

2002

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

Utah Supreme Court

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(2)

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. 000202450

Appeal No. 20020805 - SC

BRIEF OF APPELLEE PROGRESSIVE INSURANCE COMPANY

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

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JUN 23 2003

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JURISDICTION

The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2(3)(j) (2001).

ISSUES PRESENTED ON APPEAL

1. Did the lower court err in granting summary judgment for defendant Progressive Insurance Company where Progressive's policy complied with the statutory policy requirements as to John Calhoun's own vehicle and clearly explained the policy exclusion barring coverage of a non-listed vehicle owned by a relative?

2. Did the lower court err in granting summary judgment for State Farm Mutual Automobile Insurance Company where Jimmy Calhoun's State Farm's policy complied with the statutory policy requirements and excluded John Calhoun from coverage?

STANDARD OF REVIEW

The question of whether summary judgment was properly granted is a question of law and is reviewed for correctness. Prince v. Bear River Mut. Ins. Co., 2002 UT 68 ¶ 14; 56 P.3d 524, 531 (Utah 2002). In making that determination, the Court views "the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Id.*

DETERMINATIVE STATUTES AND RULES

1. Rule 56, Utah Rules of Civ. P. (2003)
2. U.C.A. § 41-12a-301(2)(a) (2002 Supplement) (Security Requirement)

... [E]very resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated . . . within the state.
...
3. U.C.A. § 41-12a-103(9) (1998) (Security defined)

"Owner's or operator's security," "owner's security," or "operator's security" means any of the following:

 - (a) an insurance policy or combination of policies conforming to Section 31A-22-302. . . ;
 - (b) a surety bond . . . subject to the minimum coverage limits and other requirements of policies conforming to Section 31A-22-302 . . . ;
 - (c) a deposit with the state treasurer of cash or securities complying with Section 41-12a-406;
 - (d) maintaining a certificate of self-funded coverage under Section 41-12a-407;
 - (e) a policy conforming to Section 31A-22-302 issued by the Risk Management Fund created in Section 63A-4-201.
4. U.C.A. § 31A-22-302 (2001) (Required coverage types)
 - (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 . . . ; and
 - (c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived. . . .
 - (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 . . . shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

5. U.C.A. § 31A-22-303(1) and (2)(2001) (Requirements for liability coverage)

- (1) (a) . . . [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 the policy is granted, 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 . . . 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 . . . 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 . . . who are residents of the named insured's household . . . to the same extent as the named insured. . . .
- (2) (a) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may: . . .
 - (ii) grant any lawful coverage in addition to the required motor vehicle liability coverage. . . .

6. U.C.A. § 31A-22-303(7)(2001) (Exclusion of a household driver)

- (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 . . . 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. . . .¹

7. U.C.A. § 41-12a-304 (1998) (No tort liability immunity)

The owner of a motor vehicle on which owner's or operator's security is required under Section 41-12A-301 who fails to have the security in effect at the time of an accident does not have immunity from tort liability under Subsection 31A-22-309(1). This owner is personally liable for the payment of the benefits provided for under Section 31A-22-307 to persons entitled to receive them under Section 31A-22-308.
8. U.C.A. § 41-12a-302 (1998) (Security violation a Class B Misdemeanor)
9. U.C.A. § 41-12a-104 (1998) (Liability not limited to policy face amount)
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18. U.C.A. § 78-2-2(3)(j)(2001) (Jurisdiction)

¹The text of this statute at the time State Farm's policy was issued did not include the phrase "at the time of the proposed exclusion." Additional requirements (b) and (c) are not reprinted here because they were not added to the statute until after State Farm had executed its Driver Exclusion Agreement.

STATEMENT OF THE CASE

A. Nature of the Case

The Calhouns appeal the decisions of the Third District Court granting summary judgment in favor of Progressive Insurance (herein "Progressive") and State Farm Mutual Insurance Company (herein "State Farm"). The Calhouns seek to have this Court extend insurance coverage for property damage arising from an automobile collision that was specifically excluded under the language of both insurance policies. The Calhouns ask this Court to invalidate either Progressive's non-covered vehicle exclusion or State Farm's named driver exclusion in order to provide insurance coverage in this matter.

