

2005

Youngblood v. Auto-Owners Insurance Company : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF UTAH

ROBERT L. YOUNGBLOOD, II,

Plaintiff - Respondent,

v.

AUTO-OWNERS INSURANCE
COMPANY, a corporation,

Defendant - Petitioner

BRIEF OF DEFENDANT- PETITIONER,
AUTO-OWNERS INSURANCE
COMPANY

Case No.: 20050400

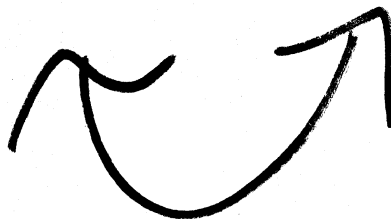
CERTIORARI TO THE COURT OF APPEALS
WHICH COURT REVERSED SUMMARY JUDGMENT
GRANTED TO PETITIONER BY THE
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STATEMENT OF JURISDICTION

This matter is before the Court on this Court's Order Granting Petitioner's Petition for Certiorari to the Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

This Court stated the issue in its Order Granting Petitioner's Petition for Certiorari as follows:

Whether equitable estoppel may apply to modify the scope of an insurance policy's coverage where the scope of coverage is misstated by a company agent prior to the insured's purchase of the policy.

More specifically to facts of the case, the issue can be otherwise stated as follows:

Where unambiguous terms of a written insurance policy provide that underinsured motorist (UIM) coverage only covers an insured when the insured is in, entering or alighting from a motor vehicle, should a court expand that coverage, after an accident, to cover the insured as a pedestrian, merely because the insured orally alleges he was given some examples mentioning him as a pedestrian by an independent sales agent.

STANDARD OF REVIEW

A party is entitled to summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); *First Amer. Title Ins. Co. v. J.B. Ranch, Inc.* 966 P.2d 834 (Utah 1998); *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1039 (Utah 1991). Furthermore, "questions of contract interpretation not requiring resort to extrinsic evidence are matters of law, and on such questions, we accord the trial court's interpretation no presumption of correctness."

First Amer. Title Ins. Co. v. J.B. Ranch, Inc. 966 P.2d 834 (Utah 1998); *Zions First Nat'l Bank v National Am. Title Ins. Co.*, 749 P.2d 651, 653 (Utah 1988) (citations omitted). See Record at 40 for Auto Owners Motion for Summary Judgment where the issue was preserved.

STATEMENT OF THE CASE

The respondent, (hereafter “Youngblood”) sued petitioner, Auto Owners Insurance Company (hereafter “Auto Owners”) for underinsured motorist (UIM) coverage for an accident in which he was a pedestrian. Youngblood’s company purchased insurance from Auto Owners (hereafter the “Policy”). However, the UIM coverage in the Policy only applied if Youngblood was a passenger or operator in, on, or in the immediate act of entering or alighting from a motor vehicle. The lower court granted summary judgment to Auto Owners, based upon the unambiguous terms of the Policy. The Court of Appeals, in *Youngblood v. Auto Owners Ins. Co.*, 2005 UT App 154, 111 P.3d 829, reversed the trial court’s grant of summary judgment, finding Auto Owners estopped from denying UIM coverage for Youngblood as a pedestrian.

STATEMENT OF FACTS

(The Undisputed Facts as to the Accident at Issue)

1. On or about December 30, 1997, Youngblood was a pedestrian, walking across a parking lot toward a medical plaza when he was struck by an automobile (hereafter the “Accident”) driven by Rachel Louis Cooksey (hereafter the “Tortfeasor”). R. at 10-11 (Amended Complaint, paras. 6, 8, 10 and 12); R. at 50-51(Pltf’s depo. at 37-38). It is undisputed that he was a pedestrian at the time of the Accident. *Id*

2. Youngblood settled with the Tortfeasor for her policy limits. R. at 109-111.

3. Youngblood alleges that his injuries exceeded the policy limits of the Tortfeasor's available insurance. R. at 11 (Amended Complaint, para. 12).

(Lack of allegations of pre-accident acts supposedly justifying estoppel)

4. In his complaint, Youngblood claimed that Auto Owners owes Youngblood underinsured motorist (UIM) coverage for injuries which exceeded the available insurance of the Tortfeasor. R. at 11-12 (Amended Complaint, paras. 14, 12, and 16).

5. Youngblood's Amended Complaint contains no allegation that he was induced to enter into the insurance contract by pre-policy representations of a sale's agent which might estop Auto Owners should be estopped from denying coverage. R. at 10-14 (entire Amended Complaint). Youngblood does allege, however, that Auto-Owners should be estopped from denying UIM pedestrian coverage, however, the only allegations in support of estoppel are that Auto Owners took actions after the accident, not before, indicating at first that there may be coverage, but later denying coverage. R. at 12 (Amended Complaint, para. 15).

6. Although Estoppel is not claimed in Youngblood's Amended Complaint regarding the pre-policy statements of any sales agent, in his deposition he alleges that an independent sales agent made certain statements to him regarding pedestrians or non-motorists before he purchased the policy. See the following paragraphs.

7. Youngblood states in his deposition, but not in his Amended Complaint, that he purchased the Policy at issue through a Mark, last name not remembered by Youngblood,

who was an employee of Cottonwood Insurance, not an employee of Auto Owners. R. at 96 (Pltf's depo. At 103:11-13).

8. Youngblood states that the Cottonwood Insurance agent stated the following:

"But he said, 'Hey, underinsured and uninsured, the reason you have these is you have to protect your family.' And he said, 'what if you're walking down the street? Without these' – what do you call them? – 'without these riders' – I think that's what they call them. He said, 'Without these riders, you know, you've got nothing.' Now, he said, 'The only thing that I would recommend, other than this, if you don't get this, is to get some kind of wage protection.'

R. at 96-97 (Pltf's depo. at 103:25 to 104:9).

9. Youngblood continued, regarding the Cottonwood Insurance agent:

A. "Well, Mark said, and I quote, 'Hey, if you're walking down the street, you've got nothing if you have – if you don't have underinsured and uninsured motorist and somebody runs you over,' and I chuckled. I thought that was kind of lame. Actually, I thought it was kind of lame because I could never picture me walking down the street and somebody running over me."

R. at 97-98 (Pltf's depo. at 104:21 to 105: 2).

10. Youngblood even said the Cottonwood Insurance agent mentioned coverage if Youngblood is sitting at his desk; Youngblood appears to equate that with underinsured motorist coverage, as if a car might hit him at his desk, which does not make sense:

"[Mark said], 'Hey, you could be walking – you could be sitting at your desk or walking down the street' – that's a quote. 'You could be sitting at your desk or walking the street and if you don't have the coverage, you've got nothing.'

R. at 98-99. (Pltf's depo. at 105:11-15).

11. Youngblood said that the example of walking down the street was “lame,” thereby appearing to imply that it was not reasonable or believable. R. at 97 (para. 9, above).

12. Youngblood was then asked if he relied on the example of walking down the street or sitting at his desk. Although he said, “Well, yes,” he went on to indicate he really wanted coverage as a motorist:

Q. “Did you rely on that statement [the statement in the immediately preceding quote] in part in purchasing this insurance:

A. Well, yes. These guys [Mark and his brother], I figured, were not only selling a lot of insurance and knew what they were doing, but I guess that truth is that I knew a lot of guys didn’t have insurance and I knew that I drove some nice vehicles. And if somebody were to slam into one of my cars...That’s what I pictured.”

R. at 98 (Pltf’s depo. at 105:16-24).

13. The above facts regarding the alleged conversation with the insurance agent from Cottonwood Insurance are denied by Auto Owners, but Auto Owners admits, for purposes of this appeal only, that such are the facts in a light more favorable to Youngblood.

(The Undisputed Facts as to the Lack of Coverage Under the Policy for
Accidents wherein the Respondent is a Pedestrian)

14. Auto Owners wrote an insurance policy to Youngblood Home Improvement, Inc., not to Youngblood individually (hereafter the “Policy”). R. at 10-11 (Amended Complaint, para. 8), Addendum at 14, 15, and 16.

15. Youngblood was an officer and owner of the insured, Youngblood Home Improvement, Inc. R. at 10 (Amended Complaint, para. 7).

16. The Policy covered certain specifically designated motor vehicles, and UIM coverage if those vehicles were involved in an accident with an underinsured motorist. See the following paragraphs.

17. The UIM coverage at issue in the Policy only covers insureds who are “occupying” one of the vehicles specifically identified in the policy. The underinsured coverage in the Policy unambiguously states:

“**2.a. We will pay compensatory damages any person is legally entitled to recover:**

- (1) from the owner or operator of an **underinsured automobile;**
- (2) for **bodily injury** sustained while **occupying an automobile** that is covered by **SECTION II-LIABILITY COVERAGE** of the policy.”

R. at 61 (the Policy - Bold and all caps in the original); Addendum at 35.

18. The words “occupying” and “automobile,” in the immediately preceding quote with regard to underinsured motorist coverage are defined terms in the Policy. The word “occupying” is defined as follows:

“1. Definitions. The following definitions apply in addition to those contained in **SECTION I-DEFINITIONS** of the policy.

A. **Occupying** means being in or on an **automobile** as a passenger or operator, or being engaged in the immediate acts of entering, boarding or alighting from an **automobile**.

R. at 60 (the Policy - Bold and caps in the original); Addendum at 34.

19. Thus, in order to be covered under the UIM coverage under the Policy, the injury must be sustained while the injured party is “occupying an automobile” which means being “in or on an automobile as a passenger or operator or being engaged in the

immediate acts of entering, boarding or alighting from an automobile.” Para. 18, above.

(Emphasis added).

20. Youngblood received a copy of the Policy before the Accident. R. at 103
(Pltf’s depo. at 117:9-15).

21. The cover sheet to the Policy is entitled “A Quick Guide to you Policy” and
states at the top:

READ YOUR POLICY CAREFULLY. This cover sheet provides only a
brief outline of some of the important features of your policy. This is not
the insurance contract and only the actual policy provisions will control.
The policy itself sets forth, in detail, the rights and obligations of both you
and your insurance company. **IT IS THEREFORE IMPORTANT
THAT YOU READ YOUR POLICY.**

Addendum at 17.

22. Although he had received a copy of the Policy, Youngblood did not see that
the UIM coverage under the Policy covered him when he was a motorist, but not when he
was doing other things such as walking, sitting at his desk, etc. R. at 105 (para. 3).

23. The Policy did state that if the named insured was “an individual” then
pedestrian coverage would exist:

b. If the first named insured in the Declarations is an individual, this
coverage is extended as follows:

(1) **We** will pay damages **you** are legally entitled to recover:

(a) From the owner of operator of any Underinsured
Automobile

(b) For **bodily injury you** sustain:

1) When **you are a pedestrian.**

R. at 61, and 63 (Pltf’s Memo. at para. 4) (bold in the original, underlining added);

Addendum at 35.

24. However, the first named insured in the Policy is Youngblood Home Improvement, Inc., not an individual. R. at 64, para. 1 (Respondent's Statement of Facts).

SUMMARY OF THE ARGUMENT

In his amended complaint, Youngblood did not allege that any representations prior to his purchase of the policy should estop Auto-Owners from denying the UIM pedestrian coverage which did not exist in the Policy. Therefore, the Court of Appeals should not have found estoppel based on pre-purchase statements.

Any pre-policy sales representations were made by an independent agent from Cottonwood Insurance, not an agent or employee of Auto-Owners, therefore Auto-Owners should not be estopped by any such statements. Under Utah law, each party should be responsible only for that party's own fault, and not for the fault of others including independent contractors.

This Court, a prior panel of the court of appeals, and the majority of the states support the general position that estoppel may not be used to expand coverage beyond that which is provided by written contract in a policy. Sound policy reasons support this position including, (1) claims of additional coverage are too easily made by someone trying to recover money, (2) the insurer never received a premium for such expanded coverage, (3) the insurer did not take such risks into account in determining its total risks, (4) a written document is the best and most reliable evidence of a contract. See also the next paragraph on parole evidence.

Under long-standing principles, parole evidence should not be used to vary the terms of a written contract, including an insurance policy, unless there is an ambiguity requiring clarification. With respect to an ambiguity in an insurance policy, there is still no need for parole evidence because any ambiguity will merely be resolved in favor of coverage. In the present Policy, there is no ambiguity.

Youngblood received a copy of the very understandable Policy, and should held to a duty to read it; otherwise reliance on pre-policy statements is not reasonable.

The pre-policy statements by the Cottonwood Insurance agent were not promises of coverage, but mention of accidents when someone is walking down the street or sitting at his desk. Youngblood thought them “lame,” desiring coverage for his company’s cars. When asked if he relied on the “lame” examples he questionable stated that he did. Thus any reliance is unreasonable.

ARGUMENT

POINT 1

YOUNGBLOOD DID NOT ALLEGE IN HIS AMENDED COMPLAINT THAT ANY PRE-POLICY REPRESENTATIONS JUSTIFIED ESTOPPING AUTO-OWNERS FROM DENYING UIM COVERAGE.

In his Amended Complaint, Youngblood did not allege that any pre-Policy representations were made by a sales agent at all, let alone that he relied on any such representations to his detriment, nor that Auto-owners should be estopped from denying coverage in the Policy as a result of any such pre-Policy representations. See Facts, above, paras. 5-6. As grounds for relief, Youngblood does allege that well after the accident, Auto Owners at first indicated there may be coverage, but later denied it. Facts, above, para. 5. Youngblood first

mentions pre-policy statements, representations by the Cottonwood sales agent, in his deposition, but not in his Amended Complaint. Facts, above, paras. 5-6

The only mention of estoppel in the Amended Complaint is in paragraph 15 thereof (R. at 12 and 57) wherein only post-accident representations are asserted as grounds for estoppel. Facts, above, para. 5.

Because the Amended Complaint does not allege any representations prior to the purchase of the insurance as grounds for estoppel, this court should not consider pre-Policy representations as grounds for estoppel, as the Court of Appeals erroneously did.

POINT II

AN INDEPENDENT INSURANCE AGENCY SHOULD NOT BE ABLE TO CREATE UNEXPECTED, UNINTENDED COVERAGE FOR AN INSURER; WHERE AN INDEPENDENT CONTRACTOR/SALES AGENT MAKES REPRESENTATIONS AS TO WHAT A FUTURE POLICY MAY COVER, THAT AGENT/AGENCY, IF ANYONE, SHOULD BE LIABLE, NOT THE INSURER.

In 1986, the Utah legislature did away with joint and several liability in favor of the more equitable and fair doctrine that each party should be liable only for that party's own percentage of fault, and not for the fault of others. See Utah Code Ann. § 78-27-40 states:

“Subject to section 78-27-38, the maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant.”

See also cases interpreting and upholding that section of the code.

In the present case, the sales agent, who allegedly made pre-Policy statements relating to persons walking down the street or sitting at a desk, was an independent agent

working for Cottonwood Insurance Agency. See Facts, above, paras. 7-12 . If this court should determine that there should some form of liability for pre-Policy statements made, then the liability should be that of the independent contractor sales agency, and not the insurer. Such liability could be in the form of some type of malpractice or other fault. However the insurer, which was not a party to such statements or representations, and in good faith, accepted a premium based upon coverage only for certain expected risks, should not be at fault, and not be through estopped to deny coverage. Unintended coverage for totally unexpected risks, outside the insurance contract, should not be imposed on the insurer based upon actions of an independent contractor. That would be contrary to the letter and spirit of the Utah statutes on fault, and the related case law supporting those statutes.

An independent insurance agency is just that, independent. The insurer cannot control such an agency, except to the extent the insurer may not let that agency sell the insurer's policies any more, after demonstration of some bad faith. The insurer doesn't control the specific representations made. The insurer can only create the policy and warn the prospective insured to read it carefully, as was done in this case. The independent agent should not be able to create coverage which is not expected or intended by the insurer, whether through "lame" examples not relied upon (Facts, above, paras. 9-11, or reasonable appearing promises relied upon. Even if, somehow, this Court might feel that an employee of the insurer might be able to create coverage which does not exist in the policy, through estoppel, such are not the facts of this case, and such a holding should await another day. No employee of the insurer was involved in the pre-

Policy sales representations regarding the future Policy at issue. See also Point VI, below, discussing the *Harr* case.

POINT III

UNDER PRINCIPLES OF CONTRACT INTERPRETATION, AS A MATTER OF LAW, NO UNDERINSURED MOTORIST COVERAGE WAS AVAILABLE TO YOUNGBLOOD AS A NON-MOTORIST UNDER THE POLICY.

Contract interpretation is a matter of law. For decades, the Courts in Utah have held that contract interpretation is a matter of law, not fact. See, for example, *Saunders v. Sharp*, 806 P.2d 198, 200 (Utah 1991) (“Interpretation of a contract is a matter of law for the court to determine, unless the contract is ambiguous and evidence of the parties’ intent . . . is necessary to establish the terms of the contract”). Whether an ambiguity exists is likewise a matter of law. See *Willard Pease Oil & Gas Co., v. Pioneer Oil & Gas Co.* 899 P. 2d. 766, 770 (Utah 1995).

Insurance contracts are no different. Insurance contracts are the same as other contracts and should likewise be interpreted as a matter of law. See *Utah Farm Bureau Ins. Co. v. Crook*, 1999 UT 47, P5; *Alf v. State Farm Fire and Cas. Co.*, 850 P. 2d. 1272 (Utah. 1993); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68 wherein the court stated, “. . . [B]ecause an insurance policy is the contract between the insurer and the insured, we first look to the plain language of the policy to ascertain its meaning if it is not ambiguous. *Id.* at *Holmes Dev, LLC v. Cook*, 2002 UT 38, P24, 48 P.3d 895; *Miller v. USAA, Cas. Ins. Co.*, 2002 Ut 6, P49, 44 P.3d 663.” *Id.* at P21. In *Holmes Dev., LLC v. Cook*,, above, this Court stated:

“a title insurance policy like other insurance policies, serves as a contract between the insurer and the insured, and as such ‘is subject to the general rules of contract construction.’ *Miller v. USAA Cas. Ins. Co.*, . . . [above] (quoting *S.W. Energy Corp v. Cont’l Ins. Co.*, 199 UT. 23, p12, 974 P.2d 1239; *Accord First Am. Title Insurance Co. v. JB Ranch, Inc.*, 966 P.2d 834, 836 (Utah 1998).”

