

1988

Michael H. McCaffery v. Terry Raymond Grow : Brief of Appellant

Utah Court of Appeals

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UTAH COURT
BRIEF

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DOCKET NO.

880566

IN THE UTAH COURT OF APPEALS

MICHAEL H. McCAFFERY, as)	
personal representative for)	
and on behalf of CHRISTOPHER M.)	
McCAFFERY, Deceased,)	BRIEF OF APPELLANT
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	
TERRY RAYMOND GROW, as personal)	
representative of RODNEY V.)	
GROW, Deceased, TERRY RAYMOND)	
GROW, individually, and STATE)	
FARM MUTUAL AUTOMOBILE INSUR-)	
ANCE COMPANY,)	
)	Civil No. 880566-CA
Defendants/Respondents.)	Argument Priority 14(b)

APPEAL FROM CROSS-MOTIONS FOR SUMMARY JUDGMENT
IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH,
HONORABLE JAMES S. SAWAYA

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FILED
FEB 8 1989
COURT OF APPEALS

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JURISDICTION

Jurisdiction is conferred on the Utah Court of Appeals pursuant to Utah Code Ann. § 78-2A-3(2)(h) and Rule 4A of the Utah Rules of the Court of Appeals.

STATEMENT OF NATURE OF PROCEEDINGS

In the lower court, Plaintiff/Appellant, Michael H. McCaffery (hereinafter "**McCaffery**" or "**Appellant**"), sought damages for personal injuries and wrongful death arising from an automobile accident on August 27, 1986, from Defendants/Respondents, Terry Raymond Grow, as personal representative of Rodney V. Grow, deceased, and against Patricia Grow as signator on the drivers license application of Rodney Grow, a minor, (hereinafter "**Grow**"), and State Farm Mutual Automobile Insurance Company (hereinafter "**State Farm**").

This appeal is from an order entered in the Third Judicial District Court for Salt Lake County, State of Utah, granting State Farm's Motion for Summary Judgment and denying Appellant's Motion For Summary Judgment. Appellant timely filed a Notice of Appeal on June 17, 1988.

ISSUES PRESENTED ON APPEAL

1. Whether State Farm may enforce by way of definition of a "non-owner car" an exclusion in a no-fault

insurance policy not allowed by Utah Code Ann. § 31A-22-309(2) (1986).

2. Whether such a contractual provision is contrary to public policy and therefore void.

STATEMENT OF FACTS

On August 27, 1986, Christopher M. McCaffery ("**Chris McCaffery**") was fatally injured in an automobile accident while a passenger in the rear seat of an automobile driven by Grow (Deposition of John Graber, Investigating Officer's Report of Traffic Accident ("**Police Report**"), Exhibit "**A**", and R. 130, 135). At the time of the accident Grow had a blood alcohol content of .11 percent. (Police Report, page 17, R. 146).

The automobile Grow was driving and in which Chris McCaffery was a passenger was traveling in excess of 100 miles per hour when it left the highway and impacted a tree at approximately 90 miles per hour. (R. 131, 135). The posted speed limit was 50 miles per hour. (R. 134, and Graber deposition, page 49).

Grow's mother, Pat Grow, signed Grow's driver's license application. (R. 7 and admitted in Pat Grow's Answer, ¶2). Grow was 17 years of age at the time of his death. (Death Certificate R. 154).

McCaffery's special damages incurred as a result of Grow's negligence exceeds \$8,819.00. (R. 106).

Grow did not own the automobile he was driving which was involved in the accident. (R. 130).

At the time of the accident, State Farm insured Rodney Grow and Defendant Pat Grow for liability arising from use of non-owned vehicles. (Automobile Policy, R. at 73, 76). The policy also contains coverage required by the Utah No-Fault Insurance Act (the "Act"), Utah Code Ann. § 31A-22-301, et seq. (R. 78).

McCaffery has settled all claims against all defendants except State Farm. McCaffery seeks personal injury protection benefits ("PIP") and attorneys' fees against State Farm which matters were specifically reserved in the settlement with the other defendants. (R. 211-214).

Grow did not have permission from the owner of the automobile, Michael Morris, to drive or use the automobile. Grow and a mutual friend, Michael Jendrycka, discovered that the key to Jendrycka's automobile also fit the Morris automobile and took turns driving the Morris vehicle at fast rates of speed. Grow drove on the last occasion in which the accident occurred. (R 49, 50).

State Farm refuses to pay personal injury protection benefits as required by the policy and the Act upon the grounds that an individual is covered for accidents arising out of the

use of non-owned cars only when they are used with the permission of the owner. (R. 73).

SUMMARY OF ARGUMENT

The Utah No-Fault Insurance Act, (Utah Code Ann. § 31A-22-301 et. seq.) requires mandatory minimum coverage for motor vehicle insurance known as Personal Injury Protection hereinafter ("PIP"). The Financial Responsibility Act (Utah Code Ann. § 41-12a-101, et. seq.) is incorporated into the No-Fault Act. Defendant Pat Grow can discharge her liability under § 41-2-115(2) by providing a policy which complies with the No-Fault Act and the Financial Responsibility Act.

In 1986 the legislature amended the No-Fault Act and provided for only certain specified exclusions. Those exclusions are found at Utah Code Ann. § 31A-22-309(2). The contractual exclusion relied upon by State Farm is not provided under the express limitations allowed by 31A-22-309(2). As between the insured and the insurer, there can be certain restrictions, but as between the types of coverage for the benefit of innocent victims, the only exclusions are those specifically allowed by statute.

Public policy has been clearly enunciated in Utah about the need and purpose of PIP benefits. In State Farm Mut. Auto. Ins. v. Mastbaum, 748 P.2d 1042 (Utah 1987) the Utah

Supreme Court citing Farmers Insurance Exchange v. Call, 712

P.2d 231 (Utah 1985) declared at 1042-3 that:

In that case [Call], we held that a household or family exclusion claims in an automobile insurance policy contravenes the statutory requirements found in Utah's No-Fault Insurance Act . . . now Section 31A-22-306-309 . . . as to minimum benefits which must be provided to all persons sustaining personal injuries.

(Emphasis supplied).

Public policy has been declared by the Utah Supreme Courts as well as the legislature to allow only specified exclusions. The amendment to the No-Fault Act (1986) is clear evidence of Utah's sound public policy.

Finally, the gross ambiguities in State Farm's insurance policy should be construed in favor of the insured to provide personal injury protection to injured persons in compliance with Utah law.

ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT A PRIVATE AGREEMENT COULD NULLIFY A STATUTE WHICH WAS ENACTED FOR THE PUBLIC BENEFIT

The policy exclusion on which State Farm relied to deny coverage on personal injury protection to Appellant does not comply with the provisions of Utah law and is an impermissible exclusion under the No-Fault Insurance Act.

Appellant is entitled to the personal injury protection coverage afforded by Utah Code Ann. § 31A-22-307, which coverage State Farm has refused to provide to Pat Grow on Appellant's behalf.

Utah Code Ann. § 31A-22-309 designates the exclusions an insurer may attach to a policy providing personal injury protection. Utah Code Ann. § 31A-22-309 provides in pertinent part:

(2)(a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the injured while occupying another motor vehicle owned by the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession the insured motor vehicle; or

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

(B) while committing a felony.

(Emphasis supplied).

The exclusion on which State Farm relies is not allowed under Utah law. State Farm's contention that in order to provide personal injury protection to passengers in a non-owned automobile the use of the non-owned automobile must be within

the scope of consent of the owner or person in lawful possession of the vehicle. This exclusion by definition of "non-owned car" finds no place in the permissible exclusions under Utah law. The Court need look no further than the plain language of the statute to determine that the exclusion is unlawful and impermissible.

The Utah Supreme Court recently clarified Utah law concerning exclusions under personal injury protection benefits. In Mastbaum, supra, the Utah Supreme Court considered whether a household exclusion was valid under Utah law. The policy at issue in Mastbaum had been issued before the enactment of the current no-fault law. On that basis, the Court held that the household or family exclusion was valid in Utah as to insurance provided by an automobile policy in excess of statutorily mandated amounts and benefits. However, following recitation of legislative history of the limitations, exclusions and conditions to personal injury protection under Utah law, Justice Durham concluded that such exclusions were now impermissible under the newly enacted legislation and citing Utah Code Ann. § 31A-22-309(2)(a) stated:

The legislature [by enacting Utah Code Ann. § 31A-22-309] thus removed any ambiguity about the validity of exclusions not specifically mentioned in § 31A-22-309. Insurers may only exclude coverage for the designated reasons.

Id. at 1046. (Emphasis supplied). Justice Zimmerman in a concurring opinion agreed with Justice Durham's conclusion concerning exclusions under personal injury protection and noted:

Justice Durham's recitation of legislative history surrounding the 1986 amendment of the relevant statutes, does persuade me that with respect to insurance policies written after the effective date of the act [July 1, 1986], household number exclusions will be entirely invalid because the Legislature has now made it clear that such exclusions are contrary to public policy.

Id. at 1044. (Emphasis supplied) (Zimmerman, J., concurring).

The exclusion on which State Farm relies is not set forth in § 31-22-309 and, accordingly, State Farm may not exclude the coverage. Any attempt to exclude the coverage is contrary to public policy and violative of the law. Michael H. McCaffery, as personal representative of Christopher M. McCaffery, is entitled to insurance coverage under the policy of Terry Raymond Grow and Pat Grow. Any attempt of State Farm to exclude coverage under the policy must fail. In denying coverage to Grow in this case, State Farm relies on an exclusion not allowed under Utah law. The legislature's enumeration of exceptions brings into play the rule of statutory construction that the legislature intended no others. In Employers Mut. Cas. Co. v. McKeon, 17 Ariz. Adv. Rep. 39 (Ariz. S. Ct., CV-87-0312-PR, filed September 22, 1988), the Supreme Court of Arizona faced a similar conflict between a

private agreement, statute, and sound public policy. In McKeon, the policy had a "named driver exclusion" which was contrary to the statutory exclusions provided under Arizona law. In ruling that a named driver exclusion was impermissible, the McKeon court stated at page 41:

The mandatory language of A.P.R.S. § 20-259.01 coupled with the narrow exceptions allowed in subsection (D), express a legislative design opposing other exclusions.

Utah's No-Fault Act also contains mandatory language requiring all insurance policies to contain personal injury protection and enumerates very narrow exclusions to that coverage. See Utah Code Ann. § 31A-22-302(2)(a). As in McKeon, here it should be presumed that the Utah State Legislature intended no other exclusions than those expressly allowed by statute. The mandatory language of the Act, and the listing of specific, narrow exceptions indicates a public policy requiring insurance to protect innocent victims of automobile accidents.

In Mastbaum, supra, Justice Durham concluded that such exclusions other than those enumerated were impermissible under the newly enacted legislation. In her dissenting opinion, Justice Durham described how the previous version of § 31A-22-309 was changed in the new law by the addition of the word "only." Prior to the passage of Senate Bill 91, § 31A-22-309(2) read: "Any insurer may exclude benefits." The

word "may" indicates that the following list is illustrative but not exclusive and, conceivably, could allow an insurer to create other exclusions in the policy. After passage of Senate Bill 91, which was effective approximately two months before Christopher McCaffery's death, § 31A-22-309(2)(a) read: "Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits" As Justice Durham stated, the addition of the word "only," "thus removed any ambiguity about the validity of exclusions not specifically mentioned in § 31A-22-309. Insurers may only exclude coverage for the designated reasons." Mastbaum at 1046.

In Mastbaum, the issue was the validity of a household exclusion. Nevertheless, Justice Durham's analysis in Mastbaum can be used for the exclusion at issue in this case. The legislature intended to confine insurers to the exclusions outlined in the statute. This conclusion is reinforced by the 1988 amendment to Utah Code Ann. § 31A-22-303 which allows a policy of motor vehicle liability coverage to include a household exclusion. See Utah Code Ann. § 31A-22-303(7). Only the specific exclusions allowed by legislative enactment are permissible under Utah law. If the legislature has not allowed the exclusion, an insurer by private contract cannot circumvent clear legislative mandate and exclude the coverage. Therefore, State Farm must provide PIP benefits to Appellant.

