

1989

Kelly Wagner v. Farmers Insurance Exchange : Brief of Respondent

Utah Court of Appeals

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89-0316 IN THE SUPREME COURT
OF THE STATE OF UTAH

KELLY WAGNER,	:	
	:	
Plaintiff/Appellant,	:	Case No. 880195
	:	
vs.	:	
	:	
FARMERS INSURANCE EXCHANGE,	:	Category 14b
	:	
Defendant/Respondent.	:	

BRIEF OF RESPONDENT

APPEAL FROM A FINAL JUDGMENT
OF THE THIRD DISTRICT COURT,
HONORABLE SCOTT DANIELS, DISTRICT JUDGE

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FILED

OCT 27 1988

Clerk, Supreme Court, Utah

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JURISDICTIONAL STATEMENT

This is an appeal from a summary or declaratory judgment of the Third Judicial District Court of Salt Lake County, State of Utah. The Judgment was entered on April 20, 1988 (R. 69-70). Notice of Appeal was filed on May 13, 1988 (R. 73). The jurisdiction of this Court is invoked under Utah Code Annotated, Section 78-2-2(3)(i).

STATEMENT OF ISSUES

Whether or not the provision in defendant's policy of insurance which provides that an uninsured motor vehicle does not include a vehicle owned by or furnished or available for the regular use of the insured or any family member is valid.

STATUTES INVOLVED

The text of the following statutes are relevant to the determination of the present case as set forth in the Appendix: Section 31A-22-303, Section 31A-22-304 and Section 31A-22-305, Utah Code Annotated, 1953, as amended.

STATEMENT OF THE CASE

This is a declaratory judgment action brought by the plaintiff Kelly Wagner to determine whether or not she is entitled to receive uninsured motorist benefits under a policy of insurance issued by the defendant Farmers Insurance Exchange to her late husband, Thomas Wagner (R. 2-3). The matter was submitted to the Court below on cross Motions for Summary Judgment on the basis of stipulated and undisputed fact (R. 27

and 31-32). The Court found that the plaintiff Kelly Wagner was not entitled to recover uninsured motorist benefits under the policy of insurance issued to Thomas Wagner (R. 68). Judgment was entered for the defendant on April 20, 1988 (R. 69-70).

The facts of this case are set out in the Stipulation (R. 51-52) marked Exhibit 2 set out in the Addendum to this brief and in the deposition of Calvin Y. Coleman filed with this appeal (R. 79). The facts are that Tom Wagner died as a result of an automobile accident which occurred at 5:56 a.m. on November 15, 1986. He is survived by the plaintiff, his wife, and a six-month-old son, Tyler Thomas. At the time of the accident, Thomas Wagner was a passenger in his own insured vehicle, a 1979 Porsche 928. The automobile was driven at the time of the accident by Charles P. Lingle with the permission of Tom Wagner. The accident was caused by the negligence of the driver, Charles Lingle.

At the time of the accident, Thomas Wagner and the vehicle he was occupying was owned by him and insured under a policy of insurance issued by the defendant and respondent, Farmers Insurance Exchange (R. 55-67). A copy of that policy showing the provisions of the policy is attached as Exhibit 3 in the Addendum to this brief.

Part I of the policy on page 1 under Liability provides:

"We will pay damages to which an insured person is legally liable because of bodily

injury to any person and property damage arising out of the ownership, management or use of a private passenger car, a utility car or a utility trailer."

Under the same section on page 1, an insured person is defined as:

- "1. You (the insured) or any family member. (parentheses added).
2. Any person using your insured car."

Bodily injury is defined on page 1 of the policy as:

"Bodily injury means bodily injury to or sickness, disease or death of any person."

The limits of liability are defined on page 2 of the policy as follows:

"The bodily injury liability limit for 'each person' is the maximum for bodily injury sustained by one person in any occurrence. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit."

The liability limits of the policy are set out in the declaration as \$100,000.00 for each person, \$300,000.00 for each occurrence. On page 2 of the policy, the policy provides:

"We will provide insurance for an insured person other than you or a family member, up to the limits of the financial responsibility law only."

A family member is defined under definitions on page 1 of the policy as:

"Family member means a person related to you by blood, marriage or adoption who is a resident of your household."

Section 31A-22-303, Utah Code Annotated, 1953, as amended provides that a motor vehicle liability policy shall:

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

Section 31A-22-304 provides that policies containing motor vehicle liability coverage may not limit the insurer's liability under that coverage below the following:

"(1) \$20,000 because of bodily injury or death to one person, in any one accident and subject to this limit for one person, in the amount of \$40,000 because of personal injury or death to two or more persons in one accident,..."

Since Charles P. Lingle was driving the automobile in which Tom Wagner was killed with the permission of the named insured, but was not a person related to the named insured by blood, marriage or adoption, the defendant Farmers Insurance Exchange deemed that under the Other Insurance Clause of its policy and Section 31A-22-304 it owed the sum of Twenty Thousand

Dollars (\$20,000.00) under the liability portion of its policy and has offered to pay the plaintiff this amount (R. 2, Exhibit 2).

The declaration of the policy also provides for the payment of medical and no-fault benefits, and the defendant has paid the funeral and death benefits under the no-fault provisions of its policy (Exhibit 2).

Plaintiff has made a demand upon the plaintiff for uninsured motorist benefits (R. 1-2). Farmers Insurance Exchange has denied it affords uninsured motorist benefits by reason of the fact that the automobile driven by Charles Lingle in which Thomas Wagner was a passenger was a vehicle owned by Thomas Wagner and does not qualify as an uninsured motor vehicle (R. 4-5, Exhibit 2).

Section 31A-22-305, Utah Code Annotated, 1953, as amended, defines uninsured motorist coverage under paragraph (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 Section 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; or

(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."

Part II, Uninsured Motorist, on page 2 of the defendant's policy provides:

"We will pay all sums which an insured person is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured person...."

Under Definitions on page 2, an insured person is defined as:

"a. You or a family member;
b. Any other person while occupying your insured car."

An uninsured motor vehicle is defined on page 3 of the policy and:

"means a motor vehicle which is a. not insured by bodily injury liability bond or policy at the time of the accident. b. insured by a bodily injury liability bond or policy at the time of the accident which provides coverage in amounts less than the limits of the uninsured motorist coverage shown in the declaration."

However, under paragraph 4 on page 3, the policy provides that an uninsured motor vehicle, however, does not mean a vehicle:

"a. Owned by or furnished or available for the regular use of you or any family member."

It is undisputed that Thomas Wagner was the insured in this case and was occupying an automobile owned by him at the time of the accident which is the subject of this action. Therefore, under the terms of the policy, neither he or his heirs were entitled to uninsured motorist coverage under the

policy of the defendant.

SUMMARY OF ARGUMENT

An insurance policy is a contract and as in all other written contract the provisions of said contract should control unless there is some reason not to follow the terms found in the contract.

Reasons for not following the provisions of a contract may include the following. The provisions are illegal or against the public policy of the state. The provisions may be ambiguous

In such event we must look to what the parties intended or expected. One of the parties may have been misled by the terms of the contract to be different than they appear in the contract. There may be some promise or representation on the part of the other party.

None of these reasons exist in this case, the provisions of the contract in question does not violate state law, the terms of the provisions are clear and unambiguous. There was no representation on the part of the insurance company or its agent which gave the insured or his heirs any reason to believe that the terms of the policy were any different than the provisions found in the policy.

ARGUMENT

It should be pointed out at the outset that this case does not address the merits of the plaintiff's action against Charles Lingle. That is the subject of another lawsuit. The

question here is, the amount of coverage available under the policy, provided plaintiffs first prove they are entitled to recover any amount by reason of the negligence of Charles Lingle.

It should be further noted that an automobile on which liability coverage is afforded in the amount required by statute is not defined by Section 31A-22-305, supra, as an uninsured motor vehicle. Nor is there any provision in the statute (Section 31A-22-305) which prohibits or renders a definition contained in Farmers policy invalid provided the vehicle is covered under a liability policy with limits no lower than required under Section 31A-22-304, supra.

The defendant has not denied that under its policy it agreed to provide uninsured-underinsured motorist coverage to Tom Wagner. Had he been struck by an uninsured or underinsured motorist driving an uninsured or underinsured motor vehicle, he or his heirs would be entitled to uninsured-underinsured motorist coverage. The issue in this case is whether or not the automobile owned by the deceased, Tom Wagner, met the qualifications of an uninsured motor vehicle. Under the provisions of the policy, it is clear that it did not.

The plaintiff argues that this provision was invalid because the deceased, Tom Wagner, reasonably expected that he would be covered if he were killed as a result of negligence on the part of the driver of his own vehicle while he was a passenger in the vehicle.