B. Course of Proceedings and Disposition in the Court Below

This action was commenced by the Calhouns on March 20, 2000 against State Farm Mutual Automobile Insurance Company (hereinafter, "State Farm") and Progressive Insurance Co (hereinafter, "Progressive"). (R. at 1-4.) On July 9, 2001, Progressive filed a Motion for Summary Judgment. (R. at 44-108.) Plaintiff filed a Memorandum in Opposition to Defendant Progressive's Motion for Summary Judgment on Aug. 22, 2001. (R. at 112-117). On Sept. 13, 2001, Progressive filed its Reply Memorandum in Support of Motion for Summary Judgment. (R. at 118-170).

On Sept 24, 2001, State Farm filed a Motion for Summary Judgment. (R. at 171-235.) On Oct. 22, 2001, Plaintiffs filed a Memorandum in Opposition to Defendant State Farm's Motion for Summary Judgment. (R. at 236-242.) On Dec. 10, 2001, State Farm filed a Reply Memorandum in Opposition to Plaintiff's Memorandum Opposing State

Farm's Motion for Summary Judgment. (R. at 243-257.)

Progressive's Motion for Summary Judgment and State Farm's Motion for Summary Judgment came before Judge Joseph Fratto of the Third District Court of Salt Lake County on April 15, 2002. (R. at 269-270.) The court granted both motions, finding that there were no material issues of fact in dispute and concluding that both insurers were entitled to judgment as a matter of law. (Id.)

Specifically, in response to Progressive's motion, the lower court held that John Calhoun's Progressive policy complied with statutory requirements. The court further upheld Progressive's exclusion of coverage for non-listed vehicles owned by a relative as the terms of the policy were clear and unmistakable, citing Hill v. Farmers Ins. Exch., 888 P.2d 138, 140 (Utah Ct. App. 1994). (R. at 276-280.)

In regard to State Farm's motion, the court held that State Farm's "Driver Exclusion Agreement was appropriately executed and John C. Calhoun was properly excluded from coverage as a member of the Calhoun household." (R. at 273). The court also noted that State Farm had "the right to rely on the [Calhoun's] representation and the certification that the excluded driver had obtained owner's or operator's security to satisfy the requirements of the statute." (Id.) Accordingly, summary judgment was granted for State Farm. (R. at 269-273.)

C. Statement of Undisputed Facts

John Calhoun was involved in an automobile collision in Salt Lake County on or about December 19, 1998 that resulted in damage to the vehicle he was driving as well as

two additional vehicles. (R. at 2; Compl. ¶ 10-12). John Calhoun was driving a 1989 Jeep Comanche pickup truck owned by his parents, Jimmy and Rosalie Calhoun. He was not driving his own vehicle, a 1987 Suzuki Samurai, as it had not been running well. (R. at 194; John Calhoun Dep. 18:10-20) John Calhoun drove his parents' vehicle with permission on that day as well as on other occasions. (R. at 194; John Calhoun Dep. 18:21-19:1; R. at 201; Jimmy Calhoun Dep. 19:6-9, 24:12-24; R. at 196.)

At the time of the collision, John Calhoun had an insurance policy with Progressive that provided coverage for his Suzuki Samurai as well any other vehicle that he drove. However, the Progressive policy excluded vehicles not listed on the policy that were owned by John Calhoun as well as his relatives. At the time of the subject collision, John Calhoun was living with his parents, who qualify as "relatives" under the Progressive policy.

The Progressive policy defines a "covered vehicle" as "any vehicle shown on the Declarations Page" and "any additional vehicle on the date you become the owner." (R. at 78.) The following caution appears in prominent print at the beginning of the exclusions:

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

(R. at 82. *See also* R. at 86, 96.) The exclusion section of Part 1 (regarding liability coverage) states the following:

"Coverage under this Part I . . . does not apply to: . . .
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**.

(R. at 82-83) (emphasis in original).

The term “covered vehicle” is defined in the Progressive policy as:

- a. any **vehicle** shown on the **Declarations Page**

Similarly, the term “relative” is defined in the policy as “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.” (Exhibit A).

In addition, at the time of the accident, Jimmy Calhoun had an insurance policy with State Farm covering his vehicles. The State Farm policy however, specifically excluded John Calhoun from coverage based on a "Driver Exclusion Agreement." (R. at 204-232, 235).