In Farmers Ins. Exchange v. Call, 712 P.2d 231 (Utah 1985), the Supreme Court acknowledged the public policy inherent in the Act and in commenting on the household exclusion stated at page 235:

It would be anomalous if the rights of innocent accident victims, for whose protection the Utah No-Fault Act was adopted, could be defeated by private agreements."

Upholding the lower court's summary judgment in this case also would lead to an anomalous result. Christopher McCaffery, as a passenger, was an innocent victim. State Farm granted coverage under its general liability and no-fault benefits to injuries arising out of the use of a non-owned car. State Farm's attempt to exclude coverage for injuries which may have arisen out of the non-permissive use of a non-owned car conflicts with the purpose of the Act in protecting the rights of innocent victims.

Appellant does not disparage the ability of an insurer and an insured to contract and negotiate on the risks that will be covered and assumed. Nevertheless, as the Supreme Court stated in Call, supra, at page 233:

[A]n insurer may include in a policy any number or kind of exceptions and limitations to which an insured will agree unless contrary to statute or public policy."

(Emphasis added). The exception which State Farm asserts is expressly contrary to the statute and sound public policy and cannot be allowed.

POINT II

PUBLIC POLICY DEMANDS THE VOIDING OF THE EXCLUSION RELIED UPON BY STATE FARM

Utah's public policy relating to mandatory minimum coverage of PIP benefits is evidenced by the provisions of Utah Code Ann. § 41-2-115 which provides in part:

Any negligence . . . of a minor younger than 18 years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. This person is jointly and severally liable with the minor for any damages caused by the negligence . . . except as provided under Subsection (3).

. . .
If a minor deposits, or there is deposited on his behalf, proof of financial responsibility in respect to the operation of a motor vehicle he owns, or with respect to the operation of any motor vehicle if he does not own one, in form and in amounts as required under Chapter 12a, Title 41, Financial Responsibility of Motor Vehicle Owners and Operators Act, the division may accept the application of the minor when signed by a parent or guardian of the minor.

The provisions of Utah Code Ann. § 41-12A-402 (1988) provides in part:

Proof of owner's or operator's security may be furnished by filing with the department the written certificate of any insurer licensed in Utah certifying that there is in effect an insurance policy or combination of policies conforming to Section 31A-22-302 for the benefit of the person required to furnish proof of owner's or operator's security.

Every insurer, which is licensed to issue policies in Utah must write a policy which complies with the required minimum found in § 31A-22-302, which provides in part:

Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of § 41-12a-301, shall also include personal injury protection under § 31A-22-306 though 31A-22-309.

The Supreme Court has declared the extent and breadth of the minimum mandatory coverages in the following instances:

the statutory requirements found in Utah's No-Fault Insurance Act . . . as to minimum benefits must be provided to all persons sustaining personal injuries.

Mastbaum, supra, at 1042-1043 (emphasis supplied).

The No-Fault Act authorizes specific allowable exclusions from coverage This legislative action reflects a public policy requiring minimum coverage to protect innocent victims of automobile accidents.

Call, supra, at 234.

Under this statutory plan, [Utah's No-Fault Act] first party PIP benefits up to the amounts provided in Section 6 [of the Act] are paid to an injured person without regard to fault.

Allstate Ins. Co. v. Ivie, 606 P.2d 1197 (Utah 1980), at 1200. (Emphasis supplied).

It is clear, given the opinions of Justices Durham and Zimmerman in Mastbaum, supra, the legislative history and the 1986 amendment to the No-Fault Act, that Utah's public policy is that all injured parties are entitled, without regard to fault, the minimum protection provided as personal injury benefits.

In McKeon, the Arizona Supreme Court citing Calvert v. Farmers Insurance Co., 144 Ariz. 291, 697 P.2d 684 (1985) at declared at page 698 that:

Our statutes require an insurer to provide full uninsured motorist coverage to every insured, whether driving an automobile, strolling down the side walk, or relaxing in the front porch swing.

and then concluded at page 41 of McKeon:

Thus we hold the purported exclusion of uninsured motorist coverage is contrary to public policy and void

Utah's mandatory Financial Responsibility Act, the No-Fault Act and the statutory liability of a parent or guardian signing a driver's license application under § 41-2-115 establishes Utah's public policy to provide the minimum PIP coverage for every person injured in an automobile accident.

Under Utah Code Ann. § 31A-22-307 (a)(c) & (d), (1986), Appellant is entitled to the following personal injury protection benefits:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation (which includes prosthetic devices), ambulance, hospital, and nursing services, not to exceed a total of \$3,000 per person; . . .

(b) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of \$3,000.

Accordingly, Appellant is entitled to \$3,000 for medical expenses, \$1,500 for funeral and burial expenses and \$3,000 on the account of Chris McCaffery's death for a total recovery under personal injury protection of \$7,500, together with interest and attorneys' fees assessed under Utah Code Ann. § 31A-22-309(5) (1986).

POINT III

PAT GROW IS JOINTLY AND SEVERALLY LIABLE WITH STATE FARM FOR PIP COVERAGE

In the settlement with Grow, the Appellant specifically reserved his claim for the PIP mandatory coverage against State Farm. Any liability of Pat Grow is covered by the PIP provisions of State Farm's insurance policy. Utah Code Ann. § 41-2-115 (2) provides in pertinent part that:

Any negligence or willful misconduct of a minor younger than 18 years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. This person is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct . . .

Pat Grow admitted that she signed Rodney Grow's application for a driver's license. Accordingly, under Utah law, she is strictly liable for the damages arising from Rodney Grow's negligence and reckless disregard for Christopher McCaffery's safety and the damages resulting from his death including personal injury protection benefits.

State Farm contends that because Rodney Grow did not have the owner's permission to use the automobile involved in the accident, State Farm is not obligated to provide any coverage to Pat Grow and has refused to provide Appellant with the personal injury protection benefits under Grow's policy. Appellant's contention is absolutely contrary to rulings of other courts which have considered such a proposition.

In United Services Automobile Association v. Crandall, 594 P.2d 704 (Nev. 1979), a case with striking parallels to the case at bar, the Nevada Supreme Court held that where an imputed liability statute placed a legal liability upon an insured father for damages caused by negligence or willful misconduct of his daughter in driving a motor vehicle, and the provisions of the father's insurance policy required the insurer to pay all sums which the father should become legally obligated to pay as damages arising out of the use of any non-owned automobile, such language afforded coverage to the father for his daughter's negligent use of a non-owned automobile, even though the daughter was driving the vehicle without the owner's permission.

In Crandall, the sixteen year old daughter of the insured drove an automobile without the permission of the owner, and while doing so was involved in an accident which caused the death of three boys. Before the accident, the father had signed as a sponsor for his daughter to obtain a

learner's permit. The father's policy obligated the insurer "to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages . . . arising out of the . . . use of . . . any non-owned automobile. Id. at 705.

Pat Grow's insurance policy, (the "**Policy**") requires State Farm "to pay damages which an insured becomes legally liable to pay because of bodily injury . . . caused by accident resulting from the ownership, maintenance or use of your car . . ." and provides further that "[t]he liability coverage extends to use, by an insured of a . . . non-owned car." The Policy defines "bodily injury" as "bodily injury to a person and . . . death which results from it." (See the Policy R. 72-90). The provisions of the liability policies in Crandall and this case are virtually identical.

In Crandall, the insurer contended that insurance coverage was not afforded to the father because his daughter was driving a non-owned vehicle without the permission of the owner and because the policy only provided coverage to "any relative . . . provided his actual operation . . . is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission" Id. at 706.

Despite the insurer's contentions, the Nevada Supreme Court held that "the words of the clause regarding permissive

use apply only to 'any relative,' and do not in any manner limit the coverage afforded to the name insured" and ruled that the insurer was obliged to defend the father, and, to the extent of policy limits, pay any judgment entered against him. See also State Farm Mutual Automobile Insurance Co. v. Eastman, 204 Cal. Rptr. 827 (1984).

Under the rationale of Crandall and Utah law, State Farm is obligated by law and the terms of the insurance policy to pay all sums which Pat Grow would be legally obligated to pay including personal injury protection required by Utah Code Ann. § 41-2-115 and 31A-22-306 to -309 (1986). Otherwise, Pat Grow's policy does not comply with the requirements of Utah law to provide personal injury protection "which must be provided to all persons sustaining personal injury." Mastbaum at 1043 (emphasis added).

POINT IV

THE GROSS AMBIGUITIES IN THE INSURANCE POLICY SHOULD BE CONSTRUED IN FAVOR OF THE INSURED TO PROVIDE PERSONAL INJURY PROTECTION TO INJURED PERSONS IN COMPLIANCE WITH UTAH LAW

The California Court of Appeals construing a State Farm insurance policy virtually identical to the one at issue here held:

To begin with, the provisions under consideration are clearly ambiguous. . . . As set forth above, Part I, the section headed Liability, commences by stating quite broadly that State Farm agrees to pay damage

arising out of the use of the owned automobile, "or any non-owned automobile" without indicating that coverage is available only if the insured is using the non-owned automobile with permission of its owner. The permission proviso is not included in the definition of non-owned automobile and is not listed as one of the exclusions. Where a policy provision is ambiguous, particularly where it purports to limit the insured's coverage but is not included in the section marked Exclusions, "doubts as to the meaning must be resolved against the insurer," (Gray v. Zurich Insurance Co., supra, 65 Cal.2d 263, 269, 54 Cal.Rptr. 104, 419 P.2d 168) and "If semantically permissible, the contract will be given such construction as will fairly achieve its object of securing indemnity to the insured for the losses to which the insurance relates . . . [If the doubt relates to extent or fact of coverage, whether as to peril insured against [citations], the amount of liability [citations], the language will be understood in its most inclusive sense, for the benefit of the insured." (Continental Cas. Co. v. Phoenix Constr. Co., supra, 46 Cal.2d 423, 437-438, 296 DP.2d 801; see numerous cases to the same effect in 13 Appleman, Insurance Law and Practice (1976) § 7401, p. 197 et seq.; 2 Couch, Insurance (2d ed 1984) § 15.74, p. 334 et seq.)

State Farm Mut. Auto. Ins. Co. v. Eastman, 204 Cal.Rptr. 827, 830 (1984). (Emphasis added).

The same ambiguities abound in State Farm's policy. Section I begins with a general provision stating that State Farm will:

pay damages which an insured becomes legally liable to pay because of

a. **bodily injury** to others . . .
caused by accident resulting from the ownership, maintenance or use of your car;

and continues adding:

The liability coverage extends to the use,
by an insured of a . . . **non-owned** car.

(Emphasis in original).

The policy adds on the same page and same section that:

THERE IS NO COVERAGE FOR NON-OWNED CARS:

1. IF THE DECLARATIONS STATE THE "USE"
OF **YOUR CAR** IS OTHER THAN "PLEASURE
AND BUSINESS": OR
2. WHILE:
 - a. BEING REPAIRED, SERVICED OR
USED BY ANY **PERSON** WHILE THAT
PERSON IS WORKING IN ANY **CAR
BUSINESS**; OR
 - b. USED IN ANY OTHER BUSINESS OR
OCCUPATION. This does not
apply to a **private passenger
car** driven or **occupied** by the
first **person** named in the
declarations, his or her spouse
or their **relatives**.

In this case, under the cited policy language, insurance coverage on behalf of Chris McCaffery has not been excluded. The circumstances resulting in his death are not covered in these policy provisions. As was the case in Eastman, a non-owned automobile was a defined term but such definition was not specifically or clearly set forth in the exclusions. The definition of a non-owned car upon which State Farm relies is found at p. 73 of the record and provides:

Non-Owned Car - means a car not:

1. owned by,
2. registered in the name of, or
3. furnished or available for the regular
or frequent use of:

you, your spouse, or any relatives.

The use has to be within the scope of consent of the owner or **person** in lawful possession of it.