There is no claim in this case that the insured was not furnished a copy of the policy issued by the defendant which he presumably read or could have read. Nor is there any evidence that Tom Wagner expected to be covered under uninsured motorist coverage on his own motor vehicle. There is no evidence, as claimed by the plaintiff on page 2 of her Brief, that Tom Wagner was misled by any representation of the insurance agent who does not recall any conversation with Mr. Wagner about what kind of coverage was provided by uninsured motorist coverage. The agent did say that he usually tells prospective customers:

"If you are involved in an accident which you are not at fault and you are injured and that person does not have liability insurance to cover your medical costs, then you have coverage available under the uninsured motorist, and I also tell them that the uninsured motorist coverage also includes underinsured motorist which if you are involved in the same example of an accident and those persons did have insurance but they have lower limits than your medical costs were, that you may use that as a supplement to their bodily injury liability insurance..." (R. 79, p. 15)

That is a long way from telling an individual that if he is killed by the negligence of a driver whom he lets drive his own insured car while he is a passenger in the car he will be entitled to uninsured motorist coverage. We doubt that such an expectation ever occurred to either the agent or the insured. After all, a person does not expect to recover damages for the negligence of a person whom he lets drive his car while he is a passenger in his car. Were we to adopt the reasonable

expectation concept as advocated by the plaintiff in this case, it would enable an insured to write his own policy simply by asserting after the happening of an accident or the incurring of a loss that he expected at the time he bought a policy of insurance that that situation would be covered regardless of the provisions of the insurance contract. An automobile policy could be turned into a life insurance policy simply by the heirs of an insured asserting that they expected to recover the uninsured motorist coverage simply by reason of the insured being killed in an automobile accident. If the insured were not killed, it could be turned into a health and accident policy by the simple assertion that the insured expected to recover uninsured motorist coverage if he were injured in an accident. Obviously there are other requirements that must be met, but if we are permitted to disregard one provision of the policy, why not all.

POINT I.

WHEN MAY THE PROVISIONS OF A CONTRACT BE
MODIFIED, EXPLAINED OR IGNORED.

As is said in the case quoted in plaintiff's Brief on page 11, Darner Motor Sales v. Universal Underwriters, 682 P.2d 388 (Ariz. 1984), page 395:

"Of course, if not put in proper perspective, the reasonable expectations concept is quite troublesome, since most insureds develop a 'reasonable expectation' that every loss will be covered by their policy. Therefore, the reasonable expectation concept must be limited by something more than the fervent hope engendered by loss. Such a limitation is easily found in the Postulate contained in

Corbin's work -- that the expectations to be realized are those that 'have been induced by the making of a promise.'"

The court then went on to adopt the standards for determining "reasonable expectations" set out in the Restatement of Contracts, Second, Section 211, which provide:

(1) Except as stated in Subsection (3), where a party to an agreement signs or otherwise manifests assent to a writing and has reason to believe that like writings are regularly used to embody terms of agreements of the same type, he adopts the writing as an integrated agreement with respect to the terms included in the writing.

(2) Such a writing is interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing.

(3) Where the other party has reason to believe that the party manifesting such assent would not do so if he knew that the writing contained a particular term, the term is not part of the agreement.

In the Darner Motor Sales case, the agent for the insurer, according to the plaintiff, had actually misrepresented the limits of coverage provided in the policy and had actually told the insured that although the policy in question provided only 15/30,000 coverage, the all-risk clause of the umbrella policy would provide additional coverage to limits of 100/300,000.

The case of Gray v. Zurich Insurance Company, cited by the plaintiff, 419 P.2d 168 (Calif. 1966), involved the duty of an insurer to defend an assault action against an insured under a

comprehensive liability policy where the policy provided "the company shall defend any lawsuit against the insured alleging such bodily injury or property damage and seeking damage which are payable under the terms of the endorsement" which policy further provided "this endorsement does not apply to bodily injury or property damage caused intentionally or at the direction of the insured." The court held that since the policy sets forth the duty to defend as the primary one and since the insurer attempts to avoid it only by an unclear exclusionary clause, the insured would reasonably expect that it is legally entitled to such protection. The court then went on to explain why it found the exclusionary clause unclear, pointing out the nature of the obligation to defend itself necessarily uncertain in that no one can determine whether the third-party suit does or does not fall within the indemnification coverage of the policy until that suit is resolved saying since the policy contains its own seeds of uncertainty, the insured has held out a promise that by its very nature is ambiguous.

In the case of Bonner County v. Panhandle Rodeo Association, also cited by the plaintiff, 620 P.2d 1102 (Idaho 1980), it was held an exclusionary clause for sole negligence found in a policy issued to one of the lessees of the fairgrounds did not exclude coverage of lessors of additional insureds as to injuries suffered by woman who fell from bleacher seat while attending a rodeo which was sponsored by lessees where

the policy disclosing exclusions was never issued to lessor. The certificate, a policy and its endorsement, all indicated there was coverage for underlying contracts and agreements and the lease agreement provided for indemnification for any liability, including liability resulting from the lessor's sole negligence. The court said:

"The rule in Idaho is that 'in the absence of ambiguity, contracts for insurance must be construed as any other and understood in their plain, ordinary and proper sense, according to the meaning derived from the plain wording of the contract.'"

The court then went on to say that where there is ambiguity, the court is not confined to the wording of the contract but should consider extrinsic matters such as the intent of the parties, the purpose sought to be accomplished, the subject matter of the contract, and the circumstances surrounding the issuance of the policy.

In the case of Reserve Insurance Company v. Pisciotto, 640 P.2d 764 (Calif. 1982), the insured's stepson sued the insured and several others for injuries sustained when the owner's boat collided with another. One of the watercraft liability policies contained a provision that the policy did not apply to bodily injury to insured or any member of family of the insured in the same household as insured. The court held that a reasonable insured could have believed that the term family did not encompass his stepchildren and since use of the terms household in conjunctive sense with family raised inference that

they were not intended to be synonymous.

The case of Erikson v. Nationwide Mutual Insurance Company, 543 P.2d 841 (Idaho 1975), involved the construction of a health and accident policy which provided that the injury must have been sustained "as a direct result of an accident directly and independently of all other causes" in order to find liability within the requirements of the insurance policy. The court in construing that clause merely held the fact that a latent disease or bodily infirmity existed prior to the accident, upon which the accident acts to precipitate the loss, will not defeat coverage as long as the disease or infirmity appears as a passive ally and the accidental cause predominates.

In Farmers Insurance Exchange v. Call, 712 P.2d 231 (Utah 1985), the court held that the household family exclusion clause in an automobile policy is contrary to the public policy of this state and to the statutory requirements found in the No-Fault Insurance Act as to the minimum benefits provided by statute. The court then went on to hold that in that case the exclusion clause was not valid as to the policy limits in excess of the statutory minimum since Farmers failed to provide any evidence that it either delivered a copy of the policy containing the exclusion clause to the insureds or otherwise disclosed the exclusion clause to the insured, and the insured affirmatively alleged that they never received a copy of the contract.

POINT II.

THE PROVISION OF AN INSURANCE CONTRACT SHOULD CONTROL WHERE IT DOES NOT VIOLATE STATE LAW OR STATE PUBLIC POLICY, THERE IS NO AMBIGUITY IN THE POLICY AND NO MISREPRESENTATION OR PROMISE MADE OUTSIDE THE POLICY.

In the Nevada case of Zobrist v. Farmers Insurance Exchange (March 31, 1987), 734 P.2d 699 (Nevada 1987), the defendant insured several cars owned by the plaintiff Zobrist under a single policy with underinsured motorist limits of \$500,000. The policy included an uninsured motorist exclusion for owned but uninsured cars. Zobrist collided with another automobile while driving his own dune buggy, which was not insured under the policy. He received \$15,000, the policy limits of the other driver. Farmers and Zobrist stipulated that the total amount of damages exceeded this amount by \$35,000. The plaintiff Zobrist claimed that the applicable policy limits for underinsured motorist coverage is equal to or exceeds \$35,000. The defendant, on the other hand, contended that the underinsured motorist coverage is limited to \$15,000, the minimum required by statute. Accordingly, the defendant paid \$20,000 (\$5,000 for interest and costs). The Court sustained a judgment in favor of the defendant and held that the exclusion in the automobile policy for owned but uninsured cars was void to prevent payment of statutory minimum of \$15,000 under the underinsured motorist statute but valid to restrict payment of any amount in excess of \$15,000 minimum.

In an Idaho case, Dullenty v. Rocky Mountain Fire and Casualty Company (1986), 721 P.2d 198, Dullenty owned three motor vehicles, only one of which was insured with Rocky Mountain Fire and Casualty Company. He was involved in an accident with an uninsured motorist while driving one of the cars which was not insured by the defendant. The policy provided:

"This supplement [uninsured motorist coverage] does not apply:

....
"(c) to any other vehicle or automobile owned by or furnished for regular use to the named insured and while resident of the same household, his spouse and relatives of either...."

