

1996

# Viking Insurance Company of Wisconsin v. Allen Coleman, Rene B. Peterson, Trans Coastal Trucking, and Utah Department of Transportation : Brief of Appellee

Utah Court of Appeals

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## Recommended Citation

Brief of Appellee, *Viking Insurance Company v. Coleman*, No. 960278 (Utah Court of Appeals, 1996).

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IN THE UTAH COURT OF APPEALS

VIKING INSURANCE COMPANY OF  
WISCONSIN,

Plaintiff / Appellee,

**VS.**

ALLEN COLEMAN, RENE B. PETERSON,  
TRANS COASTAL TRUCKING, AND UTAH  
DEPARTMENT OF TRANSPORTATION,

Defendants / Appellants.

**Case No. 960278-CA**

PRIORITY 15

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APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT,  
HONORABLE HOMER F. WILKINSON.

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**FILED**

MAY - 8 1996

# COURT OF APPEALS

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	iii
PARTIES TO THE PROCEEDINGS . . . . .	1
STATEMENT OF JURISDICTION . . . . .	1
ISSUES PRESENTED FOR REVIEW . . . . .	1
APPLICABLE STATUTES . . . . .	1
STATEMENT OF THE CASE . . . . .	2
NATURE OF THE CASE . . . . .	2
COURSE OF PROCEEDINGS . . . . .	3
STATEMENT OF UNDISPUTED FACTS RELEVANT FOR REVIEW . . . . .	4
SUMMARY OF ARGUMENT . . . . .	6
ARGUMENT . . . . .	9
I. INSURANCE CONTRACTS IN UTAH ARE TO BE INTERPRETED LIBERALLY TO ACHIEVE THE PURPOSES OF INSURANCE. . . . .	9
II. THE ACCIDENT IN QUESTION DID NOT ARISE OUT OF COLEMAN'S USE OF THE VIKING INSURED VEHICLE. . . . .	11
A. THE UNDISPUTED FACTS DO NOT SATISFY THE REQUIREMENT THAT THE ACCIDENT "ARISE OUT OF" USE OR MAINTENANCE OF THE VEHICLE. . . . .	11
B. THE ACCIDENT DID NOT ARISE OUT OF THE USE OF THE INSURED AUTOMOBILE. . . . .	21
C. THE ACTS OF MR. COLEMAN DO NOT ARISE OUT OF THE MAINTENANCE OF THE INSURED VEHICLE . . . . .	26
III. DEFENDANT'S CITED CASES ARE NOT ON POINT AND READILY DISTINGUISHABLE. . . . .	29
CONCLUSION . . . . .	32



## TABLE OF AUTHORITIES

<u>Aetna Casualty &amp; Surety Co. v. McMichael</u> , 906 P.2d 92 (Colo. 1995) . . . . .	12, 13, 21, 22, 24, 29
<u>Aetna Casualty and Surety Co. v. Safeco Insurance Co.</u> , 163 Cal. Rptr. 219 (Cal. App. 1983) . . . . .	14
<u>Allied Mut. Ins. Co. v. Patrick</u> , 819 P.2d 1233 (Kan. 1991) . . . . .	15, 16
<u>AOK Lands, Inc. v. Shand, Moran &amp; Co.</u> , 860 P.2d 924 (Utah 1993) . . . . .	1
<u>Automobile Association v. United States Fire Ins. Co.</u> , 111 Cal. Rptr. 595 (1974) . . . . .	27
<u>Barry v. Illinois Farmers Ins. Co.</u> , 386 N.W.2d 299 (Minn.Ct.App. 1986) . . . . .	31
<u>Carter v. Burns</u> , 630 N.E.2d 767 (Ohio App. 1993) . . . . .	19
<u>Carter v. City Parish Government</u> , 409 So.2d 345 (La. App. 1981) . . . . .	18
<u>Chamblee v. State Farm</u> , 601 S.2d 922 (Ala. 1992) . . . . .	16, 18
<u>Cherry v. Truck Ins. Exchange</u> , 892 P.2d 768 (Wash. App. 1994) . . . . .	26
<u>Chung La v. State Farm Auto. Ins. Co.</u> , 830 P.2d 1007 (Colo. 1992) . . . . .	21
<u>Criterion v. Velthouse</u> , 751 P.2d 1 (Alaska 1986) . . . . .	15
<u>Dohman v. Housely</u> , 478 N.W.2d 221 (Minn. App. 1991) . . . . .	19
<u>Eichelberger v. Rice</u> , 434 A.2d 747 (Pa. 1981) . . . . .	27, 29, 30
<u>Gilbertson v. State Farm Mut. Auto. Ins. Co.</u> , 845 F.2d 245 (10th Cir. 1988) . . . . .	16
<u>Government Employees Ins. Co. v. Batchelder</u> , 421 So. 2d 59 (Fla. App. D1 1982) . . . . .	12, 22
<u>Great American Insurance Co. v. Cassell</u> , 389 S.E.2d 476 (Va. 1990) . . . . .	23
<u>Harmon City v. Nielsen &amp; Senior</u> , ____ Adv. Rep. ____ (Utah 1995) . . . . .	10
<u>Hawkeye-Security Insurance Co. v. Gilbert</u> , 866 P.2d 976 (Idaho App. 1994) . . . . .	13, 14, 18, 22, 26, 28
<u>Holm v. Mutual Service Casualty Co.</u> , 261 N.W. 2d 598 (Minn. 1977) . . . . .	13, 17

<u>Johnson v. Redevelopment Agency of Salt Lake County</u> , 277 Adv. Rep. 3 (Utah 1995)	10
<u>Kohl v. Union Ins. Co.</u> , 731 P.2d 134 (Colo. 1986)	13
<u>Kolkin v. American Family Ins. Co.</u> , 374 N.W.2d 538 (Minn.App. 1984)	13, 31, 32
<u>Lumberman's Mutual Casualty Co. v. Logan</u> , 451 N.Y.S.2d 804 (N.Y. 1982)	16, 31
<u>Monroe Guar.Ins. Co. v. Campos</u> , 582 N.E.2d 865 (Ind. Ct. App. (1991)	23
<u>National Farmers Union Property &amp; Cas. Co. v. Western Casualty &amp; Surety Co.</u> , 577 P.2d 961 (Utah 1978)	11, 12
<u>Nationwide Mutual Ins. Co. v. Davis</u> , 455 S.E.2d 892 (NC.Ct.App. 1995)	30, 31
<u>Oberkramer v. Reliance Ins. Co.</u> , 650 S.W.2d 300 (Mo.Ct.App. 1983)	24
<u>P.E. Ashton Co. v. Joyner</u> , 406 P.2d 306 (Utah 1965)	9
<u>Pope v. Stolts</u> , 712 S.W. 2d 434 (Mo. 1986)	16
<u>Savage Industries, Inc. v. Utah State Tax Comm'n.</u> , 811 P.2d 664 (Utah 1991)	10, 11
<u>State Farm Auto Ins. Co v. Nol</u> , 699 S.W.2d 156 (Tenn. 1993)	15
<u>State Farm Mut. Auto. Ins. Co. v. Smith</u> , 691 P.2d 1289 (Idaho App. 1984)	14, 15
<u>State v. Larsen</u> , 865 P.2d 1355 (Utah 1993)	10
<u>Stucky v. Long</u> , 783 P.2d 500 (Okla. 1989)	15-17
<u>Sullivan v. Scoular Grain Co.</u> , 853 P.2d 877 (Utah 1993)	10
<u>Thomas v. Travelers Ins. Co.</u> , 887 N.Y.S.2d 498 (Ny.App. 1976)	20, 25
<u>Tlougan v. Auto-Owners Ins. Co.</u> , 310 N.W.2d 116 (Minn. 1981)	13
<u>U.S. Fidelity &amp; Guar. Co. v. Sandt</u> , 854 P.2d 519 (Utah 1993)	9, 15
<u>Vanguard Ins. v. Cantrell</u> , 503 P.2d 962 (Ariz. App. 1973)	12

### PARTIES TO THE PROCEEDINGS

The parties to the proceedings are Plaintiff/Appellee Viking Insurance Company and Defendants/Appellants Trans Coastal Trucking and Allen Coleman. Defendants Rene Peterson and UDOT did not file an appeal and do not participate in these proceedings.

### STATEMENT OF JURISDICTION

Jurisdiction of the Utah Court of Appeals is appropriate under U.C.A. § 78-2a-3(j).

### ISSUES PRESENTED FOR REVIEW

Whether the trial court properly ruled that the accident caused by Mr. Coleman's negligent crossing of a roadway did not arise out the use or maintenance of his insured vehicle as defined by the Viking automobile insurance policy.

The standard of review of a trial court's order granting summary judgment interpreting an insurance policy is for correctness. AOK Lands, Inc. v. Shand, Moran & Co., 860 P.2d 924 (Utah 1993).

### APPLICABLE STATUTES

Utah Code Annotated § 31A-22-303 is at issue in this case because its language regarding mandatory coverage for automobile liability policies is coextensive with the language of the Viking Insurance Company policy language at issue here.

The statute in relevant part states:

- (1) In addition to complying with the requirements of

Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

. . .

(b)(i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304 .

. .

UCA § 31A-22-303(1)(a) (emphasis added); see also Appendix A.

#### STATEMENT OF THE CASE

This case involves an appeal from the trial court's order granting summary judgment to Plaintiff/Appellee Viking Insurance Company, ruling that as a matter of law Defendant/Appellant Allen Coleman's liability for the accident in question did not arise out of the use or maintenance of his Viking insured vehicle.

#### NATURE OF THE CASE

This case involves an automobile - pedestrian accident which occurred on State Road 201 (2100 South freeway) at approximately 5600 West in Salt Lake County, Utah on January 7, 1994. Mr. Coleman was attempting to cross the roadway to return to his vehicle when he tripped on the uneven surface of the roadway and fell. An oncoming semi-tractor trailer, owned by Trans Coastal Trucking and driven by Rene Peterson, attempted to avoid hitting Mr. Coleman, swerved and rolled into the median causing injuries

to the driver and property damage.

#### COURSE OF PROCEEDINGS

Viking Insurance Company filed an action in declaratory relief pursuant to U.C.A. § 78-3-1 against Defendants Coleman, Peterson, Trans Coastal Trucking and UDOT. See R. 1. Viking requested the trial court declare that the accident did not arise out of the use or maintenance of Coleman's automobile which was insured by Viking at the time. See R. 4.

After discovery, Viking filed a motion for summary judgment asserting that the material facts giving rise to the accident were not in dispute making the interpretation of the Viking insurance contract an appropriate question of law. See R. 82. Trans Coastal filed an opposition and cross-motion for summary judgment. See R. 162. Coleman joined in Trans Coastal's motion on May 24, 1995 and Peterson joined in Trans Coastal motion on May 26, 1995. See R. 195, 198.

Oral argument was held on August 1, 1995. At the hearing Judge Homer Wilkinson granted Viking's motion for summary judgment and denied the Defendants' motion. See R. 228. The trial court entered its order granting Viking's motion for summary judgment and dismissing Defendants' counterclaims against Viking. See Appendix A, R. 238. This appeal follows by Coleman and Trans Coastal. Peterson and UDOT did not join in the appeal.

STATEMENT OF UNDISPUTED FACTS RELEVANT FOR REVIEW

The following facts were not disputed in the court below:

1. Defendant, Allen K. Coleman, was a named insured under an automobile liability policy number 44 0005256, issued by Viking Insurance Company. See Appendix "A," R. 97.

2. The policy was issued for a 1983 Oldsmobile Omega, VIN 1G3AE69R7DW351369 owned by Mr. Coleman. See Id.

3. The policy provides for coverage as follows:

We promise to pay *damages*, within the limits of our policy, for bodily injury or property damage for which the law holds you responsible because of a car accident involving a car we insure.

See, Appendix "A" (emphasis in original).

4. A car accident is defined in the policy as, "an unexpected and unintended event that causes bodily injury or property damage and arises out of the ownership, maintenance or use of a car or other motor vehicle." Appendix "A", at 2 (emphasis added); cf. U.C.A. § 31A-22-303(1).

5. On January 7, 1994, Defendant Coleman had been having mechanical trouble with his 1983 Oldsmobile Omega automobile. See R. 123, Deposition of Allen Coleman, p. 8.

6. Mr. Coleman had experienced a carburetor fire earlier that day while on his way to work. See Id.

7. Mr. Coleman attempted to drive the car from the point of the carburetor fire to his home in Magna, Utah in order to repair the vehicle. See R. 121. Mr. Coleman testified, "I got it

[the car] running to where I could get it back out to where my parents live, out in Magna where I was staying, and the car stopped again, just completely stopped at this point." See Id.

8. Mr. Coleman pulled his disabled vehicle off the right side of the road on westbound State Road 201 near its intersection with 5600 West in Salt Lake City. See Id.

9. Mr. Coleman diagnosed the problem as a defective thermostat and believed he could make the repairs himself without towing the vehicle from its place off the side of the road. Id.

10. Mr. Coleman left his vehicle and traveled immediately south, crossing the westbound, two-lane roadway (his prior direction of travel). He then crossed the median, and then crossed the two eastbound lanes of the 2100 South freeway. See R. 123.

11. Mr. Coleman climbed the fence which borders the roadway and went to a nearby service station and telephoned an auto parts store, ordering a replacement part. See R. 122.

12. Mr. Coleman then returned to his car by the same route to wait for delivery of the part. After approximately ninety minutes, the part had not been delivered. See R. 121.

13. Mr. Coleman again left his vehicle, crossed the two lanes of westbound traffic, the median, the two lanes of eastbound traffic, climbed the fence and returned to the telephone to inquire regarding delivery of the part. He was informed that the part would be delivered immediately. See R.

