

1986

# Metropolitan Property and Liability Insurance Company v. Neal W. Finlayson, Lee Childs, Michelle Childs : Brief of Respondent

Utah Supreme Court

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 860204-CA

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

METROPOLITAN PROPERTY &  
LIABILITY INSURANCE COMPANY,  
Plaintiff,

vs.

NEAL W. FINLAYSON, individually  
and LEE CHILDS individually and  
as Guardian ad litem of  
MICHELLE CHILDS, a minor,  
Defendants.

Appeal No. 860274

860204-CA

BRIEF OF RESPONDENT METROPOLITAN PROPERTY & LIABILITY  
INSURANCE COMPANY

Appeal from the Judgment of the  
Third Judicial District Court, Salt Lake County,  
the Honorable David B. Dee, District Judge, Presiding.

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**FILED**

DEC 5 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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METROPOLITAN PROPERTY &	)	
LIABILITY INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Appeal No. 860274
	)	
NEAL W. FINLAYSON, individually	)	
and LEE CHILDS individually and	)	
as Guardian ad litem of	)	
MICHELLE CHILDS, a minor,	)	
	)	
Defendants.	)	
	)	

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### STATEMENT OF THE ISSUE

The issue on this appeal is whether the Trial court erred in denying defendant Child's Motion for Summary Judgment and/or in granting plaintiff Metropolitan's Motion for Summary Judgment by its Order dated April 18, 1986.

### STATEMENT OF THE CASE

This action arises from an automobile accident which occurred on or about March 30, 1982. At the time of the accident, defendant Neal W. Finlayson (hereinafter "Mr. Finlayson") was operating a 1978 Chevrolet pick-up truck owned by his employer, FINCO Brothers, Inc. The accident resulted in the death of Michelle Childs and bodily injury to Michael D. Barton.

The insurance carrier for FINCO Brothers, Inc. (hereinafter "FINCO") made payment to the estate of Michelle Childs and payment to Michael D. Barton for the death of Childs and the injuries to Barton. Thereafter, Childs and Barton sought additional recovery under the personal automobile insurance policy issued to Neal W. Finlayson and his wife by Metropolitan.

The automobile insurance policy issued to Neal W. Finlayson and his wife listed certain automobiles to which the policy of insurance applied. The pick-up truck being driven by Neal W. Finlayson at the time of the accident was not a listed vehicle. The insurance policy also extended coverage to certain "non-owned" autos. The term "non-owned automobile" was defined in the policy as meaning:

"(A)n automobile which is neither owned by nor furnished nor available for the regular use of either the named insured or any relative, other than a temporary substitute automobile . . ."

The insurance policy also excluded coverage to a non-owned automobile:

"(W)hile maintained or used by any person while such person is employed or otherwise engaged in any other business or occupation . . ."

A declaratory action was instituted by Metropolitan to determine whether coverage was afforded to Mr. Finlayson for this accident. After discovery had been completed, stipulated facts were agreed upon by the parties. Motions for Summary Judgment were submitted to the trial court. The Honorable David B. Dee, after having considered the Motion of each party and after having received oral argument on the issues, entered his Order denying the Motion for Summary Judgment submitted by Defendants and granting the Motion for Summary Judgment submitted by Metropolitan. From this Order, the Defendant-Childs, appealed.

#### FACTS

A Stipulated Statement of Facts was agreed upon by the parties. These facts are attached to the Appendix as Exhibit A. However, for continuity, the facts are recited verbatim as follows:

1. On or about November 18, 1980, Neal and Terri Finlayson applied for insurance coverage with plaintiff Metropolitan Property & Liability Insurance Company. The policy of insurance was to be effective as of November 27, 1980.

2. Coverage was bound as of November 27, 1980, subject to the terms and conditions of the automobile policy in current use by Metropolitan.

3. When the policy was actually issued, the Declaration Sheet described the "owned automobile" as a 1980 Chevrolet Monte Carlo, vehicle number 1237KAK448161.

4. Defendant Neal W. Finlayson was involved in an automobile accident which occurred on or about March 30, 1982 on Indiana Avenue (850 South 2067 West), Salt Lake City, Utah.

5. At the time of the accident, defendant Finlayson was operating a 1978 Chevrolet pick-up truck owned by his employer FINCO Brothers, Inc.

6. At the time of the accident, Thomas Hugh Finlayson, a brother of Neal W. Finlayson, was a passenger in the vehicle being operated by Neal W. Finlayson.

7. FINCO Brothers, Inc., is a closely held Utah corporation engaged in the excavating and general contracting business.

8. Most of the stock in FINCO Brothers, Inc. is owned by Neal Finlayson's parents, Mr. and Mrs. Finlayson; Mr.



Finlayson's sons, including defendant Neal Finlayson, each owned a small number of shares.

9. Neal Finlayson was a mechanic and laborer with FINCO Brothers, Inc.

10. As a part of his official duties with FINCO Brothers, Inc., Neal Finlayson moved around wherever mechanical work needed to be done.

11. Although the corporate offices of FINCO Brothers, Inc., are registered at Max Finlayson's home at 3179 West 7550 South, West Jordan, Utah, FINCO Brothers, Inc. has an office located at 2401 Directors Road, Salt Lake City, Utah.

12. Neal Finlayson does not have an office at the Directors Road location. Rather, he works out of the pick-up truck.

13. Neal Finlayson stored tools necessary for company work in the 1978 Chevrolet pick-up truck.

14. Certain vehicles, including the accident pick-up owned by FINCO Brothers, Inc., were made available for employees to use for business purposes, including driving to and from work.

15. At the time defendant Neal Finlayson began his employment with FINCO during the year 1978, he was provided by the employer with a 1974 Chevrolet pick-up truck for the same purposes as the accident vehicle. Eight or nine months prior to

March 30, 1982, the 1974 Chevrolet pick-up truck was replaced by the employer with a 1978 Chevrolet pick-up truck. At the time the Chevrolet pick-up trucks were acquired by the employer, the employer directed that the corporate vehicles provided to defendant Neal Finlayson and other employees were to be used only for company purposes and that they were not for personal use.

16. Neal Finlayson was the primary operator of the 1978 Chevrolet pick-up truck.

17. Although some of the vehicles of FINCO Brothers, Inc., were stored at the company lot when not in use, the 1978 Chevrolet pick-up truck was stored at Neal Finlayson's home along with his personal vehicles.

18. During the four year period of his employment prior to March 30, 1982, on two occasions defendant Neal Finlayson used the company truck for personal purposes after receiving prior express permission from the employer. Once or twice Neal Finlayson had used the pick-up truck without permission for local errands. Those occasions are the only known instances of personal use of the company vehicle during that period of time by defendant Neal Finlayson. It was Neal Finlayson's understanding that any personal use of the vehicle required the prior consent or permission of FINCO Brothers, Inc.'s management. Permission had never been refused when requested.

19. Max Finlayson considered Neal's use of the truck to take him to his job and back home from the job to be part of the authorized business use.

20. As part of his business duties, Neal was required to work eight hours each day. The only time he could depart from business activities during those hours was when he obtained prior permission from Max Finlayson.

21. The morning of the accident, March 30, 1982, Tom and Neal Finlayson rode to work together in the accident vehicle.

22. March 30, 1982 was a slow work day for the defendant Neal Finlayson and his brother Tom. At approximately noon, those two, with Neal Finlayson driving, drove the 19787 Chevrolet pick-up truck from the FINCO shop at 2401 West Director's Row (1100 South), Salt Lake City, Utah, to a tavern known as "The Animal House" located near State Street and 900 South in Salt Lake City, Utah.

23. The Finlayson brothers had been directed by Max Finlayson to go to the shop to do some additional work. They decided to stop at the tavern to have a sandwich and say hello to Tom Finlayson's friend Bob, the bartender.

24. The Finlayson brothers spent approximately four hours at the tavern and both consumed a substantial but unknown quantity of beer while there.

25. The afternoon drinking sojourn at the bar was not known to or authorized by the employer, although the employer was aware that the Finlayson Brothers would stop somewhere for lunch.

26. The Finlayson brothers decided to take the rest of the day off and go home. On the way the accident occurred.

27. As a result of the accident, a civil action has been filed against Neal Finlayson, FINCO Enterprises, Max Finlayson, and John Doe I by Michael B. Barton and Lee Childs, individually and as guardian ad litem of Michelle Childs, a minor, for injuries sustained by Michael B. Barton and for the wrongful death of Michelle Childs.

In addition to these stipulated facts, the following facts ascertained by discovery, may be helpful to this court:

28. Not only was Neal Finlayson the primary operator of the 1978 Chevrolet pick-up truck, (Fact 16), he drove the truck to and from work "every day" and considered it "his work truck". (Tom Finlayson depo. pg. 9, lines 22-23).

29. Although some of FINCO Brothers, Inc. vehicles were stored at the company lot, Neal Finlayson took the 1978 Chevrolet pick-up truck to his house at night (Max Finlayson depo. pg. 24, lines 14-16).

30. Neal had been taking a company truck home at night since the inception of FINCO Brothers, Inc. (Max Finlayson depo. pg. 28, lines 6-8).

31. When the Finlayson brothers decided to take the rest of the day off and go home (Fact 26), they decided to go home by way of the other shop. (Tom Finlayson depo. pg. 20, lines 4-5). Their intent was to see if anyone was at the other shop (Tom Finlayson depo. pg. 20, line 10). On the way to the shop, the accident occurred. (Tom Finlayson depo. pg. 20, line 25).

#### SUMMARY OF ARGUMENTS

1. The 1978 Chevrolet pick-up truck was not an owned vehicle which was listed on the policy and for which a premium was charged.

2. The 1978 Chevrolet pick-up truck was not a "non-owned" vehicle, as described in the policy, because it was furnished or available (and actually used) for the regular use of Mr. Finlayson.