On that basis, the Eastman court ruled that the coverage that State Farm attempted to exclude by way of definition and not exclusion was void because of the gross ambiguities and numerous inconsistencies in the policy.

The only reasonable and lawful construction is to allow only the exclusions permitted under Utah's No-Fault Act as explained in Point I, supra and provide Appellant with PIP benefits to which he is entitled under Utah law.

CONCLUSION AND RELIEF SOUGHT

The exclusion upon which State Farm relies to deny coverage violates Utah law. The lower court's ruling must be vacated and Appellant's Motion For Summary Judgment granted entitling Appellant to personal injury protection under Grow's policy. Judgment should be entered in Appellant's favor for \$7,500, together with interest and attorneys' fees assessed under Utah Code Ann. § 31A-22-309(5).

RESPECTFULLY SUBMITTED this 9 day of December, 1988.

JARDINE, LINEBAUGH, BROWN & DUNN

By


JAMES R. BROWN

HAROLD L. REISER

Attorneys for Appellant

ADDENDUM

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PART III
MOTOR VEHICLE INSURANCE

31A-22-301. Definitions.

As used in this part:

(1) "Motor vehicle" has the same meaning as under Subsection 41-12a-104(4) [41-12a-103(4)].

(2) "Motor vehicle business" means a motor vehicle sales agency, repair shop, service station, storage garage, or public parking place.

(3) "Motor vehicle liability policy" means a policy which satisfies the requirements of §§ 31A-22-303 and 31A-22-304.

(4) "Occupying" means being in or on a motor vehicle as a passenger or operator, or being engaged in the immediate acts of entering, boarding, or alighting from a motor vehicle.

(5) "Operator" has the same meaning as under Subsection 41-12a-104(7) [41-12a-103(7)].

(6) "Owner" has the same meaning as under Subsection 41-12a-104(8) [41-12a-103(8)].

(7) "Pedestrian" means any natural person not occupying a motor vehicle.

31A-22-302. Required components of motor vehicle insurance policies.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of § 41-12a-301 shall include:

(a) motor vehicle liability coverage under §§ 31A-22-303 and 31A-22-304; and

(b) uninsured motorist coverage under § 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(4).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of § 41-12a-301, except for motorcycles, shall also include personal injury protection under §§ 31A-22-306 through 31A-22-309. First party medical coverages may be offered or included in policies issued to motorcycle owners or operators. Motorcycle owners and operators are not covered by personal injury protection coverages in connection with injuries incurred while operating a motorcycle.

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

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

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

(b) (i) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and insure any person included in Subsection (1)(c) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor

vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under § 31A-22-304; or

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

(c) insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured.

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

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

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

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

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

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

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

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

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

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

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

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

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

31A-22-304. Motor vehicle liability policy minimum limits.

Policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below either of the following:

(1) twenty thousand dollars because of bodily injury to or death of one person, in any one accident, and, subject to this limit for one person, in the amount of \$40,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$10,000 because of injury to or destruction of property of others in any one accident; or

(2) forty thousand dollars in any one accident whether arising from bodily injury to or death of others, or from destruction of or damage to the property of others.

31A-22-305. Uninsured motorist coverage.

- (1) As used in this section, "covered persons" includes:
 - (a) the named insured;
 - (b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;
 - (c) any person occupying a motor vehicle referred to in the policy or owned by a self-insurer; and
 - (d) any person who is entitled to recover damages against the owner or operator of the uninsured motor vehicle because of bodily injury to or death of persons under Subsections (1)(a), (b), or (c).
- (2) As used in this section, "uninsured motor vehicle" includes:
 - (a) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or if the vehicle is covered, but with lower limits than required by § 31A-22-304, then the motor vehicle is uninsured to the extent of the deficiency;
 - (b) an unidentified motor vehicle which left the scene of an accident proximately caused by its operator;
 - (c) an insured motor vehicle if before or after the accident the liability insurer of the motor vehicle is declared insolvent by a court of competent jurisdiction, but the motor vehicle is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund
- (3) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death, in limits which at least equal the minimum bodily injury limits for motor vehicle liability policies under § 31A-22-304.
- (4) (a) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.
 - (b) All persons, including governmental entities, which are engaged in the business of, or which accept payment for, transporting natural persons by motor vehicle, and all school districts which provide trans-

portation services for its students shall provide for all vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least \$20,000 per person and \$500,000 per accident. This coverage is secondary to any other insurance covering an injured occupant, and does not apply to an employee who is injured by an uninsured motorist whose exclusive remedy is provided by Chapter 1, Title 35.

(c) As used in this subsection:

(i) "governmental entity" has the same meaning as under Subsection 63-30-2(3); and

(ii) "motor vehicle" has the same meaning as under Subsection 41-1-1(b).

(5) When a covered person claims an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, then the covered person shall show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the covered person's testimony.

(6) In no event shall the limit of liability for uninsured motorist coverage for two or more motor vehicles be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident. If uninsured motorist coverage is available to an injured person under more than one insurance policy, the injured person shall elect the policy under which he desires to collect uninsured motorist benefits. Claimants are not barred against making subsequent elections if recovery is unavailable under previous elections.

by insured while occupying "owned" vehicle establishing compensation for claims not
not insured by policy, 30 A.L.R.4th 172. paid because of insurer's insolvency, 30
Validity, construction, and effect of statute A.L.R.4th 1110.

31A-22-306. Personal injury protection.

Personal injury protection under Subsection 31A-22-302(2) provides the coverages and benefits described under § 31A-22-307 to persons described under § 31A-22-308, but is subject to the limitations, exclusions, and conditions set forth in § 31A-22-309.

31A-22-307. Personal injury protection coverages and benefits.

- (1) Personal injury protection coverages and benefits include:
 - (a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation (which includes prosthetic devices), ambulance, hospital, and nursing services, not to exceed a total of \$3,000 per person;
 - (b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and
 - (ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;
 - (c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of \$3,000.

(2) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309(1)(e), the commissioner shall, at least once each odd-numbered year, conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and median charge to each type of service and accommodation. In conducting the study, the department shall consult with appropriate public and private medical and health agencies. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and median charge assigned to each type of service and accommodation. The value of any service or accommodation is determined by applying the unit value and median charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or median charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state. This subsection does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this subsection. In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309(1)(e) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) At appropriately reduced premium rates, insurers may offer deductibles in amounts not exceeding \$500 per accident with respect to the insurance coverages required under this section. However, the deductible is applicable only to claims of the named insured and persons living in his household.

(5) This section does not prohibit the issuance of policies of insurance providing coverages greater than the minimum coverage required under this chapter nor does it require the segregation of those minimum coverages from other coverages in the same policy.

31A-22-308. Persons covered by personal injury protection.

The following may receive benefits under personal injury protection coverage:

- (1) the named insured and persons related to the insured by blood, marriage, adoption, or guardianship who are residents of the insured's household, including those who usually make their home in the same household but temporarily live elsewhere, when injured in an accident in Utah involving any motor vehicle; and
- (2) any other natural person whose injuries arise out of an automobile accident occurring in Utah while the person occupies a motor vehicle described in the policy with the express or implied consent of the named insured or while a pedestrian if he is injured in an accident involving the described motor vehicle.

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) No person who has direct benefit coverage under a policy which includes personal injury protection may maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (a) death;
- (b) dismemberment;
- (c) permanent disability;
- (d) permanent disfigurement; or
- (e) medical expenses to a person in excess of \$3,000.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the injured while occupying another motor vehicle owned by the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle; or

(iii) to any injured person, if the person's conduct contributed to his injury:

- (A) by intentionally causing injury to himself; or
- (B) while committing a felony.

(b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.

(3) The benefits payable to any injured person under § 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because he is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) Payment of the benefits provided for in § 31A-22-307 shall be made on a monthly basis as expenses are incurred. Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer. If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1½% per month after the due date. The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) Every policy providing personal injury protection coverage shall provide:

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund of Utah, the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

41-2-115. Application of minors — Liability of person signing application — Cancellation of co-signing adult's liability.

(1) The application of any person younger than 18 years of age for a learner permit or provisional license shall be signed and verified before a person authorized to administer oaths by the parent or guardian of the applicant. If no person has custody, then a responsible adult, who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor, may sign the application.

(2) Any negligence or willful misconduct of a minor younger than 18 years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. This person is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct, except as provided under Subsection (3). This liability provision is an exception to any conflicting liability provisions in the code.

(3) If a minor deposits, or there is deposited on his behalf, proof of financial responsibility in respect to the operation of a motor vehicle he owns, or with respect to the operation of any motor vehicle if he does not own one, in form and in amounts as required under Chapter 12a, Title 41, Financial Responsibility of Motor Vehicle Owners and Operators Act, the division may accept the application of the minor when signed by a parent or guardian of the minor. While the proof is maintained, that person is not subject to the liability imposed under Subsection (2).

(4) A person who has signed the application of a minor for a license may file with the division a verified written request that the license of the minor be cancelled. The division shall then cancel the license of the minor, and the person who signed the application of the minor is relieved from the liability imposed under this chapter regarding any subsequent negligence or willful misconduct of the minor in operating a motor vehicle.

(5) The division upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for a license shall cancel the license and may not issue a new license until a new application, signed and verified, is made under this chapter. This subsection does not apply to a minor who has become 18 years of age.

PART I

GENERAL PROVISIONS

41-12a-101. Short title.

This chapter may be cited as the "Financial Responsibility of Motor Vehicle Owners and Operators Act."

41-12a-402

MOTOR VEHICLES

41-12a-402. Insurance certificate as proof of owner's or operator's security — Resident.

Proof of owner's or operator's security may be furnished by filing with the department the written certificate of any insurer licensed in Utah certifying that there is in effect an insurance policy or combination of policies conforming to Section 31A-22-302 for the benefit of the person required to furnish proof of owner's or operator's security. This certificate shall be furnished to the department in the form of an SR-22 issued by any insurer licensed in Utah. The certificate shall give each policy number and the effective date of each policy. The effective date of the policy may not be later than the effective date of the certificate. The certificate shall designate by explicit description or by appropriate reference all motor vehicles covered, unless the policy is issued to a person who is not the owner of a motor vehicle. Certificates filed under this section continue in force until cancelled under Section 41-12a-404, or until the requirement for a certificate is waived under Section 41-12a-411.



Declarations Page

REGIONAL OFFICE

G 4978k.1.

NAMED INSURED
Grow, Rodney V. & Terry R.
6006 Papricka Cir.
Taylorsville, UT 84118

POLICY NUMBER: 703-7219-A17-44

POLICY PERIOD: Jul-01-86 to Jan-01-87

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE SEPARATE
STATEMENT ENCLOSED IF AMOUNT DUE.

DESCRIBED VEHICLE	MAKE	YEAR	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS	PREMIUM FOR THIS POLICY PERIOD	Current 6 Month Premium
Mustang	76	2DR	6F03Y115750	9B301	\$301.24	\$301.24	

COVERAGES (AS DEFINED IN POLICY)

A \$227.70 P3 \$68.64 H \$2.40 U \$2.50

A—LIABILITY			C—MEDICAL	U—UNINSURED		W—UNDERINSURED	
Bodily Injury			PAYMENTS	MOTOR VEHICLE		MOTOR VEHICLE	
Each Person	Each Accident	Property Damage Each Accident	Each Person	Each Person	Bodily Injury Each Accident	Each Person	Each Accident
25,000	50,000	25,000		20,000	40,000		

EXCEPTIONS AND ENDORSEMENTS

Persons Insured Coverage

AMOUNTS

AGENT 1107

PLACED POLICY

YOUR POLICY CONSISTS OF THIS PAGE,
ANY ENDORSEMENTS, AND
THE POLICY BOOKLET, FORM 9844.2
PLEASE KEEP TOGETHER.

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
MOUNTAIN STATES OFFICE • 3001 8TH AVENUE • GREELEY, COLORADO 80638-0001

YOUR STATE FARM CAR POLICY

Policy Form 9844.2

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS
A MUTUAL COMPANY
DEFINED WORDS
WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in bold face italics. *You* can pick them out easily.

Bodily Injury — means bodily injury to a *person* and sickness, disease or death which results from it.

