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Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

AUSTIN LEWIS, an individual,

Supreme Court No.: 83079

Appellant,

District Court Case No.: CV20-01047

vs.

MID-CENTURY INSURANCE COMPANY,

Respondent.

DOCKETING STATEMENT

1. Second Judicial District Department 1
County of Washoe District Court Judge Kathleen Drakulich
District Court Case No. CV20-01047

2. Attorney filing this docketing statement:

Attorney Graham Galloway Telephone 775.333.7555
Firm Galloway & Jensen
Address 222 California Avenue, Reno, NV 89509
Client(s) Austin Lewis

3. Attorney(s) representing respondents(s):

1 Attorney Todd Alexander Telephone 775.786.6868
2 Firm Lemons, Grundy & Eisenberg
3 Address 6005 Plumas Street #300, Reno, NV 89519
4 Client(s) Mid-Century Insurance Company

5 **4. Nature of disposition below (check all that apply):**

6 Summary Judgment

7 **5. Does this appeal raise issues concerning any of the following?**

8 No

9 **6. Pending and prior proceedings in this court.** List the case name and docket
10 number of all appeals or original proceedings presently or previously pending before this court
11 which are related to this appeal:

12 None

13 **7. Pending and prior proceedings in other courts.** List the case name, number
14 and court of all pending and prior proceedings in other courts which are related to this appeal
15 (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

16 None

17 **8. Nature of the action.** Briefly describe the nature of the action and the result
18 below:

19 This matter stems from a contract dispute and the interpretation of an exclusion in a
20 contract of insurance. On October 26, 2019, Austin Lewis was riding his off road motorcycle
21 on a track at what is called the Sand Pits OHV Park outside of South Lake Tahoe, California.
22 Mr. Lewis was travelling in the proper direction on the track and had just taken a large jump.
23 Unbeknown to Mr. Lewis, Joshua Brackett drove a Ford Mustang onto the motocross track and
24 came to a stop right under the jump where motorcycles would land. Mr. Lewis was not able to
25 see the Brackett Mustang until he landed on top of the Mustang. Mr. Lewis sustained fractures

1 of his T4, T9, T11 and T12 vertabrae as a result of smashing into the windshield of Mr.
2 Brackett's Mustang. He also fractured a portion of his sternum and sustained a collapsed lung.
3 Mr. Lewis' medical expenses are \$112,477.00, and he missed a substantial amount of work at a
4 loader at UPS.

5 Mr. Brackett's vehicle was insured by Financial Indemnity Company for the statutory
6 minimum in California of \$15,000.00. Mr. Lewis accepted Mr. Brackett's policy limits and
7 then presented a claim for underinsured motorist coverage to his own insurer, Mid-Century.
8 Mr. Lewis had uninsured/underinsured limits (UM/UIM) of \$250,000.00, but when he
9 presented his claim he was informed by Mid-Century an exclusion in his policy applied to "step
10 down" the uninsured motorist (UIM) coverage from the policy limits of \$250,000.00 to the
11 statutory liability limits of \$25,000.00. Plaintiff believes Mid-Century improperly applied this
12 exclusion, or at a minimum, an ambiguity exists in the policy language such that the exclusion
13 cannot be applied to Mr. Lewis. Defendant filed a Motion for Summary Judgment on March 3,
14 2021 claiming its step down exclusion is clear and unambiguous, and limits Lewis' right to
15 recover under the policy. Plaintiff filed his Opposition on March 16, 2021, as well as a Cross
16 Motion for Partial Summary Judgment. Defendant then filed its Reply on March 25, 2021 and
17 Opposition to Plaintiff's cross motion on March 29, 2021. The district court ruled on the
18 motions in an order dated June 8, 2021, granting Defendant's motion for summary judgment
19 and denying Plaintiff's cross motion. Plaintiff appeals the June 8, 2021 order.
20

21 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach
22 separate sheets as necessary):
23

24 The district court erred in interpreting the policy language, or in the alternative,
25 improperly and incorrectly found the language to be unambiguous. The district court erred in
determining there are no genuine issues of material fact and incorrectly granted judgment as a

1 matter of law.

2 **10. Pending proceedings in this court raising the same or similar issues.** If you
3 are aware of any proceedings presently pending before this court which raises the same or
4 similar issues raised in this appeal, list the case name and docket numbers and identify the same
5 or similar issue raised:

6 None

7 **11. Constitutional issues.** If this appeal challenges the constitutionality of a statute,
8 and the state, any state agency, or any officer or employee thereof is not a party to this appeal,
9 have you notified the clerk of this court and the attorney general in accordance with NRAP 44
10 and NRS 30.130?

11 N/A

12 **12. Other issues.** Does this appeal involve any of the following issues?

13 No

14 **13. Assignment to the Court of Appeals or retention in the Supreme Court.**

15 This matter does not fall under any category set forth in NRAP 17(a) or (b).

16 **14. Trial.** If this action proceeded to trial, how many days did the trial last?

17 The district court granted summary judgment prior to the trial date.

18 **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have
19 a justice recuse him/herself from participation in this appeal? If so, which Justice?

20 No.

21 **TIMELINESS OF NOTICE OF APPEAL**

22 **16. Date of entry of written judgment or order appealed from**

23 If no written judgment or order was filed in the district court, explain the basis for
24 seeking appellate review:

25 June 8, 2021.

17. Date written notice of entry of judgment or order was served

July 9, 2021, was service by Electronic filing.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

N/A

19. Date notice of appeal filed

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

June 15, 2021.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a) NRAP 3A(b)(1)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Court granted summary judgment on behalf of Mid Century and denied Lewis' cross motion for partial summary judgment, effectively ending the underlying case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Austin Lewis

Mid-Century Insurance Company

///

1 (b) If all parties in the district court are not parties to this appeal, explain in detail
2 why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

3 All parties in the district court are parties to this appeal.

4 **23. Give a brief description (3 to 5 words) of each party's separate claims,**
5 **counterclaims, cross-claims, or third-party claims and the date of formal disposition of**
6 **each claim.**

7 Appellant Lewis; Breach of Contract

8 Respondent Mid-Century Insurance Company: General denial of liability and damages.

9 Order granting summary judgment: June 8, 2021.

10 **24. Did the judgment or order appealed from adjudicate ALL the claims**
11 **alleged below and the right and liabilities of ALL the parties to the action or consolidated**
12 **actions below?**

13 Yes

14 **25. If you answered "No" to question 24, complete the following:**

15 (a) Specify the claims remaining pending below:

16 (b) Specify the parties remaining below:

17 (c) Did the district court certify the judgment or order appealed from as a final
18 judgment pursuant to NRCP 54(b)?

19 (d) Did the district court make an express determination, pursuant to NRCP 45(b), that
20 there is no just reason for delay and an express direction for the entry of judgment?

21 N/A

22 **26. I you answered "No" to any party of question 25, explain the basis for**
23 **seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

24 N/A

25 **27. Attach file-stamped copies of the following documents:**

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See attached documents.

Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 1st day of July, 2021. GALLOWAY & JENSEN

By: /s/ Graham Galloway
GRAHAM GALLOWAY
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorney for Plaintiff

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Austin Lewis
Name of appellant

7/1/2021
Date

Graham Galloway
Name of counsel of record

/s/ Graham Galloway
Signature of counsel of record

State of Nevada, County of Washoe
State and county where signed

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN
3 and that on this date I served a true and correct copy of the preceding document addressed to
4 the following:

5 Todd Alexander
6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

9 Jill I. Greiner
10 Dotson Law
11 5355 Reno Corporate Drive Ste 100
12 Reno, NV 89511

13 ☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully
14 prepaid, an envelope containing the preceding document at Reno, Nevada, in the ordinary
15 course of business.

16 ☐ **COURTESY COPY VIA FACSIMILE**

17 ☐ **BY PERSONAL SERVICE:** An employee of Galloway & Jensen personally
18 delivered the preceding document by hand delivery to the offices of the address named above.

19 ☐ **BY MESSENGER SERVICE:** Reno Carson Messenger Service received from
20 Galloway & Jensen the preceding document for delivery to the offices of the address named
21 above.

22 ☒ **BY ELECTRONIC FILING (e-Flex)**

23 DATED this 1st day of July, 2021.

24 /s/ Yennifer Sanchez
25 Yennifer Sanchez

EXHIBIT 1

EXHIBIT 1

2200
Todd R. Alexander, Esq. NSB #10846
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
(775) 786-6868
tra@lge.net
Attorneys for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual

Plaintiff,

vs.

MID-CENTURY INSURANCE COMPANY, ROE
CORPORATIONS I-X and DOES I-X inclusive,

Defendants.

Case No. CV20-01047

Dept. No. 1

MOTION FOR SUMMARY JUDGMENT

Defendant, MID-CENTURY INSURANCE COMPANY ("Mid-Century"), by and through its undersigned counsel, hereby moves for summary judgment of the claim asserted in the Amended Complaint. This motion is filed pursuant to NRCP 56 and is based on the following memorandum of points and authorities, the attached exhibits, and any further information this Court deems it appropriate to consider.

INTRODUCTION

This is a dispute over insurance coverage in a first-party, uninsured motorist claim. There are no facts in dispute, and the dispute involves only the interpretation of the language in the Mid-Century insurance policy, which is purely an issue of law.

Plaintiff Austin Lewis was injured when he was riding his off-road motorcycle and collided with another vehicle driven by a third party, Joshua Bracket, who is not a party to this lawsuit. Mr. Bracket carried the statutory minimum insurance policy limit of \$15,000. As a result, Mr. Lewis is now suing Mid-Century, his own automobile insurer, for uninsured

1 motorist coverage.

2 The problem with Plaintiff's claim is that the subject Mid-Century insurance policy
3 covered only the automobiles listed on the declarations page of the policy, which does not
4 include the motorcycle driven by Mr. Lewis. As such, the uninsured motorist coverage of the
5 Lewis' policy does not cover Mr. Lewis' bodily injury arising from his operation of an off-road
6 motorcycle. Indeed, uninsured motorist coverage for bodily injury arising from the operation
7 of any vehicle other than those vehicles insured under the subject policy is specifically
8 excluded by the Mid-Century policy. As discussed in greater detail below, this Court should
9 interpret the Mid-Century insurance policy as written and grant summary judgment in Mid-
10 Century's favor.

11 STATEMENT OF UNDISPUTED FACTS

12 Plaintiff Austin Lewis was riding his off-road dirt bike on an off-road trail or track when
13 a vehicle operated by Joshua Bracket collided with the dirt bike. Mr. Lewis sustained bodily
14 injury as a result of the collision. Mr. Lewis made a claim against Mr. Bracket's automobile
15 insurer, which had a policy limit of only \$15,000. Mr. Lewis alleges that his damages exceed
16 Mr. Bracket's insurance policy limit. Mr. Lewis has therefore asserted a claim to Mid-Century,
17 his own automobile insurer, under the uninsured motorist coverage provision of the Mid-
18 Century policy.

19 The uninsured motorist coverage provision of the Mid-Century policy contains the
20 following exclusion:

21 4. This coverage does not apply while **occupying** any vehicle owned by you or
22 a **family member** for which insurance is not afforded under this policy or
23 through being struck by that vehicle.

24 Mid-Century Insurance Policy, attached hereto as **Exhibit 1**, p. 8 (emphasis in bold in original).

25 The only vehicles insured under the Lewis family's Mid-Century policy are the
26 following:

- 27 1. A 2013 Audi A7 Quattro
- 28 2. A 2007 Chevrolet Colorado
3. A 2018 Ford F350
4. A 1997 Ford F150

1 Mid-Century Insurance Policy Declarations Page, attached hereto as **Exhibit 2**, page 1 of 4.

2 Because Mr. Lewis was injured while occupying his off-road motorcycle, a vehicle for
3 which insurance is not afforded under the Mid-Century policy, the uninsured motorist
4 coverage of the Mid-Century policy does not apply to cover the injuries sustained in the
5 collision that is the subject of this case.

6 **STANDARD FOR GRANTING SUMMARY JUDGMENT**

7 Rule 56 of the Nevada Rules of Civil Procedure permits a party to move for summary
8 judgment on any claim or defense. NRCP 56(a) (2019). "The court shall grant summary
9 judgment if the movant shows that there is no genuine dispute as to any material fact and the
10 movant is entitled to judgment as a matter of law. The court should state on the record the
11 reasons for granting or denying the motion." *Id.*

12 Summary judgment is proper when the pleadings, depositions, answers to
13 interrogatories, admissions, documents, electronically stored information, affidavits,
14 declarations, stipulations, or other materials that are properly before the court demonstrate
15 that no genuine issue of material fact exists, and the moving party is entitled to judgment as a
16 matter of law. NRCP 56(c)(1)(A) (discussing materials to support an assertion of fact); and
17 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

18 As noted above, the issue now before this Court does not involve disputed issues of
19 fact. The facts underlying the dispute over insurance coverage are not disputed. Rather, the
20 issue involves only the interpretation of contractual insurance policy language, which is an
21 issue of law for the Court to decide. "In the absence of ambiguity or other factual
22 complexities, contract interpretation presents a question of law that the district court may
23 decide on summary judgment." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d
24 364, 366 (2013) (quoting *Ellison v. Cal. State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977
25 (1990)) (internal brackets and quotation marks omitted).

