to pay any judgment Plaintiff might obtain against the county assessor for attorney fees, and asserted the right to control the negotiations at the mediation.

CAUSE OF ACTION

(Declaratory Judgment pursuant to Idaho Code Section 10-1202)

8. Idaho Code Section 12-117 in order to promote some modicum of accountability on the part of local government entities for their conduct provides that where a state agency or a political subdivision is in litigation with a private citizen and has acted without a reasonable basis in fact or law, the court “shall” award attorney’s fees to the prevailing party.
9. But the legislature went further. The brunt of the attorney fees award occasioned by the wrongful conduct of a political subdivision is to be felt locally. Idaho Code Section 12-117 (3) specifically states that “Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision.”
10. ICRMP is an entity whose purpose is to eliminate the ameliorative purpose of Section 12-117(3) by shifting the burden of attorney fees occasioned by the wrongful conduct of local government officials from their operating budget to the ICRMP risk management pool.
11. ICRMP thus flies in the face of the clear legislative policy set out in Idaho Code Section 12-117(3) that local officials who act without a reasonable basis in fact or law feel the consequences of their actions at the local level, thus promoting responsible governmental action.
12. By taking over the litigation of local governments who are accused of acting unlawfully, and by agreement to indemnify them with funds other than funds from their regular operating budget, ICRMP is itself acting illegally.
13. While there may be considerable doubt whether an insurance arrangement such as ICRMP is at all authorized by Idaho Code Sections 67-2326 through 67-2329, those

sections make it clear that joint action authorized under those provisions cannot be used to thwart other legislative purposes.

14. For instance, Section 67-2328(a) specifically limits the power of such a joint action entity:

Any power, privilege or authority, authorized by the Idaho Constitution, statute or charter, held by the state of Idaho or a public agency of said state, may be exercised and enjoyed jointly with the state of Idaho or any other public agency of this state having the same powers, privilege or authority; but never beyond the limitation of such powers, privileges or authority; (emphasis added)

15. By purporting to pay judgments for attorney fees from a source other than the regular operating budget of the agency being sued, ICRMP has acted “beyond the limitation of the powers, privileges and authority of Franklin County that is required by statute to pay those fees out of the county assessor’s regular operating budget.
16. The consequence of the illegal operation of ICRMP is that local government bears little direct responsibility for their illegal conduct contrary to the public policy sought to be achieved by the legislature through enactment of Idaho Code Section 12-117(3).
17. Those consequences are illustrated by the facts in this case in which the county assessor showed up at court-ordered mediation with no authority to pay anything in settlement of Plaintiff’s claims for attorney fees because any ultimate judgment would be paid, not from the regular operating budget of the county assessor, but by the ICRMP insurance pool.
18. Plaintiff is entitled to a declaratory judgment that ICRMP is an illegal entity, not authorized by Idaho law and/or that its conduct in controlling litigation between citizens and their local government by providing the defense and indemnifying for attorney fees

undermines principles of good governance as adopted by the legislature in Idaho Code Section 12-117(3) is illegal.

Wherefore, Plaintiff prays for judgment against ICRMP:

1. For a declaration that ICRMP is an illegal entity, not authorized by Idaho law.
2. That the conduct of ICRMP in controlling litigation between citizens and their local government by providing the defense and indemnifying for attorney fees undermines principles of good governance as adopted by the legislature in Idaho Code Section 12-117(3) and is therefore illegal.
3. For costs of Court and reasonable attorney fees.

Dated this __ day of June, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
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FILED
16 JUN -3 AM 11:35
FRANKLIN COUNTY CLERK
lh
DEPUTY

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)
)
)
Plaintiff)
)
)
v.)
)
)
Idaho Counties Risk Management Program)
(ICRMP),)
)
Defendant.)

SUMMONS

Case No. CV-2016-195

Judge Judge: Mitchell W. Brown

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF: THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

**To: IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP)
3100 VISTA AVENUE, SUITE 300
BOISE, IDAHO 83705**

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Plaintiffs in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiffs attorney, as designated above.

To determine whether you must pay a filing fee with you response, contact the Clerk of the above-named court.

DATED this 3 day of June, 2016.



CLERK OF THE DISTRICT COURT

Linda Hampton
Deputy Clerk

FILED

16 JUN 24 PM 4: 53

FRANKLIN COUNTY CLERK

DEPUTY

Blake S. Atkin #6903
ATKIN LAW OFFICES, P.C.
7579 North West Side Highway
Clifton, Idaho 83228
Telephone: (801) 533-0300
Facsimile: (801) 533-0380
Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

<p>VAL D WESTOVER, Plaintiff</p> <p>v.</p> <p>IDAHO COUNTIES RISK MANGEMENT PROGRAM (ICRMP), Defendant.</p>	<p>CERTIFICATE OF SERVICE</p> <p>Case No. CV-2016-195</p> <p>Judge: Brown</p>
---	--

The undersigned certifies that she caused to be served a true and correct copy of the following document as indicated below:

1. Plaintiff's First Set of Requests for Admission to Defendant
2. Plaintiff's First Set of Document Requests to Defendant
3. Plaintiff's First Set of Interrogatories to Defendant

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
Facsimile: (208) 334-5510
Email: pcollaer@aihlaw.com

X U.S. Mail X E-mail ___ Facsimile

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147
(Certificate of Service Only)

U.S. Mail E-mail Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926
(Certificate of Service Only)

U.S. Mail E-mail Facsimile

Dated this 24th day of June, 2016.

Jennifer Mariscal

Phillip J. Collaer – ISB No. #3447
ANDERSON, JULIAN & HULL LLP
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FRANKLIN COUNTY CLERK

lh
DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

2016-195
Case No. CV-2014-71-G

ANSWER

Fee Category: I(1)(a)

Fee: \$136.00

COMES NOW, the above-entitled defendant, Idaho Counties Risk Management Program (ICRMP) (the “answering defendant”), by and through its attorneys of record, Anderson, Julian & Hull LLP, answers the Plaintiff’s Complaint as follows:

FIRST DEFENSE

The plaintiff’s Complaint fails to state a claim against this answering defendant upon which relief can be granted.

SECOND DEFENSE

I.

This answering defendant denies each and every allegation of the Complaint not herein expressly and specifically admitted.

II.

Based upon information and belief, this answering defendant admits the allegations contained in ¶4 of the Complaint as it relates to this answering defendant.

III.

With respect to the allegations contained in PARTIES, ¶1 of the Complaint, this answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations relating to the plaintiff's citizenship, his residency and, therefore, denies the same. This answering defendant denies the remaining allegations in ¶1.

IV.

With respect to the allegations contained in PARTIES, ¶2 of the Complaint, this answering defendant admits that ICRMP is an Idaho Corporation and joint powers entity with its principle place of business in Boise, Idaho. It was, at all times relevant, duly authorized by the State of Idaho to conduct business relating to the sale of insurance to its members within the State of Idaho. Defendant denies all other factual allegations or inferences contained in PARTIES, ¶2.

V.

This answering defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in ¶¶ 1 and 2 and, therefore, denies the same.

VI.

With respect to the allegations contained in ¶3, this answering defendant states that the lawsuit referenced therein speaks for itself and, denies any allegations in ¶3 that are inconsistent with the allegations in the lawsuit or, the responses by Franklin County in said lawsuit.

VII.

This answering defendant denies the allegations contained in ¶¶5-7 as they relate to this answering defendant.

VIII.

This answering defendant states that the allegations contained in ¶¶8-18 of the Complaint assert legal conclusions to which no response is required. To the extent ¶¶8-18 state facts, those facts are denied as to this answering defendant.

THIRD DEFENSE

Plaintiff's demand for equitable relief is improper as, the plaintiff has an adequate remedy at law.

FOURTH DEFENSE

Plaintiff lacks standing to seek the declaratory relief claimed in the Complaint.

FIFTH DEFENSE

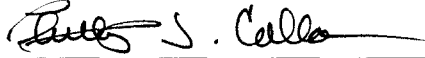
Plaintiff's claims are barred, in whole or in part, by virtue of Title VI, Chapter IX Idaho Code.

WHEREFORE, this answering defendant prays that plaintiff takes nothing by his Complaint, that the same be dismissed, and that this answering defendant be awarded

its costs of suit and attorney fees, and such other and further relief as the Court deems just.

DATED this 23 day of June, 2016.

ANDERSON, JULIAN & HULL LLP

By 
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23 day of June, 2016, I served a true and correct copy of the foregoing **ANSWER** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.
Blake S. Atkin
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Attorney for Plaintiff

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile (801) 533-0380
 Email:



Phillip J. Collaer

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16 JUN 27 PM 3:34

FRANKLIN COUNTY CLERK

KA
DEPUTY

6/17/2016

Val D Westover,
Plaintiff

v.

Idaho Counties Risk Management Program
(ICRMP),
Defendant.

FRANKLIN COUNTY - 6TH JUDICIAL DISTRICT

CV2016195

SHERIFF'S RETURN OF SUMMONS AND COMPLAINT

SHERIFF'S NUMBER: 1608796
RECEIVED BY SHERIFF ON 6/7/2016

I CERTIFY THAT DEPUTY JARROD PIRNIE #4200 PERSONALLY SERVED THE ATTACHED:
SUMMONS AND COMPLAINT (Jury Trial Demanded)

TO: IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP)
%MARY KUMMER
3100 VISTA STE 300
BOISE, ID 83705

ON: 6/16/2016 AT 13:20 HOURS

I RETURN THE SUMMONS AND COMPLAINT SERVED, AND ASSESS MY FEES AT: \$55.00 -
PAID BY ADVANCE FEES

STEPHEN BARTLETT, SHERIFF
ADA COUNTY, IDAHO

BY Sherrri Wyatt
DEPUTY SHERRI WYATT 4254

ATKIN LAW OFFICE
BLAKE S ATKIN
7579 NORTH WESTSIDE HIGHWAY
CLIFTON, ID 83228

ADA COUNTY SHERIFF'S OFFICE
CIVIL SECTION

FILED

16 JUN 27 PM 3:34

AFFIDAVIT OF SERVICE

FRANKLIN COUNTY CLERK

Val D Westover,
Plaintiff

KJ
DEPUTY

v.

Idaho Counties Risk Management Program
(ICRMP),
Defendant.

FRANKLIN COUNTY - 6TH JUDICIAL DISTRICT
COURT CASE NO: CV2016195
SHERIFF'S CASE NO 1608796

SERVE TO: Idaho Counties Risk Management Program (ICRMP)
ADDRESS: 3100 VISTA AVENUE STE 300 BOISE, ID 83705

I, JARROD PIERCE, CERTIFY THAT I PERSONALLY
(DEPUTY'S PRINTED NAME)

SERVED A COPY OF THE

- SUMMONS
- COMPLAINT (Jury Trial Demanded)

TO: MARY KUMMER
(NAME OF INDIVIDUAL RECEIVING DOCUMENTS)

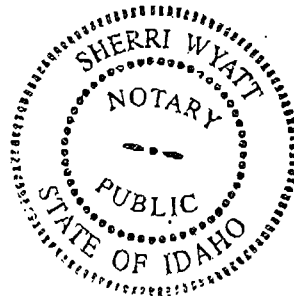
AT: 3100 VISTA STE. 300, BOISE
(ADDRESS)

ON: 6-16-16 AT 1300
(DATE) (TIME)

[Signature] ADA#: 4700
(SIGNATURE)

SUBSCRIBED AND SWORN TO before me this 17th day
of June 2016

[Signature]
Notary Public for Idaho
Residing at Boise, Ada County
My Commission Expires 4/10/2021



[Stamp] ORIGINAL

FILED

16 JUN 28 AM 10:12

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

[Signature]
DEPUTY

VAL D. WESTOVER,)	
)	
	)	Case No: CV-2016-195
)	
Plaintiff,)	
)	
VS	)	ORDER FOR SUBMISSION
	)	OF INFORMATION FOR
IDAHO COUNTIES RISK MANAGEMENT	)	SCHEDULING ORDER
PROGRAM (ICRMP),)	
)	
Defendants.)	

A Complaint was filed in this matter on June 3, 2016. The Defendants have now appeared and/or answered and the case is at issue.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 16, that the parties, through their counsel (or the parties themselves if self-represented), confer and submit to the Court, within fourteen (14) days of the date of this Order, a joint statement containing the following information:

1. Whether this matter is to be tried to the Court or to a jury.
2. Whether any service is still needed upon any unserved parties.
3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.
4. Whether the parties currently contemplate or anticipate any pre-trial motions.
5. Whether the case presents any unusual time requirements for trial preparation.
6. The number of trial days required for trial.
7. Whether the case presents any unusual times requirements for discovery.
8. Whether any party requests court-ordered mediation.
9. Two (2) TRIAL DATES, that comply with the requirements listed below. The trial date for the case will be the earliest date submitted by agreement of the parties. The reason the Court asks for two (2) trial dates is so that an optional backup trial date is available and calendared in the event the first trial date has to be continued by Motion and Order of the Court. In the event an order continuing the trial setting becomes necessary, the additional trial date avoids the need to vacate the trial setting for up to a year. Thus, the parties should plan to try the case on the first date submitted. **Therefore, do not submit less than the two (2) trial dates.**

- The two dates must be **AGREED** to by the parties and must be the specific day upon which the trial will begin.
- Each date submitted must be a MONDAY unless the Monday of that week is a holiday, then the date submitted must be a TUESDAY.
- The first agreed trial date must be a specific day *no less* than nine (9) months and *no more* than twelve (12) months from the date of this Order.
- The second agreed trial date must be a specific day *no less* than twelve (12) months and *no more* than fifteen (15) months from the date of this Order.

If the parties agree that unusual factors may justify a trial setting schedule which varies in any way from the requirements of this Order, the parties are encouraged to contact the Court and arrange for a conference to explain the reasons to deviate from this Order. Unless otherwise permitted by the Court the parties must still submit two agreed trial dates that comply with this Order.

10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

The parties shall agree as to which party shall make the joint submission but, if they cannot agree, Plaintiff shall be responsible to make the submission.

Upon receipt of this joint submission, the Court will issue an Order setting the matter for trial with appropriate dates for discovery, disclosure of witnesses, etc.


The submissions requested in the Order are deemed by the Court to constitute the scheduling conference required by IRCP 16(a). However, if either party wishes a more formal scheduling conference, please contact the Court's clerk, Linda Hampton at 852-0877 and one will be scheduled.

IT IS FURTHER ORDERED that if the parties do not file the stipulation required herein, within the fourteen (14) days set forth, the Court will set this matter for trial on the first date available to the Court.

IT IS FURTHER ORDERED that unless the Court receives written notification to the contrary, all future documents sent by the Court to counsel will be delivered electronically. Counsel is hereby instructed to provide the Court with an email address they wish to have documents delivered to. This email shall be included in the parties' response to this Order of Submission.

Counsel will also have the continuing obligation to notify the Court upon any change to the email address submitted.

Dated this 28th day of June, 2016.



MITCHELL W. BROWN
District Court

CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2016, I mailed/served a true copy of the foregoing Order for Submission of Information for Scheduling Order on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
PO Box 7426
Boise, ID 83707-7426

Method of Service:

FAXED: (801) 533-0380

FAXED: (208) 344-5510

By: Linda Hampton, Deputy Clerk

TRANSACTION REPORT

JUN/28/2016/TUE 10:40 AM

BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	JUN/28	10:38AM	18015330380	0:01:02	3	MEMORY OK	ECM 7750
002		10:39AM	12083445510	0:00:41	3	MEMORY OK	SG3 7750
TOTAL				0:01:43	6		

FILED

16 JUN 28 AM 10:12

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

[Signature]
DEPUTY

VAL D. WESTOVER,

Plaintiff,

VS

IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP),

Defendants.

Case No: CV-2016-195

ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER

A Complaint was filed in this matter on June 3, 2016. The Defendants have now appeared and/or answered and the case is at issue.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 16, that the parties, through their counsel (or the parties themselves if self-represented), confer and submit to the Court, within fourteen (14) days of the date of this Order, a joint statement containing the following information:

1. Whether this matter is to be tried to the Court or to a jury.
2. Whether any service is still needed upon any unserved parties.
3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.
4. Whether the parties currently contemplate or anticipate any pre-trial motions.
5. Whether the case presents any unusual time requirements for trial preparation.
6. The number of trial days required for trial.
7. Whether the case presents any unusual times requirements for discovery.
8. Whether any party requests court-ordered mediation.
9. Two (2) TRIAL DATES, that comply with the requirements listed below. The trial date for the case will be the earliest date submitted by agreement of the parties. The reason the Court asks for two (2) trial dates is so that an optional backup trial date is available

FILED

16 JUL 13 AM 8:12

FRANKLIN COUNTY CLERK

DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)	
)	
Plaintiff	)	STIPULATION
)	
v.)	
	)	Case No. CV-2016-195
)	
Idaho Counties Risk Management Program)	
(ICRMP),	)	Judge Brown
)	
Defendant.)	

The parties through their undersigned counsel hereby stipulate that the Joint Statement will be submitted to the Court on July 19, 2016, as Mr. Atkin is out of town.

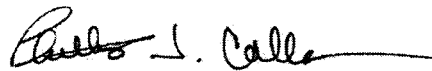
DATED this 8th day of July, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Anderson, Julian & Hull, LLP



Phillip J. Collaer
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
Facsimile: (208) 334-5510
Email: pcollaer@ajhlaw.com

U.S. Mail E-mail Facsimile

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147

U.S. Mail E-mail Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

U.S. Mail E-mail Facsimile

Dated this 12th day of July, 2016.

Jennifer Mariscal

FILED

16 JUL 19 PM 4:31

FRANKLIN COUNTY CLERK



Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,

Plaintiff

v.

Idaho Counties Risk Management Program
(ICRMP),

Defendant.

JOINT STATEMENT

Case No. CV-2016-195

Judge Brown

Both parties, through their counsel, do agree upon and submit the following joint statement:

1. Whether this matter is to be tried to the Court or to a jury.

Some issues will be tried to the Court, but there are some issues subject to jury trial and the parties have demanded and intend to preserve their rights to jury trial on all issues triable to a jury.

2. Whether any service is still needed upon any unserved parties.

No.

3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.

Yes.

4. Whether the parties currently contemplate or anticipate any pre-trial motions.

Yes.

5. Whether the case presents any unusual time requirements for trial preparation.

No.

6. The agreed amount of time required for trial.

Five (5) days.

7. Whether the case presents any unusual time requirements for discovery.

No.

8. Whether any party requests court-ordered mediation.

No.

9. Two stipulated trial dates, one no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a second no less than twelve (12) months and no more than fifteen (15) months from the date of this Order.

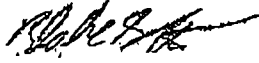
July 19-21, 2017; November 8-10, 2017

10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

No.

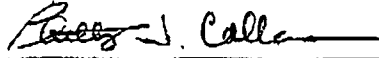
DATED this 18th day of July, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Anderson, Julian & Hull, LLP



Phillip J. Collaer
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of July, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
Facsimile: (208) 334-5510
Email: pcollaer@ajhlaw.com

U.S. Mail E-mail Facsimile

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147

U.S. Mail E-mail Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

U.S. Mail E-mail Facsimile

Dated this 19th day of July, 2016.

Jennifer Mariscal

Phillip J. Collaer – ISB No. #3447
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: pcollaer@ajhlaw.com

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16 JUL 21 AM 11:13
FRANKLIN COUNTY CLERK
DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

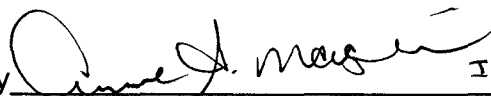
Case No. CV-2016-195

**DEFENDANT'S MOTION FOR
PROTECTIVE ORDER**

COMES NOW the Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM ("ICRMP"), by and through its attorneys of record, Anderson, Julian & Hull LLP, and files this its Motion for Protective Order in relation to Plaintiff's First Set of Document Requests to Defendant, Plaintiff's First Set of Requests for Admission to Defendant, and Plaintiff's First Set of Interrogatories to Defendant, each served June 24, 2016. This Motion is supported by a separately-filed Memorandum in Support.

DATED this 19th day of July, 2016.

ANDERSON, JULIAN & HULL LLP

By  ISB #9152
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of July, 2016, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR PROTECTIVE ORDER** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.
Blake S. Atkin
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Attorney for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (801) 533-0380
- Email:


ISO # 94152

for Phillip J. Collaer

Phillip J. Collaer – ISB No. #3447
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: pcollaer@ajhlaw.com

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15 JUL 21 AM 11:14
FRANKLIN COUNTY CLERK
DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER**

COMES NOW the Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM ("ICRMP"), by and through its attorneys of record, Anderson, Julian & Hull LLP, and files this its Memorandum in support of Motion for Protective Order in relation to Plaintiff's First Set of Document Requests to Defendant, Plaintiff's First Set of Requests for Admission to Defendant, and Plaintiff's First Set of Interrogatories to Defendant. In support of its Motion for Protective Order, Defendant states:

ARGUMENT

Plaintiff, Val D. Westover ("Plaintiff") has filed an action for declaratory judgment, asking for a declaration that ICRMP is an illegal entity which is not authorized by Idaho

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR PROTECTIVE
ORDER- 1**

law, and that the conduct of ICRMP in providing a defense to Franklin County, Idaho in an underlying slander of title action “undermines the principles of good governance . . .”

In sum, Plaintiff is alleging that ICRMP has violated state law by providing insurance coverage to governmental entities—such as Franklin County—that are members of its program. The Idaho Tort Claims Act (“ITCA”) envisions governmental entities such as Franklin County will purchase casualty insurance. At I.C. § 6-923 the Act provides:

Authority of political subdivisions to purchase insurance. All political subdivisions of the state shall have the authority to purchase the necessary liability insurance for themselves and their employees.

Franklin County was empowered to purchase insurance from ICRMP or any other insurance company. This is a purely legal issue which can be resolved by the Court on summary judgment, and does not require the exchange of discovery.

In addition, the Plaintiff does not have standing to bring her lawsuit. As a third-party claimant, Plaintiff is not entitled to bring a direct action against another party’s—Franklin County’s—insurance company, ICRMP. *See, e.g., Pocatello Indus. Park Co. v. Steel W., Inc.*, 101 Idaho 783, 791, 621 P.2d 399, 407 (1980) (“It is well established that absent a contractual or statutory provision authorizing the action, an insurance carrier cannot be sued directly and cannot be joined as a party defendant . . . We are aware of no direct action statute in Idaho.”). *See also Hartman v. United Heritage Prop. & Cas. Co.*, 141 Idaho 193, 199, 108 P.3d 340, 346 (2005) (reiterating “no-direct-action rule”);

The issue of standing is also a purely legal issue that may be resolved on summary judgment. *See Thomson v. City of Lewiston*, 137 Idaho 473, 476, 50 P.3d

488, 491 (2002) (holding that summary judgment was a proper method for dismissing a case based on a lack of standing). Thus the case hinges on legal, not factual, issues, and factual discovery is unnecessary and should not be allowed. This Court may issue a protective order forbidding the discovery sought, specifying the terms for the disclosure of the discovery, or forbidding inquiry into certain matters/limiting the scope of discovery to certain matters. Idaho Rule of Civil Procedure 26(c) provides

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters . . .

Since the case raises purely legal issues—as noted above—the Court may, and should, suspend discovery without allowing “a complicated foray into the facts.” **See** ***Serv. Employees Int’l Union, Local 6 v. Idaho Dep’t of Health & Welfare***, 106 Idaho 756, 761, 683 P.2d 404, 409 (1984) (“there was no error in the trial court’s suspension of discovery since the motion to dismiss raised purely legal issues which were capable of resolution without a complicated foray into the facts”). This Court should issue an

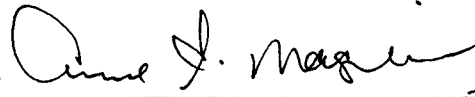
order of protection in relation to the Plaintiff's document requests, requests for admission, and interrogatories, and ordering that Defendant need not respond to same.

CERTIFICATION

Defendant certifies that its counsel has, in good faith, conferred or attempted to confer with Plaintiff's counsel in an effort to resolve the motion for protective order without court action.

DATED this 19th day of July, 2016.

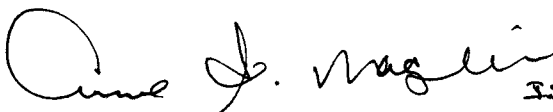
ANDERSON, JULIAN & HULL LLP

By  ISB # 9452
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

by personally delivering to or leaving with a person in charge of the office as indicated below:

Atkin Law Offices, P.C.
Blake S. Atkin
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Attorney for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (801) 533-0380
- Email:

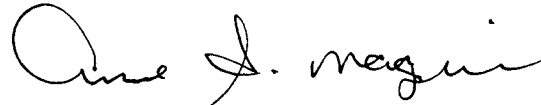

Phillip J. Collaer *ISB #9452*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of July, 2016, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR PROTECTIVE ORDER** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.
Blake S. Atkin
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Attorney for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (801) 533-0380
- Email:



~~by~~ Phillip J. Collaer

Phillip J. Collaer – ISB No. #3447
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: pcollaer@ajhlaw.com

ORIGINAL
FILED

16 JUL 21 AM 11:14

FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

NOTICE OF SERVICE

TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

YOU WILL PLEASE TAKE NOTICE that on the 19th day of July, 2016., Defendant, by and through its counsel of record, Anderson, Julian & Hull LLP, served a copy of **DEFENDANT IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP) RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION**, together with a copy of this Notice, upon counsel for the Plaintiffs, by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or

FILED

16 JUL 21 PM 12:07

FRANKLIN COUNTY CLERK

DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)	
)	
Plaintiff	)	JOINT STATEMENT
)	
v.)	
	)	Case No. CV-2016-195
)	
Idaho Counties Risk Management Program)	
(ICRMP),	)	Judge Brown
)	
Defendant.)	

Both parties, through their counsel, do agree upon and submit the following joint statement:

1. Whether this matter is to be tried to the Court or to a jury.

Some issues will be tried to the Court, but there are some issues subject to jury trial and the parties have demanded and intend to preserve their rights to jury trial on all issues triable to a jury.

2. Whether any service is still needed upon any unserved parties.

No.

3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.

Yes.

4. Whether the parties currently contemplate or anticipate any pre-trial motions.

Yes.

5. Whether the case presents any unusual time requirements for trial preparation.

No.

6. The agreed amount of time required for trial.

Five (5) days.

7. Whether the case presents any unusual time requirements for discovery.

No.

8. Whether any party requests court-ordered mediation.

No.

9. Two stipulated trial dates, one no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a second no less than twelve (12) months and no more than fifteen (15) months from the date of this Order.

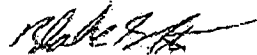
July 30-Aug. 5, 2017; November 12-18, 2017

10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

No.

DATED this 20th day of July, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Anderson, Julian & Hull, LLP



Phillip J. Collaer
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
Facsimile: (208) 334-5510
Email: pcollaer@ajhlaw.com

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Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147

U.S. Mail E-mail Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

U.S. Mail E-mail Facsimile

Dated this 20th day of July, 2016.

Jennifer Mariscal

FILED

16 JUL 22 AM 8:26

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

DEPUTY

VAL D. WESTOVER,)	
	)	Case No: CV-2016-195
Plaintiff,)	
VS	)	SCHEDULING ORDER, NOTICE OF
	)	TRIAL SETTING AND INTITAL
IDAHO COUNTIES RISK MANAGEMENT	)	PRETRIAL ORDER
PROGRAM (ICRMP),)	
)	
Defendant.)	

Pursuant to I.R.C.P. 16 and 40, IT IS HEREBY ORDERED:

1. This matter is set for **TRIAL, as follows:**
 - (A). **PRIMARY SETTING:** July 31-August 4, 2017 at 9:00 a.m.
 - (B). **ALTERNATIVE SETTING:** November 13-17, 2017 at 9:00 a.m.

All deadlines listed below shall apply to the trial setting listed in line (A) above.

2. **TRIAL:** This case is set for a **JURY TRIAL** as set forth above. The trial will be conducted in the District Courtroom, Franklin County, Preston, Idaho. A total of FIVE (5) days have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 9:00 a.m. each morning, and adjourn at approximately 3:00 p.m. each afternoon. Two twenty (20) minute / brief recesses will be taken at approximately 11:00 a.m. and 1:00 p.m.

3. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least twenty-one (21) days prior to Trial, and shall contain or include:

- (A). A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all such exhibits. The Exhibit List shall indicate: (1) by

whom the exhibit is being offered, (2) a brief description of the exhibit, (3) whether the parties have stipulated to its admission, and if not, (4) the legal grounds for objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B). A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C). A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witnesses' testimony will be objected to in its entirety and the legal grounds therefore.

(D). A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E). A statement counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F). A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G). A statement of all issues of fact and law which remain to be litigated, listing which party has the burden of proof as to each issue.

(H). A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I). A list of any orders requested by the parties which will expedite the trial.

(J). A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

These submissions will be deemed by the Court to constitute the final pre-trial conference required by IRCP 16(b). However, if either party wishes a more formal pre-trial conference, the same should be request in writing at least 60 days prior to trial and one will be scheduled.

4. **PRE-TRIAL MOTIONS**: All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed within sixty (60) days of this Scheduling Order, Notice of Trial and Initial Pretrial Order. All motions for

summary judgment and motions to add claims for punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than ninety (90) days before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine* or motions which seek to challenge the admissibility or foundation of expert testimony) must be filed and scheduled for hearing not less than thirty (30) days before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY JUDGMENT:** All motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issue of fact exists. In ruling upon any summary judgment motion, the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days prior to hearing. Further, any objection to the admissibility of evidence must be in writing and shall be part of the response to the motion for summary judgment or in reply to the response in opposition to summary judgment. The failure to object in writing to the admissibility of evidence in support of or in response to summary judgment shall constitute a waiver as to any objection to the admissibility of evidence at the time of the hearing on summary judgment. Oral objections to the admissibility of evidence at the time of hearing on summary judgment will not be considered by the court.

6. **SCHEDULING AND HEARINGS.** The Court holds its regular civil law and motion calendar the second and fourth Thursday of each month. Absent an order shortening time, all motions must be filed and served at least fourteen (14) days prior to hearing. A “judge’s copy” of any memoranda or affidavits should be provided for use by the court. Said “judge’s copy” shall be sent to the court at its chambers in Soda Springs, Idaho. All such documents shall be clearly marked as “JUDGE’S COPY.” As a matter of courtesy, counsel are expected to contact

the Court's Deputy Clerk, Linda Hampton at (208) 852-0877 to schedule hearings, and to confirm the availability of opposing counsel for proposed hearing dates. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4), in the discretion of the court. **The Court will allow attorney participation by telephone on all non-dispositive proceedings. Such proceedings shall be by way of registering with CourtCall at 1-888-882-6878 at least 24 hours prior to hearing OR with prior Court approval of a conference call system approved 48 hours in advance.**

7. **DISCOVERY AND DISCOVERY DISPUTES:** The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this Order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

8. **DISCOVERY CUT-OFFS:** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

9. **WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. **There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses.** If discovery requests seeking disclosure of expert witnesses and the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(B)(4)(A)(1)(ii) are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses, including the disclosures required by I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(b)(4)(A)(1)(ii) at the earliest opportunity, and in no event later than one hundred-fifty (150) days before trial. A defendant

upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses, including the disclosures required by I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(b)(4)(A)(1)(ii) at the earliest opportunity, and in no event later than ninety (90) days before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts, including the disclosures required by I.R.C.P. 26(b)(4)(A)(i) and I.R.C.P. 26(b)(4)(A)(ii) at the earliest opportunity, and in no event later than sixty (60) days before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than sixty (60) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

10. **EXHIBITS AND EXHIBIT LISTS:** When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days prior to trial, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exh. 1 attached) together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copy of that party's marked exhibits. The exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "101," and the defendant shall utilize exhibits beginning with number "201."

11. **JURY INSTRUCTIONS:** Jury instructions and verdict forms requested by a party shall be prepared in conformity with I.R.C.P. 51(a), and shall be filed with the Clerk (with copies to Chambers in Soda Springs, Idaho) at least seven (7) days before trial. Requested instructions not timely submitted may not be included in the court's preliminary or final charge.

Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial.

12. **TRIAL BRIEFS:** The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk (with copies to Chambers in Soda Springs, Idaho) at least ten (10) days prior to trial.

13. **REQUEST TO VACATE TRIAL SETTING:** Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorney's fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.

14. **LODGING AT RESIDENT CHAMBERS:** **“All” documents filed shall include the Court on the Certificate of Mailing, with courtesy copies mailed or faxed (but not both) to the Court’s chambers in Soda Springs, Idaho. Address: 159 South Main, Soda Springs, ID 83276 Fax # (208) 547-2147.**

15. **SANCTIONS FOR NON-COMPLIANCE:** A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to I.R.C.P. 16(i) and/or other applicable rules, statutes or case precedent.

16. All meetings and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton, by calling 852-0877. No hearing shall be noticed without contacting the Clerk.

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the currently presiding judge is unavailable. The list of potential alternative judges is: 1) Honorable Stephen S. Dunn; 2) Honorable David C. Nye;

3) Honorable Robert C. Naftz; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair; 6) Honorable Jon J. Shindurling.

Dated this 21st day of July, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 22nd day of July, 2016, she caused a true and correct copy of the foregoing SCHEDULING ORDER, NOTICE OF TRIAL, and SETTING AND INITIAL PRETRIAL ORDER to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Phillip J. Collaer
Counsel for Defendant

Method of Service:

Email: batkin@atkinlawoffices.net

Email: pcollaer@ajhlaw.com

SHAUNA T. GEDDES, Clerk

By: Linda Hampton, Deputy Clerk

EXHIBIT LIST

MITCHELL W. BROWN, DISTRICT JUDGE
Linda Hampton, Deputy Clerk
Rodney M. Felshaw, Court Reporter


CASE NO. : CV-2016-195

DATE: _____

CASE: Westover vs. ICRMP

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
101 or 201						

Phillip J. Collaer – ISB No. #3447
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
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Boise, Idaho 83707-7426
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FILED
16 AUG 22 PM 2:01
FRANKLIN COUNTY CLERK

CLERK

Attorneys for Defendants, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

The above-entitled defendants Idaho Counties Risk Management Program (ICRMP), by and through their attorneys of record, Anderson, Julian and Hull, move this Court for its order granting summary judgment to this defendant for the reason that there are no material facts in dispute and this defendant is entitled to judgment as a matter of law.

This motion is supported by a memorandum of law, and the Affidavits of Phillip J. Collaer and Jeff Boice, filed concurrently herewith.

Oral argument is requested.

DATED this 18 day of August, 2016.

ANDERSON, JULIAN & HULL LLP

By Phillip J. Collaer
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18 day of August, 2016, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Blake S. Atkin	<input type="checkbox"/>	Hand-Delivered
7579 North Westside Highway	<input type="checkbox"/>	Overnight Mail
Clifton, Idaho 83228	<input type="checkbox"/>	Facsimile (801) 533-0380
Telephone: (208) 747-3414	<input type="checkbox"/>	Email:
<i>Attorney for Plaintiff</i>		

(Courtesy Copy)	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Judge Michael W. Brown	<input type="checkbox"/>	Hand-Delivered
159 S. Main Street	<input type="checkbox"/>	Overnight Mail
Soda Springs, ID 83276	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Email:



Phillip J. Collaer

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FRANKLIN COUNTY CLERK
[Signature]
DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

This case arises from a lawsuit originally brought by the plaintiff, Val Westover, against Franklin County and, the Franklin County Assessor (Franklin County Defendants). The Franklin County Defendants were, and are currently, insured by ICRMP. The current complaint alleges ICRMP improperly controlled the litigation between the Westovers and Franklin County and, the negotiations during a court ordered mediation. Plaintiff seeks a declaratory judgment arguing ICRMP is an illegal entity as its defense of local governments and providing its insureds indemnification for attorney's fees violates I.C. § 12-117.

ORIGINAL

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT - 1**

DATE RECORDED

In the sections below, ICRMP will establish the plaintiff's complaint is a misguided attempt to maintain a direct action against the insurer of Franklin County. Direct actions are not allowed in Idaho. For that reason, the plaintiff lacks standing to seek declaratory relief. Alternatively, the actions of ICRMP were, at all times, consistent with Idaho statutes and case law. For these reasons, the defendant is entitled to summary judgment.

I.

STATEMENT OF FACTS

On July 30, 2015, Val and LaRee Westover filed a Complaint against the Franklin County Assessor, Jase Cundick. See Boice Aff, ¶3, Ex. 2. At the time the lawsuit was filed, Franklin County had purchased casualty insurance from ICRMP. *Id.* ¶2, Ex. 1. ICRMP is a reciprocal insurance company. See Georgia Siehl Aff., ¶3. It conducts business in the State of Idaho pursuant to a Certificate of Authority issued by the Idaho Department of Insurance as do other insurance companies. *Id.*, ¶4, Ex. A. Like all insurance companies doing business in this state, ICRMP is regulated by the Idaho Department of Insurance. *Id.*, ¶7. ICRMP and other insurance companies offer casualty policies to municipalities. *Id.*, ¶6.

As an elected official of Franklin County, Mr. Cundick, in his individual and official capacities, was an insured under the ICRMP policy. See Boice Aff., ¶2; Ex. 2, p. 1, ¶8. Consistent with the language of the insurance policy, ICRMP provided Franklin County and Mr. Cundick a defense. ICRMP hired the law firm of Naylor & Hales to represent its insureds. *Id.*, ¶3.

The Franklin County defendants answered the Westover complaint and, prepared a motion for summary judgment. See Boice Aff., ¶3. The County also attended a court ordered mediation. *Id.*, ¶4. The parties did not reach a settlement at mediation. *Id.* Thereafter, Franklin County's motion for summary judgment was heard by the district court and, granted. See Boice Aff., ¶5, Ex. 4. That case is currently on appeal. *Id.*, Ex. 5.

II.

PLAINTIFF LACKS STANDING TO SEEK DECLARATORY RELIEF AGAINST ICRMP.

The Idaho Supreme Court has, for many years, prohibited lawsuits by an injured party against their tortfeasor's liability insurer. The only exceptions are cases where the direct action is expressly authorized by statute or contract. See *Stonewall Surplus Lines Ins. Co. v. Farmers Ins. Co. of Idaho*, 132 Idaho 318, 971 P.2d 1142 (1998); *Downing v. Travelers ins. Co.*, 107 Idaho 511, 691 P.2d 375 (1984); *Graham v. State Farm Mutual Ins. Co.*, 138 Idaho 611, 67 P.3d 90 (2003); *Hartman v. United Heritage Property and Casualty Co.*, 141 Idaho 193, 108 P.3d 340 (2005). The basis of the no direct action rule is that "the person allegedly injured by the insured is not a party to the insurance contract and has no rights under it." See *Hartman*, 141 Idaho at 99.

The fact this case seeks declaratory relief rather than compensatory damages does not avoid the no direct action rule. This is due to the fact Mr. Westover has no relationship with ICRMP and, is not an insured under the ICRMP policy. For that reason, ICRMP's refusal to settle the *Westover v. Franklin County* lawsuit at mediation and, then successfully defend the case, did not cause plaintiff to suffer an "injury in fact". Because Westover did suffer a legal injury by virtue of the contractual

relationship between ICRMP and Franklin County, he lacks standing to seek declaratory relief concerning any aspect of the insurance policy Franklin County purchased from ICRMP.

The Uniform Declaratory Judgment Act, at I.C. § 10-1202, describes individuals and entities who are entitled to seek declaratory relief as follows:

Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The language of the statute requires proof that a plaintiff's legal rights or status is implicated by the agreement they are asking the court to interpret. ***See Student Loan Fund of Idaho vs. Payette County***, 125 Idaho 824, 827, 875 P.2d 236, 239 (Ct. App. 1994) (landowner lacked standing to challenge an agreement between the City and the County establishing an area of impact where the plaintiff failed to prove its property would be located within the disputed area of impact.) In ***Brooksby v. Geico General Ins. Co.***, 153 Idaho 546, 286 P.3d. 182 (2012) the plaintiff sought declaratory judgment against a tortfeasor's insurer seeking to establish coverage for her claim. The trial court dismissed the lawsuit ruling the plaintiff lacked standing and, her complaint violated the no direct action rule. Plaintiff appealed arguing the "rule barred her only from seeking monetary damages, as opposed to declaratory relief." ***See*** 153 Idaho at 547. The Supreme Court disagreed concluding plaintiff lacked standing under the Uniform Declaratory Judgment Act writing:

In other words, the Act does not *create* any new rights, statuses, or legal relations. It applies only where such rights, statuses, or legal relations *already exist*. At this juncture, Brooksby simply has no right, status, or legal relationship vis-à-vis GEICO which could form the basis of a declaratory judgment action.

See 153 Idaho at 548, (*emphasis in original*).

In this case, plaintiff does not allege he is or was an ICRMP insured or, that he possessed any contractual rights under the ICRMP insurance policy. In **Brooksby** the plaintiff, a passenger in a vehicle driven by her father, was injured in a single car accident. The insurer, GEICO, denied coverage to its insured, the father, asserting an exclusion in the policy. Plaintiff sued GEICO arguing the exclusion violated Idaho law. See 153 Idaho at 547. The Supreme Court affirmed the dismissal of the lawsuit as the plaintiff's claim violated the no direct action rule.

Much like the plaintiff in **Brooksby**, Westover asks this Court to determine whether Franklin County is entitled to insurance coverage arguing its insurer, ICRMP, is violating Idaho law by providing coverage for claims seeking attorney's fees. See Complaint, ¶12. Setting aside the fact plaintiffs' interpretation of I.C. § 12-117 lacks legal support and, is inconsistent with the Idaho Tort Claims Act, see § III, *infra*, plaintiff lacks standing to challenge the contractual relationship that existed between ICRMP and its insured, Franklin County. Whether or not Franklin County purchased insurance that provided indemnification for attorney fee claims did not change or impact the County's potential liability to the Westovers. The existence of insurance merely provided a means for payment if the County was found liable for a covered claim. For that reason, the insurance policy did not affect the Westovers' legal relations with Franklin County or, its claims against that entity. The current complaint violates the no

direct action rule. Westover lacks standing to challenge the contractual relationship between Franklin County and ICRMP. For these reasons, summary judgment should be granted.

III.

I.C. § 12-117 DID NOT PREVENT FRANKLIN COUNTY FROM PURCHASING CASUALTY INSURANCE.

According to the complaint, I.C. § 12-117 is intended to create accountability in local government by allowing courts to award attorney's fees against municipalities and political subdivisions where those governmental entities defend a lawsuit without a reasonable basis in fact or law. See Complaint, ¶¶8-12. Plaintiff alleges § 12-117(3) requires political subdivisions to pay any fees that may be assessed from their regular operating budget and, therefore, prohibits them from purchasing insurance that could provide indemnity coverage for those losses. *Id.*, ¶¶9-11.

These allegations are legally and factually flawed. Plaintiff incorrectly argues that I.C. § 12-117 was the exclusive basis for awarding attorney's fees in the *Westover v. Franklin County* case. The complaint in that litigation alleged slander of title and sought a writ of mandate and prohibition. See Boice Aff., ¶3, Ex. 2. Because the slander of title claim involved allegedly tortious misconduct on the part of Franklin County, those claims were governed by the Idaho Tort Claims Act (ITCA). In *Athay v. Stacey*, 146 Idaho 407, 196 P.3d 325 (2008) the Idaho Supreme Court ruled the award of attorney's fees in actions subject to the ITCA was governed exclusively by I.C. § 6-918A. The interplay between I.C. § 12-117 and § 6-918A was addressed in *Block v. City of Lewiston*, 156 Idaho 484, 328 P.3d 464 (2014) where the court wrote:

We have held that § 12-117 “[u]nless otherwise provided by statute” language allows that when “another statute expressly provides for the awarding of attorney’s fees against a state agency or political subdivision, attorney’s fees can be granted under that statute also.” ***Syringa Networks, LLC v. Idaho Dept. of Administration***, 155 Idaho 55, 305 P.3d 499, 511 (2013). While this language does not make I.C. § 12-117 the exclusive means of awarding attorney’s fees against a state agency, it also does not indicate a specific and express intent to provide an exception to I.C. § 6-918A’s exclusive scope. Rather, this language indicates that where another statute provides the exclusive means for awarding attorney’s fees, I.C. § 12-117 is not an exception to exclusivity. Therefore, I.C. § 6-918A is the exclusive means to award attorney’s fees to Lewiston in this case.

