

2002

Jimmy Calhoun and John Calhoun v. State Farm Mutual Automobile Insurance Company and Progressive Insurance Company : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Daniel F. Bertch; Kevin R. Robson; Bertch Robson; Attorneys for Plaintiffs/Appellants.

Lowell K. Smith; Smith & Glauser; Joseph J. Joyce; Strong & Hanni; Attorney for Defendants/Appellees.

Recommended Citation

Brief of Appellant, *Calhoun v. State Farm Mutual*, No. 20020805.00 (Utah Supreme Court, 2002).
https://digitalcommons.law.byu.edu/byu_sc2/2278

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE SUPREME COURT OF THE STATE OF UTAH

JIMMY CALHOUN and JOHN CALHOUN,

Plaintiffs/Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and
PROGRESSIVE INSURANCE COMPANY,

Defendants/Appellees.

20020805-SC
CASE NO ~~20020802~~ - SC

BRIEF OF APPELLANTS

Appeal from a Judgment of Third Judicial District Court
of Salt Lake County, State of Utah
Honorable Joseph C. Fratto

Daniel F. Bertch (4728)
Kevin R. Robson (6976)
BERTCH ROBSON
1996 East 6400 South Suite 100
Salt Lake City, Utah 84141
Attorneys for Plaintiffs/Appellants



Lowell K. Smith (3006)
SMITH & GLAUSER
2180 South 1300 East, Suite 600
Salt Lake City, Utah 84106
Attorneys for Defendant/Appellee Progressive

FILED
UTAH SUPREME COURT

Joseph J. Joyce (4857)
STRONG & HANNI
Nine Exchange Place,
Sixth Floor Boston Building
Salt Lake City Utah, 84111
Attorney for Defendant/Appellee State Farm

MAY 19 2003

PAT BARTHOLOMEW
CLERK OF THE COURT

FILED
UTAH SUPREME COURT

MAY 23 2003

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

JIMMY CALHOUN and JOHN CALHOUN,

Plaintiffs/Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and
PROGRESSIVE INSURANCE COMPANY,

Defendants/Appellees.

CASE NO. 20020802 - SC

BRIEF OF APPELLANTS

Appeal from a Judgment of Third Judicial District Court
of Salt Lake County, State of Utah
Honorable Joseph C. Fratto

Daniel F. Bertch (4728)
Kevin R. Robson (6976)
BERTCH ROBSON
1996 East 6400 South Suite 100
Salt Lake City, Utah 84141
Attorneys for Plaintiffs/Appellants

Lowell K. Smith (3006)
SMITH & GLAUSER
2180 South 1300 East, Suite 600
Salt Lake City, Utah 84106
Attorneys for Defendant/Appellee Progressive

Joseph J. Joyce (4857)
STRONG & HANNI
Nine Exchange Place,
Sixth Floor Boston Building
Salt Lake City Utah, 84111
Attorney for Defendant/Appellee State Farm

TABLE OF CONTENTS

TABLE OF AUTHORITIES	-iii-
JURISDICTION	1
ISSUES ON APPEAL	1
DETERMINATIVE STATUTES AND RULES	1
1. U.C.A. §31A-22-303(7)(1998):	1
2. U.C.A. §31A-22-303(1)(a)(1998):	2
STATEMENT OF THE CASE	2
1. Nature of the Case	2
2. Course of Proceedings and Disposition in the Court Below	3
3. Statement of Relevant Facts on Appeal	3
ARGUMENT	6
HISTORICAL BACKGROUND	6
QUESTIONS PRESENTED IN THIS CASE	7
<i>DAIRYLAND II</i> DOES NOT ANSWER THE QUESTIONS PRESENTED	9
PUBLIC POLICY REQUIRES NO GAP IN INSURANCE COVERAGE	10
U.C.A. §31A-22-303(1)(a) REQUIRES PROGRESSIVE TO EXTEND COVERAGE	11
PROGRESSIVE SHOULD BE ESTOPPED FROM DENYING COVERAGE	13
CONCLUSION RE: PROGRESSIVE	14
U.C.A. §31A-22-303(7) DOES NOT ALLOW STATE FARM TO EXCLUDE JOHN CALHOUN IF PROGRESSIVE DOES NOT COVER THIS ACCIDENT	15
CONCLUSION RE: STATE FARM	16
CERTIFICATE OF SERVICE	17
ADDENDUM	XIII

TABLE OF AUTHORITIES

CASES

<i>Ahlstrom v. Salt Lake City Corp.</i> , 2003 UT 4; 2003 Utah LEXIS 11	1
<i>Allstate Ins. Co. v. U.S.F.&G. Co.</i> , 619 P.2d 329 (Utah 1980)	6, 7, 11, 12
<i>Arredondo v. Avis RentACar Systems</i> , 2001 Utah 29, 418 Utah Adv. Rpt. 3 (Utah 2001)	12
<i>Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.</i> , 882 P.2d 1143 (Utah 1994)	9, 10
<i>Dairyland Ins. Corp. v. Smith</i> , 646 P.2d 737 (1982)	6, 12
<i>Farmers Ins. Exch. v. Call</i> , 712 P.2d 231 (Utah 1985)	10
<i>Pollard v. Truck Insurance Exchange</i> , 2001 Utah App. 120 ¶7 (Utah Ct. App. 2001)	13
<i>Prince v. Bear River Mut. Ins. Co.</i> , 2002 UT 68; 56 P.3d 529	1
<i>State v. Tooele County</i> , 2002 UT 8; 44 P.3d 680	1
<i>Travelers Ins. Co. v. Kearl</i> , 896 P.2d 644 (Utah App. 1995)	14
<i>Trolley Square Assocs. v. Nielson</i> , 886 P.2d 61, 65 (Utah App. 1994)	14

STATUTES:

U.C.A. 78-2-2(3)(j)(2001)	1
U.C.A. §31A-22-303(1)(a)	1, 2, 5, 11, 12, 15
U.C.A. §31A-22-303(7)(1998)	1, 7, 8, 10, 15
U.C.A. §31A-23-305(1998)	14

JURISDICTION

The Utah Supreme Court has jurisdiction in this matter pursuant to U.C.A. 78-2-2(3)(j)(2001).

ISSUES ON APPEAL

The following issues are presented on appeal:

1. Can Progressive sell John Calhoun (son) as policy of insurance which does not cover him while driving a relative's vehicle, without violating the mandatory coverage of U.C.A. §31A-22-303(1)(a)? The trial court's interpretation of a statute is reviewed *de novo*, as is the trial court's interpretation of a contract. *State v. Tooele County*, 2002 UT 8; 44 P.3d 680 (statutory interpretation reviewed as a matter of law); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68; 56 P.3d 529 (reviews *de novo* trial court's interpretation of insurance contract in light of statutes). Also, summary judgment rulings are reviewed *de novo*. *Ahlstrom v. Salt Lake City Corp.*, 2003 UT 4; 2003 Utah LEXIS 11.
2. If Progressive can sell John Calhoun such a policy, even though it is specifically purchased to take advantage of the statutory named driver exclusion, does the Progressive policy independently satisfy John Calhoun's statutory insurance requirement, to allow State Farm to specifically name and exclude him from (father) Jimmy Calhoun's policy? Again, review of summary judgment construing an insurance contract, in the context of statutory requirements, is *de novo*. *Id.*

DETERMINATIVE STATUTES AND RULES

1. U.C.A. §31A-22-303(7)(1998):

(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:

(a) at the time of the proposed exclusion, 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 . . .

2. U.C.A. §31A-22-303(1)(a)(1998):

. . . a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(i) 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;

(ii) (A) 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 other person included in Subsection (1)(a)(iii) 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

(B) 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)(iii)(A);

(iii) 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 .

STATEMENT OF THE CASE

1. **Nature of the Case**

This is an appeal from summary judgment in favor of two insurers in an action brought by their insureds for liability coverage from an accident.

2. Course of Proceedings and Disposition in the Court Below

Plaintiff John Calhoun was a named insured with Defendant Progressive, while Plaintiff Jimmy Calhoun was a named insured with Defendant State Farm. They filed a complaint for damages from the failure of each defendant to defend and/or indemnify them from liability they incurred from an automobile accident. After deposing each insured, each defendant filed a motion for summary judgment, which was granted. The named insureds appeal.

3. Statement of Relevant Facts on Appeal

Jimmy Calhoun lived in Dugway, Utah, with his wife (not a party herein), for about 13 years, until about 1999. Jimmy's son, John Calhoun, also lived with him, except for a period of time (not relevant herein) in the early-1990's. (Jimmy Calhoun Depo., p. 6-8, R. 198). They alleged that they lived together in the same household at all times material hereto. (Complaint, ¶5, R. 2).

Jimmy Calhoun carried automobile insurance with State Farm for himself, his wife and son, John Calhoun, for a number of years prior to 1998. (Complaint, ¶7, R. 2). On November 11, 1996, State Farm informed Jimmy Calhoun that because of a combination of accidents and citations, it refused to insure John Calhoun. (Summary Judgment Memo. Of Progressive, p.2, R. 47). As a result, State Farm added a "named driver" exclusion to Jimmy Calhoun's policy which purported to deny coverage to John Calhoun. (Complaint, ¶9, R. 2). John Calhoun (the excluded "named" driver) bought insurance for a Mercury Topaz he was driving from an unidentified insurance company from Curry Insurance Agency (not a party to this action).(John Calhoun depo., p. 26:7-12; 32: 8-13, R.

50) This car was replaced with a Suzuki Samurai in 1997 (John Calhoun depo , p 33 13-34 3, R 50) The insurance on the Topaz was ultimately replaced with a policy of insurance on the Samurai from Progressive in August, 1998 This insurance was effective until August, 1999 (Summary Judgment Memo Of Progressive, p 3-4, ¶14, R 48-9)

On December 19, 1998, John Calhoun had mechanical problems with the Suzuki As a result, Jimmy Calhoun gave permission to John Calhoun to drive Jimmy Calhoun's Jeep Comanche pickup truck (Jimmy Calhoun depo , p 24 2-16, R 49) John Calhoun lost control of the Jeep on the 2100 South off-ramp from I-80, and struck two vehicles that were stopped on the side of the road (John Calhoun depo , p 19 12-24, R 49) Both Jimmy Calhoun and John Calhoun gave timely notice of the loss to both State Farm and Progressive (Complaint, ¶13, R 2) Despite the fact that both Jimmy Calhoun and John Calhoun had each purchased liability insurance coverage, neither State Farm nor Progressive has provided liability insurance coverage for this accident (Complaint, ¶14, R 2)

The State Farm policy purchased by Jimmy Calhoun obligated it to "pay damages which an insured becomes legally liable to pay because of [damage or injury to another]" The term "insured" is defined to include "3 the relatives of the first person named in the declarations [here, Jimmy Calhoun], 4. Any other person while using such car if its use is within the scope of consent " John Calhoun, the driver of the Jeep, was both a "relative" of the named insured, and a permissive user Thus, he qualified under both definitions However, State Farm had also issued a "named driver" exclusion by way of an endorsement, which stated that "WE [STATE FARM] SHALL NOT BE LIABLE AND LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY

WHILE ANY MOTOR VEHICLE IS OPERATED BY John C Calhoun”. (State Farm S. J. Memo, ex. 5; R.235). Based upon this endorsement, State Farm refused to cover John Calhoun’s liability.

The Progressive policy purchased by John Calhoun provided that “we will pay damages . . . for bodily injury for which an insured person becomes legally responsible because of an accident . . .”. R. 143. However, the Progressive policy also excludes “bodily injury or property damage resulting from the operation or use of a vehicle owned by you or a relative, other than a covered vehicle”. R. 145. Of course, Jimmy Calhoun is a “relative”, and the Jeep was not a “covered vehicle”. Based upon this exclusion, Progressive also denied coverage for the accident. Because both insurers denied coverage, both John Calhoun and Jimmy Calhoun ended up uninsured for this accident. So, they sued. (Complaint, R. 1-3).

SUMMARY OF ARGUMENT

The named driver exclusion is only allowed if the excluded driver has other insurance. When John Calhoun tried to comply with this requirement of other insurance, Progressive sold him a policy that covered his use of any vehicle owned by someone else, except his own relatives. So when John borrowed, with permission, a Jeep truck owned by his father, Jimmy Calhoun, Progressive’s policy excluded him from coverage. This violated U.C.A. §31A-22-303(1)(a), especially when Progressive sold John Calhoun the policy specifically to comply with the statutory named driver exclusion requirements.

If the Progressive exclusion is valid, however, then John Calhoun had not independently satisfied the mandatory liability insurance requirements, leaving him without insurance to respond to the claims of the innocent other drivers involved in the December, 1998, accident. Therefore,

State Farm could not exclude John Calhoun as a driver, since this would leave him uninsured in circumstances which certainly occur all the time in every household with multiple family members and multiple insured vehicles

ARGUMENT

I.

A.

HISTORICAL BACKGROUND

The Utah statutes requiring insurance have been read for the past twenty (20) years to require each owner of a motor vehicle to either buy insurance or be self-insured. The contents of the required insurance are set forth by these statutes. If a policy fails to provide the minimum coverage set forth in the insurance statutes, the policy will be read to include the statutory minimum coverage. See *Allstate Ins. Co. v. U.S.F.&G. Co.*, 619 P 2d 329 (Utah 1980). Justice Hall, having dissented in *Allstate*, conceded the point in the later case of *Dairyland Ins. Corp. v. Smith*, 646 P 2d 737 (1982), stating “if one opts to provide a policy of insurance to satisfy the security requirements for the registration of a motor vehicle, that the policy of insurance so provided must meet the further requirements of the Safety Responsibility Act ”

As a result of this statutory scheme of mandatory insurance coverages, efforts by insurers to exclude drivers from liability coverage have been struck down. One effort involves the so-called “named driver exclusion”. These policies exclude certain named drivers from liability coverage. In *Allstate*, supra, the insurer issued a policy to an employer, but specifically excluded from coverage

a named driver, a certain employee with a bad driving record. That named employee driver eventually was driving, crossed a centerline, and killed an oncoming driver. The *Allstate* court noted that the statute required an insurance policy to insure any person driving an insured vehicle with permission of the owner. Since the named employee driver was driving with permission, the statute required the insurance policy to cover him “because Pulliam [the named driver/employee] was driving with the express permission of Brookfield [the named insured/employer], **the named driver exclusion is void** in relation to the minimum level of liability coverage mandated by 41-12-1(k)[now 31A-22-304]”
Emphasis added

After the *Allstate* court struck down the named driver exclusion, the legislature later responded by adding what is now U C A §31A-22-303(7) in 1985. In order to exclude a named driver, the statute requires that the excluded driver satisfy the statutory requirement of insurance independently of the household insurance policy.

(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

(a) at the time of the proposed exclusion, 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.

Thus, the Legislature created a loophole in the statute requiring mandatory coverage for the named insured’s household, for a specifically named driver. The catch is that the excluded specifically named driver must independently carry the minimum liability insurance required by statute.

B.

QUESTIONS PRESENTED IN THIS CASE

This case arises from the intersection of the “named driver exclusion” in the State Farm policy purchased by Jimmy Calhoun, and the “owned vehicle” exclusion in the Progressive policy purchased by John Calhoun. The Progressive “owned vehicle” exclusion excludes from coverage liability for the named insured’s use of any other vehicles owned by the insured, which are not insured through the insured’s policy. Fair enough. But John Calhoun did not own the Jeep he was driving; it was owned by his father, Jimmy Calhoun. However, the Progressive “owned vehicle” exclusion also excludes any other vehicles, which are owned by other household members (such as Jimmy Calhoun), not insured under the policy of the named insured, John Calhoun. This creates the problem: John Calhoun and Jimmy Calhoun live in the same household. While each has purchased liability insurance for their separate vehicles, according to State Farm and Progressive, neither is insured while driving each other’s vehicles. Stated more formally, the question presented by State Farm’s policy is this: when Jimmy Calhoun bought the Progressive policy containing an exclusion for driving other vehicles owned by relatives in his household, such as his father, John Calhoun, did he independently satisfy the minimum liability required by statute, allowing State Farm to exclude him as a named driver? The answer to this question depends on whether the Progressive “owned vehicle” exclusion, which includes non-owned vehicles owned by relatives residing in the same household, is valid in the context of a policy purchased to comply with the requirements of U.C.A. §31A-22-303(7)(1998). If Progressive cannot exclude John Calhoun in this setting, then it must provide coverage, and State Farm does not. However, if the exclusion is valid, even though purchased to comply with the requirement of U.C.A. §31A-22-303(7)(1998), then has John Calhoun independently satisfied the mandatory liability coverage required for State Farm to specifically name and exclude him?

family members, but not insured, or insured for lower limits.