3. The 1978 Chevrolet pick-up truck was being used by Mr. Finlayson within the scope, course, and authorization of his business use.

#### POINT I

THE 1978 CHEVROLET PICK-UP TRUCK WAS NOT AN OWNED  
VEHICLE WHICH WAS LISTED ON THE METROPOLITAN  
INSURANCE POLICY

The policy of insurance issued by Metropolitan to Mr. Finlayson (attached hereto in the Appendix as Exhibit B) provides, in relevant part:

Metropolitan will pay on behalf of the  
insured all sums which the insured shall

become legally obligated to pay as damages because of bodily injury sustained by other persons, and property damage caused by an occurrence, arising out of the ownership, maintenance or use, including loading or unloading, of the owned automobile, or a non-owned automobile . . .

The term "owned automobile" is defined in the insurance policy as:

(a) A private passenger automobile or utility automobile owned by the named insured and described in the declarations to which the automobile liability coverage of the policy applies and for which a specific premium for such insurance is charged . . .

In this case it is not asserted by Mr. Neal W. Finlayson (hereinafter "Mr. Finlayson") that he owned the 1978 Chevrolet pick-up truck. In fact, it was stipulated (Fact No. 5) that the truck was owned by FINCO Brothers, Inc. However, it is important to note that on the Application for Insurance (attached hereto in the Appendix as Exhibit C) Mrs. Finlayson listed as the described automobile a 1980 Chevrolet Monte Carlo. In the "Remarks" section of the application, Mrs. Finlayson indicated that:

"Also owns a Mustang which Mrs. drives to work and will be added when it comes due.

Mr. drives a company truck to work."

Coverage on the company pick-up truck was never requested under the Metropolitan insurance policy, and coverage was never extended to the pick-up truck. Further, no premium was charged for coverage to extend to the company pick-up truck.

## POINT II

THE 1978 CHEVROLET PICK-UP TRUCK WAS NOT A "NON-OWNED VEHICLE", AS DESCRIBED IN THE POLICY, BECAUSE IT WAS FURNISHED OR AVAILABLE (AND ACTUALLY USED) FOR THE REGULAR USE OF MR. FINLAYSON.

The term "non-owned automobile" is also defined in the policy. The policy states:

"Non-owned automobile" means an automobile which is neither owned by nor furnished nor available for the regular use of either the named insured or any relative, other than a temporary substitute automobile, and includes a utility trailer while used with such automobile.

Coverage can only be afforded to Mr. Finlayson if he is able to establish that the 1978 Chevrolet pick-up truck constitutes a "non-owned automobile" and does not fall within another exclusion of the policy.

The terms "furnished", "available" and "regular use" have been subject to examination by many courts in an attempt to apply their meaning to a particular set of circumstances. The courts have recognized that the terms have different meanings. The term "furnished" connotes actual utilization of the vehicle whereas the term "available" has been construed to "require that the potential use of the automobile be to a substantial degree under the control of the insured". Wagoner v. Wilson, Colo. 507 P.2d 482 (1973) at 485. The term "regular use" has been held to be not ambiguous as a matter of law and "taken in its plain,

ordinary sense is easily understood by the insured to mean that no coverage exists on cars that he or his family may have the right to use regularly". Farmers v. Zumstein, Ariz. App., 675 P.2d 729 (1983).

It is clear that the pick-up truck being driven by Mr. Finlayson at the time of the accident which is the subject of this lawsuit was both "furnished" and "available" for his "regular use" prior to the accident on March 30, 1982. The truck was "furnished" to Neal Finlayson by FINCO Brothers, Inc., for daily use in his work. Mr. Finlayson drove the vehicle to and from work each day. Mr. Finlayson stored his tools in the truck. Mr. Finlayson was the primary operator of the pick-up truck. Because of the nature of his job, he did not need an office. Rather, he "just works out of his truck" (Max Finlayson depo. pg. 14, lines 21-24). In this sense, therefore, the 1978 Chevrolet pick-up truck was furnished to Neal Finlayson and was used by him on a daily basis.

The truck was also "available" to Mr. Finlayson for his use. There was no physical limitation on that use. He was in possession of the vehicle and the keys to the vehicle at all times both during and after work. The truck was stored at his home in the evenings. Mr. Finlayson had used the vehicle on several occasions for personal trips. He occasionally used the truck to run personal errands without obtaining prior permission.



and used the truck to haul lumber from a lumber yard for fencing at his home and used the truck to take a personal trip to Albuquerque, New Mexico. Mr. Finlayson was never refused permission to use the pick-up truck.

Several cases have considered the factual situation wherein an employee uses a company vehicle. In considering whether or not the use of a company car constitutes a "regular use", the courts have addressed the same issues applicable in this case. In Benjamin v. Plains Insurance Company, U.S.C.A. 5th, 650 F.2d 98 (1981) a plaintiff was injured when a vehicle, owned by an employer, was being operated by the daughter of an employee. The vehicle had been furnished to the employee as a "demonstrator". The employee was allowed to drive the vehicle to and from work. It was understood between the employee and the employer that the vehicle was not to be used for personal business. When an accident occurred while the vehicle was being operated by the daughter of the employee, the insurance company which had issued an insurance policy to the employee individually, denied liability under its policy. In addressing the "regular use" of the "non-owned automobile" portion of the policy, the court stated:

It is well established that the purpose of this provision creating an exception to coverage of non-owned vehicles in automobile insurance policies is to make certain that the insured properly pays premiums on all of the vehicles which are regularly used and

therefore are covered by the policy. The non-owned exception, as well as other exceptions involving replacement cars, rental cars, etc., are designed as a convenience to the insured to enable coverage in the case of occasional and sporadic use of such vehicles. To cover a non-owned vehicle regularly used by an insured would cause the insurance company to have to insure vehicles for which the insured did not pay insurance premiums. Douglas Largin (the employee) did not list his vehicle as one of the family cars insured on this family liability policy. Yet, he used it daily.

It is the clear intent of such provisions to protect the insurance companies from inadequate premiums for the automobiles which they cover. See in general 6C Appleman Insurance, Section 4455, which states at page 552:

The purpose of a "drive other cars" clause is to provide coverage to an insured and others for the occasional and infrequent driving of vehicles other than those insured by the policy. It is not designed to relieve the insured of the necessity of paying premiums upon vehicles regularly used by him. 650 F.2d 98, at 100.

The court continued:

Largin was in the car everyday, driving to and from work, and driving as he needed to in connection with his duties as sales manager. This is not the unusual, temporary or sporadic use contemplated in the policy as a justification for coverage of the non-owned vehicle. Rather, it is regular, day by day use and thus falls within the exception of coverage to non-owned vehicles in this automobile liability policy. 650 F.2d 98 at 101.

As in the Benjamin case, Mr. Finlayson was in his truck everyday, driving to and from work, and driving as he needed to in connection with his duties as a mechanic and laborer with FINCO Brothers, Inc. His use of the truck was not the unusual, temporary or sporadic use contemplated in the policy as a justification for coverage of the non-owned vehicle. Rather, it was the regular, day by day use excluded by the policy.

Another case which involved the daily use of a company vehicle by an employee was Seaboard Fire & Marine Insurance Company v. Gibbs, 4th Cir., 392 F.2d 793 (1968). In Seaboard, the employee was supplied with a company vehicle for his daily use. The car was sometimes left with the employee overnight and on weekends. The court held that the "non-owned vehicle" exclusion of the employee's personal liability policy excluded coverage for injuries caused by the employee while driving the company vehicle.

Similarly, in Federated American Insurance Company v. Hargrove, 3 Wash. App. 541, 475 P.2d 913 (1970), the court affirmed the trial court's denial of coverage under an employee's personal automobile liability policy where the employee was involved in an accident while he was driving for his employer. Considering a policy provision very similar to the one at issue in this case, the court, in upholding summary judgment in favor of the insurance company, held that the truck was owned by the

driver's employer and that it was furnished for his regular and frequent use on the job. Since it was furnished for the insured's regular and frequent use, it came within the exclusion of the policy, even though it was furnished for the specific purpose of pursuing work for the employer. The court stated:

We are satisfied from an examination of the records that there is no question but that the truck was owned by Fife Lumber and was furnished for the regular and frequent use of the appellant Hargrove. Since it was furnished for the regular and frequent use of the insured, the truck did not qualify as a non-owned vehicle under the conditions of the policy. 475 P.2d 912 at 913.

Another case with similar facts and policy provisions is Kern v. Liberty Mutual Insurance Company, 8th Cir., 398 F.2d 958 (1968). In Kern, the insured was a licensed chauffeur who, as one of his duties, drove a vehicle owned by the Ferguson Church of the Nazarene over a scheduled route, on a temporary or fill in basis in the absence of the regular chauffeur. The substitute driving occurred quite frequently-sometimes two or three days a week. The insured had never used the vehicle for personal or private purposes, or for any purpose other than as stated. In addressing the issue of whether the vehicle under the circumstances was furnished or available for the insured's regular use, the court, in upholding judgment in favor of the insurance company, said:

We have no hesitancy in expressing complete agreement with the trial court that

such non-owned vehicle was excluded from coverage under the policy because it was "furnished or available for the regular use of the insured". 398 F.2d 958 at 962.

In Kern, the insured used the church vehicle much less frequently than Mr. Finlayson used the FINCO Brothers, Inc. pick-up truck. The Kern insured used the vehicle two or three times a week whereas Mr. Finlayson used his vehicle daily. The Kern insured, without dispute, used the vehicle only for church business whereas Mr. Finlayson also used his truck for personal use occasionally. Even under the more restrictive use of the vehicle by the Kern insured, the court found that his personal liability automobile policy did not extend to the accident.