The district court granted summary judgment in favor of the insurer. The Court of Appeals reversed, and the Supreme Court reversed the Court of Appeals and sustained the district court holding:

(1) The automobile insurer statute did not require an insurance carrier to extend uninsured motorist coverage to an insured occupying his own vehicle which was not insured by the carrier under a liability policy, and (2) public policy did not require a clause excluding coverage for insured occupying his own vehicle which was not insured by the carrier under motor liability policy to be invalidated.

In a case directly in point, Willey v. Farmers Insurance Group, 523 P.2d 1351 (N. M. 1974), the very language involved in this policy was construed by the New Mexico court. The plaintiff had in force with the defendant insurance company a standard automobile liability policy with an uninsured motorist

endorsement attached thereto. The plaintiff was a passenger in her own car which was being driven by one Boydston, when the latter negligently collided with another automobile, resulting in the plaintiff's death. Boydston had no insurance in force in his own name. In defining an uninsured motorist vehicle, the policy of the defendant provided that it shall not include "a motor vehicle owned by or furnished for the regular use of the named insured." The trial court granted summary judgment dismissing the plaintiff's action against the uninsured motorist carrier and the Supreme Court affirmed. The Court held that the definition of an uninsured motorist vehicle which does not include a motor vehicle owned or furnished for the regular use of the insured does not violate the uninsured motorist statute.

In the Utah case of Clark v. State Farm Mutual Insurance Company, 743 P.2d 1227 (Utah 1987), Clark was killed by an uninsured motorist who negligently hit the motorcycle which Clark was driving. Clark had not insured his motorcycle but had purchased insurance for his car from the insurer. The Clark family sued attempting to collect under an uninsured motorist clause in the policy on the car. The policy contained an uninsured motorist clause which was limited by another clause stating that the uninsured motorist insurance does not apply if the insured is driving a vehicle owned by him or residents of the same house and the vehicle is not an "owned motor vehicle" under the policy. The policy defined "owned motor vehicle" as vehicles

described in the declaration of the policy, temporary substitutes for those vehicles and newly acquired vehicles. The parties agreed that the motorcycle was not a temporary substitute or newly acquired automobile.

The Clarks argued that the District Court erred in giving the contractual language its plain meaning because of Utah Code Annotated, Section 41-12-21.1 (1981), recodified in Utah Code Annotated, Sections 31A-22-302, 31A-21-305, which created a personal right to uninsured motorist coverage and expresses a legislative statement of public policy that forbids exceptions to uninsured motorist coverage.

The Supreme Court disagreed and held that the exclusion was valid. The Court said:

"We do not think that the statute, which merely requires insurers to offer uninsured motorist coverage and authorizes motorists to waive the coverage, evinces a legislative intent to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household."

Under a similar set of facts, the holding in the Clark case was followed in the case of Hind v. Quilles, 69 Utah Adv. Rep. 9 (November 1987). Both of these cases illustrate that the Court will not extend the insurance coverage beyond that provided by the language in the policy where the language defining the coverage afforded does not violate the provisions of the statute of the State of Utah requiring such coverage and outlining the extent of such coverage.

In State Farm Mutual Auto Insurance v. Mastbaum, 748 P.2d 1042 (Utah 1987), the same issue arose. The evidence indicated that the insured did receive a copy of the insurance policy at the time it was issued by the plaintiff and the sole question for determination was whether or not the household and family exclusion is valid in a policy issued by the plaintiff (State Farm Mutual Insurance Company) in excess of those which are statutorily mandated. The Court cited the case of Allstate Insurance Company v. U.S. Fidelity & Guaranty Company, 619 P.2d 329, Utah 1980, which held that an exclusion of a named driver was unenforceable only to the extent of a statutory minimum coverage and then went on to say:

"We adhere to Allstate and the majority view and hold that the household or family exclusion is valid in this state as to insurance provided by an automobile policy in excess of the statutorily mandated amounts and benefits. While the minority view is attractive from the standpoint of an injured victim, the policy must be enforced as written when its provisions do not conflict with our mandatory automobile insurance statutes."

In a dissenting opinion, Justice Durham felt the case, in the absence of the policy itself and without a more compelling description of the nature of the negotiations and circumstances surrounding the contract formation should be remanded to the trial court to take evidence in regard to those claims. Justice Zimmerman, in a concurring opinion, felt that with respect to the adhesion contract arguments made by Justice Durham, he would not

reach that issue since the issue was not adequately presented on appeal. Both the dissenting opinion of Justice Durham and the concurring opinion of Justice Zimmerman indicate that something more than the mere claim that the contract does not meet the expectations of the insured is required in order to invoke that doctrine as does the majority opinion.

To say, as the plaintiff does, that after a loss a party may change the terms of a contract simply by asserting it did not meet with his expectations would enable a party to avoid the provisions of not only insurance contracts but other standardized agreements such as uniform real estate contracts, uniform sales contracts and other documents of this nature. The cases cited illustrate that the reasonable expectations rule is simply a way of resolving ambiguities which may be found in contracts or in some cases where there has been a misrepresentation of the terms set out in a contract or a failure to disclose those terms. In those cases, the courts resort to what might be considered an exception to the rules that the written terms of a contract may not be varied by parol evidence to determine the actual agreement between the parties. It is submitted that in the absence of ambiguity or misrepresentation or failure to disclose there is no reason to resort to parol evidence and the terms of the written instrument should control.

CONCLUSION

Thus, it appears that where the liability section of an insurance policy provides bodily injury limits of \$20,000 per person and \$40,000 per accident to the person driving an insured automobile, the amount required by the statute pertaining to uninsured motorist coverage (Section 31A-22-305, supra), the provision providing that a vehicle owned by the insured is not an uninsured motor vehicle is valid. Further, there is no evidence that the agent who sold the insurance policy in any way misrepresented the terms of the policy or that Tom Wagner would not have accepted the policy with that provision in the policy.

It is submitted that the Judgment of the District Court should be affirmed.

DATED this 26th day of October, 1988.

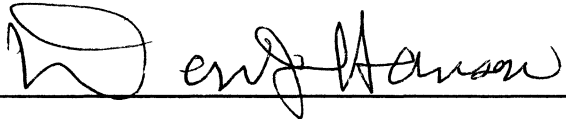
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Attorneys for Defendant

MAILING CERTIFICATE

I hereby certify that, on the 26th day of October, 1988, I caused to be mailed, postage prepaid, four true and correct copies of the foregoing BRIEF OF RESPONDENT to:

M. David Eckersley
PRINCE, YEATES & GELDZAHLER
Attorneys for Plaintiff/Appellant
175 East Fourth South
City Centre I, Suite 900
Salt Lake City, Utah 84111



ADDENDUM

Exhibit "1" - Relevant Statutes

Exhibit "2" - Stipulation

Exhibit "3" - Farmers Auto Policy

COLLATERAL REFERENCES

A.L.R. — Injury or death caused by assault as within coverage of no-fault motor vehicle insurance, 44 A.L.R.4th 1010.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members, 52 A.L.R.4th 18.

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

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

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

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

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

(c) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, 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 Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

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

- (3) Motor vehicle liability coverage need not insure any liability:
- (a) under any workers' compensation law under Title 35;
 - (b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or
 - (c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.
- (4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.
- (5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.
- (6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.
- (b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured after the injured third person has been made whole with respect to the claim against the insured.
- (7) A policy of motor vehicle liability coverage under Subsection 31A-22-302 (1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security.

History: C. 1953, 31A-22-303, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 156; 1988, ch. 215, § 1.

Amendment Notes. — The 1988 amend-

ment, effective April 25, 1988, added Subsection (7), inserted "except as provided in Subsection (7)," in Subsections (b)(i) and (c); and made minor stylistic changes.

NOTES TO DECISIONS

Cited in *Barber v. Farmers Ins. Exch.*, 77 Utah Adv. Rep. 26 (Ct. App. 2/26/88).

COLLATERAL REFERENCES

A.L.R. — Liability insurance: when is vehicle in "dead storage," 48 A.L.R.4th 591.

Automobile liability insurance policy flight from police exclusion: validity and effect, 49 A.L.R.4th 325.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy, 56 A.L.R.4th 300.

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 Subsection (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 Section 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; or
 - (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 Section 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 transportation 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 Section 63-30-2; and

(ii) "Motor vehicle" has the same meaning as under Section 41-1-1.

(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.

History: C. 1953, 31A-22-305, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 157; 1987, ch. 162, § 1.

Amendment Notes. — The 1987 amendment, in Subsection (4)(c)(i), substituted "Sec-

tion 63-30-2" for "Subsection 63-30-2(3)"; in Subsection (4)(c)(ii), substituted "Section 41-1-1" for "Subsection 41-1-1(b)"; and made minor changes in phraseology and punctuation throughout the section.

NOTES TO DECISIONS

Exclusionary clause.