See 156 Idaho at 490.

In this case, consistent with the holdings in ***Athay v. Stacey***, and ***Block v. City of Lewiston***, the exclusive basis for awarding attorney’s fees against Franklin County was I.C. § 6-918A, not § 12-117. For that reason alone, the plaintiff’s statutory interpretation argument is flawed and cannot be accepted.

The suggestion the legislature, through the passage of § 12-117, intended to prohibit political governmental entities from purchasing casualty insurance is inconsistent with the plain language of I.C. § 6-923 which specifically authorizes political subdivisions, such as Franklin County, to purchase “the necessary liability insurance for themselves and their employees.” If the terms of the insurance policy Franklin County purchased was inconsistent with the requirements of the ITCA, the policy would be reformed and interpreted to conform to the requirements of the Act. **See** I.C. § 6-925. A governmental entities tort liability is capped at \$500,000 unless it purchases liability insurance in excess of those limits. **See** I.C. § 6-926.

These statutory provisions establish the plaintiff's suggestion a governmental entity is prohibited through purchasing casualty insurance to protect itself from claims seeking attorney's fees is without merit. The language of I.C. § 12-117(3) is consistent with this conclusion. That section does not suggest indemnity insurance cannot be purchased in order to protect and preserve the government's financial resources. The fact the insurance premium is paid from the County's operating budget is consistent with I.C. § 12-117(3) which creates a mechanism for payment of uninsured fee awards. Lacking in I.C. § 12-117 is any language stating an entity such as Franklin County, cannot utilize its scarce resources to purchase casualty insurance to indemnify itself and its employees from losses which could include compensatory damages and attorney's fees. To accept the plaintiff's interpretation would require the court to insert limiting language into § 12-117 which the legislature did not include. This approach would violate basic rules of statutory construction. *See Wright v. Ada County*, 2016 WL 3679935 (July 7, 2016) (Courts are not allowed to insert words into a statute that the court believes the legislature left out, be it intentionally or inadvertently.) The plaintiff's argument is also inconsistent with the clear legislative intent set forth into I.C. §§ 6-924 through 6-926 which unambiguously authorizes and envisions the purchase of casualty insurance by political subdivisions.

Finally, the plaintiff's argument is limited to cases where the government has frivolously defended a lawsuit and is required to pay the opposing party's attorney's fees. That scenario did not arise in the *Westover v. Franklin County* case. The fact Franklin County chose to pursue its legal defenses rather than settle at mediation was not, as a matter of law, frivolous. This point is highlighted by the fact the *Westover*

lawsuit was dismissed at summary judgment. A successful defense cannot be characterized as frivolous. Mr. Westover was never entitled to attorney's fees and Franklin County, through its insurer, ICRMP, recognized that fact at mediation. For these reasons, the allegations in the plaintiff's complaint are without merit. ICRMP is entitled to summary judgment.

DATED this 18 day of August, 2016.

ANDERSON, JULIAN & HULL LLP

By Phillip J. Collaer
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18 day of August, 2016, I served a true and correct copy of the foregoing by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.
Blake S. Atkin
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Attorney for Plaintiff

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile (801) 533-0380
 Email:

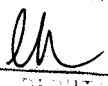
(Courtesy Copy)
Judge Michael W. Brown
159 S. Main Street
Soda Springs, ID 83276

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile
 Email:



Phillip J. Collaer

Phillip J. Collaer – ISB No. #3447
 ANDERSON, JULIAN & HULL LLP
 C. W. Moore Plaza
 250 South Fifth Street, Suite 700
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 Telephone: (208) 344-5800
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 FRANKLIN COUNTY CLERK

 DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
 (ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
 PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**AFFIDAVIT OF PHILLIP J.
 COLLAER IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss:
 County of Ada)

Phillip J. Collaer, being first duly sworn, deposes and says as follows:


1. That your affiant is an attorney duly licensed to practice law within the State of Idaho. As such, your affiant is a member of the law firm of Anderson, Julian & Hull, attorneys for the defendant, Idaho Counties Risk Management Program (ICRMP) in the above entitled litigation. The information contained herein is of your affiant's own personal knowledge.

ORIGINAL

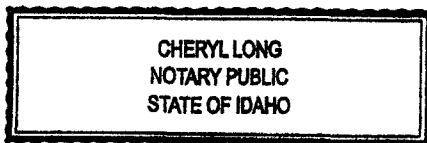
**AFFIDAVIT OF PHILLIP J. COLLAER IN SUPPORT OF DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT - 1**


2. Attached hereto and identified as Exhibit 1 is an affidavit prepared by the Idaho Department of Insurance employee, Georgia Siehl.

FURTHER your Affiant saith naught.


Phillip J. Collaer

SUBSCRIBED AND SWORN to before me this 18 day of August, 2016



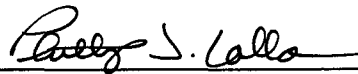

Notary Public for Idaho
Residing at Ada County
My Commission Expires: February 27, 2022

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18 day of August, 2016, I served a true and correct copy of the foregoing **AFFIDAVIT OF PHILLIP J. COLLAER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Blake S. Atkin	<input type="checkbox"/>	Hand-Delivered
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<i>Attorney for Plaintiff</i>		

(Courtesy Copy)	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Judge Michael W. Brown	<input type="checkbox"/>	Hand-Delivered
159 S. Main Street	<input type="checkbox"/>	Overnight Mail
Soda Springs, ID 83276	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Email:



Phillip J. Collaer

Exhibit 1

STATE OF IDAHO)
) ss:
County of Ada)

GEORGIA SIEHL, being first duly sworn on oath, deposes and says:

1. I am Bureau Chief of Company Activities and the Chief Examiner for the Idaho Department of Insurance (the "Department"). I am over the age of 18 and make this declaration based on my personal knowledge.

2. This affidavit is produced upon the request of Philip Collaer, of the firm Anderson Julian and Hull, LLP, attorneys for the Idaho Counties Risk Management Program Underwriters ("ICRMP"). The following information is provided based on my personal knowledge of Idaho's Insurance Code. I have no specific knowledge concerning the events that prompted Mr. Collaer's request for this affidavit and offer no opinion as to the specific application of Idaho's Insurance Code to the underlying facts that likewise prompted Mr. Collaer's request.

3. ICRMP is a reciprocal company as defined by Idaho Code § 41-2902 and incorporated by Idaho Code § 41-303. ICRMP is domiciled in Boise, Idaho, and authorized to transact insurance business of property and casualty, excluding workers compensation, in Idaho pursuant to chapter 3, title 41, Idaho Code.

4. ICRMP was initially issued its Certificate of Authority from the Department on February 1, 1986, and was reissued its certificate on September 26, 1994. Attached as Exhibit A is a true and correct copy of the Certificate of Authority issued to ICRMP.

5. On the Department's website, located at www.doi.idaho.gov, under the "Rates and Policy Forms" menu option found within "Companies" tab, the public can conduct a "Public Filings Online Search" of the forms and policies filed in Idaho. This online search is linked to the

National Association of Insurance Commissioner's ("NAIC") "SERFF Filing Access" database and allows the general public to review a given company's forms and/or policy filings.

6. Based on a cursory search of the SERFF database, it appears that there are other companies who have filed various forms in Idaho that also purport to include coverage to municipalities. Whether these forms are comparable to ICRMP's various forms which assert coverage to municipalities is unknown without conducting a line-by-line comparison, which the Department does not do. Additionally, the filing of forms and policies in compliance with Idaho Code § 41-1812 does not in itself mean that either the forms or the policies are currently marketed or sold in Idaho or, if they are sold, to whom they are sold.

7. ICRMP continues to be regulated under Idaho's Insurance Code found in title 41, Idaho Code.

Further your affiant sayeth naught.

DATED THIS 10th day of August, 2016

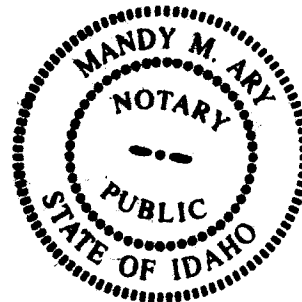
Georgia Siehl

GEORGIA SIEHL
Chief Examiner and Bureau Chief, Company Activities
Department of Insurance

SUBSCRIBED AND SWORN to before me this 10th day of August, 2016

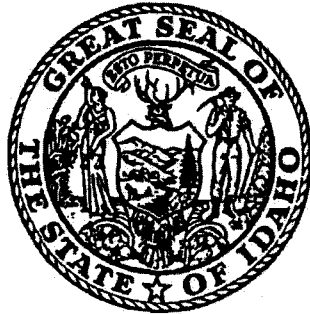
Mandy M. Ary

Notary Public for Idaho
Commission Expires: 7/24/2018



**DEPARTMENT OF
INSURANCE**

**STATE OF IDAHO
Certificate No.
1674**



CERTIFICATE OF AUTHORITY

THIS CERTIFIES, THAT

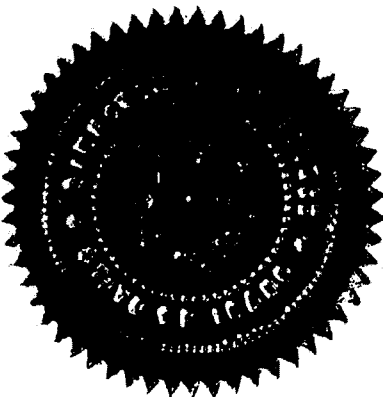
IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS
a reciprocal company domiciled in BOISE, IDAHO

subject to the provisions of its Articles of Incorporation, and having presented satisfactory evidence of compliance with the requirements of the Laws regulating the insurance business in the State of Idaho, has been granted authority to transact such business, in this State, of the class or classes of insurance as indicated below:

**PROPERTY,
CASUALTY - EXCLUDING WORKERS' COMPENSATION**

Expiration Conditions: This Certificate of Authority is expressly conditioned upon the holder hereof remaining in full compliance with, and not in violation of, any of the applicable Laws and requirements of the State of Idaho. It shall at all times remain the property of the State of Idaho, and shall continue and remain in full force and effect from the date shown hereon, until expired, suspended, revoked or otherwise terminated; subject to payment of the continuation fee and filing of a properly completed annual statement with the Director of Insurance on or before the first day of March of each year. Expiration, suspension, revocation or failure to pay the annual continuation fee or to timely file its properly compiled annual statement shall automatically terminate the insured's authority to conduct the business of insurance in this State and this Certificate of Authority must forthwith be returned to the Department of Insurance of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the Department of Insurance to be affixed at Boise, Idaho, this 1st day of February, 1986.



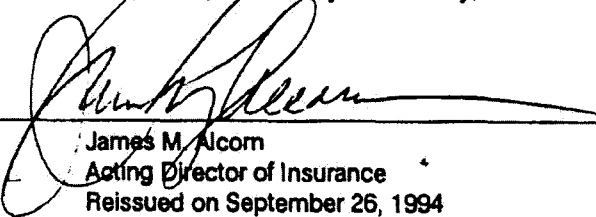

James M. Alcorn
Acting Director of Insurance
Reissued on September 26, 1994

EXHIBIT
A
71 of 272

Phillip J. Collaer – ISB No. #3447
 ANDERSON, JULIAN & HULL LLP
 C. W. Moore Plaza
 250 South Fifth Street, Suite 700
 Post Office Box 7426
 Boise, Idaho 83707-7426
 Telephone: (208) 344-5800
 Facsimile: (208) 344-5510
 E-Mail: pcollaer@ajhlaw.com

FILED
 16 AUG 22 PM 2:01
 FRANKLIN COUNTY CLERK
lw
 DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
 (ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,
 Plaintiff,

Case No. CV-2016-195

vs.

**AFFIDAVIT OF JEFF BOICE IN
 SUPPORT OF DEFENDANTS'
 MOTION FOR SUMMARY
 JUDGMENT**

IDAHO COUNTIES RISK MANAGEMENT
 PROGRAM (ICRMP)
 Defendants.

STATE OF IDAHO)
) ss:
 County of Ada)

Jeff Boice, being first duly sworn, deposes and says as follows:

1. That, at all times relevant, your affiant has been an employee of the Idaho's County Risk Management Program (ICRMP) as a claims handler. The information contained herein is of your affiant's own personal knowledge.

ORIGINAL

2. In 2015, Franklin County purchased casualty insurance from ICRMP. Attached hereto and identified as Exhibit 1 is a certified copy of the 2014/2015 ICRMP policy.

3. In the summer of 2015, I was the claims handler assigned to the lawsuit filed by Val and LaRee Westover against Franklin County and the Franklin County Assessor, Jase Cundick. See Exhibit 2 attached hereto. To meet ICRMP's contractual obligations under the insurance policy described in ¶2, above, I retained the law firm of Naylor & Hales to represent Franklin County and Mr. Cundick. The Naylor & Hales firm filed an answer on behalf of Franklin County and Mr. Cundick. Dispositive motions were filed by Franklin County and the plaintiff. See Exhibit 3 attached hereto.

4. After the motions for summary judgment were filed, I attended a court ordered mediation by telephone. The mediation did not result in a settlement.

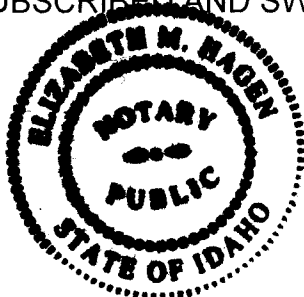
5. Following the mediation, the motions for summary judgment described in ¶3, above, were heard by the district court. The Franklin County motion was granted and the Westover case was dismissed. See Exhibit 4 attached hereto. That ruling was then appealed and is currently pending before the Idaho Supreme Court. See Exhibit 5 attached hereto.

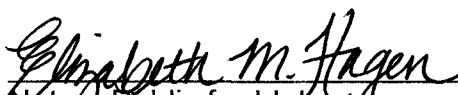
FURTHER your Affiant saith naught.



Jeff Boice

SUBSCRIBED AND SWORN to before me this 17 day of August, 2016





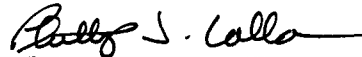
Notary Public for Idaho
Residing at Kuna, Idaho
My Commission Expires: 10-15-2018

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18 day of August, 2016, I served a true and correct copy of the foregoing **AFFIDAVIT OF JEFF BOICE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Atkin Law Offices, P.C.	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Blake S. Atkin	<input type="checkbox"/>	Hand-Delivered
7579 North Westside Highway	<input type="checkbox"/>	Overnight Mail
Clifton, Idaho 83228	<input type="checkbox"/>	Facsimile (801) 533-0380
Telephone: (208) 747-3414	<input type="checkbox"/>	Email:
<i>Attorney for Plaintiff</i>		


(Courtesy Copy)	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Judge Michael W. Brown	<input type="checkbox"/>	Hand-Delivered
159 S. Main Street	<input type="checkbox"/>	Overnight Mail
Soda Springs, ID 83276	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Email:




Phillip J. Collaer


I, Mary Kummer, Secretary of the Idaho Counties Risk Management Program (ICRMP), do hereby certify that the attached document, consisting of eighty-two (82) total pages, inclusive of seventy-four (74) pages of agreement provisions plus declarations pages, indexes, and a postscript page, is a true and correct copy of the 2014-2015 Public Entity Multi-Lines Insurance Policy issued by ICRMP to be effective on October 1, 2014.

Dated this 17th day of August, 2016

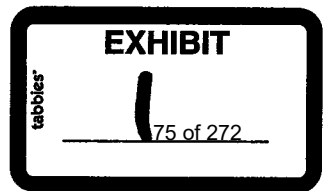
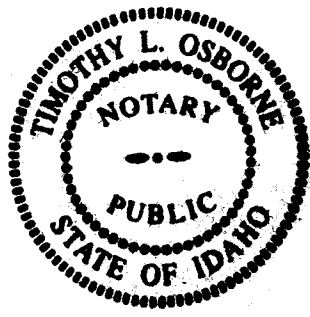

Mary Kummer
ICRMP Program Secretary

State of Idaho)
) ss.
County of Ada)

 a notary public, do hereby certify that on this 17th day of August, 2016, personally appeared before me Mary Kummer, who, being by me first duly sworn, declared that she is the Secretary of the ICRMP Program, that she signed the foregoing certification as Secretary of the ICRMP Program, and that the certification therein contained is true and accurate.


Notary Public for the State of Idaho

My commission expires on 6/23/2017





Policy Year
2014-2015

PUBLIC ENTITY
Multi-Lines Insurance
Policy

Issued for:

Franklin County

Issued by:

Idaho Counties Risk Management Program

3100 Vista Avenue, Suite 300, Boise, ID 83705

Phone: (208) 336-3100 ~ Fax: (208) 336-2100

www.icrmp.org

PUBLIC ENTITY MULTI-LINES INSURANCE POLICY DECLARATIONS

ISSUED BY IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS

Named Insured: **Franklin County**
 Address: **39 W Oneida**
Preston, Idaho 83263

Policy Number: **34A01021100114**
 Policy Period: From: **October 1, 2014**
 To: **October 1, 2015**
 Both dates above at 12:01 AM

Application Date: **August 1, 2014**

Retroactive Date Section VI,
 Insuring Agreement 3: **October 1, 2010**

Member Contribution: **\$99,726**

Retroactive Date Section VIII: **July 1, 1986**

Retroactive Date Section XI: **October 1, 2013**

SECTION V – PROPERTY

Insuring Agreements	Limit of Indemnification	Coverage Basis	Deductible
1. Buildings, Structures & Property:			The first \$1,000 of any loss is applicable to Section V, Insuring Agreements 1, 2, 3 & 4, excepting flood and earthquake losses. Earth Movement: The first \$100,000 of any loss. **Flood Type A: The first \$100,000 of any loss. ***Flood Type B: The first \$500,000 per building and first \$500,000 per contents.
Professional Fees	\$500,000	Per covered occurrence.	
Fine Arts	\$1,000,000	Per covered occurrence and/or in the aggregate for multiple occurrences.	
Landscape Items	\$25,000	Per covered occurrence.	
Ordinance Deficiency	\$5,000,000	Per covered occurrence.	
Preservation of Property	\$250,000	Per covered occurrence.	
Newly Acquired Property	\$10,000,000	Per covered occurrence.	
Property in Course of Construction: New or Repairs/Renovations of Existing	\$1,000,000	Per covered occurrence.	
Property In Transit	\$1,000,000	Per covered occurrence.	
Service Animals	\$25,000	Per covered occurrence.	
Water/Sewer Backup	\$1,000,000	Per Covered occurrence and/or in the annual aggregate for multiple occurrences all members combined.	
Earth Movement	\$50,000,000	Annual aggregate – all non-public education members combined.	
Flood Type A*	\$50,000,000	Annual aggregate – all non-public education members combined.	
Flood Type B**	\$5,000,000	Annual aggregate – all non-public education combined.	
2. Automobile/Mobile Equipment Physical Damage	\$1,000,000	Per item per covered occurrence.	
	\$10,000,000	In the aggregate for multiple items when not in use.	
3. Operational Disruption Expense	\$2,500,000	Per covered occurrence or in the aggregate for multiple occurrences.	
• Data Restoration Related to Operational Disruption Expense	\$250,000	Per covered occurrence or in the aggregate for multiple occurrences.	
4. Valuable Papers and Records	\$1,000,000	Per covered occurrence and/or in the aggregate for multiple occurrences.	
• Data Restoration Related to Valuable Papers and Records	\$500,000	Per covered occurrence and/or in the aggregate for multiple occurrences.	

TOTAL SECTION V LIMIT OF INDEMNIFICATION IS \$200,000,000 PER OCCURRENCE LIMIT FOR ALL PROPERTY COVERAGES AND ALL LIMITS OF INDEMNIFICATION COMBINED FOR ALL NON PUBLIC EDUCATION MEMBERS COLLECTIVELY.

----- SECTION VI – GENERAL LIABILITY -----

<i>Insuring Agreements</i>	<i>Indemnification Limit For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code</i>	<i>Indemnification Limit for All Other Claims</i>	<i>Defense Cost Limit for All Liability Claims</i>	<i>Coverage Basis</i>
1. General Liability City/County Prosecutors or Appointed City Attorneys serving as Independent Contractors Sewer Backup, Mold & Fungus Abatement & Remediation Fire Suppression Liability	\$500,000	\$3,000,000 \$500,000 \$500,000 \$500,000	\$2,000,000 Included in above Included in above Included in above	Per covered occurrence.
2. Law Enforcement Liability	\$500,000	\$3,000,000	\$2,000,000	Per covered occurrence.
3. Sexual Molestation Liability – CLAIMS MADE COVERAGE	\$500,000	\$3,000,000	\$2,000,000	Per Covered Claim.

----- SECTION VII – AUTOMOBILE LIABILITY -----

<i>Insuring Agreements</i>	<i>Indemnification Limit For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code</i>	<i>Indemnification Limit for All Other Claims</i>	<i>Defense Cost Limit for All Liability Claims</i>	<i>Coverage Basis</i>
1. Automobile Liability (Outside State of Idaho) Automobile Liability (Inside State of Idaho)	\$500,000 \$500,000	\$3,000,000 \$500,000	\$2,000,000 Included in above	Per covered accident.
2. Automobile Medical Payments	\$5,000 \$100,000	\$5,000 \$100,000	Not Applicable	Each person. Each accident.
3. Uninsured / Underinsured Motorists	\$100,000 \$300,000	\$100,000 \$300,000	Included in above	Each person. Each accident.

----- SECTION VIII – ERRORS AND OMISSIONS CLAIMS MADE -----

<i>Insuring Agreements</i>	<i>Indemnification Limit For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code</i>	<i>Indemnification Limit for All Other Claims</i>	<i>Defense Cost Limit for All Liability Claims</i>	<i>Coverage Basis</i>
1. Errors and Omissions CLAIMS MADE COVERAGE City/County Prosecutors Appointed City Attorneys serving as Independent Contractors	\$500,000	\$3,000,000 \$500,000	\$2,000,000 Included in above	Per covered claim.
2. Employee Benefit Liability CLAIMS MADE COVERAGE	\$500,000	\$3,000,000	Included in above	Per covered claim.
3. Employment Practices Liability CLAIMS MADE COVERAGE	\$500,000	\$3,000,000	Included in above	Per covered claim.

THERE IS A \$5,000,000 INDEMNIFICATION LIMIT IN THE AGGREGATE ANNUALLY FOR SECTIONS VI, VII, VIII, XI and XII COMBINED.

THERE IS A \$3,000,000 DEFENSE COST LIMIT IN THE AGGREGATE FOR SECTIONS VI, VII, VIII, XI and XII COMBINED.

----- SECTION IX – CRIME INSURANCE -----

<i>Insuring Agreements</i>	<i>Limit of Indemnification</i>	<i>Coverage Basis</i>	<i>Deductible</i>
1. Employee Dishonesty	\$500,000	Per covered occurrence.	The first \$1,000 of any loss in this section.
2. Loss Inside Premises	\$500,000	Per covered occurrence.	
3. Loss Outside Premises	\$500,000	Per covered occurrence.	

----- SECTION X – MACHINERY BREAKDOWN INSURANCE -----

<i>Insuring Agreements</i>	<i>Limit of Indemnification</i>	<i>Coverage Basis</i>	<i>Deductible</i>
1. Property Damage		Per covered occurrence.	The first \$1,000 of any loss in this section.
Off Premise Property Damage	\$100,000		
Data or Media (Property)	\$1,000,000		
Data or Media (Bus. Income & Extra Expense)	\$5,000,000		
Ammonia Contamination	\$1,000,000		
Consequential Loss	\$1,000,000		
Hazardous Substance	\$500,000		
Water Damage	\$2,500,000		
Fungus	\$15,000		
2. Expediting Expenses	\$2,500,000	Per covered occurrence.	
3. Business Income and Extra Expense	\$1,000,000	Per covered occurrence.	
4. Spoilage Damage	\$1,000,000	Per covered occurrence.	
5. Utility Interruption	\$1,000,000	Per covered occurrence.	
6. Newly Acquired Premises	\$5,000,000	Per covered occurrence.	
7. Ordinance or Law	\$5,000,000	Per covered occurrence.	
8. Errors and Omissions	\$10,000,000	Per covered claim.	

TOTAL SECTION X LIMIT OF INDEMNIFICATION IS \$100,000,000 PER OCCURRENCE LIMIT FOR ALL MACHINERY BREAKDOWN COVERAGES AND ALL LIMITS OF INDEMNIFICATION COMBINED FOR ALL NON PUBLIC EDUCATION MEMBERS COLLECTIVELY.

----- SECTION XII – CHEMICAL SPRAYING ACTIVITIES LIABILITY INSURANCE -----

<i>Insuring Agreements</i>	<i>Indemnification Limit For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code</i>	<i>Indemnification Limit for All Other Claims</i>	<i>Defense Cost Limit for All Liability Claims</i>	<i>Coverage Basis</i>
1. Chemical Spraying Activities Liability CLAIMS MADE COVERAGE	\$500,000	\$500,000	\$2,000,000	Per covered claim and/or in the aggregate for multiple claims.
2. Emergency Clean-up Expense	\$0	\$5,000 \$100,000	Not applicable	Each Person. Each Accident.

THERE IS A \$5,000,000 INDEMNIFICATION LIMIT IN THE AGGREGATE ANNUALLY FOR SECTIONS VI, VII, VIII, XI AND XII COMBINED.

THERE IS A \$3,000,000 DEFENSE COST LIMIT IN THE AGGREGATE FOR SECTION VI, VII, VIII, XI AND XII COMBINED.

----- SECTION XII – ENDORSEMENTS -----

<i>Insuring Agreements</i>	<i>Limit of Indemnification</i>	<i>Defense Cost Limit for All Liability Claims</i>	<i>Coverage Basis</i>	<i>Deductible</i>
1. Accidental Discharge of Pollutants Endorsement #1	\$50,000	Not applicable	Per covered occurrence and/or in the aggregate for multiple claims.	The first \$1,000 of any loss for Endorsement #1.
2. Terrorism Insurance Physical Damage/Loss Endorsement #2	\$50,000,000	Not applicable	In the aggregate annually for all ICRMP Non Public Education Members Collectively in the aggregate.	The first \$10,000 of any loss for Endorsement #2.
3. Coverage Territory for Canada Amendatory Endorsement #3				The first \$1,000 of any loss for Endorsement #3, Section V, only.
Section V – Property Insurance (all insuring agreements)	\$500,000	Not applicable	Per Covered Occurrence	
Section VI – General Liability Insurance (all insuring agreement)	\$500,000	\$2,000,000	Per Covered Occurrence or Claim	
Section VII – Automobile Liability Insurance	\$500,000	Included in above	Per Covered Accident	
Section VIII – Errors & Omissions Insurance (all insuring agreements)	\$500,000	Included in above	Per Covered Claim	
4. Public Land Fire Suppression Endorsement #4	\$500,000	Not applicable	Per covered occurrence and/or in the aggregate for multiple claims.	No Deductible for Endorsement #4.
5. Cyber Liability Endorsement #5 CLAIMS MADE COVERAGE Retroactive Date: October 1, 2014	\$1,000,000	Included in limit of indemnification	Per Covered Claim and \$4,000,000 in the aggregate for multiple claims.	The first \$25,000 of any loss for Endorsement #5.

THERE IS A \$5,000,000 INDEMNIFICATION LIMIT IN THE AGGREGATE ANNUALLY FOR SECTIONS VI, VII, VIII, XI AND XII COMBINED.

THERE IS A \$3,000,000 DEFENSE COST LIMIT IN THE AGGREGATE FOR SECTIONS VI, VII, VIII, XI AND XII COMBINED.

NOTICE RE: INSURANCE GUARANTY ASSOCIATION

As required by Article VIII, Section 4 of the Idaho Constitution and Idaho Code Section 41-3603(10), the ICRMP Program is not a participant in the Idaho Insurance Guaranty Association. As such, ICRMP Subscribers are not responsible for the costs of private insurer insolvencies, nor are they or claimants against them entitled to any of the protections which participation in the Guaranty Association would provide. This notice is provided in cooperation with the Idaho Insurance Guaranty Association. For additional information concerning this notice, contact the ICRMP Executive Director at 1-800-336-1985.

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Actual Cash Value		Section VIII	31	Section VII	26	Section IX	37
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Administration		Section IX	37	Insured Automobile		Proof of Loss	
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Aircraft		Earth Movement		J		Property Damage	
Section V	13	Section V	13	Jail Operations		Section I	1
Automobile		Emergency Clean-Up Expense		Section VI	21	R	
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Section VI	20	Employee		Media		Section V	14
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B		Employee Benefit Program		Medical Expenses		Section VIII	32
Bodily Injury		Section VIII	32	Section I	1	S	
Section VI	20	Employment		Messenger		Schedule of Values	
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Section X	40	Extra Expense		N			
Business Income		Section X	42	Named Insured		U	
Section X	41	F		Section I	1	Underinsured Automobile	
Business Income Actual Annual Value		Fire Suppression Activities		O		Section VII	27
Section X	41	Section VI	21	Occupying		Uninsured Automobile	
C		Fire Suppression Chemicals		Section VII	26	Section VII	27
Chemical Spraying Activities		Section VI	21	Occurrence		Us	
Section XI	47	First Aid		Section VI	21	Section I	2
Claim		Section I	1	Section XI	47	W	
Section VI	20	First Made		One Breakdown		We	
Section VIII	31	Section I	1	Section X	42	Section I	2
Section XI	47	Flood		Operational Disruption Expense		Wrongful Act	
Computer Equipment		Section V	13	Section V	14	Section VI	21
Section X	41	Functional Replacement Cost		Our		Section VIII	32
Computer System		Section V	14	Section I	2	Section XI	47
Section V	13	Fungi		P		Wrongful Employment Practice	
Covered Cause of Loss		Section I	1	Period of Restoration		Section VIII	33
Section X	41	H		Section V	14	Wrongful Taking	
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Section X	41	Section X	42	Personal Injury		Y	
Covered Property				Section VI	21	You	
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Section X	41			Section XI	47	Your	
D				Pollutant		Section I	2
Damages				Section I	1		

SECTION I - GENERAL DEFINITIONS

- A. Unless otherwise stated in a specific section, the following definitions are applicable to all sections of this policy.
1. **"Accident"** means an unexpected happening without intention or design.
 2. **"Damage(s)"** means monetary compensation to be awarded through judgment in a court proceeding or through settlement agreed to by **us** to compensate a claimant for harm suffered.
 3. **"First Aid"** means the rendering of emergency medical treatment at the time of an accident and only when other licensed medical professional care is not immediately available.
 4. **"First Made"** means when **you** first give written notice to **us** that a claim has been made against **you**, but not later than the end of this policy period or any extended reporting period **we** provide. Reports of incidents or circumstances made by **you** to **us** as part of risk management or loss control services shall not be considered notice of a claim.
 5. **"Fungi"** means any organism of the plant kingdom Fungi, which lacks chlorophyll and vascular tissue, including but not limited to, yeast, mold, mildew, rust, smut, mushrooms, spores, mycotoxins, or any other substances, odors, or byproducts arising out of the current or past presence of fungi.
 6. **"Medical Expenses"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
 7. **"Named Insured"** means the public entity identified in the declarations pages of this policy.
 8. **"Insured"** means:
 - a. The **Named Insured**,
 - b. Any elected or appointed official serving as a volunteer or employee of the **named insured**, as well as any volunteer or employee of the **named insured** while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the **named insured** as an independent contractor.
 - c. City or county prosecutors, or appointed city attorneys while serving as independent contractors, in the course and scope of their statutory roles.
 9. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.
 10. **"Pollutant(s)"** means:
 - a. Those materials that can cause or threaten damage to human health or human welfare or cause or threaten damage, deterioration, loss of value, marketability or loss of use to property;
 - b. Any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals and waste, including debris and trash and materials to be recycled, reconditioned or reclaimed;
 - c. Bacteria, **fungi**, mold, mildew, virus, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic

Substances Control Act or as designated by the U.S. Environmental Protection Agency or any other governing authority.

11. "**We**", "**Us**" and "**Our**" means Idaho Counties Risk Management Program, Underwriters (ICRMP).
12. "**You**" and "**Your**" means the **named insured** identified in the declarations pages of this policy.

SECTION II - GENERAL INSURING AGREEMENT

- A. Unless otherwise stated in a specific section, the following Insuring Agreement applies to all sections of this policy.
1. Idaho Counties Risk Management Program, Underwriters (ICRMP) agrees with the **named insured** as listed in the declarations pages of this policy made a part hereof, in consideration of the payment of the member contribution and subject to the limits of indemnification, Insuring Agreements, conditions, exclusions and other terms of this policy, as follows:
 - a. **We** will provide the insurance described in this policy and declarations pages if **you** have paid the member contribution and have complied with all policy provisions and conditions. This policy is divided into twelve (12) sections, some with multiple Insuring Agreements. The insurance set forth in this policy is subject to the indicated limits of indemnification or any other endorsements issued during this term.
 - b. The liability Insuring Agreements afforded by this policy (under sections VI, VII, VIII, XI and any applicable endorsements) to respond to claims for **damages** brought pursuant to Title 6, Chapter 9, Idaho Code (the Idaho Tort Claims Act) are expressly limited to five hundred thousand dollars (\$500,000) per occurrence. It is the express intent of ICRMP to limit exposure and coverage to the limits established by statute. Any reference to liability indemnification amounts in excess of five hundred thousand dollars (\$500,000) contained in this policy shall not apply to claims brought pursuant to the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code.
 - c. All limits of indemnification will be subject to this policy period's per covered claim, accident or occurrence limit of Indemnification as stated in the declarations pages or within the accompanying policy and annual aggregate limit of Indemnification for all sections as stated in the declarations pages.
- B. Certain provisions in this policy restrict coverage. The entire policy should be read carefully to determine **your** rights and duties, and to determine what is and is not covered.

SECTION III – GENERAL CONDITIONS

- A. Unless otherwise stated in a specific section, the following conditions are applicable to all sections of this policy.
1. **Apportionment.** In the event a suit alleges a claim which is covered by the terms of this policy and a claim which is not covered by the terms of this Policy, **our** obligation for the costs of defense and payment of any award or settlement for damages shall be limited to only those sums related to a covered claim.
 2. **Assignment.** **Your** interests in this insurance may not be assigned.
 3. **Bankruptcy and Insolvency.** In the event of bankruptcy or insolvency of **you** or any entity comprising **you, we** shall not be relieved of the payment of any claim by **you** or against **you** or the liquidator, receiver or statutory successor of **you** under this policy without diminution because of **your** insolvency.
 4. **Termination of Insurance Coverage by Member Withdrawal or Expulsion.** This insurance may be terminated by **you** by sending a written request of withdrawal to **us**. The effective termination date will be the date of termination **you** request, if **you** are a Member in good standing, or the date **we** received **your** notice of withdrawal, whichever is later. This insurance is available only through faithful participation as a member of ICRMP. **You** may be expelled from ICRMP pursuant to the terms and conditions set forth in the Joint Powers Subscriber Agreement effective as of the date of this policy. If you are expelled from ICRMP, all insurance pursuant to this policy is terminated immediately upon transmittal of notice of expulsion, or otherwise as soon as allowed by law.
 5. **Concealment or Fraud.** This policy or any part hereof, is void if it was obtained by misrepresentation, fraud or concealment of material facts by **you** before or after loss.
 6. **Currency.** The member contribution and losses under this insurance are payable in currency of the United States.
 7. **Declarations.** By acceptance of this policy **you** agree that the declarations pages accurately indicate the coverages **you** have purchased.
 8. **Defense of Claims or Suit.** **We** may investigate or settle any covered claim or suit against **you**. **We** will provide a defense with counsel of **our** choice, at **our** expense, if **you** are sued for a covered claim.
 - a. With respect to claims or suits involving section VI – General Liability Insurance, section VII – Automobile Liability Insurance, section VIII – Errors and Omissions Insurance, section XI – Chemical Spraying Activities Liability Insurance, including any amendatory endorsements in section XII, **our** defense costs incurred will not exceed \$2,000,000 per covered claim, subject to a \$3,000,000 limit in the aggregate for sections VI, VII, VIII, XI and XII combined for all covered claims that are subject to this policy's policy period. The "per covered claim", "per covered occurrence", or "per covered accident" defense costs amount is the most **we** will incur regardless whether one or more of sections VI, VII, VIII, XI and XII are involved in a single claim, and is in addition to the limits of indemnification shown in the declarations pages. Our obligation to defend any claim or suit ends when either:
 - (1) The amount of loss or **damages we** pay equals the limit(s) of indemnification afforded under this policy, or
 - (2) The defense costs incurred by **us** equal \$2,000,000 per covered claim or the defense costs incurred by **us** equal \$3,000,000 aggregate for the policy period.

9. **Dispute Resolution Procedure.** **You** and **we** agree that it is in **our** mutual interest to have a dispute resolution procedure in order to address potential disputes and disagreements as to whether or not a claim is covered by the terms and conditions of this policy. **You** and **we** agree that the dispute resolution procedure as set out in the Joint Powers Subscriber Agreement currently in force as of the date of this policy shall apply to address any potential disputes and disagreements as to coverage.

a. Inapplicable to Certain Disputes and Disagreements:

(1) These dispute resolution procedures do not apply to the appraisal condition set forth in the specific conditions applicable to the property Insuring Agreements in section V of this policy, or to the arbitration condition set forth in the specific conditions applicable to the automobile liability Insuring Agreements set out in section VI of this policy.

(2) These dispute resolution procedures do not apply in any way to **our** decisions regarding terms of claim settlement, claim payment amount, or the claim investigation process.

10. **Duties After Occurrence, Accident, Wrongful Act, Claim or Suit.**

a. **You** must see to it that **we** are notified as soon as practicable of an occurrence which may reasonably result in a claim. To the extent possible, notice should include:

(1) How, when and where the occurrence, claim, accident, wrongful act, or suit took place,

(2) The names, addresses and telephone numbers of any injured persons and witnesses,

(3) The nature and location of any injury or damage arising out of the occurrence, accident, wrongful act, claim or suit.

b. If a claim is made or suit is brought against any **insured**, **you** and any involved **insured** must:

(1) Immediately send **us** copies of any claims, demands, notices, summonses or legal papers received in connection with the claim, occurrence, accident, wrongful act, claim or suit,

(2) See that **we** receive written notice of the claim or suit as soon as practicable,

(3) Authorize **us** to obtain records and other information, and submit to a sworn statement, if requested,

(4) Cooperate with **us** in the investigation, or defense of the claim or suit, including but not limited to, attendance at hearings and trials, securing and giving evidence, and obtaining the attendance of witnesses,

(5) Assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to **you** because of injury or damage to which this Insurance may also apply,

c. **You** shall not, except at **your** own risk, voluntarily make a payment, assume any obligation, or incur any expense, other than for **first aid**, without **our** consent,

d. **Your** failure to comply with the foregoing duties shall constitute a material breach deemed prejudicial to **us**, thereby entitling **us** to refuse any coverage for the occurrence, accident, wrongful act, claim or suit; or any duties arising therefrom.

11. **Entire Agreement.** This policy, when read in concert with the Joint Powers Subscriber Agreement, embodies the entirety of the agreement existing between **you** and **us** relating to this Insurance. **You** acknowledge that the independent insurance agent responsible for maintaining

information about **your** insurance needs has no power to bind ICRMP to provide insurance beyond that expressed in this policy, its endorsements, and its attendant declarations pages.

12. **False or Fraudulent Claims.** If **you** make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this policy may become void and all claims hereunder may be forfeited.
13. **Inspections, Audit and Verification of Values.** **We** shall be permitted, but not obligated, to review or inspect **your** property, operations, records, and books, at any reasonable time. Neither **our** right to make inspections or conduct reviews, nor the making thereof, nor any report thereon, shall constitute an undertaking on behalf of or for the benefit of **you** or others, to determine or warrant that such property or operations are safe or that the values stated by **you** in **your** application are accurate. It is **your** responsibility to disclose accurate statements of value.
14. **Loss Payments.** When it has been determined that **we** are liable under this policy, **we** shall pay losses in excess of the stated deductible up to the limits of indemnification stated in the declarations pages. **Our** obligation to make loss payments shall arise as amounts owed are determined.
15. **Mitigation.** In the event of a loss covered under this policy, **you** must take all reasonable steps to prevent further loss or damage.
16. **No Benefit to Bailee.** **We** will not recognize any assignment or grant any coverage for the benefit of any person, entity, or organization holding, storing or transporting **your** property, regardless of any other provision of this policy.
17. **Non-stacking of Insurance Benefits.** No individual or entity entitled to coverage under any section of this policy shall recover duplicate coverages for the same elements of loss under other sections of this policy, or other policies written by **us**. Any claim which transcends more than one policy period shall be subject to the policy limits set forth in the declarations pages of the policy which covers the date of the earliest actionable event, which gives rise to the claim.
18. **Notice of Member contribution or Coverage Changes.**
 - a. **We** will mail or deliver to the **named insured**, at the last known mailing address, written notice of the following for a subsequent year at least thirty (30) days prior to the expiration date of this policy:
 - (1) A total member contribution increase greater than ten percent (10%) which is the result of a comparable increase in member contribution rates.
 - (2) Changes in deductibles.
 - (3) Reductions in limits of indemnification.
 - (4) Reductions in coverage.
 - b. If **we** fail to provide at least thirty (30) day notice, the policy provided to **you** shall remain in effect until thirty (30) days after such notice is given or until the effective date of a replacement policy obtained by **you**, whichever occurs first.
 - c. For purposes of this provision, notice is considered given on the date of mailing of the notice to the **named insured**. Proof of mailing of conditions of renewal to the last known mailing address of the **named insured** shall be sufficient proof of notice.
19. **Other Insurance.** If **you** have other insurance (whether primary, excess or contingent), against loss covered by this Insurance, **we** shall be liable, under the terms of this insurance, only as excess of other valid and collectible insurance. Notwithstanding the foregoing, **you** may

purchase insurance specifically in excess of this insurance. Such excess insurance shall not be considered "other insurance" for purposes of this condition.

20. **Reporting Property on Your Schedule of Values.** Coverage is conditioned upon information being entered into the online ICRMP e-Agent website by **your** agent. It is the responsibility of the independent insurance agent to enter information into the online ICRMP e-Agent website. It is the responsibility of **you** to report the required information to **your** agent.
21. **Salvage.** Payments received from the sale of **your** damaged property as salvage may be applied toward the amount **we** have paid to replace **your** damaged property.
22. **Subrogation/Recovery/Right of Reimbursement.** If **we** make payment under this policy to **you** or on **your** behalf, and **you** or the person or entity for whom payment was made has a right to recover damages, **we** will be subrogated to that right. **You** must do whatever is necessary to enable **us** to exercise **our** rights and must do nothing before or after the loss to prejudice **our** rights. **We** may prosecute an action or pursue other lawful proceedings in **your** name for the recovery of these payments, and **you** must cooperate and assist **us** at **our** request. Recoveries received for payments **we** have paid on **your** behalf including both indemnity payments and expenses **we** have incurred in handling **your** claim, will be reimbursed on a pro-rata recovery basis between **you** and **us**, upon closing of the claim.
23. **Suit Against Us.** No action shall be brought against **us** by **you** unless there has been full compliance with all pertinent provisions of this policy and the ICRMP Joint Powers Subscriber Agreement. No one shall have any right to join **us** as a party to any action against an **insured**. No action may be brought against **us** by any party who does not qualify as an **insured** under this policy with respect to any liability insuring agreements.
24. **Terms of Policy to Conform to Statutes.** In the event any terms of this policy are determined to be in conflict with the statutes of the State of Idaho, they are hereby amended to conform to such statutes.
25. **Territory.** The insurance provided by this policy applies to claims filed and maintained only within the fifty (50) states, including the District of Columbia, of the United States of America, for all coverage sections.