SUMMARY OF THE ARGUMENT

The Progressive policy in this case was an owners policy. As such, coverage followed the vehicles, not the individual insureds. When John Calhoun purchased his policy with Progressive, that policy covered his Suzuki Samurai. While coverage would be afforded to John Calhoun for his use of other vehicles, a specific exclusion was set forth in the policy disallowing coverage for John Calhoun’s use of other vehicles that he owned or that were owned by his relatives that were not listed on the declarations page of the policy. At the time of the subject accident, John Calhoun lived with his parents, Jimmy and Rosalie Calhoun. When the accident occurred, John Calhoun was driving a vehicle owned by Jimmy and Rosalie Calhoun, who clearly qualify as “relatives” under the Progressive policy. As such, because John Calhoun was driving a vehicle owned by a

relative that was not listed on the declarations page of his policy, coverage is not available under the Progressive policy.

In addition, Jimmy and Rosalie Calhoun maintained an insurance policy with State Farm. That policy specifically excluded coverage for John Calhoun.

Each of the insurance policies in this matter comply with Utah law and meet the minimum financial responsibility requirements. Unfortunately, neither provides coverage for John Calhoun in the situation underlying the current matter. The district court granted summary judgment in favor of Progressive and State Farm based on this fact, and this Court should affirm the lower court's rulings.

ARGUMENT

I. THERE IS NO COVERAGE UNDER PROGRESSIVE'S INSURANCE POLICY FOR THE USE OF A NON-LISTED VEHICLE OWNED BY A RELATIVE.

Utah Code Annotated section 31A-22-303(1)(a)(ii)(A) provides that an insurer shall:

[I]f 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 and of the named motor vehicles 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. U.C.A. 31A-22-303(1)(a)(ii)(A)(2002 Supp.).

The Progressive policy in this matter complies with the Utah Financial Responsibility Act. John Calhoun purchased insurance for his 1987 Suzuki Samurai with Progressive. (See Progressive policy attached hereto as Exhibit A). Under the Progressive policy, John Calhoun was covered for the vehicle listed on his insurance policy, ie., the Suzuki Samurai. In addition, John Calhoun was also covered for the use of other vehicles. However, as part of the exclusion on the Progressive policy, John Calhoun was not covered for the use of vehicles that he owned but were not listed on the declaration page, nor was there coverage for vehicles that were owned by a "relative" that were not listed on the declaration page of the Progressive policy.

The Progressive policy clearly and specifically states:

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:

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**.

(Exhibit A).

The term "covered vehicle" is defined in the Progressive policy as:

a. any **vehicle** shown on the **Declarations Page**

Similarly, the term "relative" is defined in the policy as "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." (Exhibit A).

In the present case, the subject accident occurred while John Calhoun was driving his father's Jeep Comanche pickup truck. Because John Calhoun is the son of Jimmy Calhoun and was living in the same household as his father when the accident occurred, Jimmy Calhoun and John Calhoun are considered "relatives" under the terms of the policy. The Jeep Comanche owned by Jimmy Calhoun was not listed on the Progressive policy as a covered vehicle. As such, the exclusion set forth in the Progressive policy is applicable and precludes coverage for John Calhoun in the accident occurring on December 19, 1998.

The Utah Court of Appeals has addressed this identical situation and has upheld an exclusion containing the identical language as the Progressive policy in this case. In Hill v. Farmers Ins. Exch., 888 P.2d 138 (Utah Ct. App. 1994), Barbara Pellow, a sixteen year old girl, was involved in an accident with the plaintiffs. At the time of the accident, she was driving a 1981 Camaro owned by her mother. Barbara Pellow had permission to drive the vehicle from Mrs. Pellow. At the time of the accident, Mrs. Pellow owned a 1978 El Dorado and a 1976 El Camino in addition to the 1981 Camaro. All three of the Pellow vehicles were insured under separate insurance policies through Farmers Insurance. All of the Farmers policies provided that Farmers would "pay damages for which any insured person is legally liable because of bodily injury to any person and property damage arising out of the ownership, maintenance or use of a private passenger car, a utility car, or a utility trailer." The definition of an insured in the Farmers' policy included "you or any family member". Id. at 139. Each policy also contained an

exclusion of coverage for “bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle other than your insured car which is owned or furnished or available for regular use by you or a family member.” Id. Like the Progressive policy, the term “insured car” was defined as the vehicle contained in the declaration sheet.