26 **LEGAL ARGUMENT**

27 The applicable exclusion to uninsured motorist coverage under the Mid-Century policy
28 is susceptible to only one reasonable interpretation, and it negates uninsured motorist

1 coverage under the undisputed facts of this case. Whether a contract is ambiguous presents a
2 question of law. *Margrave v. Dermody Props.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994).
3 A contract is ambiguous if its terms may reasonably be interpreted in more than one way, but
4 ambiguity does not arise simply because the parties disagree on how
5 to interpret their contract. *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123 Nev. 212, 215, 163 P.3d
6 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d 492, 493–94
7 (1954) (concluding that summary judgment was appropriate because the interpretation
8 offered by one party was not reasonable and that, therefore, the contract contained no
9 ambiguity) (*abrogated on other grounds by Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d
10 1026 (2005)). Rather, “an ambiguous contract is ‘an agreement obscure in meaning, through
11 indefiniteness of expression, or having a double meaning.’” *Galardi*, 129 Nev. at 309, 301 P.3d
12 at 366 (quoting *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir.2009).

13 The applicable exclusion in the Mid-Century policy reads:

14 4. This coverage does not apply while **occupying** any vehicle owned by you or
15 a **family member** for which insurance is not afforded under this policy or
16 through being struck by that vehicle.

17 (Exhibit 1, p. 4).

18 While Mr. Lewis was riding an off-road motorcycle owned by the Lewis family, the
19 motorcycle is a vehicle that was not insured under the Mid-Century policy. Thus, uninsured
20 motorist coverage under the Mid-Century policy is excluded under the undisputed facts of this
21 case. Summary judgment in this insurance coverage dispute should be granted in favor of
22 defendant Mid-Century Insurance Company.

23 ///

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///


1 **CONCLUSION**

2 Mid-Century is entitled to summary judgment because uninsured motorist coverage is
3 excluded under the clear and unambiguous terms of the subject policy, in light of the
4 undisputed facts of this case. Accordingly, Mid-Century Insurance Company respectfully
5 requests the entry of summary judgment in its favor.

6 **The undersigned does hereby affirm that the preceding document does not contain**
7 **the social security number of any person.**

8 Dated: March 3, 2021.

9 Lemons, Grundy & Eisenberg

10
11 By: 
12 Todd R. Alexander, Esq.
13 Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on March 3, 2021, I e-filed a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT**, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

Graham Galloway, Esq.
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509


Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Mid-Century Insurance Policy	16 pages
2	Mid-Century Insurance Policy Declarations Page	4 pages

EXHIBIT 1

EXHIBIT 1

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

Index of Policy Provisions

Declarations

Your Personal Coverage Page is attached.

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ANY ADDITIONAL PROVISIONS AFFECTING YOUR POLICY ARE ATTACHED AS "ENDORSEMENTS."

This policy is a legal contract between you (the policyholder) and us (the Company).

IT CONTAINS CERTAIN EXCLUSIONS.

READ YOUR POLICY CAREFULLY.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

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INTENTIONALLY BLANK.**

sample

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

AGREEMENT

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

DEFINITIONS

Throughout this policy "you" and "your" mean the "named insured" shown in the Declarations and spouse if a resident of the same household. "We", "us," and "our" mean the Company named in the Declarations providing this insurance and all the members of the Farmers Insurance Group of Companies, including Farmers Insurance Exchange, Mid-Century Insurance Co., Truck Insurance Exchange, etc. In addition, certain words appear in bold type. They are defined as follows:

Accident or occurrence means an unexpected and unintended event, including continuous or repeated exposure to the same conditions, that causes **bodily injury** or **property damage**.

Additional car means a **private passenger car** or **utility car** of which you acquire possession during the policy period for the purposes of ownership, provided that:

- (1) You notify us of your intent to insure it with us within 30 days of its acquisition, and
- (2) As of the date of acquisition, all **private passenger cars** and **utility cars** you own are insured with us.

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

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

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

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

Private passenger car means a four wheel land motor vehicle of the private passenger or station wagon type actually licensed for use upon public highways. It also means a motor home, regardless of the number of wheels, not used for business purposes.

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

Replacement car means a **private passenger car** or **utility car** which you acquire as a replacement of the car described in the Declarations, provided that:

- (1) Neither you nor a **family member** continues to possess or exercise any right of ownership of the car described in the Declarations, and
- (2) You notify us of its acquisition before the end of the policy term. However, if the policy term ends less than 30 days after its acquisition and you renew the policy, you may notify us within 30 days of its acquisition.

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

Substitute car means a **private passenger car** or **utility car** being temporarily used as a substitute for the car described in the Declarations while it is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

Utility car means a land motor vehicle having at least four wheels licensed for use upon public highways, with a rated load capacity of not more than 2,000 pounds, of the pickup, panel or van type. It does not mean a vehicle used in any business or occupation other than farming or ranching. However, it does mean a vehicle used to transport tools and related items to and from or between job sites. It also includes an **additional car** or **replacement car** of the same type if its usage is the same as the **utility car** described in the Declarations.

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

Your insured car means:

1. The vehicle described in the Declarations of this policy.
2. A **replacement car**.
3. An **additional car**.

For the purposes of 1, 2 and 3 above, ownership will include the written leasing of a **private passenger** or **utility car** for which you qualify as a "long-term lessee" under Nevada law.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

4. Any **utility trailer**:

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

5. Any other **private passenger car, utility car, or utility trailer** while being used as the driver by you or a **family member** which is not furnished or available for regular use or owned by you or a **family member**. This includes such vehicles while rented by you on a daily or weekly basis and for which you qualify as a "short-term lessee" under Nevada law.

Your insured car does not include the following:

- (1) Any vehicle for which there is not sufficient reason to believe the use is with permission of the owner.
- (2) Any vehicle while used in employment by any person whose primary duties are the delivery of goods or services.
- (3) Any vehicle, other than the car described in the Declarations, while used in employment in an emergency occupation on a full time, part time or volunteer basis. Such occupations include, but are not limited to, Fire Fighting, Police, and Ambulance activities.
- (4) Any vehicle which is one of a fleet or pool of vehicles provided for the use of any person by such person's employer, unless such vehicle is specifically listed in the Declarations.

WHAT TO DO IN CASE OF ACCIDENT

Notice

In the event of an **accident**, or loss, notice must be given to us or our agent promptly. Your failure to give us prompt notice as required will not invalidate your claim if you show that it was not reasonably possible to do so and you notify us as soon as it is reasonably possible. The notice must give the time, place and circumstances of the **accident**, or loss, including the names and addresses of injured persons and witnesses.

Other Duties

A person claiming any coverage of this policy must also:

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

PART I - LIABILITY

Coverage A - Bodily Injury

Coverage B - Property Damage

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

We will defend any civil claim or civil suit asking for these **damages**.

We may settle when we consider it appropriate.

We will not defend any suit or make additional payments after we have paid the limits of coverage shown in the Declarations.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

Additional Definitions Used In This Part Only

Insured Person as used in this part means:

1. You or any **family member**.
2. Any other person using **your insured car**.
3. Any other person or organization with respect only to legal liability for acts or omissions of:
 - a. You or a **family member** while using **your insured car** provided it is not owned or hired by that person or organization.
 - b. Any other person while using the car described in the Declarations, an **additional car**, a **replacement car** or a **substitute car** provided such car is not owned or hired by that person or organization.

Insured Person does not mean:

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

Supplementary Payments

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

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

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

4. Actual loss of wages or salary up to \$50 a day, but not other income, when you attend a trial or hearing at our request.
5. Expenses you incur for immediate medical and surgical treatment for others necessary at the time of the **accident** resulting in **bodily injury** covered by this part.
6. Other reasonable expenses you incur at our request.

Exclusions

This coverage does not apply to:

1. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. **Bodily injury** or **property damage**:
 - a. reasonably expected to arise out of an intentional act, whether or not the **insured person** intended or had the capacity to intend the harm.
 - b. Arising out of an **insured person's** failure to prevent another person's intentional acts.
3. **Bodily injury** or **property damage** with respect to which any person is an insured under nuclear energy insurance. This exclusion applies even if the limits of that insurance are exhausted.
4. **Bodily injury** to an employee of an **insured person** arising in the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' compensation benefits are required.
5. **Bodily injury** or **property damage** for any person while employed or otherwise engaged in the business or occupation of transporting, selling, repairing, servicing, storing or parking of vehicles designed for use mainly on public highways, including road testing or delivery.

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

6. **Bodily injury** or **property damage** arising out of the use of any vehicle while used by any person employed or engaged in any business or occupation and whose primary duties are the delivery of goods or services.
7. **Bodily injury** or **property damage** arising out of the use of any vehicle in an emergency occupation on a full time, part time, or volunteer basis, including but not limited to Fire Fighting, Police and Ambulance activities. This exclusion does not apply to the car described in the Declarations, a **replacement car** or an **additional car**.
8. **Bodily injury** or **property damage** arising out of the use of any vehicle, unless described in the Declarations, which is one of a fleet or pool of vehicles which are provided or made available for the use of an **insured person** in the course of employment.
9. Damage to property owned or being transported by an **insured person**.
10. Damage to property rented to, or in the charge of, an **insured person** except a residence or private garage not owned by that person.
11. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any motorized vehicle with less than four wheels.
12. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle other than **your insured car**, which is owned by or furnished or available for regular use by you or a **family member**.
13. Liability to any person or organization because of **bodily injury** to you.
14. Liability assumed under any contract.
15. Liability arising from the sponsoring or taking part in any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.
16. **Bodily injury** or **property damage** arising out of the ownership, maintenance, or use by any person of a vehicle in which you have transferred full ownership interest even if the transfer does not comply with the transfer of ownership provisions of the **state** motor vehicle law.
17. Punitive or exemplary **damages** or the cost of defense related to such **damages**.
18. Liability to pay **damages** or fines where the obligation is established as a condition of any criminal judgment or order and any defense costs related to such a judgment.
19. Liability which results from an **insured person** transmitting a communicable (including sexually transmitted) disease.

Limits of Coverages

The amounts shown in the Declarations, in section 3. COVERAGES for **Bodily Injury** and **Property Damage** Liability, are the limits of liability which apply to the insurance provided by Part I, subject to the following:

1. The **bodily injury** liability limit for "each person" is the maximum we will pay for all **damages** resulting from **bodily injury** sustained by one person in any one **accident** or **occurrence**, including all consequential **damages** sustained by other persons, such as loss of services, loss of support, loss of consortium, wrongful death, grief, sorrow and emotional distress.
2. The **bodily injury** liability limit for "each **occurrence**" is the maximum we will pay for all claims for two or more persons for all **damages** for **bodily injury** arising out of any one **accident** or **occurrence**.
3. The **property damage** liability limit for "each **occurrence**" is the maximum we will pay for all **damages** to all property in any one **accident** or **occurrence**.
4. The amount by which the limits of liability exceed those required by the Nevada Financial Responsibility Law apply only to you and any **family member**. We will provide insurance for an **insured person** other than you or a **family member** only up to the minimum required limits of the Nevada Financial Responsibility Law.
5. An **insured person's damages** shall be reduced by any amount payable under any Workers' Compensation or any similar medical or disability law.

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6. If you have two or more cars insured with any member company of the Farmers Insurance Group of Companies, the insurance we provide for a non-owned vehicle will pay no more than the highest limit of coverage you have on any one of your cars.

Other Insurance

The coverage provided by this policy is excess over any other collectible auto liability insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**.

No Duplication Of Benefits

Any **damages** under Part I - Liability will be reduced by any other coverage of this policy applicable to the **damages** so that no person may collect more than once for the same elements of the **damages**.

Out Of State Coverage

An **insured person** may become subject to the financial responsibility law, compulsory insurance law or similar law of another **state** or in Canada. This can happen because of the ownership, maintenance or use of **your insured car** when you travel outside of Nevada. We will interpret this policy to provide any broader coverage required by those laws, except to the extent that other liability insurance applies.

Conformity with Financial Responsibility Laws

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

PART II - UNINSURED MOTORIST

Coverage C - Uninsured Motorist Coverage

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

Additional Definitions Used In This Part Only

As used in this part:

1. **Insured person** means:
 - a. You or a **family member**.
 - b. Any other person while **occupying** the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car**.
 - c. Any person for **damages** that person is entitled to recover because of **bodily injury** to an **insured person** as described in a. and b. above.But, no person shall be considered an **insured person** if the person uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.
2. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a vehicle:
 - a. Operated on rails or crawler-treads.
 - b. Designed principally for use off public roads, including, but not limited to, dune buggies, go-carts, all terrain vehicles of two or more wheels, mini-bikes, farm tractors and other farm equipment, stock cars and all other racing cars, and all other vehicles of similar characteristics.
 - c. Used as a residence or office.
3. **Uninsured motor vehicle** means a **motor vehicle** which is:
 - a. Not insured by a **bodily injury** liability bond or policy at the time of the **accident**.
 - b. A hit-and-run vehicle whose operator or owner has not been identified and which strikes:
 - (1) You or any **family member**.
 - (2) A vehicle **occupied** by an **insured person**.

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- c. Insured by a **bodily injury** liability bond or policy at the time of the **accident** but the Company becomes insolvent or denies coverage for a reason other than because of an intentional act(s) of the owner or operator.
- d. Insured by a **bodily injury** liability bond or policy at the time of the **accident** which provides coverage in amounts less than the **damages** which the **insured person** is legally entitled from the owner or operator of that vehicle.

Uninsured motor vehicle, however, does not mean a vehicle:

- a. Insured under the liability coverage of this policy.
- b. Owned by or furnished or available for regular use by you or any **family member**.
- c. Owned or operated by a self-insured as contemplated by any financial responsibility law, or similar law.
- d. Owned by a governmental unit or agency.
- e. Operated by a person who intentionally causes the **accident** or **occurrence** and whose liability insurance coverage is denied because of an intentional act exclusion.