SECTION IV - GENERAL EXCLUSIONS

- A. Unless otherwise stated, these exclusions are applicable to all sections of this policy.
1. **Asbestos.** This policy does not cover any claim, loss, cost or expense arising directly or indirectly out of, resulting from or contributed to by:
 - a. The use of, sale of, installation of, removal of, abatement of, distribution of, containment of, or exposure to asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
 - b. The actual or threatened abatement, mitigation, removal or disposal of asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
 - c. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with parts (a) and (b) above; or
 - d. Any obligation of the covered party to indemnify or contribute with any party in connection with subparagraphs (a), (b) or (c) above.
 2. **Civil and Criminal Penalties.** This policy does not cover any *claim*, loss or damage resulting from any civil penalties, criminal penalties, fines or obligations to pay for public services rendered where such obligation is imposed or provided for pursuant to any federal, state, or local law, statute, ordinance, or regulation, however characterized, except as expressly provided elsewhere, herein.
 3. **Claims by Members against Past or Present Public Officials.** This policy does not cover the interest of any past or present employee, elected official, or agent arising out of any claim for money *damages*, monetary reimbursement or specific performance brought against such employee, elected official or agent by the *named insured* by whom the public official, employee, elected official or agent was employed or retained. Also excluded are those claims brought by an elected official, or by one appointed to fill an elected position for a *named insured* against another official of the same *named insured*, or the *named insured* itself, arising out of a dispute or interpretation involving the relative governmental authority of the elected officials of the *named insured*.
 4. **Contractual Liability.** This policy does not cover any personal injury, *property damage*, or any other claimed loss, however characterized, arising directly or indirectly from:
 - a. The performance or nonperformance of terms of a contract, whether written, oral or implied.
 - b. The interests of the State of Idaho or the United States Government, or their officers, agents, employees, volunteers, officials or trustees, for their conduct and activities arising out of or in any way related to any written, oral or implied contract or agreement with *you*, or otherwise. Each governmental entity shall be responsible for its own conduct and activities under any contract.
 5. **Course and Scope.** This policy does not cover any personal injury or *property damage* resulting from an act or omission outside the course and scope of employment or any act performed with malice or criminal intent. This exclusion applies regardless of whether any *insured* is actually charged with, or convicted of, a crime.
 6. **Cyber Liability.** This policy does not cover any personal injury, bodily injury, *property damage* to others, wrongful acts, or notification costs, *credit monitoring expenses*, forensic expenses, public relations expenses or any other loss, costs or expenses arising directly or indirectly out of, resulting from, caused by or contributed to by losses related to computer connected access to and/or computer disclosure of any person's or organization's confidential or personal information,

including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information, except for that data that is:

- a. Required to be disclosed under the Idaho Public Records Act, or;
 - b. Inadvertently and unintentionally released publically by an **insured**, via computer, without involvement by a third party, hacker, computer virus, computer bug or similar external influence.
7. **Fungi.** This policy does not cover any bodily injury, personal injury, or **property damage** arising directly or indirectly out of, resulting from, caused by or contributed to by:
- a. Any fungus(i) or spore(s);
 - b. Any solid, liquid, vapor, or gas produced by or arising out of any fungus(i) or spore(s);
 - c. Any material, product, building component, or building structure that contains, harbors, nurtures or acts as a medium for any fungus(i) or spore(s);
 - d. Any intrusion, leakage, or accumulation of water or any other liquid that contains, harbors, nurtures or acts as a medium for fungus(i) or spore(s);
 - e. The actual or threatened abatement, mitigation, removal or disposal of fungus(i) or spore(s) or any material, product, building component, or building structure that contains, harbors, nurtures or acts as a medium for any fungus(i) or spore(s);
 - f. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with subparagraphs (a) through (e) above; or
 - g. Any obligation to indemnify or contribute with any party in connection with subparagraphs (a) through (f) above. For the purpose of this exclusion fungus(i) includes, but is not limited to, any form or type of mold, mushroom or mildew and spore(s) include any reproductive body produced by or arising out of any fungus(i).
8. **Limits on Defense of Claims or Suit.** Notwithstanding any other provision of this Policy, **we** will have no duty to investigate or defend any claim, suit, dispute, disagreement or other proceeding seeking relief or redress in any form other than money damages, including but not limited to costs, fees, fines, penalties or expenses which any **insured** may become obligated to pay as a result of a consent decree, settlement, adverse judgment for declaratory relief or injunctive relief. Such denial of investigation or defense includes, but shall not be limited to any claim, suit, dispute, disagreement or other proceeding:
- a. By or on behalf of any **named insured**, whether directly or derivatively, against:
 - (1.) Any other **named insured**; or
 - (2.) Any other federal, state or local governmental entity or politically subdivision.
 - b. By the spouse, child, parent, brother, or sister of any **insured** for consequential injury as a result of any injury to an **insured**; or
 - c. Involving any intergovernmental agreement(s) where any **named insured** is a party to the agreement(s).
9. **Intergovernmental Claims.** This policy does not cover any claim alleging loss or damage, arising or in any way related to a dispute or disagreement between an ICRMP member and another governmental entity, including another political subdivision, a state or the government of the United States involving any of the following:

- a. Claims of loss or damage between an ICRMP member and another governmental entity wherein there has been no **accident** or allegation of actual bodily injury.
 - b. The respective authority of public agencies to use governmental powers, irrespective of the style or nature of such claim.
 - c. The respective duty of public agencies to use governmental powers, irrespective of the style or nature of such claim.
 - d. Intergovernmental disputes or disagreements concerning the exercise of powers or acceptance or assignment of duties by governmental entities to carry out public activities whether damages are claimed as a result of such dispute or disagreement, or not.
 - e. Claims in any way related to allocation of financial responsibilities between or among public agencies.
10. **Lead.** This policy does not cover any loss or liability arising out of, or contributed to or caused by lead as described in parts (a) through (d) below:
- a. Bodily injury, **property damage** or personal injury arising out of, resulting from, caused by or contributed to by the toxic or pathological properties of lead, lead compounds or lead contained in any materials;
 - b. Any cost or expense to abate, mitigate, remove or dispose of lead, lead compounds or materials containing lead;
 - c. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with parts (a) or (b) above; or
 - d. Any obligation to share damages with or repay someone else who must pay damages in connection with parts (a), (b) or (c) above.
11. **Nuclear, Chemical and Biological Incident.** This policy does not cover any personal injury, bodily injury or **property damage**, or other type of damages or claims arising directly or indirectly from:
- a. Nuclear detonation, reaction, radiation, radioactive contamination or hazardous properties of nuclear material of any type, however caused or characterized, including any loss or damage by fire resulting therefrom;
 - b. The dispersal, application or release of, or exposure to, chemical or biological materials or agents that are harmful to property or human health, whether controlled or uncontrolled, or due to any act or condition incidental to any of the foregoing, whether such loss be proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this policy, however such dispersal, application, release or exposure may have been caused.
12. **Pollution.** This is an absolute pollution exclusion. It is the intention of **you** and **we** that there is absolutely no coverage arising out of or relating to **pollutants**, however characterized or defined. This policy does not cover any injury, loss, damage, costs, fines, penalties, or expenses of any kind directly or indirectly arising out of the actual, alleged or threatened existence, discharge, dispersal, release or escape of **pollutants** or negligence in any way related thereto:
- a. At or from premises **you** now, or in the past, have owned, rented, or occupied, including but not limited to premises that **you** have operated or managed as an involuntary possessor;
 - b. At or from any site or location used by or for **you** or others for the handling, storage, disposal, processing or treatment of waste at any time;

- c. That at any time involves the transportation, handling, storage, treatment, disposal, or processing by or for **you** or any person or organization for whom **you** may be legally responsible;
 - (1) At or from any site or location on which **you** or any contractors or subcontractors working directly or indirectly on **your** behalf are performing operations;
 - (2) If the **pollutants** are brought on or to the site or location in connection with such operations;
 - (3) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**;
 - d. Whether caused or alleged to have been caused by the **named insured** or any other person, entity, or third-party, however characterized;
 - e. Arising out of any direction, request, or order of any governmental agency, court of law, or other authority, that **you** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**, including any and all costs or attorney's fees associated therewith;
 - f. Arising out of the failure of the **named insured** to prevent or regulate **pollutants** generated or caused by any other person, entity, or third-party, however characterized.
 - g. This exclusion shall not apply to tear gas or mace as applied by law enforcement personnel within the scope of their duties.
13. **Punitive Damages.** This policy does not cover any claim, loss, accident or damage for exemplary or punitive **damages**, however characterized.
14. **Silica.** This policy does not cover any loss or liability arising out of, or contributed to or caused by silica as described in paragraphs (a) through (d) below:
- a. Bodily injury, **property damage**, or personal injury arising out of, resulting from, caused by, or contributed to by silica, exposure to silica or the use of silica;
 - b. Any damages or any loss, cost or expense arising out of any
 - (1) claim or suit by or on behalf of any governmental authority or any other alleged responsible party because of, or
 - (2) request, demand, order or statutory or regulatory requirement that any covered party or any other person or entity should be, or should be responsible for:
 - (i) Assessing the presence, absence or amount or effects of silica;
 - (ii) Identifying, sampling or testing for, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, abating, disposing of or mitigating silica; or
 - (iii) Responding to silica in any way other than as described in (a) and (b) above;
 - (3) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with any of the subsections above; or
 - (4) Any obligation to share damages with or repay someone else in connection with any of the subsections above.

15. **War or Civil Disturbance.** This policy does not cover any claim, loss, accident or damage arising directly or indirectly from, by, happening through or as a consequence of war, invasion, acts of terrorism, acts of foreign enemies, any weapon of war employing atomic fission or radioactive force (whether in time of peace or war), hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority unless such acts of destruction by order of civil authority are at the time of and for the purpose of preventing spread of fire; or claims or liability arising directly or indirectly from nuclear fission, nuclear fusion or radioactive contamination.

SECTION V – PROPERTY INSURANCE

A. Insuring Agreements Applicable to Property Insurance:

1. **Buildings, Structures, and Property.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay **you**, or on **your** behalf, for direct accidental physical loss of or direct accidental physical damage to **your covered property**, during the policy period specified in the declaration pages.
2. **Mobile Equipment and Automobile Physical Damage.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay **you**, or on **your** behalf, for direct accidental physical loss of or direct accidental physical damage to any **automobile or mobile equipment** owned by **you**, or any **automobile or mobile equipment** for which **you** have an obligation to provide adequate insurance because of an ownership or possessory interest during the policy period specified in the declaration pages.
3. **Operational Disruption Expense.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay **you**, or on **your** behalf, **operational disruption expenses** resulting from damage to **covered property** arising out of a covered loss during the **period of restoration** under Insuring Agreements 1 or 2 of this section during the policy period specified in the declaration pages.
4. **Valuable Papers and Records.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay **you**, or on **your** behalf, for direct accidental physical loss of or direct accidental physical damage to valuable papers and electronic data following damage to **covered property** arising out of a covered loss under Insuring Agreement 1 of this section during the policy period specified in the declaration pages. This Insuring Agreement applies to the costs to research, replace, or restore records which exist on electronic or magnetic media for which duplicates do not exist.

B. Definitions Applicable to Property Insuring Agreements:

1. **"Actual Cash Value"** means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.
2. **"Aircraft"** means any machine capable of sustained atmospheric flight, including unmanned aerial vehicles.
3. **"Automobile"** means a motorized land vehicle principally licensed and designed for travel on public roads. **"Automobile"** does not include **"mobile equipment"**.
4. **"Computer System"** means a system of computer hardware, software, and associated electronic devices that **you** operate or own.
5. **"Covered Property"** means **your** buildings and structures, building contents, leasehold improvements, buildings and structures in the course of construction, **automobiles** and **mobile equipment** listed on the **schedule of values**. It also means personal property of others that are in **your** care, custody or control, leased buildings and structures, but only for the portion which **you** occupy and in which **you** have an insurable interest at the time of the loss listed on the **schedule of values**. Items placed on the **schedule of values** will not be covered if excluded elsewhere by this policy.
6. **"Earth Movement"** any natural or man-made earth movement, earthquakes, seaquakes, shocks, tremors, seismic events, landslides, submarine landslides, avalanches, subsidence, sinkhole collapse, mud flow, rock fall, volcano, lava flow or any other similar earth movement, sinking, rising or shifting
7. **"Flood"** means a temporary condition of partial or complete inundation of normally dry land from:
 - a. The overflow of inland or tidal waters outside the normal watercourse or natural boundaries;

- b. The overflow, release, rising, backup, runoff or surge of surface water; or
 - c. The unusual or rapid accumulation or runoff of surface water from any source.
7. **"Functional Replacement Cost"** means the cost of replacing damaged property with similar property that will perform the same function but may not be identical to the damaged property.
 8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not licensed or principally designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle such as a trailer or semi-trailer and identified in ***your schedule of values***. It also includes watercraft fifty (50) feet and under in length.
 9. **"Operational Disruption Expense"** means costs incurred by the ***named insured*** in order to continue as nearly as practicable the normal operation of ***your*** public entity immediately following a covered loss. This includes the loss of any income, net of expenses, incurred during the ***period of restoration*** of the operation of the public entity.
 10. **"Period of Restoration"** means that period of time that begins with the date of the direct physical loss of or direct physical damage to ***covered property*** and ends with the date when such part of the ***covered property*** as has been lost or damaged could, with the exercise of due diligence or dispatch, be rebuilt, or replaced.
 11. **"Replacement Cost"** means the cost to repair, rebuild or replace with new materials of like kind, size and quality, without deduction for depreciation.
 12. **"Schedule of Values"** means those records describing ***covered property*** as entered into the ICRMP e-Agent database by the member's agent and kept on file with ***us***.

C. Specific Conditions Applicable to Property Insuring Agreements:

1. **Appraisal.** If ***you*** and ***we*** fail to agree on the amount of loss, either one can demand that the amount of loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser, and notify the other of the appraiser's identity within twenty-one (21) days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within fourteen (14) days, ***you*** or ***we*** can ask a district judge in the State of Idaho to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to ***us***, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within fourteen (14) days, they shall submit their differences to the umpire. Written agreements signed by any two of these three shall set the amount of the loss within seven (7) days. Any such decision resulting from the appraisal process shall be final and binding upon ***you*** and ***us***, and shall not be subject to judicial review or appeal, except upon a showing of fraud, misrepresentation or other undue means. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be shared equally by ***you*** and ***us***.
2. **Automobiles and Mobile Equipment that are Leased or Rented.** ***Automobiles*** and ***mobile equipment*** that are temporarily leased or rented to an ***insured***, for less than ninety (90) days, and used for official business, are covered under Insuring Agreement 2, and are not required to be listed on the ***schedule of values***.
3. **Automobiles Owned by Employees or Authorized Volunteers.** ***Automobiles*** owned by employees or authorized volunteers of the ***named insured*** are provided secondary physical damage insurance while the ***automobiles*** are being used by the employee or authorized volunteers on official business of the ***named insured***. Insurance provided by this condition shall be deemed secondary to the insurance of the employee or authorized volunteers' personal insurance, which shall be primary insurance. The intent of this special condition shall not be interpreted to extend insurance to ***automobiles*** owned by other public or private entities, which are made available to the ***insured***, its employees or volunteers. For these non-

owned **automobiles**, the terms and conditions already contained in this section shall apply. This condition does not apply to **automobiles** or **mobile equipment** owned by authorized volunteers engaged in search and rescue activities. Insuring Agreement 2 is intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.

4. **Civil Authority.** Property which is insured under this section is also covered against damage or destruction by civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection, terrorism or other hostilities or warlike operations.
5. **Debris Removal.** This section covers up to 25% of the amount of damage to **covered property** otherwise payable for any one occurrence under Insuring Agreement 1 for the expenses of removing debris remaining after any loss thereby insured against, except that there shall be no liability for the expense of removal of any foundations, unless damaged by a covered accident.
6. **Earth Movement.** **Flood** as defined in this section, that would not have occurred but for an **earth movement** as described, shall be deemed to be proximately caused solely by **earth movement** regardless of any other cause or event that contributes concurrently or in any sequence to such **flood**, and consequently shall be considered **earth movement**.
7. **Flood.** When a loss is caused by **flood** under this section, **we** will pay only that part of the loss that exceeds the applicable deductible amount. The deductible in regards to a loss caused by **flood** is as follows:
 - a. Flood Type A: The first \$100,000 of each loss for buildings listed in the **schedule of values** subject to the aggregate as expressed in the declaration pages of this policy. Flood Type A excludes structures located wholly or partially within Special Flood Hazard Areas (SFHA), or areas of one hundred (100) year flooding, as defined by the Federal Emergency Management Agency (FEMA).
 - b. Flood Type B: The first \$500,000 of each building and the first \$500,000 of the contents amount listed for each building in the **schedule of values** subject to the aggregate as expressed in the declaration pages of this policy. Flood Type B applies to structures located wholly or partly within Special Flood Hazard Areas (SFHA), or areas of one hundred (100) year flooding, as defined by the Federal Emergency Management Agency (FEMA).
8. **Inadvertently Omitted Property:** **We** will pay up to first \$500,000 of the repair or **functional replacement cost**, whichever is less, for property inadvertently omitted from **your schedule of values**. Additionally, for any inadvertently omitted property valued in excess of \$500,000, up to a total of \$1,000,000 in the aggregate, annually, we will pay 50% of the **functional replacement cost**, whichever is less.
9. **Landscaping Items.** **We** will pay for damage to outdoor trees, shrubs, plants and harvested crops as a result of an **accident**. The most we will pay in any one occurrence is \$25,000.
10. **Newly Acquired Property:** All newly acquired property shall be reported to **us** within ninety (90) days in order for coverage to continue and shall be limited to \$10,000,000 until such time as reported to **us**, but no longer than ninety (90) days after acquisition.
11. **Operational Disruption Expense.** **We** will not be liable for any **operational disruption expense** exceeding the **period of restoration**. The maximum amount **we** will pay under Insuring Agreement 3 of this section for any one occurrence or in the aggregate for multiple occurrences is \$250,000 for damages involving actual interruption of the use of **your computer system** when caused by a covered loss, provided that the disruption is directly caused by damage to **your computer system**. The maximum amount we will pay for all other covered operational disruptions is \$2,500,000 for any one occurrence or in the aggregate for multiple occurrences.

12. **Ordinance Deficiency.** In the event of a covered loss, **we** shall be liable for additional cost not to exceed \$5,000,000 occasioned by the enforcement of any state or municipal law, ordinance or code, which necessitates repairing, rebuilding, or replacement of **covered property** to meet such requirements, provided such repairing, rebuilding or replacement is complete or commences and is continuing within twenty-four (24) months of the date of loss. If demolition is required to comply with such requirement, **we** shall be liable for such additional costs, except as provided in the debris removal provision above. The provisions of these conditions shall not, in any event, apply to increased costs due to the enforcement of compliance with pollution statutes, ordinances or laws, whether local, state or federal in nature. Any payment under this provision shall not serve to increase the limits of indemnification.
13. **Preservation of Property.** If it is necessary to move covered personal property from the described premises to preserve it from loss or damage, **we** will pay up to \$250,000 for direct physical loss or damage to that property while it is being moved or while temporarily stored at another location. **We** may pay for reasonable expenses incurred to minimize the insured loss, but any payment under this provision shall not serve to increase the limits of indemnification that would otherwise apply at the time and place of loss, nor shall such expenses exceed the amount by which the loss is reduced.
14. **Professional Fees to Prove Loss.** This policy is extended to cover reasonable and necessary expenses incurred by you for architects, engineers, or other necessary design professionals who assist you in rebuilding from your loss under this Policy. Professional fees incurred to prove the extent of a loss are limited to a maximum of \$500,000 per occurrence.
15. **Property of Others.** Employee or volunteer-owned personal property located within **covered property** is covered up to a per occurrence limit of \$50,000 per **accident**. Coverage provided shall be secondary to any primary coverage available to employees or volunteers.
16. **Property in the Course of Construction.** New construction of buildings, including equipment, machinery, tools, materials or supplies intended for use in the construction of such property shall be covered up to \$1,000,000 for each building as listed per the **schedule of values**. Repairs or renovations of existing buildings or structures listed on the **schedule of values** and that **you** have an insurable interest in at the time of loss will also be covered up to \$1,000,000.
17. **Property in Transit.** This section covers **covered property**, while being transported by **you**, up to a per occurrence and/or in the aggregate limit of \$1,000,000 per policy period.
18. **Schedule of Values.** **Covered property** need not be identified in the **schedule of values** if the individual value of the item is less than \$5,000. It is **your** responsibility, working with **your** independent insurance agent, to make sure all **covered property** valued over \$5,000 is listed on **your schedule of values**.
19. **Valuable Papers and Records.** The maximum amount **we** will pay under Insuring Agreement 4 of this section for any one occurrence or in the aggregate for multiple occurrences is \$500,000 to restore data lost by **you** for an actual interruption of the use of **your computer system** when caused by a covered loss. This includes retrieving, repairing, restoring or replacing any of **your computer system** or any other data media or media material or any other computer programs for which **you** are responsible provided the claim results from a network breach, malicious code or accidental damage to **your computer system**. The maximum amount we will pay for all other losses to valuable papers and records is \$1,000,000 for any one occurrence or in the aggregate for multiple occurrences.
20. **Valuation of Loss.**
 - a. Building and structures— **We** shall not be liable for loss or damage in excess of 125% of the stated total value per location as reported in the **schedule of values**, which **you** have submitted to **us** in accordance with the conditions described below:
 - (1) If damage or destruction to **covered property** is not repaired, rebuilt or replaced on the same or another site within two (2) years after the loss or damage, **we** shall not be liable for more than the

actual cash value as of the date of loss (ascertained with proper deduction for depreciation) of the property destroyed;

(2) **Our** total liability for loss of property covered herein shall not exceed the least of the following:

- (i) The cost to repair; or
 - (ii) The cost to rebuild or replace, calculated as of the date of the loss, on the same site, with materials that are functionally equivalent; or
 - (iii) The actual expenditure incurred in rebuilding, repairing or replacing on the same or another site.
- b. Building Contents -- at **replacement cost** of the damaged or destroyed **covered property**.
 - c. **Automobile** and **mobile equipment** --not to exceed the **functional replacement cost**, for vehicles and mobile equipment listed on **your schedule of values**, up to a maximum of \$1,000,000 per item and no more than \$10,000,000 in the aggregate for multiple items while not in use.
 - d. Stock in process -- at the value of raw material and labor expended plus the proper proportion of overhead charges.
 - e. Finished goods manufactured by **you** -- at the regular cash-selling price at the location where the loss occurs, less all discounts and charges to which the property would have been subject had no loss occurred.
 - f. Property of others -- (1) at the amount for which **you** are liable, but in no event to exceed the **replacement cost** value or (2) fine arts on display at the appraised value and included as contents or listed separately on the **schedule of values** up to the limits specified in the declaration pages.
 - g. Leased buildings, leasehold improvements and betterments at **replacement cost**, if actually replaced within two (2) years after the loss or damage; if not replaced, at **actual cash value** on date of loss.
 - h. Accounts, manuscripts, mechanical drawings and other records and documents not specifically excluded -- at value plus cost of transcribing.
 - i. Fine arts -- at the appraised value of the article to a maximum of \$1,000,000 per occurrence or in the aggregate for multiple occurrences.

21. **Water Backup through Sewer or Drain.**

- a. **We** provide coverage for direct physical loss to **your** buildings and their related contents when damage is caused by water which backs up through sewers or drains, not related to a **flood**, up to a maximum of \$1,000,000 per occurrence or in the aggregate for multiple occurrences within the policy period.

D. **Exclusions Applicable to Property Insuring Agreements:**

- 1. **With Regard to all Property, we do not cover losses under the Property Insuring Agreements resulting directly or indirectly from:**
 - a. Loss or damage more specifically covered under any other section of this policy.
 - b. Moths, vermin, termites, or other insects; inherent vice; latent defect; wear, tear or gradual deterioration; and contamination, rust, wet or dry rot, mold, dampness of atmosphere, acid rain, smog or variations of temperature.

- c. Settling, shrinkage or expansion of building or foundation, except if damage to **covered property** is caused by **earth movement** or **flood**.
 - d. Loss of use, delay, loss of markets or opportunity.
 - e. Breakdown or derangement of any machinery, unless an insured peril ensues, and then only for the actual loss or damage caused by such ensuing peril.
 - f. Electrical appliances, devices, fixtures or wiring caused by artificially generated electrical current, unless fire or explosion ensues, and then only for the actual loss or damage caused by such ensuing fire or explosion.
 - g. Inventory shortage, mysterious disappearance or loss resulting from any kind of infidelity, dishonesty by **you** or any of **your** employees, whether alone or in collusion with others.
 - h. An act or omission intended or reasonably expected from the standpoint of any **insured** to cause damage to **covered property**. This exclusion applies even if the damage to **covered property** is of a different kind or degree than that intended or reasonably expected.
 - i. Any fraudulent, dishonest, or criminal act by any employee or authorized representative of the **insured** while acting alone or in collusion with others.
 - j. Any loss to **covered property**, other than wind or fire damage to **covered property**, which has been vacant or unoccupied for more than one hundred and twenty (120) consecutive days, including the date of the loss. A building is considered vacant or unoccupied when it does not contain enough property to conduct its customary business operations. However, it does not include any time when customary activities are suspended due to circumstances that are usual to the building's occupancy.
 - k. This policy does not cover any **claim** made under this section arising directly or indirectly from **fungi**, mold, wet or dry rot and bacteria including **claims** for the cost to clean up, remove, remediate, detoxify, neutralize, or in any way respond to or assess the effects of any of the foregoing. This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.
2. **With Regard to Buildings and Structures, we do not cover losses under the Property Insuring Agreements resulting directly or indirectly from:**
- a. Settling, cracking, bulging, shrinking or expansion of pavements, foundations, walls, floors, ceilings or roofs, unless one or more of the walls or roofs of the building or structure are physically broken and falls to a lower level, except if damage is caused by a covered **accident**, or if damage to **covered property** is caused by **earth movement** or **flood**.
 - b. Extremes or changes of temperature (except to water piping or space heating equipment due to freezing) or changes in relative humidity, regardless of whether or not atmospheric except if damage to **covered property** is caused by **earth movement** or **flood**.
 - c. Any increase of loss due to interference with rebuilding, repairing, or replacing a building, or with the resumption or continuation of business.
 - d. Any increase of loss due to the suspension, lapse or cancellation of any lease or license, contract or order.
 - e. Loss or damage to property caused by or resulting from errors in design or testing of that property, except resultant physical loss or damage to other property insured by this section.
 - f. The repair or replacement of faulty or defective workmanship, material, or construction, except resultant physical loss or damage to other property insured by this section.

3. **With Regard to Property in Course of Construction, we do not cover losses under the Property Insuring Agreements resulting directly or indirectly from:**
 - a. The repair or replacement of faulty or defective workmanship, material, or construction, except resultant physical loss or damage to other property insured by this section.
 - b. Penalties for non-completion of or delay in completion of contract or non-compliance with contract conditions, nor for loss of use of occupancy, however caused.
4. **With Regard to Specific Property, we do not cover physical loss or physical damage to the following property:**
 - a. All animals and birds, except service animals that are identified on ***your schedule of values***. For those identified service animals, ***our*** liability for such loss shall not exceed the amount listed in the ***schedule of values*** or \$25,000, whichever is less, for injury, sickness or death.
 - b. Land and water.
 - c. ***Aircraft***.
 - d. Watercraft over (fifty) (50) feet in length.
 - e. Retaining walls not constituting part of a building when loss is caused by ice or water pressure.
 - f. Underground mines and mining property located below the surface of the ground.
 - g. Any property undergoing insulation breakdown tests.
 - h. Money, notes or securities.
 - i. Jewelry, furs, precious metals or precious stones.
 - j. Dams, canals, ditches, retaining ponds and all liners or other membranes designed to separate, retain, or hold water, sewage, trash, dirt, debris or any other material.
 - k. Roadways, highways, streets, bridges, and guardrails, however characterized.
 - l. Underground pipes.
 - m. Any ***mobile equipment, automobile***, watercraft or other property while participating in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity.
 - n. Overhead transmission and distribution lines, including wire, cables, poles, pylons, standards, towers or other supporting structures which may be attendant to the transmission and/or distribution of electrical power and/or telephone communications, but this exclusion shall not apply to such property which is located on the ***insured's*** premises or within one thousand (1,000) feet thereof.
 - o. Data transmission lines and conduit not contained within walls of ***covered property***.

SECTION VI –GENERAL LIABILITY INSURANCE

A. Insuring Agreements Applicable to General Liability Insurance

1. **General Liability.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which an **insured** becomes legally obligated to pay as **damages** for **personal injury** or **property damage** which arise out of an **occurrence** during the policy period. This Insuring Agreement does not apply to Insuring Agreement 3, Sexual Molestation Liability.
2. **Law Enforcement Liability.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which an **insured** becomes obligated to pay as **damages** by reason of negligent acts or **wrongful acts** arising out of an **occurrence** from the performance of **your** duties while providing law enforcement services or **jail operations** services or the administration of **first aid** resulting in **personal injury** or **property damage** during the policy period. This Insuring Agreement does not apply to Insuring Agreement 3, Sexual Molestation Liability.
3. **Sexual Molestation Liability. (Insuring Agreement 3 provides CLAIMS MADE coverage only.)** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums **you** become legally obligated to pay as **damages** because of any sexual molestation **bodily injury claim** which is **first made** in writing to **us** by **you** against an **insured** during this policy period, or any Extended Reporting Period **we** provide, arising out of any sexual molestation incident or a series of related sexual molestation incidents. This insurance applies to **bodily injury** only if:
 - a. The **bodily injury** is caused by a sexual molestation incident that takes place or a series of related sexual molestation incidents that take place in the coverage territory as specified in the general conditions section of this policy; and
 - b. The **bodily injury** caused by a sexual molestation incident or a series of related sexual molestation incidents did not occur before the retroactive date, if any, shown in the declarations pages or after the end of this policy period; and
 - c. Subject to items a and b above, Insuring Agreement 3 will only apply if the first incident of sexual molestation **bodily injury** to the injured person takes place on or after the retroactive date and before the end of the policy period. Regardless of the number of incidents of sexual molestation involving an injured person that take place over one or more policy periods while insured by **us** and whether such incidents of sexual molestation are committed by the same perpetrator or two or more perpetrators acting in concert, all such **bodily injury** to that injured person:
 - (1) All **claims** arising out of the same incident or a series of related incidents of sexual molestation **bodily injury** will be deemed to be **first made** to **us** in writing by **you** when the first of such **claims** is made and will be considered a single **claim**; and
 - (2) Will be subject to that policy period's per covered claim limit of Indemnification as stated in the declarations pages and annual aggregate limit of Indemnification for sections VI, VII, VIII, XI and XII combined as stated in the declarations pages.

B. Definitions Applicable to General Liability Insuring Agreements

1. **"Automobile"** means a motorized land vehicle, principally licensed and designed for travel on public roads.
2. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
3. **"Claim"** means a **suit** or demand made by or for the injured person for monetary damages because of alleged **bodily injury** caused by sexual molestation and applies only to Insuring Agreement 3.

4. **"Fire Suppression Activities"** means the application of water or *fire suppression chemicals* in the attempt to suppress fires or dislocation of materials or destruction of property deemed necessary to suppress fires.
5. **"Fire Suppression Chemicals"** means chemicals prescribed for extinguishing or preventing fires.
6. **"Jail Operations"** means activities relating to the detention of prisoners, arrestees or detainees at a detention facility, jail, work program, or other facility however described used to hold prisoners, arrestees, or detainees in the charge of an *insured*, or in the transportation of prisoners, arrestees or detainees from one facility to another facility.
7. **"Occurrence"** means an *accident* or a continuous or repeated exposure to conditions which result in *personal injury* or *property damage* during the policy period. All *personal injury* to one or more persons and/or *property damage* arising out of an *accident* or a continuous or repeated exposure to conditions shall be deemed one *occurrence*.
8. **"Personal Injury"** means *bodily injury*, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property. As respects Insuring Agreement 2 only, *personal injury* shall also mean false arrest, false imprisonment, detention, unlawful discrimination and violation of civil rights arising out of law enforcement activities.
9. **"Premises"** means any real property or land possessed and controlled by *you* in *your* capacity as a possessor.
10. **"Wrongful Act"** means the negligent performance of a legal duty or responsibility or failure to perform a legal duty or responsibility, respectively, in a tortious manner pursuant to the Idaho Tort Claims Act or unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

C. Specific Conditions Applicable to General Liability Insuring Agreements:

1. **Extended Reporting Periods.** Insuring Agreement 3 of this section is conditioned as follows if this policy is cancelled or not renewed for any reason, other than non-payment of member contribution or non-compliance with the terms and conditions of this policy:
 - a. If *you* are expelled from ICRMP, or have elected to withdraw from ICRMP and are in good standing as a Member, as set forth in section III – General Conditions, Item 4, *we* will extend an Extended Reporting Period of thirty (30) days duration following immediately upon the effective date of expulsion, to apply to any sexual molestation *bodily injury claim* which is *first made* against *you* in writing to *us* but only by reason of a sexual molestation *bodily injury* which commences and was sustained subsequent to the retroactive date set forth in the declarations pages and prior to the effective date of this policy's cancellation or termination, and which is otherwise afforded by Insuring Agreement 3 of this section.
 - b. If, however, this policy is immediately succeeded by similar claims-made insurance policy with any insurer, in which the retroactive date is the same as or earlier than that shown in the declarations pages of this policy, the succeeding policy shall be deemed to be a replacement of this policy, and *you* shall have no right to secure the Extended Reporting Period coverage from *us*.
 - c. The Extended Reporting Period does not reinstate or increase the limit(s) of indemnification applicable to Insuring Agreement 3 of this section. Once in effect, an Extended Reporting Period cannot be canceled.
2. **Fire Suppression Liability.** Insuring Agreement 1 of this section provides liability coverage for *damages* arising out of *fire suppression activities* by authorized firefighting personnel, provided however, all requirements of Insuring Agreement 1 of this section are satisfied. Coverage is limited to \$500,000 per occurrence for claims brought pursuant to the Idaho Tort Claims Act and \$500,000 per

occurrence for all other claims brought for **damages** related to **fire suppression activities**. When used by authorized firefighting personnel in the course of **fire suppression activities**, **fire suppression chemicals** will not be considered a pollutant. Government imposed penalties or fines, however characterized, assessed to suppress a fire started by **your fire suppression activities** or for the improper discharge of **fire suppression chemicals** will not be covered under this section.

3. **Garagekeeper's Liability.** Insuring Agreement 1 of this section provides liability coverage associated with the ownership and operation of storage garages and parking lots of the **named insured** as bailee with respect to an **automobile** left in its custody and control; provided however, all requirements of the Insuring Agreement 1 of this section are satisfied.
4. **Hostile Fire Liability.** Insuring Agreement 1 of this section provides for loss or damage arising out of heat, smoke, or fumes resulting from a hostile fire. For purposes of this specific condition, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be; provided however, all requirements of the Insuring Agreement 1 of this section are satisfied.
5. **Host/Liquor Liability.** Insuring Agreement 1 of this section provides liability coverage for actions resulting from the provision, sale or distribution of alcoholic beverages, or by reason of any local, state or federal liquor control laws; provided however, all requirements of the Insuring Agreement 1 of this Section are satisfied.
6. **Incidental Medical Liability.** Insuring Agreements 1 and 2 of this section provide liability coverage for professional medical services rendered in the course and scope of delivering such services or during medically supervised training related thereto or which should have been rendered to any person or persons (other than employees of the **named insured** injured during the course of their employment) only by any of the following persons acting on behalf of the **named insured**:
 - a. Employed or volunteer emergency medical technicians (EMTs), paramedics or first responders.
 - b. Employed or volunteer, nurse practitioners, registered nurses, licensed practical nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while employed by **you** and while acting within the scope of their duties and responsibilities serving inmates of a jail operated by **you**.
 - c. Volunteer registered nurses, licensed practical nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while volunteering for **you** and while acting within the scope of their duties and responsibilities, serving as an EMT, paramedic, first responder or ambulance personnel.
 - d. Any other **insured** providing **first aid**.
7. **Multiple Insureds, Claims or Claimants.** To the extent that coverage may be applicable to two or more Insuring Agreements in this section, inclusion herein of more than one **insured** or the making of more than one **claim** or one **occurrence** or the bringing of suits by more than one person or organization shall not operate to increase **our** limits of indemnification as stated in the declarations pages.
8. **Non-Stacking of Limits - Multiple Sections of this Policy or Multiple Insuring Agreements within this section Involved in a Single Event** if any **occurrence, accident, claim** or loss covered in whole or in part under this section VI that also constitutes:
 - a. An **occurrence** or **accident** covered in whole or in part under section VII; or
 - b. A **wrongful act, claim** or **wrongful employment practice** covered in whole or in part under section VIII, or;
 - c. A **claim** covered in whole or in part under section XI; or

- d. A **claim, accident or occurrence** in whole or in part under section XII; or
 - e. Any combination of two or more of the coverage events listed in subparagraphs 8 (a) (b), (c) and (d) of this section, or any events subject to multiple insuring agreements within each section, shall be limited to coverage limits allowed by the section of the policy with the higher limit for the per occurrence, per accident or per claim(s) limit(s) of indemnification as shown in the declarations pages, and its corresponding deductible shall be the sole limit applicable to the multiple occurrences, accidents, claims or losses addressed. If the per occurrence, per accident and per claim(s) limit(s) of indemnification as shown in the declarations pages are equal, only one limit will still apply and it will be the limit of indemnification and its corresponding deductible, if any, applicable to the Section deemed by **us** to be providing the primary coverage for the **claim, accident or occurrence**.
9. **Sewer Back-up Claims.** Insuring Agreement 1 of this section provides for third-party **claims** for **property damage** arising out of **occurrences** involving sewer line and facilities back-up and related events, for which the **named insured** is responsible by virtue of its negligence; provided however, all requirements of Insuring Agreement 1 of this section are satisfied. Notwithstanding the general exclusions stated elsewhere within this policy, this Insuring Agreement extends to mold and other fungus abatement and remediation demonstrated to be a direct result of a sewer back-up related **occurrence** for which **you** are responsible.

D. Exclusions Applicable to General Liability Insuring Agreements

1. **With Respect to Insuring Agreements 1, 2 and 3, General Liability Insurance under this Section does not apply:**
 - a. To any **claim, occurrence, accident or loss** more specifically covered under any other section of this policy.
 - b. To **personal injury or property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury or property damage**. This exclusion applies even if the **personal injury or property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected. This exclusion shall not apply to **personal injury** resulting from the use of reasonable force to protect persons or property, or in the performance of a duty of the **insured**.
 - c. To the ownership, maintenance or use, including loading and unloading, of watercraft over fifty (50) feet in length.
 - d. To **personal injury or property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **automobile**.
 - e. To **personal injury or property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **aircraft, airfields, runways, hangars, buildings, or other properties** in connection with aviation activities..
 - f. To **property damage** to property **you** own, rent or occupy; **premises you** sell, give away or have abandoned; property loaned to **you**; and personal property in **your** care, custody and control. This exclusion shall not apply to garagekeeper's liability, as provided in the specific conditions of this section.
 - g. To any **claim** arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.
 - h. To any **damages** claimed for any loss, cost or expense incurred by **you** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of **your** product, **your** work, or the impaired property if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition.

- i. To any obligation for which **you** may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any **claim** or **suit** by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
- j. To any **claim** or **suit** for which the only monetary **damages** sought are costs of **suit** and/or attorney's fees.
- k. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation, or planning and zoning activities or proceedings, however any such matters may be characterized, whether such liability accrues directly against **you** or by virtue of any agreement entered into by or on **your** behalf.
- l. To **personal injury** or medical expense caused by the following diseases: asbestosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelioma, or to any lung disease or any ailment caused by, or aggravated by exposure to or inhalation, consumption or absorption of asbestos in any form.
- m. To **personal injury** or **property damage** due to, or arising out of, the actual or alleged presence of asbestos in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or **damages** arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with aforementioned; or obligations to share **damages** with or repay someone else who must pay **damages** in connection with the aforementioned.
- n. To any **claim** relating to wrongful employment acts of the employment of any person, including threatened, actual or alleged discrimination or harassment.
- o. To any investigatory, disciplinary or criminal proceeding against an **insured**, except that **we** may at our own option, associate counsel in the defense of any such investigatory, administrative or disciplinary proceeding. Should **we** elect to associate counsel, such election shall not constitute a waiver or estoppel of any rights **we** may have pursuant to the terms, conditions, exclusions, and limitations of this policy.
- p. To any obligation of a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain employees of governmental entities who are named as defendants in a criminal action.
- q. Except to the extent coverage 6, Incidental Medical Liability, to any liability arising out of the rendering of or failure to rendering of or failure to render the following professional health care services:
 - (1) Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - (2) Any professional medical service(s) by a physician, except supervisory physicians as defined by Idaho Code § 6-902A (2) (b), and only when performing those duties as outlined in Idaho Code § 6-902A (2) (a).; or
 - (3) Any professional medical service(s) by a physician's assistant, nurse practitioner or nurse; or
 - (4) Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.
 - (5) However, this exclusion shall not apply to liability of an **insured** for incidental medical liability coverage, as provided in the specific condition six above.

- r. Service by any person as a member of a formal accreditation or similar professional board or committee of the **insured**, or as a person charged with the duty of executing directives of any such board or committee.
 - s. To any **claim** involving miscalculation or legality of assessments, adjustments, disbursements or the collection of taxes, fees, licenses, however described.
 - t. To any liability of any **insured** arising out of the rendering of or failure to render services as an officer or director, or other official of any organization, other than the **named insured**. This exclusion does not apply if the **insured** is serving at the direction of or on behalf of the **named insured**, and is acting within the scope of their duties as such.
2. **With Respect to Insuring Agreement 3, Sexual Molestation Liability Insurance under this Section does not apply to:**
- a. Any sexual molestation **bodily injury claim**:
 - (1.) Based upon, or arising out of, sexual molestation **bodily injury** which is the subject of any notice given under any policy or policies the term of which has or have expired prior to the inception date of this policy.
 - (2.) Arising out of any sexual molestation **bodily injury** that takes place prior to the retroactive date of this policy.
 - (3.) Caused by any **insured** who is found by a court of law to have committed a criminal act involving sexual molestation. However, **we** will pay covered **damages** the **named insured** becomes legally obligated to pay as a result of an employee's actions if such obligation is created pursuant to the Idaho Tort Claims Act, another state's similar law or federal law.

SECTION VII – AUTOMOBILE LIABILITY INSURANCE

A. Automobile Liability Insuring Agreements:

1. **Automobile Liability.** We agree, subject to the conditions and exclusions of this section, to pay on *your* behalf those sums which an *insured* becomes legally obligated to pay as **damages** because of **bodily injury** or **property damage** caused by an **accident** and arising out of the ownership, maintenance, use, loading or unloading, of an **insured automobile**.
2. **Automobile Medical Payments.** We agree, subject to the conditions and exclusions of this section, to pay **medical expenses** incurred within the policy period and within ten (10) days of an **automobile accident** as shall be necessary on account of **bodily injury** caused by an **accident** in a vehicle owned or rented to an *insured*. Any such **medical expenses** must be reported within one hundred and eighty (180) days of the occurrence.
3. **Uninsured or Underinsured Motorists.**
 - a. We agree, subject to the conditions and exclusions of this section, to pay **damages** for **bodily injury** which an *insured* is legally entitled to recover from the owner or operator of an **uninsured automobile** or **underinsured automobile**. The **bodily injury** must be caused by an **accident** and arise out of the ownership, maintenance, or use of an **uninsured automobile** or **underinsured automobile**. This policy will pay under this Insuring Agreement only after the limits of liability under any applicable bodily injury liability policies or bonds have been exhausted in payments, settlements, or judgments and after all worker's compensation benefits an employee may be entitled to have been paid.
 - b. The limits of indemnification shall be reduced by:
 - (1) All sums paid because of **bodily injury** by or on behalf of persons or organizations who may be legally responsible for causing the **bodily injury** and
 - (2) All sums paid by worker's compensation benefits or similar disability law.