The “owned vehicle” exclusion is not a creature of statute, but a policy provision created by Progressive. The “named driver” exclusion is a creature of statute, but only applies if the excluded driver has independent coverage.

Here, the policy issued by Progressive fails to cover John Calhoun as a permissive user of a vehicle. As a result, John’s coverage through Progressive falls short of that required by statute. Because it falls short of the statutory coverage, John has failed to independently satisfy the requirements of insurance. Therefore, the statutory precondition to the named driver exclusion (*i.e.* independently satisfying the statutory requirement of insurance) fails, and the the named driver exclusion is void to that extent, at least to the extent of the minimum required liability coverage, and at least to the extent of covering the 1987 Jeep Commanche.

C.

DAIRYLAND II DOES NOT ANSWER THE QUESTIONS PRESENTED

State Farm argued below that this same factual setting arose in *Dairyland Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 882 P.2d 1143 (Utah 1994)(hereafter, *Dairyland II*), and that *Dairyland II* resolved the issue in favor of State Farm. The trial court in *Dairyland* held that, while the named driver exclusion applied, the permissive user coverage also applied, granting coverage. The *Dairyland II* court did not rule on the question presented in this case. Instead, the *Dairyland II* court reviewed the trial court’s decision, and found that the permissive user provisions did not override the named driver exclusion. The *Dairyland II* court specifically reserved judgment on the issue in this case:

We note that the [plaintiff’s] attorneys have failed to cross-appeal the portion of the

trial court's order which held that [the excluded driver] had been **properly** excluded from his parent's policy under subsection (7) of Utah Code Ann §31A-22-303. As noted above, that subsection allows a motor vehicle insurance policy to exclude a person who is a resident of the named insured's household only 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." Utah Code Ann §31A-22-303(7). There is an issue as to whether a policy such as Dairyland's [here, Progressive] that fails to cover the primary insured when he or she is driving substitute vehicles from the same household constitutes independent insurance sufficient to satisfy the owner's and operator's security requirement under subsection (7). Although the [plaintiff's] counsel raised this argument in their brief on appeal, they neglected to appeal this issue by filing a notice of appeal and a docketing statement, and we therefore decline to consider it.

Dairyland II, supra, fn 5 (emphasis in the original). Thus, State Farm was wrong when it argued below that *Dairyland II* supported its position. *Dairyland II* supports neither side, as it carefully avoids suggesting any opinion on whether the named driver exclusion was actually valid, in light of the exclusion in the Dairyland policy.

Neither did *Dairyland II* resolve the question of whether the "owned vehicle" exclusion was valid in the context of insurance purchased to satisfy U C A §31A-22-303(7). The *Dairyland II* opinion states "[w]e need not decide whether this provision [U C A §31A-22-303] and others within the Code prohibit the "vehicle exclusion" clause contained in Dairyland's policy." *Dairyland II*, supra, fn 5. Thus, *Dairyland II* does not answer the issues raised by Progressive's policy either.

D.

PUBLIC POLICY REQUIRES NO GAP IN INSURANCE COVERAGE

The public policy of this State is set forth in the statutes requiring automobile insurance. In *Farmers Ins. Exch. v. Call*, 712 P 2d 231 (Utah 1985), the Utah Supreme Court stated that the mandatory insurance statutes "substantially changed the public policy of this state by mandating that

all Utah automobiles be covered by certain types of security. According to section 31-41-5 [predecessor to 31A-22-301, et. seq.], each automobile insurance policy used as security must qualify under the Safety Responsibility Act, U.C.A. §§41-12-1 to 41. . . This legislative action reflects a public policy requiring minimum coverage to protect innocent victims of automobile accidents.” In apparent response to *Allstate Ins. Co. v. U.S.F.&G. Co.*, 619 P.2d 329 (Utah 1980), which invalidated named driver exclusions, the Legislature created a narrow, limited way to exclude a named driver. The only way to do this, according to the statute, is if the excluded driver independently satisfies the financial responsibility statute. The obvious legislative intent is that there be no “gap”, that the minimum legislated insurance be available to injured victims of negligent drivers, whether the driver is the named insured, or an excluded driver. If, for whatever reason, the Progressive policy does not provide coverage, then the public policy reflected in the statute requires State Farm to bear the cost, not the innocent victims of this accident.

II

A

U.C.A. §31A-22-303(1)(a) REQUIRES PROGRESSIVE TO EXTEND COVERAGE

The Utah statutes requiring insurance have been read for the past twenty (20) years to require each owner of a motor vehicle to either buy insurance or be self-insured. The contents of the required insurance are set forth by these statutes. If a policy fails to provide the minimum coverage set forth in the insurance statutes, the policy will be read to include the statutory minimum coverage. See *Allstate Ins. Co. v. U.S.F.&G. Co.*, 619 P.2d 329 (Utah 1980). Justice Hall, having dissented in

Allstate, conceded the point in the later case of *Dairyland Ins. Corp. v. Smith*, 646 P 2d 737 (1982), stating “if one opts to provide a policy of insurance to satisfy the security requirements for the registration of a motor vehicle, that the policy of insurance so provided must meet the further requirements of the Safety Responsibility Act ” For a recent application of this principle, see *Arredondo v. Avis RentACar Systems*, 2001 Utah 29, 418 Utah Adv Rpt 3 (Utah 2001)(statute required primary insurer of rental car to provide statutory coverage to renter’s son, who was a permissive user not covered by policy)

The policy itself recognizes this, by providing under the heading “FINANCIAL RESPONSIBILITY LAWS” that “this policy will comply with the law to the extent required” Further, the policy states under “TERMS OF POLICY CONFORMED TO STATUTES”, that if the policy fails to conform to the required provisions, “the provision shall be deemed amended to conform with such requirements” Thus, the policy itself provides that it will cover whatever is required by statute, regardless of any specific provision in the policy to the contrary

The statute in effect in 1998 required each insurance policy to be either an owners policy, or an operators policy U C A §31A-22-303(1)(a)(ii)(A) and (B) An owners policy requires the insurer to insure three categories of people

- a The named insured,
- b Any other person using any named motor vehicle with the permission of the named insured,
- c Insure any household relatives to the same extent as the named insured

If the Progressive policy is an owners’ policy, John Calhoun (son) falls within the first category,

because he was the named insured under Progressive's policy Jimmy Calhoun (father) falls within the third category, as a resident relative of the named insured, John Calhoun (son)

An operators policy requires the insurer to insure the named insured for liability "arising out of the insured's use of any motor vehicle not owned by him " Since John Calhoun (son) did not own the car he was driving (which was owned by Jimmy Calhoun (father)), he would be insured under an operator's policy

The Progressive policy does not specify whether it is an owners or an operators policy However, it appears that John Calhoun was insured under either statutory version of auto liability policy Further, since Progressive failed to specify whether it was issuing an owners or an operators policy, it creates an ambiguity in the policy An insured has no way to know whether he is getting the statutory owners coverage, or the statutory operators coverage, or both Since the insurer has created the ambiguity, it is resolved against the insurer *Pollard v. Truck Insurance Exchange*, 2001 Utah App 120 ¶7 (Utah Ct App 2001)

B

PROGRESSIVE SHOULD BE ESTOPPED FROM DENYING COVERAGE

The Calhouns went to the Curry Insurance Agency specifically to buy insurance to satisfy the requirements of the named driver exclusion See John Calhoun deposition, pp 9-10, 12 The Combe agent who sold the Progressive policy specifically represented that the Progressive policy would cover John Calhoun "on all vehicles that I drove", specifically including the excluded vehicles from State Farm John Calhoun deposition, p 18, l 7-9, p 34, l 9-19, R 62 o John Calhoun asked for "full coverage" on his vehicle *Id.*, p 26, l 19, p 27, l 1-5, p 28, l 13-14 There is a rebuttable

presumption that an insurer is liable for the acts of an agent, such as Curry See U C A §31A-23-305(1998) Progressive has never argued that Curry Insurance Agency was not its agent for purposes of selling insurance.

By representing (through Curry Insurance Agency) that John Calhoun would be covered for all vehicles he drove, Progressive should be estopped from denying coverage The elements of estoppel are

(1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted, (2) reasonable action or inaction by the other party taken on the basis of the first party's statement, admission, act, or failure to act, and (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act

Trolley Square Assocs. v. Nielson, 886 P 2d 61, 65 (Utah App 1994) (quoting *Holland v Career Serv Review Bd*, 856 P 2d 678, 682 (Utah App 1993)) See *Travelers Ins. Co. v. Kearl*, 896 P 2d 644 (Utah App 1995)(insurer may be estopped to deny coverage by acts of agency selling insurance)

Here, John Calhoun relied upon the expertise and skill of Progressive's agent, Curry Insurance Agency, to select insurance that would comply with the requirements of Utah's named driver exclusion When Progressive's agent represented that the insurance sold would provide that coverage, the actual contents of that policy became irrelevant The only fact relevant is that Curry said they would provide such coverage If they did not, it is too late now to claim otherwise

CONCLUSION RE PROGRESSIVE

Progressive agreed to provide the minimum statutory coverages required, so that Jimmy Calhoun and State Farm could specifically name John Calhoun as an excluded driver This required Progressive to cover John Calhoun as a named insured under an owners policy, or as an operator of

a non-owned vehicle under an operators policy. Under either scenario, John Calhoun should have been covered for his liability from the December, 1998 accident. When Progressive failed to provide the minimum liability coverage required, it violated the statutory requirement of U.C.A. §31A-22-303(1)(a). Progressive's motion for summary judgment should have been denied, and the Calhouns should have been granted the liability coverage for which they paid.

III

U.C.A. §31A-22-303(7) DOES NOT ALLOW STATE FARM TO EXCLUDE JOHN CALHOUN IF PROGRESSIVE DOES NOT COVER THIS ACCIDENT

The only way State Farm can exclude John Calhoun is if he complies with the mandatory insurance scheme elsewhere. If the "owned vehicle" exclusion John Calhoun purchased from Progressive does not provide him coverage for all permissive driving uses, then the policy fails to meet the minimum statutory liability requirements, and the "named driver" exclusion must fail under U.C.A. §31A-22-303(7).

If the result were otherwise, an insurer could exclude a named driver, regardless of whether that excluded driver had any significant independent auto mobile coverage. For example, if John Calhoun bought a Progressive policy that covered green cars only, and if he had borrowed a blue car, there would be no coverage by Progressive. Could State Farm then plausibly argue that the Progressive policy "satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner or operator's security"? Of course not.

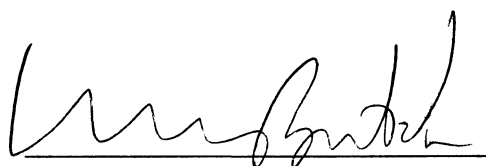
State Farm can take two positions: that the Progressive policy cannot exclude the Jimmy Calhoun vehicle, and that John Calhoun did have coverage under the Progressive policy. That is the

argument made by the Calhouns in opposition to the Progressive motion for summary judgment. Or, State Farm could have verified that the Progressive policy provided the required minimum coverage by inspecting the Progressive policy prior to relying upon it to allow a named driver exclusion in its own policy. State Farm had complete control of the situation, to avoid this stand-off, with innocent victims of the accident left without recourse against an insured driver, even though both the Calhouns had separately bought insurance. If State Farm agrees that the Progressive policy does not provide coverage, then it cannot assert the named driver exclusion.

CONCLUSION RE: STATE FARM

State Farm cannot sit back, deny coverage, and at the same time let Progressive deny coverage also. If Progressive has no coverage, then John Calhoun has not independently satisfied the required insurance coverage. If he has not independently satisfied this requirement, then the named driver exclusion must fail, because the only way to exclude a driver is if they have independently satisfied the insurance requirement. If this court rules in Progressive's favor, then State Farm's argument must fail, and they must bear the financial burden of this accident.

DATED THIS 19th day of May, 2003.

A handwritten signature in black ink, appearing to read "Daniel F. Bertch", written over a horizontal line.

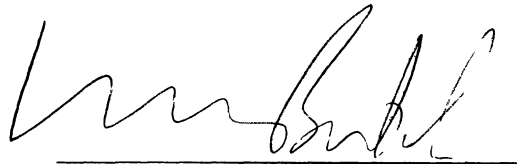
Daniel F. Bertch
Kevin K. Robson
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of May, 2003, a true and correct copy of the foregoing APPELLANT'S BRIEF was mailed by U S. Mail, first-class postage prepaid, as follows:

Lowell K Smith
SMITH & GLAUSER
7351 South Union Park Avenue, Suite 200
Salt Lake City, UT 84047

Joseph J. Joyce
STRONG & HANNI
Nine Exchange Place
Sixth Floor Boston Building
Salt Lake City, UT 84111



A handwritten signature in black ink, appearing to read 'Lowell K. Smith', is written over a horizontal line.

ADDENDUM

A

U.C.A. §31A-22-303

part of the expense of executing the fiduciary responsibility a reasonable premium paid to a surety for becoming the fiduciary's surety. However, the court may not allow an expense allowance greater than the larger of 1% of the surety's maximum obligation or \$25. 1985

31A-22-108. Repealed. 1986

PART II

LIABILITY INSURANCE IN GENERAL

31A-22-201. Required provisions of liability insurance policies.

Every liability insurance policy shall provide that the bankruptcy or insolvency of the insured may not diminish any liability of the insurer to third parties, and that if execution against the insured is returned unsatisfied, an action may be maintained against the insurer to the extent that the liability is covered by the policy. 1985

31A-22-202. Protection of third-party claimants.

No insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any person, or for damage to the property of any person may be retroactively abrogated to the detriment of any third-party claimant by any agreement between the insurer and insured after the occurrence of any injury, death, or damage for which the insured may be liable. This attempted abrogation is void. 1985

31A-22-203. Notice and proof of loss.

Section 31A-21-312 applies to the notice required under liability policies. Subsection 31A-21-312(1) may not be construed to extend the normal provisions of any claims-made coverage that required notice of an occurrence or claim prior to the expiration of the policy for coverage to be in force. 1988 (2nd S.S.)

31A-22-204. Restriction on limitation of coverage.

No insurer may limit coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force, unless the policy contains on the cover page, a conspicuous statement that the coverage of the policy is limited in that way. 1985

PART III

MOTOR VEHICLE INSURANCE

31A-22-301. Definitions.

As used in this part:

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

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

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

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

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

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

(7) "Pedestrian" means any natural person not occupying a motor vehicle. 1987

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

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

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

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

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(8)(c).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles. 1992

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

(1) (a) 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:

(i) 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;

(ii) (A) 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)(a)(iii) 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

(B) 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)(ii)(A);

(iii) 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; and

(iv) cover damages or injury resulting from a covered driver of a motor vehicle who is stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not reasonably aware that paralysis, seizure, or other unconscious condi-

B

U.C.A. §31A-22-303(7)

tion is about to occur to the extent that a person of ordinary prudence would not attempt to continue driving

- (b) The driver's liability under Subsection (1)(a)(iv) is limited to the insurance coverage
- (2) (a) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may
 - (i) provide for the prorating of the insurance under that policy with other valid and collectible insurance,
 - (ii) grant any lawful coverage in addition to the required motor vehicle liability coverage,
 - (iii) 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
 - (iv) 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
- (b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned by a motor vehicle business shall be primary coverage
 - (ii) The liability insurance coverage of a motor vehicle business shall be secondary to the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i)
- (3) Motor vehicle liability coverage need not insure any liability
 - (a) under any workers' compensation law under Title 34A,
 - (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

1993

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 the following

- (1) (a) \$25,000 because of liability for bodily injury to or death of one person, arising out of the use of a motor vehicle in any one accident,
- (b) subject to the limit for one person in Subsection (a), in the amount of \$50,000 because of liability for bodily injury to or death of two or more persons arising out of the use of a motor vehicle in any one accident, and
- (c) in the amount of \$15,000 because of liability for injury to, or destruction of, property of others arising out of the use of a motor vehicle in any one accident, or
- (2) \$65,000 in any one accident whether arising from bodily injury to or the death of others, or from destruction of, or damage to, the property of others

1993

31A-22-305. Uninsured and underinsured 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 or using 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 or underinsured 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) (i) 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
 - (ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304,
 - (B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency,
 - (b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator, or
 - (c) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is declared insolvent by a court of competent jurisdiction,
 - (ii) the vehicle described in Subsection (2)(c)(i) 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 that at least equal the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304

C

STATE FARM POLICY ISSUED TO JIMMY CALHOUN

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

Use it it:
replaces your car; or
an added car and:
if it is a private passenger
private passenger cars,
if it is other than a pri
insure all cars
it by you and your spouse
or your spouse;
you or your spouse:
tell us about it within 30
you or your spouse; and
you or your spouse has n
places, tell us which one is
pay us any added amount
rd Car - means a car no
n the name of:
bu, your spouse;
ny relative unless at the
ss:
the car has been descr
page of a liability po

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois

Mountain States Office • 3001 8th Avenue • Greeley, Colorado 80638-0001

YOUR STATE FARM CAR POLICY

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

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

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

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

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

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

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

Loss — defined in sections IV and V.