In this case, testimony has been offered by Mr. Finlayson, and his relatives, that Mr. Finlayson had almost exclusive use of the truck (Max Finlayson depo. pg. 54; Neal Finlayson depo. pg. 19-20); he used the truck daily to go to and from work as well as doing work on the job; that he had blanket authority to use the vehicle for the purposes of employment and to get to and from work; that at the time of the accident, the defendant was supposed to be going to the shop, taking the company truck as was his usual custom. At the least, he was returning home from his employment.

The common element of the above-cited cases is not whether the vehicle is actually used for business as opposed to

personal purposes, but the regularity and availability of the vehicle for any use. If the insured drives an employer supplied vehicle on a regular basis, the non-owned vehicle exclusion encourages the employer to supply sufficient liability insurance to protect the public and his employees. In this case, the insurance policy applying to the FINCO truck did pay its benefits. The defendants, however, are seeking additional recovery. The contract made by Mr. Finlayson with Metropolitan was only intended to afford liability coverage for Mr. Finlayson's personal vehicles as listed in the insurance policy or as temporarily replaced. It is evident from both the policy provisions and the judicial interpretations of similar provisions, that Mr. Finlayson's use of the vehicle at the time of the accident is excluded from coverage under the Metropolitan policy.

### POINT III

THE 1978 CHEVROLET PICK-UP TRUCK WAS BEING USED  
BY MR. FINLAYSON WITHIN THE SCOPE, COURSE, AND  
AUTHORIZATION OF HIS BUSINESS USE.

The Metropolitan Insurance policy issued to Mr. Finlayson also excludes from coverage use of a vehicle while the insured is employed or otherwise engaged in a business or occupation. The policy states:

This policy does not apply . . . under the automobile liability coverage and, except with respect to bodily injury through being struck by an automobile, under the automobile medical expense coverage:

(f) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any other business or occupation, but this exclusion does not apply to a private passenger automobile operated or occupied by the named insured or his private chauffeur or domestic servant, or a utility trailer used therewith.

The testimony of the Finlaysons clearly establishes that Mr. Finlayson was employed at the time of the March 30, 1982 accident. The truck was used by Mr. Finlayson in the regular course of the FINCO business. Max Finlayson considered Mr. Finlayson to be on duty at all times, including his trips to and from work (Max Finlayson depo. pg. 35). Mr. Finlayson was required to take his truck home in order to answer calls for assistance from drivers of the corporation long haul rig (Max Finlayson depo. pg. 24). The truck was the repository for the tools Neal might need doing work for the corporation.

It is also evident from the testimony of the deponents that the truck was supplied for the benefit of the employer. Because of the nature of defendant Finlayson's work with FINCO Brothers, he was required to have a vehicle available at all

times to service other vehicles owned by the corporation and to go to numerous job sites maintained by the corporation (Neal Finlayson depo. pg. 14; Max Finlayson depo. pgs. 24 and 28). All of these factors indicate that the truck was to be used while Mr. Finlayson was employed.

Just prior to the accident, Mr. Finlayson testified that he had finished work at the AFR Bean Plant located at 2401 West 1100 South at about 11:00 a.m. Max Finlayson told him there was additional work at FINCO storage area (Neal Finlayson depo. pg. 27; Max Finlayson depo. pg. 38). Mr. Finlayson informed Max Finlayson (his father) that he would stop for something to eat and then proceed to the shop (Neal Finlayson depo. pg. 25; Max Finlayson depo. pg. 38). Mr. Finlayson and his brother stopped at the bar. Tom Finlayson stated that he and his brother left the bar and "proceeded to go home by way of the other shop, you know, to see if anybody was there", (Tom Finlayson depo. pg. 20). The insurance policy which applied to the vehicle owned by the employer, has already paid substantial monies in this case under the business insurance policy.

There can be no question but that the defendant Finlayson under these facts was driving the truck at the time of the accident while employed. The truck was provided to him not only for travel between jobs, but also for his travel to and from



work. At the time of the accident, Mr. Finlayson and his brother were heading home by way of the other shop.

#### CONCLUSION

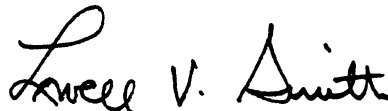
It is clear, therefore, that the 1978 pick-up truck being operated by Mr. Neal Finlayson at the time of this accident was not an owned automobile nor a non-owned automobile within the meaning of the Metropolitan Property and Liability Insurance Company policy issued to Neal Finlayson. Mr. Finlayson did not own the vehicle nor did he list the vehicle on the declaration sheet of the insurance policy. He paid no premium for insurance to extend to that vehicle. Further, the pick-up truck was made available for Mr. Finlayson's use, and was furnished for his use on a daily basis. He was the primary operator of that truck. He stored his tools in the truck. He not only used the truck to go between jobs, but used it to go to and from work each day. There were no physical limitations imposed on Mr. Finlayson's use of the truck. Moreover, at the time of the accident, Mr. Finlayson was using the truck within the normal course and scope of his employment as outlined by his employer. It was anticipated that he would use the truck to go to and from work daily. The truck would be parked at his home.

Wherefore, it is respectfully submitted that the trial court appropriate enter its judgment in favor of Metropolitan

Property and Liability Insurance Company and properly deny the Motion for Summary Judgment filed by defendant Childs.

DATED this 5<sup>th</sup> day of December, 1986.

HANSON, DUNN, EPPERSON & SMITH



LOWELL V. SMITH

Attorney for Metropolitan Property  
and Liability Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be mailed, postage prepaid, on this 5<sup>th</sup> day of December, 1986, a true and correct copy of the foregoing to the following:

Anthony M. Thurber  
Suite 735 Judge Building  
8 East Broadway  
Salt Lake City, UT 84111



## APPENDIX

EXHIBIT A

Anthony M. Thurber (#A3261)  
Attorney for Defendant Childs  
8 East Broadway, Suite 735  
Salt Lake City, Utah 84111  
(801) 533-0181

CLERK OF DISTRICT COURT  
SALT LAKE COUNTY  
JAN 10 1981  
*James P. [Signature]*

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

---

METROPOLITAN PROPERTY & LIABILITY INSURANCE COMPANY,	:	
	:	STIPULATED STATEMENT OF FACTS
Plaintiff,	:	
	:	Civil No. C82-8278
v.	:	
	:	Honorable David B. Dee
NEAL W. FINLAYSON, et al.,	:	
Defendants.	:	

---

Come now the parties above named by and through their attorneys of record, who hereby submit the following Stipulated Statement of Facts to be considered by the court in considering the parties' mutual motions for summary judgment:

1. On or about November 18, 1980, Neal and Terri Finlayson applied for insurance coverage with plaintiff Metropolitan Property & Liability Insurance Company. (See Application for Coverage, Exhibit "A"). The policy of insurance was to be effective as of November 27, 1980.

2. Coverage was bound as of Novemer 27, 1980, subject to the terms and conditions of the automobile policy in current use by Metropolitan.

3. When the policy was actually issued, the Declaration Sheet (Exhibit "C") described the "owned automobile" as a 1980 Chevrolet Monte Carlo, vehicle number 1237KAK448161. (Exhibit "C").

4. Defendant Neal W. Finlayson was involved in an automobile accident which occurred on or about March 30, 1982 on Indiana avenue (850 South 2067 West), Salt Lake City, Utah.

5. At the time of the accident, defendant Finlayson was operating a 1978 Chevrolet pickup truck owned by his employer FINCO Brothers, Inc.

6. At the time of the accident, Thomas Hugh Finlayson, a brother of Neal W. Finlayson, was a passenger in the vehicle being operated by Neal W. Finlayson.

7. FINCO Brothers, Inc., is a closely held Utah corporation engaged in the excavating and general contracting business.

8. Most of the stock in FINCO Brothers, Inc. is owned by Neal Finlayson's parents, Mr. and Mrs. Finlayson; Mr. Finlayson's sons, including defendant Neal Finlayson, each owned a small number of shares.

9. Neal Finlayson was a mechanic and laborer with FINCO Brothers, Inc.

10. As a part of his official duties with FINCO Brothers, Inc., Neal Finlayson moved around wherever mechanical work needed to be done.

11. Although the corporate offices of FINCO Brothers, Inc, are registered at Max Finlayson's home at 3179 West 7550 South, West Jordan, Utah, Finco Brothers, Inc. has an office located at 2401 Directors Road, Salt Lake City, Utah.

12. Neal Finlayson does not have an office at the Directors Road location. Rather, he works out of the pickup truck.

13. Neal Finlayson stored tools necessary for company work in the 1978 Chevrolet pickup truck.

14. Certain vehicles, including the accident pickup owned by FINCO Brothers, Inc., were made available for employees to use for business purposes, including driving to and from work.

15. At the time defendant Neal Finlayson began his employment with Finco during the year 1978, he was provided by the employer with a 1974 Chevrolet pickup truck for the same purposes as the accident vehicle. Eight or nine months prior to March 30, 1982, the 1974 Chevrolet pickup truck was replaced by the employer with a 1978 Chevrolet pickup truck. At the time the Chevrolet pickup trucks were acquired by the employer, the

employer directed that the corporate vehicles provided to defendant Neal Finlayson and other employees were to be used only for company purposes and that they were not for personal use.

16. Neal Finlayson was the primary operator of the 1978 Chevrolet pickup truck.

17. Although some of the vehicles of FINCO Brothers, Inc., were stored at the company lot when not in use, the 1978 Chevrolet pickup truck was stored at Neal Finlayson's home along with his personal vehicles.

18. During the four year period of his employment prior to March 30, 1982, on two occasions defendant Neal Finlayson used the company truck for personal purposes after receiving prior express permission from the employer. Once or twice Neal Finlayson had used the pick-up truck without permission for local errands. Those occasions are the only known instances of personal use of the company vehicle during that period of time by defendant Neal Finlayson. It was Neal Finlayson's understanding that any personal use of the vehicle required the prior consent or permission of FINCO Brothers Inc.'s management. Permission had never been refused when requested.