B. Definitions Applicable to Automobile Liability Insurance Agreements:

1. **"Automobile"** means a motorized land vehicle, principally licensed and designed for travel on public roads and does not include **mobile equipment**
2. **"Bodily Injury"** means physical injury, sickness or disease, including mental anguish or death resulting therefrom.
3. **"Insured"** means anyone operating or **occupying** an **insured automobile** with the permission of the *insured*.
4. **"Insured Automobile"** means an **automobile** owned by the **named insured** or a non-owned **automobile** while operated by an *insured* in the course and scope of their duties or such use that is otherwise authorized by the **named insured**.
5. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not principally licensed and designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle, such as a trailer or semi-trailer and does not include **automobiles**.
6. **"Occupying"** with regard to Insuring Agreements 2 and 3 of this section means an individual who, at the time of the **accident** is in physical contact with an **insured automobile**.

7. **"Proof of Loss"** means any written demand to recover **damages for bodily injury** pursuant to Insuring Agreements 2 and 3 of this section.
8. **"Underinsured Automobile"** means an **automobile** for which the sum of liability limits of all applicable liability bonds or policies at the time of an **accident** is less than the limits of indemnification applicable to Insuring Agreement 3 of this section.
9. **"Uninsured Automobile"** means an **automobile**:
 - a. To which a **bodily injury** liability bond or policy does not apply at the time of the **accident**.
 - b. For which an insuring or bonding company denies coverage or has become insolvent.
 - c. Which is a hit-and-run **automobile** and neither the driver nor the owner can be identified. The hit-and-run **automobile** must come in contact with an **insured automobile**.

C. Specific Conditions Applicable to Automobile Liability Insurance Agreements:

1. **With respect to Insuring Agreements 1, 2 and 3, Auto Liability Insurance under this Section has the following conditions:**
 - a. **Automobiles Owned by Employees or Authorized Volunteers.** An **automobile** owned by an employee or authorized volunteer of the **named insured** is provided auto liability coverage by this section while the **automobile** is being used by an employee or authorized volunteer on official business of the **named insured**. This policy shall be deemed secondary to the policy of the employee's or authorized volunteer's personal insurance, which is deemed to be primary insurance. The intent of this special condition shall not be interpreted to extend this policy to an **automobile** owned by other public or private entities, which are made available to the **named insured** or its employees. For these non-owned **automobiles**, the terms and conditions already contained in this policy shall apply. This specific condition does not apply to volunteers engaged in search and rescue activities as coverage is intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.
 - b. **Limits of Indemnification.** We will not pay more than the applicable limits of indemnification shown in the declarations pages for the **damages** that result from any one **accident**.
 - c. **Non-Duplication of Benefits.** There will be no duplication of payments under this section for Insuring Agreements 1, 2 and 3, respectively, of this policy. Any amounts payable under these respective insuring agreements will be reduced by the amount of any advance payments.
 - d. **Non-Stacking of Limits - Multiple Sections of this Policy or Multiple Insuring Agreements within this Section Involved in a Single Event.** If any **occurrence, accident** or loss covered in whole or in part under this section VII that also constitutes:
 - (1) An **occurrence** or **accident** covered in whole or in part under section VI; or
 - (2) A **wrongful act, claim** or **wrongful employment practice** covered in whole or in part under section VIII; or
 - (3) A **claim** covered in whole or in part under section XI; or
 - (4) A **claim, accident** or **occurrence** covered in whole or in part under section XII; or
 - (5) Any combination of two or more of the coverage events listed in subparagraphs d. (1), (2), (3), and (4) of this section, or any events subject to multiple insuring agreements within each section, shall be limited to coverage limits allowed by the section of this policy with the higher limit for the per occurrence, per accident or per claim(s) limit(s) of Indemnification as shown in the declarations pages, and its corresponding deductible, shall be the sole limit applicable to the multiple

occurrences, accidents, claims or losses addressed. If the per occurrence, per accident and per claim(s) limit(s) of indemnification as shown in the declarations pages are equal, only one limit will still apply and it will be the limit of indemnification and its corresponding deductible, if any, applicable to the section deemed by **us** to be providing the primary coverage for the **claim**, accident or occurrence.

2. **With Respect to Insuring Agreement 2, Automobile Medical Payments Insurance under this Section has the following conditions:**

- a. **Examinations/Medical Reports.** The injured person may be required to take physical examinations by physicians **we** choose, as often as **we** reasonably require. **We** must be given authorization to obtain medical reports and other records pertinent to any such claim.
- b. **Proof of Loss.** As soon as possible, any person making a claim under this Insuring Agreement must give **us** written **proof of loss** as described in paragraph 3 (f.) below. It must include all details **we** may need to determine the amounts payable.

3. **With Respect to Insuring Agreement 3, Uninsured/Underinsured Motorists Insurance under this Section has the following conditions:**

- a. **Arbitration.** If **we** and any person entitled to recover under Insuring Agreement 3 fail to agree on the amount of **damages** thereof, the amount shall be settled by arbitration. In that event, each party will select an arbitrator. The two arbitrators will then select a third arbitrator. If they cannot agree upon a third arbitrator within thirty (30) days, both parties can ask a district judge in the State of Idaho to select the third arbitrator. Each party will pay the expenses it incurs, and bear the expenses of the third arbitrator equally. Written decisions of any two arbitrators will determine the issues and will be binding. The arbitration will take place pursuant to the Uniform Arbitration Act, Idaho Code Title 7, Chapter 9, unless both parties agree otherwise. Attorney's fees and fees paid to medical and other expert witnesses as part of the arbitration proceeding will not be considered arbitration expenses. These costs and expenses will be paid by the party incurring them.
- b. **Hit-and-Run Accident.** At **our** request, **you** shall make available for inspection any **automobile** which any **insured** was **occupying** at the time of a hit-and-run **accident**. **You** must also notify a law enforcement agency within twenty-four (24) hours of any hit-and-run **accident**. **You** must also notify **us** of any such hit-and-run **accident** within seven (7) days of any such **accident**. Failure to provide such notice shall be deemed a material and prejudicial breach of this Insuring Agreement 3, and render any insurance provided null and void.
- c. **Prejudgment or Pre-Arbitration Award Interest.** Prejudgment or pre-arbitration award interest shall not begin to accrue until the date that the **proof of loss** is received by **us**.
- d. **Medical Examinations.** The injured person may be required to take, at **our** expense, physical examinations by physicians **we** choose, as often as **we** reasonably require.
- e. **Non-Binding Judgment.** No judgment resulting from a suit brought without **our** written consent, or which **we** are not a party to, is binding on **us**, either for determining the liability of the **uninsured or underinsured automobile** or owner, or the amount of **damages** sustained.
- f. **Proof of Loss.** A **proof of loss** must be served upon **us** as soon as practicable following any such **accident** causing the injury in order to determine the amounts payable. Failure to provide such notice shall be deemed a material and prejudicial breach of this Insuring Agreement, and render any insurance provided null and void. Each **proof of loss** presented shall accurately describe the conduct and circumstances which brought about the injury, state the time and place the injury occurred, state the names of all persons involved, and shall contain the amount of **damages** claimed, together with any and all records that exist pertaining to said injury. Said records shall consist of 1) all police reports pertaining to the **accident** and 2) complete medical and billing records from all institutions (hospitals, rehabilitation facilities, and nursing homes) and physician offices. A signed

medical records release form must be provided with the **proof of loss** giving **us** authorization to obtain additional medical reports and other records pertinent to any such loss.

D. Exclusions Applicable to Automobile Liability Insurance Agreements:

1. **With respect to Insuring Agreements 1, 2 and 3, Auto Liability Insurance under this Section does not apply:**
 - a. To any **claim** or loss more specifically covered under any other section of this policy.
 - b. To any claim of **bodily injury** sustained by any person, including an **insured**, engaged in the maintenance or repair of an **insured automobile**.
 - c. To any **claim** that directly or indirectly benefits any worker's compensation or disability benefits insurer.
 - d. To any **claim** arising out of the operation of **mobile equipment**.
 - e. For any **automobiles** or **mobile equipment** owned or leased by a **named insured** when the **automobile** or **mobile equipment** is being rented or leased to a third party for compensation.
 - f. To any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any **accident** arising out of the operation thereof.
 - g. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an **accident** arising out of the maintenance or use of the **automobile** in the business of such employer.
 - h. With respect to any hired **automobile**, to the owner or a lessee thereof, other than the **named insured**, nor to any agent or employee or such owner or lessee.
2. **With Respect to Insuring Agreement 1, Auto Liability Insurance under this Section does not apply:**
 - a. To **bodily injury** or **property damage** resulting from an act or omission intended or reasonably expected from the standpoint of any **insured** to cause **bodily injury** or **property damage**. This exclusion applies even if the **bodily injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or reasonably expected. This exclusion shall not apply to **bodily injury** and **property damage** resulting from the use of reasonable force to protect persons or property, or in the performance of **your** duties.
 - b. To property damage to property rented to, used by, or in the care, custody or control of any **insured**.
 - c. To **bodily injury** to any **insured** arising out of or in the course of employment.
 - d. To any liability for indemnity or contribution brought by any party for **bodily injury** or **property damage** sustained by any **insured**.
3. **With Respect to Insuring Agreement 2, Automobile Medical Payments under this Section does not apply:**
 - a. To any **bodily injury** arising out of or resulting from the use of an **automobile** not insured by **us**.
 - b. To any **bodily injury** arising out of or resulting from the operation of an **insured automobile** while being used for hire or for a fee with authorization for such use.

- c. For ***bodily injury*** to anyone eligible to receive benefits which are either provided, or are required to be provided, under any worker's compensation, occupational disease, or similar disability law.
 - d. To prisoners, inmates, or any other category of persons being detained by an ***insured*** while being transported by ***you***.
4. **With Respect to Insuring Agreement 3, Uninsured/Underinsured Motorists Insurance under this Section does not apply:**
- a. To any ***insured*** who enters into a settlement with a third party without ***our*** written consent.
 - b. To any ***bodily injury*** resulting from or arising out of the use of an ***automobile*** owned by ***you*** and not insured by ***us***.

SECTION VIII - ERRORS AND OMISSIONS INSURANCE
ALL INSURING AGREEMENTS ARE CLAIMS MADE ONLY

A. Errors and Omissions Insuring Agreements:

1. **Errors and Omissions Liability.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** because of a **claim** against an **insured** which is **first made** in writing to **us** by **you** during this policy period, or any extended reporting period **we** provide, arising out of any **wrongful act** by an **insured**.
2. **Employee Benefit Liability.** We agree, subject to conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** because of a **claim** against an **insured** which is **first made** in writing to **us** by **you** during this Policy Period, or any extended reporting period **we** provide, resulting from **wrongful acts** in the **administration** of the **named insured's employee benefit program**;
3. **Employment Practices Liability.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** for a **claim** by or on behalf of a volunteer, employee, former employee, or applicant for employment which is **first made** against an **insured** in writing to **us** by **you** during this policy period or any extended reporting period **we** provide, arising out of any **wrongful employment practice** by an **insured**.

B. Definitions Applicable to Errors and Omissions Insuring Agreements:

1. **"Administration"** means:
 - a. Providing information to employees, including their dependents and beneficiaries, with respect to eligibility for any **employee benefit program**;
 - b. Handling of records in connection with the **employee benefit program**; or
 - c. Affecting, continuing or terminating any employee participation in any **employee benefit program**.
 - d. **Administration** does not mean **your** decision to not offer a particular benefit, plan or program unless that particular benefit is required by law.
2. **"Bodily Injury"** means physical injury to any person, including death and any mental anguish or mental suffering associated with or arising from such physical injury. **Bodily Injury** does not include sexual molestation.
3. **"Claim"** means:
 - a. For Insuring Agreements 1 and 2, a demand received by **you** for money **damages** alleging a **wrongful act** of a tortious nature by any **insured**. No **claim** exists where the only monetary **damages** sought or demanded are costs of suit and/or attorney's fees.
 - b. For Insuring Agreement 3, a demand received by **you** for money **damages** alleging a **wrongful employment practice** of a tortious nature by any **insured**. No **claim** exists where the only monetary **damages** sought or demanded are costs of suit and/or attorney's fees. A **claim** shall include complaints filed with the Idaho Human Rights Commission (IHRC) and the Equal Employment Opportunities Commission (EEOC). A **claim** also includes employment contract claims premised upon implied employment contracts.
4. **"Discrimination"** means any actual or alleged:

- a. Violation of any employment discrimination law; or
 - b. Disparate treatment of, or the failure or refusal to hire a person because he or she is or claims to be a member of a class which is or is alleged to be legally protected.
5. **"Employee Benefit Program"** means group life insurance, group accident or health insurance, or group dental, vision and hearing plans, retirement, profit sharing, unemployment insurance, or any other benefit provided that no one other than **your** employee may subscribe to such insurance or plans and such benefits are made generally available to those employees who satisfy the plan's eligibility requirements.
6. **"Employment Sexual Harassment"** means any actual or alleged unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature which:
- a. Is made as a term or condition of a person's employment or advancement; or
 - b. The submission to or rejection of is used as a basis for decisions affecting that person or the purpose or effect of creating an intimidating, hostile or offensive work environment.
7. **"Employment Harassment "** means any actual or alleged harassment, other than **Employment Sexual Harassment**, which creates a work environment that interferes with job performance, or creates an intimidating, hostile or offensive work environment.
8. **"Insured"** means:
- a. The **Named Insured**,
 - b. Any current or former elected or appointed official serving as a volunteer or employee of the **named insured**, as well as any volunteer or employee of the **named insured** while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the **named insured** as an independent contractor.
 - c. City or county prosecutors or appointed city attorneys while serving as independent contractors in the course and scope of their statutory roles.
9. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property.
10. **"Retaliation"** means any actual or alleged wrongful termination or other adverse employment action by any **insured** against a person or persons on account of:
- a. Assistance, testimony or cooperation with a proceeding or investigation regarding alleged violations of law.
 - b. Exercise or attempted exercise of rights protected by law;
 - c. Disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law; or
 - d. Refusal to violate any law;
11. **"Wrongful Act"** means the actual or alleged negligent performance of a legal duty or responsibility or failure to perform a legal duty or responsibility, or any error, misstatement, act or omission respectively by **you**, in a tortious manner pursuant to the Idaho Tort Claims Act or unlawful violations of civil rights pursuant to Federal law arising out of public office or position. **Wrongful Act** is not a **Wrongful Employment Practice**.

12. **“Wrongful Employment Practice”** means any actual or alleged employment-related act or omission in the form of one or more of the following and does not mean **Wrongful Act**.
- a. **Discrimination**;
 - b. Employment-related libel, slander, defamation;
 - c. **Employment sexual harassment or employment harassment**;
 - d. Negligent hiring, supervision, training or retention.
 - e. **Retaliation**;
 - f. Violation of the Family Medical Leave Act;
 - g. Wrongful discipline, deprivation of career opportunity; or evaluation;
 - h. Wrongful termination;

C. Specific Conditions Applicable to Errors and Omissions Insuring Agreements:

1. **Retroactive Date.** All **wrongful acts or wrongful employment practices** must take place after the applicable retroactive date, if any, shown in the declaration pages of this policy and on or before the expiration of this policy period. A **claim** must also be **first made to us** in writing by **you** if it is made during any Extended Reporting Period **we** may provide pursuant to the specific conditions outlined in this section.
2. **Extended Reporting Periods.** All Insuring Agreements within this section are conditioned as follows if this policy is cancelled or not renewed for any reason, other than for non-payment of member contribution or non-compliance with the terms and conditions of this policy:
 - a. If **you** are expelled from ICRMP, or have elected to withdraw from ICRMP and are in good standing as a Member, as set forth in section III – General Conditions, Item 4, **we** will extend an Extended Reporting Period of thirty (30) days duration following immediately upon the effective date of expulsion, to apply to a **claim** brought forth under this section which is **first made** against **you** in writing to **us** but only by reason of a **wrongful act** or a **wrongful employment practice** which commences and was sustained subsequent on or after the retroactive date set forth in the declarations pages and prior to the effective date of this policy’s cancellation or termination, and which is otherwise afforded by all Insuring Agreements of this section.
 - b. If, however, this policy is immediately succeeded by a similar claims-made insurance policy with any insurer, in which the retroactive date is the same as or earlier than that shown in the declarations pages of this policy, the succeeding policy shall be deemed to be a replacement of this policy, and **you** shall have no right to secure the Extended Reporting Period coverage from **us**.
 - c. The Extended Reporting Period does not reinstate or increase the limit(s) of indemnification applicable to any Insuring Agreements of this section. Once in effect, an Extended Reporting Period cannot be canceled.
3. **Multiple Insureds, Claims or Claimants.** To the extent that coverage may be applicable to two or more Insuring Agreements in this section, inclusion herein of more than one **insured** or the making of more than one **claim** or the bringing of **suits** by more than one person or organization shall not operate to increase **our** limits of indemnification as stated in the declarations pages.
 - a. Two or more **claims** arising out of a single **wrongful act or wrongful employment practice** or series of related **wrongful acts or wrongful employment practices** shall be treated as a single **claim**.

- b. All such **claims**, whenever made, shall be considered **first made** in writing by **you** to **us** during the policy period, or any Extended Reporting Period, in which the earliest **claim** arising out of such **wrongful act** or **wrongful employment practice** or related **wrongful acts** or **wrongful employment practices** was **first made** and all such **claims** shall be subject to the same limits of indemnification.
4. **Non-Stacking Of Limits - Multiple Sections of this Policy or Multiple Insuring Agreements within this Section Involved in a Single Event.** If any **wrongful act**, **wrongful employment practice**, **claim** or loss covered in whole or in part under this section VIII, that also constitutes:
- a. An **occurrence** or **accident** covered in whole or in part under section VI; or
 - b. An **occurrence** or **accident** covered in whole or in part under section VII; or
 - c. A **claim** covered in whole or in part under section XI; or
 - d. A **claim**, **occurrence** or **accident** covered in whole or in part under section XII; or
 - e. Any combination of two or more of the coverage events listed in subparagraphs 4. (a.), (b.), (c.) and (d.) of this section, or any events subject to multiple insuring agreements within each section, shall be limited to coverage limits allowed by the section of this policy with the higher limit for the per occurrence, per accident or per claim(s) limit(s) of indemnification as shown in the declarations pages, and its corresponding deductible, shall be the sole limit applicable to the multiple occurrences, accidents, claims or losses addressed. If the per occurrence, per accident and per claim(s) limit(s) of indemnification as shown in the declarations pages are equal, only one limit will still apply and it will be the limit of indemnification and its corresponding deductible, if any, applicable to the section deemed by **us** to be providing the primary policy for the **claim**, accident or occurrence.

D. Exclusions Applicable to Errors and Omissions Insuring Agreements:

1. **The Errors and Omissions Insuring Agreements 1, 2 and 3 do not cover any claim:**
- a. More specifically covered under any other section of this policy.
 - b. Arising out of any dishonest, fraudulent, or criminal **wrongful acts** or **wrongful employment practice** committed by any **insured** or at the direction of any **insured**.
 - c. Based upon or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while any **insured** was engaged in any activity for which they received compensation from any source other than as a public entity or an employee of a public entity.
 - d. Arising out of the failure to supply water, electrical power, fuel, or any other utilities.
 - e. For which **you** are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a **claim** under any policy or policies, the term of which has commenced prior to the inception date of this policy, or from a **wrongful act** or **wrongful employment practice** which occurred prior to the applicable retroactive date set forth in the declarations pages of this policy.
 - f. Resulting from a continuing **wrongful act** or **wrongful employment practice** which commences prior to the applicable retroactive date set forth in the declarations pages of this policy.
 - g. Arising out of law enforcement activities or the performance of law enforcement duties.

- h. Obligating a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain employees of governmental entities who are named as defendants in a criminal proceeding.
- i. Of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory taking, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against **you** or by virtue of any agreement entered into by or on **your** behalf.
- j. For back wages or legal penalties to which an employee is lawfully entitled for work performed, including any claim for wages, damages, liquidated damages or any other form of compensation, however characterized, pursuant to, or derived in any way, from an employer's responsibility to comply with the Fair Labor Standards Act or other state or federal statute directing the manner or amount of payment of compensation to employees.
- k. Involving miscalculation or legality of assessments, adjustments, disbursements, fees, licenses or the collection of taxes, fines, penalties, including those imposed under the Internal Revenue Code or any state or local law, however described.
- l. For any **claim** where the alleged harm for which compensation is sought derives from performance or nonperformance of terms of a contract, concerns the measure of performance or payment related to contract performance, derives from fines, penalties or administrative sanctions imposed by a governmental agency, or is generated by intergovernmental determination, calculation, handling or allocation of funds according to the law. The **claims** for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.
- m. Arising directly or indirectly out of the failure of any investment in or by any **employee benefit program** including but not limited to stocks, bonds, or mutual funds to perform as represented by an **insured** or by any party authorized by an **insured** to offer benefits to employees.
- n. Arising directly or indirectly out of insolvency, poor performance, misrepresentation, or any other wrongful conduct of any **employee benefit program** provider.

2. The Errors and Omissions Insuring Agreements 1 and 2 do not cover any claim:

- a. Arising directly or indirectly out of the negligence, financial failure or breach of contract by any health or employee benefit provider that the **named insured** contracts with to provide employee benefits.
- b. Arising out of any intentional or deliberate **wrongful acts** committed by an **insured** or at an **insured's** direction.
- c. To any employee benefit liability **claim** based upon an **insured's** failure to comply with any law concerning worker's compensation, unemployment insurance, social security, or disability benefits.
- d. To loss arising out of an insufficiency of funds to meet any obligations under any plan included in the **employee benefit program**.
- e. To any employee benefit liability **claim** for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the **insured**, from the applicable funds accrued or other collectible insurance.
- f. **For bodily injury, personal injury, or property damage.**

- g. Resulting from a **wrongful act** intended, expected or deliberated on from the standpoint of any **insured** to cause injury or damage. This exclusion applies even if the injury or damage claimed is of a different kind or degree than that intended, expected, or deliberated on.
- h. Arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.

SECTION IX - CRIME INSURANCE

A. Insuring Agreements Applicable to Crime Insurance:

1. **Employee Dishonesty or Fraud.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay the **named insured**, or on its behalf, for loss of money, securities, and other financial instruments sustained by the **named insured** resulting directly from one or more **dishonest or fraudulent acts** committed by an **employee** of the **named insured**, acting alone or in collusion with others.
2. **Loss Inside the Premises.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay the **named insured**, or on its behalf, for loss of the money and securities of the **named insured** by the actual destruction, disappearance, or **wrongful taking** within the **premises**.
3. **Loss Outside the Premises.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay the **named insured**, or on its behalf, for loss of the money and securities of the **named insured** by the actual destruction, disappearance, or **wrongful taking** thereof, outside the **premises** while being conveyed by a **messenger** or any armored motor vehicle company.

B. Definitions Applicable to Crime Insuring Agreements:

1. **"Dishonest or Fraudulent Acts"** means acts committed by an **employee** of the **named insured** which
 - a. cause the **named insured** to sustain such loss; or
 - b. results in financial benefit to the **employee** or another person or organization intended by the **employee** to receive such benefit not otherwise entitled to.
2. **"Employee"** shall be as defined by the Idaho Tort Claims Act (Idaho Code, chapter 9, title 6).
3. **"Messenger"** means any **employee** who is duly authorized by the **named insured** to have the care and custody of the **insured** property outside the **premises**.
4. **"Premises"** means the interior of that portion of any building which is occupied by the **named insured** in conducting its business.
5. **"Wrongful Taking"** means an unauthorized conversion or theft of money, securities, money orders, counterfeit currency, depositor's forgery or other financial instruments, whether or not proven in a court of law.

C. Specific Conditions Applicable to Crime Insuring Agreements:

1. **All Incidents - One Loss.** All losses incidental to an actual or attempted fraudulent, dishonest, or criminal act, or series of related acts, whether committed by one or more persons, shall be deemed one loss. The applicable limits of indemnification stated in the declarations pages are the total limit of **our** liability with respect to all losses arising out of any one occurrence.
2. **Policy in Lieu of Public Officials Surety Bond.** Insurance under this section shall be deemed to provide insurance compliant with provisions of Idaho Code §59-804 for the terms and responsibilities of public officials or **employees** to the extent required by the Idaho Code bonding requirements for public officials.
3. **Limits of Indemnification for Multiple Policy Periods.** **Our** total liability is limited to the total amount specified in the declarations pages of this policy for all losses caused by any **employee** or in

which such **employee** is concerned or implicated. Regardless of the number of years this policy shall continue in force and the number of member contributions which shall be payable or paid, the limits of indemnification specified in the declarations pages shall not be cumulative from year to year or period to period. The maximum total loss paid to any **named insured** shall not exceed the limits of indemnification stated in the policy year during which a claim is made.

4. **Loss Caused by Unidentified Employees.** If a loss is alleged to have been caused by the fraud or dishonesty of any one or more **employees**, and the **named insured** shall be unable to designate the specific **employee** or **employees** causing such loss, the **named insured** shall nevertheless have the benefit of Insuring Agreement 1, provided that the evidence submitted reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more **employees** of the **named insured**.
5. **Ownership Interest.** Money, securities, and other financial instruments may be covered by this policy whether owned by the **named insured** or held by the **named insured** in its care, custody, or control.
6. **Recoveries.** To the extent that a loss of the **named insured** exceeds the limits of indemnification applicable to this section, the **named insured** shall be entitled to recoveries from third parties until the **named insured** is fully reimbursed. Any remaining recovery shall be paid to **us**. Audit fees incurred by **us** toward establishing **your** loss values will be deducted from the ultimate net loss.

D. Exclusions Applicable to Crime Insuring Agreements:

1. **The Crime Insuring Agreements 1, 2 and 3 do not cover:**
 - a. Any claim or loss more specifically covered under any other section of this policy.
 - b. Any claim for the potential income or increase including, but not limited to, interest and dividends, not realized by the **named insured** because of a loss covered under this section.
 - c. Any claim for costs, fees, or other expenses incurred by the **named insured** in establishing the existence of, or amount of loss, covered under this section.
 - d. Any claim for the funds collected or retained for any state or Federal agency pursuant to requirements established by law or pursuant to a mutual agreement.
 - e. Any loss claimed involving conduct more than two (2) years prior to the date of the claim.
2. **The Crime Insuring Agreement 1 does not cover:**
 - a. Any loss, the proof of which, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and loss computation.
 - b. Any claim of loss concerning any fiscal year wherein financial records of the political subdivision have not been timely audited by a certified public accountant in accordance with the requirements of Idaho Code §67-450B or §67-450C, as appropriate.
3. **The Crime Insuring Agreement 2 does not cover:**
 - a. Any claim or loss due to any fraudulent, dishonest, or criminal act by any **employee**, director, trustee, or authorized representative of the **named insured**, while working or otherwise, and whether acting alone or in collusion with others.
 - b. Any claim or loss due to:
 - (1) The giving or surrendering of money or securities in any exchange or purchase; or
 - (2) Accounting or arithmetical errors or omissions; or

- (3) Manuscripts, books of account, or records; or
- (4) Presentation or acceptance of any check returned for insufficient funds.
- c. Any claim or loss of money contained in coin operated amusement devices or vending machines, unless the amount of money deposited within the device or machine is recorded by a continuous recording instrument therein.

4. The Crime Insuring Agreement 3 does not cover:

- a. Any claim or loss due to any fraudulent, dishonest, or criminal act by any **employee**, director, trustee, or authorized representative of the **named insured**, while working or otherwise, and whether acting alone or in collusion with others.
- b. Any claim or loss due to:
 - (1) The giving or surrendering of money or securities in any exchange or purchase;
 - (2) Accounting or arithmetical errors or omissions; or
 - (3) Manuscripts, books of account, or records.
- c. Any insured claim or loss of money, securities, and other financial instruments of the **named insured** while in the custody of any armored motor vehicle company, except as excess policy over amounts recovered or received by the **named insured** under:
 - (1) The contract of the **named insured** with said armored motor vehicle company;
 - (2) Insurance carried by said armored motor vehicle company for the benefit of users of its services; and
 - (3) All other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service.

SECTION X – MACHINERY BREAKDOWN INSURANCE

A. Insuring Agreements Applicable to Machinery Breakdown Insurance:

1. **Property Damage.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay for direct damage to **covered property** caused by a **covered cause of loss** related to breakdown of machinery as listed in the **schedule of values** kept on file with *us*.
2. **Expediting Expenses.** With respect to direct damage to **covered property** *we* agree subject to the conditions and exclusions of this Insuring Agreement to pay for the extra cost *you* necessarily incur to make temporary repairs and expedite the permanent repairs or replacement of the damaged property.
3. **Business Income and Extra Expense.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay *your* actual loss of **business income** during the **period of restoration** and **extra expense** *you* necessarily incur to operate *your* entity during the **period of restoration**. *We* will consider the operations of *your* entity before the **breakdown** and the probable experience *you* would have had without the **breakdown** in determining the amount of *our* payment.
4. **Spoilage Damage.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay for the spoilage damage to raw materials, property in process or finished products, provided conditions are met that are outlined further in this section. *We* will also pay any necessary expenses *you* incur to reduce the amount of loss under this Insuring Agreement. *We* will pay such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this form.
5. **Utility Interruption.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay for losses resulting from the interruption of utility services provided conditions are met that are outlined further in this section.
6. **Newly Acquired Premises.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to provide insurance at newly acquired premises *you* have purchased or leased. This insurance begins at the time *you* acquire the property and continues for a period not exceeding ninety (90) days under conditions set forth below.
7. **Ordinance or Law.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay for increases in loss as necessitated by the enforcement of any laws or ordinances that are in force at the time of the **breakdown**, which regulate the demolition, construction, repair or use of the building or structure.
8. **Errors and Omissions.** *We* agree subject to the conditions and exclusions of this Insuring Agreement to pay for any loss or damage, which is not otherwise payable under this Insuring Agreement solely because of any error or unintentional omission in the description or location of property as insured under this Insuring Agreement or in any subsequent amendments, any failure through error to include any premises owned or occupied by *you* at the inception date of this Insuring Agreement; or any error or unintentional omission by *you* that results in cancellation of any premises insured under this policy.

B. Definitions Applicable to Machinery Breakdown Insuring Agreements:

1. **"Breakdown":**
 - a. Means the direct physical loss that causes damage to **covered equipment** and necessitates its repair or replacement, unless such loss or damage is otherwise excluded within this section:
 - (1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - (2) Artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances or wires.

- (3) Explosion of steam boilers, steam piping, steam engines or steam turbines owned or leased by **you**, or operated under **your** control;
 - (4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - (5) Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
- b. Does not mean or include:
- (1) Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification;
 - (2) Defects, erasures, errors, limitations or viruses in computer equipment and programs including the inability to recognize and process any date or time or provide instructions to **covered equipment**;
 - (3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
 - (4) Damage to any vacuum tube, gas tube, or brush;
 - (5) Damage to any structure or foundation supporting the **covered equipment** or any of its parts;
 - (6) The functioning of any safety or protective device; or
 - (7) The cracking of any part on an internal combustion gas turbine exposed to the products of combustion.
2. **“Business Income”** means the:
- a. Net income (net profit or loss before income taxes) that would have been earned or incurred; and
 - b. Continuing normal operating expenses incurred, including payroll.
3. **“Business Income Actual Annual Value”** means the sum of the net income and continuing normal operating expenses incurred, including payroll that would have been earned had the **breakdown** not occurred.
4. **“Computer Equipment”** means:
- a. **Your** programmable electronic equipment that is used to store, retrieve and process data; and
 - b. Associated peripheral equipment that provides communication including input and output functions such as printing or auxiliary functions such as data transmission.
 - c. It does not include **data or media**.
6. **“Covered Cause of Loss”** means a **breakdown** to **covered equipment**.
7. **“Covered Equipment”**:
- a. Means and includes any property built to operate under vacuum or pressure, other than weight of contents or used for the generation, transmission or utilization of energy.
 - b. Does not mean or include any:
 - (1) **Media**;
 - (2) Structure, foundation, cabinet or compartment;
 - (3) Insulating or refractory material;
 - (4) Equipment manufactured by **you** for sale;
 - (5) Catalyst;
 - (6) Sewer piping, underground vessels or piping, any piping forming a part of a sprinkler system or any water piping other than:
 - (a) Boiler feed water piping
 - (b) Boiler condensate return piping, or
 - (c) Water piping forming a part of a refrigerating or air conditions system;
 - (7) Vehicle, aircraft, floating vessel including or any equipment mounted on such vehicle, aircraft or floating vessel; or
 - (8) Dragline, excavation, or construction equipment

8. **"Covered Property"** means any property that:
 - a. **You** own; or
 - b. Is in **your** care, custody or control and for which **you** are legally liable.
9. **"Data"** means:
 - a. Programmed and recorded material stored on **media**; and
 - b. Programming records used for electronic data processing, or electronically controlled equipment.
10. **"Extra Expense"** means the additional cost **you** incur to operate **your** business during the **period of restoration** over and above the cost that **you** normally would have incurred to operate the business during the same period had no **breakdown** occurred.
11. **"Hazardous Substance"** means any substance other than ammonia that has been declared to be hazardous to health by a government agency.
12. **"Media"** means electronic data processing or storage media such as films, tapes, discs, drums or cells.
13. **"One Breakdown"** means if an initial **breakdown** causes other **breakdowns**, all will be considered **one breakdown**. All **breakdowns** at any one premises that manifest themselves at the same time and are the direct result of the same cause will be considered **one breakdown**.
14. **"Period of Restoration"** means the period of time that:
 - a. Begins at the time of the **breakdown** or 24 hours before **we** receive notice of **breakdown** whichever is later; and
 - b. Ends (5) five consecutive days after the date when the damaged property is repaired or replaced with reasonable speed and similar quality.
15. **"Schedule of Values"** means those records describing **covered property** as entered into the ICRMP e-Agent database by the member's agent and kept on file with **us**.
16. **"Stock"** means merchandise held in storage or for sale, raw materials, property in process or finished products including supplies used in their packing or shipping.

C. Specific Conditions Applicable to Machinery Breakdown Insuring Agreements:

1. **With Respect to Insuring Agreement 3 – Business Income and Extra Expense:**
 - a. **Damaged Media or Damaged Data.** If **media** is damaged or **data** is lost or corrupted, **we** will pay **your** actual loss of **business income** and/or **extra expense** during the time necessary to:
 - (1) Research, replace or restore the damaged **media** or lost or corrupted **data**; and
 - (2) Reprogram instructions used in any covered **computer equipment**.
 - b. There shall be no coverage for any **media** or **data** that **we** determine is not or cannot be replaced or restored.
 - c. **We** will pay the lesser of **your** actual loss of **business income** and/or **extra expense** up to 30 days after the **period of restoration** or \$25,000.
2. **With Respect to Insuring Agreement 4 – Spoilage Damage:**
 - a. The raw materials, property in process or finished products must be in storage or in the course of being manufactured;
 - b. **You** must own or be legally liable under written contract for the raw materials, property in process or finished products; and
 - c. The spoilage damage must be due to the lack or excess of power, light, heat, steam or refrigeration.

3. **With Respect to Insuring Agreement 5 – Utility Interruption:**

- a. The interruption is the direct result of a **breakdown** to **covered equipment** owned, operated or controlled by the local private or public utility or distributor that directly generates, transmits, distributes or provides utility services which **you** receive;
- b. The **covered equipment** is used to supply electric power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam to **your** premises; and
- c. The interruption of utility service to **your** premises lasts at least the consecutive period of time of twenty-four (24) hours. Once this waiting period is met, coverage will commence at the initial time of the interruption and will be subject to all applicable deductibles.

4. **With Respect to Insuring Agreement 6 – Newly Acquired Premises:**

- a. **You** must inform **us**, in writing, of the newly acquired premises as soon as practicable;
- b. The coverage for these premises will be subject to the same terms, conditions, exclusions and limitations as other insured premises.

5. **With Respect to Insuring Agreement 7 – Ordinance or Law:**

a. **We will pay for:**

- (1) The loss in value of the undamaged portion of the building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of undamaged parts of the same building or structure;
- (2) **Your** actual cost to demolish and clear the site of the undamaged parts of the same building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of such undamaged property; and
- (3) The increased cost actually and necessarily expended to:
 - (i) Repair or reconstruct the damaged or destroyed portions of the building or structure; and
 - (ii) Reconstruct or remodel the undamaged portion of that building or structure with buildings or structures of like materials, height, floor area, and style for like occupancy, whether or not demolition is required on:
 - (1) The same premises or on another premises if **you** so elect. However if **you** rebuild at another premises, the most **we** will pay is the increased cost of construction that **we** would have paid to rebuild at the same premises; or
 - (2) Another premise if the relocation is required by the ordinance or law. The most **we** will pay is the increased cost of construction at the new premises.

b. **We will not pay for:**

- (1) Demolition or site clearing until the undamaged portions of the buildings or structures are actually demolished;
- (2) Increase in loss until the damaged or destroyed buildings or structures are actually rebuilt or replaced and approved by the regulating government agency;
- (3) Loss due to any ordinance or law that:

(i) **You** were required to comply with before the loss, even if the building was undamaged; and

(ii) **You** failed to comply with;

(4) Increase in the loss, excess of the amount required to meet the minimum requirement of any ordinance or law enforcement at the time of the **breakdown**; or

(5) Increase in loss resulting from a substance declared to be hazardous to health or environment by any government agency.

c. **If.**

(1) The building or structure is damaged by a **breakdown** that is covered under this policy and there is other physical damage that is not covered under this policy and the building damage in its entirety results in enforcement of ordinance or law, then **we** will not pay the full amount of the loss under this section. Instead, **we** will pay only that proportion of such loss; meaning the proportion that the covered **breakdown** loss bears to the total physical damage.

(2) But if the building or structure sustains direct physical damage that is not covered under this section and such damage is the subject of the ordinance or law, then there is no ordinance or law coverage under this section even if the building has also sustained damage by a covered **breakdown**.

6. **With Respect to Insuring Agreement 8 – Errors and Omissions:**

a. No insurance is provided as a result of any error or unintentional omission by **you** in the reporting of values or the coverage **you** requested.

b. It is a condition of this policy that such errors or unintentional omissions shall be reported and corrected when discovered. The policy member contribution will be adjusted accordingly to reflect the date the premises should have been added had no error or omission occurred.

D. Exclusions Applicable to Machinery Breakdown Insuring Agreements:

1. **We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. The exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.**

a. Increase in loss from the enforcement of any ordinance, law, rule, regulation or ruling which restricts or regulates the repair, replacement, alteration, use, operation, construction, installation, clean-up or disposal of **covered property**.

b. Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, mudslide, earth sinking, tsunami or volcanic action;

c. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

d. Nuclear reaction or radiation, or radioactive contamination, however caused.

e. War, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

f. Explosion (except from steam or centrifugal explosion);

- g. Fire (including fire resulting from a **breakdown**); or water or other means used to extinguish a fire;
- h. Explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere;
- i. Breakage of glass; falling objects; weight of snow, ice or sleet; freezing (caused by cold weather); collapse; or molten material;
- j. Water damage resulting from a **breakdown**, unless otherwise shown as covered.
- k. Depletion, deterioration, corrosion, erosion, or wear and tear, or other gradually developing conditions. But if loss or damage from a **breakdown** results, **we** will pay the resulting loss or damage;
- l. Lightning; windstorm or hail, smoke; aircraft or vehicles; riot or civil commotion; vandalism; or sprinkler leakage;
- m. A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or an insulation breakdown test of any type of electrical equipment;
- n. A delay in, or an interruption of any business, manufacturing or processing activity except as provided by the business income and extra expense, and utility interruption Insuring Agreements;
- o. With respect to business income and extra expense, and utility interruption Insuring Agreements, the following additional exclusions shall apply:
 - (1) The business that would not or could not have been carried on if the **breakdown** had not occurred;
 - (2) **Your** failure to use due diligence and dispatch and all reasonable means to operate **your** business as nearly normal as practicable at the premises shown in the **schedule of values**; or
 - (3) The suspension, lapse or cancellation of a contract following a **breakdown** extending beyond the time business could have resumed if the contract had not lapsed, been suspended or canceled.
- p. Lack or excess of power, light, heat, steam or refrigeration except as provided by the business income and extra expense, and utility interruption Insuring Agreements.
- q. With respect to utility Interruption Insuring Agreement, any loss resulting from the following additional causes of loss whether or not coverage for that cause of loss is provided by another policy **you** have:
 - (1) Acts of sabotage;
 - (2) Collapse;
 - (3) Deliberate act(s) of load shedding by the supplying utility;
 - (4) Freezing caused by cold weather;
 - (5) Impact of aircraft, missile or vehicle;
 - (6) Impact of objects falling from an aircraft or missile;
 - (7) Lightning;
 - (8) Riot, civil commotion or vandalism;
 - (9) Sinkhole collapse;
 - (10) Smoke; or
 - (11) Weight of snow, ice or sleet.
- r. Any indirect result of a **breakdown** to **covered equipment** except as provided by the business income and extra expense, spoilage damage and utility interruption Insuring Agreements.
- s. Neglect by **you** to use all reasonable means to save and preserve **covered property** from further damage at and after the time of the loss.
- t. The most **we** will pay for any and all Insuring Agreements for loss or damage from any **one breakdown** is the applicable limits of indemnification shown in the declarations pages. Any payment made will not be increased if more than one **insured** is shown in the declarations pages. For each Insuring Agreement listed, if:
 - (1) A limit is shown in the declarations pages, the Limits of Indemnification is part of, not in addition to, the limit per **breakdown**.

- (2) A limit is shown in the declarations pages, **we** will not pay more than the limit of indemnification for each such Insuring Agreement.
- u. For any **covered equipment** that is:
 - (1) Used solely to supply utility services to **your** premises; owned by a public or private utility; not in **your** care, custody or control and for which **you** are legally liable; and covered under this section:
 - (2) The limit of indemnification for property damage stated in the declarations pages is deleted and replaced by the sum of one dollar.
- v. Unless a higher limit is shown in the declarations pages, the most **we** will pay for direct damage as a direct result of a **breakdown to covered equipment** is \$25,000 for each of the following. The limits are part of, not in addition to, the limits of indemnification for property damage or limit per **breakdown**.
 - (1) **Ammonia Contamination.** The spoilage to **covered property** contaminated by ammonia, including any salvage expense.
 - (2) **Consequential Loss.** The reduction in the value of undamaged **stock** parts of a product which becomes unmarketable. The reduction in value must be caused by a physical loss or damage to another part of the product.
 - (3) **Data and Media.** **Your** cost to research, replace or restore damaged **data** or **media** including the cost to reprogram instructions used in any **computer equipment**.
 - (4) **Hazardous Substance.** Any additional expenses incurred by **you** for the clean-up, repair or replacement or disposal of **covered property** that is contaminated by a **hazardous substance**. As used here, additional expenses mean the additional cost incurred over and above the amount that **we** would have paid had no **hazardous substance** been involved with the loss. Ammonia is not considered to be a **hazardous substance** as respects this limitation. This applies despite the operation of the ordinance or law exclusion.
 - (5) **Water Damage.** The damage to **covered property** by water including any salvage expenses, except no insurance applies to such damage resulting from leakage of a sprinkler system or domestic water piping.