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

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

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

but only if ***you*** or ***your spouse***:

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

Non-Owned Car — means a ***car*** not owned by or registered or leased in the name of:

1. ***you, your spouse***;
2. any ***relative*** unless at the time of the accident or ***loss***:
 - a. the ***car*** has been described on the declarations page of a liability policy some time within the preceding 30 days; and

b. ***you, your spouse*** or a ***relative*** who does not own or lease such ***car*** is the driver.

3. any other ***person*** residing in the same household as ***you, your spouse*** or any ***relative***; or
4. an employer of ***you, your spouse*** or any ***relative***.

Non-owned car does not include a ***car***:

1. which is not in the lawful possession of the ***person*** operating it; or
2. which has been operated by, rented by or in the possession of an ***insured*** during any part of each of the preceding 21 days; or
3. operated by an ***insured*** who has operated or rented any ***car*** otherwise qualifying as a ***non-owned car*** during any part of more than 45 days in the 365 days preceding the date of the accident or ***loss***.

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

Person — means a human being.

Private Passenger Car — means a ***car***:

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

Relative — means a ***person*** related to ***you*** or ***your spouse*** by blood, marriage, adoption or guardianship who lives with ***you***, including those who usually make their home in ***your*** household but temporarily live elsewhere.

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

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

Utility Vehicle — means a motor vehicle with:

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

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

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

DECLARATIONS CONTINUED

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

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

You agree, by acceptance of this policy that:

1. the statements in these declarations are *your* statements and are true; and
2. we insure *you* on the basis *your* statements are true; and

3. this policy contains all of the agreements between *you* and us or any of our agents.

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

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

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

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

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

Where Coverage Applies

The coverages *you* chose apply:

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

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

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

FINANCED VEHICLES

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

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

When we pay the creditor for *loss* for which *you* are not covered, we are entitled to the creditor's right of recovery against *you* to the extent of our payment. Our right of

recovery shall not impair the creditor's right to recover the full amount of its claim.

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

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

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

REPORTING A CLAIM — INSURED'S DUTIES

1. Notice to Us of an Accident or Loss

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

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

2. Notice to Us of Claim or Suit

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

3. Other Duties Under the Physical Damage Coverages

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

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

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

The *person* making claim also shall

- a. give us all the details about the death, injury, treatment and other information we need to determine the amount payable
- b. be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of

the report will be sent to the *person* upon written request. If the *person* is dead or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records

(1) under the uninsured motor vehicle and underinsured motor vehicle coverages let us see the insured *car* the *person occupied* in the accident,

(2) under the uninsured motor vehicle coverage report a "hit-and-run" accident to the police within 24 hours and to us within 30 days. Failure to give this notice within the time specified does not invalidate coverage if

(a) the *person* making claim shows it was not reasonably possible to give the notice within the prescribed time, and

(b) the notice is given as soon as reasonably possible

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

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

Insured's Duty to Cooperate With Us

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

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

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

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

SECTION I – LIABILITY – COVERAGE A

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

We will:

1. pay damages which an *insured* becomes legally liable to pay because of:
 - a. *bodily injury* to others, and
 - b. damage to or destruction of property including loss of its use,caused by accident resulting from the ownership, maintenance or use of *your car*; and
2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

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

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

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

Coverage for the Use of Other Cars

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

Who Is an Insured

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

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

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

1. the first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives*; and
4. any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR NON-OWNED CARS:

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

Trailer Coverage

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

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

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

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

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

Limits of Liability

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

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

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

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

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

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

When Coverage A Does Not Apply

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

THERE IS NO COVERAGE

- 1 WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS
 - a RENTED TO OTHERS OR USED TO CARRY *PERSONS* FOR A CHARGE

This does not apply to the use on a share expense basis of

- (1) a *private passenger car*; or
 - (2) a *utility vehicle*, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers
- b BEING REPAIRED SERVICED OR USED BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*
 - (1) If no other valid and collectible insurance is applicable this provision applies to a motor vehicle business its officers agents and employees, but only to the extent the limits of liability of this policy exceed the limits of liability required by Utah law
 - (2) This provision in its entirety does not apply to
 - (a) *you* or *your spouse*;
 - (b) any *relative*;
 - (c) any resident of *your* household, or
 - (d) any agent, employee or partner of *you*, *your spouse*, any *relative* or such resident

This coverage is excess for (c) and (d) above

2 FOR ANY *BODILY INJURY* TO

- a A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS *You* and *your spouse* are covered for such injury to a fellow employee
- b ANY EMPLOYEE OF AN *INSURED* ARISING OUT OF HIS OR HER EMPLOYMENT This does not apply to a household employee who is not covered or required to be covered under any worker's compensation insurance

3 FOR ANY DAMAGES

- a FOR WHICH THE UNITED STATES MIGHT BE LIABLE FOR THE *INSURED'S* USE OF ANY VEHICLE
- b TO PROPERTY OWNED BY, RENTED TO, IN CHARGE OF OR TRANSPORTED BY AN *INSURED*. But coverage applies to a rented
 - (1) residence, or
 - (2) private garage

damaged by a *car* we insure

- 4 FOR ANY OBLIGATION OF AN *INSURED*, OR HIS OR HER INSURER UNDER ANY TYPE OF WORKER'S COMPENSATION OR DISABILITY OR SIMILAR LAW
- 5 FOR LIABILITY ASSUMED BY THE *INSURED* UNDER ANY CONTRACT OR AGREEMENT

If There Is Other Liability Coverage

1 Policies Issued by Us to You

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

2 Other Liability Coverage Available From Other Sources

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

3 Temporary Substitute Car, Non-Owned Car, Trailer

If a *temporary substitute car*, a *non-owned car* or a trailer designed for use with a *private passenger car* or *utility vehicle* has other vehicle liability coverage on it, then this coverage is excess

4 Newly Acquired Car

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

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1 Out-of-State Coverage

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

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

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

2 Financial Responsibility Law

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

Duplicate Coverage and Arbitration

If an *insured* is or would be held legally liable for the damages resulting from *bodily injury* sustained by any *person* to whom benefits required under no-fault coverage have been paid by another insurer, including the Worker's Compensation Fund of Utah, we will reimburse the other insurer for the payment, but not in excess of the amount recoverable

The issue of liability and the amount will be decided by mandatory, binding arbitration between the insurers.

SECTION II – NO-FAULT – COVERAGE P

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

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

What We Pay

We will pay in accordance with Utah law for *bodily injury* to an *insured* caused by accident resulting from the maintenance or use of a *motor vehicle* as a *motor vehicle*:

1. **Medical Benefits.** This is reimbursement for reasonable expenses incurred for necessary
 - a medical, hospital, dental, surgical, ambulance, X-ray, nursing and rehabilitative services,
 - b eyeglasses, hearing aids and prosthetic devices; and
 - c remedial treatment by a recognized religious method of healing

The most we will pay for all expenses is the amount shown in the Schedule for *your* coverage symbol. The most we will pay for expenses for services and products furnished more than three years after the date of the accident is \$3,000, less any amount paid or payable for expenses incurred during the first three years

2. **Disability Benefits.** This is reimbursement for
 - a 85% of an *insured's* actual loss of.
 - (1) gross income from salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm, or
 - (2) earning capacitydue to that *insured's* continuous inability to work during a period that.
 - (1) begins three days after the date of the accident, and
 - (2) ends either
 - (a) when the *insured* is able to return to his or her usual job;
 - (b) when the *insured* dies, or
 - (c) 52 weeks after the period begins,whichever occurs first.If the *insured's* inability to work continues for more than two consecutive weeks after the accident, the period begins on the date of the accident. The most we will pay is the amount shown in the Schedule for *your* coverage symbol
 - b reasonable expenses incurred for actually rendered services the *insured* would have performed for his or her household except for the injury. These services must be performed during a period that.
 - (1) begins three days after the date of the injury; and

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

If the *insured's* disability continues for more than 14 consecutive days after the accident, the period begins on the date of the accident. The most we pay per day is \$20

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

Definitions

Insured – means

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

Motor Vehicle – means:

- 1 any self-propelled vehicle which is designed for use upon a highway including trailers and semi-trailers designed for use with such vehicles, and
- 2 a vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

It does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers

Owner — means a *person* who

- 1 holds legal title to a *motor vehicle*; or
- 2 has the right to possession of a *motor vehicle* under a security agreement or lease with option to buy

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

When Coverage P Does Not Apply

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

1. WHILE *OCCUPYING* OR WHEN STRUCK BY A *MOTOR VEHICLE* OWNED BY *YOU* OR ANY *RELATIVE* WHICH IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.
2. WHILE OPERATING *YOUR CAR* OR A *NEWLY ACQUIRED CAR*:
 - a. WITHOUT THE CONSENT OF *YOU* OR *YOUR SPOUSE*, OR
 - b. IF NOT IN LAWFUL POSSESSION OF IT
3. WHOSE CONDUCT CONTRIBUTED TO THE INJURY UNDER ANY OF THE FOLLOWING CIRCUMSTANCES
 - a. CAUSING **BODILY INJURY** TO HIMSELF OR HERSELF INTENTIONALLY, OR
 - b. WHILE COMMITTING A FELONY.
4. WHILE OPERATING OR *OCCUPYING* A MOTORCYCLE OWNED BY *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY,
5. ARISING OUT OF THE USE OF ANY *MOTOR VEHICLE* WHILE LOCATED FOR USE AS A RESIDENCE OR PREMISES,
6. DUE TO WAR OF ANY KIND, OR
7. RESULTING FROM THE HAZARDOUS PROPERTIES OF NUCLEAR MATERIALS

Settlement of Loss

1. Deciding Amount

If the *insured* and we cannot agree, it will be decided by arbitration upon written request of the *insured*. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a

judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party. The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitrator shall be shared equally by both parties. The arbitrator shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

2. Payment of Any Amount Due

We will pay any amount due

- a. to the *insured*, or to any *person* or organization providing medical services or products,
- b. to a parent or guardian, if the *insured* is a minor or an incompetent *person*;
- c. to the surviving *spouse*; or
- d. at our option, to a *person* authorized by law to receive such payment

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

If There Is Other Coverage

1. No Duplication

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

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

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

If coverage under more than one policy applies as excess

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

are liable to pay no-fault benefits

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

Constitutionality

If a court declares any of the Utah motor vehicle insurance law invalid, we may refigure the premium and change the

Limits of Liability

1. **The Most We Pay.** The most we pay for each *insured* who sustains *bodily injury* in any one accident shall not exceed the limit shown in the Schedule applicable to each benefit for *your* coverage symbol. Any amount payable shall be reduced by all amounts the *insured* is entitled to receive
 - a under any worker's compensation, disability or similar law, or
 - b from the United States or any of its agencies because of active duty in the military services

2. Schedule

Coverage Symbol	Medical Benefits	Disability Benefits Loss of Income Per Week	Funeral Benefits	Survivors' Benefits
P1	\$ 3,000	\$250	\$ 1,500	\$ 3,000
P2	5,000	250	1,500	3,000
P3	10,000	250	1,500	5,000
P4	25,000	250	1,500	5,000
P5	100,000	300	2,500	10,000

SECTION III – UNINSURED MOTOR VEHICLE – COVERAGE U AND UNDERINSURED MOTOR VEHICLE – COVERAGE W

UNINSURED MOTOR VEHICLE – COVERAGE U

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

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

Uninsured Motor Vehicle – means

- 1 a land motor vehicle, the ownership, maintenance or use of which is
 - a. not insured or bonded for bodily injury liability at the time of the accident, or
 - b. insured or bonded for bodily injury liability at the time of the accident, but
 - (1) the limits of liability are less than required by the financial responsibility act of the state where *your car* is mainly garaged, or
 - (2) the insuring company denies coverage or is or becomes insolvent; or
2. an unidentified “hit-and-run” land motor vehicle which was the proximate cause of the *bodily injury*. The *insured* must show the existence of the other motor vehicle by clear and convincing evidence, which shall consist of more than the *insured’s* testimony

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

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

Who Is an Insured

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

This is:

- 1 *you, your spouse* and *your relatives*; and
- 2 any other *person* while *occupying*:

- a *your car*, a *temporary substitute car*, a *newly acquired car* or a trailer attached to such *car*.

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

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

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

- 3 any *person* entitled to recover damages because of *bodily injury* to an *insured* under 1. and 2. above

Deciding Fault and Amount

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

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

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

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

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

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

UNDERINSURED MOTOR VEHICLE COVERAGE W

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

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

THERE IS NO COVERAGE UNTIL:

1. THE LIMITS OF LIABILITY OF ALL BODILY INJURY LIABILITY BONDS AND POLICIES THAT APPLY HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS TO OTHER *PERSONS*; OR
2. SUCH LIMITS OF LIABILITY OR REMAINING PART OF THEM HAVE BEEN OFFERED TO THE *INSURED*.

Underinsured Motor Vehicle — means a land motor vehicle:

1. the ownership, maintenance or use of which is insured or bonded for bodily injury liability at the time of the accident; and
2. whose limits of liability for bodily injury liability:
 - a. are less than the amount of the *insured's* damages; or
 - b. have been reduced by payments to *persons* other than the *insured* to less than the amount of the *insured's* damages.

An *underinsured motor vehicle* does not include a land motor vehicle:

1. insured under the liability coverage of this policy;
2. furnished for the regular use of *you, your spouse* or any *relative*;
3. owned by any government or any of its political subdivisions or agencies;
4. designed for use mainly off public roads except while on public roads;
5. while located for use as premises; or
6. defined as an "*uninsured motor vehicle*" in *your* policy.

Who Is an Insured

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

This is:

1. The first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives*; and
4. any other *person* while *occupying*:
 - a. *your car*, a *temporary substitute car*, a *newly acquired car*, or a trailer attached to such *car*. Such vehicle has to be used within the scope of the consent of *you* or *your spouse*; or
 - b. a *car* not owned by *you, your spouse* or any *relative*, or a trailer attached to such a *car*. It has to be driven by the first *person* named in the declarations or that *person's spouse* and within the scope of the owner's consent.

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

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

Deciding Fault and Amount

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

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

If there is no agreement, these questions shall be decided by arbitration upon written request of the *insured* or us.

Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on each party.

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

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

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

Payment of Any Amount Due — Coverages U and W

We will pay any amount due:

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

Limits of Liability — Coverage U

1. The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Any amount payable under this coverage shall be reduced by any amount paid or payable to or for the *insured*:
 - a. by or for any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
 - b. for *bodily injury* under the liability coverage.
3. Any payment made to a *person* under this coverage shall reduce any amount payable to that *person* under the *bodily injury* liability coverage.
4. Any amount paid or payable under:
 - a. the no-fault coverage; or
 - b. any worker's compensation, disability benefits, or similar law

will not be paid for again as damages under this coverage. This does not reduce the limits of liability of this coverage.
5. The limits of liability are not increased because:
 - a. more than one vehicle is insured under this policy; or
 - b. more than one *person* is insured at the time of the accident.

Limits of Liability — Coverage W

1. The amount of coverage is shown on the declarations page under "Limits of Liability — W — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.
2. Any amount paid or payable under:
 - a. the no-fault coverage; or
 - b. any worker's compensation, disability benefits or similar law

will not be paid for again as damages under this coverage. This does not reduce the limits of liability of this coverage.
3. Any payment made to a *person* under this coverage shall reduce any amount payable to that *person* for *bodily injury* under the liability coverage.
4. The limits of liability are not increased because:
 - a. more than one vehicle is insured under this policy;
 - b. more than one *person* is insured at the time of the accident; or
 - c. more than one *underinsured motor vehicle* is involved in the same accident.
5. The most we pay will be the lesser of:
 - a. the difference between the amount of the *insured's* damages for *bodily injury*, and the amount paid to the *insured* by or for any *person* or organization

who is or may be held legally liable for the *bodily injury*; or

- b. the limits of liability of this coverage.

When Coverage U Does Not Apply

THERE IS NO COVERAGE:

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

When Coverage W Does Not Apply

THERE IS NO COVERAGE:

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

4. FOR PUNITIVE DAMAGES OR INTEREST AWARDED TO OR CLAIMED BY THE **INSURED**.
5. FOR ANY **PERSON** WHOSE CLAIM FOR **BODILY INJURY** ARISES OUT OF **BODILY INJURY** SUSTAINED BY ANOTHER **PERSON**.
6. FOR COSTS OR ATTORNEY FEES INCURRED BY, ON BEHALF OF, OR AWARDED TO THE **INSURED**.