At the trial court level, Farmers filed a motion for summary judgment seeking to dismiss the plaintiffs claims against the insurance policies for the El Dorado and the El Camino vehicles. The plaintiffs argued that all three Farmers policies provided coverage for their injuries because the policies each stated that “we will pay damages for which any insured person is legally liable because of bodily injury to any person...arising out of the ownership, maintenance or use of a private passenger car.” The plaintiffs argued that such language did not limit coverage to the insured car, and as such, coverage was available under all three policies. Id. The trial court disagreed however, granting Farmers’ motion for summary judgment, and recognizing that the plaintiffs did not read the policy as a whole, including the relevant portions of the policy that excluded coverage. Id.

The Utah Court of Appeals affirmed the district court’s findings, stating that “an insurer may limit its obligation to provide coverage by exclusions phrased in language which clearly and unmistakably communicates to the insured the specific circumstances under which the expected coverage will not be provided.” Id. at 140. The Court of Appeals determined that each of the policies contained an exclusion for “bodily injury . . .

arising out of the ownership, maintenance or use of any vehicle other than your insured car, which is owned by or furnished or available for regular use by you or a family member,” and that such an exclusion barred liability which could arise out of the use of any vehicle owned by the Pellums, except for the insured car. Id. at 141.

In the present case, the identical situation to that in Hill occurred. John Calhoun purchased insurance from Progressive and listed his 1987 Suzuki Samurai as the insured vehicle. He borrowed his father’s vehicle, a Jeep Comanche that was not listed on the Progressive policy, and was involved in an accident. John and Jimmy Calhoun lived in the same household at the time of the accident and are related by blood. As such, Jimmy Calhoun’s Jeep Comanche is the vehicle of a relative not listed on the Progressive policy. As occurred in Hill, there is no coverage pursuant to the clear language of the Progressive exclusion.

Such an exclusion is valid under Utah law and should be upheld in this case. If such an exclusion was found unlawful, it would open the door for individuals to simply insure one vehicle, yet obligate insurance companies to provide coverage for all other vehicles in the household or in the household of relatives living under the same roof free of charge. Such a finding would violate public policy and would cause insurance rates to skyrocket.

II. THE CALHOUNS CANNOT ATTEMPT TO CREATE COVERAGE UNDER THE PROGRESSIVE POLICY THROUGH THE APPLICATION OF UTAH FINANCIAL RESPONSIBILITY ACT

The Calhouns have attempted to create coverage under the Progressive policy

through the application of the Utah Financial Responsibility Act. The Calhouns' arguments are misplaced however, as the Financial Responsibility Act does not mandate coverage in all situations.

U.C.A. §31A-22-303(1)(a)(iii) (2002 Supp.) indicates that, regardless of policy type, a policy may exclude specific named drivers. Furthermore, 31A-22-302 (1998) explains that certain types of coverage may be excluded. For example, uninsured and underinsured motorist coverage for bodily injury may be waived in Utah. Similarly, property damage coverage is optional. If an insured opts to forego property damage coverage or waives uninsured or underinsured coverage, the named insured has personally accepted the risk. As a further example, U.C.A. § 31A-22-303(a)(iii) provides that liability policies purchased to meet security obligations are required to insure persons related to the named insured who are residents of the insured's household to the same extent as the insured. However, an exception to this rule is provided in § 31A-22-303(7), which states:

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 . . . if:

- I. [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. . . .

A final example concerns the exclusion of vehicles from coverage. U.C.A. § 31A-22-303(1)(a)(ii) provides for additional requirements in liability policies purchased to meet

security obligations, stating:

- (i) If the policy is an *owner's* policy, it just designate all vehicles on which coverage is provided, and it must insure any person using those named vehicles with permission, including household relatives unless specifically excluded, or
- (ii) if the policy is an *operator's* policy, it must insure the named operator's use of any vehicle not owned by him.