Car — means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include

- 1 any vehicle while located for use as a dwelling or other premises, or
- 2 a truck tractor designed to pull a trailer or semitrailer.

Car Business — means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured — means the *person*, *persons* or organization defined as *insureds* in the specific coverage.

Loss — defined in sections IV and V.

Newly Acquired Car — means a *car* newly owned by *you* or *your spouse* if it

- 1 replaces *your car*, or
- 2 is an added *car* and
 - a if it is a *private passenger car*, we insure all other *private passenger cars*, or
 - b if it is other than a *private passenger car*, we insure all *cars*

owned by *you* and *your spouse* on the date of its delivery to *you* or *your spouse*;

but only if *you* or *your spouse*—

- 1 tell us about it within 30 days after its delivery to *you* or *your spouse*; and
- 2 if *you* or *your spouse* has more than one of our *car* policies, tell us which one is to apply, and
- 3 pay us any added amount due.

Non-Owned Car — means a *car* not

- 1 owned by,
- 2 registered in the name of, or
- 3 furnished or available for the regular or frequent use of

you, *your spouse*, or any *relatives*.

The use has to be within the scope of consent of the owner or *person* in lawful possession of it.

Occupying — means in, on, entering or alighting from.

Person — means a human being.

Private Passenger Car — means a *car*:

- 1 with four wheels,
- 2 of the private passenger or station wagon type, and
- 3 designed solely to carry *persons* and their luggage.

Relative — means a *person* related to *you* or *your spouse* by blood, marriage or adoption who lives with *you*. It includes *your* unmarried and unemancipated child away at school.

Spouse — means *your* husband or wife while living with *you*.

Temporary Substitute Car — means a **car** not owned by **you** or **your spouse**, if it replaces **your car** for a short time. Its use has to be with the consent of the owner. **Your car** has to be out of use due to its breakdown, repair, servicing, damage or **loss**. A **temporary substitute car** is not considered a **non-owned car**.

Utility Vehicle — means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or **Your** — means the named insured or named insureds shown on the declarations page.

Your Car — means the **car** or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Mutual Automobile Insurance Company, agree to insure **you** according to the terms of this policy based:

1. on **your** payment of premium for the coverages **you** chose; and
2. in reliance on **your** statements in these declarations.

You agree, by acceptance of this policy that:

1. the statements in these declarations are **your** statements and are true; and
2. we insure **you** on the basis **your** statements are true; and
3. this policy contains all of the agreements between

you and us or any of our agents.

Unless otherwise stated in the exceptions space on the declarations page, **your** statements are:

1. Ownership. **You** are the sole owner of **your car**.
2. Insurance and License History. Neither **you** nor any member of **your** household within the past 3 years has had:
 - a. vehicle insurance canceled by an insurer; or
 - b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. **Your car** is used for pleasure and business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages **you** chose apply to accidents and **losses** that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which **you** pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages **you** chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shipped between their ports.

The liability, no-fault and physical damage coverages also apply in Mexico within 50 miles of the United States border. A physical damage coverage **loss** in Mexico is determined on the basis of cost at the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

FINANCED VEHICLES

If a creditor is shown in the declarations, we may pay any comprehensive or collision **loss** to:

1. **you** and, if unpaid, the repairer; or
2. **you** and such creditor, as its interest may appear, when we find it is not practical to repair **your car**; or
3. the creditor, as to its interest, if **your car** has been repossessed.

When we pay the creditor for **loss** for which **you** are not covered, we are entitled to the creditor's right of recovery against **you** to the extent of our payment. Our right of recovery shall not impair the creditor's right to recover the full amount of its claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail the termination notice.

REPORTING A CLAIM — INSURED'S DUTIES

1. Notice to Us of an Accident or Loss.

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

- a. *your* name; and
- b. the names and addresses of all *persons* involved; and
- c. the hour, date, place and facts of the accident or *loss*; and
- d. the names and addresses of witnesses.

2. Notice to Us of Claim or Suit.

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

3. Other Duties Under the Physical Damage Coverages.

When there is a *loss*, *you* or the owner of the property also shall:

- a. make a prompt report to the police when the *loss* is the result of theft or larceny.
- b. protect the damaged vehicle. We will pay any reasonable expense incurred to do it.
- c. show us the damage, when we ask.
- d. provide all records, receipts and invoices, or certified copies of them. We may make copies.
- e. answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

4. Other Duties Under No-Fault, Uninsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages.

The *person* making claim also shall:

- a. give us all the details about the death, injury,

treatment and other information we need to determine the amount payable.

- b. be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. If the *person* is dead or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records.

- c. under the uninsured motor vehicle coverage:

(1) report a "hit-and-run" accident to the police within 24 hours and to us within 30 days.

(2) let us see the insured *car* the *person occupied* in the accident.

- d. under the no-fault and uninsured motor vehicle coverages, send us at once a copy of all suit papers when the party liable for the accident is sued for these damages.

- e. under the no-fault and death, dismemberment and loss of sight coverages, give us proof of claim on forms we furnish.

5. Insured's Duty to Cooperate With Us.

The *insured* shall cooperate with us and, when asked, assist us in:

- a. making settlements,
- b. securing and giving evidence:
- c. attending, and getting witnesses to attend, hearings and trials.

The *insured* shall not, except at his or her own cost, voluntarily:

- a. make any payment or assume any obligation to others; or
- b. incur any expense, other than for first aid to others.

SECTION I — LIABILITY — COVERAGE A

You have this coverage if "A" appears in the "Coverages" space on the declarations page.

We will:

1. pay damages which an *insured* becomes legally liable to pay because of:

- a. *bodily injury* to others, and
- b. damage to or destruction of property including loss of its use,

caused by accident resulting from the ownership, maintenance or use of *your car*; and

2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such

accident

- 1 Court costs of any suit for damages
 - 2 Interest on all damages owed by an *insured* as the result of a judgment until we pay, offer or deposit in court the amount due under this coverage
 - 3 Premiums or costs of bonds
 - a to secure the release of an *insured's* property attached under a court order. The amount of the bond we pay for shall not be more than our limit of liability, and
 - b required to appeal a decision in a suit for damages if we have not paid our limit of liability that applies to the suit, and
 - c up to \$250 for each bail bond needed because of an accident or traffic violation
- We have no duty to furnish or apply for any bonds
- 4 Expense incurred by an *insured*:
 - a for loss of wages or salary up to \$35 per day if we ask the *insured* to attend the trial of a civil suit
 - b for first aid to others at the time of the accident
 - c at our request

We have the right to investigate, negotiate and settle any claim or suit

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an *insured*, of a *newly acquired car*, a *temporary substitute car* or a *non-owned car*.

Who Is an Insured

When we refer to *your car*, a *newly acquired car* or a *temporary substitute car*, *insured* means

- 1 *you*;
- 2 *your spouse*;
- 3 the *relatives* of the first *person* named in the declarations,
- 4 any other *person* while using such a *car* if its use is within the scope of consent of *you* or *your spouse*; and
- 5 any other *person* or organization liable for the use of such a *car* by one of the above *insureds*.

When we refer to a *non-owned car*, *insured* means

- 1 the first *person* named in the declarations,
- 2 his or her *spouse*;
- 3 their *relatives*; and

- 4 any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR *NON-OWNED CARS*.

- 1 IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN "PLEASURE AND BUSINESS", OR
- 2 WHILE
 - a BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
 - b USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Trailer Coverage

- 1 Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2 a below, are covered while owned or used by an *insured*.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability

These trailers are not described in the declarations and no extra premium is charged

- 2 The following trailers are covered only if described on the declarations page and extra premium is paid
 - a those trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:
 - (1) if designed to carry *persons*; or
 - (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid), or
 - (3) while used as premises for office, store or display purposes, or
 - b any trailer not designed for use with a *private passenger car* or a *utility vehicle*.

THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY *YOU* WHICH WE DO NOT INSURE FOR LIABILITY COVERAGE

Limits of Liability

The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability — Coverage A — Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to **bodily injury** to one **person**. Under "Each Accident" is the total amount of coverage for all damages due to **bodily injury** to two or more **persons** in the same accident.

The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability — Coverage A — Property Damage, Each Accident".

We will pay damages for which an **insured** is legally liable up to these amounts.

The limits of liability are not increased because more than one **person** or organization may be an **insured**.

A motor vehicle and attached trailer are one vehicle. Therefore, the limits are not increased.

When two or more motor vehicles are insured under this section, the limits apply separately to each.

When Coverage A Does Not Apply

In addition to the limitations of coverage in "Who Is an Insured" and "Trailer Coverage":

THERE IS NO COVERAGE

1 WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS

- a RENTED TO OTHERS OR USED TO CARRY **PERSONS** FOR A CHARGE. This does not apply to the use on a share expense basis of:

- (1) a **private passenger car**, or

- (2) a **utility vehicle**, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers.

- b BEING REPAIRED, SERVICED OR USED BY ANY **PERSON** EMPLOYED OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**. This does not apply to:

- (1) **you** or **your spouse**;

- (2) any **relative**;

- (3) any resident of **your** household, or

- (4) any agent, employee or partner of **you**, **your spouse**, any **relative** or such resident.

This coverage is excess for (3) and (4) above.

2 FOR ANY **BODILY INJURY** TO

- a A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A

VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS. **You** and **your spouse** are covered for such injury to a fellow employee.

- b ANY EMPLOYEE OF AN **INSURED** ARISING OUT OF HIS OR HER EMPLOYMENT. This does not apply to a household employee who is not covered or required to be covered under any worker's compensation insurance.

- c ANY **INSURED** OR ANY MEMBER OF AN **INSURED'S** FAMILY RESIDING IN THE **INSURED'S** HOUSEHOLD.

3 FOR ANY DAMAGES

- a FOR WHICH THE UNITED STATES MIGHT BE LIABLE FOR THE **INSURED'S** USE OF ANY VEHICLE.

- b TO PROPERTY OWNED BY, RENTED TO, IN CHARGE OF OR TRANSPORTED BY AN **INSURED**. But coverage applies to a rented residence or private garage damaged by a **car** we insure.

4 FOR ANY OBLIGATION OF AN **INSURED**, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKER'S COMPENSATION OR DISABILITY OR SIMILAR LAW

5 FOR LIABILITY ASSUMED BY THE **INSURED** UNDER ANY CONTRACT OR AGREEMENT

If There Is Other Liability Coverage

1 Policies Issued by Us to You

If two or more vehicle liability policies issued by us to **you** apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

2 Other Liability Coverage Available From Other Sources

Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the per cent that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3 Temporary Substitute Car, Non-Owned Car, Trailer

If a **temporary substitute car**, a **non-owned car** or a trailer designed for use with a **private passenger car** or **utility vehicle** has other vehicle liability coverage on it, then this coverage is excess. THIS COVERAGE SHALL NOT APPLY.

- 1 IF THE VEHICLE IS OWNED BY ANY **PERSON** OR ORGANIZATION IN A **CAR BUSINESS**, AND
- b IF THE **INSURED** OR THE OWNER HAS OTHER LIABILITY COVERAGE WHICH APPLIES IN WHOLE OR IN PART AS PRIMARY EXCESS OR CONTINGENT COVERAGE

4 Newly Acquired Car

THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A **NEWLY ACQUIRED CAR**

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1 Out of State Coverage

If an **insured** under the liability coverage is in another state or Canada and, as a non resident, becomes subject to its motor vehicle compulsory

insurance, financial responsibility or similar law

- a the policy will be interpreted to give the coverage required by the law, and
- b the coverage so given replaces any coverage in this policy to the extent required by the law for the **insured's** operation maintenance or use of a **car** insured under this policy

Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a **person** collect more than once

2 Financial Responsibility Law

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required. The **insured** agrees to repay us for any payment we would not have had to make under the terms of this policy except for this agreement

SECTION II — NO-FAULT — COVERAGE P

You have this coverage if "P" with a number beside it appears in the "Coverages" space on the declarations page. P with a number beside it is **your** coverage symbol.