Id. at P24. Thus, interpretation of an insurance contract is the same as interpretation of other contracts. See also *Alf v. State Farm Fire and Cas. Co.*, 850 P.2d 1272, 1274 (Utah 1993); (“An insurance policy is merely a contract between the insured and the insurer and is construed pursuant to the same rules applied to ordinary contracts.”). The court of appeals has followed this precedent and held the same. See *Village Inn Apartments v. State Farm Fire and Cas. Co.*, 790 P.2d 581, 582 (Utah App. 1990), (“Insurance policies are merely contracts and should thus be interpreted under the same rules governing ordinary contracts.”).

Contracts are interpreted using their plain meaning and giving effect to all words.

In interpretation of an insurance contract, as any other contract, the commonly accepted meanings of words are considered, and a contract is read as a whole in an attempt to harmonize and give affect to all of the contract provisions. See *Nielsen v. O’Riley*, 848 P.2d 664, 665 (Utah 1992) (“The terms of insurance contracts . . . are to be interpreted in a court with their usual meanings and should be read as a whole, in an attempt to harmonize and give affect to all of the contract provisions.”)

Parole evidence will not be used to vary the terms of an insurance contract. In *Braughon v. CUNA Mutual Ins. Co.*, 771 P.2d 1105 (Utah App. 1989) this Court stated, “if a policy of insurance is clear and unambiguous, the words are to be taken and

understood in their plain ordinary and popular sense as an average or reasonable person with ordinary understanding would construe them.” *Id.* at 1108, quoting *Clark v Prudential Ins. Co.*, 204 Kan. 487, 464 P.2d 253, 257 (1970). In the case of insurance contracts, instead of the use of parole evidence to vary the contract, where there is an ambiguity, the ambiguity will merely be resolved in favor of coverage rather than requiring parole evidence. See *American Casualty Co. v. Eagle Star Ins. Co., Ltd*, 568 P.2d 731 (Utah 1977), wherein the court stated, “If an insurance policy is ambiguous or uncertain, so that it is fairly susceptible to different interpretations, any doubt should be resolved in favor of insurance coverage”. *Id.* at 734, cited favorably in *Perkins*, below, 814 P.2d 1129 (Utah App. 1991). Thus where a contract of insurance is concerned one doesn’t get to parole evidence. If there is no ambiguity, no parole evidence will be allowed. If there is an ambiguity, it is resolved in favor of coverage. Therefore, no parole evidence is needed or allowed.

Unambiguous lack of UIM pedestrian coverage in the Policy when the insured is not a motorist. In the present case, it is undisputed that the Policy, clearly and unequivocally, without any ambiguity, states that insureds are covered only when they are “occupying an automobile.” See Facts, above, paras. 17-18. The term “occupying” an automobile is clearly and without ambiguity defined as “being in or on an automobile” or “ being engaged in the immediate acts of entering, boarding or alighting from an automobile.” See Facts, above, paragraph 18.

In the present case, it is undisputed, that Youngblood was a pedestrian at the time of the Accident at issue, and was not in or on an automobile, nor in the immediate act of entering, boarding or alighting from an automobile. See Facts, above, para. 1.

Because it is undisputed that the appellant was a pedestrian, and because it is undisputed that the insurance Policy at issue does not cover pedestrians, there is no UIM coverage under the Policy and Auto Owners was entitled to the summary judgment granted by the trial court.

The Policy, in clear, simple language, states that coverage is only extended to pedestrians, if the named insured is an individual, not a corporation or other legal entity. Facts, above, para. 23. The Policy was a business policy issued to Youngblood Home Improvement, Inc., not to an individual. Facts, above, para. 24. There is no ambiguity which would require parole evidence for clarification.

POINT IV

ESTOPPEL SHOULD NOT BE EMPLOYED TO CREATE COVERAGE WHERE NONE EXISTED, WHICH COVERAGE THE INSURER DID NOT INTEND, EXPECT OR PROVIDE FOR.

Admittedly there is a split in authority among the state courts concerning whether estoppel can create coverage where none was intended or expected. An ALR report, 1 A.L.R.3d 1139, which includes cases as recent as 2004 (See cases at 1 A.L.R.3d 1139, para. 3) states:

While waiver and estoppel have been held applicable to nearly every area in which an insurer may deny liability, the courts of most jurisdictions agree that these concepts are not available to broaden the coverage of a policy so as to protect the insured against risks not included therein or expressly excluded therefrom.

Id. at § 2. (Emphasis added). The report continued:

It is a rule of general application in most jurisdictions that the doctrines of waiver and estoppel are not available to bring within the coverage of an insurance policy risks not covered by its terms, or expressly excluded therefrom.

Id. at § 3. (Emphasis added). The report does admit that, “The contrary view, however, is represented in the decisions from some jurisdictions, . . .” *Id.* at § 2.

Utah cases. This honorable Court has not decided the precise issue here.

However, in *Alf v. State Farm Fire and Cas. Co.*, 850 P. 2d. 1272 (Utah. 1993), this Court was faced with a very similar argument that an insured had certain reasonable expectations with regard to an insurance policy, which expectations were not included in the policy language itself. This court stated that it must enforce an unambiguous insurance contract, and “In general, a court may not rewrite an insurance contract for the parties if the language is clear and unambiguous.” *Id.* at 1275, quoted also in *Utah Farm Bureau Ins. Co. v. Crook*, 1999 UT. 47, P6.

In *Perkins v. Great-West Life Assurance Company, et al*, 814 P.2d 1125 (Utah App. 1991), a different panel of the court of appeals from the panel deciding this case below, faced an argument that is almost identical to the argument of the Appellant in the case at bar, that is, as a result of equitable estoppel, the plaintiff should be able to obtain coverage for which he had never paid a premium, and which was never intended or expected by the insurer, and was not provided in the insurance contract. That panel made quick work of that argument by finding that not only Utah, but the great majority of states

will not allow insurance coverage to be increased or expanded beyond that which appears in the policy of insurance, through the doctrine of estoppel. The court stated:

“The great majority of states dealing with the doctrine of estoppel have held that it cannot be used to bring risks which were not covered by the terms of the policy within coverage of the policy. See e.g., *Farmers Ins. Co. v. Zumsteim*, 138 Ariz. 469, 675 P.2d 729 (Ariz. App. 1983); *Topeka Tent and Awning Co. v. Glen Falls Ins. Co.*, 13 Kan. App. 2d 553, 774 P.2d 984 (1989); *Boyer Metal Fab. Inc. v. Maryland Casualty Co.*, 90 Or. App. 103, 750 P.2d 1195, review denied, 305 Or 672, 757 P.2d 422 (1988); *St. Paul Fire and Maurine Ins. Co. v. Albany County Dis. No. 1*, 763 P.2d 1255 (Wyo. 1988).

Id. at 1131 (Emphasis added).

The general law of estoppel also demonstrates the lack of applicability thereof to facts such as those asserted by Youngblood. For example, in *Ravarino v. Price*, 260 P.2d 570 (Utah 1953), quoted with approval by this Court as recently as 1999 in *Numley v. Westates Casing Servs. Inc.*, 1999 UT 100, this Court declared that the doctrine of equitable estoppel only applies where the alleged representations are as to past or present, not future facts. For example, the court stated, “generally, the doctrine of equitable estoppel is applicable only when a misrepresentation is made as to past or present facts; . . .” *Id.* at 557 (Emphasis added). In the present case, the plaintiff asserts that an independent agent made statements which might, at best, apply in the future. See Facts, above, paras. 7-12.

Representations as to the future has application, but a narrow application not applicable to the facts in the case. The quote from *Ravarino*, in the immediately preceding paragraph, goes on to state, “. . . [A]n exception is recognized when a

misrepresentation as to the future operates as an abandonment of an existing right of the party making the misrepresentation.” *Ravarino*, above, at 575. The court then analyzed several cases finding:

“the common element in these cases is that the promise as to future conduct constitutes a manifestation that the promisor will abandon an existing right which he possesses. It is apparent that an attempt to apply this doctrine to the oral promise of Mr. Price . . . is factually impossible unless the phrase is to be distorted beyond meaning.”

Id. at 575. A legal waiver under Utah law, which is necessary for estoppel arising out of representations as to future facts, is very difficult to establish. A waiver must be a very direct, clear expression that a party is aware of a known right and specifically intends to waive that right. In *US Realty 86 Assocs. v. Security Inv. Ltd.*, 2002 UT. 14, this court stated:

“The legal standard necessary to find waiver is clear. ‘Waiver is the intentional relinquishment of a known right. To constitute waiver, there must be an existing right, benefit or advantage, a knowledge of its existence, and an intention to relinquish it.’ *Soter’s, Inc. v. Deseret Fed. Savs. & Loan Ass’n*, 857 P.2d 935, 942 (Utah 1993) quoting *Phoenix, Inc. v. Health*, 90 Utah 187, 194, 61 P.2d 308, 211-12 (1936))”.

Id. at P16. This Court went on to indicate that courts must be “especially careful” with regard to questions of waiver “especially where such waiver is merely implied.” *Id.*

Cases from other jurisdictions. Besides the jurisdictions and cases cited by the Court of Appeals in *Perkins*, quoted above, many other cases hold that estoppel cannot be used to expand coverage in a written policy. The Court of Appeals in the decision below, *Youngblood v. Auto Owners*, 2005 UT App 154, P 16, (See Addendum to this brief) cited three cases on point which hold that estoppel may not be used to expand an insurance

policy's coverage to risks not covered by its terms or risks expressly excluded from coverage: *Nicholls v. Zurich Am. Ins. Group*, 244 F.Supp. 2d 1144, 1157 (D. Colo. 2003); *Harasyn v. St. Paul Guardian Ins. Co.* 75 S.W.3d 696, 702 (Ark. 2002); and *Quillian v. Equitable Life Assurance Soc'y*, 6 S.E.2d 108, 112 (Ga. Ct. App. 1939). In addition to these cases, the following are illustrative.

In *Royal Maccabees Life Insurance Company v. James*, 146 S.W. 3d 340 (Tex. Oct. 2004), the court stated:

Under Texas law, it has long been established that waiver and estoppel cannot be used to create insurance coverage . . . waiver and estoppel cannot enlarge the risks covered by a policy and cannot be used to create a new and different contract with respect to the risk covered and the insurance extended.

Id. at 350, citing to prior precedent. The court used principles of contract interpretation to resolve the case, similar to the approach under Point III, above, resolving ambiguities in favor of the insured.

In *St. Paul Fire & Marine Ins. Co. v. Albany Co. Sch. Dist. No. 1*, 763 P.2d 1255 (Wyo. 1988), the insured claimed “an alleged misrepresentation of policy coverage by Motis,” who “had arranged the purchases and renewals of the policies . . . “ *Id.* at 1257. The court cited precedent that, “It has been broadly stated that the doctrines of waiver and estoppel cannot be used to extend coverage of an insurance policy or create a primary liability . . . Under no conditions can the coverage or restrictions on coverage be extended by waiver or estoppel.” *Id.* at 1261. The court cited other precedents, concluding that, “[T]he coverage afforded by the policy cannot be expanded by estoppel or waiver on the basis of the representations of Motis.” *Id.* at 1262.

In *Allied Mutual Ins. Co. v. Moeder*, 48 P.3d 1 (Kan. App. 2002), the court determined that policy language was not ambiguous which stated there would be no coverage unless all of the insured's vehicles were insured by the insurer. The insurer discovered that the plaintiff owned a large Kenworth truck not insured with them, and denied coverage. The plaintiff then alleged that his agent "told him it was not capable on providing such coverage [for the Kenworth truck]," therefore the insurer should be estopped from asserting lack of coverage for his not insuring the Kenworth with the insurer. In spite of such pre-policy representations, the court stated, "Kansas cases hold that waiver and estoppel cannot be used to expand coverage of an insurance policy where the policy unambiguously excludes coverage of the insured's claim [citations omitted]." *Id.* at 5. The court continued, "Since the insurance policy unambiguously excludes coverage of the claim made in this case, Moeder [the insured] may not invoke the principles of waiver and estoppel." *Id.* at 5.

In *Wysong and Miles Co. v. Employers of Wausau, et al*, 4 F. Supp. 2d 421 (M.D.N.C. 1998), the court stated the following, applying North Carolina law, "Assuming that Wysong could establish all of the elements of an estoppel claim, this Court should not rewrite Wysong's policies to extend coverage to risks that the policies did not cover by their terms." *Id.* at 432. The court held that the rule "prevents courts from rewriting insurance policies and thereby obligating insurance companies to pay for losses for which they did not charge a premium. [citation omitted]." *Id.* at 432.

In *Western Casualty and Surety Co. v. Sliter*, 555 F.Supp. 269 (E.D. Mich. 1983), concerning pre-purchase representations, the court stated:

“The law in Michigan is that an insurer ‘is not liable on erroneous representations by an agent as to the extent of coverage of a plainly worded policy, so as to entitle the insured to equitable relief, even though the latter failed to read the instrument.’ The policy should not and will not be reformed by this Court to provide for coverage not agreed to by the insurer.”

Id. at 371.

In *Parris & Son, Inc. v. Campbell*, 196 S.E.2d 334 (Ga. 1973), concerning representations as to the extent of coverage prior to and after the purchase of the insurance, the court found such representation to be opinion, compared to the language of the policy itself. The court stated, “Nor does the expression of an opinion as to coverage work an estoppel -- even against the agent who voiced it, or against his principal,” citing prior Georgia law. *Id.* at 338. See *Hartford*, the 1992 Georgia case mentioned under Point V, below.

In *Reinsurance Assoc. of Minn. v. Timmer*, 641 N.W.2d 302 (Minn. 2002), facing pre-policy representations by the insurer’s agent, the court stated, “RAM [the insurer] correctly notes that estoppel cannot be used to enlarge the coverage of an insurance policy. See *Shannon v. Great Am. Ins. Co.* 276 N.W.2d 77, 78 (Minn. 1979)”. *Id.* at 310-311.

In *Zarella v. Minn. Mut. Life Ins. Co.* 824 A.2d 1249 (R.I. 2003), the insured complained of impressions left by the sales agent that the total cash value of a policy was contingent on the annual dividend and if the policy is surrendered between anniversary dates the insured will receive a pro rata share of the annual dividend. After discussing the elements of estoppel, the court stated:

The court, however, may not invoke the doctrine of equitable estoppel to expand the scope of coverage of an insurance policy. [citation omitted]. Additionally, quasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract. See *JN Exploration & Production v. Western Gas Resources, Inc.* 153 F.3d 906, 910 (8th Cir. 1998) (interpreting North Dakota law); *Hodgkins v. New England Telephone Co.* 82 F.3d 1226, 1232 (1st Cir. 1996) (interpreting Maine law); *Cloverdale Equipment Co. v. Simon Aerials, Inc.*, 869 F.2d 934, 939 (6th Cir. 1989) (interpreting Michigan law); *Hershey Foods Corp. v. Ralph Chapek, Inc.* 828 F. 2d 989, 999 (3d Cir. 1987) (interpreting Pennsylvania law).”

Id. at 1260 (Emphasis added).

See also *United Capitol Ins. Co. v. Kapiloff*, 155 P.3d 488, 497 (4th Cir. 1988) (applying Maryland law that “waiver or estoppel may occur only when it does not create new coverage; extension of coverage may only be created by a new contract.”); *Pace v. Fin. Sec. Life of Miss.*, 608 So. 2d 1135, 1149 (Miss. 1992) (the doctrines of waiver and estoppel may not operate to create coverage or expand existing coverage to risks which, by the terms of the policy, are expressly excluded.)

In addition, see the cases under Point V, below denying estoppel for the reason that the insured has a duty to read the policy.

Policy reasons for the majority rule. There are several policy reasons why other jurisdictions have, and this court should, hold that estoppel cannot expand coverage beyond the terms of the policy and the risks expected and intended to be covered. Those policy reasons include the following.

Contracts are agreements among parties which the courts should not re-write for one of the parties, through estoppel. The unambiguous provisions of a contract should not

be altered by parole evidence. See Point III, above, and this Court's quote from *Alf*, above, that the courts, "may not rewrite an insurance contract." *Alf* at 1275.

Allegations after an accident, to try to recover monies from a deep pocket such as an insurance company, can be too easily made, and disproved with too much difficulty. A fact finder could be sympathetic to an injured party and lean in that party's favor, in the face of denials by the sale's agent. A ruling allowing such estoppel, could encourage the easy act of asserting estoppel to create new coverage by merely alleging representations of non-existent coverage.

Where there is a writing that should control. A writing is far more reliable than the oral allegations of a person seeking to gain money by asserting coverage not in the existing written policy.

When the insured has been provided a copy of the policy, she has the means to determine the truth rather than allegedly relying on supposed oral statements which may not have existed or may have been misconstrued.

Representations of future facts would only be opinion of what may occur and should not be reasonably relied upon. See this Court's *Numley* case, above.

No premium has been paid for the expanded coverage and the risks of loss not taken into account calculated. To obtain insurance coverage, a party pays a specific premium for a specific risk or coverage. Premiums are set by actuaries to cover expected claims by all insureds based upon expected statistics. If estoppel could create coverage not expected or intended by the insurer, no premium was paid, and therefore the risk is not covered by paid-in funds. The actuarial applecart is overturned. That would certainly

be the case if more people were encouraged to assert coverage for risks not in the insurance policy if estoppel is held to create unexpected coverage.