121-122.

14. Mr. Coleman then began to repeat the same route to return to his vehicle to wait for the delivery. Id.

15. After climbing the fence, Mr. Coleman began traveling north, across the eastbound lanes of the 2100 South freeway when he tripped on the uneven surface of the roadway, landing on and injuring his right knee. See R. 125-126.

16. Mr. Coleman has a fused left knee and, as a result of injuring his right knee in the fall, he was unable to get up or otherwise move off of the roadway. See Exhibit R. 125.

17. Defendant, Rene Peterson was driving a semi tractor-trailer owned by Defendant Trans Coastal Trucking eastbound on State Road 201 at the time Coleman fell. See R. 128.

18. When Mr. Peterson saw Mr. Coleman lying in the road, Mr. Peterson attempted to avoid colliding with Mr. Coleman and overturned the truck in the median causing injury and property damage. See R. 1-6, 45-53, 222-227.

19. Mr. Coleman admitted in deposition that nothing about the car or anything related to the car caused him to fall. See R. 134. He also admits that his fall was caused by a combination of the uneven pavement and his fused knee which limited his mobility after the fall. See R. 137-38.

#### SUMMARY OF ARGUMENT

The undisputed facts demonstrate that Mr. Coleman's negligence (and resulting liability) did not arise out of the use



or maintenance of the Viking insured vehicle. While insurance contracts are construed liberally, they are limited by the intended purposes the specific type of insurance. Moreover, statutory coverage requirements in Utah are identical to the Viking policy language. Therefore, interpretation of the policy language also interprets the statute. Rules of statutory construction mandate that terms be given effect according to their plain meaning.

The accident did not arise out of use or maintenance of the vehicle. Courts of every jurisdiction require a significant causal connection between an accident and an insured vehicle before liability coverage will be implicated. But for causation is insufficient to implicate insurance coverage because nothing relating to the vehicle is causally related to the accident.

The accident in this case did not arise out of the use of the vehicle because Mr. Coleman was not using the vehicle as a vehicle, or for any purpose inherent in its nature as a vehicle, at the time. Mr. Coleman was removed from the insured vehicle in time, space, activity, focus and purpose when he fell. Similarly, Mr. Coleman was not *maintaining* the vehicle at the time he fell. He was not engaged in any activity causally connected with the act of maintaining a vehicle when he fell.

The trial court properly ruled that the accident in question did not arise out of the use or maintenance of the insured vehicle. Summary judgment may be affirmed in favor of Viking.

## ARGUMENT

### I.

#### **INSURANCE CONTRACTS IN UTAH ARE TO BE INTERPRETED LIBERALLY TO ACHIEVE THE PURPOSES OF INSURANCE.**

The Viking automobile policy specifically provides for payment for damages arising out of "a car accident involving a car we insure." See Exhibit "1". A "car accident" is defined in the policy as, "an unexpected and unintended event that causes bodily injury or property damage and arises out of the ownership, maintenance or use of a car or other motor vehicle." Appendix "A", at p.2 (emphasis added); see also Utah Code Annotated § 31A-22-303(1).

According to the Supreme Court, "[g]enerally the interpretation of insurance policy language presents a question of law to be decided by the trial judge using accepted methods of construction." Nielson v. O'Reilly, 84 P.2d 664, 665 (Utah 1992). Insurance policies are to be liberally interpreted to "promote and not defeat the purposes of insurance". U.S. Fidelity & Guar. Co. v. Sandt, 854 P.2d 519, 521 (Utah 1993). Liberal interpretation of insurance contracts is, however, tempered by the reasonable limitations imposed by the "commonly understood meaning" of a policy's terms. Cf. P.E. Ashton Co. v. Joyner, 406 P.2d 306, 308 (Utah 1965).

The policy at issue in this case is an automobile liability policy. The "purpose" of such insurance is statutorily

established. Utah law expressly requires an insurer to provide liability insurance for damages "arising out of" the "ownership, maintenance or use of a vehicle" in all automobile liability policies issued in the state. See U.C.A. § 31A-22-303(1).

The statutory language in Utah is substantively identical to the language of the Viking policy. Therefore, this Court's interpretation of the relevant provisions of the Viking policy will also establish this State's interpretation of U.C.A. § 31A-22-303(1). In defining the relevant terms at issue in this case, principles of statutory construction apply.<sup>1</sup> By its express statutory purpose, automobile liability insurance is not intended to provide general liability coverage for a person's negligence. Id.

Utah courts have not decided any cases defining or addressing whether the conduct of a driver "arises out of" the "ownership, maintenance or use" of a vehicle under either the statute or specific insurance policy language. Therefore, this Court's interpretation of the "plain language" of U.C.A. § 31A-

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<sup>1</sup> The Supreme Court has instructed, "the primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purpose the statute was meant to achieve." Sullivan v. Scoular Grain Co., 853 P.2d 877, 880 (Utah 1993). The Court continued, "to discover that intent, we look first to the plain language of the statute." Harmon City v. Nielsen & Senior, \_\_\_ Adv. Rep. \_\_\_ (Utah 1995) (citing State v. Larsen, 865 P.2d 1355, 1357 (Utah 1993)). In defining statutory terms the Court stated, "we assume that 'each term in the statute is used advisedly; thus the statutory words are read literally unless such a reading is unreasonably confused or inoperable.'" Johnson v. Redevelopment Agency of Salt Lake County, 277 Adv. Rep. 3 (Utah 1995) (citing Savage Industries, Inc. v. Utah State Tax Comm'n., 811 P.2d 664, 670 (Utah 1991)).

22-303(i) will a fortiori define the "liberal reading" of the Viking policy.

## II.

### THE ACCIDENT IN QUESTION DID NOT ARISE OUT OF COLEMAN'S USE OF THE VIKING INSURED VEHICLE.

The issue in this case is whether Mr. Coleman's actions arose out of the use or maintenance of the Viking insured vehicle. The District Court properly ruled the accident did not arise out of the use of the insured vehicle based on the undisputed facts. See Nielsen, at 665.

The following arguments will affirm that the trial court correctly ruled that the accident in this case did not "arise out of" the "use" or "maintenance" of the Viking insured vehicle as a matter of law. The decision of the trial court may be affirmed.

#### A. THE UNDISPUTED FACTS DO NOT SATISFY THE REQUIREMENT THAT THE ACCIDENT "ARISE OUT OF" USE OR MAINTENANCE OF THE VEHICLE.

The initial question to be resolved is whether the accident in question is one which *arises out of* the use of the insured vehicle. This issue is essentially a determination of the causation necessary to implicate insurance coverage under Utah law and the language of the policy.

While Utah courts have not defined the terms "arising out of" in the context of an automobile policy, the term has been touched upon in the context of a homeowner's liability policy in National Farmers Union Property & Cas. Co. v. Western Casualty & Surety Co., 577 P.2d 961 (Utah 1978). The Supreme Court in

National Farmers Union recognized that the term *arising out of* in the automobile insurance context "imports a concept of causation; there must be a causal nexus between an accident or injury in the ownership, maintenance or use of the vehicle." National Farmers Union, at 963 (quoting Vanguard Ins. v. Cantrell, 503 P.2d 962 (Ariz. App. 1973)) (emphasis added).

Similarly, the Florida Court of Appeals in Government Employees Ins. Co. v. Batchelder 421 So. 2d 59, 61 (Fla. App. D1 1982)<sup>2</sup> specified that the causation element requires something less than proximate cause but sufficient causation to constitute a "nexus" or "connection" to the vehicle. In Colorado<sup>3</sup> the Supreme Court explained the necessary causal relationship stating, "the causation test does not require that the insured vehicle itself be the cause of the injury, only that the use be integrally related to the claimant's activities and the injury at the time of the accident." Aetna Casualty & Surety Co. v. McMichael, 906 P.2d 92, 103 (Colo. 1995).

The Colorado Supreme Court noted, "[t]he reason for this causal requirement is to ensure that there is some nexus between

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<sup>2</sup> For an injury to fall within the "use" coverage of an automobile policy in Florida "(1) the accident must have arisen out of the inherent nature of the automobile, as such; (2) the accident must have arisen within the natural territorial limits of an automobile, and the actual use must not have terminated; (3) the automobile must not merely contribute to cause the condition which produces the injury, but must itself produce the injury." Batchelder, at 61.

<sup>3</sup> The language of the Colorado statute is nearly identical to that in Utah requiring policies to "insure every [insured] person on account of the maintenance, use or operation of the motor vehicle". Section 42-7-413 C.R.S.

the vehicle's use and the injury. The nexus guarantees that the accident is within the kind of risks that the automobile insurance was meant to cover." McMichael, at 103. The court further stated that the causation requirement helps distinguish "between 'injuries that are related to the use of an automobile, and injuries that are related to an automobile only because they coincidentally occurred in the vehicle.'" McMichael, (quoting Kohl v. Union Ins. Co., 731 P.2d 134, 136 (Colo. 1986)).

In Kolkin v. American Family Ins. Co., 374 N.W.2d 538, 540 (Minn.App. 1984) the Minnesota test for causation is set forth in a four part test:

- 1) there must be some "causal connection" between the injury and the use of the vehicle for transportation purposes, Tloutan v. Auto-Owners Ins. Co., 310 N.W.2d 116 (Minn. 1981);
- 2) this "causal connection" is less than proximate cause but more than the vehicle being the "mere situs" of the injury; Id.;
- 3) the requisite connection exists of the injury is a "natural and reasonable incident or consequence of the use of the vehicle," Id.; and
- 4) the vehicle must be an "active accessory" to the injury sustained. Holm v. Mutual Service Casualty Ins. Co., 261 N.W.2d 598 (Minn. 1977).

Idaho courts specify that the "arising out of" language of a policy requires more than "but for" causation. Hawkeye-Security Insurance Co. v. Gilbert, 866 P.2d 976, 982 (Idaho App. 1994).

The court explained there must be some "substantial nexus between the use of the vehicle and the injury." Hawkeye-Security, at 980 (citing 6B Appleman, Insurance Law & Practice § 4316 (1979)). In their opening brief, Appellants suggest that the Supreme Court's

interpretation of *arising out of* in the National Farmers Union, case encompasses any event which can be connected to an accident by a potentially endless chain of fortuitous *but-for* relationships. See Appellant's brief pp. 9-10.

Other courts have expressly and implicitly rejected the gossamer thread of *but for* causation Appellants suggest. In Hawkeye-Security the court flatly stated it "is not enough to say that 'but for' the use of the automobile, the injury would not have occurred." Hawkeye-Security, at 980. The court then cited numerous cases which eschew the *but for* analysis and require a more substantial *causal* connection between the use of the automobile and the injury or accident. See Hawkeye-Security, at 980-981 (and authority cited therein). The court stated, "a contrary view, if carried to its logical conclusion, would 'attach automobile insurance to every accident which occurred after an insured had first been transported by an automobile.'" Hawkeye, at 982 (citing Aetna Casualty and Surety Co. v. Safeco Insurance Co., 163 Cal. Rptr. 219, 223 (Cal. App. 1983)).

The court in Hawkeye-Security cited its prior opinion in State Farm Mut. Auto. Ins. Co. v. Smith, 691 P.2d 1289 (Idaho App. 1984), stating:

The policy provisions requiring the injury to "arise out of the use" of the vehicle connotes a causal relation between the injury and the use. The causal connection must be more than incidental or fortuitous.

Smith, 691 P.2d at 1290 (emphasis added).

This Utah Supreme Court's dicta in National Farmers Union, recognizing a "causal nexus" must exist is consistent with the causation requirements expressed in other jurisdictions and as explained in Hawkeye-Security. Appellants' claim that arising out of language can be fairly read to encompass but for causation is also erroneous on other levels as well.

Initially, Appellants' espousal of but for causation is inconsistent with a significant line of cases which find causation lacking where the vehicle is the "mere situs" of the accident. Other jurisdictions generally recognize the mere fact that an automobile is the place where an injury occurs does not, itself, implicate automobile liability insurance coverage. See Criterion v. Velthouse, 751 P.2d 1 (Alaska 1986); see also Allied Mut. Ins. Co. v. Patrick, 819 P.2d 1233, 1234 (Kan. 1991) (intentional sexual assault in an insured vehicle does not arise out of use of vehicle to trigger liability coverage); State Farm Auto Ins. Co v. Nol, 699 S.W.2d 156, 157 (Tenn. 1993) (two police officers shot in their patrol vehicle by stranded driver who was given a ride was not an accident arising out of the use of the vehicle). Assuming only but for causation is required, each of these cited cases would have triggered coverage because a but for connection can be made to the insured vehicle.

On the issue of mere incidental relation to the vehicle, the court in Stucky v. Long, 783 P.2d 500 (Okla. 1989) held:  
The United States Court of Appeals for the Tenth Circuit held



(using Minnesota law) the accident must be a natural and reasonable incident or consequence of the use of the motor vehicle. The fact that the automobile was used preceding the accident does not establish a sufficient causal connection.

Stucky, at 503 (citing Gilbertson v. State Farm Mut. Auto. Ins. Co., 845 F.2d 245 (10th Cir. 1988)(emphasis added)).

The inapplicability of *tenuous, but for* causation is further demonstrated by the fact that many cases hold that physical proximity to the vehicle alone is not enough to trigger coverage. Chamblee v. State Farm, 601 S.2d 922, 923 (Ala. 1992) (coverage not implicated where child exited vehicle, crossed street to median and then was struck by car while crossing street); Pope v. Stolts, 712 S.W. 2d 434, 436 (Mo. 1986) (injury to plaintiff while leaning over open hood of first vehicle while second vehicle was immediately adjacent and assisting to jump start first vehicle was not accident arising out of the use of the second vehicle); Lumberman's Mutual Casualty Co. v. Logan, 451 N.Y.S.2d 804, 805 (N.Y. 1982) (slip and fall in icy parking lot while returning to insured car did not arise out of use of vehicle and did not arise from the intrinsic nature of the vehicle).