SECTION XI –CHEMICAL SPRAYING ACTIVITIES LIABILITY INSURANCE

CLAIMS MADE COVERAGE ONLY

A. Insuring Agreements Applicable to Chemical Spraying Activities Liability Insurance:

1. **Chemical Spraying Activities Liability.** We agree, subject to the conditions and exclusions of this Insuring Agreement, to pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** because of a **claim** for **personal injury** or **property damage** because of a **chemical spraying activities claim** which is **first made** against an **insured** in writing to **us** by **you** during this policy period, or any extended reporting period **we** provide, arising out of an **occurrence** during this policy period, or after the retroactive date shown in the declarations pages of this policy.
2. **Emergency Clean-Up Expense.** We agree, subject to the terms, conditions and exclusions of this Insuring Agreement, to pay **you** for **emergency clean-up expenses** that are necessary, reasonable, and incurred to curtail or prevent an **occurrence**, arising out of **chemical spraying activities**, which take place during the policy period and that poses an imminent and substantial danger of **personal injury** or **property damage** to which this Insuring Agreement applies.

B. Definitions Applicable to Chemical Spraying Activities Liability Insurance Endorsement:

1. **"Bodily Injury"** means physical injury to any person, including death, and any mental anguish or mental suffering associated with or arising from such physical injury.
2. **"Chemical Spraying Activities"** means the intended dispersal of herbicides, defoliants, insecticides or pesticides or other toxic materials approved by the federal government for the eradication of undesirable plant growth, insects or rodents and the mixing, loading, storage, transportation and disposal of such materials.
3. **"Claim"** means a demand received by **you** for money **damages** alleging a **wrongful act** of a tortious nature by an **insured**. No **claim** exists where the only monetary **damages** sought or demanded are costs of suit and/or attorney's fees.
4. **"Emergency Clean-Up Expense"** means the expenses for removal or neutralization of contaminants, irritants, **or** pollution that pose an imminent and substantial danger of **personal injury** and/or **property damage**, but only those expenses incurred during the first seventy-two (72) hours following chemical spray application.
5. **"Occurrence"** means an **accident** or a continuous or repeated exposure to **chemical spraying activities** which result in **personal injury or property damage** during the policy period and also commences or was sustained on or after the retroactive date. All **personal injuries** to one or more persons and/or **property damage** arising out of an **accident** or a continuous or repeated exposure to conditions shall be deemed one **occurrence**.
6. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, discrimination, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property.
7. **"Wrongful Act"** means the negligent performance of a legal duty or responsibility or failure to perform a legal duty or responsibility, respectively, in a tortious manner pursuant to the Idaho Tort Claims Act or unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

C. Specific Conditions to Chemical Spraying Activities Liability Insurance Endorsement:

1. **Exception to Absolute Pollution Exclusion.** The insurance afforded by this Endorsement constitutes an express exception to the Absolute Pollution Exclusion set forth in the General Exclusions section IV of this policy. As an exception to such exclusion, this coverage stands only to pay legally required damages for **personal injury or property damage** not to exceed the Limits of Indemnification stated in the policy declarations, and not in any circumstances for natural resource damage claims made or penalties or fines imposed pursuant to state or Federal law.
2. **Extended Reporting Periods.** Insuring Agreement 1 of this section is conditioned as follows if this policy is cancelled or not renewed for any reason, other than non-payment of member contribution or non-compliance with the terms and conditions of this policy:
 - a. If **you** are expelled from ICRMP, or have elected to withdraw from ICRMP and are in good standing as a Member, as set forth in section III – General Conditions, Item 4, **we** will extend an Extended Reporting Period of thirty (30) days duration following immediately upon the effective date of expulsion, to apply to any **personal injury or property damage claim** resulting from **chemical spraying activities** which is **first made** against an **insured** in writing by **you to us** which commences and was sustained subsequent to the retroactive date set forth in the declarations pages and prior to the effective date of this policy's cancellation or termination, and which is otherwise afforded by Insuring Agreement 1 of this section.
 - b. If, however, this policy is immediately succeeded by similar claims-made insurance policy with any insurer, in which the retroactive date is the same as or earlier than that shown in the declarations pages of this policy, the succeeding policy shall be deemed to be a replacement of this policy, and **you** shall have no right to secure the Extended Reporting Period coverage from **us**.
 - c. The Extended Reporting Period does not reinstate or increase the limit(s) of indemnification applicable to Insuring Agreement 1 of this section. Once in effect, an Extended Reporting Period cannot be canceled.
3. **Multiple Insureds, Claims or Claimants.** Inclusion herein of more than one **insured** or the making of more than one claim or the bringing of suits by more than one person or organization shall not operate to increase **our** limits of indemnification as stated in the declarations pages. Two or more claims arising out of a single **occurrence** or series of related **occurrences** shall be treated as a single **occurrence**. All such **claims**, whenever made, shall be considered **first made** against an **insured** during the policy period or any extended reporting period, in which the earliest claim arising out of such **occurrence**, or series of related **occurrences**, was **first made** and all such **claims** shall be subject to the same limits of indemnification. It is the intent of this section to not extend coverage in any way in excess of the liability minimum established by the Idaho Tort Claims Act.
4. **Non-Stacking Of Limits - Multiple Sections of this Policy or Multiple Insuring Agreements within this Section Involved in a Single Event** if any **occurrence, accident, claim** or loss covered in whole or in part under this section XI that also constitutes:
 - a. An **occurrence** or **accident** covered in whole or in part under section VI; or
 - b. An **occurrence** or **accident** covered in whole or in part under section VII; or
 - c. A **wrongful act, wrongful employment practice or claim** covered in whole or in part under section VIII; or
 - d. A **claim, occurrence** or **accident** covered in whole or in part under section XII; or
 - e. Any combination of two or more of the coverage events listed in subparagraphs 4. (a.), (b.), (c.) and (d.) of this section, or any events subject to multiple insuring agreements within each section, shall be limited to coverage limits allowed by the section of the policy with the higher

limit for the per occurrence, per accident or per claim(s) limit(s) of indemnification as shown in the declarations pages, and its corresponding deductible, shall be the sole limit applicable to multiple occurrences, accidents, **claims** or losses addressed. If the per occurrence, per accident and per claim(s) limit(s) of indemnification as shown in the declarations pages are equal, only one limit will still apply and it will be the limit of indemnification and its corresponding deductible, if any, applicable to the section deemed by **us** to be providing the primary policy for the **claim**, accident or occurrence.

D. Exclusions to Chemical Spraying Liability Activities Liability Insurance Endorsement:

1. To any **claim** or loss more specifically covered under any other section of this policy.
2. To **personal injury** or **property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury** or **property damage**. This exclusion applies even if the **personal injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected.
3. To **personal injury** or **property damage** resulting from an act or omission outside the course and scope of employment and any act performed with malice or criminal intent. This exclusion applies regardless of whether any **insured** is actually charged with, or convicted of, a crime.
4. To any obligation for which **you** may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any claim or suit by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
5. To any claim or suit for which the only monetary **damages** sought are costs of suit and/or attorney's fees.
6. To any claim based on or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while **you** were engaged in any activity for which **you** received compensation from any source other than as a public entity or an employee of a public entity.
7. To any claim for which **you** are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a claim under any other policy or policies of insurance.
8. To **personal injury** or **property damage** arising out of **chemical spraying activities** which results from or is directly or incidentally attributable to the use of any chemical spraying product in a manner inconsistent or contrary with its product labeling, including the product label approved by any state or federal regulatory agency and any additional written materials which may accompany the product label. For purposes of this exclusion, "labeling" also includes additional sources of information (e.g., EPA Protection Standard, EPA Endangered Species Program Bulletin, state Ground Water Management Plan, company Product Use Bulletins) referenced on the product label or accompanying materials.

SECTION XII -ENDORSEMENTS

THESE ENDORSEMENTS MODIFY THE POLICY.

PLEASE READ THEM CAREFULLY.

SECTION V – PROPERTY AMENDATORY ENDORSEMENT Accidental Discharge of Pollutants Endorsement # 1

Section V – Property is amended by the following:

A. Pollution Exclusion Exception:

1. Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that section V, Property Insurance, is extended to cover **“pollution cost or expense”** related to an otherwise covered accident as defined and controlled by section V, Property . This endorsement is limited to \$50,000 per occurrence and in the aggregate.

B. Definitions Applicable to Accidental Discharge of Pollutants Endorsement:

1. **“Pollution Cost or Expense”** means any cost or expense arising out of costs incurred by **you** to monitor , clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants related to any otherwise covered claim as defined in section V Property Insurance. This coverage will apply whether this cost is incurred due to a request, order, or suit by any governmental agency or at the discretion of the named insured.

C. Exclusions Applicable to Accidental Discharge of Pollutants Endorsement:

1. This endorsement does not extend to any landfill, transfer station, trash or recycling collection facility or any other facility designed primarily for the collection of or transfer of refuse or recycling content or the vehicles and mobile equipment association with any such described location.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the policy to which this endorsement is attached other than as above stated.

SECTION V – PROPERTY AMENDATORY ENDORSEMENT

Terrorism Insurance Physical Damage/Loss Endorsement #2

Section V – Property is amended by the following:

A. Insuring Clause:

1. Subject to the terms, limits, conditions and exclusions hereinafter contained, this endorsement insures property as stated in the ***schedule of values*** attaching to and forming part of this policy (hereinafter referred to as the “Schedule”) against physical loss or physical damage occurring during the period of this policy caused by an Act of Terrorism or Sabotage, as herein defined.
2. For the purpose of this endorsement, an Act of Terrorism means an act or series of acts, including the use of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.
3. For the purpose of this endorsement, an act of sabotage means a subversive act or series of such acts committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.

B. Losses Excluded:

1. Loss or damage arising directly or indirectly from nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination may have been caused.
2. Loss or damage occasioned directly or indirectly by war, invasion or warlike operations (whether war be declared or not), hostile acts of sovereign or local government entities, civil war, rebellion, revolution, insurrection, martial law, usurpation of power, or civil commotion assuming the proportions of or amounting to an uprising.
3. Loss by seizure or legal or illegal occupation unless physical loss or damage is caused directly by an Act of Terrorism or an Act of Sabotage.
4. Loss or damage caused by confiscation, nationalisation, requisition, detention, embargo, quarantine, or any result of any order of public or government authority which deprives the Insured of the use or value of its property, nor for loss or damage arising from acts of contraband or illegal transportation or illegal trade.
5. Loss or damage directly or indirectly arising from or in consequence of the seepage and or discharge of pollutants or contaminants, which pollutants and contaminants shall include but not be limited to any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance the presence, existence or release of which endangers or threatens to endanger the health, safety or welfare of persons or the environment.
6. Loss or damage arising directly or indirectly from or in consequence of chemical or biological emission, release, discharge, dispersal or escape or chemical or biological exposure of any kind.
7. Loss or damage arising directly or indirectly from or in consequence of asbestos emission, release, discharge, dispersal or escape or asbestos exposure of any kind.
8. Any fine or penalty or other assessment which is incurred by the Insured or which is imposed by any court, government agency, public or civil authority or any other person.
9. Loss or damage by electronic means including but not limited to computer hacking or the introduction of any form of computer virus or corrupting or unauthorised instructions or code or the use of any

electromagnetic weapon. This exclusion shall not operate to exclude losses (which would otherwise be covered under this policy) arising from the use of any computer, computer system or computer software program or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

10. Loss or damage caused by vandals or other persons acting maliciously or by way of protest or strikes, labour unrest, riots or civil commotion.
11. Loss or increased cost occasioned by any public or government or local or civil authority's enforcement of any ordinance or law regulating the reconstruction, repair or demolition of any property insured hereunder.
12. Loss or damage caused by measures taken to prevent, suppress or control actual or potential terrorism or sabotage unless agreed by ICRMP in writing prior to such measures being taken.
13. Any consequential loss or damage, loss of use, delay or loss of markets, loss of income, depreciation, reduction in functionality, or increased cost of working.
14. Loss or damage caused by factors including but not limited to cessation, fluctuation or variation in, or insufficiency of, water, gas or electricity supplies and telecommunications or any type of service.
15. Loss or increased cost as a result of threat or hoax.
16. Loss or damage caused by or arising out of burglary, house - breaking, looting, theft or larceny.
17. Loss or damage caused by mysterious disappearance or unexplained loss.
18. Loss or damage directly or indirectly caused by mold, mildew, fungus, spores or other microorganism of any type, nature or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

C. Property Excluded:

1. Land or land values.
2. Power transmission, feeder lines or pipelines not on the Insured's premises.
3. Any building or structure, or property contained therein, while such building or structure is vacant or unoccupied or inoperative for more than thirty days, unless the property is intended to be unoccupied in its normal operations.
4. Aircraft or any other aerial device, or watercraft.
5. Any land conveyance, including vehicles, locomotives or rolling **stock**, unless such land conveyance is declared hereon and solely whilst located at the property insured herein at the time of its damage.
6. Animals, plants and living things of all types.
7. Property in transit not on the Insured's premises.

D. Conditions:

1. **Multiple Insureds.** ICRMP's total liability for any loss or losses sustained by any one or more of the **Insureds** under this endorsement will not exceed the sum insured shown in the declarations pages. ICRMP shall have no liability in excess of the sum insured whether such amounts consist of insured losses sustained by all of the **named insureds** or any one or more of the **named insureds**.

2. **Other insurance.** This endorsement shall be excess of any other insurance available to the **named insured** covering a loss covered hereunder except such other insurance which is written specifically as excess insurance over this endorsement. When this endorsement is written specifically in excess of other insurance covering the peril insured hereunder, this endorsement shall not apply until such time as the amount of the underlying insurance, (whether collectible or not), has been exhausted by loss and damage covered by this endorsement in excess of the deductible with respect to each and every covered loss.
3. **Other Insurance.** This endorsement shall be excess of any other insurance available to the **named insured** covering a loss covered hereunder except such other insurance which is written specifically as excess insurance over this endorsement. When this endorsement is written specifically in excess of other insurance covering the peril insured hereunder, this endorsement shall not apply until such time as the amount of the underlying insurance, (whether collectible or not), has been exhausted by loss and damage covered by this endorsement in excess of the deductible with respect to each and every covered loss.
4. **Situation.** This endorsement insures property located at the addresses stated in the **schedule of values** kept on file with us via e-Agent.
5. **Sum Insured.** ICRMP hereon shall not be liable for more than the endorsement aggregate of fifty million dollars (\$50,000,000) for all members combined.
6. **Deductible.** Each occurrence shall be adjusted separately and from each such amount the sum stated in the **schedule of values** shall be deducted of ten thousand dollars (\$10,000) per occurrence.
7. **Occurrence.** The term "occurrence" shall mean any one loss and/or series of losses arising out of and directly occasioned by one Act or series of Acts of Terrorism or Sabotage for the same purpose or cause. The duration and extent of any one "occurrence" shall be limited to all losses sustained by the **named insured** at the property insured herein during any period of 72 consecutive hours arising out of the same purpose or cause. However no such period of 72 consecutive hours may extend beyond the expiration of this endorsement unless the **named insured** shall first sustain direct physical damage by an Act of Terrorism or an Act of Sabotage prior to expiration and within said period of 72 consecutive hours nor shall any period of 72 consecutive hours commence prior to the attachment of this endorsement.
8. **Debris Removal.** This endorsement also covers, within the sum insured, expenses incurred in the removal from the insured location of debris of property stated in the **schedule of values** damaged by an Act of Terrorism or an Act of Sabotage. The cost of removal of debris shall not be considered in determination of the valuation of the property covered.
9. **Due Diligence.** The **named insured** (or any of the **named insured's** agents, sub or co-contractors) must use due diligence and do (and concur in doing and permit to be done) everything reasonably practicable, including but not limited to taking precautions to protect or remove the insured property, to avoid or diminish any loss herein insured and to secure compensation for any such loss including action against other parties to enforce any rights and remedies or to obtain relief or indemnity.
10. **Protection Maintenance.** It is agreed that any protection provided for the safety of the property insured shall be maintained in good order throughout the currency of this endorsement and shall be in use at all relevant times, and that such protection shall not be withdrawn or varied to the detriment of the interests of ICRMP without our consent.

11. **Valuation.** It is understood that, in the event of damage, settlement shall be based upon the cost of repairing, replacing or reinstating (whichever is the least) property on the same site, or nearest available site (whichever incurs the least cost) with material of like kind and quality without deduction for depreciation, subject to the following provisions:
- a. The repairs, replacement or reinstatement (all hereinafter referred to as "replacement") must be executed with due diligence and dispatch;
 - b. Until replacement has been effected the amount of liability under this endorsement in respect of loss shall be limited to the actual cash value at the time of loss;
 - c. If replacement with material of like kind and quality is restricted or prohibited by any by-laws, ordinance or law, any increased cost of replacement due thereto shall not be covered by this endorsement.
 - d. ICRMP's liability for loss under this endorsement shall not exceed the smallest of the following amounts:
 - (1) The endorsement limit applicable to the destroyed or damaged property,
 - (2) The replacement cost of the property or any part thereof which was intended for the same occupancy and use, as calculated at the time of the loss,
 - (3) The amount actually and necessarily expended in replacing said property or any part thereof.
 - (4) ICRMP will normally expect the **named insured** to carry out repair or replacement of the insured property, but if the **named insured** and ICRMP agree that it is not practicable or reasonable to do this, **we** will pay the **you** an amount based on the repair or replacement costs, less an allowance for fees and associated costs which are not otherwise incurred. **We** will only pay **you** up to the limits of indemnification shown in the declarations pages.
12. **Incorrect Declaration Penalty.** If the values declared as stated in the **schedule of values** are less than the correct insured values as determined above, then any recovery otherwise due hereunder shall be reduced in the same proportion that the values declared bear to the values that should have been declared, and **you** shall coinsure for the balance.
13. **Notification of Claims.** **You**, upon knowledge of any occurrence likely to give rise to a claim hereunder, shall give written advice as soon as reasonably practicable to **us** within seven (7) days of such knowledge of any occurrence and it is a condition precedent to the liability of ICRMP that such notification is given by the **you** as provided for by this endorsement. If **you** make a claim under this endorsement **you** must give **us** such relevant information and evidence as may reasonably be required and cooperate fully in the investigation or adjustment of any claim. If required by **us**, **you** must submit to examination under oath by any person designated by **us**.
14. **Proof of Loss.** **You** shall render a signed and sworn proof of loss within sixty (60) days after the occurrence of a loss (unless such period be extended by the written agreement of **us**) stating the time, place and cause of loss, **your** interests and all others in the property, the sound value thereof and the amount of loss or damage thereto. If ICRMP has not received such proof of loss within two years of the expiry date of this endorsement, **we** shall be discharged from all liability hereunder. In any claim and/or action, suit or proceeding to enforce a claim for loss under this endorsement, the burden of proving that the loss is recoverable under this endorsement and that no limitation or exclusion of this endorsement applies and the quantum of loss shall fall upon **you**.
15. **Subrogation.** Any release from liability entered into in writing by **you** prior to loss hereunder shall not affect this endorsement or the right of **you** to recover hereunder. In the event of any payment under this endorsement, **we** shall be subrogated to the extent of such payment to all **your** rights of recovery therefore. **You** shall execute all papers required, shall cooperate with **us** and, upon **our**

request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, attaining the attendance of witnesses and in the conduct of suits and shall do anything that may be necessary to secure such right. **We** will act in concert with all other interests concerned (including the Insured) in the exercise of such rights of recovery. If any amount is recovered as a result of such proceedings, such amount shall be distributed in the following priorities:

- a. Any interest, (including **yours**), exclusive of any deductible or self-insured retention, suffering a loss of the type covered by this endorsement and in excess of the coverage under this endorsement shall be reimbursed up to the amount of such loss (excluding the amount of the deductible);
 - b. Out of the balance remaining, **we** shall be reimbursed to the extent of payment under this endorsement;
 - c. The remaining balance, if any, shall inure to the benefit of **you**, or any insurer providing insurance primary to this endorsement, with respect to the amount of such primary insurance, deductible, self-insured retention, and/or loss of a type not covered by this endorsement.
 - d. The expense of all proceedings necessary to the recovery of any such amount shall be apportioned between the interests concerned, including that of the **named insured**, in the ratio of their respective recoveries as finally settled. If there should be no recovery and proceedings are instituted solely on the initiative of **us**, the expense thereof shall be borne by **us**.
16. **Salvage and Recoveries.** All salvages, recoveries and payments recovered or received subsequent to a loss settlement under this endorsement shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.
17. **False or Fraudulent Claims.** If **you** shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this endorsement shall become void and all claims and benefit hereunder shall be forfeited.
18. **Misrepresentation.** If **you** have concealed or misrepresented any material fact or circumstance relating to this endorsement, this endorsement shall become void. If **you** are unsure what constitutes material fact(s) or circumstance(s), **you** should consult **your** agent.
19. **Abandonment.** There shall be no abandonment to ICRMP of any property.
20. **Inspection and Audit.** ICRMP or its agents shall be permitted but not obligated to inspect the property at any time. Neither ICRMP's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **named insured** or others, to determine or warrant that such property is safe. **We** may examine and audit **your** books and records at any time up to two years after the final termination of this endorsement, as far as they relate to the subject matter of this endorsement.
21. **Assignment.** Assignment or transfer of this endorsement shall not be valid except with the prior written consent of ICRMP.
22. **Rights of Third Party Exclusions.** This endorsement is effected solely between the **named insured** and ICRMP. This endorsement shall not confer any benefits on any third parties, including shareholders, and no such third party may enforce any term of this endorsement. This clause shall not affect the rights of the **named insured**.
23. **Cancellation by Withdrawing Member/Expulsion.** This endorsement is cancelable by you by sending written request of cancellation to us. The effective date of the cancellation will be either the date you requested or the date we received notice, whichever is later. A notice to cancel will be treated as a notice to withdraw from the ICRMP program. This endorsement is available only through faithful participation as a member of the ICRMP program. If you are expelled from ICRMP, all insurance coverage pursuant to this policy is terminated. You may be expelled from the program

pursuant to the terms and conditions of the Joint Powers Subscriber Agreement effective as of the date of this policy.

24. **Arbitration.** If **you** and **we** fail to agree in whole or in part regarding any aspect of this endorsement, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two (2) chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which **you** and ICRMP shall so fail to agree and shall make an award thereon and the award in writing of any two (2), duly verified, shall determine the same, and if they fail to agree, they will submit their differences to the umpire. The parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.
25. **Severall Liability.** ICRMP's obligations under this endorsement are several and not joint and are limited solely to their individual policies.
26. **Legal Action Against ICRMP.** No one may bring a legal action against ICRMP unless:
 - a. There has been full compliance by **you** with all of the terms of this endorsement and the ICRMP Joint Powers Subscriber Agreement; and
 - b. The action is brought within two (2) years after the expiry or cancellation of this endorsement.
27. **Material Changes.** **You** shall notify **us** of any change of circumstances which would materially affect this Insurance.
28. **Experts Fees.** This endorsement includes, within the sum insured, the necessary and reasonable fees of architects, surveyors, consulting engineers and other professional experts which are incurred in reinstating or repairing the insured property following damage insured under this endorsement.
29. **Law.** As specified in the General Conditions of this policy.
30. **Jurisdiction.** As specified in the General Conditions of this policy.
31. **Service of Suit.** This service of suit clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in the Arbitration provision within this endorsement. This clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such arbitration provision for resolving disputes arising out of this endorsement. It is agreed that in the event of the failure of **us** hereon to pay any amount claimed to be due hereunder, **we** hereon, at the request of the **named insured**, will submit to the jurisdiction of a court of competent jurisdiction within Idaho. Nothing in this clause constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in Idaho, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon ICRMP representatives and that in any suit instituted against any one of them upon this endorsement, ICRMP will abide by the final decision of such court or of any appellate court in the event of an appeal.
32. **Legal Service.** Any summons, notice or process to be served upon ICRMP for the purpose of instituting any legal proceedings against them in connection with this endorsement may be served upon the Executive Director of ICRMP who has authority to accept service.
33. **Definitions.** All defined terms are controlled by section 1, General Definitions and section V, Property.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the policy to which this endorsement is attached other than as above stated.

Coverage Territory for Canada Amendatory Endorsement #3

A. Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed this endorsement is attached and to the provisions contained within this endorsement, General Conditions Section: Territory of the policy is extended to include Canada with policy limits as listed below and all payments made will be in United States currency and dollar amounts.

1. Section V – Property is amended by the following. All Insuring Agreements in section V are sublimited to \$500,000 per covered occurrence arising out of events related to insured's operations within the borders of Canada.
2. Section VI – General Liability Insurance is amended by the following. Insuring Agreements 1 and 2 in section VI are sublimited to a maximum of \$500,000 per covered **occurrence** arising out of events related to insured's operations within the borders of Canada. Insuring Agreement 3 is sublimited to a maximum of \$500,000 per covered **claim** arising out of events related to insured's operations within the borders of Canada.
3. Section VII – Auto Liability Insurance is amended by the following. Insuring Agreement 1, Automobile Liability is sublimited to a maximum of \$500,000 per covered **accident** arising out of events related to insured's travel within the borders of Canada. Insuring Agreement 2 is sublimited to \$5,000 each person and \$100,000 each **accident** arising out of events related to insured's travel within the borders of Canada. Insuring Agreement 3 is sublimited to \$100,000 each person and \$300,000 each **accident** arising out of events related to insured's travel within the borders of Canada.
4. Section VIII – Errors and Omissions Insurance is amended by the following. All Insuring Agreements in section VIII are sublimited to a maximum of \$500,000 per covered **claim** arising out of events related to insured's operations within the borders of Canada.
5. All other limits of indemnification, defense costs limits and annual aggregates stated within the policy and the declarations pages and all other terms, conditions and exclusions remain unchanged.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the policy to which this endorsement is attached other than as above stated.

SECTION VI – GENERAL LIABILITY INSURANCE AMENDATORY
ENDORSEMENT
Public Land Fire Suppression Endorsement #4

Section VI – General Liability Insurance is amended by the following:

A. Insuring Agreements Applicable to Public Land Fire Suppression Liability:

1. Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that section VI, General Liability Insurance, is extended to pay for legally obligated and statutorily allowable costs imposed by state or federal government agencies specifically related to the suppression of fire only if such costs arise out of a covered **occurrence**. This endorsement is limited to \$500,000 per occurrence and in the aggregate, annually.

B. Exclusions Applicable to Public Land Fire Suppression Liability:

1. This endorsement under any circumstance will not pay for penalties or fines imposed pursuant to state or federal law.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the policy to which this endorsement is attached other than as above stated.

Cyber Liability Coverage Endorsement #5

NOTICE: THIS ENDORSEMENT IS LIMITED TO LIABILITY FOR CLAIMS THAT ARE FIRST MADE AGAINST **YOU** AND NOTIFIED TO **US** DURING THE POLICY PERIOD AS REQUIRED. CLAIM EXPENSES SHALL REDUCE THE APPLICABLE LIMITS OF LIABILITY.

I. LIMITS OF LIABILITY:

- A. Coverage A, Privacy Liability (Including Employee Privacy) \$1,000,000 each and every **claim** including costs and expenses
- B. Coverage B, Privacy Regulatory Claims Coverage \$1,000,000 each and every **claim** including costs and expenses
- C. Coverage C, Security Breach Response Coverage \$1,000,000 each and every **claim** including costs and expenses
- D. Coverage D, Security Liability \$1,000,000 each and every **claim** including costs and expenses
- E. Coverage E, Multimedia Liability \$1,000,000 each and every **claim** including costs and expenses
- F. Coverage F, Cyber Extortion \$1,000,000 each and every **claim** including costs and expenses
- G. Coverage H, PCI Assessment \$100,000 each and every **claim**
- H. \$250,000 each every **claim** in respect of **claims/losses** arising out of **loss/theft/misplacement** of an unencrypted mobile device.

The maximum paid in any one year for all *claims/losses* combined is \$4,000,000 in the aggregate, including costs and expenses with aggregate sublimits of:

- A. \$250,000 aggregate limit including costs and expenses in Coverage H, PCI Assessment
- B. \$500,000 aggregate limit including costs and expenses in respect of **claims/losses** arising out of **loss/theft/misplacement** of an unencrypted mobile device.

II. COVERAGES

A. PRIVACY LIABILITY (INCLUDING EMPLOYEE PRIVACY)

We shall pay on **your** behalf **damages** and **claim expenses** that **you** become legally obligated to pay in excess of the applicable retention resulting from a **claim** first made against **you** and reported to **us** during the policy period or **extended reporting period** arising out of a privacy wrongful act on or after the **retroactive date** and before the end of the policy period, harming any third party or **employee**.

B. PRIVACY REGULATORY CLAIMS COVERAGE

We shall pay on **your** behalf **regulatory fines**, **consumer redress funds** and **claim expenses** that **you** become legally obligated to pay in excess of the applicable retention resulting from a regulatory **claim** first made against **you** and reported to **us** during the policy period or **extended reporting period** arising out of a **privacy wrongful act** on or after the **retroactive date** and before the end of the policy period.

C. SECURITY BREACH RESPONSE COVERAGE

We shall reimburse **you** for **crisis management costs** and **breach response costs** in excess of the applicable deductible that **you** incur in the event of a security breach with respect to personal, non-public information of **your** customers or **employees**. **We** will not make any payment under this Coverage unless the security breach first occurs on or after the **retroactive date** and before the end of the policy period and **you** first learn of the security breach within the policy period and report the security breach to **us** as soon as practicable within the policy period.

D. SECURITY LIABILITY

We shall pay on **your** behalf **damages** and **claim expenses** that **you** become legally obligated to pay in excess of the applicable deductible resulting from a **claim** first made against **you** and reported to **us** during the policy period or **extended reporting period** arising out of a **security wrongful act** on or after the **retroactive date** and before the end of the policy period.

E. MULTIMEDIA LIABILITY

We shall pay on **your** behalf **damages** and **claim expenses** that **you** become legally obligated to pay in excess of the applicable deductible resulting from a **claim** first made against **you** and reported to **us** during the policy period or **extended reporting period** arising out of a **multimedia wrongful act** on or after the **retroactive date** and before the end of the policy period.

F. CYBER EXTORTION

We shall reimburse **you** for the **cyber-extortion expenses** and **cyber-extortion payments** that **you** actually pay directly resulting from a **cyber-extortion threat** that **you** first receive and report to **us** during the policy period.

G. BUSINESS INCOME AND DIGITAL ASSET RESTORATION

1. **We** shall pay the **business income loss** that **you** sustain during a **period of restoration** resulting directly from a **network disruption** that commences during the policy period, but only if the duration of such **period of restoration** exceeds the waiting period set forth in the endorsement and such **network disruption** results solely and directly from a **security compromise** that commenced on or after the **retroactive date**.
2. **We** shall pay the **business income loss** that **you** sustain during a **period of restoration** resulting directly from a **network disruption** sustained by a **dependent business** that commences during the policy period, but only if the duration of such **period of restoration** exceeds the waiting period set forth in the endorsement and such **network disruption** results solely and directly from a **security compromise** that would have been covered if such **dependent business** had been part of **you** and commenced on or after the **retroactive date**.
3. **We** shall reimburse **you** for the **restoration costs** that **you** incur because of the alteration, destruction, damage or **loss of digital assets** that commences during the policy period resulting solely and directly from a **security compromise**, but only if such **security compromise** commenced on or after the **retroactive date**.

H. PCI DSS ASSESSMENT

We shall pay on **your** behalf **damages** and **claim expenses** that **you** become legally obligated to pay in excess of the applicable deductible resulting from a **PCI DSS assessment** first made against **you** and reported to **us** during the policy period or **extended reporting period** arising out of a wrongful act on or after the **retroactive date** and before the end of the policy period.

III. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. **We** shall have the right and duty to defend, subject to the applicable endorsement aggregate limit and applicable sublimits of liability, exclusions and other terms and conditions of this endorsement, any **claim** against **you** seeking **damages** which are payable under the terms of this endorsement, even if any of the allegations of the **claim** are groundless, false, or fraudulent and **we** shall have the right to appoint defense counsel. The applicable endorsement aggregate limit and sublimits of liability available to pay **damages** and **losses** shall be reduced and may be completely exhausted by payment of **claim expenses**. **Damages, losses** and **claim expenses** shall be applied against the applicable retention **you** pay.
- B. **We** shall not be obligated to pay any **damages, losses** or **claim expenses**, or to undertake or continue defense of any **claim**, after the applicable endorsement aggregate limit or applicable sublimits of liability has been exhausted by payment of **damages, losses** and/or **claim expenses** or after deposit of the applicable limit of liability in a court of competent jurisdiction, and that upon such payment or deposit, **we** shall have the right to withdraw from the further defense thereof by tendering control of said defense to **you**.

IV. EXCLUSIONS

The coverage under this endorsement shall not apply to any **damages, claim expenses or loss** incurred with respect to any **claim**, or any **crisis management costs, breach response costs** or other amounts, arising out of or resulting, directly or indirectly, from:

- A. Failure to adhere to the following minimum risk management controls:
1. To maintain anti-virus and malware prevention solutions, on any computer that is part of **your computer system** and update the protection at regular intervals but no less than at least once every 30 days;
 2. To maintain firewalls on any computer that is part of **your computer system** and connected to the **internet**;
 3. To take security precautions, as required by state, federal or national law or by contract, when processing, storing or transmitting credit card payment data or personally identifiable information;
 4. To maintain, update and test business continuity/disaster recovery protocols and procedures;
 5. To maintain and implement ongoing patch management process to ensure timely patching of existing network systems and servers;
- B. **Bodily injury or property damage**;
- C. **Your** employment practices or any alleged or actual discrimination against any person or entity on any basis, including without limitation, race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation, or pregnancy;
- D. The failure, malfunction or inadequacy of any satellite; any electrical or mechanical failure and/or interruption, including but not limited to electrical disturbance, spike, brownout or blackout; or any outage to gas, water, telephone, cable, telecommunications or other infrastructure, unless such infrastructure is under **your** operational control; however this exclusion shall not apply to any **privacy wrongful act** that is caused by such electrical or mechanical failure or that is caused by such failure of telephone lines, data transmission lines or other infrastructure comprising or supporting the **internet**;
- E. Fire, smoke, explosion, lightning, wind, water, flood, earth movement, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;

F. Breach of any express, implied, actual or constructive contract, agreement, warranty, guarantee or promise, provided, however, this exclusion shall not apply to:

1. any liability or obligation **you** would have in the absence of such contract or agreement;
2. any breach of **your** privacy statement; or
3. any indemnity by **you** in a written contract or agreement with **your** client regarding any **privacy wrongful act or security wrongful act** by **you** in failing to preserve the confidentiality or privacy of personal information of customers of **your** client;

G. Any of the following:

1. Any presence of pollutants or contamination of any kind;
2. Any actual, alleged or threatened discharge, dispersal, release, or escape of pollutants or contamination of any kind;
3. Any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants or in any way respond to or assess the effects of pollutants or contamination of any kind; or
4. Manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials, or products containing asbestos, asbestos fibers or dust;
5. Ionizing radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of nuclear fuel;
6. Actual, potential or alleged presence of mold, mildew or fungi of any kind;
7. The radioactive, toxic, or explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
8. The existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any property;

H. Any of the following:

1. Purchase, sale, offer of or solicitation of an offer to purchase or sell securities, or alleged or actual violation of any securities law, including but not limited to the provisions of the securities Act of 1933, or the Securities Exchange Act of 1934, as amended, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local or foreign laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law;
2. Alleged or actual violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended, or any regulation promulgated thereunder, or any federal, state, local or foreign law similar to the foregoing statute, whether such law is statutory, regulatory or common law;
3. Alleged or actual violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended;
4. Alleged or actual anti-trust violations, restraint of trade or unfair competition, including without limitation, violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, or any

other federal, state, local, or foreign laws regulating the same or similar conduct; provided, however, this exclusion H.4 shall not apply to a **claim** for a **multimedia wrongful act** or **regulatory claim**;

- I. Any **act of terrorism**, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; including all amounts, **damages**, or **claim expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to the above; however, if **we** allege that by reason of this exclusion any **damages** or **claim expenses** are not covered by this Endorsement, the burden of proving the contrary shall be upon **you**. However this exclusion does not apply to acts perpetuated electronically.
- J. Any of the following:
 1. Any circumstance occurring, or act, error, or omission committed, prior to the **inception date**, if on or before the **inception date** of this Policy, **you** knew or could have reasonably foreseen that such circumstance or **wrongful act** would be the basis of a **claim**;
 2. Any **claim** or circumstance previously notified to a prior insurer that could reasonably be expected to be the type of **claim** or **loss** covered by this Endorsement; or
 3. Any circumstance occurring, or act, error, or omission committed prior to the **retroactive date**;
- K. Any criminal, dishonest, intentional violation of the law, unfair or deceptive business practice, fraudulent or malicious act, error or omission committed by **you** with actual criminal, dishonest, fraudulent or malicious purpose or intent; provided, however, this exclusion shall not apply to:
 1. **claim expenses** incurred in defending any such **claim** until there is a final adjudication, judgment, binding arbitration decision or conviction against **you** in such **claim** or an admission by **you** establishing such conduct, or a plea of *nolo contendere* or no contest by **you** regarding such conduct, in which event **you** shall reimburse **us** for all **claim expenses** that **we** have paid and **we** shall have no further liability for **claim expenses** from such **claim**; and
 2. any of **you** who did not personally commit or personally participate in committing or personally acquiesce in such conduct, except that the exclusion shall apply with respect to **you** if an admission, final adjudication, or finding in a proceeding separate or collateral to the **claim** establishes that a current principal, partner, director, or officer of **your organization** in fact engaged in such conduct;
- L. Any **claim** made by or on behalf of:
 1. any person or entity within the definition of **you** against any other Insured person or entity within the definition of **you** provided this exclusion shall not apply to an otherwise covered **claim** under Coverage A made by a current or **your** former **employee**; or
 2. Any entity which:
 - a) Is operated, managed, or controlled by **you** or in which **you** have an ownership interest in excess of 15% or in which **you** are an officer or director; or
 - b) Operates, controls, or manages **your organization**, or has an ownership interest of more than 15% in **you**;

- M. **Your** activities as a trustee, partner, officer, director, or **employee** of any **employee** trust, charitable organization, corporation, company or business other than **your organization**;
- N. Any alleged or actual infringement or violation of patent rights or misappropriation, theft, copying, display or publication of any trade secret by, or with active cooperation, participation, or assistance of, **you**, any of **your** former **employees**, **subsidiaries**, directors, officers, partners, trustees, or any of **your** successors or assignees; or
- O. Any trading **losses** or trading liabilities; the monetary value of any electronic fund transfers or transactions by or on behalf of **you** which is lost, diminished, or damaged during transfer from, into or between accounts; or the face value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount.
- P. Any fine or penalty imposed by a payment card company, merchant bank or payment processor under any agreement by **you** to comply with or follow the Payment Card Industry Data Security Standard, as amended, or any payment card company programs, rules, bylaws, policies, procedures, regulations or requirements, or to implement, maintain or comply with security measures or standards concerning payment card data.

With respect to Insuring Coverage G only this Endorsement does not apply to any **loss** arising out of, or resulting, directly or indirectly, from:

- Q. Any costs of updating, upgrading or remediation of **your computer systems** or **your digital assets**; provided, however, this exclusion shall not apply to **restoration costs** otherwise covered under Coverage G.3.;
- R. Any failure of:
 - 1. Telephone lines;
 - 2. Data transmission lines or wireless communications connection; or
 - 3. Other telecommunications equipment, facilities or electronic infrastructure, including equipment, facilities or infrastructure that supports the operation of computer networks, including the **internet**, which are used to transmit or receive voice or data communications and which are not under **your** direct operational control or, if applicable, not under the direct operational control of **your service provider**;
- S. Any seizure, confiscation, nationalization, or destruction of, or damage to or **loss** of use of any digital asset or **your computer systems** by order of any governmental authority;
- T. Ordinary wear and tear, gradual deterioration of or failure to maintain **digital assets** or **computer systems** on which **digital assets** are processed or stored, whether owned by **you** or others;
- U. The physical **loss** of, damage to or destruction of tangible property, including the **loss** of use thereof; provided, however, "tangible property" does not include **digital assets**, but does include all computer hardware;
- V. Any form of third party liability or other legal liability, including but not limited to, any lawsuits, **claims** or demands by any third party, **employee**, officer, director or partner.

V. DEFINITIONS

A. **Act of terrorism** means:

- 1. any act certified an **act of terrorism** pursuant to the federal Terrorism Risk Insurance Act of 2002 or otherwise declared an **act of terrorism** by any government;

2. any act committed by any person or group of persons designated by any government as a terrorist or terrorist group or any act committed by any person or group of persons acting on behalf of or in connection with any organization designated by any government as a terrorist organization; or
 3. the use of force or violence and/or the threat thereof by any person or group of persons, whether acting alone or on behalf of or in connection with any organization or government, committed for political, religious, ideological, or similar purposes, including the intention to influence any government and/or put the public, or any section of the public, in fear.
- B. **Acquiring bank** means a bank or financial institution that accepts credit and or debit card payments (including credit cards, debit cards, stored value cards and pre-paid cards) for products or services on behalf of a merchant, including processing and crediting those payments to a merchant's account.
- C. **Bodily injury** means injury to the body, sickness, or disease sustained by any person, and where resulting from such injuries, mental anguish, mental injury, shock, humiliation, emotional distress, loss of consortium, or death.
- D. **Breach response costs** means the following fees, costs, charges or expenses, if reasonable and necessary, that **you** incur in responding to a **security breach** during the period of twelve (12) months after **you** first learn of such **security breach**:
1. computer forensic professional fees and expenses to determine the cause and extent of such **security breach**;
 2. costs to notify customers or **employees** affected or reasonably believed to be affected by such **security breach**, including printing costs, publishing costs, postage expenses, call center costs or costs of notification via phone or e-mail;
 3. legal fees and expenses to determine whether **you** are obligated under applicable **privacy regulations** to notify applicable regulatory agencies or customers or **employees** affected or reasonably believed to be affected by such **security breach**, effect compliance with any applicable **privacy regulations**, draft the text of privacy notifications to customers or **employees** affected or reasonably believed to be affected by such security breach, and coordinate the investigation of such security breach; or
 4. **credit monitoring expenses**, provided, however, **we** shall have no obligation to reimburse **you** for such **breach response costs** unless:
 - a) **You** provide an opinion from legal counsel that **you** were obligated under applicable **privacy regulations** to notify applicable regulatory agencies or customers or **employees** affected or reasonably believed to be affected by such security breach of such security breach; or
 - b) **You** voluntarily incur with **our** prior written consent such **breach response costs** (including **credit monitoring expenses**), such as in a jurisdiction where **you** have no obligation to notify applicable regulatory agencies or customers or **employees** affected or reasonably believed to be affected by such security breach. **Breach response costs** do not include **your** overhead expenses or any salaries, wages, fees, or benefits of **your employees**.
- E. **Business income loss** means:
1. **Earnings loss**; and/or
 2. **Expenses loss**.

Business income loss does not include:

1. any contractual penalties;
2. any costs or expenses incurred to update, upgrade, replace, restore or otherwise improve any **computer system** to a level beyond that which existed prior to a **network disruption**;
3. any costs or expenses incurred to identify, remove or remediate computer program errors or vulnerabilities, or costs to update, upgrade, replace, restore, maintain or otherwise improve any **computer system**; or
4. any legal costs or expenses or **loss** arising out liability to any third party;
5. any **loss** incurred as a result of unfavorable business conditions; or
6. any other consequential **loss** or damage.