If There Is Other Uninsured Motor Vehicle Coverage

1. Regardless of the number of motor vehicles involved, the number of **persons** covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured motor vehicle coverage shall not be added to or stacked upon limits for such coverage applying to other motor vehicles to determine the amount of coverage available to an **insured** injured in any one accident.
2. If the **insured** sustains **bodily injury** and other uninsured motor vehicle coverage applies:
 - a. the **insured** must elect one policy under which to make a claim; and
 - b. COVERAGE UNDER THIS POLICY DOES NOT APPLY IF THE **INSURED** ELECTS ANY OTHER UNINSURED MOTOR VEHICLE COVERAGE UNDER WHICH TO MAKE A CLAIM.
3. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNINSURED MOTOR VEHICLE COVERAGE ON A **NEWLY ACQUIRED CAR**.

If There Is Other Underinsured Motor Vehicle Coverage

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

SECTION IV - PHYSICAL DAMAGE COVERAGES

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

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

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

1. Loss to Your Car. We will pay for *loss* to *your car* EXCEPT *LOSS BY COLLISION* but only for the amount of each such *loss* in excess of the deductible amount, if any.

Breakage of glass, or *loss* caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. *Loss* due to hitting or being hit by a bird or an animal is payable under this coverage.

2. We will repay *you* for transportation costs if *your car* is stolen. We will pay up to \$16 per day for the period that begins 48 hours after *you* tell us of the theft. The period ends when we offer to pay for *loss*.

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

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

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

We will pay for *loss* to *your car* caused by *collision* but only for the amount of each such *loss* in excess of the deductible amount. If the *collision* is with another motor vehicle insured with us, *you* do not pay *your* deductible if it is \$100 or less as we pay it.

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

Clothes and Luggage - Comprehensive and Collision Coverages

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

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

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

Limit of Liability - Comprehensive and Collision Coverages

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

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

Actual cash value is determined by the market value, age and condition at the time the *loss* occurred. Any deductible amount that applies is then subtracted. The cost of repair or replacement is based upon:

1. the cost of repair agreed upon by *you* and us, or
2. the lower of:
 - a. a competitive bid approved by us, or
 - b. an estimate written based upon the prevailing competitive price. The prevailing competitive price means labor rates, parts prices and material prices charged by a substantial number of the repair facilities in the area where the *car* is to be repaired as determined by a survey made by us. If *you* ask, we will identify some facilities that will perform the repairs at the prevailing competitive price.

Any deductible amount that applies is then subtracted.

Settlement of Loss - Comprehensive and Collision Coverages

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

1. pay up to the actual cash value;
2. pay to repair or replace the property or part with like kind and quality. If the repair or replacement

- results in better than like kind and quality, *you* must pay for the amount of the betterment;
- 3. return the stolen property and pay for any damage due to the theft; or
- 4. take the property at an agreed value; but it cannot be abandoned to us.

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

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

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

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

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

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

We will repay *you* up to \$10 per day when *you* rent a *car* from a car rental agency or garage due to a *loss* to *your car* which would be payable under coverage D, F or G, starting:

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

and ending when:

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

whichever comes first.

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

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

- 1. Car Rental Expense. We will:

- a. repay *you* up to \$16 per day when *you* rent a *car* from a car rental agency or garage; OR
- b. pay *you* \$10 per day if *you* do not rent a *car* while *your car* is not usable

due to a *loss* to *your car* which would be payable under coverage D, F or G.

This applies during a period starting:

- a. when *your car* cannot run due to the *loss*; or
- b. if *your car* can run, when *you* leave it at the shop for agreed repairs;

and ending:

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

whichever comes first.

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

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

Total Amount of Expenses Payable – Coverage R1

The most we will pay for the total of the “Car Rental Expense” and “Rental Car – Repayment of Deductible Amount Expense” incurred in any one occurrence is \$400.

- 2 The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is \$400

Trailer Coverage

- 1 Owned Trailer

Your trailer is covered

- a when it is described on the declarations page of the policy, and
- b for the coverages shown as applying to it.

- 2 Non-Owned Trailer or Detachable Living Quarters

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

- a trailer, if it is designed for use with a *private passenger car*, or
- b detachable living quarters unit

used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

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

A non-owned trailer or detachable living quarters unit is one that.

- a is not owned by or registered in the name of
 - (1) *you, your spouse, any relative;*
 - (2) any other *person* residing in the same household as *you, your spouse* or any *relative;* or
 - (3) an employer of *you, your spouse* or any *relative;* and
- b has not been used by, rented by or in the possession of *you, your spouse* or any *relative* during any part of each of the preceding 21 days, and
- c is used by *you, your spouse* or any *relative* and such *persons* have not used or rented any non-owned trailer or detachable living quarters unit for more than 45 days in the 365 days preceding the date of the accident or *loss*.

Coverage for the Use of Other Cars

The coverages in this section *you* have on *your car* extend to a *loss* to a *newly acquired car*, a *temporary substitute car* or a *non-owned car*. These coverages extend to a *non-owned car* while it is driven by or in the custody of an *insured*.

Insured — as used in this provision means

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

When Coverages D, F, G, H, R and R1 Do Not Apply

THERE IS NO COVERAGE FOR.

- 1 A *NON-OWNED CAR*:

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

- 2 ANY VEHICLE WHILE

- a RENTED TO OTHERS OR USED TO CARRY *PERSONS* FOR A CHARGE This does not apply to the use on a share expense basis, OR
- b SUBJECT TO ANY LIEN, RENTAL OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS

- 3 *LOSS* TO ANY VEHICLE DUE TO

- a TAKING BY ANY GOVERNMENTAL AUTHORITY,
- b WAR OF ANY KIND,
- c AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE This does not apply when the *loss* is the result of a theft covered by this policy Nor does it apply to emergency road service, OR
- d CONVERSION, EMBEZZLEMENT OR SECRETION BY ANY *PERSON* WHO HAS THE VEHICLE DUE TO ANY LIEN RENTAL OR SALES AGREEMENT

- 4 TIRES unless

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

- 5 TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND

- 6 ANY RADAR DETECTOR

If There Is Other Coverage

- 1 Policies Issued by Us to You

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

2 Coverage Available From Other Sources

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

3 Temporary Substitute Car, Non-Owned Car, Trailer

If a *temporary substitute car*, a *non-owned car* or trailer designed for use with a *private passenger car* has other coverage on it, then this coverage is excess.

4 Newly Acquired Car

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

No Benefit to Bailee

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

Two or More Vehicles

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

SECTION V – DEATH, DISMEMBERMENT AND LOSS OF SIGHT – COVERAGE S

DEATH, DISMEMBERMENT AND LOSS OF SIGHT – COVERAGE S

SCHEDULE

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

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

Insured – means a *person* listed under “Persons Insured – Coverage S” on the declarations page.

Loss – means the loss of:

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

The Most We Pay

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

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

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

If amount under S in the declarations is:

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

Payment of Any Amount Due

We will pay any amount due.

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

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

Autopsy

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

When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO.

- 1 AN *INSURED* WHILE ON THE JOB, OPERATING, *OCCUPYING*, LOADING OR UNLOADING
 - a AN EMERGENCY VEHICLE, OR
 - b A VEHICLE USED IN THE *INSURED'S* BUSINESS OR JOB
 - But 1.b. does not apply if the vehicle is:
 - (1) a *private passenger car* or school bus, or
 - (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.
- 2 AN *INSURED* WHILE
 - a ON THE JOB IN ANY *CAR BUSINESS*; OR
 - b *OCCUPYING* ANY.
 - (1) VEHICLE WHILE BEING USED IN A RACE, OR
- (2) MILITARY VEHICLE
- 3 AN *INSURED* WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER.
 - a. THAT RUNS ON RAILS OR CRAWLER-TREADS,
 - b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. LOCATED FOR USE AS PREMISES
- 4 THE DEATH OF OR *LOSS* TO AN *INSURED* DUE TO.
 - a. DISEASE except pus forming infection due to *bodily injury* received in the accident, or
 - b SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE; OR
 - c WAR OF ANY KIND.

CONDITIONS

1. Policy Changes

- a Policy Terms The terms of this policy may be changed or w ed only by
 - (1) an endorsement signed by one of our executive officers, or
 - (2) the revision of this policy form to give broader coverage without an extra charge. If any coverage *you* carry is changed to give broader coverage, we will give *you* the broader coverage without the issuance of a new policy as of the date we make the change effective.
- b Change of Interest No change of interest in this policy is effective unless we consent in writing. However, if *you* die, we will protect as named insured, except under death, dismemberment and loss of sight coverage:
 - (1) *your* surviving *spouse*;
 - (2) any *person* with proper custody of *your car*, a *newly acquired car* or a *temporary substitute car* until a legal representative is qualified, and then
 - (3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.
- c Consent of Beneficiary. Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.
- d Joint and Individual Interests When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us

There is no right of action against us

- a. until all the terms of this policy have been met; and
 - b. under the liability coverage, until the amount of damages an *insured* is legally liable to pay has been finally determined by:
 - (1) judgment after actual trial, and appeal if any; or
 - (2) agreement between the *insured*, the claimant and us
- Bankruptcy or insolvency of the *insured* or his or her estate shall not relieve us of our obligations
- c. under all other coverages until the earlier of:
 - (1) 60 days after we receive proof of loss;
 - (2) our waiver of proof of loss, or
 - (3) our denial of full payment.

3. Our Right to Recover Our Payments

- a Death, dismemberment and loss of sight coverage payments are not recoverable by us
- b Under uninsured motor vehicle coverage
 - (1) we are subrogated to the extent of our payments to the proceeds of any settlement the injured *person* recovers from any party liable for the *bodily injury*.
 - (2) if the *person* to or for whom we have made payment has not recovered from the party at fault, he or she shall
 - (a) keep these rights in trust for us,
 - (b) execute any legal paper: we need, and
 - (c) when we ask, take action through our representative to recover our payments

We are to be repaid our payments, costs and fees of collection out of any recovery.
- c Under no-fault coverage we are entitled to recover our payments in accord with Utah law.
- d Under underinsured motor vehicle coverage:
 - (1) we are entitled, to the extent of our payments, to the proceeds of any settlement the *insured* recovers from any party liable for the *bodily injury*, other than payments from bodily injury liability bonds or policies made prior to our payment
 - (2) if the *insured* has not been fully compensated for the *bodily injury* by the party at fault and we make payment for the *bodily injury*, the *insured* shall:
 - (a) keep these rights in trust for us;
 - (b) execute any legal papers we need, and
 - (c) when we ask, take action through our representative to recover the amount of our payments.

We are to be repaid our payments, costs and fees of collection out of any such recovery.
- e Under all other coverages the right of recovery of any party we pay passes to us. Such party shall:
 - (1) not hurt our rights to recover; and
 - (2) help us get our money back.

4. Cancellation

How You May Cancel *You* may cancel *your* policy by notifying us in writing of the date to cancel, which must be later than the date *you* mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to *you* in writing.

How and When We May Cancel. We may cancel *your* policy by written notice, mailed to *your* last known

effective. The mailing of it shall be sufficient proof of notice.

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

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

- a. 10 days before the cancellation effective date if the cancellation is because *you* did not pay the premium; or
- b. 30 days before the cancellation effective date if the cancellation is because of any other reason.

Unless we mail or deliver a notice of cancellation to *you* within 59 days of the policy effective date, we will not cancel *your* policy before the end of the current policy period unless:

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

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

Unless we mail or deliver to *you* a notice of cancellation or a notice of our intention not to renew the policy, we agree to renew the policy for the next policy period upon *your* payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect *your* premium include, but are not limited to:

- a. drivers of *your car* and their ages and marital status;
- b. *your car* and its use;
- c. eligibility for discounts or other premium credits;
- d. applicability of a surcharge based either on accident history, or on other factors.

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

6. Change of Residence

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


MUTUAL CONDITIONS

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one vehicle for any applicable coverage and to insurance for any other coverage for which said fees were paid so long as
 - a this company continues to write such coverages,
 - b the vehicle to be insured meets the eligibility requirements of the company, and
 - c the insured remains a risk desirable to the companyWhile this policy is in force, the first insured named in the declarations is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10 00 A M , unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto

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



SECRETARY



PRESIDENT

Page No.

WHAT IT IS AND WHERE YOU CAN FIND IT – THE INDEX

5	Reporting a Claim – Insured's Duties – What to do if <i>you</i> have an accident, claim or are sued
3	Defined Words
4	Declarations Continued
4	When and Where Your Coverage Applies
4	Financed Vehicles – Coverage for Creditor
	Coverages
6	A – Liability – When there is damage to others
9	P – No-Fault – When there is <i>bodily injury</i> to an <i>insured</i> as the result of the use of a <i>motor vehicle</i> as a <i>motor vehicle</i> .
12	U – Uninsured Motor Vehicle – When the other car or driver is not insured.
12	W – Underinsured Motor Vehicle – When the other car or driver is underinsured
16	D – Comprehensive – When <i>your car</i> is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page
16	F – Collision – 80% – When <i>your car</i> is damaged by collision or upset.
16	G – Collision – When <i>your car</i> is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page
17	H – Emergency Road Service – When <i>your car</i> breaks down or needs a tow
17	R – Car Rental Expense – When <i>you</i> need to rent a car because of damage to <i>your car</i> .
17	R1 – Car Rental and Travel Expenses – When <i>you</i> need to rent a car and pay extra travel expenses because of damage to <i>your car</i> .
19	S – Death, Dismemberment and Loss of Sight – Pays for death of or certain injuries to <i>persons</i> named
	Conditions
21	1. Policy Changes
21	2 Suit Against Us
21	3 Our Right To Recover Our Payments
21	4 Cancellation
22	5 Renewal
22	6 Change of Residence
23	Mutual Conditions

6082P.3 AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is shown for the endorsement on the Declarations Page.

This endorsement is issued by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

In consideration of the premium charged, it is agreed that *your* policy is changed as follows:

1. DEFINED WORDS

- a. The definition of *insured* is changed to read:

Insured – means the *person, persons* or organization defined as *insureds* in the specific coverage. If the information *you* have provided State Farm is incorrect or incomplete, or changes during the policy period, State Farm may decrease or increase the premium during the policy period as set out in the provision titled *Premium* of the Conditions section of this policy.

- b. The definition of *newly acquired car* is changed to read:

Newly Acquired Car – means a *replacement car* or an *additional car*.

Replacement Car – means a *car* purchased by or leased to *you* or *your spouse* to replace *your car*. This policy will only provide coverage for the *replacement car* if *you* or *your spouse*:

1. tell us about it within 30 days after its delivery to *you* or *your spouse*; and
2. pay us any added amount due.

Additional Car – means an added *car* purchased by or leased to *you* or *your spouse*. This policy will only provide coverage for the *additional car* if:

1. it is a *private passenger car* and we insure all other *private passenger cars*; or
2. it is other than a *private passenger car* and we insure all *cars*

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

This policy provides coverage for the *additional car* only until the earlier of:

1. 12:01 a.m. on the 31st day after the delivery of the *car* to *you* or *your spouse*; or
2. the effective date and time of a policy issued by us or any other company that describes the *car* on its declarations page.

You or *your spouse* may apply for a policy that will provide coverage beyond the 30th day for the *additional car*. Such policy will be issued only if both *you* and the vehicle are eligible for coverage at the time of application.

- c. The definition of *non-owned car* is changed to read:

Non-Owned Car – means a *car* not owned, registered or leased by:

1. *you, your spouse*;
2. any *relative* unless at the time of the accident or *loss*:
 - a. the *car* currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an *insured* who does not own or lease the *car*;
3. any other *person* residing in the same household as *you, your spouse* or any *relative*; or
4. an employer of *you, your spouse* or any *relative*.

Non-owned car does not include a:

1. rented *car* while it is used in connection with the *insured's* employment or business; or
2. *car* which has been operated or rented by or in the possession of an *insured* during any part of each of the last 21 or more consecutive days. If the *insured* is an *insured* under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A *non-owned car* must be a *car* in the lawful possession of the *person* operating it.

- d. The definition of *relative* is changed to read:

Relative – means a *person* related to *you* or *your spouse* by blood, marriage, adoption or guardianship who resides primarily with *you*, including those who usually make their home in *your* household but temporarily live elsewhere.

- e. The definition of *spouse* is changed to read:

Spouse – means *your* husband or wife who resides primarily with *you*.