Appellants' claim of *but for* causation is further defeated by cases which recognize that the causation may be broken by acts of independent significance. The court in Stucky recognized, "[t]he causal connection can be severed by any intervening act of independent significance." Stucky, at 503 (citing Gilbertson v.

State Farm Mut. Auto. Ins. Co., 845 F.2d 245 (10th Cir. 1988)).

In Stucky an uninsured driver attempted to assault the insured while he and the insured were each driving their own vehicles. The two vehicles later stopped and the drivers exited their respective cars. The insured was then assaulted by the driver of the uninsured vehicle. The insured made a claim on his own uninsured motorist policy asserting his injuries arose out of the assailant's use of an uninsured motor vehicle as defined by his own automobile insurance policy.

The court ruled that uninsured motorist coverage did not apply because the assault was not causally connected to the uninsured vehicle. The court also rejected the insured's argument that *but for* the prior use of the uninsured vehicle he would not have been in the place he was attacked. The court said such causation was too remote. The court concluded:

Although it can be argued that (the insured) would not have been in the that place at that time if (the uninsured driver) had not tried to run him off the road, the injuries (the insured) received did not arise out of the use of (the uninsured driver's) automobile. There was no causal connection between the uninsured motor vehicle and (the insured's injuries). As in Race v. Nationwide Ins. Co., supra, the injuries occurred only after the parties had left their automobiles. The causal connection required for uninsured motorist coverage may not be a remote cause."

Stucky, at 505.

Consistently, in Hawkeye-Security, the court citing Holm v. Mutual Service Casualty Co., 261 N.W. 2d 598, 603 (Minn. 1977) concluded that in numerous cases, "the acts of leaving a vehicle

and inflicting a battery were viewed as events if independent significance which broke the causal link between the "use" of the vehicle and the injuries inflicted." Hawkeye-Security, at 980 (emphasis added).

In a case analogous to the present matter, the Supreme Court of Alabama recognized that reaching a point of safety after leaving an insured vehicle constitutes an independent undertaking, sufficient to sever the causal nexus. In the case of Chamblee v. State Farm Mut. Auto. Ins. Co., 601 So.2d 1277 (Ala. 1992) the Alabama Supreme Court ruled that coverage did not extend to incidents where a "new activity had begun" after exiting a vehicle. Id. at 924.

In Chamblee a child and her aunt had traveled to a sporting event in the aunt's car. The two alighted from the vehicle and proceeded to safely cross a street to the median. Id. at 923. The child then darted out into the street and was struck by an oncoming car. Id. The court ruled that the chain of events giving rise to the accident were set in motion only after the child "had completed the act of exiting (the) truck" and reaching a point of safety. Id. The child's new and independent act of darting out into the road was held to be an activity disassociated from the already completed use of the aunt's vehicle. Id. at 924. Similarly, in the case of Carter v. City Parish Government, 409 So.2d 345 (La. App. 1981) the court found that a passenger's act of leaving the insured vehicle when the

vehicle stalled in floodwaters, broke the causal nexus between the vehicle's use and the passenger's subsequent, accidental drowning.

In Dohman v. Housely, 478 N.W.2d 221 (Minn. App. 1991) the court ruled that injuries incurred by a police officer who was struck by a vehicle after leaving his police car to approach a third vehicle for purposes of investigation did not arise out of the "use" of the patrol car. The court ruled that the patrol car was not the active accessory nor in anyway causally related to his injury.

Similarly, a policeman who was injured when he was chasing a suspect on foot after stopping his car was not entitled to uninsured motorist coverage. The court ruled that the uninsured car the suspect had been traveling in prior to the foot pursuit was not the injury causing instrumentality of the officer's injury. Carter v. Burns, 630 N.E.2d 767 (Ohio App. 1993).

In sum, the causation required is more than *but for* causation but less than legal, proximate cause. There must be some *causal* relationship between the accident and the use or maintenance of the vehicle. That causal relationship must not be merely fortuitous or incidental. The relationship may not be terminated or broken by acts of independent significance or new undertakings.

The specific facts of the present case demonstrate that Mr. Coleman's vehicle was not causally related to the accident. Mr.

Coleman's negligent attempt to cross a busy roadway while returning to his vehicle was the occurrence which set the sequence of events into motion causing the accident. Cf. Chamblee, at 924. To go back to the period of time Mr. Coleman was last at the vehicle extends the causal relationship of the vehicle to the accident beyond the breaking point. The vehicle at best was only incidentally related to the accident. Mr. Coleman was not actually using the vehicle at the time, nor was Mr. Coleman in close physical proximity to the vehicle. Mr. Coleman's act of crossing the busy highway was an act of independent significance, breaking the chain of causation. cf. Id. Mr. Coleman had been in a place of safety off of the road. He could have easily (and properly) returned to his vehicle without illegally crossing the highway. His negligent act of attempting to cross the freeway was the cause of the accident. His subjective intent to return to the vehicle for whatever purpose is irrelevant to the causation inquiry. See Thomas v. Travelers Ins., 387 N.Y.S.2d 493, 494 (N.Y.App. 1976).

No causal relationship has been established between the accident and the vehicle based on the undisputed facts. Therefore, the trial court was correct in ruling that Mr. coleman's negligence did not arise out of the use of the Viking insured vehicle as a matter of law. The trial court's ruling that the Viking policy does not cover this event was proper and may be affirmed.

B. THE ACCIDENT DID NOT ARISE OUT OF THE USE OF THE INSURED AUTOMOBILE.

The second aspect of the issue before this Court is whether Mr. Coleman's activities at the time of the accident, if causally connected to the vehicle, constituted use of the insured vehicle within the plain meaning of that word. The undisputed facts show that at the time of the accident Mr. Coleman was walking across a street when he tripped and fell on the uneven roadway.

The court in McMichael began its analysis by stating, "when determining the meaning of the term use in an automobile insurance policy, a court must look to the factual circumstances in each case, including the particular characteristics of the vehicle and the intention of the parties to the insurance contract." McMichael, at 102. Courts generally begin the analysis of the use of a vehicle by examining whether the vehicle was being used as a vehicle. In other words, the use of the vehicle at the time of the accident must be consistent with the vehicle's inherent nature and purpose; in this case, transportation. In McMichael, the court defined the issue before it as whether the insured was "using an insured vehicle in a manner that was not foreign to its inherent purpose at the time of the accident." McMichael, at 101 (emphasis added).<sup>4</sup>

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<sup>4</sup> The dissent in McMichael, also agreed that the use of the vehicle must be inherent to its nature. The dissent stated, "The burden on the claimant to establish that he was not using the vehicle in a manner foreign to its inherent purpose." McMichael at 108 (dissent) (citing Chung La v. State Farm Auto. Ins. Co., 830 P.2d 1007, 1010-1011 (Colo. 1992)).

The court in Hawkeye-Security, began its inquiry of this issue by stating, "liability insurance coverage will be afforded in the present case only if the [] injury was causally connected to (the insured's) use of the automobile and that use of the vehicle was related to the inherent nature of the automobile." Hawkeye-Security, at 979 (emphasis added). The court in Hawkeye-Security, further stated that the injury must be shown to arise from the "inherent nature of the automobile in order to bring it within the terms of the 'use' clause." Hawkeye-Security, at 979.

In Florida the first prong of the four part test requires that, "the accident must have arisen out of the inherent nature of the automobile, as such." Government Employees Insurance Co. v. Batchelder, 421 So.2d 59 (Fla.App. D1 1982) (emphasis added).

In McMichael, the court concluded:

In the present case, McMichael's accident was integrally related to his work on the road, where it was expected that he would be put in danger from other motorists. For this reason, the truck was equipped with protective gear and warnings devices and was positioned to provide a barrier. Thus at the time of the accident, McMichael was using the truck for protection, the truck was not merely the physical location where the accident occurred.

McMichael, at 104. In contrast to the facts of the present case, in McMichael, the vehicle continued to be used for a specific purpose (a warning and safety barrier) while the insured was out of the vehicle working on the road. In the present case, the

Viking insured vehicle did not continue to serve its inherent purpose (transportation) once Mr. Coleman left the area. Moreover, an ordinary motorist does not ordinarily use a vehicle in the manner that the plaintiff in McMichael did.

The court in McMichael then went on to focus on other cases dealing with the inherent nature of automobiles having specialized or peculiar uses or equipment. For example, the court cited a decision of the Supreme Court of Virginia which ruled that a fire fighter injured while filling out a report 25 feet from his fire truck was using his fire truck at the time because "use of the fire truck to extinguish the fire, control traffic and protect fire fighters including (the plaintiff), was an integral part of the fire fighters' mission." Great American Insurance Co. v. Cassell, 389 S.E.2d 476, 477 (Va. 1990).

However, that same supreme court has previously ruled that a police officer who was injured after he exited his vehicle to serve a subpoena was not using his vehicle at the time of the injury. Insurance Co. of North America v. Perry, 134 S.E.2d 418, 421 (Va. 1964). The court ruled that at the time of the injury the officer was not using the vehicle as a vehicle. Instead, the officer had ceased using the vehicle for any specialized purpose prior to the time of the accident. Id.

The Cassell case and similar decisions illustrate that it is essential that the vehicle itself continues to be used as a vehicle when the accident occurs. See e.g. Monroe Guar.Ins. Co.



v. Campos, 582 N.E.2d 865, 867 (Ind. Ct. App. (1991) (tow truck operator injured while walking from police vehicle to tow truck was engaged in activity essential to the towing process at time of accident); Oberkramer v. Reliance Ins. Co., 650 S.W.2d 300, 302-303 (Mo.Ct.App. 1983) (police officer injured while using his police car as a road block, part of the patrol car's specific function, was using vehicle).

By contrast, the Perry case and similar cases illustrate that an injury resulting after leaving a vehicle does not arise out of its use if the vehicle does not continue to serve a function integrally related to the activities of the individual. The vehicle must continue to be integrally related to the activities of the insured while separated from the vehicle as well as being part of that particular vehicle's inherent purpose.

In McMichael, the court stated, the use "does not turn on the proximity of the claimant to the vehicle at the time of the accident but, rather arises out of the particular activity in which the claimant was engaged." McMichael, at 102. This analysis is like the third prong of the four prong analysis in Washington which requires that the insured be "vehicle oriented rather than highway or sidewalk oriented at the time." <sup>5</sup> Cherry

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<sup>5</sup> The test in Washington is: (1) there must be a causal relation or connection between the injury and the use of the insured vehicle; (2) the person asserting coverage must be in reasonably close geographic proximity to the insured vehicle, although the person need not be actually touching it; (3) the

v. Truck Ins. Exchange, 892 P.2d 768, 770 (Wash. App. 1995).

In Thomas v. Travelers Ins. Co., 387 N.Y.S.2d 498 (Ny.App. 1976) held that injuries sustained by a pedestrian who was en route to his car but who was not within or actually entering his vehicle when struck by another vehicle did not arise out of the use of the vehicle. The court reasoned that at the time of the accident the insured was acting as a pedestrian rather than engaging in ownership, use or maintenance of his vehicle. Cf. Cherry, supra at n.6, factor 3. The court further stated that the insured's future intent to enter and use the vehicle was not relevant to the analysis. Thomas, at 499.

In Hawkeye-Security the court further distinguished that the use of an ordinary vehicle for an unusual purpose does not trigger coverage. The court held that an ordinary motorist's use of a vehicle in a manner not inherent to its ordinary purpose was not a use of the vehicle reasonably related to the car's inherent nature under the policy. The driver in Hawkeye-Security used his vehicle to block the road. The court, distinguishing other cases, found that such a use was not inherent to the nature of regular passenger vehicles stating:

When Gilbert parked his car in a position to narrow the area available for Laragan's passage and exited the vehicle to confront Laragan, he abandoned his role as a motorist and also abandoned any use of the car

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person must be vehicle oriented rather than highway or sidewalk oriented at the time; and (4) the person must also be engaged in a transaction essential to the use of the vehicle at the time. Cherry, at 770.

reasonably related to its inherent nature as a vehicle.  
Hawkeye-Security, at 981.

In this case Mr. Coleman was not using his vehicle as a vehicle at the time of the accident. Mr. Coleman's vehicle was not specialized in its nature, equipment or function. Therefore, he did not and could not continue to use the vehicle after abandoning it at the side of the road unlike the parties in McMichael and Cherry who continued to use their vehicles in their activities. Mr. Coleman's vehicle had, therefore, ceased serving its essential function of transportation well prior to the time of the accident. Further, Mr. Coleman was not vehicle oriented but, rather, was roadway oriented at the time of the accident. See Cherry, supra at n. 6, factor 3.

Finally, no special equipment or function which Mr. Coleman was performing after leaving the vehicle served to continue as part of the inherent function and purpose of the vehicle. It was not being used as a warning or a barricade or for any other foreseeable, continuing use. Therefore, the accident did not arise out of any use of the vehicle as a matter of law.