F. **Claim** means:

1. A written demand received by **you** for money or services, including the service of a civil suit or institution of arbitration proceedings;
2. Initiation of a civil suit against **you** seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction); or
3. Solely with respect to Coverage B., a **regulatory claim** made against **you**.
4. A **PCI DSS assessment** multiple claims arising from the same or a series of related or repeated acts, errors, or omissions or from any continuing acts, errors, or omissions shall be considered a single **claim** for the purposes of this endorsement, irrespective of the number of claimants or **you** involved in the **claim**. All such **claims** shall be deemed to have been made at the time of the first such **claim** was made or deemed made under section IX.A.

G. **Claim expenses** means:

1. reasonable and necessary fees charged in the defense or settlement of a **claim** by an attorney whom **we** designate or whom **you** designate with **our** prior written consent, such consent not to be unreasonably withheld; and
2. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim**, if incurred by **us** or by **you** with **our** prior written consent; however, **claim expenses** do not include **your** overhead expenses or any salaries, wages, fees, or benefits of **your employees** for any time spent in cooperating in the defense or investigation of any **claim** or circumstance that might lead to a **claim**.

H. **Computer system** means electronic, wireless, web or similar systems (including all hardware and software) used to process data or information in an analog, digital, electronic or wireless format, including computer programs, electronic data, operating systems, and components thereof, including but not limited to laptops, personal digital assistants, cellular phones, media storage and peripheral devices, media libraries, associated input and output devices, networking equipment, and electronic backup equipment. With respect to Insuring Coverage G only **computer system** means a **computer system**, over which **you** have direct operational control or that is under the direct operational control of a **service provider**, used to process, maintain or store **your digital assets**.

I. **Consumer redress funds** means any sums of money **you** are legally required to deposit in a fund for the payment of consumer **claims** due to a settlement of, or an adverse judgment in, a **regulatory claim**.

- J. **Credit monitoring expenses** means the reasonable and necessary expense of providing free credit report, identity theft protection services, credit monitoring services, credit freezes, fraud alerts or call center services for customers affected or reasonably believed to be affected by a **security breach**; provided, however, **we** shall not be obligated to reimburse **you** for more than one (1) year of credit monitoring services or identity theft protection services for customers who are at least eighteen (18) years old unless there is a rule, regulation, court ruling, requirement by a regulator or statutory requirement requiring otherwise.
- K. **Crisis management costs** means any reasonable and necessary fees and expenses **you** incur with **our** prior written consent to employ a public relations consultant to avert or mitigate any material damage to any of **your** brands due to a **newsworthy event** that has arisen due to a **security breach** or a **claim** or **regulatory claim** for a **privacy wrongful act**, regardless of whether the expenses are incurred prior or subsequent to any such **claim** or **regulatory claim** being made against **you**.
- L. **Cyber-extortion threat** means a credible threat or connected series of threats made by someone other than a director, trustee or partner of **your organization**:
1. to introduce **malicious code** into **your computer system**;
 2. to interrupt **your computer system** or interrupt access to **your computer system**, such as through a **denial of service attack**;
 3. to corrupt, damage or destroy **your computer system**; or
 4. to disseminate, divulge, or improperly utilize any personal or confidential corporate information residing on **your computer systems** taken as a result of a **network disruption**.
- M. **Cyber-extortion payment** means any sum paid to or at the direction of any third party that **you** reasonably believe to be responsible for a **cyber-extortion threat**; provided that:
1. **you** obtain **our** written consent prior to making such **cyber-extortion payment**;
 2. **you** make such **cyber-extortion payment** to terminate the **cyber-extortion threat**; and
 3. the **Cyber-extortion payment** does not exceed the amount **we** reasonably believe would have been incurred had such **Cyber-extortion payment** not been made.
- N. **Cyber-extortion expenses** means the reasonable and necessary expenses **you** incur with **our** approval in evaluating and responding to a **cyber-extortion threat**. However, **cyber-extortion expenses** do not include **your** overhead expenses or any salaries, wages, fees, or benefits of **your employees**.
- O. **Damages** means:
1. Solely with respect to Coverages A, D and E, a monetary judgment, award or settlement, including:
 - a) Pre-judgment interest;
 - b) Post-judgment interest that accrues after entry of the judgment or award and before **we** have paid, offered to pay or deposited in court that part of the judgment or award within the applicable limit of liability; and
 - c) subject to this Endorsements terms, conditions, and exclusions, punitive or exemplary **damages** (where insurable by the applicable law that most favors coverage for such **damages**); and

2. Solely with respect to Coverage B, **regulatory fines** and **consumer redress funds**
3. Solely with respect to Coverage H **PCI DSS assessments, damages** shall not include or mean:
- a) **Your** future profits, restitution, or disgorgement of profits; or **your** cost to comply with any order granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
 - b) **Your** return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided;
 - c) Fines or penalties of any nature, except **regulatory fines, consumer redress funds** and **PCI DSS assessments** as identified above
 - d) Any amount **you** are not financially or legally obligated to pay;
 - e) Multiple **damages**;
 - f) Any donations or contributions to any charitable organization; or
 - g) Matters that may be deemed uninsurable under the law pursuant to which this endorsement may be construed.
- P. **Dependent business** means any third party, other than a **service provider**, on whom **you** depend for products and/or services required to conduct **your** business.
- Q. **Denial of service attack** means inability of a third party to gain access to **your computer systems** through the **internet** due to unauthorized attacks or deliberate overloading of bandwidth connections and/or web servers by means of the sending of substantial quantities of repeat or irrelevant communication or data with the intent of blocking access to the **computer system** by third parties.
- R. **Digital assets** means any electronic data, including personally identifiable, non-public information, or computer software over which **you** have direct control or for which such control has been contractually assigned by **you** to a **service provider**. **Digital assets** do not include computer hardware of any kind.
- S. **Earnings loss** means the difference between the revenue that **you** would have earned based on reasonable projections and the variable costs that would have been incurred, but which **you** would have saved as a result of not earning that revenue.
- T. **Employee** means any individual in **your** service, including any part-time, seasonal, and temporary **employee**, who is compensated by salary, wages, fees or commissions and over whom **you** have the right to direct and control, but excluding any partner or director of **you**.
- U. **Expenses loss** means the additional expenses **you** incurred to minimize the suspension of business and to continue operations during the **period of restoration** that are over and above the cost that **you** reasonably and necessarily would have incurred to conduct **your** business had no **network disruption** occurred. These additional expenses do not include any **restoration costs** or any actual, reasonable and necessary expenses **you** incur in response to a **network disruption** in order to prevent, minimize or mitigate any further damage to **your digital assets**, minimize the duration of a **network disruption** or preserve critical evidence of any wrongdoing.
- V. **Extended reporting period** means the period of time after the end of the policy period for reporting **claims** as provided in the declarations pages.

- W. **Intranet** means a private computer network inside a company or organization that uses the same kinds of software found on the **internet**, but only for internal use.
- X. **Internet** means the worldwide public network of computer networks which enables the transmission of electronic data between different users, commonly referred to as the **internet**, including a private communications network existing within a shared or public network platform.

Y. **Loss(es)** means:

1. **Business income loss**;
2. **Restoration costs**; and
3. **Cyber-extortion payments** and **cyber-extortion expenses**.

All **losses** arising from the same or related underlying facts, circumstances, situations, transactions or events or related **security compromises** shall be deemed a single **loss**.

Z. **Malicious code** means any unauthorized and corrupting or harmful computer code, including but not limited to computer viruses, spyware, Trojan horses, worms, logic bombs, and mutations of any of the proceeding.

AA. **Media content** means data, digital code, images, graphics, sounds, text or any other similar material.

BB. **Multimedia wrongful act** means any of the following acts committed in the ordinary course of **your** business in gathering, communicating, reproducing, publishing, disseminating, displaying, releasing, transmitting or disclosing **media content** via any **computer system** that **you** own or operate or is operated on **your** behalf by a third party, including any web-based social media authorized or operated by **your organization** or any **internet or intranet** website, or via any non-electronic media:

1. defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. invasion of or interference with the right to privacy or publicity;
3. false arrest, detention or imprisonment or malicious prosecution;
4. infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
5. infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name;
6. plagiarism, piracy or misappropriation of ideas; or
7. liability regarding any **media content** for which **you** are responsible; provided always that any **multimedia wrongful act** was committed or alleged to have been committed by **you**, or any person for whom or entity for which **you** are legally responsible, including an independent contractor or outsourcing organization.

CC. **Newsworthy event** means an event that has been caused by a **claim** or **security breach** within one of the coverages which **you** have purchased, that has been publicized through any media channel, including television, print media, radio or electronic networks, the **internet**, and/or electronic mail.

DD. **Network disruption** means any of the following events:

1. A detectable failure, interruption or degradation of the operation of **your computer system**;
or
2. The denial, restriction or hindrance of access to or use of **your computer system** or **your digital assets** by any party who is otherwise authorized to have access.

More than one such event that results from the same or related underlying facts, circumstances, situations, transactions or **security compromises** shall be considered a single **network disruption** which commences on the date of the earliest of such events.

EE. **PCI DSS assessment(s)** means a written demand received by **you** from **your acquiring bank** or a card association (MasterCard, VISA, Discover, American Express or JCB) for a monetary assessment of a penalty or fine due to **your** non-compliance with **PCI data security standards**.

FF. **PCI data security standards** (known as PCI DSS) means the published data security standard in effect now or as hereafter amended that all merchants and processors must follow when storing, processing and transmitting cardholder data.

GG. **Period of restoration** means the time period from the commencement of a **network disruption** to the earlier of:

1. the date that **your computer system** is, or with reasonable diligence could have been, restored to the condition and functionality that existed immediately prior to the **network disruption**; or
2. sixty (60) consecutive days after the termination of the **network disruption**.

HH. **Privacy breach** means a common law breach of confidence, infringement, or violation of any rights to privacy, including but not limited to breach of **your** privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's private information, or misappropriation of a person's picture or name for commercial gain.

II. **Privacy regulations** means any federal, state, local or foreign statute or regulation requiring **you** to limit or control the collection, use of, or access to, personally identifiable, non-public information in **your** possession or under **your** control, or obligating **you** to inform customers of the **unauthorized access** to or disclosure of such personally identifiable, non-public information, including the following statutes and regulations:

1. The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), including Title II requiring protection of confidentiality and security of electronic protected health information, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), any rules and regulations promulgated thereunder as they currently exist and as amended, and any related state medical privacy laws as they currently exist and as amended;
2. The Gramm-Leach-Bailey Act of 1999, also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;
3. Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), but solely with respect to alleged unfair or deceptive acts or practices in or affecting commerce;

4. Federal, state or local privacy protection regulations or laws, such as the California Database Protection Act of 2003 (previously called SB 1386), as they currently exist now or may be amended, associated with the control and use of, or limiting **unauthorized access** to, personal information, including but not limited to requirements to post privacy policies, adopt specific privacy controls, or inform customers of breaches of security that has or may impact their personal information;
 5. Federal, state or local data breach regulations or laws, as they currently exist now or in the future, imposing liability for failure to take reasonable care to guard against **unauthorized access** to credit or debit account information that is in **your** possession or under **your** control;
 6. Identity Theft Red Flags under the Fair and Accurate Credit Transactions Act of 2003;
 7. Federal and state consumer credit reporting laws, such as the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCAA);
 8. the Children's Online Privacy Protection Act of 1998; or
 9. Privacy protection regulations or laws adopted by countries outside of the United States, such as the EU Data Protection Directive and the Canadian Personal Information Protection and Electronic Documents Act, as they currently exist now or may be amended, associated with the collection, control and use of, or limiting **unauthorized access** to, personal information.
- JJ. **Privacy wrongful act** means any privacy breach or breach of **privacy regulations** committed by **you** or by any person or entity for which **you** are legally responsible, including an independent contractor or outsourcing organization.
- KK. **Property damage** means physical injury to or destruction of any tangible property, including the **loss** thereof. Data is not considered tangible property.
- LL. **Regulatory claim** means:
1. any request for information, civil investigative demand or formal investigation of **you** by an administrative or regulatory agency or similar governmental body concerning a **privacy breach** or possible breach of **privacy regulations**; or
 2. any administrative adjudicative proceeding against **you** by an administrative or regulatory agency or similar governmental body for a breach of **privacy regulations**.
- MM. **Regulatory fines** means fines, penalties, or sanctions awarded for a violation of any privacy regulation.
- NN. **Restoration costs** means the actual, reasonable and necessary costs **you** incur to replace, restore, or re-create **your digital assets** to the level or condition at which they existed prior to sustaining any **loss**. If such **digital assets** cannot be replaced, restored or recreated, then **restoration costs** will be limited to the actual, reasonable and necessary costs **you** incur to reach this determination. **Restoration costs** do not include:
1. any costs **you** incur to replace, restore or recreate any of **your digital assets** that were not subject to regular network back-up procedures at the time of the **loss**;
 2. any costs or expenses incurred to update, upgrade, replace, restore or otherwise improve **your digital assets** to a level beyond that which existed prior to sustaining any **loss**;
 3. any costs or expenses incurred to identify, remove or remediate computer program errors or vulnerabilities, or costs to update, upgrade, replace, restore, maintain or otherwise improve any **computer system**; or

4. the economic or market value of any **digital assets**, including trade secrets.

OO. **Retroactive date** means the date specified in the Declarations Pages of this Policy.

PP. **Security breach** means:

1. the **loss** or disclosure of personal, non-public information of customers or **employees** in **your** care, custody or control, including such information stored on paper or on a **computer system** operated by **you** or on **your** behalf; or
2. **Theft of data, unauthorized access** to or **unauthorized use** of personal, non-public information of customers or **employees** in **your** care, custody or control, including such information stored on paper or on a **computer system** operated by **you** or on **your** behalf;

that results in or may result in the compromise of the privacy or confidentiality of such personal, nonpublic information. More than one security breach arising from the same or a series of continuous, repeated or related acts, errors, or omissions shall be considered a single security breach, which shall be deemed to have first occurred at the time of the first such security breach.

QQ. **Security compromise means:**

1. The **unauthorized access** or **use** of **your computer system** or **your digital assets**;
2. The unauthorized transmission of computer code into **your computer system** that causes **loss** or damage to **your digital assets**; or
3. A **denial of service attack** on **your computer system** that causes **loss** or damage to **your digital assets**.

RR. **Security wrongful act** means any act, error, or omission committed by **you** or a person or entity for which **you** are legally responsible, including an independent contractor or outsourcing organization, in the conduct of **computer systems** security and the protection of the security and confidentiality of **your** customer records or information, that results in:

1. The inability of a third party, who is authorized to do so, to gain access to **your computer systems**;
2. The failure to prevent or hinder **unauthorized access** to or **unauthorized use** of a **computer system** operated by **you** or on **your** behalf, the failure to prevent physical theft of hardware or firmware **you** control, the failure to prevent people or processes security failures, or the failure to prevent false communications designed to trick the user into surrendering personal information (such as "phishing", "pharming" or "vishing"), any of which results in:
 - a) The alteration, copying, corruption, destruction or deletion of, or damage to, electronic data on a **computer system** operated by **you** or on **your** behalf;
 - b) Unauthorized disclosure of commercial, personal or private information;
 - c) **Theft of data** (including identity theft); or
 - d) **Denial of service attacks** against **internet** sites or **computer systems** of a third party; or
3. The failure to prevent transmission of **malicious code** from a **computer system** operated by **you** or on **your** behalf to a third party's **computer system**.

SS. **Service provider** means any third party that is responsible for the processing, maintenance, protection or storage of **your digital assets** pursuant to a written contract directly with **you**. A **service provider** does not include any provider of telecommunications services, including **internet** access, to **you**.

TT. **Theft of data** means the unauthorized taking, misuse or disclosure of information on **computer systems**, including but not limited to charge, debit, or credit information, banking, financial and investment services account information, proprietary information, and personal, private or confidential information.

UU. **Unauthorized access** means the gaining of access to a **computer system** by an unauthorized person or an authorized person in an unauthorized manner.

VV. **Unauthorized use** means the use of a **computer system** by an unauthorized person or persons or an authorized person in an unauthorized manner.

VI. LIMITS OF LIABILITY

A. The amount indicated in the Endorsement as stated within the Limits of Liability is the most **we** will pay in the aggregate under this Endorsement, under all coverages combined, for:

1. all **damages**, including **regulatory fines**, **consumer redress funds** and all **claim expenses** from all **claims**;
2. all **crisis management costs** and **breach response costs** from all security breaches; and
3. all **losses** regardless of the number of acts, errors, or omissions, persons or entities covered by this Endorsement, claimants, **claims**, **losses** or security breaches, or coverages triggered.
4. If any **claim** or any single **claim** is covered under more than one Coverage, the highest applicable sublimit of liability shall be the most **we** shall pay as to such **claim** or single **claim** and such **claim** or single **claim** shall be subject to the highest applicable retention.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the policy to which this endorsement is attached other than as above stated.

ICRMP
Multi-Lines
Insurance Policy

This Policy of Insurance is issued by ICRMP for all public entity Members to be effective 12:01 A.M., October 1, 2014 for one-year thereafter, unless sooner terminated, for all continuing Members pursuant to and consistent with the Joint Powers Subscribers Agreement approved by the ICRMP Board of Trustees to be effective for the policy year beginning at the time above stated.

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)
 LaRee H. Westover,)
 Plaintiffs)

**AMENDED COMPLAINT
 (Jury Trial Demanded)**

v.)

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity)
 And in his official capacity as)
 Franklin County Assessor,)
 John Does 1 and 2,)
 Defendant.)

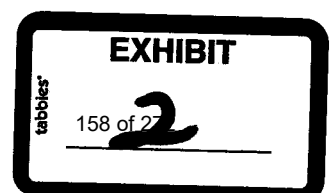
Judge Mitchell Brown

PARTIES

1. Plaintiffs Val D Westover and LaRee H. Westover are individuals residing in Franklin County, Idaho, at Clifton, ID 83228.

2. Defendant Jase D. Cundick is the County Assessor for Franklin County, Idaho. In this action he is being sued in his individual and official capacity.

3. John Does one and two are persons who work in the Franklin County Assessor's office who on information and belief were substantially instrumental in the torts that were committed by the Franklin County Assessor's office.



JURISDICTION AND VENUE

4. The cause of action set out in this Complaint arose in Franklin County, Idaho.

5. This Court has jurisdiction of this action both as a court of general jurisdiction in Franklin County and pursuant to Idaho Code § 7-302 and § 7-402, which give the district court jurisdiction to issue writs of mandate and prohibition.

6. Venue is proper in this Court pursuant to Idaho Code § 5-404, because Plaintiffs and Defendant are residents of and the cause of action arose in Franklin County, Idaho.

GENERAL ALLEGATIONS

7. In a Real Estate Sales Contract, dated November 15, 2007, sellers Don A. Westover and Connie V. Westover, the parents of Val D Westover, conveyed real property to buyers Val D Westover and LaRee H. Westover, Val's wife.

8. A memorandum of that contract was filed on November 15, 2007 with the Franklin County Recorder. A true and correct copy of that Memorandum is attached to the original complaint as Exhibit A.

9. The Memorandum put the public on notice that Val and LaRee Westover are the owners of the property.

10. After the filing of the Memorandum of the Real Estate Sales Contract, any later attempts to convey the property by Don A. Westover did not affect Val and LaRee Westover's title.

11. In 2012, there was an attempt by Don A. Westover to convey the property to a family trust with Val Westover as the trustee. That attempted transfer was rejected by the county assessor as lacking formalities necessary to make it an effective transfer. Thereafter no attempt was made by Don Westover to effect any other transfer.

12. In 2015, Val and LaRee Westover entered into a contract with Rocky Mountain Power for an underground right-of-way easement.

13. Rocky Mountain Power's easement was recorded April 20, 2015. A true and correct copy of this grant of easement was attached to the original Complaint as Exhibit B.

14. A letter dated May 29, 2015, from Franklin County Assessor Jase Cundick to Rocky Mountain Power declared that Val and LaRee Westover were not the owners of the property described in the easement grant.

15. As a result of this letter, Rocky Mountain Power has threatened to cut off power, remove its equipment, and declare Val and LaRee Westover in breach of contract.

16. Through their attorney, Val and LaRee Westover sent Jase Cundick a letter, dated June 24, 2015, detailing the above allegations and requesting that he retract his slander of title.

17. Jase Cundick has failed to respond to any communication and has refused to retract his slander of title. Mr. Cundick now takes the position that the slander of title was not his fault and he will take no action to clear the title and good name of the plaintiffs' vis-à-vis Rocky Mountain Power.

18. By their actions the county assessor's office and persons connected thereto have undertaken to interfere with the business relationships of persons involved in a real estate transaction without any justification whatever.

19. Jase Cundick has acted without or in excess of authority in slandering the property title of Val and LaRee Westover by sending a letter to Rocky Mountain Power purporting to determine the genuine ownership of the property.

20. Idaho Code § 63-703(1) gives an assessor the authority to "ascertain the current ownership of land" for tax purposes, but it does not give an assessor authority to make judicial or quasi-judicial determinations about the genuineness or legal effect of documents of title filed

with the county recorder. Rather, Idaho statutes require that an assessor's office change ownership on its records whenever presented with a deed, title, or contract. I.C. § 63-703(2).

21. In this case the assessor was not presented with a deed, title or contract that purported to change ownership of any property. Rather he was presented with a grant of an easement. An easement does not affect ownership of property and has absolutely no tax effect. There simply was no statutory or other legal authority for the assessor's office to interfere with the economic relationship between Val and LaRee Westover and the power company.

22. As a matter of fact, the assessor has now taken the position that his actions were not an official act of his office.

23. Jase Cundick and John Does one and two were acting outside the scope of their authority and therefore are personally liable to the Plaintiffs for the torts alleged herein.

24. There is no authority for the county assessor to make a determinations whether a contract is genuine. That power is reserved for the judiciary. Therefore, in making a judicial determination of true ownership—by telling the power company that Val Westover and LaRee Westover were not the owners of the property upon which they conveyed an easement to the power company—Jase Cundick acted without or in excess of authority.

25. Similarly, the statute gives an assessor no authority whatsoever to slander an owner's title by informing parties who file documents that, in the assessor's view, the document cannot be given legal effect, or that the property described is not owned by the grantor of an easement.

FIRST CAUSE OF ACTION
(Slander of Title)

26. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–25 above in this cause of action.

27. Jase Cundick aided and abetted by John Does one and two published a slanderous statement by sending a letter to Rocky Mountain Power, dated May 29, 2015, claiming that Val and LaRee Westover were not the owners of their property.

28. The Memorandum of Real Estate Sales Contract filed with Franklin County proves that the statements by Jase Cundick to Rocky Mountain Power were false.

29. Jase Cundick had access to the county records, and John Does one and two were well aware of the memorandum of contract filed in 2007. Moreover, Val and LaRee Westover, by their attorney, sent all pertinent documents to Mr. Cundick, attached to the June 24, 2015 letter. Therefore, Jase Cundick's letter and his refusal to retract it were done with malice—a reckless disregard for the truth or falsity of his statement.

30. John Doe one or John Doe two, an employee of the assessor's office, encouraged, instigated, or was otherwise involved in the sending of the letter to Rocky Mountain Power because of personal malice toward Plaintiffs.

31. The sending of the letter to Rocky Mountain Power interfered with business transactions regarding real estate in Franklin County between the Plaintiff and others, including Rocky Mountain Power, for no legitimate purpose.

32. Val and LaRee Westover have suffered special damages with Rocky Mountain Power threatening to remove its equipment and to declare Val and LaRee Westover in breach of contract. There have also been special damages in way of attorney fees incurred in attempting to remove the cloud of title created by the assessor, and the opprobrium of the accusation that Val and LaRee Westover were attempting to grant an easement across property that they did not own.

SECOND CAUSE OF ACTION
(Writs of Mandate and Prohibition)

33. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–32 above in this cause of action.

34. A writ of mandate is issued by Idaho Supreme Court or any district court to any “corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” I.C. § 7-302.

35. A writ of prohibition is the counterpart to the writ of mandate and is issued to “arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction.” I.C. § 7-401.

36. A writ of mandate or prohibition “must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” I.C. § 7-303.

37. There is no “plain, speedy and adequate remedy in the ordinary course of law” for the slander of title occurring in this case, which the County Assessor has refused to correct. *Id.* Slander of title is an intentional tort, and government entities are immune from suits alleging intentional torts. I.C. § 6-904(3).

38. Additionally, there are no administrative remedies available since appeals regarding actions taken by an assessor’s office are appealed to the Board of Equalization and the Idaho Tax Commission. However, the Assessor’s actions, in excess of his authority in determining property ownership and informing third parties of his opinion that the Plaintiffs do not own the property on which they conveyed an easement, do not regard tax issues and, therefore, cannot be appealed through existing administrative channels.

THIRD CAUSE OF ACTION
(Intentional interference with existing or potential economic relations)

39. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–38 above in this cause of action.

40. The actions of the assessor's office and their refusal to rescind the letter to Rocky Mountain Power which slandered their title, after it was sent has interfered with the existing and potential economic relationship between the Plaintiffs and the power company.

41. According to recent assertions by the assessor, the actions of the assessor's office as described above were not within the course and scope of the assessor's authority, and therefore the actions of the assessor's office were done using improper means.

42. It is the Plaintiff's information and belief that the actions by the assessor's office were taken for an improper purpose as well, namely to interfere with the plaintiff's ability to provide adequate amenities to a substantial tenant of the property that provides jobs and revenue to Franklin County, and perhaps for other improper purposes.

43. On information and belief the employees of the assessor's office were also motivated by malice.

44. As a direct and proximate result of the actions of the assessor's office, Plaintiffs have been damaged in an amount to be proved at trial.

PRAYER FOR RELIEF


WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For writ of mandate, ordering Jase Cundick, Franklin County Assessor, to retract his slander of title;
2. For writ of prohibition, prohibiting Jase Cundick, Franklin County Assessor, from exceeding his authority in making property ownership determinations for purposes beyond those required for taxes and prohibiting him from interfering with real estate transactions in Franklin County;
3. For damages in an amount to be proven at trial.
4. For Plaintiff's costs, including attorney's fees, as are provided in I.C. § 7-312; and

5. For such other and further relief as the court deems just and equitable.

Dated this 20th day of August, 2015.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Jury Trial Demand

Plaintiffs demand trial by jury

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Email: paulcjefferies@gmail.com

Jennifer Mariscal

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

DEFENDANT'S MOTION TO DISMISS

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C. hereby files his Motion to Dismiss. A memorandum in support of this motion will be filed within fourteen days pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure.

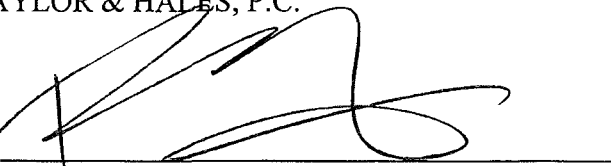
DEFENDANT'S MOTION TO DISMISS - 1.



DATED this 14th day of September, 2015.

NAYLOR & HALES, P.C.

By


Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

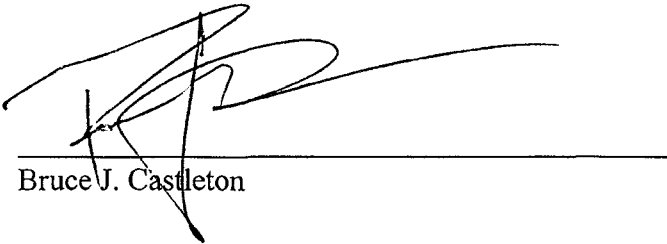
I HEREBY CERTIFY that on the 14th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

___ U.S. Mail
___ Federal Express
 Fax: 1-801-533-0380
___ Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

___ U.S. Mail
___ Federal Express
 Fax: 1-208-547-2147


Bruce J. Castleton

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED

15 OCT 23 AM 11:20

FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,	)	Judge Mitchell Brown
)	
Defendant.)	

The Franklin County Assessor, in a letter dated May 29, 2015, disparaged plaintiffs' ownership of a parcel of property in Franklin County to Rocky Mountain Power. Plaintiff has repeatedly requested that the Assessor correct that erroneous assertion and has repeatedly pointed out to the county assessor why his assessment about the ownership of the property was wrong. Plaintiff has no adequate remedy for removal of the cloud the assessor has put on the property short of an order from this Court requiring the retraction of that erroneous position by the assessor. The material facts are undisputed and plaintiffs' request for mandamus relief turns on the proper interpretation of documents on file with the Franklin County Recorder. Plaintiffs are entitled to the mandamus relief requested as a matter of law. This motion is supported by the memorandum filed in support hereof.

Dated this 23rd day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

FILED

16 FEB 17 PM 12:05

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

FRANKLIN COUNTY CLERK

[Signature]

DEPUTY

VAL D. WESTOVER and LAREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK, FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No: CV-2015-312

FINAL JUDGMENT

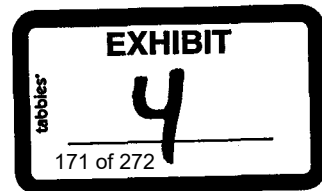
JUDGEMENT IS ENTERED AS FOLLOWS:

- (1) Plaintiffs' First Cause of Action for Slander of Title is Dismissed without prejudice;
- (2) Plaintiff's Second Cause of Action for Writs of Mandate and Prohibition are Dismissed with prejudice;
- (3) Plaintiff's Third Cause of Action for Intentional Interference with an Existing or Potential Economic Relations is Dismissed without prejudice.

Dated this 17th day of February, 2016.

[Signature of Mitchell W. Brown]

MITCHELL W. BROWN
District Court



CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2016, I mailed/served a true copy of the foregoing Final Judgment on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Bruce J. Castleton
Counsel for Defendant

Method of Service:

Faxed: (801) 533-0380

Faxed: (208) 383-9516

By: Linda Hampton, Deputy Clerk

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED

15 OCT 23 AM 11:20

FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,)	Judge Mitchell Brown
)	
Defendant.)	

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Dated this 23rd day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
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Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

DEFENDANT'S MOTION TO DISMISS

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C. hereby files his Motion to Dismiss. A memorandum in support of this motion will be filed within fourteen days pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure.

DEFENDANT'S MOTION TO DISMISS - 1.

DATED this 14th day of September, 2015.

NAYLOR & HALES, P.C.

By 

Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 14th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

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Bruce J. Castleton

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FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

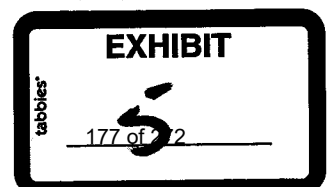
**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs/Appellants	)	NOTICE OF APPEAL
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity	)	Hon. Mitchell W. Brown
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,)	
)	
Defendant/Respondents)	

TO THE ABOVE NAMED DEFENDANTS, JASE D. CUNDICK IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS FRANKLIN COUNTY ASSESSOR, AND THE PARTY'S ATTORNEY, TYLER D. WILLIAMS, NAYLOR & HALES, P.C., ATTORNEYS AT LAW, 950 WEST BANNOCK STREET, SUITE 610, BOISE, IDAHO 83702, (208) 947-2078, TDW@NAYLORHALES.COM, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, VAL D WESTOVER AND LAREE H. WESTOVER, appeal against the above-named Respondent, to the Idaho Supreme Court



from the Final Judgment dated February 17, 2016 by the Honorable Judge Mitchell W. Brown presiding. A copy of the judgment is attached to this notice.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decision described in paragraph 1 above is an appealable decision under and pursuant to Rule 11 I.A.R.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal, are as follows:

A. Whether the District Court erred in refusing to grant injunctive relief prohibiting defendant/appellee from acting ultra vires of any statutory or regulatory authority in sending out letters to parties to real estate transactions that slander the title of the grantor when the defendant/appellee boldly proclaimed his intention to continue the practice.

B. Whether the District Court erred in refusing injunctive relief in an action brought as an action for writ of mandamus/prohibition, where under rule 54(c) it clearly appeared that plaintiffs were entitled to injunctive relief from defendants declarations that he planned to continue his ultra vires conduct, and plaintiffs' counsel asked the Court to grant that remedy even though injunctive relief had not been specifically demanded in the pleadings.

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

5. The reporter's transcript has been produced and paid for.

6. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None

7. The Appellants request that all exhibits offered or admitted at the trial be included in the record.
8. I certify:
 - a) That a transcript has been ordered, prepared, and paid for.
 - b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
 - c) That the appellate filing fee has been paid.
 - d) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 11th day of March, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2016, I caused to be served a true and correct copy of the Notice of Appeal as indicated below to the following:

Tyler D. Williams
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Hon. Mitchell W. Brown
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Jennifer Mariscal

FILED

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

FRANKLIN COUNTY CLERK

DEPUTY

VAL D. WESTOVER and LAREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK, FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No: CV-2015-312

FINAL JUDGMENT

JUDGEMENT IS ENTERED AS FOLLOWS:

- (1) Plaintiffs' First Cause of Action for Slander of Title is Dismissed without prejudice;
- (2) Plaintiff's Second Cause of Action for Writs of Mandate and Prohibition are Dismissed with prejudice;
- (3) Plaintiff's Third Cause of Action for Intentional Interference with an Existing or Potential Economic Relations is Dismissed without prejudice.

Dated this 17th day of February, 2016.

Mitchell W. Brown

MITCHELL W. BROWN
District Court

CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2016, I mailed/served a true copy of the foregoing Final Judgment on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Method of Service:

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Bruce J. Castleton
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DEPUTY

Attorneys for Defendants, Idaho Counties Risk Management Program (ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

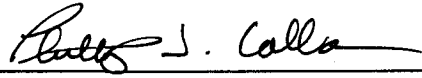
**NOTICE OF HEARING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that on the **29th** day of **September**, 2016, at **2:00 p.m.** of said day, or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Judge Michael W. Brown, Franklin County Courthouse, 39 W. Oneida, Preston, State of Idaho, the undersigned will call up for hearing before the Court Defendants' Motion for Summary Judgment.

ORIGINAL

DATED this 18 day of August, 2016.

ANDERSON, JULIAN & HULL LLP

By 
Phillip J. Collaer, Of the Firm
Attorneys for Defendants

CERTIFICATE OF MAILING

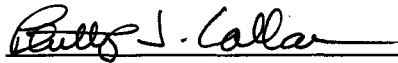
I HEREBY CERTIFY that on this 18 day of August, 2016, I served a true and correct copy of the foregoing **NOTICE OF HEARING RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorney for Plaintiff

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(Courtesy Copy)
Judge Michael W. Brown
159 S. Main Street
Soda Springs, ID 83276

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DS
DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D WESTOVER,
Plaintiff

v.

IDAHO COUNTIES RISK
MANGEMENT PROGRAM (ICRMP),
Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL AND IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Case No. CV-2016-195

Judge: Brown

On June 24, 2016, Plaintiff Val D Westover served discovery requests on ICRMP. On July 19, 2016, ICRMP responded to requests for admission, but refused to respond to interrogatories or document requests and instead filed a motion for protective order claiming that there are no factual issues in the case and the case is merely a legal question of whether local subdivisions may legally purchase insurance. ICRMP has now filed a motion for summary judgment. The motion for protective order and the motion for summary judgment miss the point.

The premise of the motions, that discovery is irrelevant since local governments are statutorily entitled to buy insurance that will reimburse tort claimants under the Idaho Tort Claims Act misses the point. Further, a motion for protective order is not an appropriate method

to object to discovery considered to be irrelevant. The ultimate issues in this case or any case should not be litigated in a discovery dispute, and Rule 56 makes it clear that a party is entitled to discovery before being required to respond to a motion for summary judgment. Rule 56(d), Idaho R. Civ. P.

That normal fleshing out of factual issues is as necessary in this case as in any other. That a local government may legally purchase insurance in the context of a tort claim has little relevance to the issues in this case. The purpose of tort law, and in particular the tort claims act, is to provide for compensation for injured persons. I.C. § 6-903 et. seq. It is clear from a perusal of the Tort Claims Act that the legislature did not care in that context who footed the bill. In that context, insurance is not only permissible, but no doubt desirable from the tort victim's standpoint because it provides a ready fund for compensation. On the other hand, the purpose of I.C. § 12-117(3) is to achieve some modicum of local responsibility for unreasonable conduct will be greatly undermined if local government officials are able to purchase insurance coverage that prevents attorney fee awards for violating the legal rights of citizens without a reasonable basis in fact or law from coming from the regular operating budget of that government.

Recently the Supreme Court tried to limit the effectiveness of I.C. § 12-117(3) in curtailing the abuse of local government. See, *Smith v. Washington County*, 149 Idaho 787, 241 P.3d 960 (2010). The legislature responded with amendments in 2012 that made it clear their intent that Idaho Code 12-117(3) was not to be watered down by the Courts to prevent its full impact in protecting citizens from local governments and to dis-incentivize such conduct:

Until the summer of 2009, Idaho Code Section 12-117 was interpreted by the Idaho Supreme Court to allow an award of attorney fees and costs to the prevailing party in administrative cases if the non-prevailing party acted without a reasonable basis in fact or law. Following an Idaho Supreme Court ruling in the summer of 2009 which reinterpreted the statute to bar such awards, HB 421 was passed by the 2010 Legislature and signed into law with the objective of allowing such awards at all stages of an

administrative proceeding, including on appeal to the courts. Nonetheless, on October 6, 2010 the Idaho Supreme Court ruled in *Smith v. Washington County*, 149 Idaho 787, 241 P.3d 960 (2010), that the 2010 amendments did not accomplish this objective. This bill adds additional language to Idaho Code Section 12-117 to correct this situation. It also amends Idaho Code Section 12-117 to cover health districts (which are not technically regarded as state agencies), to provide that the prevailing party in lawsuits between governmental entities is entitled to recover attorney fees and costs as a disincentive to such suits, and to make technical corrections.

Statement of Purpose, S.B. 1332 (2012).

That is the issue raised in this lawsuit. Whether insurance being provided by ICRM to local government officials is having the effect of thwarting the legislative purpose in the enactment of Idaho Code § 12-117 by shifting the burden of paying attorney fees awarded for government action that is without a basis in fact or law from the offending party's operating budget to ICRM's insurance pool. Mr. Westover's discovery requests were specifically tailored to find the answer to that question. ICRM's obfuscation in response to the requests for admission and its refusal to respond to the interrogatories and document requests has made it impossible for the Court to answer this rather straightforward question.

ARGUMENT

Our Rules of Civil Procedure define the scope of discovery. Rule 26(b)(1)(A) provides the simple formula:

General Scope of Discovery. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.

Tellingly, the rule continues: "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

Issues relating to what might be admissible at trial are not litigated at the discovery stage. Mr.

Westover's discovery was specifically directed to the question of whether ICRMP policies interfere with the legislative directive found in Idaho Code § 12-117 designed to bring accountability to local government by making them feel the consequence of their conduct in their operating budget. Mr. Westover's discovery is aimed precisely at that pivotal point and is highly likely to lead to the discovery of admissible evidence.

Interrogatory No. 1 is a typical request to provide a factual basis for failing to admit critical issues in the case. Such interrogatories not only help frame the issues that might be ultimately tried, but provide a buffer against the type of evasive answers to requests for admission that were submitted in this case. ICRMP's answers to those requests for admission are a model of obfuscation whenever the request neared the critical issues in this case.

REQUEST FOR ADMISSION #1: Admit that you have the duty and the right to defend your members against lawsuits brought against them by citizens subject to their jurisdiction.

RESPONSE: ICRMP admits that, consistent with the terms and conditions of the insurance policy purchased by its insureds, it is contractually obligated to provide a defense to its insureds when they are sued for claims that are potentially entitled to coverage under the ICRMP insurance policy. ICRMP denies the remainder of Request No. 1.

REQUEST FOR ADMISSION #2: Admit that you have the right to control the litigation tendered to you by your members.

RESPONSE: ICRMP admits that, consistent with the terms and conditions of the insurance policy purchased by its insureds, it has a contractual right to make strategic decisions concerning litigation involving claims that are entitled to coverage under the ICRMP policy. Defendant denies the remainder of Request No. 2.

REQUEST FOR ADMISSION #3: Admit that you have the right to control settlement and mediation of litigation tendered to you by your members.

RESPONSE: See Response to Request No. 2, above.

REQUEST FOR ADMISSION #7: Admit that on July 30, 2015, Plaintiff filed an action against the Franklin County Assessor in the Sixth Judicial District Court, Case No. CV-2015-312. ("The Assessor Lawsuit")

RESPONSE: It is admitted that there exists a case styled Westover v. Cundick, et al, Case No. CV-2015-312 in the Sixth Judicial Circuit in and for Franklin County, Idaho.

When specifically asked requests for admission on the ultimate issues in this lawsuit (which is specifically allowed under Rule 30, Idaho Rules of Civil Procedure),

REQUEST FOR ADMISSION #4: Admit that you have the duty to pay any expenses awarded against your members in lawsuits tendered to you by your members, including actions covered by Idaho Code Section 12-117.

RESPONSE: Denied.

REQUEST FOR ADMISSION #11: Admit that you refused to authorize the Franklin County Assessor to pay any money in settlement of the Assessor Lawsuit during that mediation.

RESPONSE: Denied.

REQUEST FOR ADMISSION #13: Admit that if the Franklin County Assessor is ordered to pay attorney fees to the Plaintiff in the Assessor Lawsuit you will be obligated to pay those fees on behalf of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, and calls for a legal conclusion. Any obligation by ICRMP to indemnify the Franklin County Assessor is controlled by the terms and conditions of the insurance policy purchased by Franklin County.

Request No. 13 is denied.

REQUEST FOR ADMISSION #14: Admit that any payment that you make toward attorney fees that might be awarded to the Plaintiff in the Assessor Lawsuit will be paid from funds you collect and pool from all your members.

RESPONSE: Objection; the request is vague, speculative, calls for a legal conclusion, and is dependent upon facts which have not occurred and may not ever occur. As such, the request is denied.

REQUEST FOR ADMISSION #15: Admit that any payment that you make toward attorney fees that might be awarded to the Plaintiff in the Assessor Lawsuit will not be paid from funds in the regular operating budget of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, calls for a legal conclusion, and is dependent upon facts which have not occurred and may not ever occur. As such, the request is denied.

ICRMP denied the requests, hence the need for a response to the first interrogatory spelling out the factual basis for denial. Similarly, in response to a requests about the jurisdictional basis for this lawsuit, Plaintiff was given evasive answers:

REQUEST FOR ADMISSION #6: Admit that the Franklin County Assessor is a political subdivision.

RESPONSE: Denied as phrased.

REQUEST FOR ADMISSION #8: Admit that the Franklin County Assessor is and was at the time the Assessor Lawsuit was filed one of your members.

RESPONSE: Objection; the request as phrased is a compound request. It is admitted only that Franklin County was an insured of ICRMP. The remainder of the request is denied.

Obviously, the contract by which ICRMP was obligated to provide a defense to the lawsuit brought by Mr. Westover against the Assessor (Interrogatory No. 2), may shed light on whether the insurance practices of ICRMP undermine the legislative purposes of I.C. §12-117. If that contract provides that ICRMP will pay a judgment for attorney fees despite a ruling by the Court that the assessor acted “without a reasonable basis in fact or law,” the purposes of I.C. §12-117 will be thwarted. Curiously, in response to Request for Admission No. 13, ICRMP instead of giving a forthright admission or denial as required by the rules, instead obfuscated by reference to this contract that it now refuses to produce!

REQUEST FOR ADMISSION #13: Admit that if the Franklin County Assessor is ordered to pay attorney fees to the Plaintiff in the Assessor Lawsuit you will be obligated to pay those fees on behalf of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, and calls for a legal conclusion. Any obligation by ICRMP to indemnify the Franklin County Assessor is controlled by the terms and conditions of the insurance policy purchased by Franklin County. Request No. 13 is denied.

Interrogatory No. 3 is directly to the point: “Please identify the source of any payments that have been made, or that will be made or for which there is an obligation to be made to reimburse attorney fees to the Plaintiff in the Assessor Lawsuit in the event that a court orders the Franklin County Assessor to pay attorney fees in connection with that lawsuit.” Any payment of attorney fees to the plaintiff in the Assessor lawsuit will be on the basis that the Assessor’s position in that lawsuit was “without a reasonable basis in fact or law.” The legislature specifically required that “Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of

the state agency or political subdivision.” I.C. §12-117 (3). Obviously, if ICRMP were obligated to pay those fees and is the source of those payments the legislative purpose in making sure that irresponsible actions by local government officials is felt at the local level so as to be a deterrent to future local government irresponsibility will be undermined.