An exclusionary clause to uninsured motorist coverage is permissible. Former § 41-12-21.1, which merely required insurers to offer uninsured motorist coverage and authorized motorists to waive coverage, did not evince a legislative intent to allow an individual to purchase insurance on one vehicle and obtain coverage on all the other vehicles in his household. *Clark v. State Farm Mut. Auto. Ins. Co.*, 743 P.2d 1227 (Utah 1987).

Where the policy issued by insurer specifically excluded such coverage for any vehicle owned by plaintiffs not included in the policy and for which no premium was paid, it was held that neither this section nor public policy forbids restrictions of uninsured motorist coverage such as the one contained in this policy. *Hind v. Quilles*, 69 Utah Adv. Rep. 9 (1987).

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

KELLY WAGNER,	:	
Plaintiff,	:	STIPULATION
vs.	:	Civil No. C87-6586
FARMERS INSURANCE EXCHANGE,	:	JUDGE SCOTT DANIELS
Defendant	:	

For the purpose of defining the issue to be decided by the Court in this case, the following facts are stipulated to by the parties to this action, through their respective counsel:


Tom Wagner died as a result of injuries received in an automobile accident which occurred at 5:56 a.m. on November 15, 1986. He is survived by the Plaintiff, his wife, and a six month old son, Tyler Thomas. At the time of the accident, Thomas Wagner was a passenger in his own insured vehicle, a 1979 Porsche 928. The automobile was driven at the time of the accident by Charles P. Lingle with the permission of Tom Wagner. The accident was caused by the negligence of Charles Lingle.

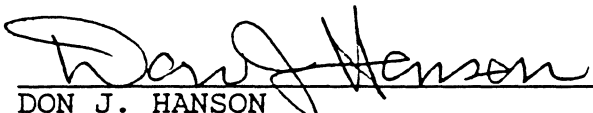
At the time of the accident, Thomas Wagner and the vehicle he was occupying was owned by him and was insured under a policy of insurance issued by Farmers Insurance Exchange. A copy of

that policy showing the provisions of the policy is attached to this stipulation. Charles P. Lingle had no insurance other than that provided under the Farmers policy at the time of the accident in question. Farmers Insurance Exchange did offer to pay the Plaintiff Twenty-thousand Dollars (\$20,000.00) under the liability portion of its policy and has paid the funeral benefits and death benefits under the no-fault provisions of its policy.

Farmers Insurance Exchange denies that it affords any uninsured motorist coverage under the provisions of its policy by reason of the fact that the automobile being driven by Charles P. Lingle in which Thomas Wagner was a passenger was a vehicle owned by Thomas Wagner, which does not qualify as an uninsured motor vehicle.

DATED this 22 day of February, 1988.

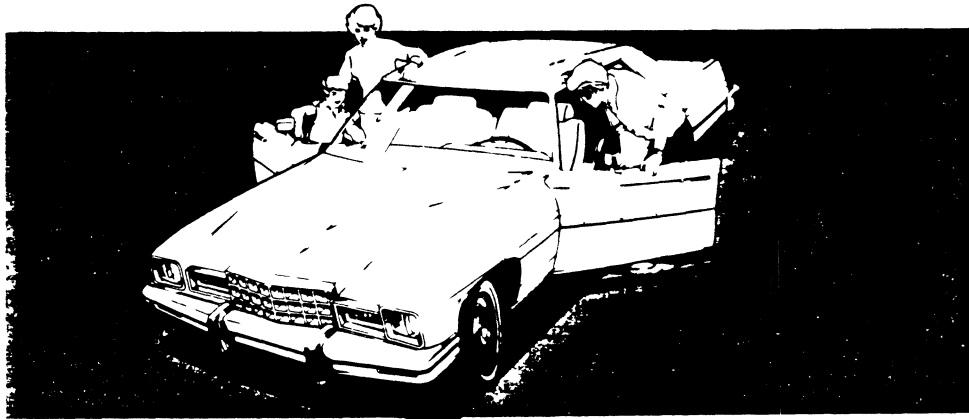

M. DAVID ECKERSLEY
Attorney for Plaintiff


DON J. HANSON
Attorney for Defendant

Non-Assessable

Your E-Z-Reader Car Policy

UTAH



Your E-Z Reader Car Policy offers protection tailored to your needs. It is written in non-technical easy-to-read style.

Please read this policy to make sure you understand the coverage it provides. Your Farmers Agent will help you with any questions you might have.



Farmers Insurance Group of Companies

4680 Wilshire Boulevard, Los Angeles, California 90010

The contractual obligations of this policy are assumed only by the issuer.

1st Edition

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We agree with you in return for your premium payment to insure you subject to all the terms of this policy. We will insure you for the coverages and the limits of liability shown in the Declarations of this policy.

DEFINITIONS

Throughout this policy, you and your mean the named insured shown in the Declarations and spouse if a resident of the same household. We, us and our mean the Company named in the Declarations which provides this insurance. In addition, certain words appear in bold type. They are defined as follows:

Accident or occurrence means a sudden event, including continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage**, neither expected nor intended by the **insured person**.

Bodily injury means bodily injury to or sickness, disease or death of any person.

Damages are the cost of compensating those who suffer **bodily injury** or **property damage** from an **accident**.

Family member means a person related to you by blood, marriage or adoption who is a resident of your household.

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

Private Passenger Car means a four wheel land motor vehicle of the private passenger or station wagon type actually licensed for use upon public highways. It includes any motor home with no more than six wheels and not used for business purposes.

Property damage means physical injury to or destruction of tangible property, including loss of its use.

State means the District of Columbia and any state, territory or possession of the United States, or any province of Canada.

Utility car means a land motor vehicle having at least four wheels actually licensed for use upon public highways, with a rated load capacity of not more than 2,000 pounds, of the pickup, panel or van type. This does not mean a vehicle used in any business or occupation other than farming or ranching. However, it does include a newly acquired or replacement vehicle of the same type if its usage is the same as the **utility car** described in the Declarations.

Utility trailer means a vehicle designed to be towed by a **private passenger car** and includes a farm wagon or farm implement while towed by a **private passenger car** or **utility car**. It does not include a trailer used as an office, store, display or passenger trailer.

Your insured car means:

1. The vehicle described in the Declarations of this policy or any **private passenger car** or **utility car** with which you replace it. You must advise us within 30 days of any change or **private passenger car** or **utility car**. If your policy term ends more than 30 days after the change, you can advise us anytime before the end of that term.

2. Any additional **private passenger car** or **utility car** of which you acquire ownership during the policy period. Provided that:

- a. You notify us within 30 days of its acquisition; and
- b. As of the date of acquisition, all **private passenger** and **utility cars** you own are insured with a member company of the Farmers Insurance Group of Companies.

Ownership shall include the written leasing of a **private passenger** or **utility car** for a continuous period of at least six months.

3. Any **utility trailer**:

- a. That you own; or
- b. While attached to **your insured car**.

4. Any **private passenger car**, **utility car** or **utility trailer** not owned by you or a **family member** while being temporarily used as a substitute for any other vehicle described in this definition because of its withdrawal from normal use due to breakdown, repair, servicing, loss or destruction.

WHAT TO DO IN CASE OF ACCIDENT

Notice

In the event of an **accident**, or loss, notice must be given to us promptly. The notice must give the time, place and circumstances of the **accident**, or loss, including the names and addresses of injured persons and witnesses.

Other Duties

2. Send us promptly any legal papers received relating to a claim or suit.
3. Submit to physical examinations at our expense by doctors we select as often as we may reasonably require.
4. Authorize us to obtain medical and other records.
5. Provide any written proofs of loss we require.
6. Notify police within 24 hours and us within 30 days if a hit and run motorist is involved and an uninsured motorist claim is to be filed.
7. If claiming car damage coverage:
 - a. Take reasonable steps after loss to protect the vehicle and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
 - b. Promptly report the theft of the vehicle to the police.
 - c. Allow us to inspect and appraise the damaged vehicle before its repair or disposal.
8. Submit to examination under oath upon our request.

PART I — LIABILITY

Coverage A — Bodily Injury

Coverage B — Property Damage

We will pay **damages** for which any **insured person** is legally liable because of **bodily injury** to any person and **property damage** arising out of the ownership, maintenance or use of a **private passenger car**, a **utility car**, or a **utility trailer**.

We will defend any claim or suit asking for these **damages**. We may settle when we consider it appropriate.

We will not defend any suit or make additional payments after we have paid the limit of liability for the coverage.

Additional Definitions Used In This Part Only

Insured person as used in this part means:

1. You or any **family member**.
2. Any person using **your insured car**.
3. Any other person or organization with respect only to legal liability for acts or omissions of:
 - a. Any person covered under this part while using **your insured car**.
 - b. You or any **family member** covered under this part while using any **private passenger car**, **utility car**, or **utility trailer** other than **your insured car** if not owned or hired by that person or organization.