Exclusions

- 1. This coverage shall not apply to the benefit of any insurer or self-insurer under any Workers' Compensation law, or directly to the benefit of the United States, or any **state** or any political subdivision.
- 2. This coverage does not apply to punitive or exemplary **damages**.
- 3. This coverage does not apply to **bodily injury** sustained by a person:
 - a. If that person or the legal representative of that person makes a settlement with or takes a judgment against any other person or entity without our written consent.
 - b. While **occupying your insured car** when used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
 - c. During active participation in any organized or agreed-upon racing or speed contest or demonstration or in practice or preparation for any such contest.
- 4. This coverage does not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle. This exclusion only applies to those **damages** which exceed the minimum limits of liability required by Nevada law for **Uninsured Motorist** coverage.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for **Uninsured Motorist**, are the limits of liability which apply subject to the following:

- 1. The **uninsured motorist bodily injury** limit for "each person" is the maximum we will pay for all **damages** resulting from **bodily injury** sustained by one person in any one **accident** or **occurrence**, including all consequential **damages** sustained by other persons, such as loss of services, loss of support, loss of consortium, wrongful death, grief, sorrow and emotional distress.
- 2. The **uninsured motorist bodily injury** limits for "each **occurrence**" is the maximum amount we will pay for all claims by all persons for all **damages** for **bodily injury** arising out of any one **accident** or **occurrence**.
- 3. Subject to the other limits of coverage of this part, the maximum we will pay for **damages** caused by an underinsured motorist as defined in Additional Definition 3d shall be no more than the extent the **damages** exceed the sum of the amounts of coverage of all liability bonds or policies available to all parties held to be liable for the **accident** or **occurrence**.
- 4. Any amount payable by us to an **insured person** under this coverage shall be reduced by the amount paid and the present value of all amounts payable on account of such **bodily injury** under any Workers' Compensation law, disability benefits law or any similar law.

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LIMITATIONS ON STACKING COVERAGES

IF YOU HAVE MORE THAN ONE CAR INSURED BY US, WE WILL NOT PAY ANY INSURED PERSON MORE THAN THE SINGLE HIGHEST LIMIT OF UNINSURED MOTORIST COVERAGE WHICH YOU HAVE ON ANY ONE OF THOSE CARS. THIS LIMIT OF COVERAGE APPLIES REGARDLESS OF THE NUMBER OF POLICIES, INSURED PERSONS, CARS INSURED, CLAIMS MADE, CLAIMANTS, OR VEHICLES INVOLVED IN THE OCCURRENCE. COVERAGES ON YOUR OTHER CARS INSURED WITH US CANNOT BE ADDED, COMBINED OR STACKED TOGETHER.

Other Insurance

The coverage provided by this policy is excess over any other collectible auto **uninsured motorist** insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**.

No Duplication Of Benefits

Any **damages** under PART II - **Uninsured Motorist** will be reduced by any other coverage of this policy applicable to the **damages** so that no person may collect more than once for the same elements of the **damages**.

PART III - MEDICAL

Coverage E - Medical Expense Coverage

We will pay **reasonable expenses** for **necessary medical services** furnished within two years from the date of the **accident** because of **bodily injury** sustained by an **insured person**.

Additional Definitions Used In This Part Only

As used in this part, **insured person** or **insured persons** means:

1. You or any **family member** while **occupying**, or through being struck by, a motor vehicle or trailer designed for use on public roads.
2. Any other person while **occupying** the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car** while being used by you, a **family member**, or any other person who has sufficient reason to believe the use is with permission of the owner.

Necessary Medical Services means medical services which are usual and customary for treatment of the injury, including the number or duration of treatments, in the county in which those services are provided. **Necessary medical services** are limited to necessary medical, surgical, dental, X-ray, ambulance, hospital, professional nursing and funeral services, and include the cost of pharmaceuticals, orthopedic and prosthetic devices, eyeglasses, and hearing aids. We will reimburse you for any **necessary medical services** covered under this part already paid by you.

Necessary medical services do not include:

1. Treatment, services, products or procedures that are:
 - a. Experimental in nature, for research, or not primarily designed to serve a medical purpose; or
 - b. Not commonly and customarily recognized throughout the medical profession and within the United States as appropriate for the treatment of **bodily injury**; or
2. The use of:
 - a. Thermography or other related procedures of a similar nature; or
 - b. Acupuncture or other related procedures of a similar nature.
3. Purchase, rental cost, or use of:
 - a. Hot tubs, spas, water beds,
 - b. Exercise equipment,
 - c. Heating or vibrating devices,
 - d. Furniture or equipment not primarily designed to serve a medical purpose,
 - e. Memberships in health clubs,
 - f. Medical reports unless requested by us.

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Reasonable Expenses means expenses which are usual and customary for **necessary medical services** in the county in which those services are provided. We will reimburse you for any **reasonable expenses** covered under this part already paid by you.

Exclusions

This coverage does not apply for **bodily injury** to any person:

1. Sustained while **occupying your insured car** when used to carry persons for a charge. This exclusion does not apply to shared-expense car pools.
2. Sustained while **occupying** any vehicle while located for use as a residence or premises.
3. Sustained while **occupying** a motorized vehicle other than a **private passenger car** or **utility car**.
4. Sustained while **occupying**, or when struck by, any vehicle (other than **your insured car**) which is owned by or furnished or available for regular use by you or any **family member**.
5. Sustained while **occupying** a vehicle other than the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car** while the vehicle is being used in the business or occupation of an **insured person**.
6. Sustained while **occupying**:
 - (1) Any vehicle while used in employment by any person whose primary duties are the delivery of goods or services.
 - (2) Any vehicle, other than the car described in the Declarations, a **replacement car** or a **substitute car**, while used in employment in an emergency occupation, including but not limited to Fire Fighting, Police, and Ambulance activities.
 - (3) Any vehicle, unless specifically described in the Declarations, which is one of a fleet or pool of vehicles provided for the use of an **insured person** in the course of his or her employment.
7. Due to heart attacks, strokes, and other medical conditions or illnesses not causally related to an **accident**.
8. Occurring during the course of employment if Workers' Compensation benefits coverage is required.
9. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
10. During active participation in any organized or agreed-upon racing or speed contest or demonstration, or in practice or preparation for any such contest.
11. Where medical expenses are paid or payable by any governmental entity.

Determination of Coverage

At our expense, we may employ or enter into contract with an independent medical consultant(s) to assist us in determining whether all or any portion of any claim are **reasonable expenses** and **necessary medical services**. We may submit to such a consultant any medical records, reports, bills, statements, results of tests and examinations, and any other documentation or material we deem appropriate.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for Medical, are the limits of liability which apply subject to the following:

1. The limit is the most we will pay for **bodily injury** sustained by any one **insured person** in any one **occurrence**.
2. In no event will we pay more than \$2,000 for funeral expenses for any one **insured person**.

LIMITATIONS ON STACKING COVERAGES

IF YOU HAVE MORE THAN ONE CAR INSURED BY US, WE WILL NOT PAY ANY INSURED PERSON MORE THAN THE SINGLE HIGHEST LIMIT OF MEDICAL EXPENSE COVERAGE WHICH YOU HAVE ON ANY ONE OF THOSE CARS. THIS LIMIT OF COVERAGE APPLIES REGARDLESS OF THE NUMBER OF POLICIES, INSURED PERSONS, CARS INSURED, CLAIMS MADE, CLAIMANTS, OR VEHICLES INVOLVED IN THE OCCURRENCE. COVERAGES ON YOUR OTHER CARS INSURED WITH US CANNOT BE ADDED, COMBINED OR STACKED TOGETHER.

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Other Insurance

The coverage provided by this policy is excess over any other collectible medical expense insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**, including but not limited to any of the following:

- a. other auto medical expense insurance, premises medical insurance or personal injury protection coverage.
- b. individual, blanket or group accident, health or hospitalization insurance or Health Maintenance Organization plan or benefits provider.

No Duplication Of Benefits

Any amount paid under PART III - Medical will be offset against any other coverage of this policy applicable to the **accident** so that there is no duplication of Medical Expense Coverage benefits and so that no person may collect more than once for the same elements of **damages**.

PART IV - DAMAGE TO YOUR CAR

Coverage F - Comprehensive

We will pay for **loss** to your **insured car** caused by any accidental means except **collision**, less any applicable deductibles. Any deductible amount will apply separately to each **loss**.

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

Coverage G - Collision

We will pay for loss to **your insured car** caused by **collision** less any applicable deductibles. Any deductible amount will apply separately to each **loss**.

Coverage H - Towing and Road Service

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

Additional Definitions Used In This Part Only

As used in this part:

1. **Collision** means collision of **your insured car** with another object or upset of **your insured car**.
2. **Loss** means direct and accidental loss of or damage to **your insured car**, including its equipment.
3. **Theft** or **Larceny** means the unlawful taking and removal of **your insured car**, its parts or accessories. It does not include voluntary parting with title or possession by you or others, if induced to do so by trickery or false pretense. Such inducement may be in the form of, but not limited to, transfer of possession without a legal right to do so, embezzlement or concealment by any person in possession of **your insured car** under any of the following:
 1. Bailment lease
 2. Conditional sale
 3. Purchase agreement
 4. Mortgage or other claim or lien.

Supplementary Payments

If you have Comprehensive coverage, we will pay for transportation expenses incurred by you because of the total **theft** of **your insured car**. We will pay up to \$15 per day, but no more than \$450 each **loss**. This coverage begins 48 hours after the **theft** has been reported to us and to the police and ends when the car is returned to use or when we offer settlement for the **loss**.

We will pay up to, but not more than, \$200 for **loss** of clothing or luggage in **your insured car** which belongs to you or a **family member** if the **loss** is caused by:

- a. **Collision** of **your insured car** provided Coverage G - **Collision** is listed as a covered part in the Declarations and **loss** occurs to **your insured car** from the same cause.

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- b. Fire, lightning, flood, earthquake, explosion, falling aircraft, or **theft** of the entire insured car; provided Coverage F- Comprehensive is listed as a covered part in the Declarations and **loss** occurs to **your insured car** from the same cause.

Exclusions

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

1. To **your insured car** while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination or any consequence of any of these.
3. Caused by **theft** to equipment designed for the reproduction of sound, or any radio receiving or radio receiving and transmitting equipment. This applies to such equipment as a tape or disc player, tape recorder, video cassette recorder, citizens band radio and two-way mobile radio, telephone, television or scanning monitor receiver. It also applies to any electronic device incorporating any of this equipment, as well as accessories and antennas.

This exclusion does not apply to that equipment which is permanently installed in the opening of the dash or console of **your insured car** normally used by the motor vehicle manufacturer for the installation of a radio or sound reproducing device.

4. Caused by **theft** to tapes, discs, records, reels, cassettes, cartridges, carrying cases or other devices for use with equipment designed for the reproduction of sound.
5. To a camper body, canopy or **utility trailer** owned by you or a **family member** and not described in the Declarations. But, coverage does apply to a camper body, canopy or **utility trailer** of which you acquire ownership during the policy period if you ask us to insure it within 30 days after you acquire it.
6. To awnings, cabanas, or equipment designed to provide additional living facilities.
7. Due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. But coverage does apply if the **loss** results from burning of wiring. Also, coverage does apply if the **loss** results from the total **theft** of **your insured car**.
8. To a vehicle not owned by you when used in auto business operations.
9. During any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.
10. To a **utility car** due to increased cost of repair or replacement of the following furnishings or equipment:
 - a. special carpeting, insulation, wall covering, furniture or bars,
 - b. dining, kitchen and sleeping facilities including enclosures or bathroom facilities.
 - c. height-extending roofs.
 - d. murals, special paint and/or other methods of painting, decals or graphics.
11. To radar detectors.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for Comprehensive and **Collision**, are the limits of liability which apply to Part IV, Coverages F and G. These limits of liability for **loss** shall not exceed:

1. The cost to repair or replace damaged or stolen property with other of like kind and quality, or with new property less an adjustment for physical deterioration and/or depreciation.
2. \$500 for a **utility trailer** not owned by you or a **family member**.

Payment of Loss

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

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Appraisal

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

No Benefit to Bailee

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

Other Insurance

The coverage provided by this policy is excess over any other applicable Comprehensive or **Collision** insurance provided by any other policy which applies to the same **loss**.

PART V - CONDITIONS

1. Policy Period and Territory

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

2. Changes

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

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

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

Policy terms which conflict with laws of Nevada are hereby amended to conform to such laws.

3. Legal Action Against Us

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

4. Transfer Of Your Interest

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

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

5. Our Right to Recover Payment

If any person to or for whom we make payment under this policy has rights of recovery from another, those rights are transferred to us. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after the **accident** to prejudice our rights.

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

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

6. Bankruptcy

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

7. Termination or Reduction of Coverage

a. Nonrenewal

We will mail to you at the address last known to us, or personally deliver to you, notice of nonrenewal not less than 30 days before the end of the policy period, if we decide not to renew or continue this policy.

b. Cancellation of Coverage

1. You may cancel this policy by advising us in writing when at a future date the cancellation is to be effective.
2. We may cancel for non-payment of premium at any time during the policy period by mailing notice to you by U.S. Post Office first class mail to the address last known to us, or by personally delivering the notice, at least 10 days prior to the effective date of such cancellation.
3. If this policy has been in effect 70 days or has been renewed, we may cancel by mailing notice to you by U.S. Post Office first class mail to the address last known to us, or by personally delivering the notice, at least 30 days prior to the effective date of such cancellation, for any of the following reasons:

(a) You purposely misrepresent information in the submission of a claim.