Check **your** coverage symbol with the Schedule in the limits of liability for the choice of options **you** made

What We Pay

We will pay in accordance with the **No-Fault Act** for **bodily injury** to an **insured** caused by accident resulting from the maintenance or use of a **motor vehicle** as a **motor vehicle**

1 Medical Benefits This is reimbursement for reasonable expenses incurred for necessary

- a medical hospital, dental, surgical, ambulance, X-ray, nursing and rehabilitative services,
- b eyeglasses, hearing aids and prosthetic devices, and
- c remedial treatment by a recognized religious method of healing

The most we will pay for all expenses is the amount shown in the Schedule for **your** coverage symbol. The most we will pay for expenses for services and products furnished more than three years after the date of the accident is \$2,000, less any amount paid or payable for expenses incurred during the first three years.

2 Disability Benefits This is reimbursement for

- a 85% of an **insured's** actual loss of
 - (1) gross income from salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm, or
 - (2) earning capacity
 due to that **insured's** continuous inability to work

during a period that

- (1) begins three days after the date of the accident, and
- (2) ends either
 - (a) when the **insured** is able to return to his or her usual job,
 - (b) when the **insured** dies, or
 - (c) 52 weeks after the period begins,

whichever occurs first

If the **insured's** inability to work continues for more than two consecutive weeks after the accident, the period begins on the date of the accident. The most we will pay is the amount shown in the Schedule for **your** coverage symbol.

b reasonable expenses incurred for actually rendered services the **insured** would have performed for his or her household except for the injury. These services must be performed during a period that

- (1) begins three days after the date of the injury, and
- (2) ends either
 - (a) when the **insured** can perform these services,
 - (b) when the **insured** dies, or
 - (c) 365 days after the date of the accident,
 whichever occurs first

If the *insured's* disability continues for more than 14 consecutive days after the accident, the period begins on the date of the accident. The most we will pay per day is \$12.

- 3 **Funeral Benefits** This is reimbursement for reasonable funeral, burial or cremation expenses. The most we will pay for an *insured* who dies is the amount shown in the Schedule for *your* coverage symbol.
- 4 **Survivors' Benefits** This is an amount paid to an *insured's* heirs when an *insured* dies as the result of the accident. The most we will pay, if the death occurs within three years of the accident, is shown in the Schedule for *your* coverage symbol. If the death occurs more than three years after the date of the accident, the most we will pay is \$2,000.

Definitions

Insured — means

- 1 *you, your spouse* or any *relative*:
 - a while *occupying a motor vehicle*; or
 - b when a *pedestrian*, if the *bodily injury* results from physical contact with a *motor vehicle* or motorcycle; or
 - c when *occupying a motorcycle*, if the *bodily injury* results from physical contact with a *motor vehicle*, and
- 2 any other *person*:
 - a while *occupying your car* or a *newly acquired car* with the permission of:
 - (1) *you, your spouse, any relative*; or
 - (2) the *person* driving such *car* with *your* permission; or
 - b when struck as a *pedestrian* by *your car* or a *newly acquired car*.

Motor Vehicle — means a vehicle required to be registered under Title 41 of the Utah Insurance Code. It does not include:

- 1 motorcycles, or
- 2 any vehicle owned by:
 - a the United States,
 - b any state, other than Utah,
 - c any political subdivision of either, or
 - d their agencies
 if not covered by the security required by the *No-Fault Act*.

No-Fault Act — means the Utah Automobile No-Fault Insurance Act, as amended.

Owner — means a *person* who

- 1 holds legal title to a *motor vehicle*; or

- 2 has the right to possession of a *motor vehicle* under a security agreement or lease with option to buy.

Pedestrian — means a *person* who is not *occupying a motor vehicle* or motorcycle.

When Coverage P Does Not Apply

THERE IS NO COVERAGE FOR *BODILY INJURY* TO ANY *PERSON*:

- 1 WHILE *OCCUPYING* OR WHEN STRUCK BY A *MOTOR VEHICLE* OWNED BY *YOU* OR ANY *RELATIVE* WHICH IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.
- 2 WHILE OPERATING *YOUR CAR* OR A *NEWLY ACQUIRED CAR*:
 - a WITHOUT THE CONSENT OF *YOU* OR *YOUR SPOUSE*, OR
 - b IF NOT IN LAWFUL POSSESSION OF IT.
- 3 WHOSE CONDUCT CONTRIBUTED TO THE *INJURY* UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:
 - a CAUSING *BODILY INJURY* TO HIMSELF OR HERSELF INTENTIONALLY, OR
 - b WHILE COMMITTING A FELONY.
- 4 INJURED OUTSIDE UTAH WHILE NOT *OCCUPYING A MOTOR VEHICLE*. This does not apply to *you, your spouse* or any *relative*.

Settlement of Loss

1. Deciding Amount

The amount due under this coverage shall be decided by agreement. If the *insured* and we cannot agree, it will be decided by arbitration upon mutual written consent. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party. The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

2. Payment of Any Amount Due

We will pay any amount due:

- a to the *insured*, or to any *person* or organization providing medical services or products,

- b to a parent or guardian if the *insured* is a minor or an incompetent *person*,
- c to the surviving *spouse*, or
- d at our option, to a *person* authorized by law to receive such payment

Payments will be made on a monthly basis within 35 days after we have proof of the amount due

If There Is Other Coverage

1 No Duplication

No *person* shall recover twice for the same expense or loss

2 When *you*, *your spouse* or any *relative* sustains *bodily injury* while *occupying* or when struck by a *motor vehicle* which is not *your car* or a *newly acquired car* this coverage applies

- a as excess to any similar coverage which applies to the vehicle as primary coverage, but
- b only in the amount by which it exceeds the primary coverage

If coverage under more than one policy applies as excess

- a the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess, and
- b we are liable only for our share. Our share is that per cent of the expenses or loss that the limit of liability of this policy for that benefit bears to the total limit of liability for that benefit of all no-fault coverage applicable as excess to the accident

3. If Coverage Is Available From More Than One Insurer

Subject to items 1 and 2 above, if two or more insurers are liable to pay no-fault benefits

- a the total amount payable from all insurers shall not exceed the amount payable under the policy with the highest limit of liability, and
- b we are liable only for our share. Our share is that per cent of the expenses or loss that the limit of liability of this policy for that benefit bears to the total limit of liability for that benefit of all no-fault coverage applicable to the accident

Constitutionality

If a court declares any part of the *No-Fault Act* invalid, we may refigure the premium and change the coverage. If the refigured premium is greater than what has been paid, *you* must pay us the difference.

Limits of Liability

1. **The Most We Pay.** The most we pay for each *insured* who sustains *bodily injury* in any one accident shall not exceed the limit shown in the Schedule applicable to each benefit for *your* coverage symbol. Any amount payable shall be reduced by all amounts the *insured* is entitled to receive

- a under any worker's compensation, disability or similar law, or
- b from the United States or any of its agencies because of active duty in the military services

2 Schedule

Coverage Symbol	Medical Benefits	Disability Benefits Loss of Income per Week	Funeral Benefits	Survivors' Benefits
P1	\$ 2,000	\$150	\$1,000	\$ 2,000
P2	5,000	150	1,000	2,000
P3	10,000	150	1,000	5,000
P4	25,000	150	1,000	5,000
P5	100,000	300	2,500	10,000

SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U

You have this coverage if “U” appears in the “Coverages” space on the declarations page

We will pay damages for **bodily injury** an **insured** is legally entitled to collect from the owner or driver of an **uninsured motor vehicle**. The **bodily injury** must be caused by accident arising out of the operation, maintenance or use of an **uninsured motor vehicle**.

Uninsured Motor Vehicle — means

- 1 a land motor vehicle, the ownership, maintenance or use of which is
 - a not insured or bonded for bodily injury liability at the time of the accident, or
 - b insured or bonded for bodily injury liability at the time of the accident, but
 - (1) the limits of liability are less than required by the financial responsibility act of the state where **your car** is mainly garaged, or
 - (2) the insuring company denies coverage or is or becomes insolvent, or
- 2 a “hit-and-run” land motor vehicle whose owner or driver remains unknown and which strikes
 - a the **insured** or
 - b the vehicle the **insured** is **occupying** and causes **bodily injury** to the **insured**.

An **uninsured motor vehicle** does not include a land motor vehicle

- 1 insured under the liability coverage of this policy,
- 2 furnished for the regular use of **you, your spouse** or any **relative**;
- 3 owned or operated by a self-insurer under any motor vehicle financial responsibility law, a motor carrier law or any similar law,
- 4 owned by any government or any of its political subdivisions or agencies,
- 5 designed for use mainly off public roads except while on public roads, or
- 6 while located for use as premises

Who Is an Insured

Insured — means the **person** or **persons** covered by uninsured motor vehicle coverage

This is

- 1 the first **person** named in the declarations;
- 2 his or her **spouse**;
- 3 their **relatives**; and
- 4 any other **person** while **occupying**:
 - a **your car, a temporary substitute car, a newly acquired car** or a trailer attached to such **car**.

Such vehicle has to be used within the scope of the consent of **you** or **your spouse**; or

- b a **car** not owned by **you, your spouse** or any **relative**, or a trailer attached to such a **car**. It has to be driven by the first **person** named in the declarations or that **person's spouse** and within the scope of the owner's consent

Such other **person occupying** a vehicle used to carry **persons** for a charge is not an **insured**.

- 5 any **person** entitled to recover damages because of **bodily injury** to an **insured** under 1 through 4 above

Deciding Fault and Amount

Two questions must be decided by agreement between the **insured** and us

- 1 Is the **insured** legally entitled to collect damages from the owner or driver of the **uninsured motor vehicle**; and
- 2 If so, in what amount?

If there is no agreement, these questions shall be decided by arbitration upon written request of the **insured** or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the **insured** resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

We are not bound by any judgment against any **person** or organization obtained without our written consent.

Payment of Any Amount Due

We will pay any amount due

1. to the **insured**;
2. to a parent or guardian if the **insured** is a minor or an incompetent **person**;

3. to the surviving *spouse*; or
4. at our option, to a *person* authorized by law to receive such payment.

Limits of Liability

1. The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. Under "Each Accident" is the total amount of coverage for all damages due to *bodily injury* to two or more *persons* in the same accident.
2. Any amount payable under this coverage shall be reduced by any amount paid or payable to or for the *insured*:
 - a. by or for any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
 - b. for *bodily injury* under the liability coverage.
3. Any payment made to a *person* under this coverage shall reduce any amount payable to that *person* under the bodily injury liability coverage.
4. Any amount paid or payable under:
 - a. the no-fault coverage; or
 - b. any worker's compensation, disability benefits, or similar law
 will not be paid for again as damages under this coverage. This does not reduce the limits of liability of this coverage.
5. The limits of liability are not increased because:
 - a. more than one vehicle is insured under this policy; or
 - b. more than one *person* is insured at the time of the accident.

When Coverage U Does Not Apply

THERE IS NO COVERAGE:

1. FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*.
2. FOR *BODILY INJURY* TO AN *INSURED*:
 - a. WHILE *OCCUPYING*, OR
 - b. THROUGH BEING STRUCK BY A MOTOR VEHICLE OWNED BY *YOU, YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.
3. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKER'S COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.

- b. A SELF-INSURER UNDER ANY WORKER'S COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.
- c. ANY GOVERNMENTAL BODY OR AGENCY.

If There Is Other Coverage

1. If the *insured* sustains *bodily injury* as a pedestrian and other uninsured motor vehicle coverage applies:
 - a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all uninsured motor vehicle coverage applicable to the accident.
2. If the *insured* sustains *bodily injury* while *occupying your car*, and *your car* is described on the declarations page of another policy providing uninsured motor vehicle coverage:
 - a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all such uninsured motor vehicle coverage applicable to the accident.
3. If the *insured* sustains *bodily injury* while *occupying* a vehicle not owned by *you, your spouse* or any *relative*, this coverage applies:
 - a. as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage, but
 - b. only in the amount by which it exceeds the primary coverage.
 If coverage under more than one policy applies as excess:
 - a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all uninsured motor vehicle coverage applicable as excess to the accident.
4. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNINSURED MOTOR VEHICLE COVERAGE ON A *NEWLY ACQUIRED CAR*.