2. REPORTING A CLAIM – INSURED'S DUTIES

- a. The following provision is added to item 4:

The *person* making claim also shall answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

- b. Item 4b is changed to read:

The *person* making claim also shall:

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

3. SECTION I — LIABILITY — COVERAGE A

- a. Item 1b(1) of When Coverage A Does Not Apply is changed to read:

- (1) If no other valid and collectible insurance is applicable, this provision applies to a motor vehicle business, its officers, agents and employees, but only to the extent the limits of liability of this policy exceed the minimum limits of liability required by section 31A-22-304 of the Utah Insurance Laws. The minimum required limits are:

- (a) \$25,000 for each *person* and \$50,000 for each accident, if the limit of liability for this coverage is shown as a split limit on the declarations page; or

- (b) \$65,000 for each accident, if the limit of liability for this coverage is shown as a single limit on the declarations page.

- b. Item 3a of When Coverage A Does Not Apply is deleted.

- c. The following is added to When Coverage A Does Not Apply:

THERE IS NO COVERAGE FOR:

- a. THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES; OR

- b. ANY *PERSON* WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

- d. Item 1 of If There Is Other Liability Coverage is changed to read:

1. Policies Issued by Us to You, Your Spouse, or Any Relative

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

- e. Item 3 of If There Is Other Liability Coverage is changed to read:

3. Temporary Substitute Car, Non-Owned Car, Trailer

If a *temporary substitute car*, a *non-owned car* or a trailer designed for

use with a *private passenger car or utility vehicle*:

- a. has other vehicle liability coverage on it; or
- b. is self-insured under any motor vehicle financial responsibility law, a motor carrier law or any similar law,

then this coverage is excess over such insurance or self-insurance.

4. SECTION II — NO-FAULT — COVERAGE P

- a. Item 2 of **What We Pay** is changed to read:

2. **Disability Benefits.** This is reimbursement for:

- a. 85% of an *insured's* actual loss of:

- (1) gross income from salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm; or

- (2) earning capacity

due to that *insured's* continuous inability to work during a period that:

- (1) begins three days after the date of the loss; and

- (2) ends either:

- (a) when the *insured* is able to return to his or her usual job;

- (b) when the *insured* dies; or

- (c) 52 weeks after the period begins,

whichever occurs first.

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

- b. reasonable expenses incurred for actually rendered services the *insured* would have performed for his or her household except for the injury. These services must

be performed during a period that:

- (1) begins three days after the date of the injury; and

- (2) ends either:

- (a) when the *insured* can perform these services;

- (b) when the *insured* dies; or

- (c) 365 days after the date of the injury,

whichever occurs first.

If the *insured's* disability continues for more than 14 consecutive days after the date of the injury, the period begins on the date of the injury. The most we pay per day is \$20.

- b. Item 1 of **When Coverage P Does Not Apply** is deleted.

- c. The following provision is added to **When Coverage P Does Not Apply**:

THERE IS NO COVERAGE UNDER THIS POLICY FOR **BODILY INJURY** TO ANY PERSON WHO IS INJURED:

- a. **WHILE OCCUPYING A MOTOR VEHICLE WHICH IS:**

- (1) OWNED BY OR FURNISHED FOR THE REGULAR USE OF YOU OR ANY RELATIVE; AND

- (2) NOT INSURED FOR NO-FAULT COVERAGE UNDER THIS POLICY.

- b. **WHEN STRUCK BY A MOTOR VEHICLE WHICH IS:**

- (1) OWNED BY THE INJURED PERSON; AND

- (2) NOT INSURED FOR NO-FAULT COVERAGE UNDER THIS POLICY.

5. SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

- a. Item 1b(1) of the definition of *Uninsured Motor Vehicle* is changed to read:

- (1) the limits of liability are less than the minimum limits required by section

31A-22-304 of the Utah Insurance Laws. The minimum required limits are \$25,000 for each *person* and \$50,000 for each accident; or

- b. The second paragraph of **Deciding Fault and Amount** under **UNDERINSURED MOTOR VEHICLE - COVERAGE W** is changed to read:

If there is no agreement, these questions shall be decided by arbitration upon written request of the *insured*.

- c. Item 2 under **When Coverage U Does Not Apply** is changed to read:

2. FOR **BODILY INJURY** TO ANY **INSURED** WHILE **OCCUPYING** A MOTOR VEHICLE OWNED BY *YOU, YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.

- d. Item 2 under **When Coverage W Does Not Apply** is changed to read:

2. FOR **BODILY INJURY** TO ANY **INSURED** WHILE **OCCUPYING** A MOTOR VEHICLE OWNED BY *YOU, YOUR SPOUSE* OR ANY *RELATIVE* IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY.

- e. The provision titled **If There Is Other Uninsured Motor Vehicle Coverage** is changed to read:

If There Is Other Uninsured Motor Vehicle Coverage

1. If the *insured* sustains *bodily injury* as a pedestrian and other uninsured motor vehicle coverage applies, or while *occupying your car* and *your car* is described on the declarations page of another policy providing uninsured motor vehicle coverage:
 - a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
 - b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all uninsured motor vehicle

coverage applicable to the accident.

2. If the *insured* sustains *bodily injury* while *occupying* a vehicle not owned by the *insured* or a *relative* and other uninsured motor vehicle coverage applies, such *insured* may elect one uninsured motor vehicle coverage that covers the *insured* as a named insured or *relative* to apply:

- a. as excess over the coverage on the vehicle *occupied* in the accident; or

- b. as primary if there is no coverage on the vehicle *occupied* in the accident.

COVERAGE UNDER THIS POLICY DOES NOT APPLY IF RECOVERY IS AVAILABLE UNDER THE UNINSURED MOTOR VEHICLE COVERAGE OF THE ELECTED POLICY.

3. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNINSURED MOTOR VEHICLE COVERAGE ON A *NEWLY ACQUIRED CAR*.

- f. The provision titled **If There Is Other Underinsured Motor Vehicle Coverage** is changed to read:

If There Is Other Underinsured Motor Vehicle Coverage

1. If the *insured* sustains *bodily injury* as a pedestrian and other underinsured motor vehicle coverage applies, or while *occupying your car* and *your car* is described on the declarations page of another policy providing underinsured motor vehicle coverage:

- a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and

- b. we are liable only for our share. Our share is that per cent of the damages that the limit of liability of this coverage bears to the total of all underinsured motor vehicle coverage applicable to the accident.

2. If the *insured* sustains *bodily injury* while *occupying* a vehicle not owned

by the *insured* or a *relative* and other underinsured motor vehicle coverage applies, such *insured* may elect one underinsured motor vehicle coverage that covers the *insured* as a named insured or *relative* to apply:

- a. as excess over the coverage on the vehicle *occupied* in the accident; or
- b. as primary if there is no coverage on the vehicle *occupied* in the accident.

COVERAGE UNDER THIS POLICY DOES NOT APPLY IF RECOVERY IS AVAILABLE UNDER THE UNDERINSURED MOTOR VEHICLE COVERAGE OF THE ELECTED POLICY.

3. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER UNDERINSURED MOTOR VEHICLE COVERAGE ON A *NEWLY ACQUIRED CAR*.

6. SECTION IV - PHYSICAL DAMAGE COVERAGES

- a. The provision titled *Limit of Liability - Comprehensive and Collision Coverages* is changed to read:

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

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

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

The cost of repair or replacement is based upon one of the following:

1. the cost of repair or replacement agreed upon by *you* and us;
2. a competitive bid approved by us; or
3. an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area where the *car* is to be repaired as determined by a survey made by us. If *you* ask, we will identify some facilities that will perform the repairs at the prevailing com-

petitive price. We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. *You* agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers.

Any deductible amount that applies is then subtracted.

- b. The first paragraph under *Settlement of Loss - Comprehensive and Collision Coverages* is changed to read:

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

1. pay the agreed upon actual cash value of the property at the time of the *loss* in exchange for the damaged property. If the owner and we cannot agree on the actual cash value, either party may demand an appraisal as described below. If the owner keeps the damaged property, we will deduct its value after the *loss* from our payment. The damaged property cannot be abandoned to us;
2. pay to:
 - a. repair the damaged property or part, or
 - b. replace the property or part.If the repair or replacement results in betterment, *you* must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

Appraisal under item 1 above shall be conducted according to the following procedure. Each party shall select an appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding. The cost of the appraiser shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by agreeing to an appraisal. If *you* give us *your* consent, we may move the damaged

property, at our expense, to reduce storage costs during the appraisal process. If *you* do not give us *your* consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages.

c. **CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1**

The first sentence following "1. Car Rental Expense." is replaced by the following:

We will:

- a. pay *you* up to \$16 of the daily rental charge when *you* rent a *car* from a car rental agency or garage; or
- b. pay *you* \$10 for each complete 24 hour period that *your car* is not drivable if you choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D, F or G.

d. **Trailer Coverage**

Items b and c under "A non-owned trailer or detachable living quarters unit is one that:" are changed to read:

- b. has not been used or rented by or in the possession of *you*, *your spouse* or any *relative* during any part of each of the last 21 or more consecutive days. If *you* are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and
 - c. is not rented and used in connection with the employment or business of *you*, *your spouse* or any *relative*.
- e. Item 6 of **When Coverages D, F, G, H, R and R1 Do Not Apply** is changed to read:

6. **ANY LASER OR RADAR DETECTOR.**

7. **CONDITIONS**

- a. The condition **Change of Residence** is deleted and replaced by the following:

Premium

The premium for this policy may vary based upon the purchase of other insurance from one of the State Farm affiliated companies.

The premium for this policy is based on information State Farm has received from *you* or other sources. If the information is incorrect or incomplete, or changes during the policy period, *you* must inform State Farm of any changes regarding the following:

1. *your car*, or its use, including annual mileage;
2. the *persons* who regularly drive *your car*, including newly licensed family members;
3. *your* marital status; or
4. the location where *your car* is principally garaged.

You agree that if this information or any other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease or increase the premium during the policy period based upon the corrected, completed or changed information. *You* agree that if the premium is decreased or increased during the policy period, State Farm will refund or credit to *you* any decrease in premium and *you* will pay for any increase in premium.

- b. The following provision is added:

Concealment or Fraud

There is no coverage under this policy if *you* or any other *person* insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

Edward B. Runtz, Jr.

President



State Farm Sells Life Insurance.

PAGE 01 OF 01

1424/44

DEDE3

D R I V E R E X C L U S I O N A G R E E M E N T

NOV 18 1999

Agent: Mike Gubler 1424/F617

Insured: JIMMY T CALHOUN

Policy Number

Effective Date of Agreement

Vehicle

(12:01 A.M. Standard Time)

712 3464-C29-44F

March 29, 1997

1989 Jeep

REQUEST FOR TOTAL DRIVER EXCLUSION ENDORSEMENT

I agree to amendment of the policy or policies listed above by addition of the following endorsement:

IN CONSIDERATION OF THE PREMIUM CHARGED FOR YOUR POLICY IT IS AGREED WE SHALL NOT BE LIABLE AND NO LIABILITY OR OBLIGATION OF ANY KIND SHALL ATTACH TO US FOR BODILY INJURY, LOSS OR DAMAGE UNDER ANY OF THE COVERAGES OF THE POLICY WHILE ANY MOTOR VEHICLE IS OPERATED BY John C Calhoun.

As the named insured, I understand and certify that the named person excluded from coverage, has in fact, satisfied 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.

I further agree to have the above endorsement included in any subsequent transfer, reinstatement, or renewal of such policy or policies.

Jimmy T Calhoun
Named Insured

96-11-13
DATE

157-5083UT.4 lw

OT

11-13

6023 John C Calhoun
eff 329-97
\$6023 Nancy
Calhoun eff 92989

D

PROGRESSIVE POLICY ISSUED TO JOHN CALHOUN

LIENHOLDER

VEH #2

VEH #4

FOR COMPANY USE ONLY

[illegible]

* 006 002 84022 1055 95 A 25 0 0 * 2431000000045

CANCELLATION FEE ENDORSEMENT

The "Cancellation" provision in **your** Motor Vehicle Policy is amended as follows:

The following paragraphs are deleted:

If **we** cancel this policy, for a reason other than non-payment of premium, any refund due will be computed on a daily pro-rata basis. The effective date of cancellation shown in a notice will be the end of the policy period.

If cancellation is at your request, or if cancellation is for non-payment of premium, any refund due will be computed on a ninety percent (90%) of a daily pro-rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. Earned premium is calculated on a daily basis. We will supply a copy of the table to you on request.

and replaced by the following:

If this policy is cancelled, any refund due will be computed on a daily pro-rata basis. However, **we** shall retain a cancellation fee if this policy is cancelled at **your** request or if cancellation is for nonpayment of premium. If this policy is cancelled, coverage will not be provided after the effective date shown in the notice of cancellation.

ALL OTHER TERMS, LIMITS AND PROVISIONS OF THIS POLICY REMAIN UNCHANGED.

UTAH MOTOR VEHICLE POLICY**AMENDATORY ENDORSEMENT**

Your policy is amended as follows:

1. The Insuring Agreement - Uninsured/Underinsured Motorist Bodily Injury Coverage under Part III is deleted in its entirety and replaced by the following:

INSURING AGREEMENT - UNINSURED MOTORIST BODILY INJURY COVERAGE

Subject to the Limits of Liability, if **you** pay a premium for Uninsured Motorist Bodily Injury Coverage, **we** will pay for damages, other than punitive or exemplary damages, which an **insured person** is entitled to recover from the **owner** or operator of an **uninsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by **accident**; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

INSURING AGREEMENT - UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Subject to the Limits of Liability, if **you** pay a premium for Underinsured Motorist Bodily Injury Coverage, **we** will pay for damages, other than punitive or exemplary damages, which an **insured person** is entitled to recover from the **owner** or operator of an **underinsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
 2. caused by **accident**; and
 3. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.
2. The first paragraph of the Policy Changes provision under General Provisions is deleted in its entirety and replaced by the following:

This policy contains all the agreements between **you** and **us**. Subject to the following, its terms may not be changed or waived except by endorsement issued by **us**.

3. The Our Rights To Recover Payment provision under General Provisions is amended by adding the following:

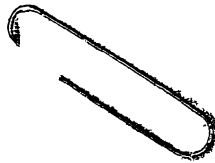
We are entitled to recovery under this provision only after the insured person has been fully compensated for damages.

ALL OTHER TERMS AND CONDITIONS OF YOUR POLICY REMAIN UNCHANGED





UTAH MOTOR VEHICLE POLICY



Progressive Casualty Insurance Company -
an Ohio domiciled company
Progressive Specialty Insurance Company -
an Ohio domiciled company
Progressive Northwestern Insurance Company -
a Washington domiciled company

Form No. 9606 (03/96) UT

© 1996 The Progressive Corporation. All Rights Reserved.

STATE CONTRACT

created: 08/06/96 11:22 AM Lori Smith

modified: 04/01/2001 12:29 PM Rhonda Andrew

State: Utah

Company Code: 01 - PCIC, 03 - PSIC, 16 - PNWIC

Product: Auto

Form Number: 9606 (03/96) UT

Filing Date: 05/01/96

Approval Date: 05/03/96

Effective Date: 06/04/96

**UTAH MOTOR
VEHICLE POLICY**

Progressive Casualty Insurance Company - an Ohio domiciled company
Progressive Specialty Insurance Company - an Ohio domiciled company
Progressive Northwestern Insurance Company - a Washington domiciled company

Form No. 9606 (03/96) UT

© 1996 The Progressive Corporation. All Rights Reserved.

CONTENTS

YOUR DUTIES IN CASE OF AN ACCIDENT OR LOSS

- Notice of Accident or Loss
- Other Duties

GENERAL DEFINITIONS

PART I - LIABILITY TO OTHERS

- Insuring Agreement - Bodily Injury
- Insuring Agreement - Property Damage
- Additional Definition
- Additional Payments
- Exclusions
- Limits Of Liability
- Financial Responsibility Laws
- Other Insurance
- Out-Of-State Coverage

PART II - PERSONAL INJURY PROTECTION COVERAGE

- Insuring Agreement
- Additional Definitions
- Exclusions
- Limits Of Liability
- Work Loss Waiver Option
- Other Insurance
- Arbitration

PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

- Insuring Agreement - Uninsured/
Underinsured Motorist Bodily Injury
Coverage
- Insuring Agreement - Uninsured
Motorist Property Damage
Coverage
- Additional Definitions
- Exclusions
- Limits Of Liability
- Other Insurance
- Arbitration

PART IV - DAMAGE TO A VEHICLE

Insuring Agreement - Collision
Insuring Agreement - Comprehensive
Insuring Agreement - Custom Parts
Or Equipment
Additional Definitions
Exclusions
Limits Of Liability
Insuring Agreement - Additional Custom
Parts Or Equipment Coverage
Insuring Agreement - Emergency Towing
And Labor
Insuring Agreement - Rental
Reimbursement Coverage
Preferred Repair Option
Payment Of Loss
No Benefit To Bailee
Loss Payee Agreement
Other Insurance
Appraisal

GENERAL PROVISIONS

Policy Period And Territory
Policy Changes
Terms Of Policy Conformed To Statutes
Transfer
Fraud Or Misrepresentation
Payment Of Premium
Cancellation
Nonrenewal
Proof Of Notice
Coverage Changes
Legal Action Against Us
Our Rights To Recover Payment
Bankruptcy

NAMED DRIVER EXCLUSION

NAMED OPERATOR - NON-OWNED VEHICLE COVERAGE

UTAH MOTOR VEHICLE POLICY

If **you** pay **your** premium when due, **we** agree to provide this insurance, subject to all the terms and provisions of this policy, and up to the Limits of Liability described in this policy and shown on the **Declarations Page**.