C. THE ACTS OF MR. COLEMAN DO NOT ARISE OUT OF THE MAINTENANCE OF THE INSURED VEHICLE.

By this same rules of law as set forth above, it must be determined whether the actions of Mr. Coleman arose out of the inherent nature of the maintenance of his automobile in this case. Cf. Hawkeye, at 979. Hawkeye cited two cases in which

"normal maintenance and repairs" were inherent in the use of a vehicle. See Eichelberger v. Rice, 434 A.2d 747 (Pa. 1981) (putting gas into a vehicle when injury occurred); Automobile Association v. United States Fire Ins. Co., 111 Cal. Rptr. 595 (1974) (starting car while gas was being poured into the carburetor when injury occurred)). Unlike the present case, these cited cases involve direct interaction with the vehicle when the accidents occurred. In this case there is no connection between walking across a street and acts inherent in maintaining a vehicle such as putting gas in it, opening the hood, lying underneath it, changing a tire, etc. Mr. Coleman admitted that the vehicle did not cause him to fall. See Exhibit "2", at 21. Therefore, the injury did not involve maintenance of the vehicle.

Hawkeye-Security, also rejects the Defendants' position on several levels. First, the activity of walking across a street is not remotely connected to the inherent tasks of maintaining a vehicle contemplated by the parties in procuring or offering automobile liability insurance. Mr. Coleman was not in or at the vehicle effecting repairs to the vehicle when the injury occurred as in the Appellants' cited cases.

Mr. Coleman was also engaging in activities distant in both time and scope from the vehicle itself. Further, the independent act of leaving the vehicle and arriving at a point of safety breaks the chain of causation. See Hawkeye-Security, at 980. Third, the presence of the vehicle is merely incidental and

fortuitous rather than a causally related to maintenance of the vehicle. Id. Hawkeye-Security expressly rejects this type of tenuous *but for* argument as inapplicable to the inquiry of whether an action arises out of the maintenance of a vehicle.

The lack of a causal connection to the maintenance of the vehicle in the present case is illustrated by a simple variation of the present facts. Assume that Mr. Coleman needed a new battery for his stranded car. Assume he was able to locate an auto parts store near the roadway. Further assume that Mr. Coleman found and selected a battery in the store and while walking to the counter to pay for it, collided with another customer in the store and dropped the battery on the customer's foot causing serious injury. Under Defendants' broad definition of *maintenance*, this accident would implicate the automobile policy because Mr. Coleman was, in fact, *maintaining* his vehicle at the time. Certainly, *but for* the need to maintain the vehicle by purchasing a battery, he would not have been in the store and no accident would have occurred.

The example illustrates that there is no causal relationship between the negligent actions of dropping a battery on another's foot and maintaining the vehicle. As in the example, in the present situation, the causal link is broken by Mr. Coleman leaving the vehicle and crossing the street. The subsequent negligent act of illegally crossing a highway was the action upon which negligence is asserted against Mr. Coleman rather than any

act arising from the manner in which he maintained the vehicle.

Therefore, Plaintiff has demonstrated that as a matter of law, Mr. Coleman's negligent crossing of the highway is not causally related to any use, or maintenance of an insured vehicle under the policy. As a result, Plaintiff is under no obligation to provide liability coverage for Mr. Coleman's independent acts of negligence.

### III.

#### DEFENDANT'S CITED CASES ARE NOT ON POINT AND READILY DISTINGUISHABLE.

Defendant cites the case of Eichelberger v. Rice, 434 A.2d 747 (Pa. 1981), as being directly on point. The case is readily distinguishable on its facts.<sup>6</sup> In Eichelberger, the accident took place at the insured vehicle when a passenger stepped back from the vehicle. Id. at 750. The parties in Eichelberger were in the very act of maintaining the vehicle by putting gas into the tank when the accident occurred. Id. at 750. In the present case the accident took place across the highway from where the vehicle was parked. In the present case no one was at the car in the very act of maintaining it. These facts alone are sufficient to distinguish the case.

Furthermore, in Eichelberger, the court's definition of "maintenance" tends to defeat Mr. Coleman's position in this

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<sup>6</sup> As pointed out by the Colorado Supreme Court, the resolution of the inquiry in these cases is highly fact specific. See McMichael at 102.

case. In Eichelberger, the court defined "maintenance" as "all acts which come within the ordinary scope and meaning of the word." Id. at 750. (emphasis added). The action of refueling a car plainly comes within the definition of maintenance. However, the action of crossing a street does not. Eichelberger fails to support Defendants' position and actually militates against finding that Mr. Coleman was maintaining his vehicle at the time of the accident.

The case of Nationwide Mutual Ins. Co. v. Davis, 455 S.E.2d 892 (NC.Ct.App. 1995) is also distinguishable. The Plaintiff in Davis was injured when she alighted from a vehicle and was struck almost immediately while crossing the street. The court found the causal link was established because Ms. Davis parked the van in such a way that the plaintiff had to cross a roadway to reach the her destination. Davis, at 895.

The Davis case is distinguished by the cogent analysis in Chamblee where the court properly draws the causal line when a party leaves the vehicle and reaches a point of safety. Chamblee at 924. In Davis, the placement of the vehicle required the passenger to cross the street and she was struck immediately. Davis at 895. By contrast, Mr. Coleman's decision to climb the fence, cross the street was for convenience, so he wouldn't have to walk it the next exit off the highway. Coleman's decision was independent of the location of the vehicle, unlike the injured party in Davis who had to cross the roadway to join her

grandmother. Davis, at 895; Cf. Chamblee at 924.

Defendants also cite Barry v. Illinois Farmers Ins. Co., 386 N.W.2d 299 (Minn.Ct.App. 1986) as supportive. That case is distinguished by its facts as well as the holding of Logan, 451 N.Y.S.2d at 805. The vehicle at issue in Barry was still the focus of the insured's activity at the time of the accident. The act of walking was the focus of the party's activity in Logan. In this case the focus of Coleman's activity at the time was walking and traversing the street rather than on the use or maintenance of the vehicle, making Logan applicable. Mr. Coleman's actions were not activities related to the use of the vehicle as a vehicle as in Barry, making Barry inapplicable.

Finally the case of Kolkin v. American Family Ins. Co., 347 N.W.2d 538 (Minn.Ct.App. 1984) which Appellants cite is not supportive of their position. In that case the accident occurred while an inoperable vehicle was abandoned and yet, was still left in the roadway. The court stated, "a vehicle obstructing a roadway is not, however, 'passive' in terms of legal causation, unlike a tree or a stone or other object alongside the roadway, particularly in the hours of darkness without proper warning lights, makes such a vehicle an 'active accessory' to a collision." Id. at 534. The vehicle in Kolkin was still located in a place inherent to its traveling function; the roadway. The court agreed that coverage applied stating, "the 'use' of the vehicle had not ended when it was left obstructing the road."



Kolkin, at 540.

In the present case unlike Kolkin, the vehicle was not an "active accessory" in the accident and its use had ended prior to the accident. Appellants' cited cases do not support their position on appeal. The cases illustrate that Mr. Coleman was neither using nor maintaining his vehicle at the time of the accident. Therefore, there is no causal connection between Mr. Coleman's negligent acts and the insured vehicle necessary to implicate liability insurance coverage.

#### CONCLUSION

The undisputed facts demonstrate that Mr. Coleman's negligence and resulting liability did not arise out of the use or maintenance of the Viking insured vehicle. No action of Mr. Coleman was causally related to the use or maintenance of the vehicle at the time of the accident. Mere *but for* causation fails to establish the requisite causal connection between the vehicle and the accident.

The accident in this case did not arise out of the use of a vehicle because Mr. Coleman was not using the vehicle as a vehicle, or for any purpose inherent in its nature as a vehicle at the time of the accident. Mr. Coleman was removed from the vehicle in time, space, activity and purpose when he fell. Additionally, Mr. Coleman was not maintaining the vehicle at the time he fell. He was not engaged in any activity essential to or normally connected with the act of maintaining the vehicle when

he fell and caused the accident in question.

The trial court properly ruled that the accident in question did not arise out of the use or maintenance of the insured vehicle. Summary judgment may be affirmed in favor of Viking.

DATED this 8 day of May, 1996.

HANSON, EPPERSON & SMITH

BY   
Bradley R. Helsten  
Attorneys for Viking Insurance  
Company of Wisconsin

**CERTIFICATE OF SERVICE**


I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF APPELLEE VIKING INSURANCE COMPANY OF WISCONSIN, by United States mail, postage prepaid, this 8 day of May, 1996, to the following:

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## APPENDIX

1. Utah Code Annotated 31A-22-303
2. Order Granting Plaintiff's Motion for Summary Judgment,  
October 10, 1995
3. Viking Insurance Policy, 44 0005256

**APPENDIX "1"**

**31A-22-303. Motor vehicle liability coverage.**

(1) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(a) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(b) (i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(ii) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(b)(i); and

(c) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adop-

tion, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured.

(2) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

(a) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

(b) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(c) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

(d) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

(3) Motor vehicle liability coverage need not insure any liability:

(a) under any workers' compensation law under Title 35;

(b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or

(c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.

(4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

(5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.

(6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.

(b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured after the injured third person has been made whole with respect to the claim against the insured.

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.



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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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VIKING INSURANCE COMPANY	:	ORDER GRANTING PLAINTIFF'S
OF WISCONSIN,	:	MOTION FOR SUMMARY JUDGMENT
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
ALLEN COLEMAN, RENE B. PETERSON,	:	
TRANS COASTAL TRUCKING, and	:	
UTAH DEPARTMENT OF TRANSPORTATION,	:	
	:	Civil No. 940908046CV
Defendants.	:	Judge Homer F. Wilkinson

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The motion of the plaintiff for summary judgment and the cross-motion of the defendants for summary judgment having come before this Court for hearing on August 1, 1995, with Terry M. Plant appearing for and on behalf of the plaintiff, Viking Insurance Company of Wisconsin, Robert G. Gilchrist appearing for and on behalf of the defendant, Trans Coastal Trucking, Taylor D. Carr appearing for and on behalf of the defendant, Allen Coleman, and Keith L. Barton appearing for and behalf of the defendant, Rene B. Peterson, the Court having reviewed memoranda filed by all parties, having further considered oral argument offered for and on behalf of all parties, and having otherwise reviewed the law and/or facts applicable to this case,



IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the motion for summary judgment of Viking Insurance Company of Wisconsin is granted and the cross-motion for summary judgment of the defendants is denied;

2. That in granting the plaintiff's motion for summary judgment the Court specifically finds that the accident in question did not reasonably arise out of the operation, use or maintenance of an insured motor vehicle under the Viking Insurance Company policy and, as a result thereof, the Court finds that Viking Insurance Company owes no coverage whatsoever to its insured, Allen Coleman, or any of the remaining defendants who are potential claimants against Mr. Coleman, as a result of the accident in question. In making this ruling, the Court specifically finds that no coverage of any kind is due and owing any of the defendants under the policy, nor can the defendants make any claim for benefits under said policy as a result of the accident in question, which occurred on or about January 7, 1994, at or near State Road 201 at its intersection with the 5600 West bridge overpass in West Valley City, Salt Lake County, State of Utah.

3. In addition, in accordance with Rule 54(b) of the Utah Rules of Civil Procedure, the Court specifically finds that there is no just reason for delay of the entry of a final order and hereby specifically makes an entry of final judgment as to the Court's granting of summary judgment in favor of the plaintiff, Viking Insurance Company of Wisconsin.

DATED this 10th day of OCTOBER, 1995.

BY THE COURT:

51 HOMER F. WILKINSON  
HONORABLE HOMER F. WILKINSON  
District Court Judge

Approved as to form:

\_\_\_\_\_  
Taylor D. Carr  
Attorney for Defendant Coleman

\_\_\_\_\_  
Keith L. Barton  
Attorney for Defendant Peterson

\_\_\_\_\_  
Robert G. Gilchrist  
Attorney for Defendant  
Trans Coastal Trucking





Viking Insurance Company of Wisconsin

UT0160 (4/93)

**POLICY DECLARATIONS****INSURED  
NOTICE**

<b>POLICY NUMBER</b>	<b>TRANSACTION TYPE</b>	<b>Date Printed</b>	<b>TRANSACTION EFFECTIVE DATE</b>
44 0005256	NEW BUSINESS	11/29/93	11/15/93

Agent      Agent Code  
44 00159  
ALLGRUNN-SWIM AGY INC  
3540 S 4000 W #430  
WEST VALLEY CIT, UT 84120-0000

Agent Phone # 801-968-3541

Insured

COLEMAN, ALLEN K  
COLEMAN, CINDY  
3295 SOUTH 7615 WEST  
MAGNA, UT 84044

<b>POLICY EFFECTIVE DATE</b>
Policy Effective at Time of Application, Time Agent Bound Coverage, <b>or</b> <b>11/15/93</b> 12:01 a.m. Standard Time, whichever is later.