In addition to the requirements regarding liability coverage, the Insurance Code contains numerous provisions related to Personal Injury Protection and Uninsured/underinsured motorist coverage. Section 31A-22-309(2) (1998) explains that Personal Injury Protection (referred to as "PIP" coverage) does not apply if an accident occurs when the insured is driving a non-covered household vehicle. Moreover, uninsured motorist coverage, unless waived, must provide a minimum level of coverage for *bodily injury, sickness, disease, or death* of the insured, household relatives, any person in a listed vehicle, and anyone in a vehicle of a self-insurer (as well as anyone entitled to recover because injury to those persons). U.C.A. § 31A-22-305 (1998). Benefits for property damage caused by uninsured/underinsured motorists is not required. U.C.A. § 31A-22-305.5 (1998). Finally, underinsured motorist coverage restricts benefits so that the insured is covered in a household vehicle only if that vehicle is listed on the policy. U.C.A. 31A-22-305(10)(a).

Beyond those requirements and restrictions, the Insurance Code also sets an overriding principal that any policy provision is authorized unless specifically prohibited. U.C.A. § 31A-1-103(2)(b) (2002 Supp.). Additionally, both statute and case law support

upholding exclusions and limitations of coverage where "phrased in language which clearly and unmistakably communicates to the insured the specific circumstances under which the expected coverage will not be provided." Eg. Hill v. Farmers Ins. Exch., 888 P.2d 138, 141 (Utah Ct. App. 1994) (quoting Wagner v. Farmers Ins. Exch., 786 P.2d 763, 765 (Utah Ct. App. 1990) (upholding clearly worded exclusions where each of three insurance policies excluded coverage of a particular accident even though exclusions afforded no coverage for the particular accident); U.C.A. § 31A-21-308(1) (1998) (allowing limitations on insurers' liability by clear language); U.C.A. § 31A-22-303(1)(a)(i) (2002 Supp.) (requiring limits to be stated in the policy); Alf v State Farm Fire and Casualty Co., 850 P.2d 1272 (Utah 1993) (upholding a homeowners' insurance policy exclusion of losses due to earth movement and making the proximate cause rule inapplicable per the clear language of the policy). In determining whether exclusions are clear or ambiguous, the Court interprets "'insurance contract terms according to their usually accepted meanings' and 'read[s them] as a whole, [giving] effect to all of the policy provisions.'" Id. at 140 (quoting Nielsen v. O'Reilly, 848 P.2d 664,665 (Utah 1992)).

III. JOHN CALHOUN'S POLICY WITH PROGRESSIVE WAS AN OWNERS POLICY

John Calhoun's policy with Progressive was unambiguous as to its policy type. The Progressive policy is clearly an owner's policy because (1) the policy was purchased by John for the vehicle he owned, (2) the Declarations Page lists only John's vehicle; and

(3) the contents of the policy make clear that the policy covers *the vehicle owned by John* while also excluding in unmistakable terms any *non-listed household vehicles*.

In Utah, insurance coverage follows the insured vehicle, not the owner of the policy. U.C.A. § 31A-22-303(1)(a)(ii)(A) (2002 Supp.) specifically states that "if the policy is an owner's policy, it must designate *all vehicles on which coverage is provided*, and it must insure any person using *those named vehicles* with permission, including household relatives unless specifically excluded" (emphasis added). This statute makes clear that an owner's policy need not cover all vehicles, but must only list those vehicles that are covered under the policy. As an owner's policy, John Calhoun's Progressive policy met that requirement by listing his vehicle on the Declarations Page.

Significantly, the requirement made of an *operator's* policy—to insure the named operator's use of *any* vehicle not owned by him—does not apply to owner's policies. U.C.A. §31A-22-303(1)(a)(ii)(A) and (B) (2002 Supplement)(emphasis added). If the legislature had intended such a requirement for *owner's* policies, § 31A-22-303(1)(a)(ii)(A) would have included that requirement.

John Calhoun's policy with Progressive was an owners policy. It contained a standard exclusion which made it clear that the policy would not cover John Calhoun in every non-owned vehicle. The Progressive policy cannot be construed to be an operator's policy. As such, when John Calhoun drove his father's vehicle, he would either have to rely on the State Farm coverage which covered that specific vehicle, or, he could have listed his father's vehicle on his own policy. Because John Calhoun did not list the

vehicle on his policy, such a vehicle was not insured by Progressive.