19. Max Finlayson considered Neal's use of the truck to take him to his job and back home from the job to be part of the authorized business use.

20. As part of his business duties, Neal was required to work eight hours each day. The only time he could depart from business activities during those hours was when he obtained prior permission from Max Finlayson.

21. The morning of the accident, March 30, 1982, Tom and Neal Finlayson rode to work together in the accident vehicle.

22. March 30, 1982 was a slow work day for the defendant Neal Finlayson and his brother Tom. At approximately noon, those two, with Neal Finlayson driving, drove the 1978 Chevrolet pick-up truck from the FINCO shop at 2401 West Director's Row (1100 South), Salt Lake City, Utah, to a tavern known as "The Animal House" located near State Street and 900 South in Salt Lake City, Utah.

23. The Finlayson brothers had been directed by Max Finlayson to go to the shop to do some additional work. They decided to stop at the tavern to have a sandwich and say hello to Tom Finlayson's friend Bob, the bartender.

24. The Finlayson brothers spent approximately four hours at the tavern and both consumed a substantial but unknown quantity of beer while there.


25. The afternoon drinking sojourn at the bar was not known to or authorized by the employer, although the employer was aware that the Finlayson Brothers would stop somewhere for lunch.




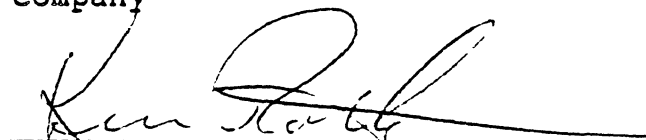
26. The Finlayson brothers decided to take the rest of the day off and go home. On the way the accident occurred.

27. As a result of the accident, a civil action has been filed against Neal Finlayson, FINCO Enterprises, Max Finlayson, and John Doe I by Michael B. Barton and Lee Childs, individually and as guardian ad litem of Michelle Childs, a minor, for injuries sustained by Michael B. Barton and for the wrongful death of Michelle Childs.

DATED this 27 day of <sup>June</sup>~~May~~, 1985.

  
ANTHONY M. THURBER  
Attorney for Defendant Childs

  
LOWELL V. SMITH  
Attorney for Metropolitan  
Property & Liability Insurance  
Company

  
KENNETH L. ROTHEY  
Attorney for Defendant Finlayson

(Signature not required)  
RICK D. HIGGINS  
Attorney for Neal Finlayson

EXHIBIT B



AUTOMOBILE INSURANCE POLIC



**Metropolitan Property and Liabil  
Insurance Company**

**Administrative Offices Warwick, Rhode Isl**

## WHERE TO FIND IT IN YOUR POLICY

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**PLACE YOUR DECLARATIONS HERE**

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**METROPOLITAN PROPERTY AND LIABILITY INSURANCE COMPANY**  
(A Stock Insurance Company, Herein Called METROPOLITAN)

In reliance upon the Declarations made a part hereof and subject to all of the terms of this policy and payment of the required premium, METROPOLITAN makes the following agreements with the insured named in Item 1 of the Declarations:

(NOTE: The words in bold-face type are defined under DEFINITIONS within various sections of the policy)

**SECTION I**  
**PERSONAL INJURY PROTECTION**

**COVERAGE A—Basic Personal Injury Protection Coverage—Statutory**

METROPOLITAN will pay promptly when due to or for the benefit of each eligible injured person or dependent survivor all basic personal injury protection benefits which such person is entitled by law to receive resulting from bodily injury, accidentally caused and arising out of the ownership, maintenance or use, including loading or unloading, of a motor vehicle as a motor vehicle.

**COVERAGE B—Additional Personal Injury Protection Coverage—Optional**

METROPOLITAN will pay promptly when due to or for the benefit of each person entitled thereto in accordance with the terms of the Additional Personal Injury Protection Endorsement issued to form a part of this policy additional personal injury protection benefits as specified in said endorsement for bodily injury with respect to which benefits are payable under COVERAGE A.

**EXCLUSIONS**

This insurance does not apply to bodily injury sustained by any person:

- (a) if such injury is suffered by him intentionally or as a result of intentionally attempting to cause bodily injury to another;
- (b) while using a motor vehicle which he had taken unlawfully, unless he reasonably believed that he was entitled to take and use such motor vehicle;
- (c) other than the named insured or any relative, while not occupying any motor vehicle, if the accident occurs outside of the state of registration of the owned automobile;
- (d) who is the named insured while occupying, or through being struck by while not occupying, any motor vehicle owned or registered by the named insured and which is not an automobile insured under this policy;
- (e) who is an owner or registrant of a motor vehicle involved in the accident with respect to which the security required by an applicable motor vehicle financial responsibility law, motor vehicle compulsory insurance law or any similar applicable law is not in effect;
- (f) who is a relative if such relative is entitled to any personal injury protection benefits as a named insured under the terms of any other policy;
- (g) other than the named insured or any relative, if such person is entitled to any personal injury protection benefits:
  1. as a named insured or a relative under the terms of any other policy with respect to such coverage, or
  2. under any other security maintained, in lieu of an insurance policy, as provided by any law;

- i) other than the **named insured** or any **relative**, while **occupying**, or through being struck by while not **occupying**, any motor vehicle other than an **automobile** insured under this policy which is being operated by the **named insured** or any **relative** if the owner or registrant of such motor vehicle is required by law to provide security with respect thereto;
- j) arising out of the ownership, operation, maintenance or use of a parked motor vehicle unless:
  1. the motor vehicle was parked in such a way as to cause unreasonable risk of the **bodily injury** which occurred, or
  2. such **bodily injury** was a direct result of physical contact with:
    - a. equipment permanently mounted on such motor vehicle, while such equipment was being operated or used, or
    - b. property being lifted onto or lowered from such motor vehicle in the loading or unloading process, or
  3. such **bodily injury** was sustained by a **person** while **occupying** such motor vehicle;
- k) while **occupying** a motor vehicle located for use as a residence or premises;
- l) while **occupying** a public or livery conveyance for which security is maintained as required by applicable law, unless such conveyance is an **owned automobile**;
- m) who is the **named insured** or any **relative** while **occupying** a motor vehicle owned or registered by the employer of the **named insured** or any **relative** for which security is maintained as required by applicable law.

#### DEFINITIONS

definitions of "automobile," "bodily injury," "named insured," "owned automobile," "person" or "persons" and "relative" under SECTION II PART I apply and when used in reference to this insurance (including endorsements forming a part of the policy):

**basic personal injury protection benefits** means those benefits required to be provided under the provisions of an applicable motor vehicle financial responsibility law, motor vehicle compulsory insurance law or any similar applicable law of a state, but does not include those provisions of any such law which apply to the option-purchase of additional personal injury protection benefits or which require that an insurance policy or bond provide coverage for bodily injury liability or protection against uninsured motorists;

**dependent survivor** means a person who is entitled by law to receive **basic personal injury protection benefits** after the death of an **eligible injured person**;

**eligible injured person** means

- (a) the **named insured** or any **relative** who sustains **bodily injury** in an accident involving a motor vehicle;
- (b) any other **person** who sustains **bodily injury** (1) while **occupying** the **owned automobile** as a guest or passenger, or (2) while using the **owned automobile** with the expressed or implied consent of the **named insured**, or (3) while not **occupying** a motor vehicle through being struck by the **owned automobile**;

**occupying** means in or upon or entering into or alighting from.

#### LIMITS OF LIABILITY

Regardless of the number of **persons** insured, policies or bonds applicable, claims made, insurers (including self-insurers), or insured **automobiles**, METROPOLITAN's liability for the payment of personal injury protection benefits to or for the benefit of any one **person** who sustains **bodily injury** in any one accident, shall not exceed the maximum benefit amounts specified in the applicable law and is also subject to the following:

1. Allowable expenses shall not include charges for a hospital room in excess of a reasonable and customary charge for semi-private accommodations, except when the **eligible injured person** requires special or intensive care;
2. The maximum amount payable for all work loss sustained in any single thirty (30) day period, and any income earned from work performed by the **eligible injured person** within the same thirty (30) day period, together shall not exceed the sum required to be provided by applicable law, and such amount shall apply pro rata to any lesser period of work loss, provided that:
  - (a) the maximum amount payable for loss of income because of work loss shall not exceed 85% of such loss of income unless the **eligible injured person** presents to METROPOLITAN reasonable proof of a lower tax advantage, in which case a greater percentage value shall apply;
  - (b) the maximum amount payable for work loss, other than loss of income, incurred by the **eligible injured person** shall not exceed the per diem amount required to be provided by applicable law.

#### REDUCTIONS AND DEDUCTIBLES

Any amount payable by METROPOLITAN under the terms of this insurance shall be reduced by the amount paid, payable or required to be provided under the laws of any state or federal government for the same **bodily injury**.

The deductible amount, if any, set forth in the Declarations, or in any endorsement issued to form a part of this policy, shall apply only to the benefits otherwise payable to or for the benefit of the **named insured** and any **relative**.

#### MULTIPLE POLICIES APPLICABLE TO ONE ACCIDENT—

##### NON-DUPLICATION OF BENEFITS

Regardless of the number of motor vehicles insured or insurers (including self-insurers) providing security in accordance with applicable law, or the provisions of any other law providing for direct benefits without regard to fault for motor or any other vehicle accidents, no **person** shall recover duplicate benefits for the same expense or loss.

If any **eligible injured person** or **dependent survivor** is entitled to recover benefits under more than one policy, the maximum recovery under all such policies shall not exceed the amount which would have been payable under the provisions of the policy providing the highest dollar limit of benefits payable.