The remaining three interrogatories (mistakenly all numbered No. 3) simply ask for the identifying information relating to witnesses, expert witnesses, and persons with knowledge of the facts. Rule 26 specifically makes that information discoverable. Rule 26(b)(1)(A). It is difficult to imagine a proper objection to such information.

Mr. Westover’s document requests were similarly all seeking discoverable evidence and were specifically aimed at facts relevant to the pivotal issue in this case of whether a local government official has purchased insurance that has the potential of thwarting the goal of I.C. §12-117 to bring accountability to local government conduct by requiring them to pay attorney fees incurred by their constituents fighting battles that should never have been fought.

I. Whether ICRMP Made the Right Call in Not Participating in the Mediation in Good Faith is Not Relevant

ICRMP makes the argument that it made the correct call when it would not allow the Assessor to offer any settlement at the mediation because when the parties returned to Court the Assessor prevailed in having Mr. Westover’s claims for Writ of mandamus/prohibition dismissed. That argument misses the point for two reasons. The Court will recall that the Westover’s complaint was dismissed, not because the Court found that the Assessor’s conduct had been lawful. Indeed, the Court chastised the Assessor for inserting himself into this real estate transaction only because no statute prohibited him from doing so.

THE COURT: Enough of this for a minute. Mr. Williams, why is your client so intent on picking this fight, which seems to exceed perhaps what his role as an elected official with the Franklin County Assessor's office would be? Why does he concern himself with this issue?

MR. WILLIAMS: We attempted to resolve this matter back in August. We sent a letter to Mr. Atkin that said basically this is moot, there's now a deed in place.

THE COURT: But that's not my question. Why did he involve himself in the first instance? Does he have any responsibility to notify Rocky Mountain Power, or a third party, that he feels like a filing with the recorder's office should be responded to or that he should police those issues?

MR. WILLIAMS: That's the practice of the assessor's office and has been for a number of years. When there is a question as to ownership --

THE COURT: Again, it might be a practice, but is there any legal or statutory authority that he do that?

MR. WILLIAMS: There is no authority to prohibit him from doing it.

THE COURT: And in fact he holds himself out to a lawsuit such as this if he's incorrect in his legal assessment of the state of affairs, correct?

MR. WILLIAMS: Yes, correct. As we now know.¹

Transcript of Hearing held 11-12-2015, p.p. 15-16.

This action is not premised on the outcome of the litigation between the plaintiff and the Assessor. Rather, this action is a challenge to an insurance regime that thwarts the legislative effort to get local government to stay within the law and not embark on the kind of rogue efforts that spawned the litigation between this plaintiff and the Assessor. Similarly what happened at the mediation is relevant only for the fact that it illustrates an evil that needs to be eradicated. The purpose of I.C. § 12-117 is to take away the incentive of local government officials to be stubbornly litigious. What happened to the Westovers is not the basis for this action, but it is a textbook example of what happens when local governments take action to thwart the legislative

¹ MR. ATKIN: The other position that the assessor takes that causes me and my clients grave concern is that the assessor takes the position that what he did in this case was a discretionary function because there's nothing in the statute that prohibits him from doing the things that he did. That is not my understanding of what a discretionary function for a government official is.

Discretionary function doesn't mean that because the statute doesn't prohibit the government official from doing something therefore he's free to do it. My understanding of a discretionary function is the way it's defined in the tort claims act, a discretionary function is something for which the government actor is shielded because he is performing a duty that was properly delegated to him under statute or regulation.

THE COURT: And in fact that's how governmental entities work, correct?

MR. ATKIN: That's correct.

THE COURT: They have no authority to act unless there is statutory authority for them to so act, correct?

Transcript of Hearing held 2-11-16, p.p. 3-4.

intent that the consequences of unfounded and stubborn conduct be felt in their operating budget. A local government official is less likely to ignore the plea of his constituent to correct a wrongful interference with a business transaction if he knows he will feel it locally if he persists in his stubborn refusal. He is less likely to defend arbitrary conduct “because there is not statute that prohibits his conduct” if he knows that taking that kind of position in court is likely to ding his local operating budget. In short, the stubborn refusal of the Assessor to correct the false statement he made to the power company in a letter he had no business writing would be far less likely to have occurred if the Assessor had not had insurance coverage that would pay the fees incurred by his constituents in getting him to get off his stubborn refusal to simply correct his wrongs.

If full and complete responses to the discovery that the plaintiff has propounded show that the indemnification provided by ICRMP will cover awards made to citizens who meet stubborn litigiousness from their local government officials who have acted without a reasonable basis in fact or in law, then this action is proper and summary judgment will need to be granted to the Plaintiff.

The Assessor, without any statutory or other authority to do so, wrote a letter to the Westovers’ Grantee the power company, telling it that the Westovers were not the owners of the property over which they had granted a power easement. That *ultra vires* act threatened to disrupt the Westovers’ contract and power to their facility. This conduct was without a reasonable basis in fact or law.

The Westovers reached out to the Assessor, several times personally, several times through their lawyer, and finally through a formal demand letter, asking the Assessor to correct

the error he had made through the *ultra vires* letter to the power company. Their pleas went unheeded. This conduct was without a reasonable basis in fact or law.

Seeing no alternative, the Westovers brought legal action against the Assessor to have the court order him through a writ of mandamus to retract his statement to the power company that the Westovers did not own the property.

Rather than simply retract the false statement in a letter he had no business writing, the Assessor filed a motion to dismiss claiming that the Westovers did not have standing to seek legal help to get the *ultra vires* letter retracted. That conduct was without a reasonable basis in fact or law.

Ultimately, the Assessor did issue the retraction letter telling the power company that the Westovers did in fact own the property over which they had conveyed the easement. But that retraction letter came after months of unnecessary delay, and thousands of dollars in attorney fees.

At no time was the Assessor able to articulate any reasonable basis in fact or law for his issuance of the letter to the power company, and more importantly for his reluctance to simply correct the error at the request of the Westovers until after they had spent months worrying about their ability to continue their business and thousands of dollars in attorney fees. That prolonged conduct was “without a reasonable basis in fact or law. “

I.C. §12-117 requires that where a political subdivision of the State in litigation with a private citizen has acted without a reasonable basis in fact or law, the court shall award attorney’s fees to the prevailing party. The legislature went further, requiring that the brunt of the attorney fee award be felt by the political subdivision and not be passed off. I.C. §12-117 (3) specifically states that “Expenses awarded against a state agency or political subdivision

pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision.”

If ICRMP offers insurance to political subdivisions against attorney fees awards under I.C. §12-117(3), it negates the effect of that section and the legislative intent to bring rationality into the actions of local government through the threat that, if they lose, and if they are found to have acted without a reasonable basis in fact or law they will have to pay an attorney fee award out of their regular operating budget.

Throughout this ordeal, the Westovers could never understand why the Assessor ignored their pleas, spent thousands of dollars on litigation defending conduct for which there is no statutory authority. Why did he not simply issue the retraction letter which he finally issued months and thousands of dollars later. At the mediation they learned the reason. The reason was ICRMP. By illegally insuring against the eventuality of an attorney fee award that needed to be felt in the local operating budget, ICRMP had removed both the incentive and the power of the Assessor to act reasonably.

What happened at the mediation, and what happened ultimately in the case (which is currently on appeal) is beside the point and is being used by ICRMP as a red herring. Obviously the legislature, in enacting I.C. §12-117(3) was not looking for a new way for litigants to get money from local governments. Rather they had a loftier goal in mind. That of promoting rational and legal conduct on the part of local government. That is what the Westovers were deprived of in this case. True, they hope one day as a result of their appeal to be compensated for the wringer the Assessor ran them through, but whether they ever prevail on that goal, they have been damaged by having to deal with a local government official who would not, or

because of his contract with ICRMP could not act rationally and legally in the way that he conducted the litigation with the Westovers.

At this point, because ICRMP refused to respond to discovery this Court must assume that the facts after discovery will show that ICRMP agreed to indemnify the Assessor if an award of attorney fees were assessed for violation of I.C. §12-117. ICRMP had a contractual arrangement with the Assessor that interfered with the Assessor's handling of the litigation so that he was precluded from acting in the manner that he felt was reasonable and legal. If those facts turn out to be true, which the Court must assume because of the premature nature of the motion for summary judgment and ICRMP's refusal to comply with the discovery rules, then ICRMP is a pernicious organization whose purpose is to annul the legislative pronouncement of I.C. §12-117, and it must be stopped.

II. Plaintiff Has Standing to Sue Defendant for Violation of I.C. § 12-117

ICRMP argues that Plaintiff does not have standing to sue in this case, because Plaintiffs cannot maintain a direct cause of action against an insurance company. While it may be true an injured third party cannot bring a direct action against a tortfeasor's insurance company, generally, that is not the basis for Plaintiff's standing in this case. ICRMP's argument completely misses the mark. Plaintiff's basis for standing is that ICRMP violated I.C. § 12-117 and Plaintiff was injured by this statutory violation. The insurance contract itself is the statutory violation and the source of Plaintiff's injury.

As explained in detail above the main issue in this case is whether or not ICRMP's assistance of governmental entities in paying attorney fees awards made against governmental entities under I.C. § 12-117 is in fact a violation of that statutory mandate in I.C. § 12-117 (3) that "Expenses awarded against a state agency or political subdivision pursuant to this section

shall be paid from funds in the regular operating budget of the state agency or political subdivision.” ICRMP insurance policy appears to enable these entities to avoid the purpose of this statute by shifting the risk of loss to an insurance pool, rather than the governmental agency having to shoulder the cost burden directly as § 12-117 intends. As a result, litigants are subjected to the kind of unfounded, baseless refusal by the government official to correct his ultra vires conduct early on that the Plaintiffs experienced in their litigation with the Assessor.

Plaintiff has standing to sue because he is claiming that under the circumstances of this case ICRMP violated I.C. §12-117 and that such violation was the proximate cause of an injury suffered by Plaintiff, namely being subjected to litigation with a government official taking a position for which there was no reasonable basis in fact or law, and a governmental official who persists in that baseless position to this day. A party may sue based on a violation of a statute. The Idaho Supreme Court has held that: “When deciding whether a party has standing, we have looked to decisions of the United States Supreme Court for guidance.” *Kock v. Canyon County*, 177 P.3d 372, 375; 145 Idaho 158 (Idaho 2008). A party has standing to claim a statutory violation if that party has suffered or is about to suffer an “injury in fact” to his interests by a violation of a statute. *Id.*; *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1149 (2009). The alleged injury may be as non-specific as “harm in fact affects the recreational or even the mere esthetic interests of the plaintiff” to suffice as support for standing. *Id.*

In this case, Plaintiff’s injury was the failure of the Assessor to make a good faith effort to determine the legality of his actions and not persist in them simply because “there is no authority to prohibit him from doing it!”

Likewise he would appear to have a duty to take part in Court ordered mediation in the case of *Westover v. Franklin County Assessor* Case No. CV-2015-312. The reason the Assessor

did not participate in the mediation in good faith is because ICRMP was directing that litigation and instructed the Assessor not to participate in a meaningful way at the mediation. ICRMP would be liable to pay any settlement amount, rather than Franklin County directly from its operating budget as I.C. § 12-117(3) requires. It appears obvious that the Assessor would be much more inclined to resolve the matter by settlement, and would have retracted his slanderous letter early on, if any settlement were to be paid by the County directly. This is enough of an “injury in fact” to support standing.

Plaintiff has alleged that ICRMP (as well as the Franklin County Assessor), under the circumstances of the case, violated the intent and purpose of I.C. § 12-117 by providing insurance for any loss incurred because of the Assessor’s unreasonable actions, rather than requiring the Assessor to pay directly out of his operating funds as the statute requires. This violation caused harm to plaintiff by the Assessor stubbornly refusing to retract his false statements about the plaintiff’s title to the property and by not participating in good faith in Court ordered mediation. Plaintiff has standing to bring this case against ICRMP.

CONCLUSION

This Court should deny ICRMP’s Motion for Summary Judgement and grant plaintiff’s Motion to Compel ICRMP’s response to discovery. Plaintiff should be awarded his fees in having to bring a Motion to Compel.

DATED this 14th day of September, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

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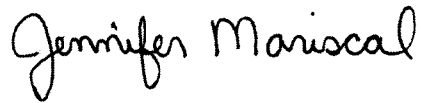
Hon. Mitchell W. Brown
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Soda Springs, ID 83276
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Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

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Dated this 14th day of September, 2016.



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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D WESTOVER,

Plaintiff

v.

IDAHO COUNTIES RISK
MANGEMENT PROGRAM (ICRMP),

Defendant.

STIPULATION

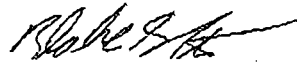
Case No. CV-2016-195

Judge: Brown

The parties through their undersigned counsel hereby stipulate that Plaintiff's Motion to Compel will be heard along with Defendant's Motion for Summary Judgment on Thursday, September 29, 2016, at 2:00 p.m. The parties also stipulate that Defendant's Motion for Protective Order will be heard at this same hearing.

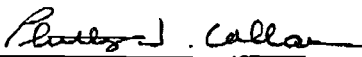
DATED this 19th day of September, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Plaintiff

Anderson, Julian & Hull, LLP



Phillip J. Collaer
Attorneys for the Defendant

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Dated this 19th day of September, 2016.

Jennifer Mariscal

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FRANKLIN COUNTY CLERK
DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

<p>VAL D WESTOVER, Plaintiff</p> <p>v.</p> <p>IDAHO COUNTIES RISK MANGEMENT PROGRAM (ICRMP), Defendant.</p>	<p>NOTICE OF HEARING</p> <p>Case No. CV-2016-195</p> <p>Judge: Brown</p>
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Please take notice that the Plaintiff's Motion to Compel will be heard on Thursday, September 29, 2016, at 2:00 p.m.

DATED this 19th day of September, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

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Dated this 19th day of September, 2016.

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FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Defendants, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**REPLY BRIEF IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I.

**PLAINTIFF HAS FAILED TO ESTABLISH THAT I.C. § 12-117 APPLIED TO THE
CLAIMS AGAINST FRANKLIN COUNTY.**

In their response, plaintiff argues that I.C. § 12-117 was enacted to discourage governmental entities from “violating the legal rights of citizens without a reasonable basis in fact or law”. See Memorandum in Opposition, p. 2. To support this assertion he then suggests that allowing the government to purchase casualty insurance would encourage elected officials to engage in tortious or illegal conduct as the financial

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT - 1**

ORIGINAL

responsibility for their actions would be shifted to the insurance company rather than being paid from the governmental entities operating budget. This argument is unsupported by the facts in this case and, is inconsistent with case law from the Idaho Supreme Court.

The initial flaw in plaintiff's argument is his focus upon the insurance company's agreement to indemnify in the event its insured is found liable for a covered claim. See Boice Aff, Exb. 1, p. 20, ¶A; p. 31 ¶A. In addition to its indemnity obligations, ICRMP was required to provide Franklin County a defense. *Id.*, p. 4, ¶8. An insurer's duty to defend is a separate, unrelated and broader obligation than its duty to pay for damages under the insurance contract. See *Hirst v. Saint Paul Fire and Marine Ins. Co.*, 106 Idaho 792, 798, 683 P.2d 440, 446 (Ct. App. 1984); *Deluna v. State Farm Fire & Casualty Co.*, 149 Idaho 81, 85, 233 P.3d 12, 16 (2008). Consistent with the terms of the insurance policy it sold to Franklin County, ICRMP hired counsel to defend its insured. See Boice Aff., ¶3. That defense, which included representing and advising the County at mediation, caused Franklin County to decide to stand on its legal rights and defend the case rather than seek settlement.

When Mr. Westover filed his lawsuit, that filing did not guarantee he would receive compensatory damages or non-monetary relief. The rules of civil procedure, as well as the federal and state constitutions, afforded him the opportunity to pursue his claims in court. Those same rules and constitutional guarantees provided Franklin County the opportunity to retain counsel and defend itself. Plaintiff's argument is a misguided attempt to interfere with the County's legal rights. Idaho Code § 12-117 cannot be interpreted to restrict the County's ability to retain legal counsel, develop legal

and factual defenses and, advance those defenses through legal motions or at trial. Any restriction upon the County's legal rights is not stated in the statute and, would raise serious constitutional questions.

The second flaw in the plaintiff's argument is the apparent suggestion that I.C. § 12-117 is intended to govern a tortfeasor's conduct prior to the time a lawsuit is filed. This argument ignores the plain language of the statute which allows the court to award attorney's fees in "any proceeding involving as adverse party's estate agency or a political subdivision and a person...if it finds that the non-prevailing party acted without a reasonable basis in fact or law." See I.C. § 12-117(1). (emphasis added) The plain language of the statute addresses the conduct of litigants during a lawsuit rather than the events which caused the lawsuit to be filed. This requires a finding that the factual or legal defenses offered to oppose the plaintiff's lawsuit were frivolous. See ***Employers Research Management Co. v. Dept. of Insurance***, 143 Idaho 179, 141 P.3d 1048 (2006); ***Ada County v. City of Garden City***, 155 Idaho 914, 919, 318 P.3d 904, 909 (2014); ***Rangen, Inc. v. Idaho Dept. of Water Resources***, 159 Idaho 798, 367 P.3d 193, 207 (2016). The same standard applies to the conduct of the plaintiff with respect to the legal or factual claims offered in support of the liability complaint.

Franklin County aggressively defended the lawsuit filed by the Westovers. The fact the case was not settled at mediation reflects the County's belief it was not liable and, that the plaintiff's demands were excessive in light of the available legal and factual defenses. The fact Franklin County refused to settle and, was then granted summary judgment establishes, as a matter of law, its defense in the ***Westover v. Franklin County*** lawsuit was not frivolous. Accordingly, there was never a basis for an award of

attorney's fees against Franklin County. For that reason, § 12-117 was never at issue and, did not impact Mr. Westover's legal rights in any respect.

Finally, even if Franklin County's legal defenses could be criticized, I.C. § 12-117 could not have been used as a basis for awarding attorney's fees against either Franklin County or Mr. Westover. The liability complaint alleged slander of title. Because the defendants included a governmental entity and its elected official, the plaintiff's tort claims were governed by the Idaho Tort Claims Act (ITCA). The Act, at I.C. § 6-618A, provided the exclusive basis for attorney fee awards. **See Athay v. Stacey**, 146 Idaho 407, 196 P.3d 325 (2008); **Block v. City of Lewiston**, 156 Idaho 484, 328 P.3d 464 (2014). The ITCA unambiguously authorizes governmental entities to purchase casualty insurance for "themselves and their employees". **See** I.C. § 6-923. Thus, the argument that I.C. § 12-117 should be interpreted to prohibit or discourage Franklin County from purchasing casualty insurance would conflict with the plain language of the ITCA. Considering implied repeals are disfavored, **see Callies v. O'Neil**, 147 Idaho 841, 848, 216 P.3d 130, 136 (2009), the plaintiff's interpretation of § 12-117 cannot be accepted.

The plaintiff has failed to address to this aspect of the defendants' motion. It cannot be seriously argued the slander of title claim asserted against Franklin County and the Assessor described a tort which brought the lawsuit under the umbrella of the Idaho Tort Claims Act. The plaintiff's continued and misguided reliance upon § 12-117 in light of the Supreme Court's rulings addressing the exclusivity of I.C. § 6-618A shows the plaintiff's arguments are without legal merit and, have become frivolous. The defendants' Motion for Summary Judgment should be granted.

II.

PLAINTIFF LACKS STANDING TO CHALLENGE THE CONTRACTUAL RELATIONSHIP BETWEEN ICRMP AND FRANKLIN COUNTY.

In an effort to establish standing, plaintiff argues that ICRMP violated I.C. § 12-117 and, as a result, he suffered injury. See Memorandum In Opposition, p. 13. This argument is legally and factually frivolous. Idaho Code § 12-117 does not mention insurance, does not state a governmental entity is prohibited from purchasing insurance, and does not attempt to limit the coverages an insurance company is allowed to offer to its customers. Plaintiff is asking the court to infuse language into the statute which the legislature chose to omit. This argument violates established rules of statutory construction, ***Wright v. Ada County***, 160 Idaho 491, 376 P.3d 58 (2016) and, is inconsistent with I.C. §§ 6-922 through 6-926 which unambiguously authorizes political subdivisions, such as Franklin County, to purchase insurance to protect “themselves and their employees”. See I.C. § 6-923.

As established in § I, above, the defense provided Franklin County, which included the unsuccessful mediation, was not frivolous. Logically, a defendant and its insurer cannot be accused of pursuing a frivolous defense when all claims against the insured are dismissed through a motion for summary judgment. Because the Franklin County defense was not frivolous, I.C. § 12-117 was not violated. Accordingly, Westover did not suffer an injury protected by the statute and, for that reason alone, his standing argument fails.

It is unquestioned the plaintiff is not allowed to maintain a direct action against an alleged tortfeasor’s (Franklin County) insurance company. See ***Graham v. State Farm Mutual Ins. Co.***, 138 Idaho 611, 67 P.3d 90 (2003). Plaintiffs have ignored this rule by

suggesting ICRMP's agreement to defend and indemnify Franklin County violated § 12-117. As outlined in § I, above, this argument is without merit. Westover is attempting to interject himself into the contractual relationship between ICRMP and it's insured by arguing the insurer was not allowed to provide insurance which, under certain defined circumstances, could provide coverage for attorney's fees awarded against its insured.¹ This was the same argument that was rejected in *Brooksby v. Geico Ins. Co.*, 153 Idaho 546, 296 P.3d 182 (2012) where the plaintiff argued an exclusion in the insurance contract violated Idaho law. The Supreme Court ruled that Brooksby lacked standing to challenge the insurer's reliance upon the disputed exclusion. See 153 Idaho at 548. The same conclusion is applicable in this case. Mr. Westover lacks standing to question the contractual terms and coverages of the insurance policy purchased by Franklin County from ICRMP. Additionally, Westover lacks standing to challenge ICRMP's interpretation of those contractual terms as, he "is not a party to the insurance contract and has no rights under it." See *Hartman v. United Heritage Property and Casualty*, 141 Idaho 340, 346 (2005). This lawsuit is barred by the no direct action rule and, must be dismissed.

¹ Plaintiff's argument ignores language in the ICRMP policy that excludes coverage for claims where the sole monetary compensation sought is limited to attorney's fees and costs of suit. See Boice Aff., Exb. 1, p. 24, ¶D.1.j; p. 31, ¶B.3. Contrary to plaintiff's argument, the ICRMP policy would exclude coverage if he had not sought compensatory damages and had limited his claims to prospective injunctive relief and attorney fees.

DATED this 22 day of September, 2016.

ANDERSON, JULIAN & HULL LLP

By Phillip J. Collaer
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 22 day of September, 2016, I served a true and correct copy of the foregoing by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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(Courtesy Copy)
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Phillip J. Collaer

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FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**RESPONSE MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL REPLY IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

BACKGROUND

ICRMP previously filed its Motion for Protective Order in relation to Plaintiff's First Set of Document Requests to Defendant, Plaintiff's First Set of Requests for Admission to Defendant, and Plaintiff's First Set of Interrogatories to Defendant. In an excess of caution, it simultaneously filed responses to Plaintiff's Requests for Admission.

Plaintiff, Val D. Westover ("Plaintiff") has now filed a Motion to Compel which takes issue both with the Motion for Protective Order, and the Responses to Requests for Admission. He asks the Court to compel ICRMP'S responses to discovery and to award Plaintiff attorney's fees for having to bring a Motion to Compel. Neither relief

**RESPONSE MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL REPLY IN SUPPORT FOR PROTECTIVE ORDER - 1**

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should be granted, as explained below.

ARGUMENT

Firstly, although Plaintiff asks the Court to “Compel ICRMP’s response to discovery,” he also acknowledges that ICRMP has responded to his Requests for Admission. (Pl.’s Mem., p. 15; pp. 3-8) Plaintiff simply does not approve of ICRMP’s Responses to Requests for Admission, calling them obfuscating. (Pl.’s Mem., pp. 3, 4, 7)

In addition, ICRMP has not “failed” or refused to respond to plaintiff’s discovery. Instead, it properly and timely moved for a protective order. Whether, and when ICRMP will be required to answer plaintiff’s discovery, will be determined by the court when it rules upon defendant’s motions. See I.R.C.P. 26(c)(2). Thus, Plaintiff’s request for fees for “having to move to compel” should be denied, since the motion was not required as ICRMP has not been ordered to respond to their discovery.¹ (Additionally, Plaintiff’s Motion to Compel does not include a certification as required by I.R.C.P. 37(a)(1) that counsel conferred or attempted to confer with ICRMP’s counsel before filing the Motion—which did not occur.)

Plaintiff claims that, without responses to his interrogatories and document requests, it will be “impossible for the Court” to answer what he poses as the central question of the case: whether insurance provided by ICRMP to local government officials covers attorney’s fees awarded under I.C. §12-117. (Pl.’s Mem., p. 3) This argument fails to respond to defendant’s Motion for Protective Order. Whether an insurance company is allowed to sell governmental agencies insurance that provides

¹ Plaintiff should simply have responded to ICRMP’s Motion for Protective Order, instead of filing a Motion to Compel, either mistakenly or, seemingly, in an attempt to create a fee entitlement.

indemnity coverage for certain claims, including attorney fee awards, presents a legal issue that does not require factual discovery. The court can resolve these legal issues prior to allowing either side to pursue unneeded and irrelevant factual discovery. Additionally, as explained in ICRMP's Motion for Summary Judgment and Reply Brief, I.C. § 12-117, could not have been utilized to award attorney fees in the **Westover v. Franklin Co.** case. For that reason, the statute did not impact either Franklin County or Mr. Westover.

The question before the Court is whether Franklin County was empowered to purchase insurance from ICRMP or any other insurance company. This is a purely legal question that does not require factual discovery.

CONCLUSION

There is nothing to "compel" in relation to the Requests for Admission as ICRMP has responded to that aspect of plaintiff's discovery requests. Further, ICRMP's qualified admissions and denials were allowable. Cf. Schwan's Sales Enterprises, Inc. v. Idaho Transp. Dep't, 142 Idaho 826, 136 P.3d 297 (2006) (party could have qualified its responses to requests for admissions). Any response to plaintiff's interrogatories and document requests should be suspended until the defendants' pending motion for summary judgment is resolved. See Serv. Employees Int'l Union, Local 6 v. Idaho Dep't of Health & Welfare, 106 Idaho 756, 761, 683 P.2d 404, 409 (1984). Defendants' motion for protective order should be granted.

DATED this 22 day of September, 2016.

ANDERSON, JULIAN & HULL LLP

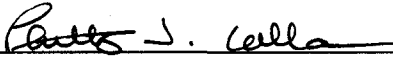
By Phillip J. Collaer
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22 day of September, 2016, I served a true and correct copy of the foregoing **RESPONSE MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL REPLAY IN SUPPORT FOR PROTECTIVE ORDER** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

<p>VAL D WESTOVER, Plaintiff v. IDAHO COUNTIES RISK MANGEMENT PROGRAM (ICRMP), Defendant.</p>	<p>MOTION TO COMPEL Case No. CV-2016-195 Judge: Brown</p>
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Pursuant to the Court's order this date, Plaintiff files this motion to compel discovery. Counsel's signature below certifies that prior to filing the motion to compel, on August 15, 2016 he caused the attached letter to be mailed to counsel for ICRMP attempting to negotiate answers to the discovery, but never received a response.

DATED this 29th day of September, 2016.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

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August 15, 2016

Phillip J. Collaer
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Re: Westover v. ICRMP case no. CV-2016-195
Responses to discovery requests

Dear Mr. Collaer:

I am writing this letter in order to try to avoid the cost of a motion to compel responses to our discovery requests served on you on June 24, 2016. You served responses to our requests for admission, but have not responded to our interrogatories nor our document requests. I have received your motion for protective order and take it from that filing that you do not intend to respond to our other discovery requests until compelled to do so by the Court. Hence this letter.

I do not agree with your premise that our discovery is irrelevant since local governments are statutorily entitled to buy insurance that will reimburse tort claimants. Further, I do not think that filing a motion for protective order is an appropriate method to object to discovery that you consider to be irrelevant. The ultimate issues in this case should not be litigated in a discovery dispute, but would appear to me to be better relegated to a summary judgment motion after proper discovery responses have fleshed out the issues factually.

On the issue of a local government's legal right to purchase insurance, I believe you miss the point. As I am sure you are aware, the purpose of tort law, and in particular the tort claims act, is to provide for compensation for injured persons. In that context, insurance is not only permissible, but no doubt desirable from the tort victim's standpoint because it provides a ready fund for compensation. On the other hand, the purpose of Idaho Code 12-117(3) to achieve some modicum of local responsibility for unreasonable conduct will be greatly undermined if local government officials are able to purchase insurance coverage that prevents attorney fee

awards for violating the legal rights of citizens without a reasonable basis in fact or law from coming from the regular operating budget of that government.

That is the issue we are raising in this lawsuit. We want to know whether your insurance to local government officials is having the effect of thwarting the legislative purpose in the enactment of Idaho Code Section 12-117 by shifting the burden of paying attorney fees awarded for government action that is without a basis in fact or law from the offending party's operating budget to your insurance pool. Our discovery requests were specifically tailored to find the answer to that question. Your obfuscation in response to our requests for admission and your refusal to respond to the interrogatories and document requests has made it impossible for us to answer this rather straightforward question.

Our rules of civil procedure define the scope of discovery. Rule 26(b)(1)(A) provides the simple formula:

General Scope of Discovery. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.

Tellingly, the rule continues: "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Issues relating to what might be admissible at trial are not litigated at the discovery stage. Mr. Westover's discovery was specifically directed to the question of whether ICRMP policies interfere with the legislative directive found in Idaho Code section 12-117 designed to bring accountability to local government by making them feel the consequence of their conduct in their operating budget. Mr. Westover's discovery is aimed precisely at that pivotal point and is highly likely to lead to the discovery of admissible evidence.

Interrogatory No. 1 is a typical request to provide a factual basis for failing to admit critical issues in the case. Such interrogatories not only help frame the issues that might be ultimately tried, but provide a buffer against the type of evasive answers to requests for admission that were submitted in this case. ICRMP's answers to those requests for admission are a model of obfuscation whenever the request neared the critical issues in this case.

REQUEST FOR ADMISSION #1: Admit that you have the duty and the right to defend your members against lawsuits brought against them by citizens subject to their jurisdiction.

RESPONSE: ICRMP admits that, consistent with the terms and conditions of the insurance policy purchased by its insureds, it is contractually obligated to provide a defense to its insureds when they are sued for claims that are potentially entitled to coverage under the ICRMP insurance policy. ICRMP denies the remainder of Request No. 1.

REQUEST FOR ADMISSION #2: Admit that you have the right to control the litigation tendered to you by your members.

RESPONSE: ICRMP admits that, consistent with the terms and conditions of the insurance policy purchased by its insureds, it has a contractual right to make strategic decisions concerning litigation involving claims that are entitled to coverage under the ICRMP policy. Defendant denies the remainder of Request No. 2.

REQUEST FOR ADMISSION #3: Admit that you have the right to control settlement and mediation of litigation tendered to you by your members.

RESPONSE: See Response to Request No. 2, above.

REQUEST FOR ADMISSION #7: Admit that on July 30, 2015, Plaintiff filed an action against the Franklin County Assessor in the Sixth Judicial District Court, Case No. CV-2015-312. ("The Assessor Lawsuit")

RESPONSE: It is admitted that there exists a case styled Westover v. Cundick, et al, Case No. CV-2015-312 in the Sixth Judicial Circuit in and for Franklin County, Idaho.

When specifically asked requests for admission on the ultimate issues in this lawsuit (which is specifically allowed under rule 30, Idaho Rules of Civil Procedure),

REQUEST FOR ADMISSION #4: Admit that you have the duty to pay any expenses awarded against your members in lawsuits tendered to you by your members, including actions covered by Idaho Code Section 12-117.

RESPONSE: Denied.

REQUEST FOR ADMISSION #11: Admit that you refused to authorize the Franklin County Assessor to pay any money in settlement of the Assessor Lawsuit during that mediation.

RESPONSE: Denied.

REQUEST FOR ADMISSION #13: Admit that if the Franklin County Assessor is ordered to pay attorney fees to the Plaintiff in the Assessor Lawsuit you will be obligated to pay

those fees on behalf of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, and calls for a legal conclusion. Any obligation by ICRMP to indemnify the Franklin County Assessor is controlled by the terms and conditions of the insurance policy purchased by Franklin County. Request No. 13 is denied.

REQUEST FOR ADMISSION #14: Admit that any payment that you make toward attorney fees that might be awarded to the Plaintiff in the Assessor Lawsuit will be paid from funds you collect and pool from all your members.

RESPONSE: Objection; the request is vague, speculative, calls for a legal conclusion, and is dependent upon facts which have not occurred and may not ever occur. As such, the request is denied.

REQUEST FOR ADMISSION #15: Admit that any payment that you make toward attorney fees that might be awarded to the Plaintiff in the Assessor Lawsuit will not be paid from funds in the regular operating budget of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, calls for a legal conclusion, and is dependent upon facts which have not occurred and may not ever occur. As such, the request is denied.

ICRMP denied the requests, hence the need for a response to the first interrogatory spelling out the factual basis for denial.

Similarly, in response to a requests about the jurisdictional basis for this lawsuit, Plaintiff was given evasive answers:

REQUEST FOR ADMISSION #6: Admit that the Franklin County Assessor is a political subdivision.

RESPONSE: Denied as phrased.

REQUEST FOR ADMISSION #8: Admit that the Franklin County Assessor is and was at the time the Assessor Lawsuit was filed one of your members.

RESPONSE: Objection; the request as phrased is a compound request. It is admitted only that Franklin County was an insured of ICRMP. The remainder of the request is denied.

Obviously, the contract by which ICRMP was obligated to provide a defense to the lawsuit brought by Mr. Westover against the Assessor (Interrogatory No. 2), may shed light on whether the insurance practices of ICRMP undermine the legislative purposes of Idaho Code section 12-117. If that contract provides that ICRMP will pay a judgment for attorney fees

despite a ruling by the Court that the assessor acted “without a reasonable basis in fact or law,” the purposes of Idaho Code section 12-117 will be thwarted. Curiously, in responses to request for admission No. 13, ICRMP instead of giving a forthright admission or denial as required by the rules, instead obfuscated by reference to this contract that it now refuses to produce!

REQUEST FOR ADMISSION #13: Admit that if the Franklin County Assessor is ordered to pay attorney fees to the Plaintiff in the Assessor Lawsuit you will be obligated to pay those fees on behalf of the Franklin County Assessor.

RESPONSE: Objection; the request is vague, speculative, and calls for a legal conclusion. Any obligation by ICRMP to indemnify the Franklin County Assessor is controlled by the terms and conditions of the insurance policy purchased by Franklin County. Request No. 13 is denied.

Interrogatory No. 3 is directly to the point: “Please identify the source of any payments that have been made, or that will be made or for which there is an obligation to be made to reimburse attorney fees to the Plaintiff in the Assessor Lawsuit in the event that a court orders the Franklin County Assessor to pay attorney fees in connection with that lawsuit.” Any payment of attorney fees to the plaintiff in the Assessor lawsuit will be on the basis that the Assessor’s position in that lawsuit was “without a reasonable basis in fact or law.” The legislature specifically required that “Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision.” Idaho Code Section 12-117 (3). Obviously, if ICRMP were obligated to pay those fees and is the source of those payments the legislative purpose in making sure that irresponsible actions by local government officials is felt at the local level so as to be a deterrent to future local government irresponsibility will be undermined.

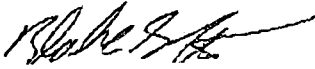
The remaining three interrogatories (mistakenly all numbered No. 3) simply ask for the identifying information relating to witnesses, expert witnesses, and persons with knowledge of the facts. Rule 26 specifically makes that information discoverable. Rule 26(b)(1)(A). It is difficult to imagine a proper objection to such information.

Mr. Westover’s document requests were similarly all seeking discoverable evidence and were specifically aimed at facts relevant to the pivotal issue in this case of whether a local government official has purchased insurance that has the potential of thwarting the goal of Idaho Code section 12-117 to bring accountability to local government conduct by requiring them to pay attorney fees incurred by their constituents fighting battles that should never have been

fought.

I hope that as you consider the points I have raised in this letter, you will decide to provide us with the evidence we have sought in our discovery requests. If you continue to assert that you have no duty to do so, please advise me of the reasonable basis for your refusal to provide what seems to me to be highly relevant information.

Sincerely,

A handwritten signature in black ink, appearing to read "Blake S. Atkin", with a long horizontal flourish extending to the right.

Blake S. Atkin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
Facsimile: (208) 334-5510
Email: pcollaer@ajhlaw.com

X U.S. Mail X E-mail ____ Facsimile

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147

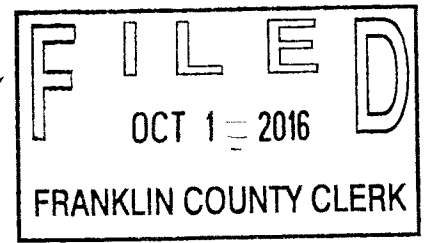
__ U.S. Mail __ E-mail X Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

__ U.S. Mail __ E-mail X Facsimile

Dated this 29th day of September, 2016.

Jennifer Mariscal



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,)	
)	
	)	Case No: CV-2016-195
)	
Plaintiff,)	
VS	)	MINUTE ENTRY AND ORDER
)	
IDAHO COUNTIES RISK MANAGEMENT)	
PROGRAM (ICRMP))	
)	
Defendant.)	

This matter came before the Court on September 29, 2016 for hearing on various motions. Blake S. Atkin appeared for and on behalf of the Plaintiff, Val D. Westover. The Plaintiff was also present in the courtroom. Phillip J. Collaer appeared for and on behalf of the Defendant, Idaho Counties Risk Management Program (ICRMP). Rodney M. Felshaw acted as court reporter.

Pursuant to stipulation by the parties, the Court will hear on shortened notice the parties' Motion to Compel and a Motion for Protective order. Defendant's Motion for Summary Judgment was also duly scheduled for hearing on today's date. The Court noted that Plaintiff had not filed a formal motion to compel but had filed a memorandum; the Court asked that the Plaintiff file the appropriate Motion to Compel. The Court noted that to the extent the Plaintiff was seeking a delay of the summary judgment hearing pursuant to Rule 56(d) of the Idaho Rules of Civil Procedure ("I.R.C.P.") Plaintiff had failed to comply with the Rule. Specifically, Plaintiff had not filed an

affidavit or declaration. The Court, to the extent that Plaintiff was seeking a delay of the summary judgment pursuant to I.R.C.P. 56(d), the request is DENIED.

The Court heard the parties' arguments with respect to the Plaintiff's Motion to Compel and Motion for Protective Order.

The Court heard the parties' arguments with respect to the Defendant's Motion for Summary Judgment. Thereafter, the Court **GRANTED** Defendant's Motion for Summary Judgment advising that it will issue a written decision. The Court also reserves the right to amend the order that was announced here today. Further, the Court will not enter a judgment until it has issued the Memorandum Decision and Order. Based upon the Court's summary judgment determination, the Court will not address or rule on the Motion to Compel or Motion for Protective Order.

IT IS SO ORDERED.

Dated this 1st day of October, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 3rd day of October, 2016, she caused a true and correct copy of the foregoing Minute Entry and Order to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Phillip J. Collaer
Counsel for Defendnat

Method of Service:

Email: batkin@atkinlawoffices.net

Email: pcollaer@jhlaw.com

SHAUNA T. GEDDES, Clerk

By: Linda Hampton, Deputy Clerk

FILED

16 NOV -1 AM 10:39

FRANKLIN COUNTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER,

Plaintiff,

VS

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendant.

Case No: CV-2016-195

**ORDER RE DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

The Court having considered Defendants Idaho Counties Risk Management Program's (ICRMP), Motion for Summary Judgment and having considered oral arguments of the parties, it is hereby ordered that Defendants' Motion for Summary Judgment is hereby granted;

IT IS FURTHER ORDERED that all claims in the complaint against defendants will be dismissed with prejudice. The Court will prepare a written Memorandum Decision and Order on Defendant's Motion for Summary Judgment and will also file a final judgment in accordance with Rule 54 of the Idaho Rules of Civil Procedure.

IT IS SO ORDERED.

Dated this 1st day of November, 2016.



MITCHELL W. BROWN
District Judge



CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 1st day of November, 2016, she caused a true and correct copy of the foregoing Order Re Defendants' Motion for Summary Judgment to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Phillip J. Collaer
Counsel for Defendnat

Method of Service:

Faxed: (801) 533-0380

Faxed: (208) 344-5510

SHAUNA T. GEDDES, Clerk

By: Linda Hampton, Deputy Clerk

FILED IN CHAMBERS

NOV 14 2016

@ 3:40 am
Judge: Mitchell W. Brown

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

VS

IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP)

Defendant.

Case No: CV-2016-195

MEMORANDUM DECISION AND ORDER ON ICRMP'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the Defendant's, Idaho Counties Risk Management Program ("ICRMP"), Motion for Summary Judgment ("MSJ").¹ In conjunction with a Motion to Compel, the Plaintiff, Val D. Westover ("Westover"), filed a Memorandum in Support of Motion to Compel and in Opposition to Motion for Summary Judgment ("Opposition Memorandum").²

¹ICRMP's MSJ was supported by a Memorandum in Support of Defendant's Motion for Summary Judgment ("Supporting Memorandum"), the Affidavit of Phillip J. Collaer in Support of Motion for Summary Judgment ("Collaer Affidavit"), and the Affidavit of Jeff Boice in Support of Defendant's Motion for Summary Judgment ("Boice Affidavit").

²At this point the Court must depart and address other procedural issues that came up in the context of this summary judgment proceeding. Westover did not file any affidavits or other evidence in support of his Opposition Memorandum. Instead, Westover filed a separate Motion to Compel. While Westover obtained a Stipulation with counsel for ICRMP to have his Motion to Compel heard on shortened notice (See Stipulation filed on September 19, 19, 2016), his Motion to Compel was not actually filed until after the hearing on ICRMP's MSJ. See Minute Entry and Order entered on October 1, 2016. Because the Court granted ICRMP's MSJ from the bench, the Court did not take up Westover's Motion to Compel despite the parties' Stipulation. The Court would also note that as part of the proceedings on summary judgment and presumably Westover's Motion to Compel, Westover made reference to Rule 56(d) of the Idaho Rules of Civil Procedure ("I.R.C.P.") arguing that said Rule "makes it clear that a party is entitled to discovery before being required to respond to a motion for summary judgment." See Opposition Memorandum, p. 2. While I.R.C.P. 56(d) does provide a mechanism upon which a non-moving party faced with summary judgment may obtain relief from the pending summary judgment, Westover has completely failed to comply with the requirements of I.R.C.P. 56(d). This Rule provides as follows:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Westover has wholly failed to comply with I.R.C.P. 56(d). He did not file a motion requesting any relief allowed pursuant to I.R.C.P. 56(d) subparagraphs (1) through (3). He did not file an affidavit or declaration setting forth a "specified reason" for any of the relief allowed pursuant to I.R.C.P. 56(d)(1), (2) or (3). The burden of the moving party associated with a request made

ICRMP filed a Reply Brief in Support of Defendant's Motion for Summary Judgment ("Reply Memorandum"). ICRMP's MSJ was argued before the Court and at the conclusion of the parties' argument, the Court GRANTED ICRMP's MSJ. However, the Court advised the parties that it would issue a written Memorandum Decision and Order with respect to its order granting summary judgment.