IV. THE CALHOUN'S ESTOPPEL ARGUMENT MUST FAIL

The Calhouns further argue for coverage under the Progressive policy maintaining that John Calhoun obtained his insurance coverage through dealings with Jason Curry of the Curry Insurance Agency, and that Mr. Curry specifically represented that the Progressive policy would cover John Calhoun on all of the vehicles that he drove, specifically including the excluded vehicles from State Farm. Such an argument has no basis in Utah law as Jason Curry was an insurance broker, not an agent of Progressive, and had no authority to bind Progressive with his unfounded promises.²

Utah Code Annotated § 31A-23-309 states:

No person may represent himself as the agent of an insurer unless a written agency contract is in effect giving the person authority from the insurer and the insurer has appointed that person as its agent.

Further, Utah Code Annotated § 31A-23-102 defines a broker as:

an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract *on behalf of an insured* other than itself. (emphasis added)

The Utah Supreme Court has found that the existence of an agency relationship is determined from all the facts and circumstances in the case. An agent, so far as the insurer is concerned, is a person expressly or impliedly authorized to represent it in

² The Calhouns assert in their appellate brief that Progressive has never taken the position that the Curry Insurance Agency was not its agent for purposes of selling insurance. This allegation is incorrect as Progressive set forth this position very clearly in its Reply Memorandum in Support of Motion for Summary Judgment (R.124-126)

dealing with third persons and is commissioned and employed by an insurance company to solicit and write insurance by and in the name of the company. Vina vs. Jefferson Insurance Company of New York, 761 P.2d 581, (Utah Ct. App.1988).

The Utah Supreme Court has determined that an insurance broker, like other brokers, is primarily the agent of the first person who employs him and is therefore ordinarily the agent of the insured as to matters connected with the procurement of the insurance. An independent agent who solicits insurance for the insured and places that insurance with an insurance company, is, if anyone's agent, the agent of the insured and not of the insurance company. Id at 584.

In the present case, John and Jimmy Calhoun went to Jason Curry of Curry Insurance in order to procure insurance. Mr. Curry then, acting as an agent for the Calhouns, procured insurance through State Farm and Progressive. Accordingly, any representations made by Jason Curry regarding subsequent coverage under the Progressive policy would be the representations of a broker, and not an agent of Progressive.

Pursuant to U.C.A. § 31A-23-309, Mr. Curry did not have the power to bind Progressive on any statements that he made. The actual policy language is what should govern in the present case. As demonstrated above, based on the applicable exclusion in the Progressive policy, coverage for John Calhoun's use of his father's vehicle is not available under the Progressive policy.

V. STATE FARM IS ALSO ENTITLED TO HAVE ITS SUMMARY JUDGMENT AFFIRMED

As did the Progressive policy, Jimmy Calhoun's policy with State Farm also met the statutory policy requirements of U.C.A. §§ 31A-22-302 and 303. The State Farm policy also, however, contained a named driver exclusion that was consistent with §§ 31A-22-303(1)(a)(iii) and 31A-22-303(7).

The Calhouns do not dispute that the State Farm policy contained the required coverage as to the owners of the vehicle, Jimmy and Rosalie Calhoun. Instead, the Calhouns argue that the exclusion should be invalidated when an excluded driver fails to maintain the appropriate coverage through other insurance.

Plaintiffs' argument that the named driver exclusion should be deemed void fails as there is no requirement that a policy cover every household member. To the contrary, the statute specifically allows for an insurer to exclude an individual from coverage.

Furthermore, Calhoun's argument that the Court should extend the interpretation of § 31A-22-303(7) to require adequate security *at the time of an accident* must fail because, since the time that the Calhouns agreed to the named driver exclusion, the legislature has specifically clarified its intent that the security requirement need only be met "at the time of the proposed exclusion." § 31A-22-303(7)(a). The legislature undoubtedly recognized that insurers cannot control what coverage a driver may change, cancel, or allow to lapse after a named driver exclusion agreement is made; thus, the insurer should not be held responsible to make sure coverage is in place each time a

named, excluded individual drives the car of an insured.