**SECTION II**  
**AUTOMOBILE LIABILITY, AUTOMOBILE MEDICAL EXPENSES**  
**AND PROTECTION AGAINST UNINSURED MOTORISTS**

**PART 1. AUTOMOBILE LIABILITY COVERAGE**

METROPOLITAN will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury sustained by other persons, and property damage caused by an occurrence arising out of the ownership, maintenance or use, including loading or unloading, of the owned automobile, or a non-owned automobile; and to defend with attorneys selected by and compensated by METROPOLITAN, any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent; and METROPOLITAN may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.

**Additional Payments METROPOLITAN Will Make:**

As respects the insurance afforded under the Automobile Liability Coverage and in addition to the applicable limits of liability METROPOLITAN will pay:

- (a) all expenses incurred by METROPOLITAN, all costs taxed against the insured in any suit defended by METROPOLITAN and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before METROPOLITAN has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of METROPOLITAN's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile or trailer insured hereunder, not to exceed \$250 per bail bond, but without any obligation to apply for or furnish any such bonds;
- (c) the insured's expenses for first aid to others at the time of an accident involving an automobile or trailer to which the Automobile Liability Coverage applies;
- (d) reasonable expenses incurred by the insured at METROPOLITAN's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$25 per day because of his attendance at hearings or trials at such request.

**DEFINITIONS FOR PART I**

**"automobile"** means a four-wheel land motor vehicle designed for use principally upon public roads, but automobile shall not include a midget automobile nor any vehicle while located for use as a residence or premises;

**"automobile business"** means the business or occupation of selling, leasing, repairing, servicing, storing or parking of land motor vehicles or trailers;

**"bodily injury"** means bodily injury, sickness or disease sustained by any person including death at any time resulting therefrom;

**"damages"** with respect to bodily injury includes damages for care and loss of services resulting therefrom, and with respect to property damage, damages for loss of use;

**"insured" means**

- (a) with respect to an owned automobile.
  - (1) the named insured or any relative;
  - (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and
  - (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;
- (b) with respect to a non-owned automobile.
  - (1) the named insured;
  - (2) a relative, but only with respect to a private passenger automobile or utility trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and
  - (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

**"midget automobile"** means a land motor vehicle of the type commonly referred to as "midget automobile," "kart," "go-kart," "speedmobile" or a comparable name whether commercially built or otherwise;

**"named insured"** means the person or persons named in the Declarations and the term named insured also includes the spouse of such person or persons if resident of the same household;

**"non-owned automobile"** means an automobile which is neither owned by nor furnished nor available for the regular use of either the named insured or any relative, other than a temporary substitute automobile, and includes a utility trailer while used with any such automobile;

**"occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

**"owned automobile" means**

- (a) a private passenger automobile or utility automobile owned by the named insured and described in the Declarations to which the Automobile Liability Coverage of the policy applies and for which a specific premium for such insurance is charged, or
- (b) a private passenger automobile or utility automobile ownership of which is newly acquired by the named insured, provided (i) it replaces an owned automobile as defined in (a) above, or (ii) METROPOLITAN insures all automobiles owned by the named insured on the date of such acquisition and the named insured notifies METROPOLITAN within thirty (30) days of such acquisition of his election to make this and no other policy issued by METROPOLITAN applicable to such automobile and pays any additional premium required therefor, or
- (c) a temporary substitute automobile;

and includes a utility trailer while used with any such automobile;

**"person" or "persons"** means a natural person and not a corporation, partnership, association or business name;

**private passenger automobile**" means a private passenger type automobile designed solely for the transportation of persons and personal luggage;

**property damage**" means physical injury to or destruction of tangible property which occurs during the policy period, including the use thereof at any time resulting therefrom;

**relative**" means a person related to the named insured by blood, marriage or adoption, who is a resident of the same household, provided neither such person nor the spouse of such person owns a private passenger automobile. The named insured's unmarried and emancipated children, while away from the household attending school or for active military service are deemed to be residents of household;

**temporary substitute automobile**" means an automobile not owned by the named insured or any resident of the same household, while temporarily used with the permission of the owner as a substitute for an owned automobile when withdrawn from normal use for service or repair or because of breakdown, loss or destruction;

**utility automobile**" means an automobile of the pickup body, sedan, van or panel type not used for business or commercial purposes other than farming or ranching;

**utility trailer**" means

- (1) a trailer designed for use with a private passenger automobile, if not an office, store, display or passenger trailer, or
- (2) a farm wagon or farm implement while used with a private passenger automobile or utility automobile.

## IT 2. AUTOMOBILE MEDICAL EXPENSE COVERAGE

METROPOLITAN will pay promptly when due, to or for the benefit of each eligible injured person, reasonable medical expenses incurred for services furnished within one year from the date of accident for bodily injury caused by accident arising out of the ownership, maintenance or use, including loading and unloading, of an automobile.

### DEFINITIONS FOR PART 2

The definitions of "automobile," "automobile business," "bodily injury," "named insured," "non-owned automobile," "owned automobile," "person" or "persons," and "relative" under SECTION PART 1, apply and when used in reference to this insurance including endorsements forming a part of the policy:

**eligible injured person**" means

- (a) the named insured or any relative who sustains bodily injury in an accident involving an automobile;
- (b) any other person who sustains bodily injury (1) while occupying the owned automobile as a guest or passenger, or (2) while using the owned automobile, with the expressed or implied consent of the named insured, or (3) while not occupying a motor vehicle through being struck by the owned automobile;
- (c) any other person who sustains bodily injury while occupying a non-owned automobile with the permission of the owner if the bodily injury results from the operation or occupancy of such non-owned automobile by the named insured or a relative;

**medical expenses**" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services;

**occupying**" means in or upon or entering into or alighting from.

## PART 3. PROTECTION AGAINST UNINSURED MOTORISTS COVERAGE

METROPOLITAN will pay all sums which the insured or his legal representative shall be legally entitled to recover as damages because of bodily injury sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of an uninsured highway vehicle; and, where the limits of liability for Protection Against Uninsured Motorist Coverage stated in the Declarations exceeds the limits of liability required under the applicable motor vehicle financial responsibility law, motor vehicle compulsory insurance law or any similar law of the state where the insured highway vehicle is principally garaged, an underinsured highway vehicle; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the insured or such representative and METROPOLITAN or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive, as between the insured and METROPOLITAN of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured or his legal representative with the written consent of METROPOLITAN.

### DEFINITIONS FOR PART 3

The definitions of "bodily injury," "damages," and "person" or "persons," under SECTION II, PART 1, apply and when used with reference to this insurance (including endorsements forming a part of the policy):

**"highway vehicle"** means a land motor vehicle or trailer other than:

- (a) a farm type tractor or other farm equipment designed for use principally off public roads, while not upon public roads;
- (b) a vehicle operated on rails or crawler-treads, or
- (c) a vehicle while located for use as a residence or premises;

**"hit-and-run vehicle"** means a highway vehicle which causes bodily injury to an insured arising out of physical contact of such vehicle with the insured or with a vehicle which the insured is occupying at the time of the accident provided:

- (a) there cannot be ascertained the identity of either the operator or owner of such highway vehicle;
- (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner or Director of Motor Vehicles, and shall have filed with METROPOLITAN within thirty (30) days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof, and
- (c) at METROPOLITAN's request, the insured or his legal representative makes available for inspection the vehicle which the insured was occupying at the time of the accident;

## OTHER INSURANCE

### Automobile Liability and Automobile Medical Expense Coverages

If the insured has other insurance against a loss to which the automobile Liability Coverage applies or other automobile insurance affording benefits for automobile medical expenses against a loss to which the Automobile Medical Expense Coverage applies, METROPOLITAN shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or a non-owned automobile shall be excess insurance over any other valid and collectible insurance and if the insured has other excess or contingent insurance applicable to loss arising out of the use of a temporary substitute automobile or a non-owned automobile, METROPOLITAN shall not be liable under this policy for a greater proportion of such loss than the amount which would have been payable under this policy, had no such other insurance existed, bears to the sum of said amount and the amounts which would have been payable under each other policy applicable to such loss, had each such policy been the only policy so applicable.

### Protection Against Uninsured Motorists Coverage

With respect to bodily injury to an insured while occupying a highway vehicle not owned by the named insured, the insurance under the Protection Against Uninsured Motorists Coverage shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and METROPOLITAN shall not be liable for a greater proportion of any loss to which this Protection Against Uninsured Motorists Coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

## EXCESS INSURANCE

### Protection Against Uninsured Motorists Insurance

Any protection against uninsured motorist coverage afforded by this policy shall be excess over any personal injury protection benefits required by applicable law to be provided under this policy to an insured.

## SECTION III

### LOSS TO THE COVERED AUTOMOBILE

METROPOLITAN will pay for loss to the covered automobile or to a non-owned private passenger automobile. The insurance afforded hereunder applies only for the amount of each loss in excess of the deductible amount stated in the Declarations as applicable thereto, provided, however, that any deductible amount stated in the Declarations as applicable to loss caused by collision shall not apply to loss caused by collision with another automobile insured by METROPOLITAN. For the purposes of this coverage, breakage of glass, and loss caused by missiles, falling objects (other than an automobile), fire, theft or larceny, explosion, earthquake, riot, commotion or colliding with a bird or animal shall be deemed not to be a loss caused by collision.