More than the lack of one premium, the unexpected risk itself could be vastly greater than any corresponding premium. The premium may be small in comparison to the insurance coverage sought by way of estoppel. The liability to an insurer could be in the hundreds of thousands or even the millions of dollars if parties could assert estoppel to obtain unexpected and unintended coverage. The actuarial applecart is really upset.

One might argue that an insurance company should be able to shoulder additional, unexpected huge risks, however even if that may be the case with some very solvent insurers, covering large, unexpected risks might cause the demise of other insurers. Insurers and their actuaries should be able to assess their potential risks, and rely on those assessments without having them turned upside down by unexpected and unintended claims through estoppel.

As is the case in the present matter, an insurer should not suffer where an independent contracting sales agent is alleged to have made pre-contract representations inconsistent with the policy written by the insurer. See Point II, above. An insurer should only be liable for its own fault, and not that of an independent insurance sales agency, even if pre-policy representations could be actionable.

POINT V

ESTOPPEL SHOULD NOT APPLY WHERE THE INSURED RECEIVES A COPY OF THE POLICY AND HAS OPPORTUNITY TO READ IT AND DETERMINE THE COVERAGES THEREIN.

In *Perkins*, above, the Court of Appeals stated that representations are not reasonably relied upon when one has the means to ascertain the actual content of the insurance policy, or the actual truth. The court stated, quoting from two prior cases from this Court:

“‘A party claiming an estoppel cannot rely on representations or acts if they are contrary to his knowledge of the truth or if he had the means by which with reasonable diligence he could ascertain the truth.’ *Larson v. Wycoff Co.*, 624 P.2d 1151, 1155 (Utah 1981) (citing *Coombs v. Ouzounian*, 24 Utah 2d 39, 465 P.2d 356 (1970)).

Id. at 1130. (Emphasis added). The court continued by stating that, “Mrs. Perkins had the means by which she could have ascertained the contents of Great-West’s policy.” *Id.* The court then stated that, “given Mrs. Perkins’ failure to learn the terms of her insurance policy, her reliance thereon [or alleged representations] was not reasonable.” *Id.* (Emphasis added).

Auto Owners must admit that this Court, in a three to two split decision, has applied estoppel to insurance contracts, but only in a very narrow context, where the insurance company failed or refused to provide a copy of the policy to its insured: the insured could not read and verify coverage. In *General Motors Acceptance Corp. v. Martinez*, 668 P.2d 498 (Utah 1983) (hereafter *Martinez*), the majority decision held, “that an insurance company is estopped from relying upon an exclusion in a policy if the company has failed to deliver the policy or certificate of insurance to the insured, or any other document stating the exclusion.” *Id.* at 501. The above language of the majority seems to state that if there were any possibility that the insured could see the exclusion or

a representation of the exclusion, not even the policy, such as “a certificate of insurance or any other document stating the exclusion” the majority would not even apply estoppel in such case.

The dissent in *Martinez*, by two justices would not even apply estoppel under the facts of that case, stating, “The majority’s decision injects a new provision into insurance contracts, a provision whose effects are almost impossible to gauge. . . .” *Id.* at 502-503. The dissent continued, “The potential effects of the majority’s decision are even more far-reaching . . . the majority’s holding suggests that an insured who can convince a jury that he had not received a copy of the policy might enforce this policy without regard to its provisions . . .” *Id.* at 503.

Cases from other jurisdiction declare that an insured has an obligation to read the policy of insurance. As an example, in *Hunton v. Guardian Life Ins. Co. of America* 243 F.Supp.2d 686 (S.D. Texas 2001), the plaintiff alleged he bought a life policy which would only require premium payments for a fixed number of years, and the sales agent represented that the policy would so provide. Although the insured claimed misrepresentation, the court held that under Texas law, “an insured has a duty to read the insurance policy and is charged with knowledge of its provisions.” *Id.* at 706. The court held that, “Friedman’s [the sales agent’s] oral representations cannot as a matter of law override the written contract terms.” *Id.* at 707. Even with respect to a claim of fraudulent inducement, the court held, “Nevertheless, even a cursory review of the Policy and Application informs Plaintiffs that Friedman’s oral representations did not accurately reflect the written Policy. “ *Id.* at 699. See also *Rutz v. Government Employees Ins. Co.*

4 S.W.3d 838, 841 (Tex. App 1999) (An insured has a duty to read the policy and failing to do so, is charged with knowledge of the policy terms and conditions).

In *Hartford Ins. Co. of the Southeast v Franklin*, 424 S.E. 2d 803 (Ga. 1992) the court considered pre-policy representations as to what the extent of coverage would be. The court stated, citing prior precedent, “We declined to apply the doctrine of estoppel because the insured was under a duty to read and examine the policy and to reject it as unacceptable or renegotiate it if the coverage the insured sought was not provided in the policy.” *Id.* at 805.

See also *Liberty Mutual Ins. Co. v. Ben Lewis Plumbing, Heating & Air Conditioning, Inc.* 710 A.2d 338 (Md. 1998) (recognizing a duty to read the policy of insurance in the face of misrepresentation and estoppel claims); *Sophie v. Lincoln National Life Ins. Co.* F. Supp.Lexis 14861 (N.D. Ill. 1997) (The plaintiffs had the means to ascertain the true facts as to the extent of any coverage where names of phone numbers of persons existed, to call regarding extent of coverage).

Even where courts recognize estoppel in relation to insurance policies, the courts hold that there is not reasonable reliance justifying estoppel where the insured has but does not read the policy. See, e.g. *Leibman v. Prudential Financial, Inc.* F. Supp., 20 Lexis 21048 (E.D. Pa. 2004) (Applying New Jersey law which recognized equitable estoppel regarding pre-policy representations, however, “where policy terms are clearly worded and conspicuously displayed, an insured may not avoid policy terms based on her failure to read or understand the policy.”); *Redmond v. State Farm Ins. Co.*, 728 A.2d 1202 (D.C. Ct. App. 1999) (Notwithstanding representation made by State Farm’s agent,

the doctrines of equitable estoppel and reformation do not apply where the language of the policy is clear);

In the present case, the insured received a copy of the policy. Facts, above, para. 20. The concerns of the dissent in *Martinez*, above, remain under the facts of this case, that is, enforcement of the policy without regard to its provisions. And the concerns of the majority in *Martinez* disappear. Youngblood had the opportunity to read the policy. It was available for him to determine the extent of coverage. He was even warned, in bold capital letters, to read the Policy carefully. Facts, above, para. 21. The policy language concerning UIM coverage applying only if he were a motorist, is clear and unambiguous. See Facts above, paras. 17-18. If any provisions were not clear, he could have sought clarification. As a result, estoppel should not be applied to the facts at bar to allow coverage never intended or expected or accounted for by the insured.

POINT VI

THE HARR CASE RELIED UPON BY THE COURT OF APPEALS IS GREATLY DISTINGUISHABLE FROM THE CASE AT BAR

In its decision in this case, the panel of the Court of Appeals, in the face of cases to the contrary stated, “We are particularly persuaded by the reasoning of *Harr v. Allstate Insurance Co.* 54 N.J. 287, 255 A. 2d 208 (N.J. 1969) . . . “*Youngblood*, 2005 UT App 154, P18. However, several very significant differences make one believe that even the New Jersey court in *Harr* would rule differently under the present facts.

First, the person making the representations concerning coverage in *Harr* was an employee/agent of the defendant insurer not an independent contractor as is the case at

bar (see Facts, above, para. 7). The court in *Harr* stated: “It is our understanding that defendant does not write insurance through so-called ‘independent’ agents but rather does business only by its own employees. Consequently we assume Meinsohn [the agent] was defendant’s employee.” *Harr* at 211, n1. Also, the court recognized, and apparently felt it important that, “it was stipulated” that Meinsohn was defendant’s agent. *Id.* at 211. For the reasons why it should make a significant difference whether the agent was an independent contractor or an employee, see Point II, above.

Second, in *Harr*, the day before the plaintiff was going on vacation, plaintiff called the agent to specifically enquire if the merchandise in his basement could be covered for up to \$15,000. *Id.* at 212. The agent said he would have to check and would call *Harr* back. *Id.* at 212. The agent called back saying, “Mr. Harr, we can cover you for \$7,500 and you are *fully covered*. Go to Florida and have a good time.” *Id.* at 212. (Emphasis in the original). The actions of the agent in *Harr* were in the nature of a binder. The trip was in the middle of January and the loss occurred in February. *Id.* at 211. Insurance agents can bind their principles. It is not unusual for a person to call an agent and ask for a binder, for example, when a person buys a new car. The case at bar is not similar to a binder-type representation as in *Harr*.

Third, the plaintiff in *Harr* did not receive the contract regarding the new coverage: “Harr did not receive the contract . . . before he left for Florida, but testified he took Meinsohn’s word that he was fully covered.” *Id.* at 212. He read it later, but it is unclear whether it arrived before the loss: “He was not asked if he read it before or after

he learned of the water damage.” *Id.* at 212 and 221. In the present case, Mr. Youngblood received the policy well before the loss. Facts, above, para. 20.

Fourth, the 1963 *Harr* policy was “confusing and abstruse.” *Id.* at 212. For a lengthy discussion of the confusion see pages 212-213. The policy at issue is not confusing but clear and simply worded. See Facts, above, paras. 17-18, 23.

Fifth, concerning “the element of reliance,” the New Jersey court held that Mr. Harr relied on the statement of the agent that he was fully covered, which “demonstrates sufficient reliance at least until the written contract reached him and he had a reasonable opportunity to examine it.” *Id.* at 220. (Emphasis added). That language implies that even the New Jersey court, upon which the Court of Appeals relied in the case at bar, may not allow estoppel if the insured has received a copy of the policy and has had opportunity to read it. The *Harr* court found the policy so confusing that even if Mr. Harr had received it prior to the loss, he was excused in that regard; “he will only be held to that to which he would be alerted thereby [by a review of the policy].” *Id.* at 221.

See a later New Jersey case, *Martinez v John Hancock Mut. Life Ins. Co.*, 367 A.2d 904 (N.J. 1976) which notes the general rule that insureds are charged with knowledge of their contracts, with some exceptions.

In the present case, because the sales agent was an independent contractor, the circumstances were not similar to a binder, Youngblood had received a copy of the Policy before the loss, the language of the policy was not obscure and abstruse, and there was no reasonable reliance, this court should reverse the Court of Appeals and affirm the Summary Judgments granted by the trial court.

Although *Harr* is clearly distinguishable, it is admitted, that the court in *Harr* did state that equitable estoppel is available under proper circumstances regarding coverage, as did the other cases cited by the Court of Appeals panel in this case. However, this is not one of those proper cases where estoppel should be allow even under those other states' cases.

POINT VII

PLAINTIFF DID NOT REASONABLY RELY ON THE STATEMENTS OF THE COTTONWOOD INSURANCE AGENCY'S SALES PERSON.

One of the elements of estoppel, even where it is applied to insurance coverage, is reasonable reliance. Even if this Court would allow estoppel to create non-existent coverage, Youngblood did not reasonably rely on the statements of the Cottonwood Insurance agent for the following reasons: (1) Youngblood did not allege any such representations and reliance thereon in his Amended Complaint, estoppel should not apply under such circumstances, (2) factually Youngblood felt the examples regarding him as a pedestrian or sitting at his desk were lame, (3) he questionably declared he relied thereon in his deposition when specifically asked if he did, stating he wanted his cars covered; (4) the examples did not make sense that underinsured "motorist" coverage UIM would exist for the examples given by the Cottonwood agent such as sitting at his desk, (5) this Court should not consider reliance on oral examples of an independent agent reasonable when Youngblood had the ability to determine precisely what the coverage was by reading the Policy which he was supplied, (6) the Policy cover sheet warned Youngblood to read the Policy carefully and rely thereon because it set out the

agreement between insured and insurer. Each of the above will be discussed under separate heading below.

(1) Youngblood did not allege any such representations or reliance thereon in his Amended Complaint. Estoppel should not apply under such circumstances. See Point I, above.

(2) Factually, Youngblood felt the examples regarding him as a pedestrian or sitting at his desk were lame. In his deposition, Youngblood stated that the examples of the Cottonwood agent concerning pedestrians and sitting at his desk were lame, thus implying he did not give them credence, did not rely on them.

To result in estoppel, reliance must be reasonable. It is not reasonable to rely on lame examples.

A failure to demonstrate that the independent agent promised specific coverage as opposed to giving some lame examples, should not justify reliance or estoppel.

(3) Youngblood questionably declared that he relied thereon in his deposition when specifically asked if he did, stating he wanted his cars covered;

Youngblood was specifically asked if he relied on such lame examples. He did say, “Well, yes”, but continued that he really wanted his good cars covered. Facts, above, para. 12. Such questionable reliance, is not reasonable reliance, is not justifiable reliance.

(4) The examples did not make sense that underinsured motorist coverage would exist for the examples given by the Cottonwood agent such as sitting at his desk.

Reliance must be reasonable. It is unreasonable that underinsured “motorist” coverage

would exist or be an important protection for the plaintiff sitting at his desk. (Facts, above, para. 10). Any reliance on such examples, recognized by the Youngblood as lame, is unreasonable.

(5) This Court should not consider reliance on oral examples of an independent agent reasonable to provide non-existent coverage, when Youngblood had the ability to determine precisely what the coverage was by reading the Policy which he was supplied. The agent involved in the sale of the insurance was with Cottonwood Insurance Agency. Facts, above, para. 7. An insured should not be found to have reasonably relied upon an independent agent's questionable, lame examples, to bind an insurer, where the Policy is sent to the insured, and he/she has opportunity to read it. The Insurer's written expression of coverage, should be reasonably relied upon, not some example by an independent agent.

(6) the Policy cover sheet warned the Youngblood to read the Policy carefully and rely thereon because it set out the agreement between insured and insurer. The cover to the Policy warned Youngblood in capitalized, bold letters, to read the policy carefully because it contained the rights and obligations of the parties. Facts, above, para. 21. The language is clear and simple. Youngblood is warned thereby that even the brief outline in the cover sheet, which came from the insurer itself as opposed to an independent sales' agent, should not be relied upon, because only the Policy contains the rights and obligations of the parties. Facts, above para. 21. In the face of such a warning, reliance on the lame examples of an independent sales agent should be unreasonable as a matter of law.

POINT VIII

EVEN WHERE THE PRE-CONTRACT REPRESENTATIONS ARE IN WRITING, COURTS OFTEN REFUSE TO APPLY ESTOPPEL TO EXPANCD COVERAGE; BUT IF THIS COURT SHOULD RECOGNIZE ESTOPPEL TO EXPAND COVERAGE, IT SHOULD ONLY BE ALLOW UNDER RELIABLE CIRCUMSTANCES

In *Couch on Insurance* 3d (2005), estoppel is declared not well recognized even where written promotional materials contain representations:

“With the exception of group insurance policies, . . . a prospectus, pamphlet, schedule, or illustration which is not attached or referred to in the policy does not generally form a part of the contract, and is not binding on the insurer. However, the facts may be such that a different conclusions is warranted. For example, knowingly false statements and in a pamphlet or advertisement have rendered the company responsible for such statements liable to one who relied upon them.”

Id. at 18:19. *Couch* continues:

“There is greater justification for regarding the prospectus, pamphlet, schedule, or illustration as part of the contract where it is referred to in the policy or attached to it.

Id. at 18:19. *Couch* recognizes that there are cases to the contrary.

In the present case, the alleged statements by the independent agent were, at the very best, in the nature of an illustration, and should not result in estoppel.

Although this court should not allow estoppel to expand coverage beyond that which is expected by the insurer, if the court does, it should only do so under very limited circumstances which by themselves have indicia of reliability. Because it is so easy for a plaintiff, who is seeking recovery, to assert that a sales person made representations which would allow the plaintiff to recover large amounts of money for risks not covered

in a policy, if estoppel is allow to expand coverage beyond that which is expected in the policy, it should be allow only under very narrow circumstances.

With respect to estoppel against a governmental entity this court, for example, provides that no such estoppel will lie unless the representations are established in writing. See, *Celebrity Club, Inc. v Utah Liquor Control Commission*, 602 P.2d 689 (Utah 1979); *Anderson v. Public Service Commission*, 839 P.2d 822 (Utah 1992).

Only if this Court is inclined to allow estoppel to expand coverage, such a requirement as a written representation should be adopted in the case of insurance as in the case of governmental entities, to ensure reliability in the face of easy allegations of oral statements of coverage which a plaintiff hopes to expand.

Some state courts will allow estoppel to expand coverage if the pre-policy representations were made in writing authorized by the insurer. For example, *Marlin v. Wetzel County Board of Education*, 569 S.E.2d 462 (W.Va. 2002) (misrepresentations in writing through a certificate of insurance could result in estoppel to deny lack of coverage); *United Pacific Ins. Co. v. Meyer*, 305 F. 2d 107 (9th Cir. 1962) (Where the insurer issued a written certificate of insurance which reasonably led the insured to believe coverage existed, insurer was estopped to deny coverage); *Farmers Mutual Auto. Ins. Co. v. Bechard* 122 N.W. 2d 86 (S.D. 1963) (misrepresentations in writing resulted in estoppel).

If this court should recognize estoppel to expand coverage, which Auto-owners declares it should not do, at the very least, it should only be applied where the alleged representations are in writing, directly from the insurer as opposed to an independent

contractor, and clearly misrepresent coverage not in the policy. Generalities should not suffice, and misrepresentations must be specific as to specific coverage. Also some courts require that any misrepresentations must be knowingly false, akin to fraud, or there must be a higher than normal standard of proof. Such safeguards should be adopted if estoppel is recognized to expand coverage.

CONCLUSION

The Summary Judgment granted by the trial court should be affirmed in favor of Auto-owners, and the decision of the Court of Appeals reversed.

DATED this 3rd day of August, 2005.

KIRTON & McCONKIE

A handwritten signature in cursive script, appearing to read "R. Wallace", is written over a horizontal line.