(b) You or any person who regularly operates **your insured car**:

- (1) Has had a driver's license suspended or revoked within the 12 months prior to the date of notice of cancellation;
- (2) Is subject to epilepsy or heart attacks and cannot have a physician certify as to the ability to operate a motor vehicle safely;
- (3) Has been addicted to the use of narcotics or other drugs within the 36 months prior to the notice of cancellation;
- (4) Has been convicted, or forfeited bail, during the 12 months immediately preceding the notice of cancellation for any of the following reasons:
 - (a) Felony;
 - (b) Criminal negligence resulting in death, homicide or assault when using a motor vehicle;
 - (c) Driving while intoxicated or under the influence of drugs, being intoxicated while in, or about, an automobile, or while having custody of an automobile;
 - (d) Leaving the scene of the **accident** without reporting the **accident**.
 - (e) Theft of a motor vehicle.

(c) There has been a material change in the nature of the risk since the policy inception or renewal which substantially and materially increases the risk of loss beyond that contemplated at the time the policy was issued or last renewed.

(d) The Commissioner determines that continuation of our present volume of premiums would jeopardize our solvency or be hazardous to the interests of our policyholders, creditors or the public.

(e) The Commissioner determines that the continuation of this policy would violate, or place us in violation of, any provision of the Insurance Code of Nevada.

If we cancel, the notice we send you will describe why we are cancelling.

c. Automatic Termination

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

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

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

d. Reduction of Coverage

We may reduce coverage limits, increase any deductible, or increase the premium rate of all or any portion of the policy at the time of renewal. You shall have 30 days from the date you receive notice of the altered terms of the policy to cancel the policy. If you elect to cancel under these circumstances, we will refund the pro rata premium of the unexpired portion of the new term.

e. Other Provisions

- (1) If different requirements for cancellation and nonrenewal or termination of policies become applicable because of the laws of Nevada, we will comply with those requirements.
- (2) Mailing of a notice shall be sufficient proof of notice. We may deliver a notice instead of mailing it.
- (3) The effective date and time stated on the notice for cancellation of the entire policy shall become the end of the policy period.
- (4) Termination or change may result in a premium refund. If so, we will send it to you. Our making or offering of a refund is not a condition of cancellation.

If you cancel, the refund will be computed in accordance with the customary short rate table and procedure, except as provided for in subsection d.

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

We shall not cancel or refuse to renew this policy solely because of age, residence, race, color, creed, national origin, ancestry or occupation of any insured under this policy.

RECIPROCAL PROVISIONS

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

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

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

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

- a. A partnership or mutual insurance association.
- b. Any joint liability.

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

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

We hold the Annual Meeting of the members of the Exchange at our Home Office at Los Angeles California, on the first Monday following the 15th day of March of each year at the hour of 2:00 p.m. The Board of Governors may elect to change the time and place of the meeting.

If they do so, you will be mailed a written or printed notice at your last known address at least ten days before such a time. Otherwise, no notice will be sent to you.

The Board of Governors shall be chosen by subscribers from among yourselves. This will take place at the annual meeting or at any special meeting which is held for that purpose. The Board of Governors shall have full power and authority to establish such rules and regulations for our management as are not inconsistent with the subscribers' agreement.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

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

This policy is non-assessable.

SPECIAL PROVISIONS

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

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

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

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

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

MID-CENTURY INSURANCE COMPANY

Doren E. Hall

Secretary

Paul H. Hopburn

Vice-President

NO MEXICO COVERAGE **Read This Warning Carefully**

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

EXHIBIT 2

EXHIBIT 2



Auto Insurance Declaration Page

Policy Number: 18927-90-72
Effective: 11/18/2019 12:01 AM
Expiration: 5/18/2020 12:01 AM
Named Insured(s): Rochelle L. Lewis
Stephen Wesley Lewis
1316 Skyfire Ct
Sparks, NV 89441-5855
e-mail: lewisfammx@charter.net
Address(es):
Underwritten By: Mid-Century Insurance Company
6301 Owensmouth Ave.
Woodland Hills, CA 91367

Premiums

► **Policy Premium** **\$3,805.70**

This is not a bill.

Your bill with the amount due will be mailed separately.

Household Drivers

Are there drivers not listed below who either reside in your household (even if temporarily away from home) or are guests staying in your home for more than 90 days? If so, please contact us or your agent. If you have purchased coverage for loss to your insured car (for example, Collision Coverage), your deductible could increase to \$5000 for a loss to your car (or an attached trailer) because your car was being operated by one of those unlisted drivers at the time of the loss. Details regarding this higher deductible can be found in your policy documents.

Name	Driver Status	Name	Driver Status
Rochelle L. Lewis	Covered	Stephen Wesley Lewis	Covered
Austin Lewis	Covered	Ethan Michael Lewis	Covered
Courtney N Lewis	Covered		

Vehicle Information

Veh. #	Year/Make/Model/VIN	Coverage	Deductible	Limit
1	2013 Audi A7 Quattro 5D 3.0T Prem P WAUYGAF5DN156241	Comprehensive:	\$100	
		Collision:	\$500	
2	2007 Chevrolet Truck Colorado Pu E C 4Wd 1GCDT19E178123184	Comprehensive:	\$100	
		Collision:	\$500	
3	2018 Ford Truck F350 Crew C Pu 4X4 Crew C 1FT8W3BT8JED05177	Comprehensive:	\$100	
		Collision:	\$500	
4	1997 Ford Truck F150 Super Pu 4X4 Stylesi 1FTDX18W5VNB19586	Comprehensive:	\$100	
		Collision:	\$500	

farmers.com

Policy No. 18927-90-72

Questions?

Call your agent Thomas J. Cashell at
(775) 824-0700 or email
tcashell@farmersagent.com

Manage your account:

Go to www.farmers.com to access
your account any time!

Declaration Page (continued)

Vehicle Level Coverage Items

Coverage	Limits (applicable to all vehicles)	Premiums by Vehicle			
		Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
Bodily Injury Liability	\$500,000 each person \$500,000 each accident	\$321.50	\$394.60	\$442.90	\$288.80
Property Damage Liability	\$500,000 each accident	\$98.30	\$142.50	\$190.00	\$138.60
Medical Coverage	\$10,000 each person	\$46.20	\$42.70	\$43.50	\$37.50
Comprehensive		\$76.90	\$29.30	\$108.90	\$17.30
Collision		\$448.00	\$158.60	\$208.10	\$49.20
Towing and Road Service		\$11.70	\$11.70	\$11.70	\$11.70
New Car Pledge		Not Covered	Not Covered	\$33.90	Not Covered

Policy Level Coverage Items

Coverage	Limits (for all vehicles)	Per Policy
Uninsured Motorist	\$250,000 each person	\$441.60
Bodily Injury	\$500,000 each accident	

Policy Premium **\$3,805.70**

Discounts

Discount Type	Applies to Vehicle(s)	Discount Type	Applies to Vehicle(s)
Auto/Home	1, 2, 3, 4	Multiple Car	1, 2, 3, 4
Transfer	1, 2, 3, 4	Early Shopping	1, 2, 3, 4
Auto/Life	1, 2, 3, 4	EFT	1, 2, 3, 4
Auto/Specialty	1, 2, 3, 4	ePolicy	1, 2, 3, 4
Good Student	1, 2, 3, 4	Teen Driver	1, 2, 3, 4

Other Policy Features and Benefits

- Accident Forgiveness - prevents one accident from impacting your premium
- Incident Forgiveness - protects your premium from increases due to minor traffic violations
- Guaranteed Renewal - claims activity will not lead to cancellation or nonrenewal

Lienholder and Additional Interest

Vehicle	Lienholder	Loan Number
2013 Audi A7 Quattro 5D 3.0T Prem P VIN: WAUYGAFC5DN156241	Greater Nevada Cu PO Box 492 Carmel, IN 46082-0492	Not Applicable

Declaration Page (continued)

Vehicle	Lienholder	Loan Number
2007 Chevrolet Truck Colorado Pu E C 4Wd VIN: 1GCDT19E178123184	Greater Nevada Cu PO Box 492 Carmel, IN 46082-0492	Not Applicable
2018 Ford Truck F350 Crew C Pu 4X4 Crew C VIN: 1FT8W3BT8JED05177	Ford Motor Cr Co PO Box 390910 Minneapolis, MN 55439-0910	Not Applicable

Policy and Endorsements

This section lists the policy form number and any applicable endorsements that make up your insurance contract. Any endorsements that you have purchased to extend coverage on your policy are also listed in the coverages section of this declarations document: 56-5058 3rd ed.; J6275 1st ed.; J6284 1st ed.; J6489 1st ed.; J6492 1st ed.; J6674 1st ed.; J6683 1st ed.; J6774 1st ed.; J6934 1st ed.; J6956 2nd ed.; J7200 1st ed.; NV007 2nd ed.; NV008 1st ed.; NV011 1st ed.; NV019 1st ed.; NV034 2nd ed.; NV038 1st ed.; 25-2480 6-12; J6561 1st ed.[Veh:3 only]; J6562 2nd ed.[Veh:3 only]

Other Information

- Vehicle 1,2,3,4 - Deductible waived if glass repaired rather than replaced.
- Your policy provides Towing and Road Service Coverage for selected vehicles as shown in the Coverage Information section of your Declarations Page. The Towing and Road Service Coverage is outlined in the policy, and it extends for the duration of the policy period. Farmers may remove this coverage from any vehicle at your next policy renewal if the coverage use on that vehicle exceeds 3 service events within a rolling 12 month period. If you have any questions, please contact Farmers customer service at 1-888-327-6335.
- UM premium is discounted because of limitations on stacking coverages.
- Farmers Friendly Reviews are a great way to make sure you are receiving all the discounts for which you qualify, and identify any potential gaps in coverage. Contact your agent to learn more about the policy discounts, coverage options, and other product offerings that may be available to you.

Declaration Page (continued)

***Information on Additional Fees**

The "Fees" stated in the "Premium/Fees" section on the front apply on a per-policy, not an account basis. The following additional fees also apply:

1. Service Charge per installment (In consideration of our agreement to allow you to pay in installments):

- For Recurring Electronic Funds Transfer (EFT) and enrolled online billing (paperless): **\$0.00** (applied per account)
- For other Recurring EFT plans: **\$2.00** (applied per account)
- For all other payment plans: **\$5.00** (applied per account)

If this account is for more than one policy, changes in these fees are not effective until the revised fee information is provided for each policy.

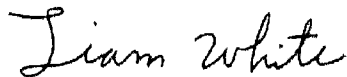
2. Late Fee: \$10.00 (applied per account)

3. Returned Payment Charge: \$25.00 (applied per check, electronic transaction, or other remittance which is not honored by your financial institution for any reason including but not limited to insufficient funds or a closed account)

4. Reinstatement Fee: \$25.00 (applied per policy)

One or more of the fees or charges described above may be deemed a part of premium under applicable state law.

Countersignature



Authorized Representative

CODE: 2160
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual,

Case No.: CV20-01047

Plaintiff,

Dept No.: 1

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

PLAINTIFF'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Austin Lewis, by and through his attorney, Graham Galloway of Galloway and Jensen, hereby moves this Court for an order granting partial summary judgment on the issue of what the underinsured motorist limits are in this matter. Plaintiff's motion is made and based upon the pleadings and evidence filed in support of and in opposition to the Defendant's Motion for Summary Judgment. Plaintiff is entitled to partial summary judgment finding the underinsured motorist limits available to him under Mid-Century's policy are \$250,000.00, and the limiting exclusion language asserted by the Defendant does not apply to the facts of this matter.

I.
FACTS

The facts of this matter are set forth in detail in both the Defendant's Motion for Summary Judgment and Plaintiff's Opposition to the Defendant's Motion for Summary Judgment, and are incorporated by reference into this motion as if more fully set forth herein. The facts necessary for the Court to decide this cross motion are the same facts critical to the underlying motion for summary judgment brought by the Defendant:

1. The Mid-Century exclusion limits the underinsured motorist coverage under the policy to the state liability minimum limit of \$25,000.00 when the insured is occupying or riding a vehicle that is owned by the insured, but not insured under the policy.

2. The Mid-Century policy defines a motor vehicle, for purposes of the underinsured motorist coverage, to not include vehicles designed for off public road use, including all terrain vehicles of two wheels.

3. Austin Lewis was riding a KTM 250 SX motorcycle he owned when he was involved in a crash with an underinsured motorist.

4. Mr. Lewis' KTM motorcycle was designed exclusively for off public road use.

II.
ARGUMENT

Plaintiff is entitled to partial summary judgment on the issue of the amount of the underinsured motorist coverage available pursuant to the Mid-Century policy. As set forth in the Plaintiff's Opposition to Defendant's Motion for Summary Judgment, the opposition being incorporated into the instant cross motion by reference herein, the definition of "motor vehicle" contained in the UM/UIM provisions of the Mid-Century policy, define a motor vehicle to not include an off road motorcycle, and therefore the exclusion does not apply to limit the coverage

1 of \$250,000.00 to the Plaintiff. If the motorcycle is not a vehicle for purposes of underinsured
2 motorist coverage, how can the exclusionary limitation of the policy limits apply? As argued in
3 the alternative in the Opposition to Defendant's Motion for Summary Judgment, at a minimum,
4 an ambiguity exists in the UM/UIM language between the exclusion and the definition of motor
5 vehicle, and the policy language has to be construed against the Defendant and the Plaintiff
6 afforded the full UM/UIM limits of \$250,000.00.