Insured person does not mean:

1. The United States of America or any of its agencies.
2. Any person for **bodily injury** or **property damage** arising from the operation of a vehicle by that person as an employee of the United States Government when the provisions of the Federal Tort Claims Act apply.
3. Any person who uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.

Your insured car as used in this part shall also include any other **private passenger car**, **utility car**, or **utility trailer** not owned by or furnished or available for the regular use of you or **family member**. But no vehicle shall be considered as **your insured car** unless there is sufficient reason to believe that the use is with permission of the owner, and unless it is used by you or a **family member**.

Supplementary Payments

In addition to our limit of liability, we will pay these benefits and respects an **insured person**:

1. All costs we incur in the settlement of any claim or defense in any suit.
2. Interest after entry of judgment on any amount that does not exceed our limit of liability.
3. a. Premiums on appeal bonds on any suit we defend.
b. Premiums on bonds to release attachments in any suit for an amount not in excess of the applicable limit of liability of this policy.
c. Up to \$300 for the cost of bail bonds required because of **accident** or traffic law violation arising out of use of **your insured car**.

We are not obligated to apply for or furnish any of the above bonds.

4. Actual loss of wages or salary up to \$50 a day, but not other

Exclusions

This coverage does not apply to

1 **Bodily injury or property damage** arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

2 **Bodily injury or property damage:**

- a Caused intentionally by or at the direction of an **insured person**, or
- b Arising from any **occurrence** caused by an intentional act of an **insured person** where the results are reasonably foreseeable.

3 **Bodily injury or property damage** with respect to which any person is an insured under nuclear energy insurance. This exclusion applies even if the limits of that insurance are exhausted.

4 **Bodily injury** to an employee of an **insured person** arising in the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' or workmen's compensation benefits are required.

5 **Bodily injury or property damage** for any person while employed or otherwise engaged in the business or occupation of transporting, selling, repairing, servicing, storing or parking of vehicles designed for use mainly on public highways, including road testing or delivery.

This exclusion does not apply to the ownership, maintenance or use of **your insured car** by you, any **family member**, or any partner, agent, or employee of you or any **family member**. This exclusion also does not apply to any other person who does not have other insurance available to him with limits equal to at least those of the Utah Financial Responsibility Law. In such event, the insurance afforded that person will be limited to the requirements of the Utah Financial Responsibility Law.

6 **Bodily injury or property damage** arising out of the ownership, maintenance or use of any vehicle by any person employed or otherwise engaged in a business other than the business described in Exclusion 5. This exclusion does not apply to the maintenance or use of a

- a **Private passenger car**.
- b **Utility car** that you own, if rated as a **private passenger car**, or
- c **Utility trailer** used with a vehicle described in a or b above.

7 ~~Damage to property owned or being transported by an insured person.~~

8 Damage to property rented to, or in the charge of, an **insured person** except a residence or private garage not owned by that person.

9 **Bodily injury or property damage** arising out of the ownership, maintenance or use of any motorized vehicle with less than four wheels.

10 **Bodily injury or property damage** arising out of the ownership, maintenance or use of any vehicle other than **your insured car**, which is owned by or furnished or available for regular use by you or a **family member**.

11 a Liability for **bodily injury** to an **insured person**.

- b Liability to any person or organization because of **bodily injury** to you.

This exclusion applies only after the limits of liability required by the Financial Responsibility Law have been satisfied.

12 Liability assumed under any contract or agreement except liability of others you assume in a written contract relating to the use of an auto you do not own.

13 Liability arising from the sponsoring or taking part in any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation or in practice or preparation for any such contest.

14 **Bodily injury or property damage** arising out of the ownership, maintenance, or use by any person of a vehicle in which you have transferred full ownership interest but the transfer does not comply with the vehicle transfer of ownership provisions of the motor vehicle **state** law.

15 Punitive or exemplary damages or the cost of defense related to such damages.

Limits of Liability

The limits of liability shown in the Declarations apply subject to the following:

treats the loss of consortium as a separate claim, financial responsibility limits will be furnished.

2 Subject to the **bodily injury** liability limit for each person, the **bodily injury** liability limit for each **occurrence** is the maximum combined amount for **bodily injury** sustained by two or more persons in any **occurrence**.

3 The **property damage** liability limit for each **occurrence** is the maximum for all **damages** to all property in any one **occurrence**.

4 We will pay no more than the maximum limits provided by this policy regardless of the number of vehicles insured, **insured persons**, claims, claimants, policies, or vehicles involved in the **occurrence**.

5 Any amount payable by us to an **insured person** shall be reduced by any amount payable under any Workers' Compensation or any similar medical or disability law.

Out of State Coverage

An **insured person** may become subject to the financial responsibility law, compulsory insurance law or similar law of another **state** or in Canada. This can happen because of the ownership, maintenance or use of **your insured car** when you travel outside of Utah. We will interpret this policy to provide any broader coverage required by those laws, except to the extent that other liability insurance applies. No person may collect more than once for the same elements of loss.

Conformity with Financial Responsibility Laws

When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by the law.

Other Insurance

If there is other applicable Auto Liability Insurance on any other policy that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.

We will provide insurance for an **insured person** other than you or a **family member**, up to the limits of the Financial Responsibility Law only.

Any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

PART II — UNINSURED MOTORIST

Coverage C — Uninsured Motorist Coverage

(Including Underinsured Motorist Coverage)

We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

Determination as to whether an **insured person** is legally entitled to recover **damages** or the amount of **damages** shall be made by agreement between the **insured person** and us. If no agreement is reached, the decision will be made by arbitration.

Additional Definitions Used In This Part Only

As used in this part:

1 **Insured person** means:

- a You or a **family member**.
- b Any other person while **occupying your insured car**.
- c Any person for **damages** that person is entitled to recover because of **bodily injury** to you, a **family member**, or another occupant of **your insured car**.

But no person shall be considered an **insured person** if the person uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.

2 **Motor vehicle** means a land motor vehicle or a trailer but does not mean a vehicle:

- a Operated on rails or crawler-treads.

- 3 **Uninsured motor vehicle** means a motor vehicle which is
- Not insured by a **bodily injury** liability bond or policy at the time of the **accident**.
 - Insured by a **bodily injury** liability bond or policy at the time of the **accident** which provides coverage in amounts less than the limits of Uninsured Motorist Coverage shown in the Declarations
 - A hit-and-run vehicle whose operator or owner has not been identified and which strikes
 - You or any **family member**.
 - A vehicle which you or a **family member** are **occupying**.
 - Your **insured car**.
 - Insured by a **bodily injury** liability bond or policy at the time of the **accident** but the Company denies coverage or is or becomes insolvent
- 4 **Uninsured motor vehicle**, however does not mean a vehicle
- Owned by or furnished or available for the regular use of you or any **family member**.
 - Owned or operated by a self-insured as contemplated by any financial responsibility law motor carrier law or similar law
 - Owned by a governmental unit or agency

Exclusions

This coverage shall not apply to the benefit of any insurer or self-insurer under any workers' or workmen's compensation law or directly to the benefit of the United States, or any **state** or any political subdivision

This coverage shall not apply to punitive or exemplary damages or the cost of defense related to such damages

This coverage does not apply to **bodily injury** sustained by a person

- While **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle
- If that person or the legal representative of that person makes a settlement without our written consent
- While **occupying your insured car** when used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools
- If the injured person was **occupying** a vehicle you do not own which is insured for this coverage under another policy

Limits of Liability

The limits of liability shown in the Declarations apply subject to the following

- The limit for each person is the maximum for **bodily injury** sustained by any person in any one **occurrence**. Any claim for loss of consortium or injury to the relationship arising from this injury shall be included in this limit

If the financial responsibility law of the place of the **accident** treats the loss of consortium as a separate claim financial responsibility limits will be furnished

- Subject to the limit for each person the limit for each **occurrence** is the maximum combined amount for **bodily injury** sustained by two or more persons in any one **occurrence**.
- Subject to the law of the **state** of the **occurrence**, we will pay no more than these maximums regardless of the number of vehicles insured **insured persons**, claims claimants policies or vehicles involved in the **occurrence**.