ROBERT R. WALLACE

Attorney for Defendant – Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2005, I caused two true and correct copies of the foregoing BRIEF OF DEFENDANT– PETITIONER, AUTO-OWNERS INSURANCE COMPANY to be mailed to the following:

Peter C. Collins
623 East 2100 South
Salt Lake City, Utah 84106

Pamela Alexander

ADDENDUM

*2005 UT App 154, *; 111 P.3d 829, **;
522 Utah Adv. Rep. 27; 2005 Utah App. LEXIS 156, ****

Robert L. Youngblood II, Plaintiff and Appellant, v. Auto-Owners Insurance Company, a corporation, Defendant and Appellee.

Case No. 20040184-CA

COURT OF APPEALS OF UTAH

2005 UT App 154; 111 P.3d 829; 522 Utah Adv. Rep. 27; 2005 Utah App. LEXIS 156

March 31, 2005, Filed

PRIOR HISTORY: [***1] Third District, Salt Lake Department. The Honorable William B. Bohling.

CASE SUMMARY


PROCEDURAL POSTURE: Appellant insured challenged a decision of the Third District, Salt Lake Department (Utah), which granted summary judgment in favor of appellee insurer in connection with the insured's claims of equitable estoppel and bad faith.


OVERVIEW: The insured purchased an automobile insurance policy from the insurer. The insured was struck by an automobile while walking in a parking lot. He sought underinsured motorist coverage from the insurer in this action. The trial court ruled in the insurer's favor, but the court reversed. The court adopted the view that estoppel could not generally be used to extend the terms of an insurance contract, but estoppel could bar an insurer's defense of noncoverage in the limited circumstances when an insurance agent made material misrepresentations to a prospective insured before or at the inception of the contract and the prospective insured reasonably relied upon such misrepresentations in purchasing the policy. In this case, the insured testified that an agent of the insurer misrepresented the scope of the policy before it was purchased. Based on this, the insured showed a disputed issue of fact as to whether material misrepresentations were made to him by the agent before he entered the contract. There was also an issue as to whether the insured reasonably relied on the representations made. A remand was necessary.

OUTCOME: The court reversed and remanded.

CORE TERMS: coverage, insured, misrepresentation, insurer, estoppel, reasonably relied, estopped, inception, insurance contract, insurance policy, purchasing, summary judgment, insurance agent, denying coverage, equitable estoppel, doctrine of estoppel, purchaser, insurance coverage, misrepresented, deposition testimony, misrepresents, pedestrian, prospective purchaser, expressly excluded, estopped to deny, written policy, life insurance, detriment, broaden, granting summary judgment


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[Civil Procedure](#) > [Summary Judgment](#) > [Standards of Review](#) 


[Civil Procedure](#) > [Summary Judgment](#) > [Summary Judgment Standard](#) 


HN1 ✚ Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). When reviewing a grant of summary judgment, the appellate court


views all facts and reasonable inferences drawn therefrom in the light most favorable to the nonmoving party and reviews the trial court's conclusions of law for correctness. [More Like This Headnote](#)


[Contracts Law](#) > [Contract Conditions & Provisions](#) > [Equitable Estoppel](#) 


HN2  Utah courts define equitable estoppel as conduct by one party which leads another party, in reliance thereon, to adopt a course of action resulting in detriment or damage if the first party is permitted to repudiate his conduct. [More Like This Headnote](#)


[Contracts Law](#) > [Defenses](#) > [Fraud & Misrepresentation](#) 


HN3  Utah courts have held that for a claim of misrepresentation to modify a contract, it is not essential that the party making the representations knew that they were false, if they were in fact false and material, and the other party had a right to rely thereon, and did so. Thus, to escape the language of a contract, there must be a false and material statement made before the contract is consummated and the plaintiff must have reasonably relied upon such statement. [More Like This Headnote](#)


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[Insurance Law](#) > [Claims & Contracts](#) > [Contract Formation](#) 


HN4  Other jurisdictions hold that an insurer may be estopped from asserting particular policy provisions, even though the effect may be to bring within the coverage of the policy risks not covered by its terms, when an insurance agent misrepresents the coverage of the insurance contract and where the insured reasonably relies on the misrepresentation when purchasing the insurance. The Court of Appeals of Utah is persuaded by this view. [More Like This Headnote](#)


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[Insurance Law](#) > [Claims & Contracts](#) > [Contract Formation](#) 


HN5  Equitable estoppel is available to broaden insurance coverage and estoppel may bar the insurance company's defense of noncoverage where the insurance company agent made misrepresentations before the contract was executed and the purchaser reasonably relied on those misrepresentations in purchasing the policy. [More Like This Headnote](#)


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HN6  Where an insurer or its agent misrepresents, even though innocently, the coverage of an insurance contract, or the exclusions therefrom, to an insured before or at the inception of the contract, and the insured reasonably relies thereupon to his ultimate detriment, the insurer is estopped to deny coverage after a loss on a risk or from a peril actually not covered by the terms of the policy. The proposition is one of elementary and simple justice and by justifiably relying on the insurer's superior knowledge, the insured has been prevented from procuring the desired coverage elsewhere. To reject this approach because a new contract is thereby made for the parties would be an unfortunate triumph of form over substance. [More Like This Headnote](#)


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HN7  Estoppel may be used to expand the terms of a policy when the agent misrepresents the coverage of the insurance contract before or at its inception and where the insured reasonably relies. While estoppel cannot be invoked to create coverage clearly excluded by a written contract of insurance, the concept may be utilized against an insurer when its conduct has been such as to induce action in


reliance on it. [More Like This Headnote](#)


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HN8  An insurer may be estopped from denying coverage when the insurer's agent makes oral misrepresentations regarding the coverage provided by the policy and the purchaser reasonably relies on such misrepresentations. It is true that courts in Indiana and elsewhere, realizing that many people do not read their insurance policies and, perhaps even more important, do not do so because the policies are unreadable, have held that the agent's oral representations at the time of sale can override the written terms of the policy. If the agent insists to the prospective purchaser that the policy will insure against a hazard that the prospective purchaser is particularly concerned about, and the hazard materializes, the company may be estopped to plead the terms of the policy because the strength of the agent's oral assurances lulled the prospective purchaser into not reading, or reading inattentively, dense and rebarbative policy language. [More Like This Headnote](#)


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HN9  The Court of Appeals of Utah adopts the view that estoppel may not generally be used to extend the terms of an insurance contract. However, estoppel may bar an insurer's defense of noncoverage in the limited circumstances when an insurance agent makes material misrepresentations to a prospective insured before or at the inception of the contract and the prospective insured reasonably relies upon such misrepresentations in purchasing the insurance. [More Like This Headnote](#)


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HN10  The second key requirement for equitable estoppel to apply to modify an insurance contract is reasonable reliance upon the precontract misrepresentations. Reasonable reliance must be considered with reference to the facts of each case, and is usually a question for the jury to determine. Although it is impossible to draw precise legal boundaries of when reliance is reasonable, the courts have given some direction. Generally, a plaintiff may justifiably rely on positive assertions of fact without independent investigation. It is only where, under the circumstances, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve as a warning that he is being deceived, that a plaintiff is required to make his own investigation. A plaintiff who fails to read a contract without fault on the part of the defendant generally is found not to have reasonably relied. Where there is nothing said or done which would be reasonably calculated to disarm a reasonably prudent person so that he would sign the contract without reading it and in the absence of some act or artifice in inducing the other part to refrain from reading the contract, relief from the fraud is often denied. [More Like This Headnote](#)

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[Insurance Law](#) > [Claims & Contracts](#) > [Contract Formation](#) 

HN11  Regarding estoppel and an insurance contract formation, the rule set forth is a narrow one and applies only in limited circumstances. The representations must be clear and material and must be made in an attempt to induce the potential insured to enter into the contract. The representations must lead the potential insured to feel as though he or she need not read the contract, and the representations must be of the type that a reasonable person would rely upon. [More Like This Headnote](#)

COUNSEL: Peter C. Collins, Salt Lake City, for Appellant.

Robert R. Wallace, Salt Lake City, for Appellee.

JUDGES: BILLINGS, Presiding Judge. WE CONCUR: Norman H. Jackson, Judge, Gregory K. Orme, Judge

OPINIONBY: Judith M. Billings

OPINION:

[830]** BILLINGS, Presiding Judge:

[*P1] Robert L. Youngblood II appeals the trial court's order granting summary judgment to Auto-Owners Insurance Company (Auto-Owners) on Youngblood's claims of equitable estoppel and bad faith. We reverse and remand.

BACKGROUND

[*P2] Youngblood, the president and sole owner of Youngblood Home Improvement, Inc., purchased an auto insurance policy (the Policy) from Auto-Owners for his business. The Policy contained coverage for certain specifically designated motor vehicles, and underinsured motorist (UIM) coverage if those vehicles were involved in an accident with an underinsured motorist. The Policy provided UIM coverage of \$ 300,000 per person.

[*P3] Youngblood never read the Policy, which provided that Auto-Owners "will pay compensatory damages [that the **[***2]** named insured is] legally entitled to recover . . . from the owner or operator of any underinsured automobile . . . for bodily injury [the named insured] sustains . . . when [the named insured is] a pedestrian."

[*P4] When Youngblood purchased the Policy, he spoke with an Auto-Owners insurance agent. According to Youngblood's deposition testimony, the agent made representations which Youngblood relied upon in purchasing **[**831]** the Policy. Specifically, Youngblood testified that the agent

gave me a scenario . . . probably just a scare tactic. He said . . . 'the reason you have [UIM and uninsured motorist coverage] is you have to protect your family.' And he said 'if you're walking down the street, you've got nothing if you . . . don't have underinsured and uninsured motorist and somebody runs you over. You could be sitting at your desk or walking down the street and if you don't have the coverage, you've got nothing.'

[*P5] Youngblood testified that the agent went on to tell him that "'the only thing I would recommend, other than [the UIM coverage] is to get some kind of wage protection . . . at the very least you should buy underinsured motorist and uninsured **[***3]** motorist because there are a lot of people out there . . . that don't carry insurance at all.'" Youngblood testified that he relied on these statements because the agents were "selling a lot of insurance and knew what they were doing." Finally, at the time of purchasing the Policy, Youngblood testified that no Auto-Owners agent told him that because the Policy was a corporate policy it would not cover Youngblood personally should he become the victim of a pedestrian accident.

[*P6] After purchasing the Policy, on December 30, 1997, Youngblood was walking across a parking lot toward a medical office when he was struck by an automobile driven by Rachel Cooksey. Cooksey had \$ 50,000 available in liability insurance. Youngblood settled with Cooksey for her policy limits, however, he alleges that hospital bills for his injuries sustained as a result of the accident exceed \$ 50,000.

[*P7] Prior to settling with Cooksey, Youngblood asked Auto-Owners to waive its subrogation rights to ensure that settlement would not jeopardize his entitlement to UIM benefits under the Policy. Auto-Owners agreed to do so and Youngblood executed a release and settlement agreement to Cooksey in exchange **[***4]** for the \$ 50,000 liability insurance. Youngblood sent Auto-Owners a copy of the release along with documents evidencing Youngblood's damages and a UIM settlement demand.

[*P8] On January 5, 2002, Auto-Owners sent Youngblood a letter which first recognized that Youngblood was the insured under the Policy and then stated "we have determined this claim will be honored." However, on March 11, 2002, Auto-Owners sent Youngblood a letter stating that "further review of the coverage" had caused Auto-Owners to take the position that because Youngblood was not occupying the insured vehicle, "there is no coverage afforded to him for this loss and we will defend based on this issue."

[*P9] Youngblood brought suit against Auto-Owners alleging that he was entitled to UIM benefits and that Auto-Owners breached its duty of good faith and fair dealing. After limited discovery, Auto-Owners filed a motion for summary judgment which the trial court granted. Youngblood appeals.

ISSUE AND STANDARD OF REVIEW

[*P10] Youngblood argues that the trial court erred in granting Auto-Owners's motion for summary judgment. ^{HN1} Summary judgment is appropriate only when there are no genuine issues of **[***5]** material fact and the moving party is entitled to judgment as a matter of law. See Utah R. Civ. P. 56(c). When reviewing a grant of summary judgment, we view all facts and reasonable inferences drawn therefrom in the light most favorable to the nonmoving party and review the trial court's conclusions of law for correctness. See Lovendahl v. Jordan Sch. Dist., 2002 UT 130, P13, 63 P.3d 705.

ANALYSIS

[*P11] Youngblood argues that the trial court erred in granting Auto-Owners's motion for summary judgment relying on Perkins v. Great-West Life Assurance Co., 814 P.2d 1125 (Utah Ct. App. 1991), and that Auto-Owners should be equitably estopped from denying coverage where Youngblood reasonably relied on Auto-Owners's misrepresentations made prior to his purchase of the Policy. We agree with Youngblood that the granting of summary judgment was error.

[832]** I. Equitable Estoppel

[*P12] ^{HN2} Utah courts define equitable estoppel as "conduct by one party which leads another party, in reliance thereon, to adopt a course of action resulting in detriment or damage if the first party is permitted to repudiate his conduct." United Am. Life Ins. Co. v. Zions First Nat'l Bank, 641 P.2d 158, 161 (Utah 1982). **[***6]**

[*P13] In Perkins, the case the trial court relied upon in granting summary judgment, this court determined that an insurance company was not estopped from denying a claim for life insurance where the policy clearly stated that coverage extended only to "active, full-time employees." 814 P.2d at 1128. Perkins worked as a nurse for sixteen and one-half years until she became disabled and was unable to work. See id. at 1127. Great-West Insurance

Company (Great-West) mistakenly paid medical benefits and accepted and retained premiums on behalf of Perkins in reliance on representations made by her in an application for health and life insurance that she worked full time. See *id.* Upon Perkins's death and her husband's claim for life insurance, Great-West denied the claim on the basis that Perkins was never eligible for insurance coverage because she did not work full time. See *id.* at 1128. We determined that estoppel could not be used to extend coverage to risks not covered by the express terms of the policy. See *id.* at 1130-31. Moreover, "given Mrs. Perkins'[s] failure to learn the terms of her insurance policy, [***7] her reliance thereon was not reasonable." *Id.* at 1131.

[*P14] Simply put, *Perkins* does not present a similar factual scenario as the instant case. Youngblood's deposition testimony alleges that an Auto-Owners agent misrepresented the scope of the Policy before it was purchased. In *Perkins*, there were no representations made by Great-West as to coverage, rather Great-West mistakenly paid benefits and accepted premiums based on Perkins's inaccurate application indicating she was a full-time employee. See *id.* at 1127. Therefore, the trial court erred in granting summary judgment based on *Perkins*. n1

- - - - - Footnotes - - - - -

n1 In *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125 (Utah Ct. App. 1991), we noted that a "great majority of states dealing with the doctrine of estoppel have held that it cannot be used to bring risks which were not covered by the terms of the policy within coverage of the policy." *Id.* at 1131 (citing numerous cases standing for this proposition). However, the cases cited are all factually distinct from the instant case in that none deal with misrepresentations before the insurance policy was purchased.

- - - - - End Footnotes- - - - - [***8]

[*P15] This is a case of first impression in Utah. Utah courts have never dealt with the doctrine of estoppel in an insurance coverage case where an insurance agent allegedly made material misrepresentations as to coverage before a policy was purchased. However,^{HN3} ¶ Utah courts have held that for a claim of misrepresentation to modify a contract, it is not essential that the party making the representations knew that they were false, if they were in fact false and material, and the other party had a right to rely thereon, and did so. See, e.g., *Smith v. Columbus Buggy Co.*, 40 Utah 580, 123 P. 580, 585 (1912). Thus, to escape the language of a contract, there must be a false and material statement made before the contract is consummated and the plaintiff must have reasonably relied upon such statement.

[*P16] Turning to other jurisdictions, there is a split of authority as to whether in some circumstances equitable estoppel may be utilized to modify the terms of an insurance policy. Some jurisdictions hold that the doctrine of estoppel may not be used to expand an insurance policy's coverage to include risks that the policy specifically excludes. See, [***9] e.g., *Nicholls v. Zurich Am. Ins. Group*, 244 F. Supp. 2d 1144, 1157 (D. Colo. 2003) (stating under Colorado law, "the doctrine of estoppel cannot, based upon conduct of insurer, bring within coverage of [the] insurance policy risks not covered by its terms or risks expressly excluded from the policy"); *Harasyn v. St. Paul Guardian Ins. Co.*, 349 Ark. 9, 75 S.W.3d 696, 702 (Ark. 2002) (holding that the doctrine of waiver or estoppel cannot be given the effect of enlarging or extending the coverage as defined in the contract); *Quillian v. Equitable Life Assurance Soc'y*, 61 Ga. App. 138, 6 S.E.2d 108, 112 (Ga. Ct. App. 1939) (holding that neither waiver nor estoppel was available to radically change the terms of an [***833] insurance policy to cover additional subject matter, causes of loss, or matters expressly excluded from the coverage of the policy).

[*P17] ^{HN4} Other jurisdictions, however, hold that an insurer may be estopped from asserting particular policy provisions, even though the effect may be to bring within the coverage of the policy risks not covered by its terms, when an insurance agent misrepresents the coverage of the insurance **[***10]** contract and where the insured reasonably relies on the misrepresentation when purchasing the insurance. We are persuaded by this view.