BACKGROUND

The genesis of the present controversy arises out of civil litigation between Westover and Jase Cundick, the Franklin County Assessor. See *Westover v. Cundick, Franklin County Assessor*, Franklin County Case No. CV-2015-312 ("*Westover v. Cundick*"). In said litigation, Westover requested that this Court enter a Writ of Mandamus and/or a Writ of Prohibition in his favor.³ The Court, in *Westover v. Cundick*, denied Westover's requested relief. See *Westover v. Cundick*, Final Judgment filed stamped February 17, 2016 and Minute Entry and Order file stamped February 24, 2016.⁴ During the course of the litigation in *Westover v. Cundick*, the

pursuant to I.R.C.P. 56(d)(1) (formerly numbered as I.R.C.P. 56(f)) was recently addressed in *Fagen, Inc. v. Lava Beds Wind Park, LLC*, 159 Idaho 628, 364 P.3d 1193 (2016) ("*Fagen*"). In *Fagen*, the Idaho Supreme Court noted as follows:

Rule 56(f) of the Idaho Rules of Civil Procedure permits a trial court to continue the hearing on a motion for summary judgment if "it appear[s] from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition." "The rule clearly contemplates that such a motion must be supported with an affidavit stating the reasons why the continuance is necessary." *Franklin Bldg. Supply Co. v. Hymas*, 157 Idaho 632, 638, 339 P.3d 357, 363 (2014). The party seeking a continuance "has the burden of setting out 'what further discovery would reveal that is essential to justify their opposition,' making clear 'what information is sought and how it would preclude summary judgment.'" *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 239, 108 P.3d 380, 386 (2005). In ruling on a motion for a continuance under Rule 56(f), the trial court can consider "the moving party's previous lack of diligence in pursuing discovery." *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 106, 294 P.3d 111, 1118 (2013).

Id. at 632, 364 P.3d at 1197. Therefore, the Court denied I.R.C.P. 56(d) relief, to the extent that Westover was requesting a continuance pursuant to I.R.C.P. 56(d)(1). See Minute Entry and Order entered on October 1, 2016.

³Specifically, Westover requested that the Court issue a Writ of Mandate "ordering Jase Cundick, Franklin County Assessor, to retract his slander of title." See *Westover v. Cundick*, Complaint, p. 5. Westover also requested that the Court issue a Writ of Prohibition "prohibiting Jase Cundick, Franklin County Assessor, from exceeding his authority in making property ownership determinations for purposes beyond those required for taxes, and from communicating those determinations to third parties." *Id.* Interestingly, the third cause of action asserted by Westover was one for Slander of Title. This is likely the cause of action which invoked a duty to defend under ICRMP's insurance contract with Franklin County, which defense and associated involvement in the litigation provides the basis for Westover's complaints in the present litigation. This cause of action was ultimately dismissed by Westover at the time of oral argument on Cundick's Motion to Dismiss.

⁴Westover perfected an appeal to the Idaho Supreme Court concerning this determination of the Court. This matter is presently pending before the Idaho Supreme Court.

parties participated in mediation. Westover alleges that the “focus of mediation was how much the county would pay in attorney fees to the Plaintiff because the county assessor had retracted its slanderous letter before mediation.” Complaint, ¶ 5.⁵ Westover alleges that at mediation, Cundick “announced ... that he could not offer anything in way of settlement of Plaintiff’s claims for attorney fees because he had no authority from ICRMP to offer anything in settlement.” Complaint, ¶ 6. Westover alleges further, that he was “informed that ICRMP controlled the litigation, provided lawyers who were defending [Cundick], would ultimately be responsible to pay any judgment Plaintiff might obtain against the county assessor for attorney fees, and asserted the right to control the negotiations at the mediation.” Complaint ¶ 7.

Based upon the foregoing, Westover filed his Complaint against ICRMP seeking a declaration of rights, specifically requesting that the Court declare “ICRMP [to be] an illegal entity, not authorized by Idaho Law” and also a declaration that “ICRMP in controlling litigation between citizens and their local government by providing the defense and indemnifying for attorney fees undermines principles of good governance as adopted by the legislature in Idaho Code Section 12-117(3) and is therefore illegal.” *See* Complaint, Prayer for Relief, ¶¶ 1 and 2. ICRMP filed its Answer followed shortly by the present MSJ.

STANDARD OF REVIEW

A party is entitled to summary judgment when the pleadings, depositions, and admissions, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Idaho Rules of Civil

⁵The Court cannot speak to issue of what the primary focus of the mediation was. However, the Court’s intention with respect to ordering mediation in this matter was directed at resolving, through the mediation process, Westover’s requests for Writ’s of Mandamus and Prohibition and his Slander of Title claim. *See Westover v. Cundick*, Minute Entry and Order file stamped December 7, 2015. Ultimately, this mediation proved to be unsuccessful resulting in the Court having to rule on Cundick’s Motion to Dismiss. *See Westover v. Cundick*, Final Judgment filed stamped February 17, 2016 and Minute Entry and Order file stamped February 24, 2016.

Procedure 56(c); *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 367 P.3d 208, 223 (2016).

The standards applicable to summary judgment require the courts to liberally construe the facts in the record in favor of the non-moving party and to draw all reasonable inferences from the facts in favor of the non-moving party. *Hilliard v. Murphy Land Co., LLC*, 158 Idaho 737, 744, 351 P.3d 1195, 1202 (2015), *reh'g denied* (July 20, 2015). If the record contains conflicting inferences or reasonable minds might reach different conclusions, summary judgment must be denied. *Edged In Stone, Inc. v. Nw. Power Sys., LLC*, 156 Idaho 176, 180, 321 P.3d 726, 730 (2014). All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. *Unifund CCR, LLC v. Lowe*, 159 Idaho 750, 367 P.3d 145, 149 (2016)

The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *La Bella Vita, LLC v. Shuler*, 158 Idaho 799, 805, 353 P.3d 420, 426 (2015). In order to meet its burden, the moving party must challenge in its motion and establish through evidence the absence of any genuine issue of material fact on an element of the non-moving party's case. If the moving party fails to challenge an element or fails to present evidence establishing the absence of a genuine issue of material fact, the burden does not shift to the non-moving party, and the non-moving party is not required to respond with supporting evidence. *Meikle v. Watson*, 138 Idaho 680, 683, 69 P.3d 100, 103 (2003). However, if the moving party challenges an element of the non-moving party's case on the basis that no genuine issue of material fact exists, the burden then shifts to the non-moving party to come forward with sufficient evidence to create a genuine issue of fact. *Id.* Summary judgment is appropriate where the non-moving party bearing the burden of proof fails

to make a showing sufficient to establish the existence of an element essential to that party's case. *T.J.T., Inc. v. Mori*, 152 Idaho 1, 4, 266 P.3d 476, 479 (2011).

The party opposing the summary judgment motion "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 610, 349 P.3d 1197, 1201 (2015), *reh'g denied* (June 22, 2015). The non-moving party's case must be anchored in something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue of fact. *Am. Bank v. Wadsworth Golf Const. Co. of the Sw.*, 155 Idaho 186, 190, 307 P.3d 1212, 1216 (2013). If the non-moving party does not come forward as provided in the rule, then summary judgment should be entered against that party. *Rocky Mountain Power v. Jensen*, 154 Idaho 549, 554, 300 P.3d 1037, 1042 (2012).

All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that one may draw conflicting inferences, and if reasonable people might reach different conclusions. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 411, 179 P.3d 1064, 1066-67 (2008).

The burden of establishing that there is no genuine issue of material fact rests at all times upon the moving party. *Silicon Int'l Ore, LLC v. Monsanto Co.*, 155 Idaho 538, 550, 314 P.3d 593, 605 (2013). However, once the absence of sufficient evidence on an element has been shown, the burden shifts to the non-moving party to establish a genuine issue of material fact. *Holdaway v. Broulim's Supermarket*, 158 Idaho 606, 610-11, 349 P.3d 1197, 1201-02 (2015), *reh'g denied* (June 22, 2015).

DISCUSSION

ICRMP seeks summary judgment with respect to Westover's declaratory judgment action, arguing "that there are no genuine issues of material fact in dispute and that [ICRMP] is entitled to judgment as a matter of law. MSJ, p.1. Specifically, ICRMP asserts: (1) that Westover "lacks standing to seek declaratory relief against ICRMP" (*See* Supporting Memorandum, pp. 3-6); and (2) that Idaho Code ("I.C.") § 12-117 does "not prevent Franklin County from Purchasing Casualty Insurance" (*See* Supporting Memorandum, pp. 6-9).

A. ICRMP's Assertion of Lack of Standing

The Court will first address ICRMP's assertion that Westover lacks standing to pursue this declaratory judgment action. Westover's claim is for a declaration declaring that ICRMP is an "illegal entity" and that ICRMP's conduct in providing Cundick a defense in *Westover v. Cundick*, directing the litigation and indemnifying Cundick for any award of attorney fees was also illegal.

Title 10 of the Idaho Code, Chapter 12, addresses declaratory judgments in Idaho. Specifically, I.C. § 10-1201 provides as follows:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

I.C. § 10-1202 provides that:

Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

[Bold Emphasis Added by Court].

ICRMP argues that what is commonly referred to as the “direct action rule” prohibits Westover from pursuing this action directly against ICRMP. One of Idaho’s earlier pronouncements articulating the “direct action rule” is contained in *Pocatello Indus. Park Co. v. Steel West, Inc.*, 101 Idaho 783, 621 P.2d 399 (1980) (“*Pocatello Indus. Park*”). In *Pocatello Indus. Park*, the Idaho Supreme Court states as follows:

It is well established that absent a contractual or statutory provision authorizing the action, an insurance carrier cannot be sued directly and cannot be joined as a party defendant.

Id. at p. 791, 621 P.2d at 407. Certainly, there is no contractual basis authorizing the present action. In fact, there is no contractual relationship between Westover and ICRMP, nor has Westover pointed the Court to any provision of ICRMP’s contract of insurance with Franklin County that would afford a third party, such as Westover, to bring a direct action against ICRMP.

Therefore, the only basis upon which an argument may be asserted that Westover may pursue his “direct action” against ICRMP would be a “statutory provision authorizing the action”. One can certainly argue that I.C. § 10-1202 is a “statutory provision authorizing such an action. The prefatory phrase of I.C. § 10-1202 is “any interested person”, without any limiting language in the statute; this phrase can certainly be interpreted broadly enough to include Westover under the facts of this case. Certainly utilizing a broad definition of “any interested person”, Westover is interested in the insurance relationship between ICRMP and Franklin County to the extent outlined in his Complaint.

However, Idaho case law has been unwilling to apply such a broad definition to the phrase contained in I.C. § 10-1202, “any interested person.” This Court concludes that *Brooksby*

v. *Geico Ins. Co.*, 153 Idaho 546, 286 P.3d 182 (2012) (“*Brooksby*”) and its ruling relating to the application of the language in I.C. § 10-1202 is dispositive of the issue before this Court on summary judgment.

Brooksby involved a case where Christina Brooksby (“Christina”) was injured in a one car motor vehicle accident while a passenger in a vehicle operated by her father, Craig Brooksby (“Craig”). Christina demanded payment from Craig’s liability insurer, GEICO General Insurance Company (“GEICO”). GEICO rejected Christina’s claim and Christina filed a declaratory judgment action against GEICO requesting a declaration of coverage under Craig’s insurance policy with GEICO. *Id.* at p. 547, 286 P.3d 183. The trial court “dismissed Christina’s Complaint for lack of standing.”⁶

Christina appealed the determination of the trial court dismissing her complaint. The trial court’s dismissal was affirmed by the Idaho Supreme Court. In affirming the trial court’s dismissal, the Supreme Court restated the basis for the “direct action rule” stating as follows:

The basis for this [the direct action] rule is that an insurance policy is “a matter of contract between the insurer and the insured,” and a third party “allegedly injured by the insured is not a party to the insurance contract and has no rights under it.” *Hartman*, 141 Idaho at 199, 108 P.3d at 346

Id. at 548, 286 P.3d, at 184. The Supreme Court continued its holding by stating as follows:

It makes no difference that Brooksby seeks declaratory relief as opposed to money damages. The requirement that a party have standing is equally applicable in both types of actions. *See Selkirk–Priest Basin Ass’n v. State ex. rel. Batt*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996) (“[T]he Declaratory Judgment Act does not relieve a party from showing that it has standing to bring the action in the first instance.”); *State v. Rhoades*, 119 Idaho 594, 597, 809 P.2d 455, 458 (1991) (“[A] declaratory judgment can only be rendered in a case where an actual or

⁶The Court would note that *Brooksby*’s posture at the time of dismissal was different than the case at bar. In *Brooksby*, the issue before the trial court was a request for dismissal pursuant to I.R.C.P. 12(b)(6), failure to state a claim upon which relief can be granted. The present motion is one for summary judgment pursuant to I.R.C.P. 56. However, this distinction is without substance. It has long been the rule in Idaho that a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to I.R.C.P. 12(b)(6) will be treated as a summary judgment motion. *See Cobbley v. City of Challis*, 143 Idaho 130, 134, 139 P.3d 732, 736. That is essentially what is before the Court in the present motion, a motion to dismiss with supporting affidavits filed ICRMP.

justiciable controversy exists.” (quoting *Harris v. Cassia Crnty.*, 106 Idaho 513, 516, 681 P.2d 988, 991 (1984)).

Moreover, Brooksby's position is contradicted by the plain language of Idaho's Uniform Declaratory Judgment Act:

Any person ... whose rights, status or other legal relations are affected by a ... contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a declaration of rights, status or other legal relations thereunder.

I.C. § 10–1202 (emphasis added). In other words, the Act does not *create* any new rights, statuses, or legal relations. It applies only where such rights, statuses, or legal relations *already exist*. At this juncture, Brooksby simply has no right, status, or legal relationship vis-à-vis GEICO that could form the basis of a declaratory judgment action. See *Farmers Ins. Exch. v. Dist. Court for Fourth Judicial Dist.*, 862 P.2d 944, 948 (Colo.1993) (declaratory judgment would not affect injured third party's then-existing or reasonably foreseeable rights, as she might fail to establish alleged tortfeasor's liability); *Knittle v. Progressive Cas. Ins. Co.*, 112 Nev. 8, 908 P.2d 724, 726 (1996).

Id. at 548–49, 286 P.3d at 184–85. As was the case in *Brooksby*, outside of Westover's attempt to obtain standing pursuant to Idaho's Declaratory Judgment statutes, Westover has no contractual, tortious or other legal basis or standing to sue ICRMP. Without some independent “actual or justiciable controversy” between ICRMP and Westover, Idaho's Declaratory Judgment Act “does not create any new rights, statuses or legal relations.” *Id.* Rather, it only provides a forum for declaration in a context “where such rights, statuses, or legal relations already exist.” *Id.*

For the foregoing reasons, the Court concludes that Westover lacks standing to pursue a declaratory judgment action against ICRMP. As a result, the Court will **GRANT** ICRMP's MSJ.⁷


⁷ICRMP also seeks summary judgment on the alternative ground that I.C. § 12-117 does not prevent Franklin County from purchasing casualty insurance. The Court need not address this alternative ground for summary judgment based upon its conclusion that Westover lacks standing. However, the Court agrees with ICRMP's analysis of the summary judgment record as it relates to ICRMP's alternative basis for summary judgment. Had the

CONCLUSION

Based upon the foregoing, the Court **GRANTS** ICRMP's MSJ having concluded, based upon the record before the Court on summary judgment, that there are no genuine issues of material fact and that ICRMP is entitled to judgment as a matter of law based upon Westover's lack of standing to pursue his Complaint requesting declaratory relief. The Court will enter a separate final judgment in this matter, dismissing Westover's Complaint with prejudice.

IT IS SO ORDERED.

Dated this 14th day of November, 2016.


 MITCHELL W. BROWN
 District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the __ day of November, 2016, she caused a true and correct copy of the foregoing Minute Entry and Order to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
 Counsel for Plaintiff

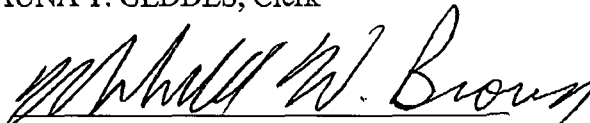
Phillip J. Collaer
 Counsel for Defendnat

Method of Service:

Facsimile: (801) 533-0380

Facsimile: (208) 344-5510

SHAUNA T. GEDDES, Clerk

By: 

Court not granted summary judgment on the standing issue, it would also have granted summary judgment on the alternative ground asserted by ICRMP.

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CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER,

Plaintiff,

VS

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendant.

Case No: CV-2016-195

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiff's Complaint (Jury Trial Demand) is hereby dismissed with prejudice.

IT IS SO ORDERED.

Dated this 14th day of November, 2016.



MITCHELL W. BROWN
District Judge



CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 15th day of November, 2016, she caused a true and correct copy of the foregoing Judgment to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Phillip J. Collaer
Counsel for Defendnat

Method of Service:

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SHAUNA T. GEDDES, Clerk

By: Linda Hampton, Deputy Clerk

FILED

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FRANKLIN COUNTY CLERK



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Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
(ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**DEFENDANT ICRMP'S MOTION
FOR ATTORNEYS' FEES AND
COSTS**

COMES NOW IDAHO COUNTIES RISK MANAGEMENT PROGRAM ("ICRMP"), by and through its undersigned counsel Anderson, Julian & Hull LLP, and moves this Court pursuant to I.C. §12-121 and I.R.C.P. 54(d) and (e), for an award of attorneys' fees and costs. ICRMP requests an award of attorney fees in the amount of \$9,111.00. ICRMP also moves for costs including costs as a matter of right in the amount of \$136.00 and discretionary costs in the amount of \$188.49. This Motion is supported by a Memorandum of Law In Support, a Verified Memorandum of Costs and Attorneys' Fees, the Declaration of Phillip J. Collaer, and the business records of Anderson, Julian

& Hull LLP submitted contemporaneously herewith.

DATED this 28th day of November, 2016.

ANDERSON, JULIAN & HULL LLP

By Anne J. Maglieri ISB#9452
~~for~~ Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 28th day of November, 2016, I served a true and correct copy of the foregoing Motion by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorney for Plaintiff

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~~for~~ Phillip J. Collaer

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 FRANKLIN COUNTY CLERK

 DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
 (ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
 PROGRAM (ICRMP)

Defendant.

Case No. CV-2016-195

**DEFENDANT ICRMP'S
 MEMORANDUM IN SUPPORT OF
 MOTION FOR ATTORNEY'S FEES
 AND COSTS**

COMES NOW IDAHO COUNTIES RISK MANAGEMENT PROGRAM ("ICRMP"),
 by and through its undersigned counsel Anderson, Julian & Hull LLP, and pursuant to
 I.C. §12-121 and I.R.C.P. 54(d) and (e), submits its Memorandum of Law in Support of
 Motion for Fees and Costs. Its Memorandum of Costs as required by I.R.C.P. 54(d)(5)
 is filed concurrently herewith.

INTRODUCTION

Judgment was entered, with prejudice, in favor of ICRMP on November 14, 2016.
 This followed the Court's Order granting defendant's Motion for Summary Judgment.

**DEFENDANT ICRMP'S MEMORANDUM IN SUPPORT OF MOTION FOR
 ATTORNEY'S FEES AND COSTS- 1**

The Court ruled plaintiff could not maintain a direct action against ICRMP, and that the plaintiff lacked standing to challenge the contractual relationship between ICRMP and Franklin County. The Court also indicated that in the absence of the standing argument, it would have granted summary judgment on the alternative basis that I.C. §12-117 does not prevent ICRMP from providing insurance that could potentially provide coverage for attorneys' fees awards.

ICRMP is entitled to attorneys' fees because the entire declaratory judgment action was brought and pursued frivolously, unreasonably, and without foundation. It is also entitled to its discretionary costs.

ARGUMENT

Through its dispositive motion, defendant advised plaintiff, that he lacked standing to pursue a third-party direct action against ICRMP, as Franklin County's insurer. In the same vein, as noted in the briefing in the Motion for Protective Order, defendant sought an agreement from plaintiff that factual discovery was not necessary since the issues argued by ICRMP—on which it was ultimately granted judgment—were legal issues. Nevertheless, plaintiff continued to pursue a ruling that ICRMP was an illegal entity that was not allowed to pay for attorneys' fees awarded against its insureds.

A. FEES RECOVERABLE UNDER I.C. §12-121

Idaho Code § 12-121 states, in part:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties . . .

Meanwhile, Idaho Rule of Civil Procedure 54 provides:

(e)(1) Attorney Fees. In any civil action the court may award

reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. **Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment. (emphases supplied)**

In the present case, Westover's case was brought and pursued frivolously, unreasonably, and without foundation. The fact plaintiff lacked standing to pursue his claim was clearly established in *Brooksby v. Geico General Ins. Co.*, 153 Idaho 546, 286 P.3d 182 (2012), *Athay v. Stacey*, 146 Idaho 407, 196 P.3d (2008), and *Block v. City of Lewiston*, 156 Idaho 484, 328 P.3d 464 (2014). In his briefing opposing defendant's motion plaintiff failed to offer any authority or precedent suggesting he possessed standing plaintiff's case was brought and then pursued frivolously, unreasonably, and without foundation, because from the beginning, he lacked the necessary standing to challenge the contractual obligations owed by ICRMP to its insured pursuant to the insurance policy Franklin County had purchased from ICRMP.

In *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 199 Idaho 87, 803 P.2d 993 (1991), the Supreme Court affirmed a grant of attorney's fees to defendants on the basis of I.C. §12-121 and I.R.C.P. 54(e)(1). The court repeated the standard discussed in *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982) ruling a plaintiff must have brought its claim "without reasonable foundation." See 199 Idaho at 90 (citing *Anderson* at 660). Even if Westover initially believed he was entitled to file the case, when defendant raised the standing issue at summary judgment, he should have, at that point, ceased to pursue the case against ICRMP. See, e.g., Ortiz v.

Reamy, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989) (“The terms ‘brought’ and ‘pursued,’ used disjunctively in Rule 54(e)(1), signify that a nonprevailing litigant may suffer an award of fees if a claim which is arguably meritorious when initially asserted is rendered frivolous, unreasonable or without foundation by subsequent events or information during the pendency of the suit.”)

It is within a trial court’s discretion to determine that a specific claim has been pursued frivolously and determine the entire lawsuit was also “brought unreasonably and without foundation.” *See Win of Michigan, Inc. v. Yreka United, Inc.*, 137 Idaho 747, 754 53 P.3d 330, 337 (2002) (upholding fee award made under § 12-121). This Court should make that finding, and should award ICRMP fees for having to defend Westover’s claims.

B. FEES AND COSTS AWARDABLE UNDER RULE 54

As noted *supra*, attorney’s fees are awardable to ICRMP pursuant to I.R.C.P. 54(e) for Westover’s frivolous pursuit of his declaratory judgment action. Costs are also due to ICRMP under Rule 54(d)(1) on the ground that that it is a prevailing party.

ICRMP is entitled to its prevailing party costs allowed by I.R.C.P. 54(d)(1)(A) and (C) and detailed in the concurrently-filed Memorandum of Costs. *See Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998) (“The prevailing party in a civil action has a right to seek reimbursement of the costs incurred in prosecuting or defending the action.”) (citing I.R.C.P. 54(d)(1)(A)); *Eagle Water Co. v. Roundy Pole Fence Co.*, 134 Idaho 633, 637, 7 P.3d 1110, 1114 (Ct. App. 1999) (“Costs are also allowed as a matter of right pursuant to I.R.C.P. 54(d)(1).”) ICRMP may also be entitled to certain other costs, the award of which is discretionary with the Court pursuant to I.R.C.P.

54(d)(1)(D).

"Idaho Rule of Civil Procedure 54(d)(1)(D) permits the district court to award additional items of cost not enumerated in, or in an amount in excess of that allowed as a matter of right." *Hoagland v. Ada Cty.*, 154 Idaho 900, 913, 303 P.3d 587, 600 (2013) (citation omitted). "A trial court may, in its discretion, award a prevailing party certain costs where there has been 'a showing that the costs are necessary and exceptional, reasonably incurred, and should in the interests of justice be assessed against the adverse party.'" *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005) (citing I.R.C.P. 54(d)(1)(D)). "Discretionary costs may include long distance phone calls, photocopying, faxes, travel expenses and additional costs for expert witnesses." *Hayden Lake Fire Prot. Dist., Id.* (citation omitted). In awarding such costs, the Court "should assess the context and nature of a case as a whole along with multiple circumstances." *Hoagland, Id.*, 154 Idaho at 914. "Particular standards a court should consider include, but are not limited to, whether there was unnecessary duplication of work, whether there was an unnecessary waste of time, the frivolity of issues presented, and creation of unnecessary costs that could have been easily avoided." *Id.* at 914.

In the present case defendant seeks its costs associated with traveling to Franklin County to argue its Motion for Summary Judgment. These costs were necessarily incurred evidenced by the fact the motion was filed and, plaintiff's legal allegations found to lack merit.

CONCLUSION

ICRMP is entitled to attorneys' fees and costs from the filing of plaintiff's

Complaint on the grounds set forth above. A Memorandum of Costs as required by I.R.C.P. 54(d)(5) is filed concurrently herewith.

DATED this 28th day of November, 2016.

ANDERSON, JULIAN & HULL LLP

By Phillip J. Collaer ISB# 9452
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of November, 2016, I served a true and correct copy of the foregoing Memorandum by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Phillip J. Collaer ISB# 9452
Phillip J. Collaer

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FRANKLIN COUNTY CLERK



DEPUTY

Attorneys for Defendant, IDAHO COUNTIES RISK MANAGEMENT PROGRAM
 (ICRMP)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
 PROGRAM (ICRMP)

Defendants.

Case No. CV-2016-195

**VERIFIED MEMORANDUM OF
 COSTS AND ATTORNEYS' FEES**

STATE OF IDAHO)
) ss.
 COUNTY OF ADA)

COMES NOW Defendant Idaho Counties Risk Management Program ("ICRMP"),
 by and through its undersigned counsel Anderson, Julian & Hull LLP, and moves this
 Court for an Order awarding costs and attorneys' fees incurred in defending this lawsuit.

The undersigned attorney states:

1. My name is Anne S. Magnelli. I am an attorney licensed in the State of
 Idaho. I am an associate in the firm of Anderson, Julian & Hull LLP and I am an

attorney for ICRMP in the above-entitled action.

2. The matters set forth herein are based upon my own personal knowledge, information, and belief, and are also based upon the accounts, records, and business ledgers kept by the firm in the regular and ordinary course of its business. I have personally reviewed the billing statements and invoices and have affirmed that the following information is true and correct.

3. The costs and disbursements set forth herein are to my knowledge and belief correctly stated, properly claimed, and in accordance with I.R.C.P. 54. To my knowledge and belief, all such costs and disbursements were incurred or expended reasonably, in good faith, for purposes of preparing and defending this action, and were not incurred to vex, harass, or annoy the Plaintiff. The costs and disbursements hereby claimed are truly and correctly stated and were actually paid, and are claimed in compliance with I.R.C.P. 54(d) as follows:

I.

COSTS AS A MATTER OF RIGHT

1. Filing Fee: ICRMP is entitled to reimbursement for the court appearance fee for filing its Answer in the amount of **\$136.00**, paid under State of Idaho Filing Fee Schedule (I)(1), pursuant to I.R.C.P. 54(d)(1)(C)(1).

Total of Costs as a Matter of Right= \$136.00

II.

DISCRETIONARY COSTS

ICRMP sustained the following necessary, exceptional, and reasonably-incurred costs, the award of which is discretionary under 54(d)(1)(D), and which should in the interests of justice be assessed against Plaintiff. The following costs are separate from

and do not include the costs as a matter of right set forth in Section I. The discretionary costs are:

1. Travel Costs: ICRMP should be able to recover its costs for counsel's travel expenses to and from the courthouse for the hearing on summary judgment, in the amount of **\$188.49**.

Total of Discretionary Costs= \$188.49

TOTAL COSTS CLAIMED= \$324.49

III.

ATTORNEYS' FEES

Anderson, Julian & Hull LLP was retained to protect the interests of ICRMP in *Val D. Westover v. Idaho Counties Risk Management Program*, Case No. CV-2016-195 in and for the County of Franklin, Idaho. Attorney's fees and costs are requested pursuant to I.C. §12-121 and I.R.C.P. 54(d) and (e) for proving Plaintiff could not maintain a direct action against ICRMP.

TOTAL ATTORNEYS' FEES REQUESTED= \$9,111.00

To the best of my knowledge and belief, the items of costs are in compliance with Rule 54(d) of the Idaho Rules of Civil Procedure. These costs were actually incurred and paid, were reasonable and necessary for the proper defense of this action, and were not expended for the purpose of vexation or harassment.

FURTHER your Affiant sayeth naught.

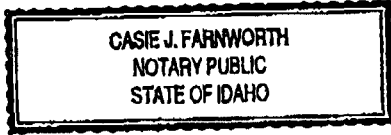
DATED this 28th day of November, 2016.

ANDERSON, JULIAN & HULL LLP

By Anne S. Magnelli

Anne S. Magnelli, Of the Firm
Attorneys for Defendant ICRMP

SUBSCRIBED AND SWORN to before me this 28th day of November, 2016.



Casie J. Farnworth
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 11/16/21

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of November, 2016, I served a true and correct copy of the foregoing Memorandum by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Anne S. Magnelli

Anne S. Magnelli

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FRANKLIN COUNTY CLERK

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Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)	
)	
Plaintiff	)	OPPOSITION TO ICRMP'S MOTION FOR
	)	ATTORNEY'S FEES AND COSTS
v.)	
	)	Case No. CV-2016-195
Idaho Counties Risk Management Program)	
(ICRMP),	)	Judge Brown
)	
Defendant.)	

INTRODUCTION

ICRMP moves for attorney's fees citing as the sole basis for such an award Idaho Code Section 12-121, claiming that Plaintiff's claims were frivolous because he lacked standing. That argument itself, is frivolous. Plaintiff is one of a very few citizens in a position to challenge the legality of ICRMP in light of the legislative pronouncement in I.C. § 12-117. This Court found that it was at least arguable that Plaintiff had standing under I.C. § 10-1202, but ruled otherwise. Plaintiff's assertion of rights under I.C. § 12-117, a statute yet to be judicially interpreted, does not even approach frivolity.

PLAINTIFF'S ASSERTION OF STANDING WAS NOT FRIVOLOUS

This case is a case of first impression. Neither party nor the Court could find a case that interprets I.C. § 12-117. As this Court perceived, Plaintiff arguably has standing under I.C. §10-1202. See, *Memorandum Decision and Order on IRMP's Motion for Summary Judgment*, dated November 14, 2016, p. 7. (*Memorandum Decision*) That Statute reads:

PERSON INTERESTED OR AFFECTED MAY HAVE DECLARATION. Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Plaintiff claims standing, based on the above statute, through I.C. § 12-117 that requires local government to bear the brunt of their frivolous conduct out of their operating budget. Plaintiff in this case, had his business interfered with to the tune of thousands of dollars by frivolous conduct of a local government official. He seeks to challenge a practice, under § 12-117 that thwarts the legislative intent to make the local government official feel the cost he has caused his constituents to incur. It is hard to imagine anyone who can have greater standing to challenge ICRMP's facilitation of a violation of § 12-117 than Plaintiff. Again, there appears to be no case law regarding standing and § 12-117.

The cases on which Defendant relies and that were ultimately adopted by the Court, deal with a Plaintiff who is suing an insurance company seeking coverage under the policy and seeking to enforce the insurance coverage under a contract with a third party. Until the decision by this Court, Plaintiff logically took the position that those cases had scant, if any relevance to the claims Plaintiff was pursuing.

Plaintiff is not seeking to have the insurance enforced. Quite the opposite, Plaintiff feels that ICRMP and what it is doing is illegal, and prevented him from having interaction with

a local government official in an atmosphere of mutual cooperation based on the facts and law and not on personality. He is not seeking to bootstrap himself into the insurance pool, but is seeking to have it disbanded as an illegal attack of the legislation set out in I.C. § 12-117. As argued previously, it is the existence of the policy itself that is the alleged violation of § 12-117, Plaintiff does not seek any recovery *from or under* the policy. Such a claim would be improper, but is not Plaintiff's claim in this case. ICRMP uses a "straw man" technique to mischaracterize Plaintiff's claims in an effort to make its standing argument stronger. In reality, Plaintiff is *not* making a claim that can be accurately characterized as a "direct action claim" against the insurance policy. Again, Plaintiff is claiming the very existence of the policy violates I.C. § 12-117, not that he has any right to recover anything under the policy.

While that argument ultimately failed in this Court, it was not without a factual and legal basis and an argument that this Statute, I.C. § 12-117, needs to be analyzed by a court in this state to determine if the activities of ICRMP interfere with the legislative intent behind that statute.

ICRMP's argument assumes that standing is a static concept. Standing cannot be determined by any bright line analysis. Standing cannot be used to immunize persons or entities from the legislative will as enacted in our statutes. Standing must be evaluated in the context of the facts of the case in order for the Court to determine whether the proponent of a legal proposition is the proper party to assert that claim. It is not a simple proposition. The Court must weigh all the facts and determine whether the Plaintiff is within the class that the legislature sought to protect.¹ If he is, the inquiry ends and the Court must find standing. Even if it is not

¹ It is also important to note that this is not a case where the position of the Plaintiff was well founded when the case was filed, but was pursued after it became clearly frivolous. The case was filed on June 3, 2016. Defendant's answer was filed on June 23, 2016. Plaintiff immediately began discovery that went to the heart of Plaintiff's claims and sought to flesh out the illegality of the ICRMP approach to local government litigation. ICRMP stonewalled

clear that the legislature intended to benefit this particular Plaintiff, there may still be standing.

I.C. §10-1202 provides that a party may sue based on a violation of a statute. The Idaho Supreme Court has held that: “When deciding whether a party has standing, we have looked to decisions of the United States Supreme Court for guidance.” *Kock v. Canyon County*, 177 P.3d 372, 375; 145 Idaho 158 (Idaho 2008). A party has standing to claim a statutory violation if that party has suffered or is about to suffer an “injury in fact” to his interests by a violation of a statute. *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1149 (2009). The alleged injury may be as non-specific as “harm...that affects the recreational or even the mere esthetic interests of the plaintiff” to suffice as support for standing. *Id.* The requirement that a party has standing assures that there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party. *Id.*

In this case, Plaintiff has alleged he was damaged by a Franklin County official’s illegal act and that ICRMP’s providing of an insurance policy in violation of I.C. § 12-117 had a significant effect on both the commission of the illegal act and the County’s approach to defending Plaintiff’s claims. Franklin County would have acted differently had they not been insured by ICRMP. This firmly shows the allegation of a specific injury caused to Plaintiff in connection with I.C. § 12-117.

In the cases cited by the Defendant, the insurance company will not escape the obligations of its contract if the third party is not allowed to pursue the insurance coverage because there is a more direct candidate for holding an insurance company liable—namely the c

Plaintiff on that discovery, and Plaintiff brought those facts to the Court’s attention in conjunction with the motion for summary judgment. The Court cited Plaintiff’s failure to file an affidavit pursuant to Rule 56(c), even though it clearly appeared from the pleadings Plaintiff filed that the broader concern that summary judgment is appropriate only after “sufficient time for discovery,” was thwarted by the Defendant’s stonewalling. Given the total failure of any opportunity for the Plaintiff to pursue discovery it can hardly be found that the circumstances of this case changed and Plaintiff should have recognized that fact.

insured. In this case Defendant cannot point to a reason why Plaintiff cannot, nor to anybody who will, enforce the legislative dictates of I.C. § 12-117. If Plaintiff is not allowed to do so, who will? Franklin County obviously will not. While, this Court decided that Plaintiff could not challenge the questionable actions of ICRMP, that decision did not make Plaintiff's attempt to be a good citizen and bring to light a potentially corrupt practice frivolous.

It very well could have been proper for this Court to find that the Plaintiff had standing. After going through the analysis, the Court might have been led to query, "if not this plaintiff then who." If Val Westover, whose business was impacted to the tune of several thousands of dollars by the frivolous conduct of the assessor sticking his nose into private business transactions and getting it wrong cannot challenge a practice that shields the assessor's office from the consequences of its actions contrary to clear legislative pronouncement, who can? That is the essence of the standing analysis, and while Plaintiff lost at this stage, it cannot be claimed that Plaintiff's challenge was without merit, especially when this Court found that Plaintiff had made an "arguable" claim under I.C. § 10-1202. In its *Memorandum Decision*, at page 7, this Court stated:

One can certainly argue that I.C. § 10-1202 is a "statutory provision" authorizing such an action. The prefatory phrase of I.C. § 10-1212 is "any interested person", without limiting language in the statute; the phrase can certainly be interpreted broadly enough to include Westover under the facts of this case. Certainly utilizing a broad definition of "any interested person" Westover is interested in the insurance relationship between ICRMP and Franklin County to the extent outlined in his Complaint.

Even though this Court found against Plaintiff in this matter, his claims in this case are not frivolous, unreasonable or without foundation. This is especially true when one consider the fact that Plaintiff's claims were not to enforce the insurance contract in any way, but Westover's

interest in the insurance contract was a claim that the contract itself violated I.C. § 12-117.

The Motion should be denied.

**DEFENDANT IS NOT ENTITLED TO EXTRAORDINARY COSTS FOR HIRING A
LAWYER FROM BOISE**

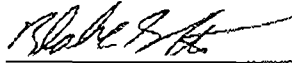
Defendant seeks "extraordinary costs" because its lawyer was required to come from Boise to Franklin County to argue the motions in this case. That argument might work if there were no lawyers competent to handle Defendant's case in this jurisdiction, but Defendant has not even attempted to establish such facts and the Court knows from its own experience that there are a number of local attorneys who are competent to handle cases such as this. *Smith v. Milton*, 104 P.3d 367, 376-377; 140 Idaho 893 (Idaho 2004); *See, also Bailey v. Bailey*, 284 P.3d 970; 975-976 (Idaho 2012) and I.R.C. P. 54 (e)(3) The rule only allows exceptional costs where there has been a showing that the costs are necessary and exceptional, reasonably incurred, and should in the interests of justice be assessed against the adverse party. Defendant has wholly failed to establish any basis for extraordinary costs in this case.

CONCLUSION

ICRMP's motion for fees and costs should be denied.

DATED this 12th day of December, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Phillip J. Collaer
ANDERSON, JULIAN & HULL LLP
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U.S. Mail E-mail Facsimile

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
Facsimile: (208) 547-2147

U.S. Mail E-mail Facsimile

Franklin County Court
39 West Oneida
Preston, Idaho 83263
Facsimile: (208) 852-2926

U.S. Mail E-mail Facsimile

Dated this 12th day of December, 2016.

Jennifer Mariscal

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
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FILED
16 DEC 13 AM 10:51
FRANKLIN COUNTY CLERK
DEPUTY

Attorney for Plaintiff

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover,)	
)	
Plaintiff	)	NOTICE OF APPEAL
)	
v.)	
	)	Case No. CV-2016-195
)	
Idaho Counties Risk Management Program)	
(ICRMP),	)	Judge Brown
)	
Defendant.)	

TO THE ABOVE NAMED DEFENDANTS, IDAHO COUNTIES RISK MANAGEMENT PROGRAM (ICRMP), AND THE PARTY'S ATTORNEY, PHILLIP J. COLLAER, ANDERSON JULIAN & HULL, LLP, C.W. MOORE PLAZA 250 SOUTH FIFTH STREET, SUITE 700, P.O. BOX 7426, BOISE, IDAHO 83707-7426, (208) 344-5800, PCOLLAER@AJHLAW.COM, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, VAL D WESTOVER, appeals against the above-named Respondent, to the Idaho Supreme Court from the Final Judgment dated

November 15, 2016 by the Honorable Judge Mitchell W. Brown presiding. A copy of the judgment is attached to this notice.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decision described in paragraph 1 above is an appealable decision under and pursuant to Rule 11 I.A.R.

3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal, are as follows:

A. Whether the District Court erred in determining that the Plaintiff, whose rights were violated by the frivolous conduct by a local government official, has standing to challenge the practice of ICRMP in insuring against the assessment of attorneys' fees that should otherwise be collected against the local government official's operating budget in contravention of I.C. § 12-117?

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

5. The reporter's transcript has been ordered and paid for.

6. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None

7. The Appellants request that all exhibits offered or admitted at the trial be included in the record.

8. I certify:

a) That a transcript has been ordered and paid for.

- b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
- c) That the appellate filing fee has been paid.
- d) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 13th day of December, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Appellant

Request for additional (clerk's) record filed: No

Request for additional reporter's transcript filed: No

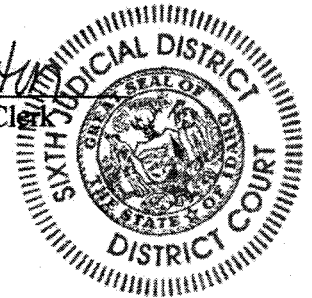
Was reporter's transcript requested? Yes

Name of reporter: **Rodney M. Felshaw**

Dated this 23rd day of December, 2016.

SHAUNA T. GEDDES

By *Linda Hampton*
Linda Hampton, Deputy Clerk



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
COUNTY OF FRANKLIN, STATE OF IDAHO

VAL D. WESTOVER,

Plaintiff/Appellant,

vs.

NOTICE OF LODGING.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM (ICRMP),

Defendant/Respondent.

Franklin County No. CV-2016-195
Supreme Court No. 44722

The following transcript(s) in the above-entitled matter were electronically lodged with the District Court Clerk at the Franklin County Courthouse in Preston, Idaho, on February 10, 2017.

September 29, 2016 - 56 pages.

Filed via:

- (XX) Electronic Filing with Court Clerk
- () U.S. Mail to Court Clerk
- (XX) Electronic Copy to ISC/ICA.
- () Hard copy filed with Court Clerk.

Rodney M. Felshaw, RPR, CSR

(Typed name of Reporter.)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,)	
)	
Plaintiff/Appellant,	)	Docket No. 44722
)	
vs.)	
)	
IDAHO COUNTIES RISK	)	CERTIFICATE OF EXHIBITS
MANAGEMENT PROGRAM (ICRMP),)	
)	
Defendant/Respondent.)	
_____)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that the following is a list of exhibits which were offered or admitted into evidence during the hearing in this cause:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of February, 2017.

SHAUNA T. GEDDES
 CLERK OF THE DISTRICT COURT

By *Linda Hampton*
 Linda Hampton, Deputy Clerk



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER,)	
)	
Plaintiff/Appellant,	)	Docket No. 44722
)	
vs.)	
)	
IDAHO COUNTIES RISK	)	CERTIFICATE OF CLERK
MANAGEMENT PROGRAM (ICRMP))	
)	
Defendant/Respondent.)	
_____)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Franklin, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all no exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Preston, Idaho, this 21st day of February, 2017.

SHAUNA T. GEDDES
 CLERK OF THE DISTRICT COURT

BY: *Linda Hampton*
 Linda Hampton, Deputy Clerk



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

)	
)	
VAL D. WESTOVER,)	
)	
Plaintiff/Appellant,	)	Supreme Court No. 44722
)	
vs.	)	CERTIFICATE OF SERVICE
)	
IDAHO COUNTIES RISK)	
MANAGEMENT PROGRAM (ICRMP))	
)	
Defendant/Appellant.)	
_____)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the REPORTER'S TRANSCRIPT AND CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Blake S. Atkin
ATKIN LAW OFFICES, P.C.
7579 North West Side Highway
Clifton, ID 83228

Phillip J. Collaer
ANDERSON, JULIAN & HULL, LLP
PO Box 7426
250 South Fifth Street, Suite 700
Boise, ID 83707-7426

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of February, 2017.

SHAUNA T. GEDDES
CLERK OF THE DISTRICT COURT

By Linda Hampton
Linda Hampton, Deputy Clerk