Other Insurance

- We will pay under this coverage only after the limits of liability under any applicable **bodily injury** liability bonds or policies have been exhausted by payment of judgments or settlements
- The amount of Uninsured Motorist Coverage we will pay under Additional Definitions 3b shall be reduced by the amount of any other **bodily injury** coverage available to any party held to be liable for the **accident**.
- Except as provided in paragraph 2 above if any other collectible insurance applies to a loss covered by this part we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits
- We will not provide insurance for a vehicle other than your **insured car**, unless the owner of that vehicle has no other insurance applicable to this part
- If any applicable insurance other than this policy is issued to

Arbitration

If an **insured person** and we do not agree (1) that the person is legally entitled to recover **damages** from the owner or operator of an **uninsured motor vehicle**, or (2) as to the amount of payment under this part, either that person or we may demand that the issue be determined by arbitration

In that event an arbitrator will be selected by the **insured person** and us. If agreement on an arbitrator cannot be reached within (30) days the judge of a court having jurisdiction will appoint the arbitrator. The expense of the arbitrator and all other expenses of arbitration will be shared equally. Attorney's fees and fees paid for the witnesses are not expenses of arbitration and will be paid by the party incurring them

The arbitrator shall determine (1) the existence of the operator of an **uninsured motor vehicle**, (2) that the **insured person** is legally entitled to recover **damages** from the owner or operator of an **uninsured motor vehicle**, and (3) the amount of payment under this part as determined by this policy or any other applicable policy

Arbitration will take place in the county where the **insured person** lives. Local court rules governing procedures and evidence will apply. The decision in writing of the arbitrator will be binding subject to the terms of this insurance

Formal demand for arbitration shall be filed in a court of competent jurisdiction. The court shall be located in the county and **state** of residence of the party making the demand. Demand may also be made by sending a certified letter to the party against whom arbitration is sought with a return receipt as evidence

PART III — NO-FAULT

Coverage D — Personal Injury Protection

We will provide the benefits described below for **bodily injury** to each injured person caused by a **motor vehicle accident**.

1. Medical and Hospital Benefits

We will pay for all reasonable and necessary medical and hospital expenses incurred within one year from the date of the **accident** which caused the injury. This includes drugs, artificial substitutes for parts of the body and eyeglasses. It also includes necessary x-ray, dental, ambulance, nursing and **funeral expenses**.

We will also pay reasonable expenses for any non-medical remedial care. This includes treatment by a recognized religious method of healing

We will not pay more than the amount stated in the Declarations for each **insured person**, including a limit of \$1,500 for **funeral expenses**.

2. Income Continuation Benefits

We will pay up to 85% of the **insured person's** loss of gross income from work and earning capacity subject to the following

- The **insured person** must have a regular income from an occupation at which he or she was usually working at the time of the **accident**.
- Coverage and payment periods begin 3 days after the date of the **accident**; however if the **insured person's** inability to work continues for more than two consecutive weeks after the date of the injury then coverage and payment periods begin on the day of the **accident**.
- Coverage ends when the earliest of the following events occurs
 - when the **insured person** is reasonably able to return to his or her usual work
 - 52 weeks after coverage begins
 - upon the death of the **insured person**.
- The most we will pay to any **insured person** is \$250 per week
- The total combined amount any person can receive under sick leave, any other disability or loss of income benefit and this coverage shall not be more than 85% of the **insured person's** weekly income
- Except for you, your **family members**, your guest passengers and persons using your **insured car** with your permission we will not pay for any **accident** which occurs outside the **state** of Utah

3. Loss of Service Benefits

Coverage and payment periods begin 3 days after the date of the **accident**; however if the **insured person's** inability to work continues for more than two consecutive weeks after the date of the injury then coverage and payment periods begin on the day of the **accident**.

Coverage ends on the date you are reasonably able to perform the service yourself or upon your death. Coverage is limited to a maximum of 52 weeks.

4. Survivor Loss Benefits

We will pay up to \$3,000 to natural persons who are heirs of an **insured person** upon the death of that person.

Additional Definitions Used In This Part Only

Family member means a person related to you by blood, marriage or adoption (including a ward or foster child) who is a resident of your household.

Funeral expenses means funeral, burial or cremation expenses actually incurred.

Insured motor vehicle means a **motor vehicle**

- a. to which the **bodily injury** liability insurance of the policy applies,
- b. for which a specific premium is charged, and
- c. for which you are required to maintain security under the provisions of the Utah Automobile No-Fault Insurance Act.

Insured person means

- a. you or any **family member** who sustains **bodily injury** while **occupying** a **motor vehicle** or, while a pedestrian, caused by **accident** arising out of the operation or maintenance of any **motor vehicle** or motorcycle,
- b. any other person who sustains **bodily injury** while **occupying your insured car** with your consent or, while a pedestrian, caused by **accident** arising out of the ownership, operation or maintenance of **your insured car**;

Motor vehicle means a land motor vehicle, trailer or any vehicle which is required to be registered under Title 41, Utah Code Annotated 1953, excluding motorcycles.

Exclusions

1. We will not pay you or any **family member** for injury received while **occupying** any **motor vehicle** you own, or which is furnished for your regular use, but is not an **insured motor vehicle** as described in the Declarations of this policy.
2. We will not pay a **family member** for injury received while **occupying** a **motor vehicle** owned by or furnished for the regular use of that **family member** when security required by the Utah Automobile No-Fault Insurance Act is not in effect.
3. We will not pay for injury to any person
 - a. which is caused intentionally by that person or while committing a felony
 - b. other than you or a **family member**, who uses the **insured motor vehicle** without having sufficient reason to believe that the use is with the permission of the owner
 - c. caused by war (declared or undeclared), civil war, insurrection, rebellion or revolution, or any act contributing to such activity
 - d. resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear material
 - e. arising out of the maintenance or use of a **motor vehicle** while used as a residence
 - f. injured while **occupying** or, while a pedestrian through use of any **motor vehicle**, other than the **insured motor vehicle**, for which the security required under the Utah Automobile No-Fault Insurance Act is in effect.

Limit of Liability

Regardless of the number of vehicles insured, **insured persons**, claims, claimants, policies, or vehicles involved in the **accident**, we will pay no more than the limits of liability described in this coverage for each person injured in any one **accident**.

Any amount payable by us to an **insured person** shall be reduced by any amount payable

- a. under any worker's compensation plan or any similar statutory plan,
- b. by the United States or any of its agencies because of

Other Insurance

If there is other applicable automobile medical payments or Personal Injury Protection for medical and hospital benefits insurance that applies to a loss covered by this part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits.

Any insurance coverage we provide to any **insured person** for a substitute or non-owned **motor vehicle** or trailer, shall be excess over any other collectible insurance.

We will reduce the amount payable under uninsured motorist coverage by the amount of any personal injury protection benefits paid or payable which would be paid or payable under this or any other **motor vehicle** insurance policy because of **bodily injury** sustained by an **insured person**.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

Medical Reports — Proof of Claim

You shall give us written proof of claim as soon as possible. When required, proof shall be under oath. You shall include full details of the nature and extent of the injuries and treatment received and contemplated. Also you should submit such other information as may assist us to determine the amount due and payable. When benefits for loss of wages or salary are claimed you shall authorize us to obtain details of all wages, salary payments or their equivalent received since the time of the **bodily injury** or during the year prior to the date of the **accident**. The injured person shall submit to physical examination by physicians at our expense selected by us when and as often as we may reasonably require. In the event of incapacity or death your legal representative shall upon request by us execute authorization to enable us to obtain medical reports and copies of records.

Our Right To Recover Payment

In the event of any payment under this coverage, we are entitled, subject to the applicable limitations stated in the Utah Automobile No-Fault Insurance Act, to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those

rights and do nothing after loss to prejudice our rights. When a person has been paid **damages** by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

Arbitration

If any person making claim and we do not agree as to the amount of payment under this part, then by mutual written agreement the matter shall be decided by arbitration. If the parties agree in writing, the matter shall be decided by a single arbitrator selected by the person making claim and ourselves.

If a single arbitrator is not agreed upon, then the **insured person** shall select one arbitrator and we will select another. The two arbitrators will select and agree upon a third. The decision of any two arbitrators shall be binding on the person and on us.

Payment of Benefits

No payment shall be made under this coverage unless the **insured person** or his legal representative shall have agreed in writing that the amount of such payments shall be applied toward settlement of any claim or satisfaction of any award entered in his favor under underinsured motorists coverage in this or any other policy of the Farmers Insurance Group of Companies.

Constitutionality Clause

The premium for and the coverages of this part have been established in accordance with the provisions of the Utah Automobile No-Fault Insurance Act. If a court decision rules the provisions of such act partially or completely invalid or unenforceable, we shall have the right to recompute the premium payable for the policy, subject to review by the Commissioner of Insurance. The provisions of this coverage shall be voidable or subject to change at our option.

PART IV — DAMAGE TO YOUR CAR

Coverage E — Comprehensive

explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not deemed **loss** caused by **collision**. If breakage of glass results from a **collision**, you may elect to have it treated as **loss** caused by **collision**.

Coverage G — Collision

We will pay for **loss** to **your insured car** caused by **collision** less any applicable deductibles.

Any deductible shall apply separately to each **loss**.

Coverage H — Towing and Road Service

We will pay for reasonable and necessary towing and labor costs incurred because of disablement of **your insured car**. The labor must be performed at the place of disablement.