[*P18] We are particularly persuaded by the reasoning of Harr v. Allstate Insurance Co., 54 N.J. 287, 255 A.2d 208 (N.J. 1969), where the New Jersey Supreme Court overturned prior state precedent in holding that ^{HN5} equitable estoppel was available to broaden insurance coverage and that estoppel may bar the insurance company's defense of noncoverage where the insurance company agent made misrepresentations before the contract was executed and the purchaser reasonably relied on those misrepresentations in purchasing the policy. See id. at 219. In Harr, there was evidence that the insured had relied to his detriment on the agent's misrepresentations regarding the scope of fire insurance coverage, as the agent told the insured that he was "fully covered" when in fact the terms of the policy specified certain exclusions. Id. at 220. The insured did not receive a copy of the policy, but stated that he took the agent's word that he was "fully covered" because he "felt like [he] had confidence in him." Id. at 212. The **[***11]** New Jersey Supreme Court analyzed the view that estoppel is not available to broaden coverage and noted that many cases comprising this view "are confusing and not clear cut" because "estoppel and waiver are often interchangeably and improperly used, and in many cases where estoppel is held unavailable[,] the necessary elements have not been made out anyway, or the insured by reason of his own conduct is clearly not entitled to relief." Id. at 218. The court noted that it is more impressed by decisions proceeding

on the thesis that ^{HN6} where an insurer or its agent misrepresents, even though innocently, the coverage of an insurance contract, or the exclusions therefrom, to an insured before or at the inception of the contract, and the insured reasonably relies thereupon to his ultimate detriment, the insurer is estopped to deny coverage after a loss on a risk or from a peril actually not covered by the terms of the policy.

Id. at 219. Finally, the court noted that "the [above stated] proposition is one of elementary and simple justice" and "by justifiably relying on the insurer's superior knowledge, the insured has been prevented from procuring the desired **[***12]** coverage elsewhere." Id. "To reject this approach because a new contract is thereby made for the parties would be an unfortunate triumph of form over substance." Id.

[*P19] The Florida case of Peninsular Life Insurance Co. v. Wade, 425 So. 2d 1181 (Fla. Dist. Ct. App. 1983), also exemplifies the position that estoppel may be used to broaden insurance contract coverage where the insurer makes misrepresentations before the policy is purchased. See id. at 1183-84. In Peninsular, the Florida district court determined that the insurer was estopped to deny full coverage on a life insurance policy, notwithstanding a clear and unambiguous policy provision limiting coverage, where the insurer's agent held himself out as an expert and misrepresented to the insured and his wife that the policy would provide "full coverage" at the time of purchasing the policy and where the insured reasonably relied. Id. When the insured read the policy a few days later and questioned the agent about a particular provision, the agent told the insured that he was one of the few people who understood the policy and that the policy would pay full benefits from **[***13]** the date of issuance. See id. at 1182. Although the facts differ slightly from those in the case before us

because there were misrepresentations both before and after the purchasing of the policy, the Florida court stated that it agreed with the reasoning of the New Jersey Supreme Court in *Harr* and held that ^{HNT}estoppel may be used to expand the terms of a policy when the agent misrepresents the coverage of the insurance contract before or at its inception and where the insured reasonably relies. See *id.* at 1183-84; see *Harr*, 255 A.2d at **[**834]** 219; see also *Kramer v. United Servs. Auto. Assoc.*, 436 So. 2d 935, 937 (Fla. Dist. Ct. App. 1983) (quoting *Peninsular* and stating that the doctrine that waiver and estoppel are not available to extend coverage of insurance policy is not applied without exception; when a insurance agent misrepresents coverage before or at the inception of the contract and the insured reasonably relies, the insurer is estopped to deny coverage). The court in *Peninsular* went on to state that "while estoppel cannot be invoked to create coverage clearly excluded by a written contract of insurance, **[***14]** the concept may be utilized against an insurer when its conduct has been such as to induce action in reliance on it." 425 So. 2d at 1184 (quoting *Burns v. Consolidated Am. Ins. Co.*, 359 So. 2d 1203, 1207 (Fla. Dist. Ct. App. 1978)).

[*P20] Indiana has also adopted the rule that ^{HNS}an insurer may be estopped from denying coverage when the insurer's agent makes oral misrepresentations regarding the coverage provided by the policy and the purchaser reasonably relies on such misrepresentations. See *Village Furniture, Inc. v. Associated Ins. Managers, Inc.*, 541 N.E.2d 306, 308 (Ind. Ct. App. 1989). In *Village Furniture*, the court stated,

It is true that courts in Indiana and elsewhere, realizing that many people do not read their insurance policies and, perhaps even more important, do not do so because the policies are unreadable, have held that the agent's oral representations at the time of sale can override the written terms of the policy. If the agent insists to the prospective purchaser that the policy will insure against a hazard that the prospect[ive purchaser] is particularly concerned about, and the hazard materializes, **[***15]** the company may be estopped to plead the terms of the policy because the strength of the agent's oral assurances lulled the prospect[ive purchaser] into not reading, or reading inattentively, dense and rebarbative policy language.

Id. (citations and alterations omitted); see also *American Family Mut. Ins. Co. v. Jeffery*, 2000 U.S. Dist. LEXIS 12225, at *16, 28 (S.D. Ind. Aug. 11, 2000) (holding the insurer was estopped from denying coverage where agent told prospective purchaser that policy would cover "anything to do with" prospective purchaser's business including use of dump trucks, in clear contradiction to written policy which excludes such coverage and where prospective purchaser reasonably relied). n2

- - - - - Footnotes - - - - -

n2 Numerous other jurisdictions have also held that estoppel may bar the insurer's denial of coverage when misrepresentations were made before or at the inception of the insurance contract and where the prospective insured reasonably relied on those misrepresentations. See, e.g., *United Pac. Ins. Co. v. Meyer*, 305 F.2d 107, 113 (9th Cir. 1962) (applying Idaho law and holding "that an insurance company may, through the conduct of its agents, be held liable for the coverage of the personal liability of a person not only not named as an insured in a policy, but actually expressly excluded by the terms of the written policy"); *Ivey v.*

United Nat'l Indem. Co., 259 F.2d 205, 208 (9th Cir. 1958) (holding that under California law, "an insurance company may by its conduct or dealings apart from the policy itself be estopped from denying . . . coverage . . . [when] the insured has been led to believe [it] is protected under the policy"); Allied Mut. Ins. Co. v. Dakota Rose, Inc., 43 F. Supp. 2d 1081, 1087 (D. S.D. 1999) (holding under South Dakota law, conduct of insurer giving rise to estoppel to deny coverage must occur before or at inception of policy and must be shown by clear and convincing evidence); County Forest Prod. v. Green Mountain Agency, Inc., 2000 ME 161, 758 A.2d 59, 66 (Me. 2000) (holding insurer was estopped from denying the increase in policy limits because insurer misrepresented to insured that an increase in policy limits would be "no problem"); Allstate Ins. Co v. State Farm Mut. Auto. Ins. Co., 67 Ore. App. 623, 679 P.2d 879, 882 (Or. Ct. App. 1984) (holding that insurance company estopped from denying coverage where insured's son reasonably relied on agent's representation that son's auto was covered at inception of new policy to cover son); Barth v. State Farm Fire & Cas. Co., 214 Pa. Super. 434, 257 A.2d 671, 675 (Pa. Super. Ct. 1969) (holding representations in brochure given before the contract was purchased, if reasonably relied upon, may be considered terms of the contract); Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460, 462 (S.C. 1990) (holding "the scope of risk under an insurance policy may be extended by estoppel if the insurer has misled the insured into believing the particular risk is within the coverage"); State Auto. Cas. Underwriters v. Ruotsalainen, 81 S.D. 472, 136 N.W.2d 884, 887 (S.D. 1965) (holding insurer was estopped from denying coverage where agent assured insured that policy covered liability arising out of use of trailer); Farmers Mut. Auto Ins. Co. v. Bechard, 80 S.D. 237, 122 N.W.2d 86, 92 (S.D. 1963) (allowing oral representations of insurance agent to limit exclusions in written policy); Marlin v. Wetzel County Bd. of Educ., 212 W. Va. 215, 569 S.E.2d 462, 472 (W. Va. 2002) (holding that "exceptions to the general rule that the doctrine of estoppel may not be used to extend insurance coverage beyond the terms of an insurance contract, include, but are not necessarily limited to, instances where an insured has been prejudiced because: (1) an insurer's, or its agent's, misrepresentation made at the policy's inception resulted in the insured being prohibited from procuring the coverage he or she desired").

- - - - - End Footnotes- - - - - **[***16]**

[835] [*P21]** ^{HN9} We adopt the view that estoppel may not generally be used to extend the terms of an insurance contract. However, we hold that estoppel may bar an insurer's defense of noncoverage in the limited circumstances when an insurance agent makes material misrepresentations to a prospective insured before or at the inception of the contract and the prospective insured reasonably relies upon such misrepresentations in purchasing the insurance.

[*P22] Based on Youngblood's deposition testimony and affidavit, he has shown at the least that there is a disputed issue of material fact as to whether material misrepresentations were made to him by an insurance agent before he entered into the contract. n3

- - - - - Footnotes - - - - -

n3 Youngblood also argues that Auto-Owners should be estopped from denying coverage because of misrepresentations that occurred after the inception of the contract. We agree with the trial court that Perkins controls any postcontract alleged misrepresentations.

- - - - - End Footnotes- - - - -

[*P23] ^{HN10} The second key requirement for **[***17]** equitable estoppel to apply to modify an insurance contract is reasonable reliance upon the precontract misrepresentations.

"Reasonable reliance must be considered with reference to the facts of each case, and is usually a question for the jury to determine." Conder v. A.L. Williams & Assocs., 739 P.2d 634, 638 (Utah Ct. App. 1987). "Although it is impossible to draw precise legal boundaries of when reliance is reasonable . . . the courts have given some direction." Id.

[*P24] "Generally, a plaintiff may justifiably rely on positive assertions of fact without independent investigation." Id. "It is only where, under the circumstances, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve as a warning that he is being deceived, that a plaintiff is required to make his own investigation." Id. A plaintiff who fails to read a contract without fault on the part of the defendant generally is found not to have reasonably relied. See id. The Utah Supreme Court explained in Johnson v. Allen, 108 Utah 148, 158 P.2d 134 (1945), where there is nothing

said or done **[***18]** which would be reasonably calculated to disarm a reasonably prudent person so that he would sign the contract without reading it and in the absence of some act or artifice in inducing the other part to refrain from reading the contract[,], relief from the fraud is often denied.

Id. at 137.

[*P25] In Conder, the plaintiff, Conder alleged that during the course of several conversations with the defendant's agents regarding prospective employment with the defendant company, the agents fraudulently misrepresented the nature of their business and employment opportunities that Conder would have by working for the defendant. See 739 P.2d at 636. Relying upon those statements, Conder alleged that he terminated his former employment and was induced to work as an agent of the defendant, suffering various damages. See id. We determined that "we cannot say as a matter of law that Conder was unreasonable in his reliance on the alleged misrepresentations" made by the agents, id. at 638-39, because "a plaintiff may justifiably rely on positive assertions of fact without independent investigation." Id. at 639. Moreover, **[***19]** Conder did not have the knowledge, nor did he discover anything to serve as a warning sign that he was being deceived, which would require him to make an investigation of his own. See id. We determined that although Conder subsequently entered into a contract expressly limiting his employment opportunities, "Conder's affidavit alleges that he was relying on the verbal representations of [the defendants] . . . thereby indicating that the contradictory written provision was of no effect." Id.

[*P26] In the instant case, based on Youngblood's deposition testimony and affidavit, there is again at least a disputed issue of material fact as to whether Youngblood reasonably relied on the representations made by Auto-Owners's agent. Furthermore, the Policy, even if read by Youngblood, is not particularly clear as to whether he would receive UIM coverage as a pedestrian. n4 This further boosts his subjective claim that he reasonably relied on the agent's assertions.

- - - - - Footnotes - - - - -

n4 The Policy is confusing and does not make clear that Youngblood would not be covered as a pedestrian in an accident because the Policy was purchased in the company name rather

than in his own.

- - - - - End Footnotes- - - - - *****20]**

[*P27] Accordingly, we reverse the trial court's grant of summary judgment and remand for proceedings consistent with this opinion. Moreover, we emphasize that ^{HN11}the rule we have set forth is a narrow one and applies only in limited circumstances. The representations must be clear and material and must be made in an attempt to induce the potential insured to enter into the contract. The representations must lead the potential insured to feel as though he or she need not read the contract, and the representations must be of the type that a reasonable person would rely upon.

CONCLUSION

[*P28] We determine that the trial court erred by granting Auto-Owners's motion for summary judgment. The judgment of the trial court is reversed. We remand for proceedings consistent with this opinion. n5

- - - - - Footnotes - - - - -

n5 We do not reach the remaining issues on appeal because of our disposition.

- - - - - End Footnotes- - - - -

Judith M. Billings,

Presiding Judge

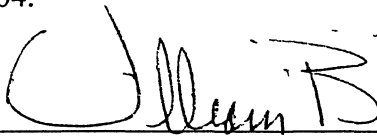
[*P29] WE CONCUR:

Norman H. Jackson, Judge

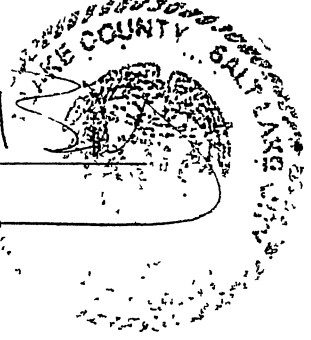
Gregory K. Orme, Judge

IT IS HEREBY ORDERED that summary judgment is granted in favor of the defendant and against the plaintiff on all claims, and all claims are dismissed with prejudice.

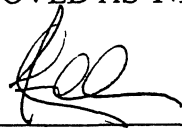
Dated and entered this 27 day of January 2004.



Judge William Bohling
State District Court Judge



APPROVED AS TO FORM:



Peter Collins

Auto-Owners

Page 0

19020 (10-80) XX
Issued 08-04-1997

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AUTOMOBILE POLICY DECLARATIONS

AGENCY COTTONWOOD INSURANCE INC
43-0002-00

Endorsement Effective 07-31-1997

INSURED YOUNGBLOOD HOME IMPROVEMENT INC

POLICY NUMBER 41-075-982-00

Company Use 45-04-UT-9705

ADDRESS 8584 S 700 E

SANDY UT 84070-6306

FA	POLICY TERM	
	12:01 a.m.	12:01 a.m.
	to	
	05-24-1997	05-24-1998

This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term.

FOR COMPANY USE ONLY

Trailback Date 07-11-1997

Fleet Surcharge 07.50%

Messages
DO NOT PRINT INDICATED

RECEIVED

SEP 24 1997

PLATT WALLACE,
CHRISTENSEN & KANELL

Auto-Owners

Page 1

19020 (10-80) XX
Issued 08-04-1997INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999AGENCY COTTONWOOD INSURANCE INC
43-0002-00

INSURED YOUNGBLOOD HOME IMPROVEMENT INC

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AUTOMOBILE POLICY DECLARATIONS

Endorsement Effective 07-31-1997

POLICY NUMBER 41-075-982-00

Company Use 45-04-UT-9705

FA	POLICY TERM
	12:01 a.m. 12:01 a.m.
	to
	05-24-1997 05-24-1998

This policy is amended in consideration of the additional or return premium shown below. This Declarations voids and replaces all previously issued Declarations bearing the same policy number and premium term.

DESCRIPTION OF ITEM INSURED	AGE	SYMBOL/COST	TERRITORY	CLASS/PG
Hired Automobiles			002 Salt Lake County, UT	SPL

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	\$ 300,000 occurrence	\$30.23	
		TOTAL \$30.23	No Charge

Additional Forms For This Item: 79521 (06-92) 79539 (06-92)

PREMIUM BASIS: Estimated cost of hire - liability \$ If Any

150

Employers Non-Ownership Liab.	1-25 employees	002 Salt Lake County, UT	SPL
COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	\$ 300,000 occurrence	\$22.00	
		TOTAL \$22.00	No Charge

Additional Forms For This Item: 79503 (06-92) 79539 (06-92)

150

1. 1978 GMC DUMP TRK VIN: TCE628V602271	9	\$7,916 Salt Lake County, UT	002
COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	\$ 300,000 occurrence	\$318.00	
Residual Uninsured			
Motorist	\$ 300,000 person/\$ 300,000 occurrence	9.00	
Underinsured Motorist	\$ 300,000 person/\$ 300,000 occurrence	24.00	
Personal Injury			
Protection	\$ 3,000 person	6.00	
Comprehensive	Actual Cash Value - \$1000 deductible	13.00	
Collision	Actual Cash Value - \$1000 deductible	14.00	
		TOTAL \$384.00	No Charge

Interested Parties: None

Additional Forms For This Item: 79354 (01-97) 79355 (01-97) 79357 (01-97)
79365 (01-97) 79539 (06-92)

Premium Basis: Medium truck operated within a 100 mile radius - service use.
Gross Vehicle weight is 19,501.
Use Classification: Contractor - Miscellaneous.
A 5% discount has been applied to automobiles used in contracting business.
Work Comp Discount applies.

150

OWNERS INS. CO.

AGENCY CODE 43-0002-00

FA POLICY NUMBER 41-075-982-00

INSURED YOUNGBLOOD HOME IMPROVEMENT INC

Term 05-24-1997 to 05-24-1998

2. 1989 TOYT 4RUNNER 9 \$12,000 002
VIN: JT4RN62D4K0241039 Salt Lake County, UT

COVERAGES	LIMITS	PREMIUM	CHANGE
Combined Liability	\$ 300,000 occurrence	\$374.00	
Residual Uninsured			
Motorist	\$ 300,000 person/\$ 300,000 occurrence	9.00	
Underinsured Motorist	\$ 300,000 person/\$ 300,000 occurrence	24.00	
Personal Injury			
Protection	\$ 3,000 person	6.00	
Comprehensive	Actual Cash Value - \$1000 deductible	35.00	
Collision	Actual Cash Value - \$1000 deductible	48.00	
	TOTAL	\$496.00	No Charge

Interested Parties: None

Additional Forms For This Item: 79354 (01-97) 79355 (01-97) 79357 (01-97)
79365 (01-97) 79539 (06-92)

Premium Basis: Light truck operated within a 100 mile radius - service use.
Gross Vehicle weight is 8,000.
Use Classification: Contractor - Miscellaneous.
A 5% discount has been applied to automobiles used in contracting business.
Work Comp Discount applies.