Where the statute specifically allows exclusion of a household member from coverage, and the statute specifies that the named driver need only meet the security requirement *at the time the exclusion is proposed* to make the exclusion valid and binding, State Farm has met the requirements of the law. Importantly, Sections §§ 41-12a-301(2)(a) (2002 Supp.) and 31A-22-303(7) (2001) do not require the excluded driver to maintain security for a particular vehicle. As such, where the excluded driver owns his own vehicle, if he meets the security requirement for his own vehicle, he has presumably met the security requirement as a whole. Therefore, the lower court correctly held that State Farm had properly executed its Driver Exclusion Agreement and granted summary judgment in its favor.

CONCLUSION

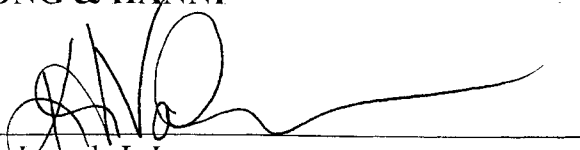
It is clear that the Progressive policy in this case was an owners policy. As such, coverage followed the vehicles, not the individual insureds. When John Calhoun purchased his policy with Progressive, that policy covered his Suzuki Samurai. While coverage would be afforded to John Calhoun for his use of other vehicles, a specific exclusion was set forth in the policy disallowing coverage for John Calhoun's use of other vehicles that he owned or that were owned by a relative. At the time of the accident, John Calhoun lived with his parents, Jimmy and Rosalie Calhoun. It is undisputed that Jimmy and Rosalie Calhoun are "relatives" of John Calhoun. The accident involved a vehicle owned by Jimmy and Rosalie. As such, coverage is not available under the Progressive

policy. The lower court in this matter appropriately found that there was no coverage under the Progressive policy. Similarly, the district court correctly ruled that there was no coverage under the State Farm policy that specifically excluded coverage for John Calhoun. Based on the foregoing, it is clear that the district courts's granting of summary judgment in favor of both Progressive and State Farm should be affirmed.

DATED this 23rd day of June, 2003.

STRONG & HANNI

By: _____


Joseph J. Joyce
Kristin A. VanOrman
Attorneys for Progressive
Insurance Company

ADDENDUM

EXHIBIT A: PROGRESSIVE INSURANCE POLICY

| | |
|---------------------------|----------------|
| 24 Hour Policy Service | 1-800-888-7764 |
| Automated Billing Inquiry | 1-800-999-8781 |
| 24 Hour Claims Service | 1-800-274-4499 |

PERSONAL AUTO POLICY DECLARATIONS PAGE
FOR NAMED INSURED:

00045

Abstract

JOHN CALHOUN
195 EAST 5TH AVE #A
DUGWAY UT 84022

JOHN CALHOUN
195 EAST 5TH AVE #A
DUGWAY UT 84022

POLICY NUMBER: 10489441 - 0

POLICY PERIOD: 08/28/98 TO 02/28/99

This policy incepts the later of:

1. the time the application for insurance is executed on the first day of the policy period; or

2. 12:01 a.m. on the first day of the policy period.

This policy shall expire at 12:01 a.m. on the last day of the polling period.

The following coverages and limits apply to each described vehicle as shown below. Coverages are defined in the policy and are subject to the terms and conditions contained in the policy, including amendments and endorsements. No changes will be effective prior to the time changes are requested.

REASON FOR ISSUANCE: NEW BUSINESS

| EH# | YR | MAKE - MODEL | SERIAL NUMBER | STATED AMT | DRV# | LISTED DRIVERS | EXCLUDED | SR22 | RATED |
|-----|----|--------------|---------------|-------------------------|------|----------------|----------|------|-------|
| 1 | 87 | SUZUK | SAMURAI | 4X4CV JS4JC51C7H4148813 | 1 | JOHN CALHOUN | NO | NO | YES |
| 2 | | | | | 2 | | | | |
| 3 | | | | | 3 | | | | |
| 4 | | | | | 4 | | | | |
| | | | | | 5 | | | | |