SECTION IV — PHYSICAL DAMAGE COVERAGES

Loss — means, when used in this section, each direct and accidental loss of or damage to

- 1 **your car**,
- 2 its equipment which is common to the use of **your car** as a vehicle, or
- 3 clothes and luggage insured, and
- 4 a detachable living quarters attached or removed from **your car** for storage. Detachable living quarters includes its body and items securely fixed in place as a permanent part of the body. **You** must have told us about the living quarters before the **loss** and paid any extra premium needed.

COMPREHENSIVE — COVERAGE D. You have this coverage if “D” appears in the “Coverages” space on the declarations page. If a deductible applies, the amount is shown by the number beside “D”

- 1 **Loss to Your Car** We will pay for **loss to your car** EXCEPT **LOSS BY COLLISION** but only for the amount of each such **loss** in excess of the deductible amount, if any.
Breakage of glass, or **loss** caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. **Loss** due to hitting or being hit by a bird or an animal is payable under this coverage.
- 2 We will repay **you** for transportation costs if **your car** is stolen. We will pay up to \$14 per day for the period that begins 48 hours after **you** tell us of the theft. The period ends when we offer to pay for **loss**.

COLLISION — 80% — COVERAGE F. **You** have this coverage if “F” appears in the “Coverages” space on the declarations page.

We will pay 80% of the first \$250 and 100% over that amount of **loss to your car** caused by **collision**. If the **collision** is with another motor vehicle insured by us, we will pay 100% of the **loss**.

COLLISION — COVERAGE G. **You** have this coverage if “G” appears in the “Coverages” space on the declarations page. The deductible amount is shown by the number beside “G”

We will pay for **loss to your car** caused by **collision** but only for the amount of each such **loss** in excess of the deductible amount. If the **collision** is with another motor

vehicle insured with us, **you** do not pay **your** deductible if it is \$100 or less as we pay it.

Collision — means **your car** upset or hit or was hit by a vehicle or other object.

Clothes and Luggage — Comprehensive and Collision Coverages

We will pay for **loss** to clothes and luggage owned by the first **person** named in the declarations, his or her **spouse**, and their **relatives**. These items have to be in or on **your car**. **Your car** has to be covered under this policy for

- 1 Comprehensive, and the **loss** caused by fire, lightning, flood, falling objects, explosion, earthquake or theft. If the **loss** is due to theft, **YOUR ENTIRE CAR MUST HAVE BEEN STOLEN**, or
- 2 Collision, and the **loss** caused by **collision**.

We will pay up to \$200 for **loss** to clothes and luggage in excess of any deductible amount shown for comprehensive or collision. \$200 is the most we will pay in any one occurrence even though more than one **person** has a **loss**. This coverage is excess over any other coverage.

Limit of Liability — Comprehensive and Collision Coverages

The limit of our liability for **loss** to property or any part of it is the lower of

- 1 the actual cash value, or
- 2 the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the **loss** occurred. Any deductible amount that applies is then subtracted.

Settlement of Loss — Comprehensive and Collision Coverages

We have the right to settle a **loss** with **you** or the owner of the property in one of the following ways

- 1 pay up to the actual cash value,
- 2 pay to repair or replace the property or part with like kind and quality. If the repair or replacement results in better than like kind and quality, **you** must pay for the amount of the betterment,
- 3 return the stolen property and pay for any damage due to the theft, or

- 4 take the property at an agreed value, but it cannot be abandoned to us

If we can pay the **loss** under either comprehensive or collision, we will pay under the coverage where **you** collect the most

When there is **loss** to **your car**, clothes and luggage in the same occurrence, any deductible will be applied first to the **loss** to **your car**. **You** pay only one deductible

EMERGENCY ROAD SERVICE — COVERAGE H. **You** have this coverage if “H” appears in the “Coverages” space on the declarations page

We will pay the fair cost **you** incur for **your car** for

- 1 mechanical labor up to one hour at the place of its breakdown,
- 2 towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run,
- 3 towing it out if it is stuck on or immediately next to a public highway,
- 4 delivery of gas, oil, loaned battery, or change of tire. **WE DO NOT PAY FOR THE COST OF THESE ITEMS**

CAR RENTAL EXPENSE — COVERAGE R. **You** have this coverage if “R” appears in the “Coverages” space on the declarations page

We will repay **you** up to \$10 per day when **you** rent a **car** from a car rental agency or garage due to a **loss** to **your car**, starting

- 1 when it cannot run due to the **loss**, or
- 2 if it can run, when **you** leave it at the shop for agreed repairs,

and ending when

- 1 it has been repaired or replaced, or
- 2 we offer to pay for the **loss**, or
- 3 **you** incur 30 days rent,

whichever comes first

Any car rent payable under coverage R is **REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE**

CAR RENTAL AND TRAVEL EXPENSE — COVERAGE R1. **You** have this coverage if “R1” appears in the “Coverages” space on the declarations page

- 1 Car Rental Expense. We will
 - a repay **you** up to \$14 per day when **you** rent a **car** from a car rental agency or garage, OR
 - b pay **you** \$10 per day if **you** do not rent a **car** while **your car** is not usable due to a **loss** to **your car**.

This applies during a period starting

- a when **your car** cannot run due to the **loss**, or

- b if **your car** can run, when **you** leave it at the shop for agreed repairs,

and ending

- a when it has been repaired or replaced, or
- b (1) when we offer to pay for the **loss**, if **your car** is repairable, or
(2) five days after we offer to pay for the **loss**, if
 - (a) **your car** was stolen and not recovered, or
 - (b) we declare it a total loss,

whichever comes first

Any car rent payable under this coverage is **REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE**

- 2 Travel Expenses. If **your car** cannot run due to a **loss** more than 50 miles from home, we will repay **you** for expenses incurred by **you**, **your spouse** and any **relative** for
 - a Commercial transportation fares to continue to **your** destination or home
 - b Extra meals and lodging needed when the **loss** to **your car** causes a delay enroute. The expenses must be incurred between the time of the **loss** and **your** arrival at **your** destination or home or by the end of the fifth day, whichever occurs first
 - c Meals, lodging and commercial transportation fares incurred by **you** or a **person** **you** choose to drive **your car** from the place of repair to **your** destination or home
- 3 Rental Car — Repayment of Deductible Amount Expense. We will repay the expense of any deductible amount **you** are required to pay the owner under comprehensive or collision coverage in effect on a substitute **car** rented from a car rental agency or garage

Total Amount of Expenses Payable — Coverage R1

1. The most we will pay for the total of the “Car Rental Expense” and “Rental Car — Repayment of Deductible Amount Expense” incurred in any one occurrence is \$400
2. The most we will pay for “Travel Expenses” incurred by all **persons** in any one occurrence is \$400

Trailer Coverage

- 1 Owned Trailer

Your trailer is covered

 - a when it is described on the declarations page of the policy, and
 - b for the coverages shown as applying to it
- 2 Non-Owned Trailer or Detachable Living Quarters

Any physical damage coverage in force on *your car* applies to a non owned

- a trailer if it is designed for use with a *private passenger car*, or
- b detachable living quarters unit used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500

A non-owned trailer or detachable living quarters unit is one that is not

- 1 owned by,
- 2 registered in the name of, or
- 3 furnished or available for the regular or frequent use of

you, your spouse or any *relatives*.

Coverage for the Use of Other Cars

The coverages in this section *you* have on *your car* extend to a *loss* to a *newly acquired car*, a *temporary substitute car* or a *non-owned car*. These coverages extend to a *non-owned car* while it is driven by or in the custody of the first *person* named in the declarations, his or her *spouse* or their *relatives*.

When Coverages D, F, G, H, R and R1 Do Not Apply
THERE IS NO COVERAGE FOR

- 1 A **NON-OWNED CAR**.
 - a IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS other than pleasure and business,
 - b WHILE BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
 - c WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.
- 2 ANY VEHICLE WHILE
 - a RENTED TO OTHERS OR USED TO CARRY *PERSONS* FOR A CHARGE This does not apply to the use on a share expense basis, OR
 - b SUBJECT TO ANY LIEN, RENTAL OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS
- 3 **LOSS TO ANY VEHICLE DUE TO**
 - a TAKING BY ANY GOVERNMENTAL AUTHORITY,
 - b WAR OF ANY KIND,

c AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE This does not apply when the *loss* is the result of a theft covered by this policy Nor does it apply to emergency road service, OR

d CONVERSION, EMBEZZLEMENT OR SECRETION BY ANY *PERSON* WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL OR SALES AGREEMENT

4 TIRES unless

- a stolen, or damaged by fire or vandalism, or
- b other *loss* covered by this section happens at the same time

5 TAPES FOR RECORDING OR REPRODUCING SOUND

6 **LOSS BY THEFT OF A CITIZENS BAND RADIO, TAPE RECORDER OR PLAYER OR ANY ELECTRONIC DEVICE WHICH INCLUDES OR COMBINES ANY OF THESE ITEMS** This does not apply if it is permanently installed in the opening of the dash or console of *your car* normally used by the maker of *your car* for the installation of a radio

If There Is Other Coverage

1 Policies Issued by Us to You

If two or more vehicle policies issued by us to *you* apply to the same *loss* or occurrence, we will pay under the policy with the highest limit

2 Coverage Available From Other Sources

Subject to item 1, if other coverage applies to the *loss* or expenses, we will pay only our share Our share is the per cent the limit of liability of this policy bears to the total of all coverage that applies

3 Temporary Substitute Car, Non-Owned Car or Trailer

If a *temporary substitute car*, a *non-owned car* or trailer designed for use with a *private passenger car* has other coverage on it, this coverage is excess THIS COVERAGE SHALL NOT APPLY

a IF THE VEHICLE IS OWNED BY ANY *PERSON* OR ORGANIZATION IN A *CAR BUSINESS*; AND

b IF *YOU* OR THE OWNER HAS OTHER COVERAGE THAT APPLIES IN WHOLE OR IN PART AS PRIMARY, EXCESS OR CONTINGENT COVERAGE

4 Newly Acquired Car

THIS INSURANCE DOES NOT APPLY IF THERE IS SIMILAR COVERAGE ON A **NEWLY ACQUIRED CAR**.

Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for **loss**.

Two or More Vehicles

If two or more of **your cars** are insured for the same coverage, the coverage applies separately to each.

SECTION V—DEATH, DISMEMBERMENT AND LOSS OF SIGHT—COVERAGES

DEATH, DISMEMBERMENT AND LOSS OF SIGHT—COVERAGES

"S" is shown in the "Coverages" space on the declarations page each **insured** has the coverage.

We will pay the amount shown in the schedule that applies for death, or **loss**, caused by accident. The **insured** has to be **occupying** or be struck by a land motor vehicle or trailer. The death or **loss** must be the direct result of the accident and not due to any other cause. The death or **loss** must occur within 90 days of the accident.

Insured — means a **person** listed under "Persons Insured — Coverage S" on the declarations page.

Loss — means the loss of:

1. the foot or hand, cut off through or above the ankle or wrist; or
2. the whole thumb or finger; or
3. all sight.

The Most We Pay

The most we will pay because of the death of, or **loss** to, the **insured**, except as provided below, is shown under "Amounts" next to his or her name on the declarations page.

The amount shown in the schedule for death or **loss** is doubled for an **insured** who, at the time of the accident, was using the vehicle's complete restraint system as recommended by the vehicle's manufacturer.

If the **insured** dies as a result of this accident any payment made or due for **loss** reduces the amount of the death payment.

SCHEDULE

	If amount under S in the declarations is:	
	\$5,000	\$10,000
Death	\$5,000	\$10,000
Loss of:		
hands; feet; sight of eyes; one hand & one foot; or one hand or one foot & sight of one eye	5,000	10,000
one hand or one foot; or sight of one eye	2,500	5,000
thumb & finger on one hand; or three fingers	1,500	3,000
any two fingers	1,000	2,000

Payment of Any Amount Due

We will pay any amount due:

1. to the **insured**;
2. to a parent or guardian if the **insured** is a minor or an incompetent **person**;
3. to the surviving **spouse**; or
4. at our option, to any **person** or organization authorized by law to receive such payment.