150

TOTAL POLICY PREMIUM	TERM \$932.23	ALL ITEMS No Charge
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Forms That Apply To All Items: 79001 (02-94) 79282 (12-94) 79360 (01-97)
79517 (06-92) 79524 (06-92) 79540 (06-92)

Countersigned By: _____

This policy is a legal contract between you and us.

READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. **IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY.**

A QUICK GUIDE TO YOUR POLICY

The DECLARATIONS contain:

- YOUR NAME
- POLICY TERM
- YOUR AUTOMOBILE
- COVERAGES
- LIMITS OF LIABILITY
- ENDORSEMENTS THAT APPLY

<u>YOU WILL FIND</u>	<u>ON PAGE</u>
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INSURING AGREEMENT

The attached Declarations describe the **automobile(s)** we insure and the Coverages and Limits of Liability for which **you** have paid a premium. **We** agree to insure the described **automobile(s)** for those Coverages and Limits of Liability subject to the terms and conditions of this policy. In return **you** must pay the premium and comply with all the terms and conditions of this policy.

SECTION I - DEFINITIONS

To understand this policy, **you** must understand the meaning of the following words. These words appear in **bold face type** whenever used in this policy and endorsements attached to this policy.

- **Automobile** means a **private passenger automobile**, a truck, truck tractor, **trailer**, **farm implement** or other land motor vehicle.
 - **Bodily injury** means physical injury, sickness or disease sustained by a person including resulting death of that person.
 - **Equipment** means an apparatus or device permanently attached to or installed in **your automobile**. **Equipment** includes an apparatus or device specifically for use with **your automobile**.
 - **Farm implement** means motorized self-propelled farm machinery.
 - **Insured contract** means:
 - a. a lease of premises;
 - b. a sidetrack agreement;
 - c. an easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
 - d. any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - e. an indemnification of a municipality as required by ordinance, except in connection with work for a municipality; or
 - f. that part of any other contract or agreement pertaining to **your** business under which **you** assume the tort liability of another to pay damages because of **bodily injury** or **property damage** to a third person or organization, if the contract or agreement is made before the **bodily injury** or **property damage** occurs. Tort liability means liability that would be imposed by law in the absence of any contract or agreement.
- An **insured contract** does not include that part of any contract or agreement:
- a. that pertains to the loan, lease or rental of an **automobile** to **you**; or
 - b. that holds a person or organization engaged in the business of transporting property for hire harmless for **your** use of **your automobile** over a route or territory that person or organization is authorized to serve by public authority.
- 6. **Occurrence** means an accident that results in **bodily injury** or **property damage** and includes, as one **occurrence**, all continuous or repeated exposure to substantially the same generally harmful conditions.
 - 7. **Private passenger automobile** means a four wheel:
 - a. private passenger or station wagon type **automobile**; or
 - b. pickup or van type **automobile** with a maximum load capacity of 2,000 pounds or less not used in the business of carrying passengers for hire.
 - 8. **Property damage** means damage to or destruction of tangible property including resulting loss of use of that property.
 - 9. **Relative** means a person who resides with **you** and who is related to **you** by blood, marriage or adoption. **Relative** includes a ward or foster child who resides with **you**.
 - 10. **Suit** means a civil court proceeding in which damages because of **bodily injury** or **property damage** to which this insurance applies are alleged.
 - 11. **Trailer** means a utility trailer, camping or vacation trailer, truck trailer or semi-trailer.
 - 12. **You** or **your** means the first named insured shown in the Declarations and if an individual, **your** spouse who resides in the same household.
 - 13. **Your automobile** means the **automobile** described in the Declarations.
 - 14. **We, us** or **our** means the Company providing this insurance.

I. COVERAGE

a. Liability Coverage - Bodily Injury and Property Damage

We will pay damages for **bodily injury** and **property damage** for which **you** become legally responsible because of or arising out of the ownership, maintenance or use of **your automobile** as an **automobile**. We will pay such damages:

- (1) on **your** behalf;
- (2) on behalf of any **relative** using **your automobile**;
- (3) on behalf of any other person using **your automobile** with **your** permission; and
- (4) on behalf of any person or organization legally responsible for the use of **your automobile** when used by **you**, a **relative**, or with **your** permission.

We will settle or defend, as we consider appropriate, any claim or **suit** for damages covered by this policy. We will do this at **our** expense, using attorneys of **our** choice. This agreement to settle or defend claims or **suits** ends when we have paid the limit of **our** liability.

b. Trailers

- (1) The Liability Coverage provided for **your automobile** includes:

- (a) a **trailer** designed for use with a **private passenger automobile**;
- (b) a **trailer** with a load capacity of 2,000 pounds or less; and
- (c) non-motorized farm machinery or a farm wagon;

while used with **your automobile**, whether owned by **you** or someone else.

A **trailer** described in (1)(a) or (1)(b) above does not have to be attached to **your automobile**.

- (2) Liability Coverage provided by b.(1) above to:

- (a) **your trailer** designed for use with a **private passenger automobile**; and
- (b) **your trailer** with a load capacity of 2000 pounds or less;

includes **your** liability arising out of or resulting from use of **your trailer** by a person or organization other than **you**.

c. Other Automobiles Covered

The Liability Coverage provided for **your automobile** also applies to certain other **automobiles**. It applies:

- (1) to an **automobile** **you** do not own which is temporarily used as a substitute for **your automobile**. **Your automobile** must be out of use because of breakdown, repair, servicing, loss or destruction. The owner of the substitute **automobile** is not covered.
- (2) to an **automobile** of the same type which **you** acquire after the inception date of the current policy term if:
 - (a) it replaces **your automobile**. **You** must report the replacement **automobile** to **us** no later than the expiration date of the policy term during which the **automobile** was acquired; or
 - (b) it is an additional **automobile** and we insure all **automobiles** **you** already own provided **you**:
 - 1) report the additional **automobile** to **us** within 30 days of delivery; and
 - 2) pay any required additional premiums.

This extension does not apply if **you** have other liability insurance that applies to the **automobile** **you** acquire.

2. EXCLUSIONS

Liability Coverage does not apply:

- a. to any person for **bodily injury** or **property damage** arising out of or resulting from an intentional act of that person.
- b. to any person operating or employed by an **automobile** garage, repair shop, sales agency, service station or public parking place. This exclusion does not apply to:
 - (1) **you**;
 - (2) a **relative**; or
 - (3) any person associated with or employed by **you**;

while using **your automobile** in such business.

d. to any **automobile** while:

- (1) preparing for;
- (2) practicing for; or
- (3) participating in;

any prearranged racing, speed or demolition contest.

e. to **your automobile** when used with any **trailer** not covered for Liability Coverage by this policy.

f. to **your trailer** when used with any **automobile** not covered for Liability Coverage by this policy. This exclusion does not apply to the coverage provided by 1.b.(2) above.

g. to any person or organization with respect to the loading or unloading of **your automobile**. **We** will cover **you** or **your** employee or a lessee or borrower of **your automobile** or that person's employee.

h. to any person or organization (or that person's or organization's agents, employees or contractors) subject to the security requirements of any motor carrier law or regulation because of transporting property for **you** or for others. This exclusion does not apply to **you**.

i. to liability which is assumed under any contract or agreement. This exclusion does not apply to such liability for damages that **you**:

- (1) assumed under a contract or agreement that is an **insured contract**;
- (2) would have in the absence of a contract or agreement; or
- (3) assumed in a **private passenger automobile** lease or rental agreement, provided **you** are an individual.

j. to any person or organization for damage to property that person or organization is transporting. This exclusion does not apply to liability **you** have assumed under a sidetrack agreement.

k. to any person or organization for damage to property or an **automobile** owned by, rented to or in the care, custody or control of that person or organization.

l. to any expenses that would be payable under any workers compensation law, unemployment compensation or disability benefits law or under any similar law.

(1) **bodily injury** to a domestic employee when workers compensation benefits are not required or available; or

(2) when such liability is assumed by **you** under an **insured contract**.

n. to **your** employee for claims brought against him or her by another of **your** employees injured on the job.

o. to any person or organization for **bodily injury** to:

(1) an employee of that person or organization; or

(2) a spouse, child, parent, brother or sister of the employee which results from the injury to the employee;

when that injury arises out of and in the course of employment by that person or organization. This exclusion applies:

(1) whether a claim is made against such person or organization as employer or otherwise; and

(2) to any obligation to share damages with or repay another who must pay damages because of the injury.

This exclusion does not apply to liability **you** have assumed under an **insured contract**.

p. to **bodily injury** or **property damage** for which insurance is available under any nuclear energy liability policy. This exclusion applies even if the nuclear energy liability policy limits of liability are exhausted.

q. to **bodily injury** or **property damage** for which financial responsibility or liability insurance is required to be maintained under the Atomic Energy Act of 1954, as amended, or for which governmental indemnity is available.

r. to liability for **bodily injury** or **property damage** caused by war, whether declared or not declared, insurrection or any of their consequences whether or not assumed under a contract or agreement.

3. COVERAGE EXTENSIONS

In addition to **our** limit of liability, **we** will also pay:

a. premiums on appeal bonds in any **suit we** defend. **We** will not apply for or furnish such bonds.

- b. premiums on bonds to release attachments, but only for bond amounts that do not exceed the applicable limit of liability. **We** will not apply for or furnish such bonds.
- c. premiums on bail bonds required because of an accident or related traffic law violation, involving **your automobile** during the policy period. **We** will not apply for or furnish such bonds. **Our** maximum payment is \$250 per **occurrence**.
- d. interest on damages owed by **you** because of a judgment in a **suit we** defend and accruing:
 - (1) after the judgment, and until **we** pay, offer or deposit in court, the amount for which **we** are liable under this policy; or
 - (2) before the judgment, where owed by law, but only on that part of the judgment **we** pay.
- e. expenses **you**, a **relative** or a person using **your automobile** with **your** permission, incur for first aid to others at the time of an **occurrence** covered by this policy.
- f. all other reasonable expenses incurred at **our** request, including actual loss of earnings up to \$100.00 per day.

LIMIT OF LIABILITY

We will pay damages for **bodily injury** or **property damage** up to the Limit of Liability stated in the Declarations as follows:

- a. Under **bodily injury**:
 - (1) The limit stated for "each person" is the amount of coverage and the most **we** will pay for all damages because of or arising out of **bodily injury** to one person in any one **occurrence**.
 - (2) The limit stated for "each occurrence" is the total amount of coverage and the most **we** will pay, subject to a.(1) above, for all damages because of or arising out of **bodily injury** to two or more persons in any one **occurrence**.
- b. Under **property damage**, the limit stated is the amount of coverage and the most **we** will pay

for all claims of one or more persons or organizations in any one **occurrence**.

- c. The Limit of Liability is not increased because of the number of:
 - (1) **automobiles** shown or premiums charged in the Declarations;
 - (2) claims made or **suits** brought;
 - (3) persons injured; or
 - (4) **automobiles** involved in the **occurrence**.
- d. An **automobile** and attached **trailer** are one **automobile** and do not increase the Limit of Liability.

5. FINANCIAL RESPONSIBILITY AND COMPULSORY INSURANCE LAWS

While **your automobile** is subject to laws of another state or Canada, **we** will:

- a. increase the Limit of Liability for Liability Coverage to comply with the minimum requirements of a financial responsibility or compulsory insurance law of the jurisdiction where **your automobile** is being operated; and
- b. afford the minimum amounts for the types of mandatory coverages required by the jurisdiction where **your automobile** is being operated.

This provision does not apply to any limits required by any law governing motor carriers of property or passengers.

We will not duplicate payments available under this or any other insurance for the same elements of loss.

6. OTHER INSURANCE

If there is other collectible **automobile** liability insurance, **we** will pay only **our** share of the loss. **Our** share will be the ratio of the amount of this insurance to the total amount of all collectible **automobile** liability insurance. The coverage extended to **automobiles you** do not own will be excess over any other insurance available to **you**.

SECTION III - DAMAGE TO YOUR AUTOMOBILE

COVERAGES

a. Fire Coverage

We will pay for loss of or damage to **your automobile** and its **equipment** caused by:

- (1) fire or lightning.

- (2) smoke or smudge because of a sudden, unusual or faulty operation of any fixed heating equipment where **your automobile** is stored.
- (3) windstorm, hail, earthquake, explosion, external discharge or leakage of water. **We** cover damage resulting from the stranding,

any equipment being used to transport **your automobile** on land or water. **We** will also pay for general average and salvage charges for which **you** may be legally responsible.

b. Theft Coverage

We will pay for loss of or damage to **your automobile** and its **equipment** caused by theft, larceny, robbery or pilferage. **We** cover **your** loss when **you** are tricked into giving **your automobile** to another person.

c. Comprehensive Coverage

We will pay for loss of or damage to **your automobile** and its **equipment** from any cause except upset or collision with another object or with a vehicle to which it is attached.

We will also pay for:

- (1) glass breakage from any cause including upset or collision;
- (2) damage caused by missiles or falling objects; and
- (3) damage caused by collision with an animal or bird.

When a deductible is indicated in the Declarations for this coverage, **we** will reduce **our** payment by that amount.

d. Collision Coverage

We will pay for loss of or damage to **your automobile** and its **equipment** caused by accidental collision with another object or by accidental upset.

When a deductible is indicated in the Declarations for this coverage, **we** will reduce **our** payment by that amount. If **your automobile** is a **private passenger automobile**, the deductible does not always apply. It does not apply in a collision with another **automobile**:

- (1) **we** insure and which **you** do not own, rent or have in **your** care, custody or control; or
- (2) whose owner or operator has been identified; and
 - (a) is legally responsible for the entire amount of the damage; and

ly policy or bond;

but only if the damage exceeds the deductible amount.

e. Road Trouble Service

We will reimburse **you** up to the amount stated in the Declarations for this coverage in any one emergency:

- (1) for towing **your automobile** to the nearest available garage; and
- (2) for the cost of labor performed on **your automobile** at the place of the emergency.

f. Other Automobiles Covered

The Damage To Your Automobile Coverages provided for **your automobile** also apply to certain other **automobiles**. They apply:

- (1) to an **automobile** **you** do not own which is temporarily used as a substitute for **your automobile**. **Your automobile** must be out of use because of breakdown, repair, servicing, loss or destruction.
- (2) to an **automobile** of the same type which **you** acquire after the inception date of the current policy term subject to the following:
 - (a) If the **automobile** replaces **your automobile**, **we** will apply only those coverages that apply to the **automobile** being replaced. **You** must report the replacement **automobile** to **us** no later than the expiration date of the policy term during which the **automobile** was acquired.
 - (b) If the **automobile** is an additional **automobile** and **we** insure all **automobiles** **you** already own, **we** will apply only those coverages which are common to all of **your automobiles** **we** insure provided **you**:
 - 1) report the additional **automobile** to **us** within 30 days of delivery; and
 - 2) pay any required additional premiums.

These extensions do not apply when there is other insurance covering **your** interest or the interest of the owner. However, paragraph f.(1) above applies if **you** are legally liable.

EXCLUSIONS

Fire, Theft, Comprehensive and Collision Coverages do not apply to:

- a. loss of or damage to **your automobile** because of confiscation or destruction by any civil or governmental authorities because of illegal activities engaged in by:

- (1) **you**; or

- (2) a **relative**.

This exclusion does not apply to a loss payee's interest in **your automobile**.

- b. loss of or damage to **your automobile** because of or arising out of **your** intentional act or an intentional act committed at **your** direction or with **your** knowledge. This exclusion does not apply to a loss payee's interest in **your automobile**.

- c. conversion, embezzlement or secretion by any person lawfully having **your automobile** under a sale, lease or similar agreement.

- d. any **automobile** while:

- (1) preparing for;

- (2) practicing for; or

- (3) participating in;

- any prearranged racing speed or demolition contest.

- e. loss of use, except as provided in Coverage Extensions.

- f. wear and tear, freezing, mechanical or electrical breakdown, other than burning of wiring, unless this damage follows and results from other loss or damage covered by this policy.

- g. tires, unless the loss or damage is caused by:

- (1) fire;

- (2) theft; or

- (3) malicious mischief; or

- is part of other damage covered by this policy.

- h. a stereo tape or disc player:

- (1) that is not attached to **your automobile**; and

- (2) is not receiving its power from **your automobile's** electrical system.

- i. stereo tapes, cassettes, discs or cartridges or related items

- j. any caddy, case or container designed for storing or carrying stereo tapes, cassettes, discs or cartridges.

- k. unless described in the Declarations and a premium charged:

- (1) a camper body; or

- (2) a pickup cover with built-in cooking and sleeping equipment.

- l. A citizens-band radio, mobile or cellular telephone, television or other similar device for sending or receiving communications, including related items. However, these devices are covered if:

- (1) standard or optional **equipment** from the manufacturer of **your automobile** for that make, model and model year;

- (2) permanently installed in the dash or console opening designed for such **equipment**; or

- (3) described in the Declarations and a premium charged.

- m. a radio, stereo, stereo tape deck, compact disc player or other similar device designed for the reproduction of sound, including related items. However these devices are covered if:

- (1) standard or optional **equipment** from the manufacturer of **your automobile** for that make, model and model year; or

- (2) permanently installed in **your automobile**.

Our liability under m.(2) above shall not exceed \$1000 unless a greater amount is shown in the Declarations and a premium charged.

- n. Any device designed or used to detect or locate radar or any other speed measuring or calculating apparatus.

- o. radioactive contamination.

- p. loss caused by:

- (1) declared or undeclared war or insurrection; or

- (2) explosion of a nuclear weapon or its consequences.

3. COVERAGE EXTENSIONS

- a. **Trailers**

The Damage To Your Automobile Coverages provided to **your automobile** extend to certain **trailers** you do not own. The **trailer** must:

- (1) be designed for use with a **private passenger automobile**.

disc; and

- (3) be other than a **trailer** of the home, office, store, display, or passenger type.