### METROPOLITAN Will Pay These Additional Costs:

1. Costs of labor done at the place of disablement and for towing made necessary by the disablement of the covered automobile, not to exceed \$25 per disablement.
2. Loss to wearing apparel and luggage of the named insured or relative not to exceed \$200 for each occurrence while such property is in or upon the covered automobile, provided such loss is caused by a peril for which the covered automobile is insured.
3. Transportation Expenses  
METROPOLITAN will reimburse the named insured for the cost of transportation:
  - (a) from the place of disablement of the covered automobile to the place of intended destination, but not to exceed \$10 for each occurrence, provided the disablement involves a loss to the covered automobile with respect to which this policy affords insurance;
  - (b) if there be a theft of the entire covered automobile, not to exceed \$10 per day nor a total of more than \$300 incurred during the period starting 48 hours after the report of the theft to METROPOLITAN and ending when METROPOLITAN offers settlement for the theft.
4. General Average and Salvage Charges  
METROPOLITAN will pay general average and salvage charges imposed with respect to the covered automobile being transported for which the insured becomes legally liable.

## EXCLUSIONS

This insurance does not apply:

- (a) to any automobile while used as a public or livery conveyance;
- (b) to loss to a non-owned private passenger automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
- (c) to loss to any automobile not described in this policy if there is other valid and collectible insurance against such loss available to the insured;
- (d) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (e) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (f) to loss to
  - (i) any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the covered automobile;
  - (ii) any tape, wire, record disc or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound;
  - (iii) or of any device, transceiver, instrument or combination of devices or instruments designed for broadcasting or receiving as a Citizens Band radio, two way mobile radio or telephone, including its accessories, equipment and antenna.



to loss to a camper body designed for use with covered automobile and not designated in the Declarations and for which no premium has been charged if such camper body was owned at the inception of the policy period or the inception of any anniversary date or extension period thereof; to loss due to

- (i) war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing,
- (ii) radioactive contamination.

#### DEFINITIONS

definitions of "automobile," "automobile business," "named insured," "occurrence," "private passenger automobile," "relative," "temporary substitute automobile," "utility automobile" and "utility trailer" under SECTION II, PART 1, apply and when used in reference to this insurance (including endorsements forming a part of the policy):

**camper body** means a body designed to be mounted upon a covered automobile and equipped as sleeping or living quarters;

**collision** means (a) collision of a covered automobile with another car or with a vehicle to which such covered automobile is attached, or (b) upset of such covered automobile;

**covered automobile** means

- a) a private passenger automobile, utility automobile or a trailer designed for use with a private passenger automobile owned by the named insured and described in the Declarations as a covered automobile, and for which a specific premium for loss to such vehicle is charged, or
- (b) if not so described, such vehicle is newly acquired by the named insured during the policy period, provided it replaces a described covered automobile and provided the named insured notifies METROPOLITAN within thirty (30) days of such acquisition of his election to make this and no other policy issued by METROPOLITAN applicable to such automobile and pays any additional premium required therefor;
- (c) a temporary substitute automobile;

**insured** means (a) with respect to the owned automobile, the named insured and any other person or organization if not engaged in the automobile business, or as a carrier or other bailee for hire, maintaining, using or having custody of such automobile with permission of the named insured; (b) with respect to a non-owned automobile, the named insured or any relative, provided, such automobile is a private passenger automobile, or utility trailer, and is being operated by, or is in the possession or control of, the named insured or such relative;

**loss** means direct and accidental loss or damage;

**non-owned private passenger automobile** means a private passenger automobile not owned by or furnished or available for the regular use of either the named insured or any relative but non-owned private passenger automobile does not include a temporary substitute automobile.

#### LIMITS OF LIABILITY

The limits of METROPOLITAN's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

#### OTHER INSURANCE

If the named insured has other insurance against a loss covered by this insurance, METROPOLITAN shall not be liable under this insurance for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

#### GENERAL CONDITIONS

The conditions are applicable to all sections and coverages, except where specifically made applicable to only one or more sections or coverages.

##### 1. POLICY PERIOD, TERRITORY

This policy applies only to accidents, occurrences and loss during the policy period within the United States of America, its territories or possessions, or Canada, including loss to the automobile while being transported between ports thereof.

##### 2. PREMIUM

All premiums for this policy shall be computed in accordance with METROPOLITAN's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

On each anniversary of the effective date, the policy premium shall be computed in accordance with the manuals then in use by METROPOLITAN.

Premiums are payable quarter-annually on the dates set forth in the Declarations.

If the named insured acquires ownership of a private passenger or utility automobile or a vehicle to be insured hereunder during the policy period he must notify METROPOLITAN within thirty (30) days after the date of such acquisition of his election to make this policy applicable to such automobile, except that the insurance under the Personal Injury Protection, Automobile Liability and Automobile Medical Expense Coverages shall apply automatically to such automobile if it replaces an owned automobile. Any additional premium shall be computed in accordance with the manuals in use by METROPOLITAN as of the date of such acquisition, and shall be paid promptly.

Any premium adjustments made under this policy for any reason shall be rounded to the nearest dollar, in accordance with the manuals in use by METROPOLITAN.

##### 3. FINANCIAL RESPONSIBILITY LAWS

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy under the Automobile Liability Coverage shall comply with the provisions of such law to the extent of the coverages and limits required by such law. The insured agrees to reimburse METROPOLITAN for any payment made by METROPOLITAN which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

#### 4. LIBERALIZATION

If METROPOLITAN revises this policy form with respect to policy provisions, endorsements or rules by which the insurance hereunder could be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval or acceptance of such revisions during the policy period by the appropriate insurance supervisory authority.

METROPOLITAN may from time to time issue to the named insured a replacement policy incorporating all policy changes effective on or before the date of issue of such replacement policy, but the issuance of such replacement policy shall not affect the liability of METROPOLITAN with respect to any accident, occurrence or loss occurring prior to said date of issue, nor shall it operate to increase the limit of METROPOLITAN's liability otherwise applicable to such accident, occurrence or loss.

#### 5. OTHER AUTOMOBILE INSURANCE IN METROPOLITAN

With respect to any occurrence, accident or loss to which this and any other automobile insurance policy issued to the named insured by METROPOLITAN also applies, the total limit of METROPOLITAN's liability under all such policies shall not exceed the highest applicable limit of liability or benefit amount under any one such policy.

#### 6. NOTICE

In the event of an accident, occurrence or loss, written notice containing the particulars sufficient to identify the insured or claimant and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimants and of available witnesses, shall be given by or for the insured to METROPOLITAN or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he shall immediately forward to METROPOLITAN every demand, notice, summons or other process received by him or his representative.

If, before METROPOLITAN makes payment under the Personal Injury Protection Insurance or the Protection Against Uninsured Motorist Insurance Coverages, the insured, claimant or the legal representatives of either, shall institute any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to METROPOLITAN by such insured, claimant or legal representative.

#### 7. ASSISTANCE AND COOPERATION OF THE INSURED

The insured shall cooperate with METROPOLITAN and, upon METROPOLITAN's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury and property damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

After notice of claim under the Protection Against Uninsured Motorists Insurance Coverage, METROPOLITAN may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury; and in any action against METROPOLITAN, METROPOLITAN may require the insured to join such person or organization as a party defendant.

#### 8. ACTION AGAINST METROPOLITAN

##### Sections I and II

No action shall lie against METROPOLITAN unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor shall an action lie under the Automobile Liability Coverage until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and METROPOLITAN.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join METROPOLITAN as a party to any action against the insured to determine the insured's liability, nor shall METROPOLITAN be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve METROPOLITAN of any of its obligations hereunder.

##### Section III

No action shall lie against METROPOLITAN unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty (30) days after proof of loss is filed and the amount of loss is determined as provided in this policy.

#### 9. MEDICAL REPORTS: PROOF AND PAYMENT OF CLAIM

##### Sections I and II

As soon as practicable, or within the number of days specified by applicable law, the person making claim shall give to METROPOLITAN written proof of claim for Personal Injury Protection Insurance, Automobile Medical Expense Coverage or Protection Against Uninsured Motorists Coverage, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable. The injured person shall submit to physical examinations by physicians selected by METROPOLITAN when and as often as METROPOLITAN may reasonably require, and he, or in the event of his incapacity or death, his legal representative, or the person or persons entitled to sue therefor, shall upon each request from METROPOLITAN execute authorization to enable METROPOLITAN to obtain medical reports and copies of records.

Under the Personal Injury Protection Insurance and Protection Against Uninsured Motorists Coverage, the insured and every other person making claim shall submit to examinations under oath by any person named by METROPOLITAN and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by METROPOLITAN, unless METROPOLITAN shall have failed to furnish such forms within fifteen (15) days after receiving notice of claim.

for the Personal Injury Protection Insurance and Automobile Expense Coverage, METROPOLITAN may pay the injured or any person or organization rendering the services and payment shall reduce the amount payable hereunder for such Payment hereunder shall not constitute an admission of liability on the part of any person or, except hereunder, of METROPOLITAN.

The amount due under the Personal Injury Protection Insurance and Uninsured Motorists Coverage is payable (a) if the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, or (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided METROPOLITAN may at its option pay any amount due in accordance with division (d) hereof.

#### **INSURED'S DUTIES IN EVENT OF LOSS (Under Section II)**

In the event of loss, the insured shall:

protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at METROPOLITAN's request; file with METROPOLITAN within ninety-one (91) days, or within the number of days specified by applicable law, after loss, his sworn proof of loss in such form and including such information as METROPOLITAN may reasonably require and shall, upon METROPOLITAN's request, exhibit the damaged property and submit to examination under oath.

#### **APPRAISAL (Under Section III)**

If the insured and METROPOLITAN fail to agree as to the amount of loss, either may, within sixty (60) days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and METROPOLITAN shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and METROPOLITAN shall each pay his own appraiser and shall bear equally the other expenses of the appraisal and umpire.

#### **PAYMENT OF LOSS (Under Section III)**

METROPOLITAN may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before loss is paid or the property is so replaced, at its expense return stolen property to the named insured, or at its option to the insured shown in the Declarations with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to METROPOLITAN. METROPOLITAN may settle any claim for loss either with the insured or the owner of the property.