| COVERAGES AND LIMITS OF LIABILITY | | PREMIUMS | | | | |
|--|--|----------------------|--------|--------|--------|----------|
| THE COVERAGE IS APPLICABLE ONLY IF A PREMIUM IS INDICATED | | VEH #1 | VEH #2 | VEH #3 | VEH #4 | TOTAL |
| ODILY INJURY LIABILITY | | \$525 | | | | \$525 |
| \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT | | | | | | |
| PROPERTY DAMAGE LIABILITY | | INCL | | | | |
| \$15,000 NO DEDUCTIBLE | | | | | | |
| PERSONAL INJURY PROTECTION | | \$82 | | | | \$82 |
| \$3,000 LIMIT - \$0 DEDUCTIBLE | | | | | | |
| UNINSURED MOTORIST | | \$30 | | | | \$30 |
| \$25,000 EACH PERSON - \$50,000 EACH ACCIDENT | | | | | | |
| UNDERINSURED MOTORIST | | \$19 | | | | \$19 |
| \$10,000 EACH PERSON - \$20,000 EACH ACCIDENT | | | | | | |
| PROPERTY DAMAGE \$3,500 LESS \$250 DEDUCTIBLE | | \$21 | | | | \$21 |
| SEE REVERSE | | \$677 | | | | |
| PREMIUM BY VEHICLE | | | | | | |
| I CERTIFY THIS DOCUMENT TO BE A TRUE AND ACCURATE COPY. BY <u>Kelly Cook</u> DATE <u>11-24-00</u> | | | | | | |
| ATTACHMENTS IDENTIFIED BY FORM NO. 169 (0497) 9988 (0597) | | TOTAL POLICY PREMIUM | | | | \$677.00 |

I CERTIFY THIS DOCUMENT TO BE
A TRUE AND ACCURATE COPY.

BY

DATE _____

SEE REVERSE

PREMIUM BY VEHICLE

3677

TOTAL POLICY PREMIUM

\$677.00

Y LOSS UNDER PART IV IS PAYABLE TO NAMED INSURED AND LIENHOLDER:

LIENHOLDER

VEH #1

VEH #2

VEH #3

VEH #4

ADDITIONAL INTEREST

FOR COMPANY USE ONLY

| DISCOUNTS: | VEH 1 | VEH 2 | VEH 3 | VEH 4 |
|------------------------------------|-------|-------|-------|-------|
| MULTIPLE CARS ON POLICY | | | | |
| RESPONSIBLE DRIVER | | | | |
| INSURED OWNS RESIDENCE | | | | |
| INSURED OWNS MOBILE HOME RESIDENCE | | | | |
| PREMIUM PAID IN FULL | | | | |
| MATURE DRIVER COURSE | | | | |
| ASSOCIATION | | | | |
| | | | | |
| SURCHARGES: | | | | |
| BUSINESS/ARTISAN USE | | | | |
| | | | | |
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| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| VEH | DR# | AGE | SEX | M/S | CL | TERR | LIAB | COMP | COLL |
|-----|-----|-----|-----|-----|----|------|------|------|------|
| 1 | 1 | 24 | M | S | 16 | 03 | 04 | 14 | 03 |
| 2 | | | | | | | | | |
| 3 | | | | | | | | | |
| 4 | | | | | | | | | |

COMPANY 16
 MARKET MIDDLE MARKET
 LEVEL ADVANTAGE
 PAY PLAN 25
 R/R 9808
 FACTOR % 1.000
 FORM 9606
 ED 0396
 AGENT CODE BU 44026
 PREV POL #

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:

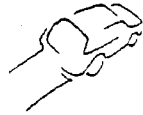
This policy contains all the agreements between **you** and **us**. Subject to the following, its terms may not be changed or waived except by endorsement issued by **us**.

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.

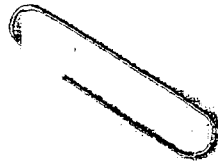
ALL OTHER TERMS AND CONDITIONS OF YOUR POLICY REMAIN UNCHANGED





PROGRESSIVE®

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

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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

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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, or 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

Give me

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.

5. "**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

*no
Collision
No
Comp.*

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.

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**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.

**CERTIFICATE
OF
SERVICE**

Case No. 20020805 - SC

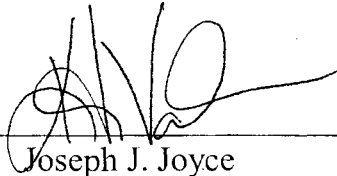
Appeal from a Judgment of the Third Judicial District Court
of Salt Lake County, State of Utah
Honorable Joseph C. Fratto

I hereby certify that on the 23rd day of June, 2003, a true and correct copy
of Brief of Appellee Progressive Insurance Company, and this Certificate of Service was
served by US Mail, Postage Prepaid, to

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