YOUR DUTIES IN CASE OF AN ACCIDENT OR LOSS

Notice of Accident or Loss

If there is an accident or loss arising out of the ownership, maintenance or use of a vehicle, for which coverage may be provided under this policy, report it to us within twenty-four (24) hours or as soon as practicable by calling us at 1-800-274-4499.

You should report each accident or loss even if an insured person is not at fault.

The following accident information should be reported as it is obtained:

1. time;
2. place;
3. circumstances of the **accident** or **loss**;
4. names and addresses of any injured persons;
5. names and addresses of any witnesses; and
6. the license plate numbers of the vehicles involved.

Notice of loss given to any of **our** authorized agents is notice to **us** if it sufficiently identifies the policy. Failure to give notice or to file any proof of loss within the time period required by this policy does not invalidate a claim if the person making the claim:

1. proves to **us** that it was not reasonably possible to give the notice when required; and
2. provides the notice or proof of loss as soon as reasonably possible.

You should also notify the police within twenty-four (24) hours or as soon as practicable if :

1. **you** cannot identify the owner or operator of a vehicle involved in the **accident**; or
2. theft or vandalism has occurred.

OTHER DUTIES

A person claiming coverage under this policy must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;

2. provide any written proof of loss **we** may reasonably require;
3. allow **us** to take signed or recorded statements, including statements under oath, and answer all reasonable questions **we** may ask, when and as often as **we** may reasonably require;
4. promptly send **us** any and all legal papers relating to any claim or lawsuit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a **loss** to protect the **covered vehicle** or **non-owned vehicle** from further **loss**. **We** will pay reasonable expenses incurred in providing that protection. If **you** fail to do so, any further damages will not be covered under this policy;
7. allow **us** to inspect and appraise the damage to a **covered vehicle** or **non-owned vehicle** before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

GENERAL DEFINITIONS

Except as otherwise defined in this policy, terms appearing in boldface will have the following meaning:

1. "**Accident**" means a sudden, unexpected, and unintended occurrence.
2. "**Bodily injury**" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
3. "**Business**" includes a trade, profession, or occupation.
4. "**Covered vehicle**" means:

- a. any **vehicle** shown on the **Declarations Page**;
- b. any additional **vehicle** on the date **you** become the **owner** if:
 - i. **you** acquire the **vehicle** during the policy period shown on the **Declarations Page**;
 - ii. **we** insure all vehicles **owned** by **you**; and
 - iii. no other insurance policy provides coverage for that **vehicle**.

For a **vehicle** **you** acquire in addition to any **vehicle** shown on the **Declarations Page**, **we** will provide the broadest coverage **we** provide for any **covered vehicle** shown on the **Declarations Page**. **We** will provide coverage for a period of thirty (30) days after **you** become the **owner**. **We** will not provide coverage after this thirty (30) day period, unless within this period **you** ask **us** to insure the **vehicle**;

- c. any replacement **vehicle** on the date **you** become the **owner** if:
 - i. **you** acquire the **vehicle** during the policy period shown on the **Declarations Page**;
 - ii. the **vehicle** that **you** acquire replaces one shown on the **Declarations Page**; and
 - iii. no other insurance policy provides coverage for that **vehicle**.

If the **vehicle** that **you** acquire replaces one shown on the **Declarations Page**, it will have the same coverage as the **covered vehicle** it replaces. **You** must ask **us** to insure a replacement **vehicle** within thirty (30) days after **you** become the **owner** if **you** want to add or continue coverage under Part IV - Damage To A Vehicle; and

- d. any **trailer owned** by **you** while drawn by or attached to a **vehicle** described in a, b, or c above.
5. "**Declarations Page**" means the report from **us** listing:
 - a. the types of coverage **you** have elected;
 - b. the limit for each coverage;
 - c. the cost for each coverage;

- d. the specified **vehicles** covered by this policy;
 - e. the types of coverage for each such **vehicle**; and
 - f. other information applicable to this policy.
6. "**Loss**" means sudden, direct, and accidental loss or damage.
7. "**Minimum statutory limits**" means the minimum policy limits for motor vehicle liability coverage required by the law of the State of Utah. Those limits are as follows:
- a. \$25,000 because of liability for **bodily injury** to one (1) person arising out of the use of a motor vehicle in any one (1) **accident**;
 - b. subject to the limit for one (1) person in "a" above, \$50,000 because of liability for **bodily injury** to two (2) or more persons arising out of the use of a motor vehicle in any one (1) **accident**; and
 - c. \$15,000 because of liability for **property damage** arising out of the use of a motor vehicle in any one (1) **accident**; or
 - d. \$65,000 because of liability for **bodily injury** or **property damage** arising out of the use of a motor vehicle in any one (1) **accident**.
8. "**Non-owned vehicle**" means any **vehicle** that is not **owned** by **you**, a **relative**, or the spouse of the named insured even if not residing in the same household as the named insured.
9. "**Occupying**" means in, on, entering, or exiting.
10. "**Owned**" means the person:
- a. holds legal title to the **vehicle**;
 - b. has legal possession of the **vehicle** that is subject to a mortgage or conditional sale agreement; or
 - c. has legal possession of the **vehicle** that is leased to that person.
11. "**Owner**" means any person who, with respect to a **vehicle**:
- a. holds legal title to the **vehicle**;
 - b. has legal possession of the **vehicle** that is subject to a mortgage or conditional sale agreement; or
 - c. has legal possession of the **vehicle** that is leased to that person.
12. "**Property damage**" means physical damage to, or destruction or loss of use of, tangible property.
13. "**Relative**" means a person residing in the same household as **you**, and related to **you** by blood, marriage, adoption, or guardianship whether or not temporarily away from home.
14. "**Trailer**" means a vehicle designed to be towed on public roads by a **vehicle**. It includes a farm wagon or farm implement while being towed by a **vehicle**. It does not include a mobile home, or a trailer used as an office, store, display, or passenger conveyance.
15. "**Vehicle**" means a land motor vehicle:
- a. of the private passenger, pickup body, or sedan delivery type;
 - b. designed for operation principally upon public roads;

- c. with at least four (4) wheels; and
- d. with a gross vehicle weight of 10,000 pounds or less.

- 16. **"We"**, **"Us"**, and **"Our"** mean the company providing the insurance, as shown on the **Declarations Page**.
- 17. **"You"** and **"Your"** mean the person shown as the named insured on the **Declarations Page**, and that person's spouse if residing in the same household.

PART I - LIABILITY TO OTHERS

INSURING AGREEMENT - BODILY INJURY

Subject to the Limits of Liability, if **you** pay a premium for **bodily injury** liability coverage, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury** for which an **insured person** becomes legally responsible because of an **accident** arising out of the ownership, maintenance, or use of a **vehicle**.

INSURING AGREEMENT - PROPERTY DAMAGE

Subject to the Limits of Liability, if **you** pay a premium for **property damage** liability coverage, **we** will pay damages, other than punitive or exemplary damages, for **property damage** for which an **insured person** becomes legally responsible because of an **accident** arising out of the ownership, maintenance, or use of a **vehicle**.

We will settle or defend, at **our** option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITION

When used in this Part I, "**insured person**" or "**insured persons**" means:

1. **you** or a **relative** with respect to an **accident** arising out of the ownership, maintenance, or use of any **veh icle** with the express or implied permission of the **owner** of the **vehicle**;
2. any person with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of **you** or a **relative**;
3. any person or organization with respect only to vicarious liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in 1 or 2 above; and
4. any Additional Interest Insured designated by **you** in **your** application or by a change request agreed to by **us**, with respect to liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in 1 or 2 above.

ADDITIONAL PAYMENTS

In addition to **our** Limit of Liability, **we** will pay for an **insured person**:

1. all expenses that **we** incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until **we** have paid or tendered that portion of the judgment which does not exceed **our** Limit of Liability. This does not apply if **we** have not been given notice of suit or the opportunity to defend an **insured person**;
3. premiums on appeal bonds or attachment bonds required in any lawsuit **we** defend. **We** have no duty to purchase bonds in an amount exceeding **our** Limit of Liability, and **we** have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an **accident** arising out of the ownership,

maintenance, or use of a **covered vehicle** or **non-owned vehicle**. We have no duty to apply for or furnish this bond; and

5. reasonable expenses, including loss of earnings up to \$50 a day, incurred at **our** request.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including **our** duty to defend, does not apply to:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of a **vehicle** while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. any liability assumed by an **insured person** under any contract or bailment;
3. **bodily injury** to an employee of an **insured person** arising out of or within the course of employment, except for domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, if no other liability insurance applies to the **accident** with limits at least as great as the **minimum statutory limits**, this exclusion shall apply only to the extent the damages exceed such **minimum statutory limits**. This exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered vehicle**;
5. **bodily injury** or **property damage** resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, in practice or preparation for any such contest or activity;
6. **bodily injury** or **property damage** due to nuclear reaction or radiation;
7. **bodily injury** or **property damage** for which insurance is afforded under a nuclear energy liability insurance contract;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury** or **property damage** caused by an intentional act of an **insured person** or at the direction of an **insured person**;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of an **insured person**. However, this exclusion does not apply to a rented residence or a rented garage damaged by a **covered vehicle**;

11. **bodily injury** to **you** or a **relative** to the extent the damages exceed the **minimum statutory limits** ; or

12. **bodily injury** or **property damage** resulting from the operation or use of a vehicle **owned** by **you** or a **relative**, other than a **covered vehicle**.

LIMITS OF LIABILITY

The Limit of Liability shown on the **Declarations Page** is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in an **accident**; or
6. premiums paid.

If the **Declarations Page** shows that "combined single limits" or "CSL" applies, the amount shown is the most **we** will pay for the aggregate of all damages resulting from any one (1) **accident**. **We** will apply the "each person" Limit of Liability for **bodily injury** as required by the law of the state listed on **your** application as **your** residence. However, this provision does not change **our** total "each accident" Limit of Liability.

If **your Declarations Page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to a **bodily injury** to one (1) person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to a **bodily injury** to two (2) or more persons in any one (1) **accident**; and
3. the amount shown for "property damage" is the most **we** will pay for the aggregate of all **property damage** for which an **insured person** becomes liable from any one (1) **accident**.

The **bodily injury** limit for "each person" includes the aggregate of claims made for such **bodily injury** and claims derived from such **bodily injury**, including, but not limited to, wrongful death.

No one will be entitled to duplicate payments for the same elements of damages.

Any payment to a person under this Part I shall be reduced by any payment to that person under Part III - Uninsured/Underinsured Motorist Coverage.

A **vehicle** and attached **trailer** are considered one (1) **vehicle**. Therefore, the Limits of Liability will not be increased for an **accident** involving a **vehicle** which has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When **we** certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. **You** must reimburse **us** if **we** make a payment that **we** would not have made if this policy was not certified as Proof of Financial Responsibility.

OTHER INSURANCE

If there is other applicable liability insurance or bond, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** Limit of Liability bears to the total of all applicable limits. Any insurance **we** provide for a **vehicle**, other than a **covered vehicle**, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an **accident** to which this policy applies occurs in any state or province other than the one in which a **covered vehicle** is principally garaged, and the state or province has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the Limits shown on the **Declarations Page**, this policy will provide the higher limit; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a **vehicle** in that state or province, this policy will provide:
 - a. the required minimum amounts and types of coverage; or
 - b. any higher limit **you** have elected, provided **you** have paid the premium for higher limits.

PART II - PERSONAL INJURY PROTECTION COVERAGE

INSURING AGREEMENT

Subject to **our** Limits of Liability, if **you** pay a premium for Personal Injury Protection Coverage, **we** will pay for:

1. **medical expenses**;
2. **work loss**;
3. **funeral expenses**; and
4. **survivor loss**;

if an **insured person** sustains **bodily injury**:

1. caused by an **accident**; and
2. arising out of the ownership, operation, maintenance, or use of a **motor vehicle**.

Additional Definitions

When used in this Part II:

1. "**Funeral expenses**" means funeral, burial, or cremation expenses incurred.
2. "**Insured person**" means:
 - a. **you** or any **relative**;
 - b. any other person sustaining **bodily injury** while:
 - i. **occupying a covered vehicle** with **your** express or implied permission; or
 - ii. a pedestrian if the **accident** occurs in the State of Utah and involves a **covered vehicle**.
3. "**Medical expenses**" means the reasonable value of all expenses for:
 - a. necessary medical, surgical, X-ray, dental, and rehabilitation services, including prosthetic devices; and
 - b. necessary ambulance, hospital, and nursing services.

Medical expenses also include the reasonable value of expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.
4. "**Motor vehicle**" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with other motorized vehicles. It does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers or any vehicle that is propelled by electric power obtained from overhead wires but not operated on rails.
5. "**Relative**" means a spouse or any other person residing in the same household as **you**, and related

to **you** by blood, marriage, adoption, or guardianship whether or not temporarily away from home.

6. "**Survivor loss**" means compensation for the death of an **insured person**, payable to the **insured person's** heirs.
7. "**Work loss**" means loss of gross income and earning capacity resulting from the **insured person's** inability to work because of **bodily injury** sustained in the **accident**. Payment for **work loss** also includes a "special damage allowance" for services actually rendered or expenses reasonably incurred for services that, but for the **bodily injury**, the **insured person** would have performed for the benefit of his or her household. No payment for **work loss** shall be made for the first three (3) days following the date of disability unless the disability continues for longer than two (2) consecutive weeks.
8. "**You**" means the person(s) shown as the named insured on the **Declarations Page**.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II does not apply to **bodily injury** sustained by:

1. **you** while using or operating a **motor vehicle owned by you**, other than a **covered vehicle**;
2. a **relative** while using or operating a **motor vehicle owned by such relative**, other than a **covered vehicle**;
3. any person while operating a motorcycle, trailer or semitrailer;
4. any person while operating a **covered vehicle** without **your** express or implied permission or while not in lawful possession of a **covered vehicle**;
5. any person while committing a felony;
6. any person if caused intentionally by such person;
7. any person arising out of the use of any **motor vehicle** while located for use as a residence or premises; or
8. any person due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of these.

LIMITS OF LIABILITY

Our Limits of Liability under this Part II with respect to **bodily injury** sustained by any one (1) person in any one (1) **accident** shall be as follows:

1. payment for **medical expenses** shall not exceed \$3,000;
2. payment for **funeral expenses** shall not exceed \$1,500;
3. payment for **survivor loss** shall not exceed \$3,000; and
4. payment for **work loss** shall not exceed the lesser of \$250 per week or 85% of any loss of gross income and earning capacity, for a maximum of fifty-two (52) consecutive weeks from the date of disability. The "special damage allowance" is limited to \$20 per day for a maximum of three hundred and sixty-five (365) days.

Our Limits of Liability are the most **we** will pay under this Part II with respect to **bodily injury** sustained by any one (1) **insured person** in any one (1) **accident**, regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. **vehicles** involved in an **accident**; or
6. premiums paid.

Any amount payable under this Part II shall be reduced by:

1. any amounts paid or payable under any workers' compensation plan or similar statutory plan; and
2. any amounts which an **insured person** receives or is entitled to receive from the United States or any of its agencies because the **insured person** is on active duty in the military service.

WORK LOSS WAIVER OPTION

If **you** waive payment for **work loss**, then no payment shall be made under this Part II for any loss of gross income and earning capacity resulting from **your** or **your** spouse's inability to work because of **bodily injury** sustained in an **accident**.

OTHER INSURANCE

Any insurance **we** provide under this Part II shall be excess over any similar insurance or self-insurance on the **motor vehicle** in use at the time of the **accident**.