#### **13. LOSS PAYEE (Under Section III)**

Loss, if any, under this policy shall be payable as interest may appear to the person or organization named in the Declarations as Loss Payee and this insurance as to the interest of the bailment lessor, conditional vendor or mortgagee or assignee of bailment lessor, conditional vendor or mortgagee (herein called the lienholder) shall not be invalidated by any act or neglect of the lessee, mortgagor or owner of the within described automobile nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the lessee, mortgagor or purchaser in possession of the property insured under a bailment lease, conditional sale, mortgage or other encumbrance is not covered under this policy, unless specifically insured against and premium paid therefor; and provided, also, that in case the lessee, mortgagor or owner shall neglect to pay any premium due under this policy the lienholder shall, on demand, pay the same.

Provided also, that the lienholder shall notify METROPOLITAN of any change of ownership or increase of hazard which shall come to the knowledge of said lienholder and, unless permitted by this policy, it shall be noted thereon and the lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

METROPOLITAN reserves the right to cancel this policy at any time as provided by its terms, but in such case METROPOLITAN shall notify the lienholder when not less than ten (10) days thereafter such cancellation shall be effective as to the interest of said lienholder therein, and METROPOLITAN shall have the right, on like notice, to cancel this agreement.

If the insured fails to render proof of loss within the time granted in the conditions of this policy, such lienholder shall do so within sixty (60) days thereafter, in form and manner as provided by this policy, and further, shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

Whenever METROPOLITAN shall pay the lienholder any sum for loss under this policy and shall claim that, as to the lessee, mortgagor or owner, no liability therefor existed, METROPOLITAN shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the lienholder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the lienholder to recover the full amount of its claim.

Whenever a payment of any nature becomes due under this policy, separate payment may be made to each party at interest provided METROPOLITAN protects the equity of all parties.

#### **14. NO BENEFIT TO BAILEE (Under Section III)**

The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

#### **15. SUBROGATION**

Subject to any applicable limitations set forth in applicable law, in the event of any payment under this policy, METROPOLITAN shall be subrogated to all the insured's or eligible injured persons' right of recovery therefor against any person or organization and the insured or eligible injured person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, and shall do nothing after loss to prejudice such rights.

## 16. REIMBURSEMENT AND TRUST AGREEMENT

Under Sections I and II, subject to any applicable limitations set forth in applicable law, in the event of payment to any person under the Personal Injury Protection Insurance, Automobile Medical Expense Coverage or the Protection Against Uninsured Motorists Insurance Coverages:

- (a) METROPOLITAN 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, including the proceeds of any settlement with or judgment against a person or organization who is an insured under the Automobile Liability Coverage of this policy;
- (b) such person shall hold in trust for the benefit of METROPOLITAN all rights of recovery which he shall have against such other person or organization because of such bodily injury;
- (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by METROPOLITAN, such person shall take, through any representative designated by METROPOLITAN, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, METROPOLITAN shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;
- (e) such person shall execute and deliver to METROPOLITAN such instruments and papers as may be appropriate to secure the rights and obligations of such person and METROPOLITAN established by this provision.

## 17. CHANGES

The terms of this policy may not be waived or changed except by policy endorsement hereto, signed by an executive officer of METROPOLITAN.

## 18. ASSIGNMENT

Assignment of interest under this policy shall not bind METROPOLITAN until its consent is endorsed hereon; if, however, the insured named in Item 1 of the Declarations, or his spouse if a resident of the same household, shall die, this policy shall cover (a) the survivor as named insured, (b) his legal representative as named insured but only while acting within the scope of his duties as such, and (c) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative.

## 19. CANCELLATION

This policy may be cancelled by the insured named in Item 1 of the Declarations by mailing to METROPOLITAN written notice stating when thereafter the cancellation shall be effective.

This policy may be cancelled by METROPOLITAN,

- (a) if the named insured fails to discharge when due any of his obligations in connection with the payment of premiums for this policy or any installment thereof,
- (b) if the driver's license of the named insured or any other operator who either resides in the same household or customarily operates an automobile insured under this policy has been under suspension or revocation during the twelve (12) month period preceding the effective date of cancellation,
- (c) if this policy is to be replaced by another policy issued by METROPOLITAN to be effective as of the effective date of cancellation of this policy, or
- (d) if this policy has been in effect less than sixty (60) days at the time notice of cancellation is mailed,

by mailing to the insured named in Item 1 of the Declarations at the address shown in this policy written notice stating when not less than the number of days thereafter required by applicable law, or in any event not less than twenty (20) days thereafter, such cancellation shall be effective.

In all other circumstances this policy may be cancelled by METROPOLITAN in accord with applicable law, as of any anniversary of its effective date by mailing, not less than the number of days required by such applicable law or in any event not less than thirty (30) days before such anniversary, written notice thereof to the insured named in Item 1 of the Declarations at the address shown in this policy.

The mailing of notice shall be sufficient proof of notice and the effective date and hour of cancellation stated therein shall become the end of the policy period. Delivery of such written notice, either by such insured or by METROPOLITAN, shall be equivalent to mailing.

Notwithstanding the agreement set forth in the foregoing provisions, this policy shall, on the effective date of any replacement automobile insurance policy not issued by METROPOLITAN, terminate with respect to any automobile designated in both policies.

If the policy is cancelled, earned premium shall be computed pro rata and return premiums shall be rounded to the nearest dollar. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## 20. PARTICIPATION

This policy is a participating policy. The Board of Directors may from time to time, in its discretion, declare and authorize the distribution of dividends with respect to participating policies and the insured named in Item 1 of the Declarations shall, to the extent and upon the conditions fixed and determined by the Board of Directors, participate in such dividend distribution.

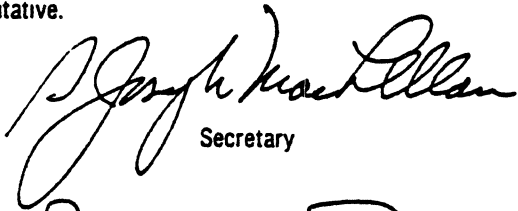
#### DECLARATIONS

Acceptance of this policy, the insured named in Item 1 of the Declarations, agrees that the statements in the Declarations and in subsequent application accepted by METROPOLITAN, which are made as an inducement to METROPOLITAN to issue or continue this policy, are his agreements and representations, that this policy is issued and continued in reliance upon the truth of the representations and that this policy embodies all agreements between himself and METROPOLITAN or any of its agents with respect to this insurance.

#### ARBITRATION

If a person making claim under the Protection Against Uninsured Motorists Coverage and METROPOLITAN do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured highway vehicle because of bodily injury to or death of the insured, or do not agree as to the amount of payment which should be made hereunder, or do not agree as to the coverage of insurance hereunder, then, upon written election of the insured, the dispute or matters upon which such person and METROPOLITAN do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, unless other means of settling the arbitration are required by applicable law or are agreed to between the insured and METROPOLITAN, and judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such person and METROPOLITAN agree to consider itself bound and to be bound by any award made by the arbitrator(s) pursuant to this provision.

IN WITNESS WHEREOF, the METROPOLITAN PROPERTY AND LIABILITY INSURANCE COMPANY has caused this policy to be signed by its President and its Secretary at Warwick, Rhode Island, and countersigned on the Declarations by a duly authorized representative.