Our limit of liability for all loss and damage under this coverage extension is \$500 in any one **occurrence**.

b. Loss Of Use By Theft

Under Theft Coverage or Comprehensive Coverage, **we** will reimburse **you** for transportation expenses if **your private passenger automobile** is stolen. **We** will pay up to \$10 per day but not more than \$300 in one **occurrence**. **We** will pay such expenses incurred beginning 48 hours after **you** report the theft to **us** and to the police and ending when **your automobile** is returned to use or **we** pay for its loss.

c. Transportation Cost

Under the coverages for Damage To Your Automobile **we** will reimburse **you** for expenses **you** incur for transportation from where **your automobile** was disabled to **your** home or intended destination. The maximum payment is \$25 for each **occurrence**.

d. Personal Property

If **your automobile** is a **private passenger automobile**, **we** will extend the Comprehensive Coverage and the Collision Coverage that apply to **your automobile** to loss of or damage to personal property contained in or on **your automobile**. This coverage extension is subject to the following:

- (1) The personal property must be owned by **you**, a **relative**, or **your** employee.
- (2) Comprehensive Coverage is extended only for loss or damage because of:
 - (a) fire;
 - (b) lightning;
 - (c) theft or attempted theft.

Unless the entire **automobile** is stolen, there must be visible signs of someone breaking into the **automobile** for (2)(c) above to apply.

- (3) This coverage extension does not apply to:
 - (a) stereo tapes, cassettes, discs or cartridges or related items.
 - (b) a citizens-band radio, mobile or cellular telephone, television or other similar device for sending or receiving communications, including related items.

compact disc player or other similar device designed for the reproduction of sound, including related items.

- (d) property used in a business, trade or profession.
- (e) money or jewelry.
- (f) any device designed or used to detect or locate radar or any other speed measuring or calculating apparatus.
- (g) property specifically insured.

- (4) **Our** limit of liability for all loss or damage under this coverage extension is \$200 in any one **occurrence**.

4. LIMIT OF LIABILITY

- a. **We** will pay no more than the lowest of the following:

- (1) the actual cash value of stolen or damaged property;
- (2) the necessary cost, at local prices, to repair or replace the property or damaged parts with material of similar kind and quality; or
- (3) the Limit of Liability stated in the Declarations.

- b. **We** will, at **our** option, replace **your automobile** with a new one of equal value or pay **you** **your** original purchase price if:

- (1) **your automobile** is a **private passenger automobile**;
- (2) **you** purchased it new;
- (3) **we** determine the loss or damage can not be repaired; and
- (4) the loss or damage occurs within 90 days of the purchase date.

- c. **Your automobile** may have been altered, re-modeled, converted or modified so that its value is substantially increased over that of a standard **automobile** of the same make and model. In that case, **we** will pay only a proportional share of any loss or damage. **We** will pay the proportion that the value of a standard **automobile** bears to the value of **your automobile**. This applies only when alteration, remodeling, conversion or modification affects the amount of the loss. It does not apply when an additional premium is charged based on the increased value.

- d. If a loss can be paid under either Comprehensive or Collision Coverage, payment will be

made under the coverage that pays **you** the most.

SECTION IV - INDIVIDUAL NAMED INSURED

the first named insured in the Declarations is an individual and the **automobile** described in the Declarations is a **private passenger automobile** the following extensions of coverage apply.

LIABILITY COVERAGE - BODILY INJURY AND PROPERTY DAMAGE

a. The Liability Coverage provided for **your automobile** also applies to an **automobile** not:

- (1) owned by or furnished or available for regular use to **you** or anyone living with **you**. However, **we** will cover **your** liability for **your** use of an **automobile** owned by or furnished for the regular use of a **relative**.
- (2) used in an **automobile** garage repair shop, sales agency, service station or public parking business **you** own or operate.

b. **We** extend this coverage only:

- (1) to **you**;
- (2) to **relatives** who do not own an **automobile**; and
- (3) to anyone legally responsible for the use of the **automobile** by the persons in (1) and (2) above.

c. **We** do not cover:

- (1) the owner of the **automobile**, but when **we** cover a **trailer** used with the **automobile**, **we** cover the owner of that **trailer**.
- (2) an **automobile** used in **your** business or occupation or that of a **relative**, unless it is:
 - (a) a **private passenger automobile**; and

(b) used by **you**, such **relative** or the chauffeur or household employee of either.

(3) **you** or a **relative** using an **automobile** without a reasonable belief of permission to do so.

2. DAMAGE TO YOUR AUTOMOBILE

a. The Damage To Your Automobile Coverages provided for **your automobile** also apply to an **automobile** not:

- (1) owned by or furnished or available for regular use to **you** or anyone living with **you**.
- (2) used in an **automobile** garage, repair shop, sales agency, service station or public parking business **you** own or operate.

b. **We** extend this coverage only:

- (1) to **you**; and
- (2) to **relatives** who do not own an **automobile**.

c. **We** do not cover an **automobile** used in **your** business or occupation or that of a **relative** unless it is:

- (1) a **private passenger automobile**; and
- (2) used by **you**, such **relative**, or the chauffeur or household employee of either.

d. These extensions do not apply when there is other insurance covering **your** interest or the interest of the owner. However, they do apply if **you** are legally liable.

SECTION V - WHAT YOU MUST DO AFTER AN ACCIDENT OR LOSS

I. NOTIFY US PROMPTLY

a. **You** and any person seeking coverage under this policy must notify **us** promptly as to how, when and where the accident happened. **We** must have the names and addresses of any injured person and of any witnesses. Notice and documentation of loss must be given if **we** require it. Any loss or damage caused by theft, larceny, robbery, pilferage or trickery must be promptly reported to the police.

b. If claim is made or **suit** is brought against **you** or any person entitled to coverage, **we** must be advised promptly. All papers in connection with

c. Under Uninsured Motorist Coverage and/or Underinsured Motorist Coverage, any person making claim must:

- (1) give **us** written notice and documentation of loss;
- (2) submit to examinations by physicians **we** select as often as **we** require; and
- (3) authorize **us** to obtain medical reports and other pertinent records.

We must be given copies of the legal papers if **suit** is brought against any person believed to

- a. **You** and any person seeking coverage under this policy must cooperate with **us** in the investigation, settlement or defense of any claim or **suit**. This includes submitting to a statement under oath and giving **us** access to any documents which **we** request.
- b. When a claim is made for damage to **your automobile**, **you** must let **us** examine the vehicle before repairs are made or evidence of loss removed.
- c. Following damage to **your automobile**, every reasonable effort must be made to protect the vehicle against further loss. **We** will pay the reasonable expenses incurred to do this.

- a. If **we** make a payment under this policy and the person to or for whom payment is made has a right to recover damages from another, **we** will be entitled to that right. That person shall do everything necessary to transfer that right to **us** and shall do nothing to prejudice it.
- b. The person to or for whom payment is made under Uninsured Motorist Coverage and/or Underinsured Motorist Coverage must hold in trust for **us** his rights of recovery against any legally liable person. He must do all that is proper to secure such rights and must do nothing to prejudice them. He must take any required action in his name to recover damages and reimburse **us** out of any proceeds to the extent of **our** payment.

SECTION VI - GENERAL CONDITIONS

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses which happen during the policy period as shown in the Declarations. They must take place within the United States of America, its territories or possessions, Canada or Mexico or between their ports.

CHANGES

- a. This policy contains all the agreements between **you** and **us** or any of **our** agents relating to this insurance. The terms of this policy may not be changed except by written endorsement issued by **us**.
- b. **We** may adjust **your** premium during the policy term because of changes in the factors that were used to determine such premium. These factors include but are not limited to:
 - (1) the principal place of garaging **your automobile**;
 - (2) coverages, limits of liability and deductibles;
 - (3) the type, make and model of **your automobile** and its use;
 - (4) the operators of **your automobile**.

Premium adjustments will be made at the time of such changes or when **we** become aware of the changes, if later. **We** will use the governing rules and rates in effect on the inception date of the policy term.

3. FRAUD

We will not cover any person seeking coverage under this policy who has made fraudulent statements or engaged in fraudulent conduct with respect to procurement of this policy or to any **occurrence** for which coverage is sought.

4. LEGAL ACTION AGAINST US

- a. No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. Further, under the Liability Coverage no legal action may be brought until **we** agree a person entitled to coverage has an obligation to pay or until the amount of that obligation has been determined by judgement after trial. No one has any right under this policy to bring **us** into any action to determine the liability of any person **we** have agreed to protect.
- b. Bankruptcy or insolvency of any person **we** have agreed to protect will not relieve **us** of any obligation under the terms of this policy.

5. SEVERABILITY

Except as to **our** limit of liability, the coverage provided by this policy applies separately to each person against whom claim is made or **suit** is brought.

6. DUPLICATION OF COVERAGE

- a. If this policy and any other policy or form of coverage provided by **us** or a company affiliated with **us**, provide coverage for the same loss or damage, **our** maximum limit of liability under all the policies or forms of coverage shall not exceed the highest limit of liability under any single policy or form of coverage applicable to the loss or damage.
- b. This condition does not apply to any policy or form of coverage issued by **us** or a company

affiliated with **us** to specifically provide excess insurance over this policy.

ASSIGNMENT

No interest in this policy may be assigned without **our** written consent. But, if **you** should die within the policy term, the policy will cover as though named in the Declarations:

a. **your** spouse, if **you** are an individual;

- b. **your** legal representative but only with respect to his legal responsibility for the maintenance or use of **your automobile**; and
- c. any person having proper temporary custody of **your automobile** until a legal representative is appointed;

provided **we** are given written notice of **your** death within 60 days. this requirement does not apply with regard to **your** spouse.

It is agreed:

1. **SECTION II - LIABILITY COVERAGE; 1. COVERAGE; a. Liability Coverage - Bodily Injury and Property Damage** extends to an **automobile you** hire, lease or borrow for use in **your** business. This coverage extension does not apply to:
 - a. any **automobile**:
 - (1) **you** own;
 - (2) owned by **your** executive officers or partners; or
 - (3) **you** lease while that **automobile**:
 - (a) is leased to **you** in writing in accordance with a written agreement in which the lessor holds **you** harmless; and
 - (b) is used pursuant to operating rights (permits) granted to **you** by a public authority;
 - b. the owner of an **automobile you** hire, lease or borrow or the owner's agents or employees;
 - c. a lessee from whom **you** sublease an **automobile** or the lessee's agents or employees; or
 - d. any **automobile** covered elsewhere by this insurance or any of its extensions.
2. **SECTION II - LIABILITY COVERAGE; 1. COVERAGE, b. Trailers and c. Other Automobiles Covered; and 3. COVERAGE EXTENSIONS** are deleted.
3. The following conditions apply in addition to those contained in **SECTION VI - GENERAL CONDITIONS** of the policy.
 - a. **Premium**
 - (1) The premium stated in the Declarations for this coverage extension is provisional. **We** shall compute the earned premium for each policy term on the basis of the total cost **you** incur to hire **automobiles** during that term. **We** shall use the rate for the coverage in effect on the inception date of the term.
 - (2) Additional premium will be charged or a refund made, whichever is appropriate. However, **we** shall retain the minimum premium for this coverage extension.
 - b. **Examination of Your Books and Records**

We may examine and audit **your** books and records to determine the premium for this coverage at any time:

 - (1) during the policy term, and
 - (2) within one year after the expiration of this insurance.
 - c. **OTHER INSURANCE**

This coverage extension is excess of any other available insurance.

All other terms and conditions of the policy apply.

COMBINED LIMIT OF LIABILITY
Automobile Policy

79539 (6-9)

It is agreed:

When Combined Liability is shown under Coverages in the Declarations, **SECTION II - LIABILITY COVERAGE, 4. LIMIT OF LIABILITY** is deleted and replaced by the following:

4. LIMIT OF LIABILITY

- a. We will pay damages for **bodily injury** and **property damage** up to the Limit of Liability stated in the Declarations. The Limit of Liability is the amount of coverage and the most we will pay for all damages because of or arising out of:

- 1) all **bodily injury**; and
- 2) all **property damage**;

in any one occurrence.

- b. The Limit of Liability is not increased because of the number of:

- 1) **automobiles** shown or premiums charged in the Declarations;
- 2) claims made or **suits** brought;
- 3) persons injured; or
- 4) **automobiles** involved in the **occurrence**.

- c. An **automobile** and attached **trailer** are one **automobile** and do not increase the Limit of Liability.

All other policy terms and conditions apply.

EXTRA BODILY INJURY EXCLUSION
Automobile Policy

It is agreed:

SECTION II - LIABILITY COVERAGE does not apply to **bodily injury** sustained by any person:

1. while in or upon; or
2. getting into, out of, on to or off of;

your automobile that is a motorcycle, motor scooter or motorized bicycle.

All other policy terms and conditions apply.

NO-FAULT INSURANCE ENDORSEMENT

It is agreed:

SECTION I - DEFINITIONS

The following definitions apply to this endorsement. Definitions contained in the policy do not apply to this endorsement.

1. **Elimination period** means the 3 days following the **motor vehicle** accident.
2. **Injured person** means:
 - a. **you**, when injured in an accident involving any **motorized vehicle**, except when the injury is the result of the use or operation of a **motor vehicle** **you** own that is not insured by this endorsement;
 - b. a **relative**, when injured in an accident involving any **motor vehicle**, except when the injury is the result of the use or operation of a **motor vehicle** owned by the injured **relative** that is not insured by this endorsement; and
 - c. any other natural person whose injuries arise out of a **motor vehicle** accident:
 - (1) while **occupying** the **insured motor vehicle** with **your** express or implied consent; or
 - (2) while a pedestrian, if the accident involves the **insured motor vehicle** and occurs in the State of Utah
3. **Injury** means physical injury, sickness or disease sustained by a person including resulting death of that person.
4. **Insured motor vehicle** means a **motor vehicle**:
 - a. to which the bodily injury liability insurance of the policy and personal injury protection coverage of this endorsement apply; and
 - b. for which **you** are required to maintain the owner's or operator's security required by the State of Utah.
5. **Motor vehicle** means every self-propelled vehicle that is designed for use upon a highway, including trailers and semi-trailers designed for use with such motorized vehicles. **Motor vehicle** does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails.
6. **Occupying** means being in or on a **motor vehicle** as a passenger or operator, or being engaged in the immediate acts of entering, boarding or alighting from a **motor vehicle**.
7. **Operator** means every person who is in actual physical control of a **motor vehicle**.
8. **Pedestrian** means any natural person not **occupying** a **motor vehicle**.
9. **Relative** means a person who resides with **you** and who is related to **you** by blood, marriage or adoption or who is **your** ward or foster child. **Relative** includes such person who usually resides in **your** household but temporarily lives elsewhere
10. **We, us or our** means the Company providing this insurance
11. **You or your** means the first natural person or organization named in the Declarations.

SECTION II - PERSONAL INJURY PROTECTION

1. COVERAGE

- a. **We** will pay personal injury protection benefits to or for an **injured person** who sustains accidental injury arising out of the operation or use of a **motor vehicle** as a vehicle.
- b. Personal injury protection benefits shall consist of
 - (1) medical expenses benefits meaning the reasonable value of all expenses for necessary medical, surgical, x-ray, dental and rehabilitation services, including.

- (c) hospital and nursing services; and
 - (d) nonremedial care and treatment rendered in accordance with a recognized religious method of healing.
- (2) loss of income and earning capacity of an **injured person** from an inability to work for a maximum period of 52 consecutive weeks beginning three days after the date of the loss of income and earning capacity. If the disability continues for longer than two consecutive weeks after the date of loss, the **elimination period** shall be waived.
 - (3) an allowance for services actually rendered or expenses reasonably incurred for services that, but for the injury, the **injured person** would have performed for his or her household for a maximum period of 365 days beginning three days after the date of the accident. If the disability continues for longer than two consecutive weeks after the date of **injury**, the **elimination period** shall be waived.
 - (4) funeral, burial or cremation benefits.
 - (5) compensation for death of an **injured person**, payable to the **injured person's** personal representative for the benefit of his or her heirs.

2. EXCLUSIONS

We will not pay personal injury protection benefits because of **injury**:

- a. sustained by the **injured person** while occupying a **motor vehicle** owned by or furnished to or available for regular use by the **injured person** or any **relative** of such **injured person**, if the **motor vehicle** is not an **insured motor vehicle**.
- b. to any person while operating the **insured motor vehicle** without the express or implied consent of **you** or a **relative** or while not in lawful possession of the **insured motor vehicle**.
- c. to any person, if that person's conduct contributes to his or her injury by intentionally causing the injury to himself or herself or while committing a felony.
- d. to any person arising out of the use of any **motor vehicle** while located for use as a residence or premises.
- e. to any person because of war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the preceding.
- f. to the owner, operator or occupant of a motorcycle, trailer or semitrailer, if such **injury** occurs while operating or **occupying** any of these vehicles.
- g. to any person resulting from radioactive, toxic, explosive or other hazardous properties of nuclear materials.
- h. to any person sustained as a **pedestrian**, if the accident takes place outside the State of Utah. This exclusion does not apply to **you** or a **relative**.

3. LIMITS OF LIABILITY

- a. Our liability for payment of personal injury protection benefits to or for any one **injured person** for **injury** because of or arising out of any one accident shall not exceed the following:
 - (1) \$3,000 for medical expenses. If a larger amount is shown in the Declarations, **we** will pay up to that amount.
 - (2) 85% of loss of income and earning capacity, subject to a maximum of \$250 per week.
 - (3) \$20 per day for household services the **injured person** would have performed.
 - (4) \$1,500 for incurred funeral, burial or cremation expenses.
 - (5) A total of \$3,000 for death of the **injured person**.
- b. The amount **we** pay shall be reduced by:
 - (1) any benefits the **injured person** receives or is entitled to receive under any workers' compensation or similar statutory plan; and

SECTION III - CONDITIONS

1. ACTION AGAINST US

No legal action may be brought against **us** until there has been full compliance with all the terms of this coverage.