If an **insured person** is entitled to coverage under more than one policy providing personal injury protection coverage or similar coverage, the most an **insured person** may recover may not exceed the amount payable under the policy with the highest dollar limit. **We** will pay **our** share. **Our** share is the proportion that **our** Limits of Liability bear to the total of all applicable limits.

No one shall be entitled to payment under this Part II which would duplicate any amounts paid or payable under any other policy providing personal injury protection coverage or similar coverage.

ARBITRATION

If **we** and an **insured person** do not agree as to the amount payable under this Part II, then, by mutual agreement, the matter shall be decided by arbitration.

Arbitration shall be conducted by a single arbitrator chosen by the **insured person** and **us**. The costs and fees of the arbitrator shall be shared equally. The decision of the arbitrator shall be binding on the **insured person** and **us**.

If **we** and the **insured person** do not agree on a single arbitrator, then each party shall select an arbitrator. The two arbitrators shall select a third. Each party shall pay the costs and fees of its arbitrator. The costs and fees of the third arbitrator shall be shared equally. A decision agreed to by two of the arbitrators shall be binding on the **insured person** and **us**.

Each party shall pay the expenses it incurs.

Unless both parties agree otherwise, arbitration shall take place in the county in which the **insured person** resides. Local rules of procedure and evidence shall apply.

PART III - UNINSURED/UNDERINSURED **MOTORIST COVERAGE**

INSURING AGREEMENT - UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Subject to the Limits of Liability, if **you** pay a premium for Uninsured/Underinsured Motorist Bodily Injury Coverage, **we** will pay for damages, other than punitive or exemplary damages, which an **insured person** is entitled to recover from the **owner** or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by **accident**; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle** or **underinsured motor vehicle**.

INSURING AGREEMENT - UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Subject to the Limits of Liability, if **you** pay a premium for Uninsured Motorist Property Damage Coverage, **we** will pay for damages, other than punitive or exemplary damages, which an **insured person** is entitled to recover from the **owner** or operator of an **uninsured motor vehicle** due to **property damage**:

1. caused by **accident**; and
2. arising out of the ownership, maintenance or use of an **uninsured motor vehicle**.

You, or someone on **your** behalf, must notify **us**, or one of **our** agents, of any **accident** resulting in **property damage** within ten (10) days from the date of the **accident**.

We will pay under this Part III only after the limits of liability under all applicable liability bonds or policies have been exhausted by payment of judgments or settlements.

Determination of whether an **insured person** is legally entitled to recover damages, and the amount of damages, will be made by agreement between the **insured person** and **us**. If no agreement is reached, and the claim or dispute is not within the jurisdiction of the small claims court of the state where **you** reside, the decision may be made by arbitration if **we** and the **insured person** agree to arbitration prior to the expiration of the **bodily injury** statute of limitations in the state in which the **accident** occurred.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "**Insured person**" and "**insured persons**" mean:

- a. **you** or a **relative**;
 - b. any person **occupying a covered vehicle**; and
 - c. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a or b above.
2. "**Property damage**" means physical damage to, or destruction of, a **covered vehicle**. It does not include loss of use of the **covered vehicle**.
3. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type to which a **bodily injury** liability bond or policy applies at the time of the **accident**, but its limit of liability for **bodily injury** is less than the damages which an **insured person** is entitled to recover from the **owner** or operator of such vehicle.

An **underinsured motor vehicle** does not include any vehicle or equipment that is:

- a. a **covered vehicle**; or
 - b. an **uninsured motor vehicle**.
4. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
- a. to which no liability bond or policy applies at the time of the **accident**;
 - b. to which a liability bond or policy applies at the time of the **accident**, but the bonding or insuring company:
 - i. denies coverage; or
 - ii. is or becomes insolvent and the claim is not paid by a guaranty association or fund;
 - c. to which a liability bond or policy applies at the time of the **accident**, but its limits of liability are less than the **minimum statutory limits**; or
 - d. whose operator or **owner** cannot be identified and which causes an **accident** resulting in **bodily injury**, provided that the **insured person**, or someone on his or her behalf, reports the **accident** to the police or civil authority within twenty-four (24) hours or as soon as practicable after the **accident**. If there is no physical contact with the vehicle, the **insured person** must prove the existence of the vehicle by clear and convincing evidence consisting of more than the **insured person's** testimony.

An **uninsured motor vehicle** does not include any vehicle or equipment:

- a. **owned** by **you** or a **relative**;
- b. **owned** or operated by a self-insurer under any applicable vehicle law, except a self-insurer that is or becomes insolvent;
- c. **owned** by any governmental unit or agency;
- d. operated on rails or crawler treads;

- e. designed mainly for use off public roads, while not on public roads;
- f. while used as a residence or premises;
- g. shown on the **Declarations Page** of this policy; or
- h. not required to be registered as a motor vehicle.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

Coverage under this Part III is not provided for **bodily injury** sustained by any person while using or **occupying**:

- 1. a **covered vehicle** while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
- 2. a **covered vehicle** without the express or implied permission of **you** or a **relative**;
- 3. a **non-owned vehicle** without the express or implied permission of the **owner**; or
- 4. a vehicle **owned** by **you** or a **relative**, other than a **covered vehicle**.

Coverage under this Part III is not provided for **property damage**:

- 1. if there is no actual physical contact between the **covered vehicle** and the **uninsured motor vehicle**;
- 2. if the **owner**, operator, or license plate number of the **uninsured motor vehicle** is unidentified;
- 3. sustained while a **covered vehicle** is being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food or any other products. This exclusion does not apply to shared-expense car pools;
- 4. sustained while a **covered vehicle** is being used or driven by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering or testing vehicles. However, this exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative** when using a **covered vehicle**;
- 5. resulting from any prearranged or organized racing, speed or demolition contest, stunting activity or in practice or preparation for any such contest or activity;
- 6. due to nuclear reaction or radiation;
- 7. for which insurance is afforded under a nuclear energy liability insurance contract; or
- 8. to a **trailer**.

Coverage under this Part III will not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:

- 1. workers' compensation law; or
- 2. disability benefits law.

LIMITS OF LIABILITY

The Limit of Liability shown on the **Declarations Page** for the coverages under Part III is the most we

will pay regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in an **accident**; or
6. premiums paid.

If the **Declarations Page** shows that "combined single limits" or "CSL" applies, the amount shown is the most we will pay for the aggregate of all damages resulting from any one (1) **accident**. We will apply the "each person" Limit of Liability for uninsured or underinsured motorist coverage as required by the law of the state listed on **your** application as **your** residence. However, this provision does not change **our** total "each accident" Limit of Liability.

If **your Declarations Page** shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to a **bodily injury** to one (1) person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to a **bodily injury** to two (2) or more persons in any one (1) **accident**; and
3. the amount shown for "property damage" is the most we will pay for the aggregate of all **property damage** caused by any one (1) **accident**.

The **bodily injury** Limit of Liability under this Part III for "each person" includes the aggregate of claims made for such **bodily injury** and all claims derived from such **bodily injury**, including, but not limited to, wrongful death.

The amount of damages which may be recovered under this Part III shall be reduced by all sums:

1. paid because of **bodily injury** or **property damage** by or on behalf of any persons or organizations who may be legally responsible, including, but not limited to, all sums paid under Part I - Liability To Others; and
2. paid or payable because of **bodily injury** under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

Our Limit of Liability under this Part III for **property damage** to a **covered vehicle** arising out of one (1) **accident** is the lowest of:

1. the actual cash value of the **covered vehicle** at the time of the **accident** reduced by the deductible shown on the **Declarations Page** and by its salvage value if **you** retain the salvage;
2. the amount necessary to replace the **covered vehicle**, reduced by the deductible shown on the **Declarations Page**;
3. the amount necessary to repair the **covered vehicle** to its pre-loss condition, reduced by the

deductible shown on the **Declarations Page**; and

4. any Limit of Liability shown on the **Declarations Page** for "property damage" under this Part III reduced by the salvage value of the **covered vehicle** if you retain the salvage.

Payments for **property damage** under this Part III are subject to the following provisions:

1. any amount payable under this Part III for **property damage** shall be subject to the deductible shown on the **Declarations Page**;
2. no more than one (1) deductible shall be applied to any one (1) **accident**; and
3. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of the **accident**.

Any payment made to a person under this Part III shall reduce any amount that the person is entitled to recover under Part I - Liability To Others or Part IV - Damage To A Vehicle.

No one will be entitled to duplicate payments for the same elements of damages.

Any judgment for damages against an operator or **owner** of an **uninsured motor vehicle** or **underinsured motor vehicle** which arises out of a lawsuit brought without **our** written consent is not binding on **us**.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** Limit of Liability bears to the total of all available coverage limits. Any insurance **we** provide for **bodily injury** or **property damage** under this Part III shall be excess over any other uninsured or underinsured motorist coverage, except for:

1. **bodily injury** to you or a **relative** when **occupying** a **covered vehicle**; or
2. uninsured or underinsured motorist coverage provided by a person engaged in the business of transporting persons as set forth in subsection 4 of Section 31A-22-305 of the Utah Annotated Code, as amended.

If you or a **relative** sustain **bodily injury** while using or **occupying** a **non-owned vehicle**, such injured person is entitled to the highest uninsured motorist coverage limits applicable to any one (1) vehicle covered under a policy insuring the injured person as a named insured or insured family member.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

If any **insured person** is injured while not **occupying** a motor vehicle, the coverage provided under this policy shall be excess to any uninsured or underinsured motorist coverage provided by a policy under which that **insured person** is a named insured. If you are injured while not **occupying** a motor vehicle, and are also a named insured under any other policy, **our** coverage will pay the proportionate

share that **our** limits bear to the total available uninsured or underinsured motorist coverage limits.

ARBITRATION

If **we** and an **insured person** have agreed to arbitration, then each party shall select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within thirty (30) days, then on joint application by **us** and the **insured person**, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator. The costs and fees of the third arbitrator will be shared equally. Each party will pay the expenses it incurs.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding as to whether the **insured person** is legally entitled to recover damages under the applicable liability law, and the amount of damages. The arbitrators shall have no authority to award an amount in excess of the Limit of Liability. The decision of the arbitrators is binding only if the amount does not exceed the minimum limit of bodily injury liability specified by the financial responsibility laws of the state listed on **your** application as **your** residence. If the decision of the arbitrators is in an amount which exceeds this minimum limit, either party may demand the right to a trial. This demand must be made in writing within sixty (60) days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART IV - DAMAGE TO A VEHICLE

INSURING AGREEMENT - COLLISION

If **you** pay a premium for collision coverage, **we** will pay for **loss** to a **covered vehicle, non-owned vehicle, or trailer**, when it collides with another object or overturns, subject to the Limits of Liability.

INSURING AGREEMENT - COMPREHENSIVE

If **you** pay a premium for comprehensive coverage, **we** will pay for comprehensive **loss** to a **covered vehicle, non-owned vehicle, or trailer**, subject to the Limits of Liability.

A comprehensive **loss** is a **loss** to a **covered vehicle, non-owned vehicle, or trailer**, caused by any event other than collision, including, but not limited to, any of the following:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny; or
8. windstorm, hail, water, or flood.

If **you** pay a premium for comprehensive coverage under this policy, **we** will pay **you** up to \$20 per day, but not more than a total of \$600 per **loss**, for:

1. transportation expenses incurred by **you** if a **covered vehicle** is stolen; or
2. loss of use damages that **you** are legally liable to pay if a **non-owned vehicle** is stolen.

Transportation expenses and loss of use damages coverage begins forty-eight (48) hours after **you** report the theft to **us**, and ends when the **covered vehicle** has been recovered and repaired, replaced, or if the **covered vehicle** is deemed by **us** to be a total loss or unrecoverable, forty-eight (48) hours after **we** make an offer to pay the lesser of the actual cash value of the **covered vehicle** or any Stated Amount Vehicle Coverage elected by **you**.

You must provide **us** written proof of **your** transportation expenses and loss of use damages.

Duplicate recovery for identical elements of damages is not permitted under this policy.

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

INSURING AGREEMENT - CUSTOM PARTS OR EQUIPMENT

We will pay for **loss to custom parts or equipment** resulting from any **loss** for which comprehensive or collision coverage is provided under the terms of this policy, subject to the Limit of Liability. All payments for **loss to custom parts or equipment** shall be reduced by the applicable deductible; but only one (1) deductible may be applied to a **loss** in an **accident** which is covered by this Part IV.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. **"Custom parts or equipment"** means equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which alter the appearance or performance of a **vehicle**. This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or play back recorded media, other than those which are original manufacturer installed, that are permanently installed in a **covered vehicle** or **non-owned vehicle** using bolts or brackets, including slide-out brackets.
2. **"Non-owned vehicle"** means any **vehicle** that is not **owned** by **you**, a **relative**, a resident of **your** household, or the spouse of the named insured even if not residing in the same household as the named insured, while in the custody of, or being operated by, **you** or a **relative** with the express or implied permission of the **owner**. A **non-owned vehicle** will be provided the broadest coverage applicable to any **vehicle** shown on the **Declarations Page**.
3. **"Trailer"** means a vehicle, including a farm wagon or farm implement, designed to be towed on public roads, that is:
 - a. **owned** by **you**; or
 - b. not **owned** by **you**, while being towed by a **covered vehicle**.**"Trailer"** does not include a mobile home, or a trailer used as an office, store, display, or passenger conveyance.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV does not apply for **loss**:

1. to a **covered vehicle**, **non-owned vehicle**, or **trailer**, while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. to a **non-owned vehicle** or **trailer** rented by **you** or a **relative** if being maintained or used by a person while employed or engaged in any **business**;
3. to a **non-owned vehicle** or **trailer**, other than one rented by **you** or a **relative**, if being maintained or used by a person while employed or engaged in any **business** not described in exclusion 4 below. This exclusion does not apply to the use by **you** or any **relative** of a **non-owned vehicle** that is a private passenger **vehicle** or **trailer**;

4. to a **covered vehicle, non-owned vehicle, or trailer**, while being used or driven by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered vehicle**;
5. to a **covered vehicle** or **non-owned vehicle** resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. to a **covered vehicle, non-owned vehicle, or trailer**, due to nuclear reaction or radiation;
7. to a **covered vehicle, non-owned vehicle, or trailer**, for which insurance is afforded under a nuclear energy liability insurance contract;
8. due to destruction or confiscation by governmental or civil authorities of a **covered vehicle, non-owned vehicle, or trailer**, because **you** or any **relative** engaged in illegal activities;
9. to a **covered vehicle, non-owned vehicle, or trailer**, caused by an intentional act of **you** or a **relative** or at the direction of **you** or a **relative**;
10. to a **covered vehicle, non-owned vehicle, or trailer**, that is due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion does not apply if the damage results from the total theft of a **covered vehicle, non-owned vehicle, or trailer**;

11. due to theft or conversion of a **covered vehicle, non-owned vehicle, or trailer**:
 - a. by **you**, a **relative**, or any resident of **your** household;
 - b. prior to its delivery to **you** or a **relative**; or
 - c. while in the care, custody, or control of anyone engaged in the **business** of selling the **vehicle** or **trailer**;
12. to tapes, compact discs, cassettes, and other recording or recorded media;
13. to any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or other recording or recorded media;
14. to any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions;
15. to **custom parts or equipment** in excess of the applicable Limit of Liability; or

16. to a **covered vehicle, non-owned vehicle, or trailer**, for diminution of value.

LIMITS OF LIABILITY

1. The Limit of Liability for **loss** to a **covered vehicle, non-owned vehicle, or trailer** will be the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the **loss**, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if **you** retain the salvage;
 - b. the amount necessary to repair or replace the stolen or damaged property, reduced by the applicable deductible shown on the **Declarations Page**; or
 - c. any applicable Limit of Liability or Stated Amount Vehicle Coverage elected by **you**, reduced by its salvage value if **you** retain the salvage.

However, if the **loss** is to a **trailer**, the applicable Limit of Liability will be \$500.

2. Subject to Section 3 below, the Limit of Liability for **loss to custom parts or equipment** is the combined total of \$1,000, unless **you** pay a premium for Additional Custom Parts Or Equipment Coverage, and it is shown on the **Declarations Page**.

Coverage for **custom parts or equipment** shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged **vehicle**.