<b>EXPIRATION DATE</b>
<b>01/15/94</b> 12:01 a.m. Standard Time

<b>PREMIUM FOR CURRENT TERM</b>
<b>\$106.00</b>

**Original Policy Inception Date**  
11/15/93

**RATING INFORMATION**

Year 1983	Vehicle ID Number 1G3AE69R7DW351369	IMAO Symbol 00	Multi-Car Credit N
Make OLDS	Vehicle Type STANDARD	Garaging Zip 84044	Safe Driver Credit N
Model OMEGA BROU	Vehicle Use PERSONAL	Territory 01	Defensive Dr. Cr. N
Rated on Driver # 1	COLEMAN, ALLEN KENT	Rating Points 006	Quarterly Discount N
Rated Driver Birth Date 12/12/61	Rated Driver Gender M		Preferred Cust. Cr. N
Rated Dr. Marital Status M			Homeowner Credit N

**COVERAGES****LIMITS/DEDUCTIBLES****MONTHLY PREMIUM**

BODILY INJURY LIABILITY	\$25,000 each person \$50,000 each accident*	22.00
UNINSURED MOTORIST BODILY INJURY	\$25,000 each person \$50,000 each accident*	3.00
UNINSURED MOTORIST PROPERTY DAMAGE	REJECTED	
UNDERINSURED MOTORIST BODILY INJURY	\$10,000 EACH PERSON \$20,000 EACH ACCIDENT*	3.00
PERSONAL INJURY PROTECTION		
PERSONAL INJURY PROTECTION	SEE CE-59 FOR COVERAGES	11.00
PROPERTY DAMAGE LIABILITY	\$15,000 each accident	14.00

\* Limit of Liability each accident or occurrence as indicated by the Insuring Agreement

**TOTAL MONTHLY PREMIUM \$53.00****DRIVER INFORMATION**

DRIVER # 1 COLEMAN, ALLEN KENT  
Birth Date 12/12/61

DRIVER # 2 COLEMAN, CINDY C  
Birth Date 07/04/71

Driver Class 3 Financial Resp. N

Driver Class 7

**I CERTIFY THAT THIS IS A  
TRUE AND CORRECT COPY**

**POLICY FORMS**

The following policy forms and endorsements apply to this policy:

CE-26 (10/81)

CE-59 (04/93)

CE-61 (04/93)

UT-CP (01/79)

UT-CPA (04/93)

**ANY RENEWAL OF THIS POLICY SHALL BE SUBJECT TO THE RENEWAL PROVISION UNDER THE GENERAL POLICY PROVISIONS.**

This policy is effective on the date shown on the face of these declarations. These declarations form a part of the policy and replace all previously issued declarations for this policy. If these declarations are accompanied by a new policy, this policy replaces any which may have been issued previously with the same policy number.

**THIS IS NOT A BILL - KEEP FOR YOUR RECORDS**

**I CERTIFY THAT THIS IS  
A TRUE AND CORRECT COPY**



# Viking Insurance Company of Wisconsin

## UTAH CAR POLICY

INDEX	PAGE		PAGE
A. DEFINITIONS	1	6. Bodily Injury Covered	5
B. INSURING AGREEMENT	2	7. Payment Of Damages	5
C. CARS WE INSURE	2	8. Trust Agreement	5
D. WHAT TO DO WHEN AN ACCIDENT HAPPENS	2	9. Arbitration	5
E. LIABILITY INSURANCE	2	10. Limits Of Uninsured Motorist Insurance	5
1. Our Promises To You	2	H. COLLISION INSURANCE	5
2. Additional Benefits	2	1. Our Promise To You	5
3. Protection For Others	3	2. Excluded Uses Of Cars	5
4. Those Not Protected	3	3. Losses Covered	5
5. Excluded Uses Of Cars	3	4. Payment Of Loss	6
6. Bodily Injury Covered	3	5. Limits Of Payment	6
7. Property Damage Covered	3	I. COMPREHENSIVE INSURANCE	6
8. Limits Of Liability	3	1. Our Promise To You	6
9. Financial Responsibility Laws	3	2. Additional Benefits	6
F. MEDICAL EXPENSE INSURANCE	3	3. Excluded Uses Of Cars	6
1. Our Promises To You	3	4. Losses Covered	6
2. Protection For Others	4	5. Payment Of Loss	7
3. Those Not Protected	4	6. Limits Of Payment	7
4. Medical Expenses Covered	4	J. GENERAL POLICY PROVISIONS	7
5. Payment Of Benefits	4	1. Our Right To Recover From Others	7
6. Limits Of Medical Expense Insurance	4	2. Transfer Of This Policy	7
G. UNINSURED MOTORIST INSURANCE	4	3. Changes In Your Policy	7
1. Our Promise To You	4	4. Territory	7
2. Protection For Others	4	5. Cancellation	7
3. Those Not Protected	4	6. Renewal Provisions	7
4. Uninsured Motor Vehicles	4	7. Out-Of-State Insurance	8
5. Excluded Uninsured Motor Vehicles	5	8. Other Insurance	8
		9. Collision And Comprehensive Payments	8

### DEFINITIONS

The terms that are defined below are in *italics* when they appear in the text of this policy.

A **car** is a 4-wheel *motor vehicle* licensed for use on public roads. It includes any motor home that isn't used for business purposes and any *utility trailer*.

A **car accident** is an unexpected and unintended event that causes bodily injury or property damage and arises out of the ownership, maintenance or use of a *car* or other *motor vehicle*.

**Damages** means the cost of compensating those who suffer bodily injury or property damage from a *car accident*. It does not include amounts awarded as a punishment or deterrent.

A **motor vehicle** is a land motor vehicle designed for use on public roads. It includes *cars* and trailers. It also includes any other land motor vehicle while used on public roads.

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

A **utility trailer** is a trailer designed for use with a *car*. It includes a farm implement or farm wagon while towed on public roads by a *car*. It doesn't include a trailer used as an office, store, display or passenger trailer.

**You, your, yourself** means the person named on the declarations page and that person's husband or wife if a resident of the same household.

**You, your, yourself** also means a member of the family who is a resident of the household and who doesn't own a *car* or whose spouse doesn't own a *car*.

## INSURING AGREEMENT

Upon *your* payment of the premiums, we agree that this policy provides the various kinds of insurance *you* have selected as shown on the declarations page. The declarations page is a part of this policy. This insurance applies only to *car accidents* and losses which occur while this policy is in force. Subject to our consent, *you* may renew this policy. When we consent to renew this policy, *you* must pay the renewal premium in advance. *You* will not be protected if *you* do not pay the renewal premium before *your* policy expires.

## CARS WE INSURE

We insure any *car* described on the declarations page and any *car* *you* replace it with. We'll also insure any additional *car* *you* acquire if we insure, under this insurance, all *cars* *you* own. But the replacement or addition is insured only if *you* notify us within 30 days of its date of purchase.

We insure any *utility trailer* *you* own or are using except for collision and comprehensive insurance. For collision and comprehensive insurance, the *utility trailer* must be listed on the declarations page and a premium shown for it. We insure a substitute *car* when any *car* described on the declarations page, or any replacement or addition, can't be used because it's being serviced or repaired, or it's been stolen or destroyed. A *car* owned by *you* or a resident member of *your* family doesn't qualify as a substitute *car*.

We insure other *cars* *you* use with the permission of the owner, but not for collision or comprehensive insurance. We don't insure other *cars* owned by, or furnished for the regular use of, *you* or resident members of *your* family.

## WHAT TO DO WHEN AN ACCIDENT HAPPENS

When *you're* involved in a *car accident*, *you* or someone on *your* behalf must notify us as soon as possible. The quickest way is to phone our nearest office. When *you* notify us, tell us how the accident happened and the extent of any injuries. If we need other information to investigate the accident, we'll ask *you* for it. We will require it in writing.

If *you're* injured, we may ask that *you* be examined by a doctor we select. *You* must be examined when and as often as we may reasonably require. We may need authorization to obtain medical records and copies of other records. *You* must give us authorization upon each request.

If the accident involves a hit-and-run driver, it must be reported within 24 hours to the police or Commissioner of Motor Vehicles. A statement under oath must be filed with us within 30 days after the accident has been reported. If *you* were *occupying a motor vehicle* at the time of the accident, *you* must make it available for our inspection, before it is repaired.

If *you* have comprehensive or collision insurance, *you* must protect the *car* from any further damage. If *you* fail to do so, any further damage won't be recoverable under this policy. We'll pay any reasonable expenses incurred in protecting the *car*. We may require that *you* file with us a sworn proof of loss within 60 days after the accident. *You* may be required to show us *your car* or damaged property and submit to examination under oath.

*You* must cooperate with us in our effort to investigate the accident or loss, settle any claims against *you* and defend *you*. *You* must also send us, promptly, any legal papers served on *you* or *your* representative as a result of a *car accident*. If *you* fail to cooperate or fail to promptly send us such legal papers, we may have the right to refuse *you* any further protection for the accident or loss. If *your car* is stolen, *you* must report the theft to the police within 24 hours.

## LIABILITY INSURANCE

### Our Promises To You

We promise to pay *damages*, within the limits of our policy, for bodily injury or property damage for which the law holds *you* responsible because of a *car accident* involving a *car* we insure. We also promise to pay additional benefits.

### Additional Benefits

These benefits are in addition to our limit of liability for *damages*. We'll pay for the cost of investigating the *car accident* and arranging for the settlement of any claim against *you*. We'll also defend *you*, hire and pay a lawyer, and pay all defense costs if *you're* sued by someone for *damages* because of a *car accident*--even if the accusations aren't true. However, we won't be obligated to pay for the cost of any further investigation or arrangement for settlement or to defend *you* further after we've paid our entire limit of liability for *damages*. If the person who sues *you* tries to tie up *your* property by an attachment, we'll arrange and pay for a bond to release the attachment. We do have to limit this, so *you'll* have to pay the cost of the additional amount of the bond if the bond required is more than the limits of liability available to *you*.

If *you* lose a lawsuit that we're defending, we'll pay the court costs. If we decide to appeal, we'll also pay those court costs. We'll also pay interest on the full amount of the judgement even if the judgement is higher than the limit of liability. And we'll pay this interest from the day the judgement is entered until we've offered the other party the amount of the judgement up to the full limits of liability available under this insurance.

We'll pay any reasonable travel expenses *you* might have for attending hearings or a trial at our request. We'll pay *your* expense for first aid to others at the scene of a *car accident* involving a *car* we insure.

### **Protection For Others**

Anyone using, with *your* permission, a *car* described on the declarations page, or any additional, replacement or substitute *car*, has the same rights and obligations that *you* have under this insurance.

Any corporation *you* work for or any partnership in which *you're* a partner has the same rights and obligations that *you* have under this insurance if it owns or hires a *car* described on the declarations page.

Anyone else who doesn't own or hire a *car* operated by *you* and who may be responsible for its use has the same rights and obligations that *you* have under this insurance.

### **Those Not Protected**

Anyone protected at the time of the *car accident* by an atomic or nuclear energy liability insurance contract isn't protected by this insurance. The reason for this is that by law such policies protect all persons involved in the *car accident*--regardless of who was at fault.

Neither the United States of America nor any of its agencies is protected by this insurance.

Anyone for whom the United States Government may be held responsible under the Federal Tort Claim Act isn't protected by this insurance.

### **Excluded Uses Of Cars**

While we provide broad protection under this insurance, there are some situations we don't insure.

We don't insure *your car* while it's hired or rented to others for a charge.

We don't insure any *car you're* driving while it's available for hire by the public.

We don't insure any *car* used in preparation for any prearranged or organized racing, speed, demolition or stunting contest or activity, or for the event itself.

We don't insure any *car* used in the business of selling, repairing, servicing, storing or parking *motor vehicles*. However, we'll insure *your* use of a *car* in such business if *you* own the *car* and that *car* is insured under this policy. Also, if *you're* the owner or a partner in such business, we'll insure *your* partner's and employee's use of a *car you* own provided that *car* is insured under this policy.

### **Bodily Injury Covered By This Insurance**

This insurance covers bodily injury, including loss of services, sickness, disease or death which results from the injury, caused by a *car accident* and suffered by any person.

This insurance doesn't cover *your* employees if *you* are required to provide workers' compensation insurance and such insurance would apply to the injury.

This insurance doesn't cover a fellow employee of anyone protected by this insurance, other than *you*, if the injury is suffered in the course of employment.

### **Property Damage Covered By This Insurance**

This insurance covers property damage that results from a *car accident*. Property damage means any injury to or destruction of physical property, including the loss of use of that property.

This insurance doesn't cover any property damage to any property *you* rent, own, have charge of or are transporting.

### **Limits Of Liability**

The limits of liability shown on the declarations page are the maximum amounts we'll pay in *damages* for any one *car accident*.

The limit for "each person" is the limit for all claims by all persons for *damages* from bodily injury to one person. The limit for "each occurrence" is the total limit for all claims for *damages* from bodily injury to two or more people in any one *car accident*. The limit for property damage is the limit for all claims for *damages*, direct or indirect, by all persons from damage to property in any one *car accident*. Even though more than one *car* is insured with us and separate premiums are charged for each *car*, or more than one person is protected under this insurance, the limits of liability won't be increased. When *damages* are payable on *your* behalf under more than one policy we've issued to *you*, we won't pay more than the highest limits in any one such policy.

### **Financial Responsibility Laws**

If *you're* required to show proof of financial responsibility for the future because of *car accidents*, traffic violations or other state motor vehicle requirements, we'll certify this policy as proof. When we certify this policy as proof, all the terms and conditions of this insurance will be amended to comply with the requirements of such law. But the terms and conditions of this insurance won't be amended for any limits of liability in excess of the minimum limits required by such law. **YOU MUST REIMBURSE US IF WE HAVE TO MAKE A PAYMENT THAT WE WOULD NOT HAVE TO MAKE IF THIS POLICY WERE NOT CERTIFIED AS PROOF.**

## **MEDICAL EXPENSE INSURANCE**

### **Our Promises To You**

We promise to pay medical expenses for *your* bodily injury, sickness, disease or death suffered in a *car accident* while *occupying* a *car* or from having been struck by a *motor vehicle*. We'll pay the medical expenses incurred within one year from the date of the *car accident*, within the limits shown in the declarations.



### **Protection For Others**

Anyone *occupying*, with *your* permission, a *car* we insure has the same rights and obligations that *you* have under this insurance.

### **Those Not Protected**

Anyone *occupying your car* while it's hired or rented to others for a charge isn't protected by this insurance.

Anyone *occupying a car you're* driving while it's available for hire by the public isn't protected by this insurance.

Anyone *occupying a car* in preparation for any prearranged or organized racing, speed, demolition or stunting contest or activity, or for the event itself, isn't protected by this insurance.