7 **II.**

8 **CONCLUSION**

9 For all of the reasons set forth in the Plaintiff's Opposition to Defendant's Motion for
10 Summary Judgment, there are no genuine issues of material fact on the issue of the UM/UIM
11 limits, and Plaintiff is entitled to an order granting partial summary judgment that he has
12 UM/UIM limits available for this matter in the amount of \$250,000.00. The issue of whether
13 Mr. Lewis' injuries and damages exhaust those limits remains to be determined.

14 Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the
15 preceding document does not contain the social security number of any person.

16 Respectfully Submitted this 16th day of March, 2021.

17 GALLOWAY & JENSEN

18
19 By: /s/ Graham Galloway
20 GRAHAM GALLOWAY
21 222 California Avenue
22 Reno, Nevada 89509
23 (775) 333-7555
24 *Attorney for Plaintiff*
25

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN
3 and that on this date I served a true and correct copy of the preceding document addressed to
4 the following:

5 Todd Alexander
6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

9 ☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully
10 prepaid, an envelope containing the preceding document at Reno, Nevada, in the ordinary
course of business.

11 ☐ **COURTESY COPY VIA FACSIMILE**

12 ☐ **BY PERSONAL SERVICE:** An employee of Galloway & Jensen personally
13 delivered the preceding document by hand delivery to the offices of the address named above.

14 ☐ **BY MESSENGER SERVICE:** Reno Carson Messenger Service received from
15 Galloway & Jensen the preceding document for delivery to the offices of the address named
above.

16 ☒ **BY ELECTRONIC FILING (e-Flex)**

17 DATED this 16th day of March, 2021.
18

19
20 /s/ Yennifer Sanchez
Yennifer Sanchez
21
22
23
24
25

CODE: 2645

Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual,

Plaintiff,

Case No.: CV20-01047
Dept No.: 1

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff, Austin Lewis, by and through his counsel, Graham Galloway of Galloway and Jensen, hereby opposes the Defendant's Motion For Summary Judgment on the basis the Defendant is not entitled to judgment as a matter of law, and in the alternative, genuine issues of material fact exist that preclude judgment as a matter of law.

I.

FACTS

On October 26, 2019, Austin Lewis was riding his off road motorcycle at what is called the Sand Pits OHV Park outside of South Lake Tahoe, California. The Sand Pits Park is signed

1 for use by "...vehicles that are not street legal (i.e. dirt bikes and quads)..." (See **Exhibit 1**,
2 Traffic Collision report page 6). Mr. Lewis was riding his KTM 250SX dirt bike on the
3 motocross track in the natural directional flow when he took a large jump. At the same time,
4 Joshua Brackett, unbeknown to Mr. Lewis, drove a Ford Mustang onto the motocross track and
5 was headed in the wrong direction and came to a stop right under the jump where motorcycles
6 would land. Mr. Lewis was not able to see the Brackett Mustang until coming down off the
7 jump and his motorcycle landed on top of the Mustang. The California Highway Patrol
8 determined Mr. Brackett was the cause of the crash for improperly driving a car on the
9 motocross track, as well as driving in the wrong direction. **Exhibit 1.**

10
11 Mr. Lewis sustained fractures of his T4, T9, T11 and T12 vertabrae as a result of
12 smashing into the windshield of Mr. Brackett's Mustang. He also fractured a portion of his
13 sternum and sustained a pneumothorax, which is when air leaks between the lungs and chest
14 wall and causes a collapsed lung. Mr. Lewis' medical expenses to date are \$112,477.00, and he
15 missed a substantial amount of work at a loader at UPS.

16 Mr. Brackett's vehicle was insured by Financial Indemnity Company for the statutory
17 minimum in California of \$15,000.00. Mr. Lewis accepted Mr. Brackett's policy limits and
18 then presented a claim for underinsured motorist coverage to his own insurer, Mid-Century.
19 (See **Exhibit 2**, the Financial Indemnity Release). Mr. Lewis was insured through Mid-
20 Century at the time of this crash, and had uninsured/underinsured limits (UM/UIM) of
21 \$250,000.00. When Mr. Lewis presented a claim for underinsured motorist benefits, he was
22 informed by Mid-Century an exclusion in his policy applied to "step down" the uninsured
23 motorist (UIM) coverage from the policy limits of \$250,000.00 to the statutory liability limits
24 of \$25,000.00. (See **Exhibit 3**, Shawn Ward correspondence of January 30, 2020). Plaintiff
25

believes Mid-century has improperly applied this exclusion, or at a minimum, an ambiguity exists in the policy language such that the exclusion cannot be applied to Mr. Lewis.

II.

ARGUMENT

A. The Mid-Century Exclusion Does Not Apply

When Austin Lewis applied for his UIM benefits, Mid-Century asserted an exclusion set forth in its policy that limits the UIM coverage when an insured is occupying any vehicle the insured owns that is not covered under the policy. Mid-Century correctly asserts the KTM motorcycle Mr. Lewis was riding was not insured under the policy in question, and the motorcycle was owned by Mr. Lewis. What Mid-Century failed to consider, and has not raised in its motion, is the definition of a vehicle as it is defined in the UM/UIM provisions of the contract of insurance.

The policy has a general definitions section set forth at page three of the contract. **(Exhibit 4)** This section does not define a motor vehicle and instead talks in terms of a "car". There are definitions for "additional car", "replacement car", "private passenger car", "substitute car", "utility car" and "insured car", but nothing that defines or addresses vehicle or motor vehicle. Instead, in Part II of the contract, entitled **UNINSURED MOTORIST** (Page 7), Mid-Century provides a definition of "motor vehicle" under the heading **Additional Definitions Used In This Part Only:**

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

a. Operated on rails or crawler-treads.

b. Designed principally for use off public roads, including, but not limited to, dune buggies, go carts, all terrain vehicles of two or more wheels, mini-bikes, farm tractors and

1 other farm equipment, stock cars and all other racing cars, and all other vehicles of similar
2 characteristics.

3 So, in the very section of the insurance contract that covers UIM claims, Mid-Century
4 has defined a vehicle to not include vehicles designed principally for use off public roads, and
5 specifically includes in this exclusion all terrain vehicles of two wheels. As set forth in the
6 Declaration of Eileen Sullivan, **Exhibit 5**, the KTM 250 SX motorcycle Austin Lewis was
7 riding at the time of this crash was a vehicle designed exclusively for off road use. As such,
8 under Mid-Century's own UIM definition of motor vehicle, it is not a vehicle, and therefore, the
9 exclusion relied upon by Mid-Century to step down the UIM coverage does not apply. If the
10 exclusion does not apply, then the Defendant is not entitled to judgment as a matter of law. On
11 the contrary, it is the Plaintiff who is entitled to partial judgment as a matter of law on the issue
12 of whether the policy exclusion applies.
13

14 **B. Ambiguities In The Contract are Construed Against The Insurer**

15 Although the definition of motor vehicle in Mid-Century's UIM portion of the insurance
16 contract clearly excludes the Plaintiff's KTM 250 SX from the definition of a motor vehicle,
17 and therefore the exclusion relied upon by the Defendant does not apply, in the event the
18 exclusion is somehow deemed the limiting exclusion is ambiguous when read in conjunction
19 with the definition of motor vehicle contained within the uninsured motorist section of the
20 Defendant's insurance contract. The exclusion relied upon by the defendant uses the term "any
21 vehicle" owned by the named insured that is not insured under the contract. The definition of a
22 "motor vehicle" within the uninsured section of the contract excludes off road vehicles from the
23 definition of a motor vehicle. Again, as argued above, this clearly excludes the Plaintiff's off
24 road motorcycle from being defined as a vehicle, but Mid-Century seemingly believes a much
25

1 broader definition of motor vehicle applies at least as to the exclusion they have used to step
2 down the UIM limits.

3 If Mid-Century is correct that somehow a broader definition of motor vehicle applies to
4 UIM coverage then an ambiguity exists within the uninsured/underinsured motorist coverage
5 language. On the one hand the definition of a motor vehicle for uninsured/underinsured
6 motorist coverage does not include off road vehicles, and on the other hand for policy limits
7 purposes, as argued by Mid-Century, all vehicles, even off road vehicles, are included in the
8 exclusion that steps down the policy limits. These two positions are inherently in conflict, and
9 unless you ignore the definition of motor vehicle as Mid-Century has done, cannot be
10 reconciled. The definitional language, however, cannot simply be ignored. If you read the
11 definition and the exclusion together, and then apply Mid-Century's argument that "any"
12 vehicle, including an off road vehicle, is subject to the step down provisions of the exclusion,
13 the policy language is subject to two competing interpretations and is therefore ambiguous.
14

15 In *Benchmark Ins. Co. v. Sparks*, 127 Nev. 407. 254 P.3d 617 (2011), the Nevada
16 Supreme Court stated:

17 "... insurance policies are contracts of adhesion. That is, the
18 policies are drafted by the insurers and are offered to the
19 policyholder without any opportunity for the policyholder to
20 negotiate the policy's terms. Thus, in order for an insurer to
21 effectively limit its contractual obligations, the insurance policy
22 must unambiguously convey the insurer's intent to do so. It
23 follows that any ambiguity or uncertainty in an insurance policy
24 must be construed against the insurer and in favor of the insured."
25 (internal quotations and citations omitted).

 The Nevada Supreme Court has further stated:

 "We interpret an insurance policy from the perspective of one not
trained in the law or in insurance, with the terms of the contract
viewed in their plain, ordinary and popular sense. And we
consider the policy as a whole to give reasonable and harmonious
meaning to the entire policy."

1 *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 329 P.3d 614 (2014) (internal
2 quotations and citations omitted).

3 "An insurance policy is considered ambiguous if it creates multiple
4 reasonable expectations of coverage as drafted. A seemingly clear
5 policy can be rendered ambiguous when applying the policy to the
6 facts leads to multiple reasonable interpretations. We interpret
ambiguities in an insurance contract against the drafter, which is
typically the insurer. *Id.*

7 "Clauses providing coverage broadly interpreted so as to afford the
8 greatest possible coverage to the insured, and clauses excluding
coverage are interpreted narrowly against the insurer." *Id.*

9 In the instant case, if the exclusion put forth by the Defendant is read by itself, it is
10 seemingly unambiguous. On the other hand, the definition of a vehicle is also unambiguous; it
11 does not include an off road motorcycle such as the one ridden by Austin Lewis at the time of
12 his crash, and therefore, the exclusion should not apply to his claim. How can an exclusion for
13 "any vehicle" apply to an off road motorcycle if the policy provides that an off road motorcycle
14 by definition is not a "vehicle"? Mid-Century has ignored its definition of motor vehicle
15 because when the exclusion and definition are read together, two competing interpretations can
16 be argued as to the limits of the UIM coverage.

17 Although Mr. Lewis does not believe an ambiguity exists because his motorcycle is not
18 a vehicle for purposes of the UM/UIM portion of the insurance contract, the Defendant has put
19 forth an alternative interpretation of its contract, and as such, the conflicting interpretations or
20 ambiguity, should be construed against the Defendant who drafted the contract of adhesion that
21 is at issue in this matter. If the Defendant had not wanted to cover the present factual scenario,
22 it could easily have defined motor vehicle differently and not excluded off road vehicles in its
23 definition of motor vehicle.
24

25 When a provision in an insurance policy is ambiguous, the provision should be

1 construed to effectuate the reasonable expectations of the insured. *Benchmark Ins. co., v.*
2 *Sparks, 127 Nev. 407, 254 P.3d 617 (2011)*. In the instant matter, the definition of motor
3 vehicle in the UM/UIM section of the Mid-Century policy, gives rise to an expectation the full
4 UIM limits would be available to Plaintiff, and not a sum reduced down to the statutory
5 liability limits. (**Exhibit 6**, Affidavit of Austin Lewis).

6 In *Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. 156, 252 P.3d 668 (2011)*, the Nevada
7 Supreme Court held:

8 If an insurer wants to exclude (or in this case limit) coverage, it
9 must:

- 10 (1) Write the exclusion in obvious and unambiguous language in
the policy,
11 (2) Establish that the interpretation excluding coverage is the only
interpretation of the exclusion that can fairly be made, and
12 (3) Establish that the exclusion clearly applies to this particular
case."

13 Mid-Century cannot establish the interpretation it has given its limiting exclusion is the
14 only interpretation of its contract language. Plaintiff's interpretation is reasonable; Plaintiff's
15 off road motorcycle is by definition not a vehicle for purposes of UM/UIM coverage, and
16 therefore the exclusion or limitation on coverage language argued by the Defendant cannot
17 apply. If the motorcycle is not a vehicle, then the exclusions for "vehicles" not insured under
18 the policy is not triggered.

19 **III.**

20 **CONCLUSION**

21 Mid-Century is not entitled to judgment as a matter of law. Its own definition of motor
22 vehicle excludes Mr. Lewis' off road motorcycle as a vehicle, and the exclusion relied upon by
23 the Defendant does not apply to the facts of this matter. At a minimum, two interpretations
24 may be applied to the UM/UIM language of the policy which gives rise to an ambiguity that
25

1 has to be construed against Mid-Century as the drafter of the policy. Mid-Century, therefore, is
2 not entitled to judgment as a matter of law, and its motion for summary judgment should be
3 denied.

4 Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the
5 preceding document does not contain the social security number of any person.

6 DATED this 16th day of March, 2021.

GALLOWAY & JENSEN

7
8 By: /s/ Graham Galloway
9 GRAHAM GALLOWAY
10 222 California Avenue
11 Reno, Nevada 89509
12 (775) 333-7555
13 *Attorney for Plaintiff*
14
15
16
17
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19
20
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22
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24
25

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN
3 and that on this date I served a true and correct copy of the preceding document addressed to
4 the following:

5 Todd Alexander
6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

9 ☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully
10 prepaid, an envelope containing the preceding document at Reno, Nevada, in the ordinary
course of business.