3. Payments for **loss** covered under Collision, Comprehensive, and Custom Parts Or Equipment are subject to the following provisions:
 - a. no more than one (1) deductible shall be applied to any one (1) covered **loss**;
 - b. if coverage applies to a **non-owned vehicle**, the highest deductible on any **covered vehicle** shall apply;
 - c. if Stated Amount Vehicle Coverage is elected by **you**, that stated Limit of Liability will be the total Limit of Liability applicable for **loss** to a **covered vehicle** or **non-owned vehicle**, including its **custom parts or equipment**;
 - d. an adjustment for depreciation and physical condition will be made in determining the Limit of Liability at the time of **loss**;
 - e. in determining the amount necessary to repair damaged property to its pre-**loss** condition, **our** estimate will be based on:
 - i. the prevailing competitive labor rates charged in the area where the property is to be repaired, as reasonably determined by **us**; and
 - ii. the cost of repair or replacement parts and equipment, which parts may be new, refurbished, restored, or used, including, but not limited to:
 - a). original manufacturer parts or equipment; and
 - b). non-original manufacturer parts or equipment;
 - f. the actual cash value is determined by the market value, age and condition of the **vehicle** at the time the **loss** occurs; and
 - g. any amount paid or payable to a person under this Part IV shall be reduced by any amount paid

for **property damage** under Part III - Uninsured/Underinsured Motorist Coverage.

4. If more than one (1) **vehicle** is shown on **your Declarations Page**, coverage will be provided as specified on the **Declarations Page** as to each **vehicle**.

INSURING AGREEMENT - ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

If **you** pay a premium for Additional Custom Parts Or Equipment Coverage, the Limit of Liability for **loss to custom parts or equipment** for this additional coverage will be the lowest of:

1. the actual cash value of such **custom parts or equipment**;
2. the declared value of such **custom parts or equipment**; or
3. the amount necessary to repair or replace such **custom parts or equipment**;

reduced by the applicable deductible.

Coverage for **custom parts or equipment** shall not cause any Limit of Liability under this Part IV to be increased to an amount in excess of the actual cash value of any stolen or damaged **vehicle**.

Any deductible amount will apply separately to each **loss**

INSURING AGREEMENT - EMERGENCY TOWING AND LABOR

If **you** pay a premium for Emergency Towing And Labor coverage, **we** will pay for towing and labor costs incurred by **you** as a result of the disablement of a **covered vehicle** or **non-owned vehicle**, subject to the Limit of Liability shown on the **Declarations Page**, provided that:

1. the labor is performed at the place of disablement; and
2. the disablement does not occur at **your** residence.

INSURING AGREEMENT - RENTAL REIMBURSEMENT COVERAGE

If **you** pay a premium for Rental Reimbursement Coverage, **we** will reimburse up to \$20 each day for thirty (30) days for any one (1) **accident** for rental charges incurred by **you** when **you** rent a **vehicle** from a rental agency or vehicle repair shop due to a **loss to a covered vehicle**, other than a total theft, that is payable under this Part IV. Rental charges will be reimbursed beginning:

1. when the **covered vehicle** cannot be driven due to a **loss**; or
2. if the **covered vehicle** can be driven, when **you** deliver the **covered vehicle** to a vehicle repair shop for repairs due to the **loss**;

and ending when the **covered vehicle** has been repaired, replaced, or if the **covered vehicle** is deemed by **us** to be a total loss, forty-eight (48) hours after **we** make an offer to pay the actual

cash value of the **covered vehicle**.

You must provide **us** written proof of **your** rental charges.

Duplicate recovery for identical elements of damages is not permitted under this policy.

PREFERRED REPAIR OPTION

If **you** have elected the Preferred Repair option, and **we** elect to repair a **covered vehicle** under this Part IV, **you** agree that **we** may select the repair facility which will complete the repairs. When **we** select the repair facility, **we** guarantee that the workmanship of repairs will be of the quality generally accepted in the automobile repair business. The limit of **our** obligation under this guarantee will be to remedy any departures from such standards. This guarantee shall continue as long as the **vehicle** listed on the estimate is **owned** by **you**.

If **you** do not have the repairs completed at the repair facility **we** select:

1. **our** payment shall not exceed the amount of the estimate prepared by **us** or a repair facility chosen by **us**;
2. **we** shall not guarantee the quality of the repair; and
3. **our** guarantee, along with the related discount for this option, shall terminate at the end of the policy period during which the repair was made.

Any estimate prepared by a repair facility not selected by **us** is subject to **our** approval in the same manner as for insureds who have not chosen the Preferred Repair option. Any additional work required but not contained in the original estimate must also be approved by **us**.

PAYMENT OF LOSS

At **our** expense, **we** may return any stolen property to **you** or to the address shown on the **Declarations Page**, with payment for any damage resulting from the theft. **We** may keep all or part of the property at the agreed or appraised value. **We** may settle any **loss** with **you** or the **owner** or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYEE AGREEMENT

Payment for damage to a **covered vehicle** will be made according to **your** interest and the interest of any Loss Payee or lienholder shown on the **Declarations Page** or designated by **you**. Payment may be made to both jointly, or separately, at **our** discretion.

Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at

the direction of **you** or a **relative**, the Loss Payee or lienholder's interest will not be protected.

We will be entitled to the Loss Payee or lienholder's rights of recovery, to the extent of **our** payment to the Loss Payee or lienholder.

OTHER INSURANCE

If there is other applicable insurance, **we** will pay only **our** share of the **loss**. **Our** share is the proportion that **our** Limit of Liability bears to the total of all applicable limits of liability. However, any insurance that **we** provide for a **vehicle**, other than a **covered vehicle**, or for a non-owned **trailer**, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by the **owner** of the **non-owned vehicle** or **trailer**; and
2. any other applicable physical damage insurance.

APPRAISAL

If **we** cannot agree with **you** on the amount of a **loss**, then **we** or **you** may demand an appraisal of the **loss**. If so, each party shall appoint a competent and impartial appraiser. The appraisers will determine the amount of **loss**. If they fail to agree, the disagreement will be submitted to a qualified and impartial umpire chosen by the appraisers. A decision agreed to by any two will be binding. **You** will pay **your** appraiser's fees and expenses. **We** will pay **our** appraiser's fees and expenses. Payment of the umpire and all other expenses of the appraisal will be shared equally between **us** and **you**. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to **accidents** and **losses** occurring during the policy period shown on the **Declarations Page** and which occur within any state, territory, or possession of the United States of America, or any province of Canada, or while a **covered vehicle, non-owned vehicle, or trailer** is being transported between their ports.

POLICY CHANGES

This policy, **your** application for insurance (which is made a part of this policy as if attached hereto), and endorsements issued by **us** to this policy contain all the agreements between **you** and **us**. Subject to the following, its terms may not be changed or waived except by an endorsement issued by **us**.

The premium for each **vehicle** is based on information **we** have received from **you** or other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and **you** will notify **us** if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, **we** may adjust **your** premium during the policy period, or take other appropriate action. To properly insure **your vehicle**, **you** must promptly notify **us** when:

1. **you** change **your** address;
2. any resident operators are added or deleted; or
3. **you** acquire an additional or replacement **vehicle**.

Changes that may result in a premium adjustment are contained in **our** rates and rules. These include, but are not limited to:

1. changes in the number, type, or use classification of **covered vehicles**;
2. changes in operators using **covered vehicles**, their ages, or marital status;
3. a **relative** obtaining a driver's license or operator's permit;
4. changes in the place of principal garaging of any **covered vehicle**;
5. changes in coverage, deductibles, or limits of liability; or
6. changes in rating territory or discount eligibility.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform with the legal requirements of the state listed on **your** application as **your** residence, the provision shall be deemed amended to conform with such legal requirements. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on **your** application as **your** residence.

TRANSFER

This policy may not be transferred to another person without **our** written consent. If **you** die, this policy will provide coverage until the end of the policy period for **your** legal representative, while acting as such, and for persons covered under this policy on the date of **your** death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on **your** insurance application. **We** may void coverage under this policy if **you** or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time application was made or at any time during the policy period.

We may void this policy or deny coverage for an **accident** or **loss** if **you** or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

We may void this policy for fraud or misrepresentation even after the occurrence of an **accident** or **loss**. This means that **we** will not be liable for any claims or damages which would otherwise be covered. However, if **we** void this policy, this shall not affect coverage under Part I - Liability To Others up to the **minimum statutory limits** if the **accident** occurs before **we** notify the named insured that the policy is void. If **we** void this policy, **you** must reimburse **us** if **we** make a payment.

PAYMENT OF PREMIUM

If **your** initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy is conditioned upon the check, draft, or remittance being honored upon presentment. If the check, draft, or remittance is not honored upon presentment, this policy may, at **our** option, be deemed void from its inception. This means that **we** will not be liable under this policy for any claims or damages which would otherwise be covered if the check, draft, or remittance had been honored upon presentment.

If **you** tender a check to **us** for any full or partial payment of **your** premium, other than **your** initial payment, and the check is returned to **us** because of insufficient funds, a closed account, or a stop payment, a service charge will be added to **your** account balance.

CANCELLATION

You may cancel this policy by calling or writing **us**, and stating the future date that **you** wish the cancellation to be effective.

We may cancel this policy by mailing a notice of cancellation to the named insured shown on the **Declarations Page** at the last known address appearing in **our** records. If cancellation is due to non-payment of premium, notice will be mailed at least ten (10) days before the effective date of cancellation. If cancellation is due to any other reason, notice will be mailed at least thirty (30) days

before the effective date of cancellation.

If **you** do not pay the required premium for this policy when due, **we** may cancel this policy at any time.

We may cancel this policy for any other reason within the first fifty-nine (59) days of the policy period shown on the **Declarations Page**.

After this policy is in effect for more than fifty-nine (59) days, or if this is a renewal or continuation policy, **we** may cancel only for one (1) or more of the following reasons:

1. **you** do not pay the required premium for this policy when due;
2. misrepresentation by **you** of any material fact in the procurement or renewal of this policy or in the submission of any claim under this policy;
3. loss of driving privileges through suspension or revocation of **your** operator's license or that of any other person who customarily operates a **covered vehicle**;
4. substantial change in the risk assumed, unless **we** should have foreseen the change or contemplated the risk when the policy was issued;
5. **you** have substantially breached **your** duties or any conditions under this policy; or
6. any other reason specified by law or contained in **our** rates and rules filing.

We will mail notice of cancellation to the named insured shown on the **Declarations Page** at the last known address for the named insured appearing in **our** records.

Upon cancellation, **you** may be entitled to a premium refund. **Our** making or offering of a refund is not a condition of cancellation.

If **we** cancel this policy for a reason other than non-payment of premium, any refund due will be computed on a daily pro-rata basis. The effective date of cancellation shown in a notice will be the end of the policy period.

If cancellation is at **your** request, or if cancellation is for non-payment of premium, any refund due will be computed on a ninety percent (90%) of a daily pro-rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. Earned premium is calculated on a daily basis. **We** will supply a copy of the table to **you** on request.

NONRENEWAL

If **we** decide not to renew or continue this policy, **we** will mail notice of nonrenewal to the named insured shown on the **Declarations Page** at the last known address appearing in **our** records. Notice will be mailed at least thirty (30) days before the end of the policy period. If the policy period is other than one (1) year, **we** will have the right not to renew or continue this policy only at each anniversary of its original effective date or earlier if permitted by state law.

PROOF OF NOTICE

Proof of mailing of any notice will be sufficient proof of notice.

COVERAGE CHANGES

If **we** make a change which broadens a coverage **you** have under this edition of **your** policy, without additional charge, **you** will receive the broadened coverage. The broadened coverage applies on the date the coverage change is implemented in **your** state. This provision does not apply to a general program revision or **our** issuance of a subsequent edition of **your** policy. Otherwise, this policy can be changed only by endorsement issued by **us**.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. **We** may not be sued for payment under Part I - Liability To Others until the obligation of an **insured person** to pay is finally determined either by final judgment against that person or by written agreement of the **insured person**, the claimant, and **us**. No one will have any right to make **us** a party to a lawsuit to determine the liability of an **insured person**.

OUR RIGHTS TO RECOVER PAYMENT

In the event of any payment under this policy, **we** are entitled to all the rights of recovery that the insured person to whom payment was made has against another. That insured 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 an **accident** or **loss** to prejudice **our** rights.

However, **we** may not assert rights of recovery against any person who was using a **covered vehicle** with **your** express or implied permission for any payment made under Part IV - Damage To A Vehicle.

When an insured person has been paid by **us** under Part I - Liability To Others, Part III - Uninsured/Underinsured Motorist Coverage, or Part IV - Damage To A Vehicle and also recovers from another person, entity, or organization, the amount recovered will be held by the insured person in trust for **us** and reimbursed to **us** to the extent of **our** payment.

If recovery is made by an insured person under this policy from a responsible party without **our** written consent, the insured person's right to payment under any affected coverage will no longer exist.

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligations under this policy.

NAMED DRIVER EXCLUSION

If **you** have asked **us** to exclude any person from coverage under this Policy, then **we** will not provide

coverage for that person under Part I- Liability To Others or Part III - Uninsured/ Underinsured Motorist Coverage for an **accident** that occurs while a **vehicle** is being operated by the excluded person. THIS INCLUDES COVERAGE FOR ANY CLAIM FOR DAMAGES MADE AGAINST **YOU**, A **RELATIVE**, OR ANY OTHER PERSON OR ORGANIZATION THAT IS VICARIOUSLY LIABLE FOR AN **ACCIDENT** ARISING OUT OF THE OPERATION OF A **VEHICLE** BY THE EXCLUDED DRIVER. Further, no coverage will be provided for **loss** to a **covered vehicle** or **non-owned vehicle** under Part IV - Damage To A Vehicle while being operated by the excluded person.

You must prove to **us** that the excluded person has, in effect, a motor vehicle liability insurance policy, self-insurance certificate, bond or cash deposit which satisfies the security requirement of Utah Code Annotated Section 41-12a-301. **You** agree to notify **us** if such policy, certificate, bond or deposit is no longer in effect. **You** must reimburse **us** if **we** make a payment under this policy because the excluded person had no motor vehicle liability insurance policy, self-insurance certificate, bond or cash deposit in effect at the time of the **accident**.

NAMED OPERATOR - NON-OWNED VEHICLE COVERAGE

If you elect **Named Operator - Non-owned Vehicle Coverage**, you agree with **us** that this policy is amended as follows:

1. General Definitions:

- a. The general policy definition of "**you**" and "**your**" is deleted and replaced by the following:

"You" and "**your**" mean the person shown as the named insured on the **Declarations Page**.

- b. The general policy definitions of "**covered vehicle**" and "**non-owned vehicle**" are deleted and replaced by the following: "**Covered vehicle**" and "**non-owned vehicle**" mean any **vehicle** that is not **owned** by **you**.

2. Part I - Liability To Others

- a. Additional Definition: When used in Part I, the definition of "**insured person**" and "**insured persons**" is deleted and replaced by the following:

"Insured person" and "**insured persons**" mean:

- i. **you**, when operating or using a **covered vehicle** or **non-owned vehicle** with the express or implied permission of the **owner**; and
- ii. any person or organization with respect only to vicarious liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by **you** with the express or implied permission of the **owner**.

- b. Exclusions: The following exclusion is deleted from Part I:

Coverage under this Part I, including **our** duty to defend, does not apply to:

bodily injury or **property damage** arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, if no other liability insurance applies to the **accident** with limits at least as great as the **minimum statutory limits**, this exclusion shall apply only to the extent the damages exceed such **minimum statutory limits**. This exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered vehicle**;

and replaced by the following:

Coverage under this Part I, including **our** duty to defend, does not apply to:

bodily injury or **property damage** arising out of an **accident** involving a **vehicle** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, if no other liability insurance applies to the **accident** with limits at least as great as the **minimum statutory limits**, this exclusion shall apply only to the extent the damages exceed such **minimum statutory limits**.

3. **Part III - Uninsured/Underinsured Motorist Bodily Injury Coverage**

If **you** pay a premium for Uninsured/Underinsured Motorist Bodily Injury Coverage, and it is shown on the **Declarations Page**:

- a. When used in Part III, the Additional Definition of "**insured person**" and "**insured persons**" is deleted and replaced by the following:

"Insured person" and "insured persons" mean:

- i. **you**; and
 - ii. any person who is entitled to recover damages covered by Part III, because of **bodily injury** to **you**.
- b. The **Other Insurance** provision under Part III is deleted and replaced by the following:

Other Insurance

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** Limit of Liability bears to the total of all available coverage limits. Any insurance **we** provide under this Part III shall be excess over any other uninsured or underinsured motorist coverage, except for uninsured or underinsured motorist coverage provided by a person engaged in the business of transporting persons as set forth in subsection 4 of Section 31A-22-305 of the Utah Annotated Code, as amended.

You are entitled to the highest uninsured motorist coverage limits applicable to any one (1) vehicle covered under any other policy under which **you** are a named insured or insured family member.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

If **you** are injured while not **occupying** a motor vehicle, the coverage provided under this policy shall be excess to any uninsured or underinsured motorist coverage provided by a policy under which **you** are a named insured.