Anyone *occupying* or struck by a *car* owned by *you* or furnished for *your* regular use and not insured under this insurance isn't protected by this insurance.

Anyone *occupying a car* used in the business of selling, repairing, servicing, storing or parking *motor vehicles* isn't protected by this insurance. However, we'll protect *you*, *your* partner or employee if the *car* is owned by *you* and is insured under this insurance. We'll also protect occupants if the *car* owned by *you* and insured under this insurance is being used by *you*, *your* partner or employee.

Anyone protected at the time of the *car accident* by an atomic or nuclear energy liability insurance contract isn't protected by this insurance. The reason for this is that by law such policies protect all persons involved in the *car accident*--regardless of who was at fault.

### **Medical Expenses Covered By This Insurance**

This insurance covers reasonable and necessary medical, surgical, chiropractic and dental treatment, professional nursing, hospital, x-ray, ambulance and funeral services and prosthetic devices. This insurance also covers reasonable and necessary treatment rendered in accordance with a legally recognized religious method of healing.

This insurance doesn't cover that amount paid or payable under any health or accident insurance available.

This insurance doesn't cover that amount payable or required to be provided under any workers' compensation, disability benefits law or similar law.

This insurance doesn't cover medical expenses for injury caused by war.

THIS INSURANCE DOESN'T COVER CARE WHICH THE UNITED STATES GOVERNMENT OR ITS MILITARY SERVICES ARE REQUIRED TO PROVIDE TO EMPLOYEES, MEMBERS, OR DEPENDENTS.

### **Payment Of Benefits**

We may pay *you*, the person providing the medical services or the person responsible for payment of the medical expenses.

When we pay *your* medical expenses, *you* or *your* legal representative must agree in writing to repay us out of any *damages you* recover under the liability or uninsured motorist insurance of this policy.

### **Limits Of Medical Expense Insurance**

Regardless of the number of *cars* we insure under this policy, the limit of medical expense insurance is the amount shown on the declarations page for "each person". When medical expenses are payable under more than one policy issued by us, we won't pay more than the highest limit in any one such policy.

## **UNINSURED MOTORIST INSURANCE**

### **Our Promise To You**

We promise to pay the *damages you're* legally entitled to receive from the owner or operator of an uninsured *motor vehicle* because of bodily injury. We'll pay these *damages* for bodily injury *you* suffer in a *car accident* while *occupying a car* or, as a pedestrian, as a result of having been struck by an uninsured *motor vehicle*.

### **Protection For Others**

Anyone *occupying*, with *your* permission, a *car* we insure has the same rights and obligations that *you* have under this insurance.

### **Those Not Protected**

Anyone *occupying your car* while it's hired or rented to others for a charge isn't protected by this insurance.

Anyone *occupying a car you* are driving while it's available for hire by the public isn't protected by this insurance.

Anyone *occupying a motor vehicle* owned by *you* or furnished for *your* regular use and not insured under this insurance isn't protected by this insurance.

### **Uninsured Motor Vehicles**

An uninsured *motor vehicle* is a *motor vehicle* for which there is no bodily injury policy or liability bond available at the time of the *car accident* with at least the minimum limits required by the financial responsibility law of the state in which *your car* is principally garaged.

An uninsured *motor vehicle* also includes a *motor vehicle* which has insurance available at the time of the *car accident* but the company writing it is or becomes insolvent or denies coverage.

An uninsured *motor vehicle* is a hit-and-run *motor vehicle* that strikes *you* or a *car you are occupying*, if neither the driver nor the owner can be identified.

#### **Excluded Uninsured Motor Vehicles**

A *motor vehicle* owned by *you* or furnished for *your* regular use isn't an uninsured *motor vehicle*.

A *motor vehicle* that's owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law isn't an uninsured *motor vehicle*.

A *motor vehicle* owned by any governmental authority or agency isn't an uninsured *motor vehicle*.

#### **Bodily Injury Covered By This Insurance**

This insurance covers bodily injury, including loss of services, sickness, disease or death which results from the injury, caused by a *car accident* and suffered by *you*. This insurance doesn't cover bodily injury if, without our written consent, *you* settle or sue to a judgement a claim against anyone responsible for *your* injury.

#### **Payment Of Damages**

We may pay *you*, *your* legal representative or anyone authorized by law to receive payment.

The amount of *damages* payable under this insurance will be reduced by the amount paid by or on behalf of anyone responsible for *your* injury. This includes any amount paid under the liability insurance of this policy and any amount paid or payable under any workers' compensation law, disability benefits law or any similar law--exclusive of any state non-occupational disability benefits law.

#### **Trust Agreement**

When we pay *you damages* under this insurance, *you* or *your* legal representative must agree in writing to repay us out of any *damages* recovered from anyone responsible for *your* injuries. *You* or *your* legal representative must also agree in writing to hold in trust and preserve for us all rights of recovery.

At our request, *you* must take any necessary action to recover the payments we've made under this insurance. *You* must do so in *your* own name and through a representative we select. Expenses of recovery will be repaid to us out of any *damages* recovered.

#### **Arbitration**

If we and *you*, or *your* legal representative, don't agree on *your* legal right to receive *damages* or the amount of *damages*, then upon the written request of either party, the disagreement will be settled by arbitration.

Arbitration will take place in the county where *you* live. *You'll* select one arbitrator and we'll select another. The two selected arbitrators will then select a third. If the two arbitrators are unable to agree on a third arbitrator within 30 days, the judge of the court of record in the county of jurisdiction where arbitration is pending will appoint the third arbitrator.

Local court rules governing procedure and evidence will apply unless the arbitrators agree on other rules. The decision in writing of any two arbitrators will be binding on *you* and us, subject to the terms of this insurance. Judgement on any award may be entered in any court having jurisdiction.

*You'll* pay the arbitrator that *you* choose and we'll pay the arbitrator we choose. The expense of the third arbitrator and all other expense of arbitration will be shared equally by *you* and us.

#### **Limits Of Uninsured Motorist Insurance**

The limit of uninsured motorist insurance shown on the declarations page for "each person" is the maximum we'll pay in *damages* for bodily injury to any one person.

The maximum we'll pay in *damages* for bodily injury to two or more persons is the amount shown on the declarations page for "each accident".

Even though we insure *you* under more than one policy, or more than one *car* is listed on the declarations page, and separate premiums are charged for each *car* or policy, these limits won't be increased.

## **COLLISION INSURANCE**

#### **Our Promise To You**

We promise to pay *you* for accidental damage to *your car* and its equipment when it's hit by or it hits another *car*, it hits another object or rolls over. We'll pay for the damage minus any applicable deductible. We'll waive the deductible if the collision is between a *car* insured under this insurance and another *car* insured by us.

#### **Excluded Uses Of Cars**

While we provide broad protection under this insurance, there are some situations we don't insure.

We don't insure any *car* while it's available for hire by the public.

We don't insure any *car* used in preparation for any prearranged or organized racing, speed, demolition or stunting contest or activity, or used in the event itself.

We don't insure any *car* used in the business of selling, repairing, servicing, storing or parking *motor vehicles*. However, we'll insure a *car* used in such business if the *car* is described on the declarations page, or is a replacement, additional or substitute *car*.

#### **Losses Covered By This Insurance**

This insurance covers all direct and accidental collision losses to *cars* we insure.

This insurance doesn't cover collision loss of more than one stereo tape, cassette or cartridge.

This insurance doesn't cover any loss due to war.

This insurance doesn't cover any camper unit that's designed for mounting on a vehicle unless the unit has been reported to us.

This insurance doesn't cover any equipment or accessories contained in motor homes, camper units or trailers unless they're built in and form a permanent part of the vehicle. In both cases a premium must be paid for this coverage.

This insurance doesn't cover special equipment, parts and accessories unless *you* include them in the application, or tell us when *you* add them to the *car*, and pay a premium for them. The following are examples of special equipment, parts and accessories: (a) chrome, alloy, or magnesium wheels, (b) custom wide tread tires and racing slicks, (c) custom paint work, glass, or chroming, (d) tape record player and stereo radios, unless factory installed as original equipment, (e) two-way radios (including CB radios), and telephones or radio-telephones, (f) custom enclosures for pickup trucks, (g) custom interior work.

This insurance doesn't cover any *car you* do not own unless it is listed in the declarations page.

#### **Payment Of Loss**

We may pay for the collision loss in cash or we may repair or replace the damaged property. We may take all or part of the damaged property at the agreed or appraised value.

We may settle any loss either with *you* or the owner of the property.

#### **Limits Of Payment**

The maximum limit of collision insurance for losses is the actual cost to repair or replace the damaged property. Payment won't exceed the actual cash value of the property at the time of the loss.

## **COMPREHENSIVE INSURANCE**

#### **Our Promise To You**

We promise to pay for direct and accidental loss of, or damage to, *your car* and its equipment--not caused by collision. We'll pay for the loss or damage minus any applicable deductible.

Accidental glass breakage and loss or damage from missiles, falling objects, theft or animals is a comprehensive loss.

We also promise to pay additional benefits.

#### **Additional Benefits**

We'll pay *you* for transportation costs up to \$10 per day to maximum of \$300 if *your car* is stolen. We'll pay the costs that begin 72 hours after the theft has been reported to us and to the police. The payment ends when *your car* is recovered or we've paid or offered to pay the loss.

We'll pay salvage charges for which *you* become legally liable because of transporting a *car* we insure.

#### **Excluded Uses Of Cars**

While we provide broad protection under this insurance, there are some situations we don't insure.

We don't insure any *car* while it's available for hire by the public.

We don't insure any *car* used in preparation for any prearranged or organized racing, speed, demolition or stunting contest or activity, or used in the event itself.

We don't insure any *car* used in the business of selling, repairing, servicing, storing or parking *motor vehicles*. However, we'll insure a *car* used in such business if the *car* is described on the declarations page, or is a replacement, additional or substitute *car*.

#### **Losses Covered By This Insurance**

This insurance covers all direct and accidental comprehensive losses to *cars* we insure.

This insurance doesn't cover loss which is due and confined to wear and tear or mechanical or electrical breakdown or failure, unless it results from a theft or other loss covered by this insurance.

This insurance doesn't cover a loss due to conversion or embezzlement.

This insurance doesn't cover a comprehensive loss of more than one stereo tape, cassette or cartridge.

This insurance doesn't cover any loss due to war.

This insurance doesn't cover any camper unit that's designed for mounting on a vehicle unless the unit has been reported to us.

This insurance doesn't cover any equipment or accessories contained in motor homes, camper units or trailers unless they're built in and form a permanent part of the vehicle. In both cases a premium must be paid for this coverage.

This insurance doesn't cover special equipment, parts and accessories unless *you* include them in the application, or tell us when *you* add them to the *car*, and pay a premium for them. The following are examples of special equipment, parts and accessories: (a) chrome, alloy, or magnesium wheels, (b) custom wide tread tires and racing slicks, (c) custom paint work, glass, or chroming, (d) tape record player and stereo radios, unless factory installed as original equipment, (e) two-way radios (including CB radios), and telephones or radio-telephones, (f) campers and custom enclosures for pickup trucks, (g) custom interior work.

This insurance doesn't cover any *cars* *you* do not own unless it is a substitute *car*, or it is listed on the declarations page.

### **Payment Of Loss**

We may pay for the loss in cash or we may repair or replace the damaged or stolen property. Before a loss is paid or the property is replaced, we may return any stolen property to *you* at our expense with payment for any damage.

We may settle any loss either with *you* or the owner of the property.

### **Limits Of Payment**

The maximum limit of comprehensive insurance for losses is the actual cost to repair or replace the damaged property. Payment won't exceed the actual cash value of the property at the time of the loss.

## **GENERAL POLICY PROVISIONS**

### **Our Right To Recover From Others**

After we have made payment under the Liability, Medical Expense, Uninsured Motorist, Comprehensive or Collision insurance of this policy, we have the right to recover the payment from anyone who may be held responsible. *You* and anyone we protect must sign any papers and do whatever else is necessary to transfer this right to us. *You* and anyone we protect must do nothing to affect our rights.

### **Transfer Of This Policy**

This policy can't be transferred to any person or organization without our written consent. However, if the person named on the declarations page dies, this policy will provide protection until the end of the policy period for the deceased's legal representative and those persons who were protected on the date of death.

### **Changes In Your Policy**

We'll automatically give *you* the benefits of any extension or broadening of this policy if the change doesn't require additional premium.

The only other way this policy can be changed is by policy endorsement. Any necessary adjustment of premium will be made at that time.

If, at the time of *your* application for insurance or the issuance of this policy, our agent misrepresents facts to us without *your* knowledge, we won't void this policy or deny *you* protection in the event of a loss or claim.

### **Territory**

This policy applies only to *car accidents* and losses within the United States of America, its territories or possessions and Canada, or while the *car* is being transported between their ports.

### **Cancellation During The Policy Period**

*You* may cancel this policy by mailing to us a written notice stating the future date *you* wish the cancellation to be effective. If there is any refund in premium, we'll mail it to *your* agent as soon as possible after the date of cancellation. The earned premium may be based on our short rate table. This means that we may keep premium for the days *you* were protected, plus a percentage charge to cover the expense of cancelling during the policy period.

We won't cancel this policy solely because of *your* age, sex, marital status, residence, race, color, creed, national origin, ancestry or occupation. If we cancel this policy, we must mail the notice of cancellation to *you* at least 10 days before this policy is to be cancelled. If there is any refund in premium, we'll mail it to *your* agent as soon as possible after the cancellation date. The earned premium will be based on our pro rata table. This means that we'll keep premium for only those days that *you* were protected.