2. NOTICE

In the event of an accident, written notice containing particulars sufficient to identify the **injured person**, and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each **injured person** to **us** or any of **our** authorized agents as soon as practicable.

If an **injured person**, his or her legal representative or his or her dependent survivors shall institute legal action to recover damages for **injury** against a person or organization who is or may be liable, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded to **us** as soon as practicable by the **injured person**, his or her legal representative or his or her survivors.

3. MEDICAL REPORTS and PROOF OF CLAIM

As soon as practicable, the **injured person** or someone on his or her behalf shall give to **us** written proof of claim, under oath if required, including full particulars of the nature and extent of the **injury**, treatment and rehabilitation received and contemplated, and such other information as may assist **us** in determining the amount due and payable. The **injured person** shall submit to physical and mental examination by physicians selected by **us** when and as often as **we** may reasonably require. **We** shall pay for such examinations.

4. NON-DUPLICATION AND COORDINATION

Coverage afforded by this endorsement is primary coverage for only **injury** sustained by an **injured person** in an accident arising out of the operation or use of the **insured motor vehicle** as a vehicle.

No **injured person** shall recover duplicate benefits for the same elements of loss under this or any similar insurance, including approved plans of self-insurance. If an **injured person** has other similar insurance that is available and applicable to the accident, that total amount recoverable shall not exceed the amount payable under the provisions of the insurance providing the highest dollar limit. **We** shall not be liable for an amount greater than the proportion that **our** limit of liability bears to the sum of the limits of liability of all applicable insurance that applies on the same basis.

5. SUBROGATION

In the event of any payment under the provisions of this endorsement, **we** are subrogated to the rights of the person to whom or for whose benefit the payments were made to the extent of those payments. That person must do everything necessary to secure such rights, do nothing to prejudice those rights, and shall execute and deliver to **us** instruments and papers necessary to secure his or her rights and obligations under this provision. Any recovery shall go first to the **injured person** for any unpaid loss, then to **us**.

All other policy terms and conditions apply.

UNDERINSURED MOTORIST COVERAGE
Automobile Policy

It is agreed:

1. DEFINITIONS

The following definitions apply in addition to those contained in **SECTION 1 - DEFINITIONS** of the policy.

- a. **Occupying** means being in or on an **automobile** as a passenger or operator, or being engaged in the immediate acts of entering, boarding or alighting from an **automobile**.
- b. **Pedestrian** means any natural person who is not **occupying** an **automobile**.
- c. **Underinsured automobile** means an **automobile** to which a liability bond or policy applies at the time of the **occurrence**, however, the limit of liability is less than the amount of compensatory damages the injured person is legally entitled to recover for **bodily injury**.

Underinsured automobile does not include an **automobile**:

- (1) owned by or furnished to or available for regular use by **you** or a **relative**;
- (2) owned by any governmental unit or agency;
- (3) located for use as a residence or premises;
- (4) that is designed for use primarily off public roads except while actually on public roads;
- (5) that is an **uninsured automobile**. **Uninsured automobile** means an **automobile**:
 - (a) the operation, maintenance and use of which is not covered by a liability bond or policy at the time of the **occurrence**.
 - (b) the operation, maintenance and use of which is covered by a liability bond or policy at the time of the **occurrence** but the limits are less than:
 - (1) \$25,000 because of liability for **bodily injury** to one person in any one **occurrence**;
 - (2) subject to (1) above, \$50,000 because of liability for **bodily injury** to two or more persons in any one **occurrence**; and
 - (3) \$15,000 because of liability for **property damage** in any one **occurrence**; or
 - (4) \$65,000 in any one **occurrence** whether arising from **bodily injury** or **property damage**.

However, such **automobile** is uninsured only to the extent of the deficiency.

- (c) insured by a company that is or becomes insolvent. However, such **automobile** is uninsured only to the extent that the claim against the insurer is not paid by a guaranty association or fund.
- (d) insured by a company that has issued a successful written denial of coverage.
- (e) that is a hit and run **automobile**. By this **we** mean an **automobile** that causes **bodily injury**:
 - 1) by direct physical contact with the injured person or the **automobile** the injured person is **occupying**; or
 - 2) without direct physical contact with the injured person or the **automobile** the injured person is **occupying**;and whose owner or operator is unknown.

If there is no direct physical contact, the injured person must show existence of the **uninsured automobile** by clear and convincing evidence consisting of more than the injured person's testimony.

- (f) owned or operated by a self-insurer under any motor vehicle law provided such self-insurer is or becomes insolvent and cannot provide the minimum amounts required by that motor vehicle law.

- (1) from the owner or operator of an **underinsured automobile**;
 - (2) for **bodily injury** sustained while **occupying** an **automobile** that is covered by **SECTION II - LIABILITY COVERAGE** of the policy.
- b. If the first named insured in the Declarations is an individual, this coverage is extended as follows:
- (1) We will pay compensatory damages **you** are legally entitled to recover:
 - (a) from the owner or operator of any **underinsured automobile**;
 - (b) for **bodily injury** **you** sustain:
 - 1) when **you** are a **pedestrian**; or
 - 2) while **occupying** an **automobile** **you** do not own which is not covered by **SECTION II - LIABILITY COVERAGE** of the policy.
 - (2) The coverage extended in (1) above is also afforded to a **relative** who does not own an **automobile**.
- c. The **bodily injury** must be accidental and arise out of the ownership, maintenance or use of the **underinsured automobile**.
- d. Whether an injured person is legally entitled to recover damages and the amount of the damages shall be determined by agreement between the injured person and **us**. **We** will not be bound by any judgments for damages obtained or settlements made without **our** written consent.

3. EXCLUSIONS

Underinsured Motorist Coverage does not apply:

- a. to punitive or exemplary damages.
- b. when the first named insured in the Declarations is an individual:
 - (1) to **you** while **occupying** or when struck by any **automobile** owned by **you**, if the **automobile** is not insured for underinsured motorist coverage by the policy.
 - (2) to a **relative** while occupying or when struck by any **automobile** owned by that **relative**, if the **automobile** is not insured for underinsured motorist coverage by the policy.
 - (3) to a **relative** while occupying or when struck by any **automobile** owned by **you**, if the **automobile** is insured for underinsured motorist coverage on a primary basis by any other policy.
- c. to any person while occupying any **automobile** owned by **you**, if the **automobile** is not insured for underinsured motorist coverage by the policy.
- d. to any person who settles a **bodily injury** claim without **our** written consent.
- e. to directly or indirectly benefit an insurer or self-insurer under any workers compensation, disability benefits or similar law.

4. LIMIT OF LIABILITY

We will pay compensatory damages for **bodily injury** up to the Limit of Liability stated in the Declarations as follows:

- a. The limit stated for "each person" is the amount of coverage and the most **we** will pay for all compensatory damages because of or arising out of **bodily injury** to one person in any one occurrence.
- b. The limit stated for "each occurrence" is the total amount of coverage and the most **we** will pay, subject to a. above, for all compensatory damages because of or arising out of **bodily injury** to two or more persons in any one **occurrence**.
- c. If **you** or a **relative** sustains **bodily injury** while not **occupying** an **automobile**, the applicable limit of liability available may equal but shall not exceed the highest limit of liability for underinsured motorist coverage applying to any one **automobile** for which the injured person is an insured.

- (1) the limit of liability applicable to the **automobile** the injured person was **occupying** at the time of the **occurrence**; and
 - (2) the highest limit of liability for underinsured motorist coverage afforded by a policy that insures **you** or the **relative**.
- e. Except as provided in d. above, the limits of liability for two or more **automobiles** may not be added together, combined or stacked to determine the amount of coverage available for **bodily injury** sustained by any injured person in any one **occurrence** regardless of the number of:
- (1) policies involved;
 - (2) **automobiles** involved;
 - (3) persons insured;
 - (4) claims made or suits brought;
 - (5) **automobiles** or premiums shown in the Declarations; or
 - (6) premiums paid.
- f. The amount **we** pay will not duplicate any amounts paid or payable for the same **bodily injury**:
- (1) under **SECTION II - LIABILITY COVERAGE** of the policy;
 - (2) under any workers compensation, disability benefits or similar law; or
 - (3) by or on behalf of any person or organization who may be legally responsible for the **bodily injury**.

5. OTHER INSURANCE

- a. If this insurance and other insurance applies on a primary basis, **we** will pay **our** share. **Our** share shall be the ratio of **our** limit of liability to the total of all limits which apply on a primary basis.
- b. If this insurance and other insurance applies on an excess basis, **we** will pay **our** share. **Our** share shall be the ratio of **our** limit of liability to total of all limits which apply on an excess basis.
- c. The insurance **we** extend to **automobiles** **you** do not own shall apply as excess over any other insurance that applies on a primary basis.

6. CONDITIONS

The following conditions apply in addition to those contained in the **SECTION VI - GENERAL CONDITIONS** of the policy.

a. TIME LIMITATION FOR ACTION AGAINST US

Any person seeking Underinsured Motorist Coverage must present a claim for compensatory damages:

- (1) according to the terms and conditions of the policy; and
- (2) within four years from the date of the **occurrence**.

b. ARBITRATION

- (1) If **we** and a person entitled to Underinsured Motorist Coverage under this endorsement do not agree:

- (a) that the person is entitled to recover compensatory damages; or
- (b) to the amount of those damages;

the matter may be arbitrated provided both **we** and the injured person agree to arbitration. If so, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that a judge of a court having jurisdiction make the selection.

- (2) Each party will pay its own arbitrator and share equally all other expenses of arbitration.

of competent jurisdiction.

All other policy terms and conditions apply.

COLLISION COVERAGE AMENDATORY ENDORSEMENT
Automobile Policy

79282 (12-9)

It is agreed:

SECTION III - DAMAGE TO YOUR AUTOMOBILE, 1. COVERAGES, d. Collision Coverage is deleted and replaced by the following:

d. Collision Coverage

We will pay for loss or damage to **your automobile** and its **equipment** caused by accidental collision with another object or by accidental upset.

When a deductible is indicated in the Declarations for this coverage, **we** will reduce **our** payment by that amount. If **your automobile** is a **private passenger automobile**, the deductible does not always apply. The deductible shall not apply:

(1) in a collision with another **automobile**:

(a) **we** insure and which **you** do not own; rent or have in **your** care, custody or control; or

(b) whose owner or operator has been identified; and

1) is legally responsible for the entire amount of the damage; and

2) is covered by a **property damage** liability policy or bond;

but only if the damage exceeds the deductible amount.

(2) to **your** legally parked **private passenger automobile** in the event it is accidentally struck by another of **your private passenger automobiles**, provided Collision Coverage applies to both such **automobiles**.

All other policy terms and conditions apply.

Utah
UNINSURED MOTORIST COVERAGE AMENDMENT
Automobile Policy

79365 (1-97)

It is agreed:

If **you** are engaged in the business of or accept payment for, transporting natural persons by **automobile** or are a school district that provides transportation services for its pupils:

1. the uninsured motorist coverage provided is secondary to any other insurance covering the injured person; and
2. the uninsured motorist coverage provided does not apply to an employee whose exclusive remedy is provided by Title 35, Chapter 1, Workers' Compensation.

All other policy terms and conditions apply.

Utah
AMENDATORY ENDORSEMENT
Automobile Policy

79360 (1-97)

It is agreed:

1. Under **SECTION I - DEFINITIONS, 9. Relative** is deleted and replaced by the following:
 9. **Relative** means a person who resides with **you** and who is related to **you** by blood, marriage or adoption or who is **your** ward or foster child. **Relative** includes such person who usually resides in **your** household but temporarily lives elsewhere.
2. Under **SECTION V - WHAT YOU MUST DO AFTER AN ACCIDENT OR LOSS, 1. NOTIFY US PROMPTLY, a.** is deleted and replaced by the following:
 - a. **You** and any person seeking coverage under this policy must notify **us** promptly as to how, when and where the accident happened. **We** must have the names and addresses of any injured person and of any witnesses. Notice given by or on behalf of **you** or any person seeking coverage or making claim to any authorized agency of **ours** within Utah, with particulars sufficient to identify the policy, shall be considered to be notice to **us**. Notice and documentation of loss must be given if **we** require it. Any loss or damage caused by theft, larceny, robbery, pilferage or trickery must be promptly reported to the police.

Failure to provide notice or proof of loss within the time limit specified by **us** does not invalidate the claim if **you** or the person seeking coverage can show that it was not reasonably possible to file the notice or proof of loss within the prescribed time limit. This paragraph also applies to Uninsured Motorist Coverage and/or Underinsured Motorist Coverage.

All other policy terms and conditions apply.

ROAD CONSTRUCTION, MAINTENANCE AND SPECIAL EQUIPMENT
Automobile Policy

79517 (6-

It is agreed:

1. **SECTION II - LIABILITY COVERAGE** applies to any:

- a. road grader, road oiler, road roller or road scraper;
- b. asphalt spreader, tar spreader or concrete mixer;
- c. crane, steam shovel or gas shovel;
- d. ditch or trench digger;
- e. air compressor, sandblasting or building surface cleaning machinery, septic tank cleaning or vacuum cleaning equipment;
- f. tree or other spraying equipment;
- g. snow plow or loader;
- h. welding apparatus or well drilling machinery; or
- i. _____

incapable of moving under its own power while towed by **your automobile** provided **your automobile** is insured for Liability Coverage.

2. **SECTION II - LIABILITY COVERAGE** does not apply to:

- a. any accident arising out of the operation of any:
 - (1) crane, steam shovel or gas shovel;
 - (2) ditch or trench digger;
 - (3) air compressor, sandblasting or building surface cleaning machinery, septic tank cleaning or vacuum cleaning equipment;
 - (4) tree or other spraying equipment;
 - (5) welding apparatus or well drilling machinery; or
 - (6) _____

unless such operation is solely for the purpose of locomotion; or

- b. any **bodily injury** or **property damage** covered by insurance provided by any other policy, form or endorsement.

All other policy terms and conditions apply.

POLLUTION LIABILITY EXCLUSION
Automobile Policy

79524 (6-92)

It is agreed:

SECTION II - LIABILITY COVERAGE does not apply to:

- I. **Bodily injury or property damage** resulting from the actual, alleged or threatened discharge, release, escape, seepage, migration, or dispersal of **pollutants**:
 - a. that are, or are contained in any property that is:
 - (1) being transported or towed by, handled or prepared for placement into or upon, or taken from the **automobile**;
 - (2) otherwise in the course of transit by **you** or on **your** behalf, or
 - (3) being disposed of, stored, treated or processed into or upon the **automobile**;
 - b. before such **pollutants** or property containing **pollutants** are moved from the place they are accepted by **you** or anyone acting on **your** behalf for placement into or onto the **automobile**; or
 - c. after such **pollutants** or property containing **pollutants** are removed from the **automobile** to where they are delivered, disposed of or abandoned by **you** or anyone acting in **your** behalf.
 - 1.a. above does not apply to **pollutants** that are needed or result from the normal mechanical, electrical or hydraulic functioning of the **automobile** or its parts, if the discharge, release, escape, seepage, migration or dispersal of such **pollutants** is directly from a part of the **automobile** designed to hold, store, receive or dispose of such **pollutants** by the **automobile** manufacturer.
 - 1.b. and 1.c. above do not apply, if as a direct result of the maintenance or use of the **automobile**, **pollutants** or property containing **pollutants** which are not in or upon the **automobile**, are upset, overturned or damaged at any premises not owned by or leased to **you**. The discharge, release, escape, seepage, migration or dispersal of the **pollutants** must be directly caused by such upset, overturn or damage.
- Any loss, cost or expense arising out of any:
- a. request, demand or order that **you** or anyone else test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
 - b. claim or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, liquids, gases and waste. Waste materials include materials to be recycled, reconditioned or reclaimed.

Other policy terms and conditions apply.

NEWL . ACQUIRED AUTOMOBILE COVERAGE
Automobile Policy

79540 (6-9

It is agreed:

1. COVERAGE

Provided all **automobiles you** own that are licensed for use on public roadways, except any that are out of service because of mechanical breakdown or damage sustained in an accident, are scheduled in the Declarations on the inception date of the current policy term, we will extend:

- a. Liability Coverage;
- b. Comprehensive Coverage;
- c. Collision Coverage;
- d. Uninsured Motorist Coverage and Underinsured Motorist Coverage;
- e. Automobile Medical Payments or any mandatory no-fault insurance coverages;

as provided for those scheduled **automobiles** to any additional **automobile you** acquire during the current policy term. The extension applies only for the remainder of the current policy term.

2. CONDITIONS

The following conditions apply to this coverage extension in addition to those contained in **SECTION VI - GENERAL CONDITIONS** of the policy.

- a. Comprehensive Coverage is extended only if it applies to all **automobiles** scheduled in the Declarations on the inception date of the current policy term. We shall reduce our payment by \$100 for each claim made with respect to each **automobile** covered by this endorsement.
- b. Collision Coverage is extended only if it applies to all **automobiles** scheduled in the Declarations on the inception date of the current policy term. We shall reduce our payment by \$250 for each claim made with respect to each **automobile** covered by this endorsement.
- c. If a claim is made under this endorsement, **you** shall be charged the appropriate premium for the **automobile** involved in the loss. The premium charge shall be made from the date **you** acquired the **automobile** through the end of the current policy term.
- d. We may examine and audit **your** books and records to determine the premium for this coverage at any time:
 - (1) during the policy term; and
 - (2) within one year after the expiration of this insurance.
- e. **You** shall report all additional **automobiles** to **us** within 30 days following the expiration of each policy term.
- f. We shall compute the actual earned premium for each policy term on a pro-rata basis determined by the number of additional **automobiles you** acquire during the current policy term.

All other policy terms and conditions apply.