11 ☐ **COURTESY COPY VIA ELECTRONIC MAIL**

12 ☐ **BY PERSONAL SERVICE:** An employee of Galloway & Jensen personally
13 delivered the preceding document by hand delivery to the offices of the address named above.

14 ☐ **BY MESSENGER SERVICE:** Reno Carson Messenger Service received from
15 Galloway & Jensen the preceding document for delivery to the offices of the address named
above.

16 ☒ **BY ELECTRONIC FILING (e-Flex)**

17 DATED this 16th day of March, 2021.
18

19
20 /s/ Yennifer Sanchez
Yennifer Sanchez

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Exhibit List
Lewis v. Mid-Century Insurance

- Exhibit 1 Traffic Collision report
- Exhibit 2 Financial Indemnity Release
- Exhibit 3 Shawn Ward correspondence dated January 30, 2020.
- Exhibit 4 Exhibit 1 of Defendant’s Motion
- Exhibit 5 Declaration of Eileen Sullivan
- Exhibit 6 Affidavit of Austin Lewis

EXHIBIT 1

EXHIBIT 1

SPECIAL CONDITIONS		NUMBER INJURED 1	HIT & RUN FELONY <input type="checkbox"/>	CITY UNINCORPORATED		JUDICIAL DISTRICT EL DORADO (SLT)		LOCAL REPORT NUMBER 9246-2019-00208	
		NUMBER KILLED 0	HIT & RUN MISDEMEANOR <input type="checkbox"/>	COUNTY EL DORADO		REPORTING DISTRICT 906		BEAT 906	
LOCATION	COLLISION OCCURRED ON: SAND PITS OHV PARK					MO 10/26/2019	DAY 1120	YEAR 2019	TIME (2400) 1120
	MILEPOST INFORMATION:					GPS COORDINATES LATITUDE 38.899456° LONGITUDE -120.009468°			
	AT INTERSECTION WITH: <input type="checkbox"/> OR: .25 MILE(S) SOUTH OF LAKE TAHOE BLVD.					STATE HWY REL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
						PHOTOGRAPHS BY: <input checked="" type="checkbox"/> NONE			
PARTY 1	DRIVER'S LICENSE NUMBER Y4847370		STATE CA	CLASS C	AIR BAG M	SAFETY EQUIP. G		VEH. YEAR 2002	MAKE / MODEL / COLOR FORD MUSTANG RED
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) JOSHUA MICHAEL BRACKETT					OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER		LICENSE NUMBER 8DME518	STATE CA
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 1504 BEL AIRE CIR					OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP SOUTH LAKE TAHOE CA 96150					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BRN	HEIGHT 5-04	WEIGHT 114	MO 11/17/2001	BIRTHDATE DAY 2001	YEAR 2001	RACE W
OTHER <input type="checkbox"/>	HOME PHONE (530)545-3428		BUSINESS PHONE NONE		MADE OWN ARRANGEMENTS PRIOR MECH. DEFECTS <input checked="" type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE <input type="checkbox"/>				
INSURANCE CARRIER FINANCIAL INDEMNITY		POLICY NUMBER 4762858							
DIR OF TRAVEL ON STREET OR HIGHWAY E		SAND PITS DIRT TRACK				SPEED LIMIT NA		VEHICLE IDENTIFICATION NUMBER: 01	
		CA		DOT		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA TOP/LEFT 	
PARTY 2	DRIVER'S LICENSE NUMBER 0804743082		STATE NV	CLASS F	AIR BAG P	SAFETY EQUIP. W		VEH. YEAR 2017	MAKE / MODEL / COLOR KTMX 250XS ORN/WHT
DRIVER <input checked="" type="checkbox"/>	NAME(FIRST, MIDDLE, LAST) AUSTIN WESLEY LEWIS					OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER		LICENSE NUMBER NA	STATE NV
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS 1316 SKYFIRE CT					OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP SPARKS NV 89441					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICY- CLIST <input type="checkbox"/>	SEX M	HAIR BRN	EYES BRN	HEIGHT 5-04	WEIGHT 160	MO 09/22/1997	BIRTHDATE DAY 1997	YEAR 1997	RACE W
OTHER <input type="checkbox"/>	HOME PHONE (775)750-9713		BUSINESS PHONE NONE		RELEASED TO P-2'S BROTHER ON SCENE PRIOR MECHANICAL DEFECTS <input checked="" type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE <input type="checkbox"/>				
INSURANCE CARRIER NONE		POLICY NUMBER							
DIR OF TRAVEL ON STREET OR HIGHWAY W		SAND PITS DIRT TRACK				SPEED LIMIT NA		VEHICLE IDENTIFICATION NUMBER: VBKSXM236HM288340	
		CA		DOT		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input checked="" type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA MOTORCYCLE - RIGHT 	
PARTY 3	DRIVER'S LICENSE NUMBER		STATE	CLASS	AIR BAG	SAFETY EQUIP.		VEH. YEAR	MAKE / MODEL / COLOR
DRIVER <input type="checkbox"/>	NAME(FIRST, MIDDLE, LAST)					OWNER'S NAME <input type="checkbox"/> SAME AS DRIVER		LICENSE NUMBER	STATE
PEDES- TRIAN <input type="checkbox"/>	STREET ADDRESS					OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER			
PARKED VEHICLE <input type="checkbox"/>	CITY / STATE / ZIP					DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER			
BICY- CLIST <input type="checkbox"/>	SEX	HAIR	EYES	HEIGHT	WEIGHT	MO	BIRTHDATE DAY	YEAR	RACE
OTHER <input type="checkbox"/>	HOME PHONE		BUSINESS PHONE		PRIOR MECHANICAL DEFECTS <input type="checkbox"/> NONE APP. <input type="checkbox"/> REFER TO NARRATIVE <input type="checkbox"/>				
INSURANCE CARRIER		POLICY NUMBER							
DIR OF TRAVEL ON STREET OR HIGHWAY		SAND PITS DIRT TRACK				SPEED LIMIT		VEHICLE IDENTIFICATION NUMBER:	
		CA		DOT		DESCRIBE VEHICLE DAMAGE <input type="checkbox"/> UNK <input type="checkbox"/> NONE <input type="checkbox"/> MINOR <input type="checkbox"/> MOD <input type="checkbox"/> MAJOR <input type="checkbox"/> ROLL-OVER		SHADE IN DAMAGED AREA	
		CAL-T		TCP/PSC		MC/MX			
PREPARER'S NAME JULIE HEITZMAN 015910					DISPATCH NOTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A		REVIEWER'S NAME RUTH Y. LOEHR 018269		DATE REVIEWED 10/29/2019

AN INTERNATIONALLY ACCREDITED AGENCY

INJURED / WITNESSES / PASSENGERS**
CHP 555 CARS PAGE 3 (REV 11-16) OPI 060

PAGE 3 OF 6

DATE OF COLLISION (MO. DAY YEAR) 10/26/2019				TIME(2400) 1120		NCIC # 9246		OFFICER I.D. 015910				NUMBER 9246-2019-00208					
WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED
				FATAL INJURY	SUSPECTED SERIOUS INJURY	SUSPECTED MINOR INJURY	POSSIBLE INJURY	DRIVER	PASS.	PED.	BICYCLIST	OTHER					
<input type="checkbox"/> #	<input type="checkbox"/>	22	M	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	1	P	W	1
NAME / D.O.B. / ADDRESS AUSTIN WESLEY LEWIS (09/22/1997) 1316 SKYFIRE CT SPARKS NV 89441												TELEPHONE (775)750-9713					
(INJURED ONLY) TRANSPORTED BY: EL DORADO COUNTY EMS MEDIC 1						EMS RUN NUMBER 1910-2168				TAKEN TO: BARTON MEMORIAL HOSPITAL							
DESCRIBE INJURIES: ABRASIONS AND SCRAPES TO FACE AND CHIN, PAIN TO MIDDLE BACK																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input checked="" type="checkbox"/> # 1	<input type="checkbox"/>	17	M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAME / D.O.B. / ADDRESS ETHAN MICHAEL LEWIS (02/24/2002) 1316 SKYFIRE CT SPARKS NV 89441												TELEPHONE (775)622-5781					
(INJURED ONLY) TRANSPORTED BY:						EMS RUN NUMBER				TAKEN TO:							
DESCRIBE INJURIES:																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAME / D.O.B. / ADDRESS												TELEPHONE					
(INJURED ONLY) TRANSPORTED BY:						EMS RUN NUMBER				TAKEN TO:							
DESCRIBE INJURIES:																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
<input type="checkbox"/> #	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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NAME / D.O.B. / ADDRESS												TELEPHONE					
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DESCRIBE INJURIES:																	
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NAME / D.O.B. / ADDRESS												TELEPHONE					
(INJURED ONLY) TRANSPORTED BY:						EMS RUN NUMBER				TAKEN TO:							
DESCRIBE INJURIES:																	
<input type="checkbox"/> VICTIM OF VIOLENT CRIME NOTIFIED																	
PREPARER'S NAME JULIE HEITZMAN						I.D. NUMBER 015910		MO. DAY YEAR 10/26/2019		REVIEWER'S NAME RUTH Y. LOEHR 018269					MO. DAY YEAR 10/29/2019		

SKETCH DIAGRAM

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PAGE 4 OF 6

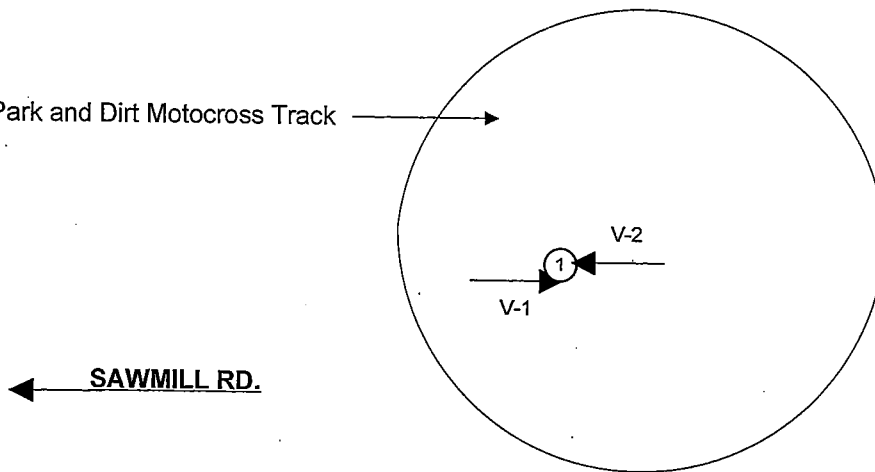
DATE OF INCIDENT 10/26/2019	TIME 1120	NCIC NUMBER 9246	OFFICER I.D. 015910	NUMBER 9246-2019-00208
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ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE=)

Sketch

Not to
ScaleLAKE TAHOE BLVD.

OHV Park and Dirt Motocross Track



PREPARED BY JULIE HEITZMAN	I.D. NUMBER 015910	DATE 10/26/2019	REVIEWER'S NAME RUTH Y. LOEHR 018269	DATE 10/29/2019
-------------------------------	-----------------------	--------------------	---	--------------------

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
10/26/2019	1120	9246	015910	9246-2019-00208

1 NOTIFICATION

2 I received a call from CHP Dispatch of a collision with an ambulance responding at 1123 hours at
3 the Sand Pits OHV park off Lake Tahoe Blvd just east of Sawmill Rd. I responded from Pioneer
4 Trail at Marshall Trail and arrived on scene at approximately 1130 hours. All times, speeds and
5 measurements are approximate. Measurements were made by visual estimation.

6

7 STATEMENTS:

8 **Party 1 (Brackett):** Party 1 was contacted at the scene and related the following information.

9 Party 1 was driving Vehicle 1 (Ford) on the dirt roadway adjacent to the dirt track and decided he
10 wanted to take the banked corner. He went onto the dirt track, wrong way and drove around the
11 banked corner. He continued up the back side of a groomed jump (the landing area for the jump)
12 at 5-10 mph. As he got to the top of the hill, Party 2 had already left the jump and was airborne.
13 Party 2 came down and landed on top of Vehicle 1.

14

15 **Party 2 (Lewis):** Party 2 was contacted at the scene in the back of the ambulance and related
16 the following information. Party 2 was riding his dirt bike (Vehicle 2, KTM) and as he went off the
17 jump, Vehicle 1 came up the hill towards him. Party 2 didn't see Vehicle 1 until he was coming
18 down to land and Vehicle 1 landed on top of Vehicle 1. Party 2 was ejected from Vehicle 2 and
19 landed on the ground.

20

21 **Witness 1 (Ethan Lewis):** Witness 1 was contacted at the scene and related the following
22 information. Witness 1 was over at his truck watching Party 2 ride the track. Party 1 was driving
23 Vehicle 1 and was drifting before he went up the hill wrong way at 20 mph. Party 2 was
24 westbound going over the hill and the two hit at the top of the hill. Party 2 landed on top of Vehicle
25 1 and was thrown off the bike.