If *your* state has special restrictions on our right to cancel, we will change our policy to meet these restrictions. In that case, *you* will find the rules on cancellation in an endorsement which will be included with *your* policy.

If we cancel, our mailing of notice to *your* address shown on the declarations page will constitute proof of notice as of the date we mail it. Delivery of written notice of cancellation by either *you* or us will be equivalent to mailing.

### **Renewal Provision**

We won't refuse to renew this policy solely because of *your* age, sex, marital status, residence, race, color, creed, national origin, ancestry or occupation. Subject to our consent, *you* may renew this policy. When we consent to renew this policy, *you* must pay the renewal premium in advance. We will mail *you* a notice telling *you* when *your* premium must be paid. *Your* policy will expire if we don't receive the required payment by the renewal date.

If we decide not to renew *your* policy, we'll mail to *you*, at *your* address shown on the declarations page, written notice of non-renewal. The written notice will be mailed to *you* at least 20 days before the end of the policy term. If we decide not to renew *your* policy, our mailing of notice to *your* address shown on the declarations page will constitute proof of notice as of the date we mail it.

### Out-Of-State Insurance

If this policy provides liability insurance and *you* are traveling in a state which requires non-residents to carry higher liability limits than are shown on the declaration page of *your* policy we'll automatically provide these higher limits. However, we won't provide any additional coverage under the No-Fault law or any other similar law of any other state. This insurance is excess only.

### Other Insurance

Sometimes two or more insurance policies protect the same person or organization for a *car accident*. When this happens, *damages* or loss may be payable under each policy. Insurance companies try to avoid conflicts where this possibility exists by stating the basis on which their insurance applies. Where it isn't likely any other insurance will be involved, the insurance company usually makes its insurance primary. Primary insurance pays even if there is other insurance. Where it's likely that other insurance will apply, insurance companies make their insurance excess. Excess insurance protects *you* when primary insurance is exhausted or no primary insurance is available.

This insurance is primary for any *car* described on the declaration page, or any additional or replacement *car* we insure.

This insurance is excess for the use of any *car* not owned by *you*.

Occasionally there is other primary insurance available when this insurance is primary; or there is other excess insurance available when this insurance is excess. When this happens the following rules apply:

**LIABILITY INSURANCE**--If the other insurance isn't issued by us, we'll pay only our share of any *damages*. Our share is determined by adding up the limits of this insurance and all other insurance that applies on the same basis and finding the percentage of the total which our limits represent.

**UNINSURED MOTORIST INSURANCE**--We'll pay only our share of any *damages*. Our share is determined by adding up the limits of this insurance and any other insurance that applies on the same basis and finding the percentage of the total which our limits represent. That percentage is applied to the amount of *damages* which doesn't exceed the highest limit of any one such policy.

When this insurance is excess and all other insurance is primary, we'll pay *damages* up to the amount by which this insurance exceeds the limits of the primary insurance.

**COLLISION AND COMPREHENSIVE INSURANCE**--The amount of the loss in excess of any applicable deductible will be shared equally.

### Collision And Comprehensive Payments

We will pay loss or damage due under this policy according to *your* interest and that of the lienholder. We may make separate payments according to those interests.

We will pay the lienholder for a loss under the terms of this policy even though *you* have violated the terms of the policy by something *you* have done or failed to do. However, we will not pay for any loss caused by conversion, embezzlement or secretion by *you* or anyone acting on *your* behalf. We will not pay the lienholder more than the net balance of the loan.

We will not notify the lienholder each time *you* renew this policy and we may cancel this policy according to its terms. We will protect the lienholder's interest for 10 days after we notify him that the policy has terminated, for any reason.

If *you* fail to give proof of loss within the time allowed, the lienholder may protect his interest by filing a proof of loss within 30 days after that time.

The lienholder must notify us of any known change of ownership or increase in the risk. If he does not, he will not be entitled to any payment under this endorsement.

If we pay the lienholder under the terms of this endorsement for a loss not covered under the policy, we are subrogated to his rights against *you*. This will not affect the lienholder's right to recover the full amount of his claim. The lienholder must assign us his interest up to the amount of our payment and transfer to us all supporting documents.

This policy is signed at Madison, Wisconsin, on behalf of Viking Insurance Company of Wisconsin by our President and Secretary. It's countersigned on the declarations page by our authorized representative.

  
Secretary

  
President

## AMENDATORY ENDORSEMENT - 1 AH

This endorsement modifies the "DEFINITIONS", "WHAT TO DO WHEN AN ACCIDENT HAPPENS", "UNINSURED MOTORIST INSURANCE", and "GENERAL PROVISIONS" sections of *your* policy.

### DEFINITIONS

The definition of *motor vehicle* is replaced by the following:

**Motor vehicle** means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

The definition of *you*, *your* and *yourself* is replaced by the following:

**You, your, yourself** means the person named on the declarations page and that person's husband or wife if a resident of the same household.

**You, your, yourself** also means a member of the family who is a resident of the household and does not own a car or whose spouse does not own a car, or a member of the family who temporarily lives elsewhere and does not own a car. A "member of the family" means a person related to *you* by blood, marriage or adoption and includes a ward or foster child.

### WHAT YOU MUST DO WHEN AN ACCIDENT HAPPENS

This section is replaced with the following:

When *you're* involved in a car accident, *you* or someone on *your* behalf must notify us as soon as possible. The quickest way is to phone our nearest office. Notice to our authorized representative is considered notice to us. When *you* notify us, tell us how the accident happened and the extent of any injuries. If we need other information to investigate the accident we'll ask you for it. We will require it in writing.

If *you're* injured, we may ask that *you* be examined by a doctor we select. *You* must be examined when and as often as we may reasonably require. We may need authorization to obtain medical records and copies of other records. *You* must give us authorization upon each request.

If the accident involves a hit-and-run driver, it must be reported within 24 hours to the police or Commissioner of Motor Vehicles. A statement under oath must be filed with us within 30 days after the accident has been reported. If *you* were *occupying a motor vehicle* at the time of the accident, *you* must make it available for our inspection, before it is repaired.

If *you* have comprehensive or collision insurance, *you* must protect the *car* from any further damage. If *you* fail to do so, any further damage won't be recoverable under this policy. We'll pay any reasonable expenses incurred in protecting the *car*. We may require that *you* file with us a sworn proof of loss within 60 days after the accident. *You* may be required to show us *your car* or damaged property and submit to examination under oath.

*You* must cooperate with us in our effort to investigate the accident or loss, settle any claims against *you* and defend *you*. *You* must also send us, promptly, any legal papers served on *you* or *your* representative as a result of a *car accident*. If *you* fail to cooperate or fail to promptly send us such legal papers, we may have the right to refuse *you* any further protection for the accident or loss. If *your car* is stolen, *you* must report the theft to the police within 24 hours.

### UNINSURED MOTORIST INSURANCE

The "Those Not Protected" is replaced by the following:

#### Those Not Protected

Anyone *occupying your car* while it's hired, rented or leased to others isn't protected by this insurance.

Anyone *occupying any car you* are driving while hired, rented or leased by *you* which is not listed on the declarations page or is not a substitute *car* isn't protected by this insurance.

The "Uninsured Motor Vehicles" section is replaced by the following:

#### Uninsured Motor Vehicle

An uninsured *motor vehicle* means a *motor vehicle* which is not insured by a bodily injury liability policy or bond at the time of the *car accident*. This also includes a *motor vehicle* which is insured at the time of the *car accident* by a bodily injury liability policy or bond with limits below the minimum required by the financial responsibility law of the state in which *your car* is principally garaged.

An uninsured *motor vehicle* also includes a *motor vehicle* which has insurance available at the time of the *car accident* but the company writing it is or becomes insolvent or denies coverage.

An uninsured *motor vehicle* is a hit-and-run *motor vehicle* that strikes *you*, or a *car you* are *occupying*, if neither the driver nor the owner can be identified.

If there is no physical contact with the hit-and-run vehicle, the facts of the accident must be proved by clear and convincing evidence from more than the covered person's testimony.

## NOTICE

*You* may reject Uninsured Motorist Insurance by providing a written request. Such a rejection request is continuous until *you* request, in writing, Uninsured Motorist Insurance.

## GENERAL POLICY PROVISIONS

The "Cancellation During the Policy Period" section is replaced by the following:

### Cancellation During The Policy Period

*You* may cancel this policy by mailing to us a written notice stating the future date *you* wish the cancellation to be effective. If there is any refund in premium, we'll mail it to *your* agent as soon as possible after the date of cancellation. The earned premium will be based on our short rate table. This means that we'll keep premium for days *you* were protected, plus a percentage charge to cover the expense of cancelling during the policy period.

We won't cancel this policy solely because of *your* age, sex, marital status, residence, race, color, creed, national origin, ancestry or occupation.

If we cancel this policy within the first 60 days of coverage, or because *you* don't pay the premium when it's due, we must mail the notice of cancellation to *you* at least 10 days before this policy is to be cancelled. If we cancel this policy for any other reason after the first 60 days of coverage, we must mail the notice of cancellation to *you* at least 30 days before this policy is to be cancelled. If there is any refund in premium, we'll mail it to *you* as soon as possible after the cancellation date. The earned premium will be based on our pro rata table. This means that we'll keep premium for only those days that *you* were protected.

After all or any part of this policy has been in effect for more than 60 days, or if this policy is a renewal, effective immediately, our right to cancel is limited. We may then cancel this policy only if *you* don't pay the premium when it is due, or if *you* obtained this policy through material misrepresentation, or a substantial change in risk, or substantial breach of contractual duties, conditions or warranties, or if *your* driver's license is suspended or revoked during the policy period.

If we cancel, our mailing of notice to *your* address shown on the declarations page will constitute proof of notice as of the date we mail it. Delivery of written notice of cancellation by either *you* or us will be equivalent to mailing.

The "Renewal Provision" section is replaced by the following:

### Renewal Provision

We won't refuse to renew this policy solely because of *your* age, sex, marital status, residence, race, color, creed, religion, national origin, ancestry or occupation. If we decide not to renew *your* policy, we will mail *you* written notice 30 days before the end of the policy period. If we decide not to renew *your* policy, our mailing of notice to *your* address shown on the declarations page will constitute proof of notice as of the date we mail it.

When we offer to renew this policy, *you* must pay the renewal premium before the renewal date. We will mail *you* a notice telling *you* when *your* premium must be paid. *Your* policy will expire if we don't receive the required payment by the renewal date.

The "Out-of-State Insurance" section is replaced by the following:

If this policy provides liability insurance and *you* are traveling in a state which has compulsory *motor vehicle* insurance requirements for non-residents, we will automatically provide the required liability insurance. However, this insurance will be excess only.

The Medical Expense Section is placed with the following:

## PERSONAL INJURY PROTECTION COVERAGE - UTAH

We agree with you, subject to all of the provisions in this endorsement and to all of the provisions of the policy except as modified herein, as follows:

### SECTION I

#### PERSONAL INJURY PROTECTION COVERAGE

We will pay personal injury protection benefits to or on behalf of each *eligible injured person* for:

- (a) *medical expenses*,
- (b) *work loss*,
- (c) *funeral expenses*, and
- (d) *survivor loss*

with respect to *bodily injury* sustained by an *eligible injured person* caused by an accident involving the use of a *motor vehicle* as a motor vehicle.

#### Exclusions

This coverage does not apply:

- (a) to *bodily injury* sustained by any person while *occupying* a *motor vehicle* which is owned by *you* or a *family member* and which is not *your covered auto*;
- (b) to *bodily injury* sustained by any person while operating *your covered auto* without *your* express or implied consent or while not in lawful possession of *your covered auto*.
- (c) to *bodily injury* sustained by any person, if such person's conduct contributed to his injury under either of the following circumstances:
  - (1) causing injury to himself intentionally, or
  - (2) while committing a felony;
- (d) to *bodily injury* sustained by any person arising out of the use of any *motor vehicle* while located for use as a residence or premises;
- (e) to *bodily injury* due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (f) to *bodily injury* resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear material.

#### Definitions

When used in reference to this coverage:

**Bodily injury** means bodily injury, sickness or disease, including death resulting therefrom;

**Eligible injured person** means:

- (a) *you* or any *family member* who sustains *bodily injury* caused by an accident involving the use of any *motor vehicle*;
- (b) any other person who sustains *bodily injury* caused by an accident while:
  - (1) *occupying your covered auto* with *your* consent, or
  - (2) *occupying* any other *motor vehicle* other than a public or livery conveyance, operated by *you* or a *family member*
- (3) a *pedestrian* if the accident involves the use of *your covered auto*;

**Funeral expenses** means funeral, burial or cremation expenses incurred;

**Insured** means *you*, *your* spouse or a *family member* who resides in the same household as *you* including those who usually make their home in the same household but temporarily live elsewhere, or any person using the described *motor vehicle* with the permission, either expressed or implied, of the owner;

**Your covered auto** means a *motor vehicle* with respect to which

- (a) the bodily injury liability insurance of the policy applies and for which a specific premium is charged, and
- (b) the *named insured* is required to maintain security under the provisions of Title 41, Chapter 12a Utah Code Ann.