Secretary



President

PLACE YOUR ENDORSEMENTS HERE

MAILING ADDRESS <b>1565 So. M.N. DR. West Jordan</b>		CITY <b>West Jordan</b>		STATE <b>UT</b>		ZIP CODE <b>84084</b>		BUSINESS TELEPHONE NO. <b>255-8786</b>		HOME TELEPHONE NO. <b>566-2881</b>																	
VEHICLES WILL BE GARAGED AT ABOVE ADDRESS UNLESS OTHERWISE NOTED HEREIN, CITY, STATE, ZIP CODE																											
APPLICANT'S EXACT LOCATION OF RESIDENCE, IF NO STREET NUMBER USED FORMER ADDRESS IF IN COMMUNITY LESS THAN 6 MONTHS MOST RECENT LIABILITY INSURER COMPANY-EXPLAIN IF NONE <b>FARMERS</b> POLICY NO. <b>76 10523 0708</b> MONTH-DAY-YEAR <b>11-27-73</b> TO <b>11-27-80</b> APPLICANT'S EMPLOYER <b>FINCO CONST.</b> YEARS WITH ADDRESS OF EMPLOYER <b>2</b> 3175 W. 7550 SO. N.T. UT.																											
2		LIST ALL DRIVERS NAMES AS THEY APPEAR ON LICENSES		SOCIAL SECURITY NUMBER		OCCUPATION (BE SPECIFIC) IF STUDENT, MILLS FROM HOME		DRIVER'S LICENSE NO. AND NAME OF STATE		LICENSED 3 YRS. YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> IF NO, GIVE DATE ISSUED		SEX M <input checked="" type="checkbox"/> F <input type="checkbox"/>		DATE OF BIRTH MO. DAY YR.		MARITAL STATUS		% OF MILEAGE BY EACH DRIVER VEH 1 VEH 2 VEH 3									
1		NORL		528-82-5613		Home Bldg		C1169711		11-18-36		M		11-18-36		1-SGL		2-60									
2		TERRI		525-04-7761		Sales Clerk		4724737		11-02-58		F		11-02-58		2-MAR		2-80									
3																											
4																											
3 ARE THERE ANY OTHER (NON-DRIVING) RESIDENTS OF THE APPLICANT'S HOUSEHOLD, INCLUDING CHILDREN? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> IF YES, LIST NAMES & BIRTH DATES FOR THOSE OVER THE AGE OF 12. <b>Under 12</b>																											
4 DURING THE PAST 5 YEARS, HAS THE APPLICANT OR ANY HOUSEHOLD MEMBER HAD AUTO INSURANCE CANCELLED, BEEN REFUSED ISSUANCE OR RENEWAL, OR RECEIVED NOTICE OF SUCH INTENT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, WAS IT WITHIN THE PAST YEAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>																											
DURING THE PAST 5 YEARS, HAS THE APPLICANT, ANY HOUSEHOLD MEMBER, OR ANY REGULAR DRIVER: a. Had license to drive or b. Been the driver in any automobile registration suspended or refused? accident or loss? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>																											
DOES THE APPLICANT OR ANY REGULAR DRIVER HAVE ANY: 1. PHYSICAL LIMITATIONS OR 2. MENTAL DEFECTS? YES <input type="checkbox"/> DESCRIBE <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>																											
VIOLATIONS & ACCIDENTS																											
DRIVER NO.		TYPE		DATE		NATURE OF VIOLATIONS, DETAILS OF ACCIDENTS OR OTHER LOSSES (Dates, damages, injuries or deaths, amt. paid and how accident or loss occurred)						IF AN ACCIDENT, WAS THERE BODILY INJURY OR DEATH? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		DAMAGE TO ANY PROPERTY? (If yes, show amount) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>													
												YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>													
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												YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>													
5 IF ANY OF THE FOLLOWING SITUATIONS APPLIED IN EACH ACCIDENT (Insofar as they involve the applicant or other operator listed above) indicate by letter A, B, C, D, E, F, or G to mean: (A) caused by contact with foul, animals, flying gravel, missiles or falling objects. (B) Automobile lawfully parked. (C) Reimbursed by or on behalf of, person responsible for the accident or has judgment against such person. (D) Struck in rear by another vehicle, and not convicted of a moving traffic violation in connection with the accident. (E) Damaged by "hit-and-run" driver and accident reported to police within 24 hours from time of accident. (F) Other person involved in accident was convicted of a moving traffic violation. Applicant or person residing in his household was not convicted. (G) Vehicle was of the non-private passenger type.																											
VEHICLE																											
VEH 1		YEAR		NAME		IDENTIFICATION NO.		MODEL		BODY TYPE		CYL		NEW OR USED		PURCHASED WHEN PURCH. INCL. EQUIP.		UTILITY VEH. W/O CAMPER COST NEW		MOUNTED CAMPER COST NEW		IS VEHICLE BODY OR ENGINE MODIFIED OR DAMAGED? YES-DESCRIBE <input checked="" type="checkbox"/> NO <input type="checkbox"/>					
1		80		CHEV		1237KAK48161		M.C.		2DR		6		N		3.80		7500				YES-DESCRIBE <input checked="" type="checkbox"/> NO <input type="checkbox"/>					
2																						YES-DESCRIBE <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
3																						YES-DESCRIBE <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
6 FINANCE COMPANY																											
VEN 1		FINANCE COMPANY		2323		FOOTHILL BLVD.		SLC		UT		84109															
7 PERSONAL INJURY PROTECTION																											
CONTRACTS & LIMITS		ADDITIONAL PERSONAL INJURY		DEDUCTIBLE		BIPD SINGLE LIMIT		MEDICAL EXPENSE \$1000 INCLUDED		LOSS TO COVERED AUTOMOBILE		ACTUAL CASH VALUE LESS DEDUCTIBLE AMOUNT APPLICABLE TO LOSS CAUSED BY COLLISION		BY OTHER THAN COLLISION		UNMODIFIED VEHICLE TOTAL		EXPERIENC MODIFIED VEHICLE TOTAL									
BASIC		TOTAL BENEFITS \$		MEDICAL LOSS \$		SUSTITUTE SERVICES \$		SURVIVOR BENEFITS \$		BIPD SINGLE LIMIT \$100,000		MEDICAL EXPENSE \$1000 INCLUDED		LOSS TO COVERED AUTOMOBILE		ACTUAL CASH VALUE LESS DEDUCTIBLE AMOUNT APPLICABLE TO LOSS CAUSED BY COLLISION		BY OTHER THAN COLLISION		UNMODIFIED VEHICLE TOTAL		EXPERIENC MODIFIED VEHICLE TOTAL					
1		6								BASIC \$100,000		MEDICAL EXPENSE \$1000 INCLUDED		LOSS TO COVERED AUTOMOBILE		ACTUAL CASH VALUE LESS DEDUCTIBLE AMOUNT APPLICABLE TO LOSS CAUSED BY COLLISION		BY OTHER THAN COLLISION		UNMODIFIED VEHICLE TOTAL		EXPERIENC MODIFIED VEHICLE TOTAL					
2										BASIC \$100,000		MEDICAL EXPENSE \$1000 INCLUDED		LOSS TO COVERED AUTOMOBILE		ACTUAL CASH VALUE LESS DEDUCTIBLE AMOUNT APPLICABLE TO LOSS CAUSED BY COLLISION		BY OTHER THAN COLLISION		UNMODIFIED VEHICLE TOTAL		EXPERIENC MODIFIED VEHICLE TOTAL					
3										BASIC \$100,000		MEDICAL EXPENSE \$1000 INCLUDED		LOSS TO COVERED AUTOMOBILE		ACTUAL CASH VALUE LESS DEDUCTIBLE AMOUNT APPLICABLE TO LOSS CAUSED BY COLLISION		BY OTHER THAN COLLISION		UNMODIFIED VEHICLE TOTAL		EXPERIENC MODIFIED VEHICLE TOTAL					
PREMIUM		VEN 1 \$		VEN 2 \$		VEN 3 \$				VEN 1 \$27		VEN 2 \$		VEN 3 \$		VEN 1 \$49		VEN 2 \$		VEN 3 \$		VEN 1 \$80		VEN 2 \$		VEN 3 \$	
8 CLASSIFICATION																											
VEN 1		USE 1 PLEASURE		CAR POOL		NO. OF DAYS PER MONTH		DISTANCE TO WORK ONE WAY		TERM		SYN. AGE		DATE CLASS CODE		MULTI CAR DISC. Y/N		10. CUSTOMER INFORMATION		RESIDENCE		QUARTERLY TOTAL \$ 82					
1		1		Y		0		4 1/2		01								OWN <input checked="" type="checkbox"/> RENT <input type="checkbox"/>		HOUSE <input checked="" type="checkbox"/> APARTMENT <input type="checkbox"/>		OTHER METROPOLITAN INSURANCE					
2																		INSURED BY METROPOLITAN <input checked="" type="checkbox"/>		CONDO/COOP <input type="checkbox"/>		OTHER METROPOLITAN INSURANCE					
3																		DATE		LIFE <input type="checkbox"/> ANNUITY <input type="checkbox"/> HEALTH <input type="checkbox"/> HOMEOWN <input type="checkbox"/>							
9 BINDER																											
EFFECTIVE DATE		11		27		80		METROPOLITAN PROPERTY AND LIABILITY INSURANCE COMPANY hereby binds, as of the requested effective date, the insurance applied for, subject to all of the terms and conditions of the automobile policy in current use by the company for a period of 30 days from such effective date. Issuance of the policy applied for voids this binder.		I HEREBY APPLY FOR THE INSURANCE INDICATED AND REPRESENT (1) I HAVE READ THIS APPLICATION, (2) THE STATEMENTS HEREON ARE CORRECT AND (3) I AM THE SOLE OWNER OF THE DESCRIBED VEHICLE(S) EXCEPT AS OTHERWISE STATED.		IT IS UNDERSTOOD AND AGREED THAT NO INSURANCE IS EFFECTIVE HEREUNDER (A) UNLESS THE BINDER IS COMPLETED AND SIGNED BY AN AUTHORIZED FIELD REPRESENTATIVE OF THE COMPANY OR (B) UNTIL THE DATE OF THE POLICY OR BINDER ISSUED BY THE COMPANY ACCEPTING THIS APPLICATION.		APPLICANT SIGNATURE <b>Dennis Silvan</b>		FILED REPRESENTATIVE INITIALS <b>11/26/80</b>											
I HAVE PERSONALLY INSPECTED THE VEHICLE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>																											
DATE AND TIME OF APPLICATION		11		18		80		9:00 AM		GREEN		612		842		3		RECEIPT OF \$ 82.00		IS HEREBY ACKNOWLEDGED		I DESCRIBE IN REMARKS ON REVERSE					

Also own a Mustang which Mrs.  
Drives to work and will be added  
when it comes due

Mr. drives a company truck to work.

THE FOLLOWING QUESTIONS CONCERNING CAMPING, TRAVEL OR UTILITY TRAILERS SHOULD BE ANSWERED IN FULL

DESCRIBE EXACT USE OF TRAILER		LENGTH	WIDTH
		FT.	FT.
IS TRAILER EQUIPPED WITH OTHER THAN USUAL HOUSEHOLD EQUIPMENT?	NO	IF YES, DESCRIBE:	
DOES APPLICANT MAINTAIN OTHER PERMANENT LIVING QUARTERS FOR HIS OWN OCCUPANCY?	NO	IF YES, CHECK APPROPRIATE CATEGORIES	
		HOUSE	APARTMENT
		OTHER	OWNED
			RENTED
NUMBER OF MONTHS DURING YEAR TRAILER WILL BE USED AS LIVING QUARTERS		WHERE IS TRAILER KEPT WHEN NOT IN USE?	
ARE PASSENGERS EVER TRANSPORTED IN TRAILER?	NO	IF YES, EXPLAIN	
	YES		
IS TRAILER EVER RENTED OR LOANED TO OTHERS?	NO	IF YES, EXPLAIN	
	YES		
IS TRAILER USED IN CONNECTION WITH APPLICANT'S OCCUPATION?	NO	IF YES, EXPLAIN	
	YES		
IS TRAILER EVER USED IN CONNECTION WITH STORE, OFFICE OR DISPLAY USE?	NO	IF YES, EXPLAIN	
	YES		