Additional Definitions Used In This Part Only

As used in this part:

1. **Collision** means collision of **your insured car** with another object or upset of **your insured car**.
2. **Loss** means direct and accidental loss of or damage to **your insured car**, including its equipment.
3. **Your insured car** shall also include any other **private passenger car**, **utility car**, or **utility trailer** not owned by or furnished or available for the regular use of you or a **family member**. But no vehicle shall be considered as **your insured car** unless there is sufficient reason to believe that the use is with permission of the owner, and unless it is used by you or a **family member**.

Supplementary Payments

1. If you have comprehensive coverage, we will pay for transportation expenses incurred by you because of the total theft of **your insured car**. We will pay up to \$15 per day, but no more than \$450. This coverage begins 48 hours after the theft has been reported to us and to the police and ends when the car is returned to use or when we offer settlement for the **loss**.
2. We will pay up to, but not more than, \$200 for **loss** of clothing or luggage in **your insured car** and belonging to you or a **family member** if the **loss** is caused by:

- a. **Collision** of **your insured car** while covered by this policy
- b. Fire, lightning, flood, earthquake, explosion, falling aircraft, or theft of the entire insured car; and **loss** occurs to **your insured car** from the same cause while covered for comprehensive by this policy.

Exclusions

This coverage does not apply to **loss**:

1. To **your insured car** while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
3. Caused by theft to equipment designed for the reproduction of sound, or any radio receiving or radio receiving and transmitting equipment. This applies to such equipment as a tape player, tape recorder, citizens band radio and two-way mobile radio telephone, radar detectors, television or scanning monitor receiver. It also applies to any electronic device incorporating any of this equipment, as well as accessories and antennas.
This exclusion does not apply to that equipment which is permanently installed in the opening of the dash or console of **your insured car** normally used by the motor vehicle manufacturer for the installation of a radio or sound reproducing device.
4. Caused by theft to tapes, records, reels, cassettes, cartridges, carrying cases or other devices for use with equipment designed for the reproduction of sound.
5. To a camper body, canopy or **utility trailer** owned by you or a **family member** and not described in the Declarations. But coverage does apply to a camper body, canopy or **utility trailer** ownership of which you acquire during the policy period if you ask us to insure it within 30 days after you acquire it.
6. To awnings, cabanas, or equipment designed to provide additional living facilities.
7. Due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. But coverage does apply if the **loss** results from burning of wiring. Also coverage does apply if the **loss** results from the total theft of

or during any organized or agreed upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.

10. To a van, pickup, or panel truck due to increased cost of repair or replacement of the following furnishings or equipment:
 - a. special carpeting, insulation, wall paneling, furniture or bars.
 - b. facilities for cooking and sleeping including enclosures or bathroom facilities.
 - c. height-extending roofs.
 - d. murals, paintings or other decals or graphics.

Limits of Liability

Our limits of liability for **loss** shall not exceed the lowest of:

1. The actual cash value of the stolen or damaged property
2. The amount necessary to repair or replace the property or parts with other of like kind and quality, less depreciation
3. \$500 for a **utility trailer** not owned by you or a **family member**.

Payment of Loss

We may pay the **loss** in money or repair or replace damaged or stolen property. We may, at any time before the **loss** is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown in the Declarations, with payment for the resulting damage. We may keep all or part of the property at the agreed or appraised value.

Appraisal

You or we may demand appraisal of the **loss**. Each will appoint and pay a competent and disinterested appraiser and will equally share other appraisal expenses. The appraisers, or a judge of a court having jurisdiction, will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of **loss**. An award in writing by any two appraisers will determine the amount payable, which shall be binding subject to the terms of this insurance.

No Benefit to Bailee

This coverage shall not directly or indirectly benefit any carrier or other bailee for hire liable for **loss** to **your insured car**.

Other Insurance

If there is other applicable similar insurance on any other policy that applies to a **loss** covered by this part, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. This coverage does not apply to any substitute or non-owned car if there is similar coverage on it.

Any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

PART V — CONDITIONS

1. Policy Period and Territory

This policy applies only to **accidents, occurrences**, and losses during the policy period shown in the Declarations which occur within the United States, its territories or possessions or Canada or while the car is being shipped between their ports.

2. Changes

This policy with the Declarations includes all agreements between you and us relating to this insurance. No other change or waiver may be made in this policy except by endorsement, new Declarations or new policy issued by us.

The premium for each term of this policy is determined by information in our possession at the inception of that term. Any changes in this information which would affect the rating of your policy will allow us to make an additional charge or refund on a pro rata basis. If a premium adjustment is necessary, we will make the adjustment as of the effective date of the change.

When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective in your **state**. We may make other changes or replace this policy to conform to coverage currently in use at the next policy period. The change or new policy will be delivered to you, or mailed to you at your mailing address shown in the Declarations at least 30 days before the effective date of the new

We may not be sued unless there is full compliance with all the terms of this policy. We may not be sued under the Liability Coverage until the obligation of a person we insure to pay is finally determined either by judgment against that person at the actual trial or by written agreement of that person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of a person we insure.

4. Transfer Of Your Interest

Interest in this policy may not be assigned without our written consent. But if the insured named in the Declarations, or the spouse of the insured resident in the same household dies, the policy will cover:

- a The survivor
- b The legal representative of the deceased person while acting within the scope of duties of a legal representative
- c Any person having proper custody of **your insured car** until a legal representative is appointed

5. Our Right to Recover Payment

In the event of any payment under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid **damages** by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

This condition does not apply if prohibited by **state law**.

6. Two or More Cars Insured

With respect to any **accident** or **occurrence** to which this and any other auto policy issued to you by any member company of the Farmers Insurance Group of Companies applies, the total limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

7. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of any insured person.

8. Termination or Reduction of Coverage

a Cancellation or reduction of coverage

(1) You may cancel this policy by advising us in writing when at a future date the cancellation is to be effective.

(2) We may cancel, change the renewal date, or cancel or reduce all or any portion of any coverage by mailing notice to you at the address shown in the Declarations or by delivering the notice:

(a) Not less than 10 days prior to the effective date of such cancellation, reduction, or change of renewal date:

(i) For nonpayment of premium, or

(ii) If the policy has been in effect less than 60 days and is not a renewal.

(b) Not less than 20 days prior to the effective date of cancellation for any other circumstance.

If we cancel or reduce all or any portion of any coverage, the notice we send you will describe that portion we are cancelling or reducing.

(3) (a) Our right to cancel is limited if this policy has been in effect for 60 days or is a renewal and insures either of the following:

(i) a private passenger type auto, or a station wagon, that does not carry passengers for hire and is not rented to others;

(ii) any other four wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in your occupation, profession or business.

(b) We can cancel in such case only if any of the following apply:

(i) you fail to pay the premium when due;

(ii) any person who regularly and frequently operates **your insured car** has had a driver's license suspended or revoked during the policy period or within 180 days prior to any renewal;

(iii) You knowingly make a false statement on the insurance application.

(c) (a) and (b) above do not limit our right to add a \$100 deductible under Coverage F at any time if we so desire.

Notice of cancellation for nonpayment must be mailed

10 days prior to the effective date of cancellation. Within 5 days of receipt of the request, we will furnish you with a statement giving the reasons or grounds for the notice of cancellation.

b Nonrenewal

We will mail to you at the address shown in the Declarations or deliver to you notice of nonrenewal not less than 30 days before the end of the policy period if we decide not to renew or continue this policy.

This provision shall not apply in any of the following cases:

1 you fail to pay the premium when due;

2 we show a willingness to renew.

If your policy is renewed, we still may cancel it at our option if grounds for cancellation existed before the effective date of the renewal.

We will only non-renew at the annual anniversary of the effective date.

c Automatic Termination

This policy will automatically terminate at the end of the policy period if you or your representative do not accept our offer to renew it. Your failure to pay the required renewal premium as we require means that you have declined our offer.

If other insurance is obtained on **your insured car**, any similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.

d Other Provisions

(1) If different requirements for cancellation and nonrenewal or termination of policies become applicable because of the laws of Utah, we will comply with those requirements.

(2) Mailing of a notice shall be sufficient proof of notice. We may deliver a notice instead of mailing it.

(3) The effective date and time stated on the notice for cancellation of the entire policy shall become the end of the policy period.

(4) The effective date and time stated on the notice for reductions of coverage or cancellation of a portion of the coverage shall be the effective date of the change. The notice shall be part of the policy. It is an endorsement.

(5) Termination or change may result in a premium refund. If so, we will send it to you. Our making or offering of a refund is not a condition of cancellation.

If you cancel, the refund will be computed in accordance with the customary short rate table and procedure.

If we cancel or reduce coverage, the refund will be computed on a pro rata basis.

RECIPROCAL PROVISIONS

(Applicable Only If This Policy Is Issued by Farmers Insurance Exchange)

This policy is made and accepted in consideration of your premium payment to us. It is also in consideration of the power of attorney you signed as part of your application and the information you gave to us on your application. Some of your statements actually become a part of the policy which we call The Declarations.

When you signed the power of attorney authority on your application, you authorized the Farmers Underwriters Association to execute interinsurance policies between you and other subscribers.