26

27

28

29

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
JULIE HEITZMAN	015910	10/26/2019	RUTH Y. LOEHR 018269	10/29/2019

NARRATIVE/SUPPLEMENTAL

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
10/26/2019	1120	9246	015910	9246-2019-00208

1 SUMMARY

2 At the entrance to the OHV park there is a large US Forest Service sign that is in excellent
3 condition. The sign states the codes and regulations regarding the park operation and usage. It
4 also indicates that the intended use of the OHV park is for high clearance vehicles and vehicles
5 that are not street legal (i.e. dirt bikes and quads) and all other vehicles will park a designated
6 distance away from the track in the dirt parking area. This collision occurred on the dirt motocross
7 track. The natural directional flow of the track according to how the jumps were groomed was
8 opposite of the direction Party 1 was traveling in Vehicle 1. It is also not reasonable that Party 2
9 could have seen Vehicle 1 coming toward the hill due to the height of the jump/hill he was
10 approaching. The jump is referred to as a table top, it is higher and steeper on the approach with
11 a lip 2/3 the way up the hill to create the "jump". The top of the hill levels out and the opposite
12 side is a gradual decline to create the landing area.
13 Party 1 was driving Vehicle 1 and drove Vehicle 1 wrong way onto the off-road track. Party 2 was
14 driving Vehicle 2 and was traveling west as he got to the table top jump. Party 2 entered the jump
15 and as he was coming down, Party 1 drove Vehicle 1 up the backside of the hill at 10-20 mph.
16 Party 2 came down and landed on top of Vehicle 1 crushing Vehicle 1's windshield. Party 2 was
17 then ejected from Vehicle 2.

18

19 AREA OF IMPACT

20 The area of impact from V-1 vs. V-2 was located .25 mile south of the south roadway edge of
21 Lake Tahoe Blvd. and 1 mile east of the east roadway edge of Sawmill Rd.

22

23 CAUSE

24 Party 1 caused this collision by driving Vehicle 1 improperly. Party 1 was driving Vehicle 1 (Ford
25 Mustang) wrong way on the motocross track. This subsequently caused the collision with Vehicle
26 2. The cause and area of impact were determined by statements and vehicle damage.

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
JULIE HEITZMAN	015910	10/26/2019	RUTH Y. LOEHR 018269	10/29/2019

EXHIBIT 2

EXHIBIT 2

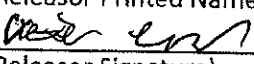
Claim Number: B064326CA19

Release of Claim for Bodily Injury

In consideration of the payment of Fifteen Thousand Dollars (\$15,000.00), Austin Lewis (hereinafter "Releasor") hereby forever release(s) and discharge(s) Joshua Brackett (hereinafter "Releasee") from any and all claims, causes of action, obligations and liabilities arising from or related to any bodily injury due to an accident occurring on October 26, 2019 in or near Lake Tahoe, CA.

Releasor also waives the benefits of Section 1542 of the California Civil Code, which provides: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

SIGNATURE(S)


Austin Lewis
(Releasor Printed Name)

(Releasor Signature)
7/10/2020
(Date)

(If applicable, Printed Name of spouse or legal guardian)

(If applicable, Signature of spouse or legal guardian)

(Date)

WITNESS(ES):

Rachelle Lewis
(Witness Printed Name)

(Witness Signature)
7/10/2020
(Date)

(Witness Printed Name)

(Witness Signature)

(Date)

California - For your protection California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

EXHIBIT 3

EXHIBIT 3



National Document Center
PO Box 268994
Oklahoma City, OK 73126-8994
claimsdocuments@farmersinsurance.com
Fax: (877) 217-1389

January 30, 2020

Austin Lewis in care of;
Law Offices of Galloway & Jensen
222 California Avenue
Reno, NV 89509

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED and REGULAR U.S. MAIL

RE: Insured: Rochelle Lewis
Policy Number: 0189279072
Claim Number: 7000923003-1
Loss Date: 10/26/2019

Dear Mr. Lewis:

Please be advised that we have completed our review of the coverage provided by the Your Mid-Century Insurance Company, Nevada EZ Reader Car Policy, form 56-5058, 3rd Edition. Thank you for presenting this Underinsured Motorist Bodily Injury claim for our review and coverage consideration. Our first notice of this incident was on January 21, 2020 by Thomas Cashell. We have compared the policy to the allegations contained in the claim. We have compared the policy to the allegations contained in the claim. We must respectfully inform you that there is no coverage provided by the Your Nevada EZ Reader Car Policy, form 56-5058, 3rd Edition. However, we will provide the Nevada State Minimum based on the financial responsibility laws of the state of Nevada. The reasons for our position are outlined below.

Mid-Century Insurance Company issued a Your Nevada E-Z Reader Car Policy, form 56-5058, 3rd Edition, to Rochelle Lewis to insure a 2018 Ford F350 with VIN 1FT8W3BT8JED05177. The effective dates for this policy are from May 22, 2019 to November 22, 2019. This policy provides applicable Uninsured/Underinsured Motorist coverage with limits of \$250,000 per person and \$500,000 per accident.

As we understand it, the incident in question involves a 2017 KTM 250XS motorcycle with VIN VBKSXM236HM288340 which is owned by your father Stephen Lewis whom you reside with. We understand that the motorcycle is insured through Foremost Insurance Company and did not carry Uninsured Motorist Bodily Injury Coverage at the time of this loss. As a result of this incident you sustained an injury for which you are seeking recovery for Underinsured Motorist benefits through this Nevada EZ Reader Car Policy, form 56-5058, 3rd Edition issued by Mid-Century Insurance Company.

Our investigation includes discussing this matter with your attorney's office, a review of the police report and a review of the statement you provided Foremost Insurance.

We would now like to direct your attention to the Your Nevada E-Z Reader Car Policy, Form 56-5058, 3rd Edition, which states in relevant part:

PART II - UNINSURED MOTORIST

Coverage C - Uninsured Motorist Coverage

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

Additionally, the Your Nevada E-Z Reader Car Policy, Form 56-5058, 3rd Edition contains the following Exclusions:

Exclusions

4. This coverage does not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle. This exclusion only applies to those **damages** which exceed the minimum limits of liability required by Nevada law for **Uninsured Motorist** coverage.

As you can see, according to the above exclusion, Underinsured Motorist coverage does not apply while occupying any vehicle owned by you or a family member for which insurance is not afforded under this policy. The exclusion then goes on to say that it is limited to the damages which exceed the minimum limits.

As a result of our evaluation of the claim and the coverage under this policy, we will provide Underinsured Motorist Coverage in the amount of \$25,000 per person, which are the state minimum limits as required by statute.

This decision is based on information currently known to us. If you have additional information you believe bears on this decision, please submit it for consideration at this time. Mid-Century Insurance Company reserves the right to assert any policy coverage defenses or policy exclusions that may be revealed in the future.

If for any reason you disagree with the contents of this letter, or are aware of additional facts or documents relating to coverage under the policy for this claim, please contact Claims Representative, Laurie Cordano, at (775) 742-2204.

Very Truly Yours,
Mid-Century Insurance Company

Shawn Ward

Shawn Ward
Liability Claims Supervisor
Nevada Claims Service Center

CC: Thomas Cashell, agent

EXHIBIT 4

EXHIBIT 4

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

Index of Policy Provisions

Declarations

Your Personal Coverage Page is attached.

Agreement	3	Determination of Coverage	10
Definitions	3	Limits of Coverage	10
What To Do In Case of Accident	4	Limitations on Stacking Coverages	10
		Other Insurance	11
		No Duplication of Benefits	11

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Out of State Coverage	7
Conformity with Financial Responsibility Law	7

PART II - UNINSURED MOTORIST

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Limits of Coverage	8
Limitations on Stacking Coverages	9
Other Insurance	9
No Duplication of Benefits	9

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Exclusions	10

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Coverage H - Towing	11
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Supplementary Payments	11
Exclusions	12
Limits of Coverage	12
Payment of Loss	12
Appraisal	13
No Benefit to Bailee	13
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ANY ADDITIONAL PROVISIONS AFFECTING YOUR POLICY ARE ATTACHED AS "ENDORSEMENTS."

This policy is a legal contract between you (the policyholder) and us (the Company).

IT CONTAINS CERTAIN EXCLUSIONS.

READ YOUR POLICY CAREFULLY.

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AGREEMENT

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

DEFINITIONS

Throughout this policy "you" and "your" mean the "named insured" shown in the Declarations and spouse if a resident of the same household. "We", "us," and "our" mean the Company named in the Declarations providing this insurance and all the members of the Farmers Insurance Group of Companies, including Farmers Insurance Exchange, Mid-Century Insurance Co., Truck Insurance Exchange, etc. In addition, certain words appear in bold type. They are defined as follows:

Accident or occurrence means an unexpected and unintended event, including continuous or repeated exposure to the same conditions, that causes **bodily injury** or **property damage**.

Additional car means a **private passenger car** or **utility car** of which you acquire possession during the policy period for the purposes of ownership, provided that:

- (1) You notify us of your intent to insure it with us within 30 days of its acquisition, and
- (2) As of the date of acquisition, all **private passenger cars** and **utility cars** you own are insured with us.

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

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

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

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

Private passenger car means a four wheel land motor vehicle of the private passenger or station wagon type actually licensed for use upon public highways. It also means a motor home, regardless of the number of wheels, not used for business purposes.

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

Replacement car means a **private passenger car** or **utility car** which you acquire as a replacement of the car described in the Declarations, provided that:

- (1) Neither you nor a **family member** continues to possess or exercise any right of ownership of the car described in the Declarations, and
- (2) You notify us of its acquisition before the end of the policy term. However, if the policy term ends less than 30 days after its acquisition and you renew the policy, you may notify us within 30 days of its acquisition.

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

Substitute car means a **private passenger car** or **utility car** being temporarily used as a substitute for the car described in the Declarations while it is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

Utility car means a land motor vehicle having at least four wheels licensed for use upon public highways, with a rated load capacity of not more than 2,000 pounds, of the pickup, panel or van type. It does not mean a vehicle used in any business or occupation other than farming or ranching. However, it does mean a vehicle used to transport tools and related items to and from or between job sites. It also includes an **additional car** or **replacement car** of the same type if its usage is the same as the **utility car** described in the Declarations.

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

Your insured car means:

1. The vehicle described in the Declarations of this policy.
2. A **replacement car**.
3. An **additional car**.

For the purposes of 1, 2 and 3 above, ownership will include the written leasing of a **private passenger** or **utility car** for which you qualify as a "long-term lessee" under Nevada law.

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4. Any **utility trailer**:

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

5. Any other **private passenger car, utility car, or utility trailer** while being used as the driver by you or a **family member** which is not furnished or available for regular use or owned by you or a **family member**. This includes such vehicles while rented by you on a daily or weekly basis and for which you qualify as a "short-term lessee" under Nevada law.

Your insured car does not include the following:

- (1) Any vehicle for which there is not sufficient reason to believe the use is with permission of the owner.
- (2) Any vehicle while used in employment by any person whose primary duties are the delivery of goods or services.
- (3) Any vehicle, other than the car described in the Declarations, while used in employment in an emergency occupation on a full time, part time or volunteer basis. Such occupations include, but are not limited to, Fire Fighting, Police, and Ambulance activities.
- (4) Any vehicle which is one of a fleet or pool of vehicles provided for the use of any person by such person's employer, unless such vehicle is specifically listed in the Declarations.

WHAT TO DO IN CASE OF ACCIDENT

Notice

In the event of an **accident**, or loss, notice must be given to us or our agent promptly. Your failure to give us prompt notice as required will not invalidate your claim if you show that it was not reasonably possible to do so and you notify us as soon as it is reasonably possible. The notice must give the time, place and circumstances of the **accident**, or loss, including the names and addresses of injured persons and witnesses.

Other Duties

A person claiming any coverage of this policy must also:

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

PART I - LIABILITY

Coverage A - Bodily Injury

Coverage B - Property Damage

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

We will defend any civil claim or civil suit asking for these **damages**.

We may settle when we consider it appropriate.

We will not defend any suit or make additional payments after we have paid the limits of coverage shown in the Declarations.

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Additional Definitions Used In This Part Only

Insured Person as used in this part means:

1. You or any **family member**.
2. Any other person using **your insured car**.
3. Any other person or organization with respect only to legal liability for acts or omissions of:
 - a. You or a **family member** while using **your insured car** provided it is not owned or hired by that person or organization.
 - b. Any other person while using the car described in the Declarations, an **additional car**, a **replacement car** or a **substitute car** provided such car is not owned or hired by that person or organization.

Insured Person does not mean:

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

Supplementary Payments

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

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

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

4. Actual loss of wages or salary up to \$50 a day, but not other income, when you attend a trial or hearing at our request.
5. Expenses you incur for immediate medical and surgical treatment for others necessary at the time of the **accident** resulting in **bodily injury** covered by this part.
6. Other reasonable expenses you incur at our request.

Exclusions

This coverage does not apply to:

1. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. **Bodily injury** or **property damage**:
 - a. reasonably expected to arise out of an intentional act, whether or not the **insured person** intended or had the capacity to intend the harm.
 - b. Arising out of an **insured person's** failure to prevent another person's intentional acts.
3. **Bodily injury** or **property damage** with respect to which any person is an insured under nuclear energy insurance. This exclusion applies even if the limits of that insurance are exhausted.
4. **Bodily injury** to an employee of an **insured person** arising in the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' compensation benefits are required.
5. **Bodily injury** or **property damage** for any person while employed or otherwise engaged in the business or occupation of transporting, selling, repairing, servicing, storing or parking of vehicles designed for use mainly on public highways, including road testing or delivery.