Any payment made is to its extent a complete discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy made where it is not forbidden by law.

When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO:

1. AN **INSURED** WHILE ON THE JOB, OPERATING, **OCCUPYING**, LOADING OR UNLOADING:
 - a. AN EMERGENCY VEHICLE; OR
 - b. A VEHICLE USED IN THE **INSURED'S** BUSINESS OR JOBBut 1.b. does not apply if the vehicle is:
 - (1) a **private passenger car** or school bus; or
 - (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.
2. AN **INSURED** WHILE:
 - a. ON THE JOB IN ANY **CAR BUSINESS**; OR
 - b. **OCCUPYING** ANY:
 - (1) VEHICLE WHILE BEING USED IN A RACE; OR
 - (2) MILITARY VEHICLE.
3. AN **INSURED** WHILE **OCCUPYING** OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER:
 - a. THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. LOCATED FOR USE AS PREMISES.

4. THE DEATH OF, OR **LOSS TO, AN *INSURED***
DUE TO:

- a. DISEASE except pus forming infection due to
bodily injury received in the accident; or

b. SUICIDE OR ATTEMPTED SUICIDE
WHILE SANE OR INSANE; OR

- c. WAR OF ANY KIND.

CONDITIONS

1. Policy Changes.

- a. Policy Terms. The terms of this policy may be changed or waived only by:

- (1) an endorsement signed by one of our executive officers; or
(2) the revision of this policy form to give broader coverage without an extra charge. If any coverage ***you*** carry is changed to give broader coverage, we will give ***you*** the broader coverage without the issuance of a new policy as of the date we make the change effective.

- b. Change of Interest. No change of interest in this policy is effective unless we consent in writing. However, if ***you*** die, we will protect as named insured, except under death, dismemberment and loss of sight coverage:

- (1) ***your surviving spouse***;
(2) any ***person*** with proper custody of ***your car***, a ***newly acquired car*** or a ***temporary substitute car*** until a legal representative is qualified; and then
(3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.

- c. Consent of Beneficiary. Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.

- d. Joint and Individual Interests. When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us.

There is no right of action against us:

- a. until all the terms of this policy have been met; and
b. under the liability coverage, until the amount of damages an ***insured*** is legally liable to pay has been finally determined by:
(1) judgment after actual trial, and appeal if any; or
(2) agreement between the ***insured***, the claimant and us.

Bankruptcy or insolvency of the ***insured*** or his or her estate shall not relieve us of our obligations.

- c. under uninsured motor vehicle, any physical damage, death, dismemberment and loss of sight coverages, until 30 days after we get the ***insured's*** notice of accident or ***loss***.

- d. under no-fault, until 35 days after we get the ***insured's*** notice of accident or loss.

3. Our Right to Recover Our Payments.

- a. Death, dismemberment and loss of sight coverage payments are not recoverable by us.

- b. Under uninsured motor vehicle coverage:

- (1) we are subrogated to the extent of our payments to the proceeds of any settlement the injured ***person*** recovers from any party liable for the ***bodily injury***.

- (2) if the ***person*** to or for whom we have made payment has not recovered from the party at fault, he or she shall:

- (a) keep these rights in trust for us;
(b) execute any legal papers we need; and
(c) when we ask, take action through our representative to recover our payments.

We are to be repaid our payments, costs and fees of collection out of any recovery.

- c. Under no-fault coverage we are entitled to recover our payments in accord with the ***No-Fault Act***.

- d. Under all other coverages the right of recovery of any party we pay passes to us. Such party shall:

- (1) not hurt our rights to recover; and
(2) help us get our money back.

4. Renewal.

Unless within 59 days of the policy effective date, we mail or deliver a notice of cancellation to ***you***, we agree:

- a. to continue it in force until the end of the current policy period; and
b. to renew the policy for the next policy period at the rates then in effect unless we mail to ***you***

written notice of our intention not to renew. The notice will be mailed to **your** last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

These agreements to continue and renew are void:

- a. if **you** fail to pay the premium when due; or
- b. if **you** or any other **person** who usually drives **your car** have had his or her driver's license under suspension or revocation:
 - (1) during the policy period; or
 - (2) if the policy is renewed:
 - (a) during the current policy period; or
 - (b) 180 days just before its latest renewal date.

5. Cancellation.

How You May Cancel. **You** may cancel **your** policy by written notice mailed or delivered to us. The notice must give us the date to cancel, which must be later than the date **you** mail or deliver it to us.

How and When We May Cancel. We may cancel **your** policy by written notice, mailed to **your** last known address. The notice shall give the date cancellation is effective. The mailing of it shall be sufficient proof of notice.

If we mail or deliver a notice of cancellation to **you** during the first 59 days following the policy effective date, the cancellation notice will be mailed to **you** at least 10 days before the cancellation effective date.

After the policy has been in force for more than 59 days, any notice of cancellation will be mailed to **you** at least:

- a. 10 days before the cancellation effective date if the cancellation is because **you** did not pay the premium; or
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason.

Return of Unearned Premium. If **you** cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

6. Change of Residence.

When we receive notice that the location of principal garaging of the vehicle described on the declarations page has been changed, we have the right to recalculate the premium based on the coverages and rates applicable in the new location. When the change of location is from one state to another and **you** are a risk still acceptable to us at the time **you** notify us of the change, we shall replace this policy with the policy form currently in use in the new state of garaging. The word "state" means one of the United States of America, the District of Columbia or a province of Canada.

MUTUAL CONDITIONS

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one vehicle for any applicable coverage, and to insurance for any other coverage for which said fees were paid so long as this company continues to write such coverages and such insured remains a risk desirable to the company.

While this policy is in force, the first insured named in the declarations is entitled to vote at all meetings of members and to share in the earnings and savings of the company in accordance with the dividends declared by the Board of Directors on this and like


policies.

2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.



SECRETARY



PRESIDENT

4 Reporting a Claim — Insured's Duties — What to do if **you** have an accident, claim or are sued.

2 Defined Words

3 Declarations Continued

3 When and Where Your Coverage Applies

3 Financed Vehicles — Coverage for Creditor

Coverages

4 A — Liability — When there is damage to others.

7 P — No-Fault — When there is **bodily injury** to an **insured** as the result of the use of a **motor vehicle** as a **motor vehicle**.

10 U — Uninsured Motor Vehicle — When the other car or driver is not insured.

12 D — Comprehensive — When **your car** is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page.

12 F — Collision — 80 % — When **your car** is damaged by collision or upset.

12 G — Collision — When **your car** is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page.

13 H — Emergency Road Service — When **your car** breaks down or needs a tow.

13 R — Car Rental Expense — When **you** need to rent a car because of damage to **your car**.

13 R1 — Car Rental and Travel Expenses — When **you** need to rent a car and pay extra travel expenses because of damage to **your car**.

15 S — Death, Dismemberment and Loss of Sight — Pays for death of or certain injuries to **persons** named.

Conditions

16 1. Policy Changes.

16 2. Suit Against Us.

16 3. Our Right To Recover Our Payments.

16 4. Renewal.

17 5. Cancellation.

17 6. Change of Residence.

18 Mutual Conditions

Citation	Runl (R)	Database	Mode
Slip Copy	R 1 OF 2	AZ-CS	P
1988 WL 97530 (Ariz.)			

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

EMPLOYERS MUTUAL CASUALTY COMPANY, Plaintiff/Appellant.

v.

Robert E. McKEON, an individual; Jay Edward McKeon, an individual; and Joan L. McKeon, Defendants/Appellees.

No. CV-87-0312-PR.

Supreme Court of Arizona, En banc.

Sept. 22, 1988.

Jennings, Keoner & Haug by Craig R. Kepner, Randy L. Sassaman, Phoenix, for plaintiff/appellant.

Hofmann, Salcito, Stevens & Myers, P.A. by Robert D. Myers, Leroy W. Hofmann, Phoenix, for defendants/appellees.

FELDMAN, Vice Chief Justice.

Petitioners seek review of a decision denying insurance benefits under a policy's "named driver exclusion." We granted review to define the permissible application of such clauses to uninsured motorist coverage, a matter of first impression in Arizona. Rule 23(a), Ariz.R.Civ.App.P., 17B A.R.S. We have jurisdiction under Ariz. Const. art. 6, s 5(3) and A.R.S. s 12-120.24.

FACTUAL AND PROCEDURAL SUMMARY

The facts are undisputed. Joan and Robert McKeon purchased automobile insurance with Employers Mutual Casualty Company (Employers) with limits of \$300,000 for liability and uninsured motorist coverage, plus \$5,000 in medical payments coverage. The policy initially provided full coverage to their son Jay because he was a family member. However, from 1981 to 1983, Jay received a series of traffic citations for speeding and reckless driving. Employers finally refused to keep the policy in force unless Joan and Robert agreed to sign an endorsement excluding Jay from "all coverage" under the policy whenever he drove any automobile. Joan and Robert McKeon signed this "named driver exclusion" [FN1] on December 20, 1983.

While driving his brother's car in 1985, Jay was severely injured in a crash with an uninsured motorist. Jay's brother had a separate insurance policy on his car. This insurer paid Jay its uninsured motorist limit of \$20,000.

Jay and his father then demanded that Employers pay additional uninsured motorist benefits [FN2] and \$5,000 in medical pay coverage to compensate Jay for his injuries. Relying on the named driver exclusion, Employers refused to pay. Instead, Employers sued Jay and his parents (the McKeons), seeking a declaratory judgment that it was not obligated to provide benefits to Jay.

The parties both moved for summary judgment on an agreed statement of facts. Rule 4(f), Ariz.Unif.R.Prac.Super.Ct., 17B A.R.S. Employers argued that A.R.S. s 28-1170(B)(3) (allowing named driver exclusions) permitted Jay's exclusion from uninsured motorist coverage notwithstanding A.R.S. s 20-259.01 (requirements for uninsured motorist coverage). Employers also argued that if the exclusionary clause were contrary to A.R.S. s 20-259.01, Jay could receive

only the \$15,000 statutory minimum coverage. Minute Entry, Sept. 9, 1986.

The McKeons made two counterarguments. First, the language of the exclusionary clause was intended only to bar liability for harm to others "caused" by Jay's driving, not harm that Jay suffered from others. Under this reasoning, Jay could recover uninsured motorist benefits to the extent he was not responsible for the accident. Thus, the named driver exclusion did not preclude Jay's claim. Second, A.R.S. s 20-259.01 mandated uninsured motorist coverage in automobile insurance policies. The "named driver exclusion" permitted by A.R.S. s 28-1170(B)(3) applied only to liability coverage, not to uninsured motorist benefits.

The trial court granted summary judgment to the McKeons and denied Employers motion. The court held that the policy benefits were not limited to \$15,000, and instead covered Jay's entire loss to the applicable policy limits. By way of explanation, the trial court adopted "the reasoning of the [McKeons] as set forth in the pleadings and as stated in oral argument." Minute Entry, Sept. 9, 1986. Employers appealed.

The court of appeals reversed. It first determined that the named driver endorsement was an unambiguous attempt to exclude Jay from all coverage under the policy. Employers Mutual Casualty Co. v. McKeon, 154 Ariz. 411, 413, 743 P.2d 7, 9 (App.1987). The court then held that A.R.S. s 28-1170(B)(3) permitted the proposed exclusion from uninsured motorist and medical pay benefits in the absence of any specific prohibition in A.R.S. s 20-259.01. Because these statutes had to be read in pari materia, exclusion was proper. The fact that the policy fully covered Jay except when he drove did not impress the court. Id. at 413-14, 743 P.2d at 9-10. The court remanded in favor of Employers. Id. at 414, 743 P.2d at 10. We then granted the McKeons' petition for review.

THE ISSUES

This case presents three issues.