Nothing in this policy is intended or shall be construed to create either:

a A partnership or mutual insurance association;

b Any joint liability.

We may sue or be sued in our own name, as though we were an individual, if necessary to enforce any claims which arise under this policy. In any suit against us, service of process shall be upon the Farmers Underwriters Association, Attorney-in-Fact.

Membership fees which you pay are not part of the premium. They are fully earned when you are granted membership and coverage is effective. They are not returnable. However, if we cancel or non-renew your policy during the initial six (6) months period, membership fees will be refunded to you in full.

We hold the Annual Meeting of the members of the Exchange at our Home Office at Los Angeles, California, on the first Monday following the 15th day of March of each year at the hour of 2:00 p.m. The Board of Governors may elect to change the time and place of the meeting. If they do so, you will be mailed a written or printed notice at your last known address at least ten days before such a time. Otherwise, no notice will be sent to you.

such rules and regulations for our management as are not inconsistent with the subscribers' agreements.

Your premium for this policy and all payment made for its continuance shall be payable to us at our Home Office or such location named by us in your premium invoice. The funds which you pay shall be placed to your credit on our records. They will be applied to the payment of your proportion of losses and expenses and to the establishment of reserves and general surplus. The Board of Governors or its Executive Committee has the authority to deposit, withdraw, invest, and reinvest such funds. You agree that any amount which the Board of Governors allocates to our surplus fund may be retained by us. Also, after provision is made for all of our liabilities, it may be applied to any

policyholders.

This policy is non-assessable.

SPECIAL PROVISIONS

(Applicable Only If This Policy Is Issued by Mid-Century Insurance Company)

Policy fees which you pay are not part of the premium. They are fully earned when the policy is issued. They are not returnable. However, if we cancel or non-renew your policy during the initial six (6) months period, policy fees will be refunded to you in full.

This policy shall not be effective unless countersigned on the Declarations Page by a duly authorized representative of the Company named on the Declarations Page.

The Company named on the Declarations has caused this policy to be signed by the officers shown below

FARMERS INSURANCE EXCHANGE
by Farmers Underwriters Association,
Attorney-in-Fact

MID-CENTURY INSURANCE COMPANY



Secretary



Vice-President

No Mexico Coverage Read This Warning Carefully

No coverage under this policy is provided while in Mexico. The Republic of Mexico considers an automobile accident a criminal offense as well as a civil matter. Coverage can be obtained through a Mexican insurance company when needed.

DECLARATIONS

FARMERS INSURANCE EXCHANGE LOS ANGELES, CALIFORNIA
AN INTER-INSURANCE EXCHANGE, HEREIN CALLED THE COMPANY

The Effective Date is from THE TIME APPLIED FOR. * * * * The policy shall expire at 12 00 MIDNIGHT STANDARD TIME on the expiration date shown. The policy may be renewed for an additional policy term of six months each time the Company offers to renew by sending a bill for the required renewal premium, and the insured pays said premium in advance of the respective renewal date. The policy is issued in reliance upon the statements in the Declarations.

1. Named Insured & Address
TOM WAGNER
7521 SO 2160 EAST
SLC UT 84121

Agent

15 341

Policy Number

76 11394 58 50

9/4/86

Effective Date

4/9/87

Expiration Date

2. COVERAGES — indicated by "COV" or the limit of Company's liability against each coverage. "NC" means "Not Covered." "D" means "Deductible." "MAX" means "Maximum Deductible." — See Reverse Side For Coverage Designations. * Entries in thousands of dollars.

Bodily Injury		P.D. *	U.M.		Medical/ No-Fault	Compre- hensive	Collision	Tow.	Non-Auto *		Vehicle Description & I.D.#	
100	300	100	100	300	5,000	150 D	500 D	NC	NC Liab.	NC Medical	79 PORSCHE	117
Each Person	Each Occurrence		Each Person	Each Occ.							"T" means Truck	Last 3 digits shown

Type of Transaction	New Bus. or Reinst. (0)	Coverage Change	Car Change	Name / Address	Rate Class and/or Discount Change	Mtgee.	Other
\$		Previous Balance					
\$		Premium					
\$		Fees					
\$		Payments or Other Credits					
\$		TOTAL					

Symbol

Endorsement Numbers - Coverage Parts

E-1167 K2

Rating Point or Accide Code

PSA Terr. 04
Financial Resp.
Filing Made

Rate Class 7

00

Address of all premises covered under Personal Liability

Outboard(s) over 25HP combined covered under Personal Liab.

Lienholder or Other Interest

01

Issuing Office

P.O. BOX 4820

POCATELLO, ID 83201

76 11394 58 50

Date 2/2/88

Countersigned

Authorized Representative

INSURED-TOM WAGNER

Continued on the Reverse Side

ATTACH TO THIS POLICY

COVERAGE DESIGNATIONS

BODILY INJURY	—Bodily Injury Liability,	COMPREHENSIVE	— Comprehensive Car Damage-
	—Property Damage Liability	COLLISION	— Collision-Upgrade
	—Benefits for Bodily Injury (including property damage coverage if policy issued in New Mexico) caused by, uninsured Motorists	TOW	— Towing and Road Service Insurance
		NON-AUTO	— Comprehensive Personal Liability - Each occurrence
MEDICAL	—Medical Expense Insurance Family Medical Expense and Guest Medical Expense-See Policy Provision		Medical Payments to Others - Each Person
	If policy contains the E-550 No-Fault Endorsement or No-Fault Coverage D Auto Medical Expense Coverage does not apply		Damage to Property of Others - See Policy for Limits per occurrence
FAULT	—See Endorsement E-550 (Illinois E-2250) or Coverage D if applicable		

If refund is due under this policy and the insured cannot be located we may deduct a handling charge (Not applicable in Kansas)

Subject to the Loss Payable Provisions or any other loss payable endorsement attached to the policy, payment for loss thereunder is made as interest may appear to the named insured and the Lienholder or Other Interest on the reverse side.

LOSS PAYABLE PROVISIONS

(Applicable only if lienholder is named, and no other Automobile loss payable endorsement is attached to the policy)

We agree that any payment for loss or damage to the vehicle described in this policy shall be made on the following basis:

At our option, loss or damage shall be paid as interest may appear to the policyholder and the lienholder shown in the Declarations, or by repair of the damaged vehicle.

Any act or neglect of the policyholder or a person acting on his behalf shall not void the coverage afforded to the lienholder. Change in title or ownership of the vehicle or error in its description shall not void coverage afforded to the lienholder.

This policy does not cover conversion, embezzlement or secretion of the vehicle by the policyholder or anyone acting in his behalf while in possession under a contract with the lienholder.

Payment may be made to the lienholder which we would not have been obligated to make except for these terms. In such event, we are added to all the rights of the lienholder to the extent of such payment. The lienholder shall do whatever is necessary to secure such rights. Subrogation shall impair the right of the lienholder to recover the full amount of its claim.

The policyholder reserves the right to cancel this policy at any time as provided by its terms. In case of cancellation or lapse we will notify the lienholder at the address shown on the Declarations. We will give the lienholder advance notice of not less than 10 days from the effective date of such cancellation or lapse as respects his interest.

This Declarations page, when signed by us, becomes part of the policy numbered on the reverse side. It supersedes and controls anything to the contrary. It is subject to all the other terms of the policy.

LOSS OF USE ENDORSEMENT

This Company shall pay your extra expense arising from any of the options you have purchased. The chosen option applies when the loss exceeds the deductible amount applicable to peril causing the loss.

The options are:

1. COVERAGE K-1

This Company shall pay you \$10 per day while the insured automobile is in the custody of a garage for repairs resulting from a **Collision**. The maximum payable is \$100. If the automobile is a total loss (regardless of salvage value) we shall pay you \$100.

2. COVERAGE K-2

This Company shall pay you \$15 per day while the insured automobile is in the custody of a garage for repairs resulting from a **Collision** or a **Comprehensive** coverage peril. The maximum payable is \$300. If the automobile is a total loss (regardless of salvage value) we shall pay you \$300. This option does not cover total theft of the insured automobile.

3. COVERAGE K-3

Car Return Expenses. If Coverage K-1 or K-2 loss occurs more than 50 miles from the residence of the named insured, the Company will reimburse you for the reasonable and necessary extra expense for commercial transportation, gasoline, lodging and meals incurred to return the repaired automobile to your residence or destination. The maximum payable is \$200.

The insurance afforded by this endorsement does not apply to any Collision or Comprehensive loss occurring before the effective date of this endorsement.

This endorsement is also subject to the following provisions:

1. This insurance applies only to your **insured car**.
2. If you are paid under this endorsement, the Company shall have your rights to seek recovery. You shall do whatever is necessary to secure such rights. You shall do nothing to prejudice these rights.
3. The premium charged for this insurance is fully earned unless the entire policy is cancelled.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