**Medical expenses** means the reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitation services, including prosthetic devices, necessary ambulance, hospital and nursing services, and any non-medical remedial care and treatment rendered in accordance with a recognized religious method of healing; however, it does not include expenses in excess of those for a semi-private room, unless more intensive care is medically required;



**Motor vehicle** means every self-propelled vehicle which is designed for use on a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails;

**Named insured or you** means the person or organization in the declarations;

**Occupying** means being in or upon a *motor vehicle* as a passenger or operator or engaged in the immediate act of entering, boarding or alighting from a *motor vehicle*;

**Pedestrian** means any person not *occupying* or riding upon a *motor vehicle*;

**Relative** means a spouse or any other person related to *you* by blood, marriage or adoption (including a ward or foster child) who is a resident of the same household as the *named insured*, or who usually makes his home in the same household but temporarily lives elsewhere;

**Survivor loss** means compensation on account of the death of the *eligible injured person*;

**Work loss** means (a) loss of income and loss of earning capacity by the *eligible injured person* during his lifetime, from inability to work during a period commencing three days after the date of the *bodily injury* and continuing for a maximum of 52 consecutive weeks thereafter, provided that if such *eligible injured person's* inability to work shall so continue for in excess of a total of two consecutive weeks after the date of the *bodily injury*, this three day elimination period shall not be applicable; and (b) an allowance for services actually rendered or expenses reasonably incurred that, but for the *bodily injury*, the *eligible injured person* would have performed during his lifetime for his household commencing three days after the date of the *bodily injury* and continuing for a maximum of 365 consecutive days thereafter, provided that if such *eligible injured person's* inability to perform such services shall continue for in excess of two consecutive weeks after the date of the *bodily injury*, this three day elimination period shall not be applicable.

### Policy Period; Territory

This coverage applies only to accidents which occur during the policy period and within the United States of America, its territories or possessions, or Canada.

### Limits of Liability

Regardless of the number of persons insured, policies or bonds applicable, claim made, or *covered autos* to which this coverage applies, our liability for personal injury protection benefits with respect to *bodily injury* sustained by any one *eligible injured person* in any one *motor vehicle* accident, is limited as follows:

1. the maximum amount payable for *medical expenses* shall not exceed \$3,000;
2. the maximum amount payable for *work loss* is
  - (a) eighty-five percent of any loss of gross income and earning capacity, not to exceed the total of \$250 per week; For a maximum of 52 weeks after the loss.
  - (b) \$20 per day for inability to perform services for his household; For a maximum of 365 days after the loss.
3. the maximum amount payable for *funeral expenses* shall not exceed \$1,500;
4. the amount payable by us under the terms of this coverage shall be reduced by the amount paid, payable, or required to be provided on account of such *bodily injury*
  - (a) under any workmen's compensation plan or any similar statutory plan;
  - (b) by the United States or any of its agencies because of his or her being on active duty in the military services.

### Conditions

- A. **Action Against Company.** No action shall lie against us unless as a condition precedent thereto, there shall have been full compliance with all the terms of this coverage.
- B. **Notice.** In the event of an accident, written notice containing particulars sufficient to identify the *eligible injured person*, and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each *eligible injured person* to us or any of our authorized agents as soon as practicable. If any *eligible injured person*, his legal representative or his survivors shall institute legal action to recover damages for *bodily injury* against a person or organization who is or may be liable in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to us by such eligible person, his legal representative, or his survivor.
- C. **Medical Reports: Proof of Claim.** As soon as practicable, the *eligible injured person* or someone on his behalf shall give to us written proof of claim, under oath if required, including full particulars of the nature and the extent of the injuries and treatment received and contemplated, and such other information as may assist us in determining the amount due and payable. The *eligible injured person* shall submit to physical and mental examinations by physicians selected by us when and as often as we may reasonably require.
- D. **Subrogation.** In the event of any payment under this coverage, we are subrogated to the rights of the person to whom or for whose benefit such payments were made, to the extent of such payments, and such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights.

- E. Reimbursement and Trust / Assignment.** In the event of any payment to any person under this coverage:
1. we shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the *bodily injury* because of which such payment is made and we shall have a lien to the extent of such payment, notice of which may be given to the person or organization causing such *bodily injury*, his agent, his insurer or a court having jurisdiction in the matter;
  2. such person shall hold in trust for the benefit of us all rights of recovery which he shall have against such other person or organization because of such *bodily injury*;
  3. such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
  4. such person shall execute and deliver to us instruments and papers as may be appropriate to secure the rights and obligations of such person and us established by this provision.
- F. Non-Duplication of Benefits; Other Insurance.** The following provisions apply:
1. No *eligible injured person* shall recover duplicate benefits for the same elements of loss under this or any other insurance.
  2. This insurance is primary only for *bodily injury* sustained by an *eligible injured person* in an accident arising out of the use or operation of an *insured motor vehicle*.
  3. If an *eligible injured person* is entitled to similar benefits under more than one policy, the maximum amount recoverable under all policies combined shall not exceed the amount payable under the policy with the highest dollar limit. Our share is the proportion that our limit of liability bears to the total of all applicable limits on the same basis.

## SECTION II

Personal Injury Protection benefits paid or payable under this or any other auto insurance policy because of *bodily injury* sustained by an *eligible injured person* shall be primary to any Medical Payments Coverage provided under this policy.

## SECTION III

The premium for the policy is based on rates which have been established in reliance upon the limitations on the right to recover for damages imposed by the provisions of Title 31A, Utah Code Ann. In the event a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of such act invalid or unenforceable in whole or in part, we shall have the right to recompute the premium payable for the policy and the provisions of this endorsement shall be voidable or subject to amendment at our option.

CE-59 (4/93)

## UNDERINSURED MOTORIST COVERAGE ENDORSEMENT

### UNDERINSURED MOTORIST COVERAGE

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

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

Determination of whether an *insured* is legally entitled to recover damages or the amount of the damages shall be made by agreement between that person and us. If suit is brought to determine legal liability or amount of damages without our written consent, we are not bound by any resulting judgment.

Insured as used in this Part means:

1. *You* or any *family member*, including those who usually make their home in the same household but temporarily live elsewhere;
2. Any other person *occupying your car*.
3. Any person who is entitled to recover damages from the owner or operator of the *underinsured motor vehicle* because of bodily injury to persons listed in (1) or (2).

*Underinsured motor vehicle* means a vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

However *underinsured motor vehicle* does not include any vehicle:

1. The operation, maintenance, or use of which is not covered under a liability policy or bond.
2. Covered with lower liability limits than required by the Financial Responsibility Law of Utah Section 31A-22-304.
3. That is unidentifiable that left the scene of the accident proximately caused by the vehicle operator.

4. That is insured by a liability policy but the insuring company is declared insolvent by a court of competent jurisdiction.
5. Owned by or furnished or available for the regular use of *you* or any *family member*.
6. Owned by any governmental unit or agency.
7. Operated on rails or crawler treads.
8. Which is a farm type tractor or equipment designed mainly for use off public roads while not on public roads.
9. While located as a residence or premises.

### **EXCLUSIONS**

- A. We do not provide Underinsured Motorists Coverage for *bodily injury* sustained by any person:
  1. If that person or the legal representative settles the *bodily injury* claim without our consent.
  2. While *occupying your car* when it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.
  3. Using a vehicle without your permission or not within the scope of your permission.
  4. While *occupying*, operating, or maintaining any vehicle not licensed for use on public roads.
  5. While "*occupying*," or when struck by, any motor vehicle owned by you or any "*family member*" which is not insured for this coverage under this policy. This includes a trailer of any type used with this vehicle.
  6. While *occupying*, operating, or maintaining a motorcycle.
- B. We will not pay for exemplary or punitive damages.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any worker's or workmen's compensation law.

### **LIMIT OF LIABILITY**

Regardless of the number of covered *cars*, policies of insurance with our company or others, claims made or vehicles involved in the accident, our limit of liability is as follows:

1. The most we will pay for all damages resulting from *bodily injury* to any one person caused by any one accident is the limit shown in the Declarations for "each person."
2. Subject to the limit for "each person," the most we will pay for all damages resulting for *bodily injury* caused by any one accident is the limit shown in the Declarations for "each accident."
3. The limit of liability for *underinsured motorist coverage* for two or more *motor vehicles* may not be added together, combined, or stacked to determine the limit of insurance coverage available to an insured person for any one accident.

Any amounts otherwise payable for damages under this coverage shall be excess of:

1. all sums paid because of the *bodily injury* by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under the Liability Coverage of this policy, and
2. all sums paid or payable because of the *bodily injury* under any worker's or workmen's compensation, disability benefits law.

Any payment under this coverage to or for a *covered person* will reduce any amount that person is entitled to recover under the Liability Coverage of this policy.

### **OTHER INSURANCE**

If *you* are injured while occupying *your car*, *you* may not elect to collect *underinsured motorist coverage* benefits from any other *motor vehicle* insurance policy under which *you* are covered unless coverage is not available under this policy.

If *you* are injured as a pedestrian or while occupying a vehicle other than *your car*, *you* may elect the policy under which *you* collect underinsured motorist benefits.

### **TRUST AGREEMENT/SUBROGATION**

If we pay you for loss under this coverage:

1. We are entitled to recover from you an amount equal to such payment if there is a legal settlement made on your behalf against any person or organization legally responsible for the *bodily injury*.
2. You must hold in trust for us all rights which you have to recover money from any person or organization legally responsible for *bodily injury*.
3. You must do everything proper to secure our rights and do nothing to prejudice these rights.
4. If we ask you in writing, you shall take the necessary or appropriate action, through a representative designated by us, to recover payment as damages from the responsible person or organization. If there is a recovery, then we shall be reimbursed out of the recovery for expenses, costs and attorney's fees incurred in connection with this recovery.

5. You must execute and deliver to us any legal instruments or papers necessary to secure the rights and obligations of you and us as established here.

### NOTICE

You may reject Underinsured Motorist Insurance by providing a written request. Such a rejection request is continuous until you request, in writing, Underinsured Motorist Insurance.

CE-61 (4/93)

## PROPERTY DAMAGE UNINSURED MOTORIST COVERAGE ENDORSEMENT - UTAH

In return for payment of premium for this coverage and subject to all the terms of the policy that apply, we agree with you as follows:

We will pay compensatory damages which you are legally entitled to recover from the owner or operator of an *uninsured motor vehicle* because of *property damage* caused by an accident. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the *uninsured motor vehicle*. Any judgment for damages arising out of a suit brought without our consent is not binding on us.

Your *covered auto* means a *motor vehicle* with respect to which

- (a) the *bodily injury* liability insurance of the policy applies and for which a specific premium is charged, and
- (b) the *named insured* is required to maintain security under the provisions of Title 41, Chapter 12a Utah Code Ann.

*Property damage* as used in this endorsement means injury to or destruction of your *covered auto*. However, *property damage* does not include loss of use of your *covered auto*.

*Uninsured motor vehicle* as used in this endorsement means a land *motor vehicle* or trailer of any type, that hits your *covered auto* and whose owner, operator or license number can be identified.

- A. To which no liability bond or policy affording coverage for *property damage* applies at the time of the accident; or
- B. To which a liability bond or policy affording coverage for *property damage* applies at the time of the accident but the bonding or insuring company:
  - (a) denies coverage; or
  - (b) becomes insolvent; or
  - (c) becomes voluntarily or involuntarily bankrupt; or
  - (d) is placed in receivership.

However, *uninsured motor vehicle* does not include any vehicle or equipment:

- 1. Owned by or furnished or available for the regular use of you or any *family member*.
- 2. Owned or operated by a self-insurer under any applicable *motor vehicle* law, except a self-insurer which is or becomes insolvent.
- 3. Owned by any governmental unit or agency.
- 4. Operated on rails or crawler treads.
- 5. Designed mainly for use off public roads while not on public roads.
- 6. While located for use as a residence or premises.

### EXCLUSIONS

- A. We do not provide Uninsured Motorist Coverage for *property damage*.
  - 1. To any *motor vehicle* owned by you or any *family member* which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
  - 2. If you or your legal representative settles the *property damage* claim without our consent.
  - 3. When your *covered auto* is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
  - 4. For the first \$250 of the amount of *property damage* to each of your *covered autos* as the result of an accident.
  - 5. When your *covered auto* is being used by a person without a reasonable belief that that person is entitled to do so.
- B. This coverage shall not apply directly or indirectly to benefit any insurer of property.
- C. We do not provide Property Damage Uninsured Motorists Coverage for punitive or exemplary damages.

## **LIMIT OF LIABILITY**

The limit of liability for this coverage is \$3,500.00. It is our maximum limit of liability for all damages resulting from any one accident. Subject to this maximum, our limit of liability will be the lesser of:

1. The actual cash value of the damaged property; or
2. The amount necessary to repair or replace the property:

This is the most we will pay regardless of the number of:

1. Claims made;
2. Vehicles we insure or premiums shown in the Declarations; or
3. Vehicles involved in the accident.

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of loss.

Any amounts otherwise payable for damages under this coverage shall be reduced by all sums paid because of the *property damage*:

1. By or on behalf of persons or organizations who may be legally responsible.
2. Under any similar coverage under any other policy.

## **OTHER INSURANCE**

Any coverage provided by this Endorsement is excess to any other insurance covering *property damage* to *your covered auto*.

## **ARBITRATION**

This provision does not apply if a small claims court having jurisdiction resolves the matter or matters upon which the parties do not agree.

A. If we and an insured do not agree:

1. Whether that person is legally entitled to recover damages under this endorsement; or
2. As to the amount of damages;

then the matter may be arbitrated. However, both parties must agree to arbitration and to be bound by the results of that arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs, and
2. Bear the expense of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in either of the following, at the election of the insured:

1. The county and state where the insured resides; or
2. The county and state where the insured's cause of action against the operator or owner of the *uninsured motor vehicle* arose.

Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

## **ADDITIONAL DUTIES AFTER AN ACCIDENT OR LOSS**

A person seeking Property Damage Uninsured Motorist Coverage, or someone on that person's behalf, must also:

1. Report the accident within 10 days to us or our agent.
2. Promptly send us copies of the legal papers if a suit is brought.