1. Does the named driver endorsement exclude only liability coverage?
2. If not, does A.R.S. s 20-259.01 invalidate the attempt to exclude Jay?
3. If A.R.S. s 20-259.01 invalidates the attempt to exclude Jay, is Jay only entitled to the statutory uninsured minimum coverage of \$15,000?

RESOLUTION

A. Scope of the Exclusion Clause

The named driver clause states that "under all coverage provided [Employers] shall not be liable for loss, damage, and/or liability caused while ... any automobile ... is being driven or operated by ... Jay Edward McKeon" (emphasis added).

[1]

[1] The parties interpret this clause differently. The McKeons claim that it only excludes liability coverage for accidents caused by Jay. Employers asserts that the endorsement excludes all coverage for loss or damage caused while Jay is driving, regardless of Jay's fault.

We agree with the court of appeals that this clause clearly attempts to deny all coverage to Jay while he is driving. See McCullough v. Standard Fire Insurance Co. of Alabama, 404 So.2d 637, 637 (Ala.1981) (virtually identical named driver endorsement excluded permissive uninsured motorist benefits). Thus, the policy excluded Jay from the non-mandatory medical payments coverage. However, the question remains whether Arizona law permits the exclusion of mandatory uninsured motorist coverage by contractual arrangement.

B. Excluding Uninsured Motorist Coverage

[2]

[2] Regardless of the policy, the McKeons argue that A.R.S. s 20-259.01 prohibits exclusion of uninsured motorist benefits. [FN3] This statute requires insurance companies writing motor vehicle liability policies to include a minimum level of uninsured motorist coverage and to offer insureds coverage at least equal to the policy's liability limits. The statute only excepts public livery, rental, or commercial transportation vehicles from this requirement. A.R.S. s 20-259.01(D). While this exception is irrelevant here, enumeration of exceptions in a statute creates a strong inference that the legislature intended no others. See, e.g., *State v. Ault*, --- Ariz. ---, 759 P.2d 1320 (1988), *Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). The mandatory language of A.R.S. s 20-259.01, coupled with the narrow exceptions allowed in subsection (D), express a legislative design opposing other exclusions. See *Pennsylvania National Mutual Casualty Insurance Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (App.1984) (business and commercial use exclusion in policy contravened state insurance law). Cf. *Garza v. Glen Falls Insurance Co.*, 105 N.M. 220, 731 P.2d 363 (1986) (specific, detailed New Mexico statute allowed exclusion of a named driver from uninsured motorist coverage).

[3]

[3] Employers, however, contends that A.R.S. s 28-1170(B)(3) allows an insured to exclude any named person from uninsured motorist insurance coverage when driving. [FN4] According to Employers, we should construe this statute and A.R.S. s 20-259.01 in pari materia because both laws deal with motor vehicle liability policies. The exclusionary language of A.R.S. s 28-1170(B)(3) should therefore carry over to A.R.S. s 20-259.01.

We disagree for several reasons. First, the term "motor vehicle liability policy" in A.R.S. s 28-1170 referred exclusively to liability coverage under the Arizona Uniform Motor Vehicle Safety Responsibility Act, A.R.S. ss 28-1101 to -1225 (the Act). 1951 Ariz.Sess.Laws ch. 122, s 21. The legislature adopted the Act in 1951 to encourage motorists to purchase liability insurance. See generally *id.* The Act made no mention of uninsured motorist coverage, which the legislature did not require until 1966. See 1965 Ariz.Sess.Laws ch. 34, s 1 (enacting the first version of A.R.S. s 20-259.01).

Further, while both A.R.S. s 28-1170(B)(3) and A.R.S. s 20-259.01 deal with aspects of Arizona motor vehicle liability policies, the statutes approach the subject from different perspectives. The 1951 law centers on liability coverage--protection of those injured by the insured's negligence, the later statute concerns uninsured and now, also, underinsured benefits--protection of the insured. The laws were enacted at different times to protect different interests. Thus, an exclusion under liability protection does not require a similar result for uninsured motorist protection.

Therefore, in pari materia does not fit the statutory framework here. Moreover, no ambiguity in these statutes justifies resort to venerable doctrines of judicial construction. See, e.g., *Frazier v. Terrill*, 65 Ariz. 131, 125, 175 P.2d 439, 441 (1946) (in pari materia doctrine used with analogous statute prescribing penalty). There being no statutory conflict or ambiguity, application of the in pari materia doctrine to two statutes enacted at different times to deal with different problems, brings more confusion than enlightenment. See *State v. Carter*, 145 Ariz. 101, 111, 700 P.2d 466, 498

(1985).

Finally, and most importantly, narrowing uninsured motorist coverage contravenes a long-standing legislative policy to guarantee all insureds protection against uninsured motorists. See, e.g., *Spain v. Valley Forge Insurance Co.*, 152 Ariz. 189, 192, 731 P.2d 84, 87 (1986) (evolution of legislation strengthening uninsured motorist insurance coverage). The statutes on the subject are remedial, and we have liberally construed them in the past to further the legislature's intent to aid all victims of financially improvident drivers. *Calvert v. Farmers Insurance Co.*, 144 Ariz. 291, 294, 697 P.2d 684, 687 (1985).

Our statutes require an insurer to provide full uninsured motorist coverage to every insured, whether driving an automobile, strolling down the sidewalk, or relaxing in the front porch swing. *Id.* at 296, 697 P.2d at 689. The intent is to protect each insured no matter where he is (within the policy's territorial limits) or what he is doing. Employers concedes that Jay was an insured, entitled to uninsured motorist coverage in every circumstance except when he was driving. Neither text nor intent of the uninsured motorist statute permits us to add such legislatively unrecognized exclusions. We have already specifically condemned this sort of whittling away of legislatively required coverage. See, e.g., *Spain*, 152 Ariz. at 192, 700 P.2d at 498. *Calvert*, 144 Ariz. at 294, 697 P.2d at 687.

One could argue that the statute only required Employers to offer the uninsured motorist coverage, not guarantee it. Therefore, the McKeons' agreement to exclude Jay constituted a partial rejection of coverage to Jay. 1 A. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 4.25, at 133 (2d ed. 1987). Some states with permissive uninsured motorist offering statutes have allowed such partial abrogation of uninsured motorist coverage. See *Southeast Title & Insurance Co. v. Thompson*, 231 So.2d 201 (Fla.1970) (per curiam) (court adopts dissent of Swann, J. in court of appeals' decision at 224 So.2d 719-21). [FN5] However, courts in jurisdictions which, like Arizona, have adopted mandatory uninsured motorist coverage, have not upheld a named driver exclusion as a partial rejection of uninsured motorist benefits. As Widiss notes

In states where uninsured motorist coverage is mandatory--that is, where it cannot be rejected--interpreting such an exclusion as a partial rejection of the uninsured motorist coverage would clearly violate public policy.

1 A. WIDISS, *supra* § 4.25, at 138. See also *Hartford Accident & Indemnity Co. v. Dairyland Insurance Co.*, 274 Or. 145, 545 P.2d 113 (1976). Thus, we hold the purported exclusion of uninsured motorist coverage is contrary to public policy and void.

C. Limitation of Coverage to Statutory Minimum

[4]

[4] Assuming the named driver exclusion did not eliminate Jay's uninsured motorist coverage, Employers argues that Jay is only entitled to the statutory minimum coverage of \$15,000, rather than the \$200,000 uninsured motorist policy limits Jay's parents actually purchased. We disagree.

Arizona requires that insurance companies offer uninsured motorist coverage at least equal to the liability limits of the policy for "all persons insured under the policy." A.R.S. § 20-259.01(B). [FN5] By statute, therefore, the minimum limit for uninsured motorist coverage is either \$15,000/\$30,000, or an amount equal to the liability limits, whichever the insured elects to purchase. *Spain*, 152 Ariz. at 192, 731 P.2d at 87. This provision is typical

of insurance statutes across the nation and demonstrates legislative intent that purchasers of motor vehicle liability policies be able to buy uninsured motorist protection in the same limit as the liability coverage they chose. Indeed, among all coverages in motor vehicle insurance policies, "the uninsured motorist insurance is the only coverage that is subject to the mandatory offering requirement." 1 A. WIDISS, *supra* s 4.25, at 133.

[The] insured's statutory entitlement to [uninsured motorist] coverage is not limited to the \$15,000/\$30,000 floor provided by A.R.S. s 20-259.01(A), but also extends to that amount of coverage, up to the policy's liability limit, that the named insured has actually elected to purchase pursuant to A.R.S. s 20-259.01(B).

State Farm Mutual Automobile Insurance Co. v. Janssen, 154 Ariz. 386, 393, 742 P.2d 1372, 1379 (Ct.App.1987).

Therefore, we reject Employers' invitation to reduce the McNeons' uninsured motorist coverage to the statutory minimum of \$15,000. We do so because the minimum issue limit is below the \$300,000 in expanded coverage that the statute required that the insured be allowed to purchase and that they actually did purchase. Such a reduction of required coverage limits would contravene the mandatory offering terms of A.R.S. s 20-259.01, and is therefore impermissible on public policy grounds. *Spain*, 152 Ariz. at 193, 731 P.2d at 88. See also *California Casualty Indemnity Exchange v. Steven*, 5 Cal.App.3d 304, 85 Cal.Rptr. 82 (1970) (general named driver exclusion was ineffective as a waiver of uninsured motorist coverage). 1 A. WIDISS, *supra* s 4.25, at 138.

CONCLUSION

As far as mandatory uninsured motorist coverage is concerned, the named driver exclusion in the present policy is void. Coverage is available in the limits purchased by the insured. However, the named driver exclusion did abrogate the nonmandatory medical pay coverage for Jay. We therefore vacate the portion of the court of appeals' opinion that deals with uninsured motorist coverage. We affirm the judgment concerning uninsured motorist coverage and reverse the part of the judgment affecting medical payments.

GORDON, C.J., and CAMERON, MOELLER and HOLOHAN, JJ., concur.

FN1. The clause is also known as a "named driver endorsement."

FN2. Under the policy, any amount payable was reduced by the \$20,000 already paid by the insurer for Jay's brother.

FN3. In relevant part, A.R.S. s 20-259.01 provides
A. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in the policy or supplemental to the policy, in limits for bodily injury or death prescribed in subsection B of this section, but not less than the limits prescribed in s 28-1102, ... for the protection of persons insured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting

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therefrom ...

FN4. Section 28-1170(B)(3) provides as follows:
[The owner's policy of liability insurance] may by agreement in writing between any named insured and the insurer exclude as insured any person or persons designated by name when operating a motor vehicle.

FN5. But see Liberty Mutual Insurance Co. v. Marino, 370 So.2d 397, 398 (Fla. Dist. Ct. App. 1979) ("operator restriction endorsement" did not cut off uninsured motorist coverage).

FN6. B. Every insurer writing automobile liability or motor vehicle liability policies, as provided in subsection A of this section shall also make available to the named insured thereunder and by written notice offer the insured and at the request of the insured shall include within the policy uninsured motorist coverage which extends to and covers all persons insured under the policy, in limits not less than the liability limits for bodily injury or death contained within the policy.
(Emphasis added.)

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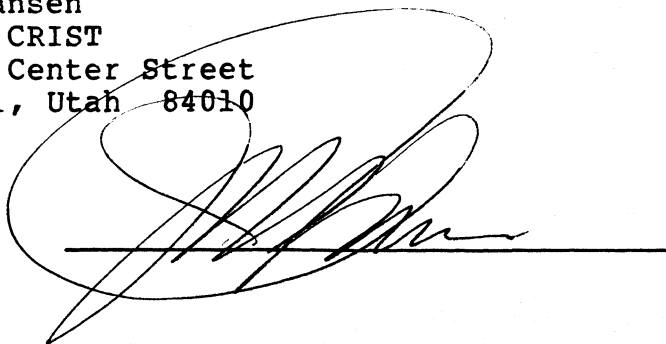
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MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing Brief of Appellants was mailed by United States mail, postage prepaid, on this 9 day of December, 1988, addressed to:

Darwin Hansen
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Bountiful, Utah 84010

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be 'D. Hansen'.

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