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

6. **Bodily injury** or **property damage** arising out of the use of any vehicle while used by any person employed or engaged in any business or occupation and whose primary duties are the delivery of goods or services.
7. **Bodily injury** or **property damage** arising out of the use of any vehicle in an emergency occupation on a full time, part time, or volunteer basis, including but not limited to Fire Fighting, Police and Ambulance activities. This exclusion does not apply to the car described in the Declarations, a **replacement car** or an **additional car**.
8. **Bodily injury** or **property damage** arising out of the use of any vehicle, unless described in the Declarations, which is one of a fleet or pool of vehicles which are provided or made available for the use of an **insured person** in the course of employment.
9. Damage to property owned or being transported by an **insured person**.
10. Damage to property rented to, or in the charge of, an **insured person** except a residence or private garage not owned by that person.
11. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any motorized vehicle with less than four wheels.
12. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle other than **your insured car**, which is owned by or furnished or available for regular use by you or a **family member**.
13. Liability to any person or organization because of **bodily injury** to you.
14. Liability assumed under any contract.
15. Liability arising from the sponsoring or taking part in any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.
16. **Bodily injury** or **property damage** arising out of the ownership, maintenance, or use by any person of a vehicle in which you have transferred full ownership interest even if the transfer does not comply with the transfer of ownership provisions of the **state** motor vehicle law.
17. Punitive or exemplary **damages** or the cost of defense related to such **damages**.
18. Liability to pay **damages** or fines where the obligation is established as a condition of any criminal judgment or order and any defense costs related to such a judgment.
19. Liability which results from an **insured person** transmitting a communicable (including sexually transmitted) disease.

Limits of Coverages

The amounts shown in the Declarations, in section 3. COVERAGES for **Bodily Injury** and **Property Damage** Liability, are the limits of liability which apply to the insurance provided by Part I, subject to the following:

1. The **bodily injury** liability limit for "each person" is the maximum we will pay for all **damages** resulting from **bodily injury** sustained by one person in any one **accident** or **occurrence**, including all consequential **damages** sustained by other persons, such as loss of services, loss of support, loss of consortium, wrongful death, grief, sorrow and emotional distress.
2. The **bodily injury** liability limit for "each **occurrence**" is the maximum we will pay for all claims for two or more persons for all **damages** for **bodily injury** arising out of any one **accident** or **occurrence**.
3. The **property damage** liability limit for "each **occurrence**" is the maximum we will pay for all **damages** to all property in any one **accident** or **occurrence**.
4. The amount by which the limits of liability exceed those required by the Nevada Financial Responsibility Law apply only to you and any **family member**. We will provide insurance for an **insured person** other than you or a **family member** only up to the minimum required limits of the Nevada Financial Responsibility Law.
5. An **insured person's damages** shall be reduced by any amount payable under any Workers' Compensation or any similar medical or disability law.

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6. If you have two or more cars insured with any member company of the Farmers Insurance Group of Companies, the insurance we provide for a non-owned vehicle will pay no more than the highest limit of coverage you have on any one of your cars.

Other Insurance

The coverage provided by this policy is excess over any other collectible auto liability insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**.

No Duplication Of Benefits

Any **damages** under Part I - Liability will be reduced by any other coverage of this policy applicable to the **damages** so that no person may collect more than once for the same elements of the **damages**.

Out Of State Coverage

An **insured person** may become subject to the financial responsibility law, compulsory insurance law or similar law of another **state** or in Canada. This can happen because of the ownership, maintenance or use of **your insured car** when you travel outside of Nevada. We will interpret this policy to provide any broader coverage required by those laws, except to the extent that other liability insurance applies.

Conformity with Financial Responsibility Laws

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

PART II - UNINSURED MOTORIST

Coverage C - Uninsured Motorist Coverage

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

Additional Definitions Used In This Part Only

As used in this part:

1. **Insured person** means:
 - a. You or a **family member**.
 - b. Any other person while **occupying** the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car**.
 - c. Any person for **damages** that person is entitled to recover because of **bodily injury** to an **insured person** as described in a. and b. above.But, no person shall be considered an **insured person** if the person uses a vehicle without having sufficient reason to believe that the use is with permission of the owner.
2. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a vehicle:
 - a. Operated on rails or crawler-treads.
 - b. Designed principally for use off public roads, including, but not limited to, dune buggies, go-carts, all terrain vehicles of two or more wheels, mini-bikes, farm tractors and other farm equipment, stock cars and all other racing cars, and all other vehicles of similar characteristics.
 - c. Used as a residence or office.
3. **Uninsured motor vehicle** means a **motor vehicle** which is:
 - a. Not insured by a **bodily injury** liability bond or policy at the time of the **accident**.
 - b. A hit-and-run vehicle whose operator or owner has not been identified and which strikes:
 - (1) You or any **family member**.
 - (2) A vehicle **occupied** by an **insured person**.

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- c. Insured by a **bodily injury** liability bond or policy at the time of the **accident** but the Company becomes insolvent or denies coverage for a reason other than because of an intentional act(s) of the owner or operator.
- d. Insured by a **bodily injury** liability bond or policy at the time of the **accident** which provides coverage in amounts less than the **damages** which the **insured person** is legally entitled from the owner or operator of that vehicle.

Uninsured motor vehicle, however, does not mean a vehicle:

- a. Insured under the liability coverage of this policy.
- b. Owned by or furnished or available for regular use by you or any **family member**.
- c. Owned or operated by a self-insured as contemplated by any financial responsibility law, or similar law.
- d. Owned by a governmental unit or agency.
- e. Operated by a person who intentionally causes the **accident** or **occurrence** and whose liability insurance coverage is denied because of an intentional act exclusion.

Exclusions

- 1. This coverage shall not apply to the benefit of any insurer or self-insurer under any Workers' Compensation law, or directly to the benefit of the United States, or any **state** or any political subdivision.
- 2. This coverage does not apply to punitive or exemplary **damages**.
- 3. This coverage does not apply to **bodily injury** sustained by a person:
 - a. If that person or the legal representative of that person makes a settlement with or takes a judgment against any other person or entity without our written consent.
 - b. While **occupying your insured car** when used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
 - c. During active participation in any organized or agreed-upon racing or speed contest or demonstration or in practice or preparation for any such contest.
- 4. This coverage does not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle. This exclusion only applies to those **damages** which exceed the minimum limits of liability required by Nevada law for **Uninsured Motorist** coverage.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for **Uninsured Motorist**, are the limits of liability which apply subject to the following:

- 1. The **uninsured motorist bodily injury** limit for "each person" is the maximum we will pay for all **damages** resulting from **bodily injury** sustained by one person in any one **accident** or **occurrence**, including all consequential **damages** sustained by other persons, such as loss of services, loss of support, loss of consortium, wrongful death, grief, sorrow and emotional distress.
- 2. The **uninsured motorist bodily injury** limits for "each **occurrence**" is the maximum amount we will pay for all claims by all persons for all **damages** for **bodily injury** arising out of any one **accident** or **occurrence**.
- 3. Subject to the other limits of coverage of this part, the maximum we will pay for **damages** caused by an underinsured motorist as defined in Additional Definition 3d shall be no more than the extent the **damages** exceed the sum of the amounts of coverage of all liability bonds or policies available to all parties held to be liable for the **accident** or **occurrence**.
- 4. Any amount payable by us to an **insured person** under this coverage shall be reduced by the amount paid and the present value of all amounts payable on account of such **bodily injury** under any Workers' Compensation law, disability benefits law or any similar law.

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LIMITATIONS ON STACKING COVERAGES

IF YOU HAVE MORE THAN ONE CAR INSURED BY US, WE WILL NOT PAY ANY INSURED PERSON MORE THAN THE SINGLE HIGHEST LIMIT OF UNINSURED MOTORIST COVERAGE WHICH YOU HAVE ON ANY ONE OF THOSE CARS. THIS LIMIT OF COVERAGE APPLIES REGARDLESS OF THE NUMBER OF POLICIES, INSURED PERSONS, CARS INSURED, CLAIMS MADE, CLAIMANTS, OR VEHICLES INVOLVED IN THE OCCURRENCE. COVERAGES ON YOUR OTHER CARS INSURED WITH US CANNOT BE ADDED, COMBINED OR STACKED TOGETHER.

Other Insurance

The coverage provided by this policy is excess over any other collectible auto **uninsured motorist** insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**.

No Duplication Of Benefits

Any **damages** under PART II - **Uninsured Motorist** will be reduced by any other coverage of this policy applicable to the **damages** so that no person may collect more than once for the same elements of the **damages**.

PART III - MEDICAL

Coverage E - Medical Expense Coverage

We will pay **reasonable expenses** for **necessary medical services** furnished within two years from the date of the **accident** because of **bodily injury** sustained by an **insured person**.

Additional Definitions Used In This Part Only

As used in this part, **insured person** or **insured persons** means:

1. You or any **family member** while **occupying**, or through being struck by, a motor vehicle or trailer designed for use on public roads.
2. Any other person while **occupying** the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car** while being used by you, a **family member**, or any other person who has sufficient reason to believe the use is with permission of the owner.

Necessary Medical Services means medical services which are usual and customary for treatment of the injury, including the number or duration of treatments, in the county in which those services are provided. **Necessary medical services** are limited to necessary medical, surgical, dental, x-ray, ambulance, hospital, professional nursing and funeral services, and include the cost of pharmaceuticals, orthopedic and prosthetic devices, eyeglasses, and hearing aids. We will reimburse you for any **necessary medical services** covered under this part already paid by you.

Necessary medical services do not include:

1. Treatment, services, products or procedures that are:
 - a. Experimental in nature, for research, or not primarily designed to serve a medical purpose; or
 - b. Not commonly and customarily recognized throughout the medical profession and within the United States as appropriate for the treatment of **bodily injury**; or
2. The use of:
 - a. Thermography or other related procedures of a similar nature; or
 - b. Acupuncture or other related procedures of a similar nature.
3. Purchase, rental cost, or use of:
 - a. Hot tubs, spas, water beds,
 - b. Exercise equipment,
 - c. Heating or vibrating devices,
 - d. Furniture or equipment not primarily designed to serve a medical purpose,
 - e. Memberships in health clubs,
 - f. Medical reports unless requested by us.

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Reasonable Expenses means expenses which are usual and customary for **necessary medical services** in the county in which those services are provided. We will reimburse you for any **reasonable expenses** covered under this part already paid by you.

Exclusions

This coverage does not apply for **bodily injury** to any person:

1. Sustained while **occupying your insured car** when used to carry persons for a charge. This exclusion does not apply to shared-expense car pools.
2. Sustained while **occupying** any vehicle while located for use as a residence or premises.
3. Sustained while **occupying** a motorized vehicle other than a **private passenger car** or **utility car**.
4. Sustained while **occupying**, or when struck by, any vehicle (other than **your insured car**) which is owned by or furnished or available for regular use by you or any **family member**.
5. Sustained while **occupying** a vehicle other than the car described in the Declarations, an **additional car**, a **replacement car**, or a **substitute car** while the vehicle is being used in the business or occupation of an **insured person**.
6. Sustained while **occupying**:
 - (1) Any vehicle while used in employment by any person whose primary duties are the delivery of goods or services.
 - (2) Any vehicle, other than the car described in the Declarations, a **replacement car** or a **substitute car**, while used in employment in an emergency occupation, including but not limited to Fire Fighting, Police, and Ambulance activities.
 - (3) Any vehicle, unless specifically described in the Declarations, which is one of a fleet or pool of vehicles provided for the use of an **insured person** in the course of his or her employment.
7. Due to heart attacks, strokes, and other medical conditions or illnesses not causally related to an **accident**.
8. Occurring during the course of employment if Workers' Compensation benefits coverage is required.
9. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
10. During active participation in any organized or agreed-upon racing or speed contest or demonstration, or in practice or preparation for any such contest.
11. Where medical expenses are paid or payable by any governmental entity.

Determination of Coverage

At our expense, we may employ or enter into contract with an independent medical consultant(s) to assist us in determining whether all or any portion of any claim are **reasonable expenses** and **necessary medical services**. We may submit to such a consultant any medical records, reports, bills, statements, results of tests and examinations, and any other documentation or material we deem appropriate.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for Medical, are the limits of liability which apply subject to the following:

1. The limit is the most we will pay for **bodily injury** sustained by any one **insured person** in any one **occurrence**.
2. In no event will we pay more than \$2,000 for funeral expenses for any one **insured person**.

LIMITATIONS ON STACKING COVERAGES

IF YOU HAVE MORE THAN ONE CAR INSURED BY US, WE WILL NOT PAY ANY INSURED PERSON MORE THAN THE SINGLE HIGHEST LIMIT OF MEDICAL EXPENSE COVERAGE WHICH YOU HAVE ON ANY ONE OF THOSE CARS. THIS LIMIT OF COVERAGE APPLIES REGARDLESS OF THE NUMBER OF POLICIES, INSURED PERSONS, CARS INSURED, CLAIMS MADE, CLAIMANTS, OR VEHICLES INVOLVED IN THE OCCURRENCE. COVERAGES ON YOUR OTHER CARS INSURED WITH US CANNOT BE ADDED, COMBINED OR STACKED TOGETHER.

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Other Insurance

The coverage provided by this policy is excess over any other collectible medical expense insurance coverage provided by any other policy which applies to the same **accident** or **occurrence**, including but not limited to any of the following:

- a. other auto medical expense insurance, premises medical insurance or personal injury protection coverage.
- b. individual, blanket or group accident, health or hospitalization insurance or Health Maintenance Organization plan or benefits provider.

No Duplication Of Benefits

Any amount paid under PART III - Medical will be offset against any other coverage of this policy applicable to the **accident** so that there is no duplication of Medical Expense Coverage benefits and so that no person may collect more than once for the same elements of **damages**.

PART IV - DAMAGE TO YOUR CAR

Coverage F - Comprehensive

We will pay for **loss** to your **insured car** caused by any accidental means except **collision**, less any applicable deductibles. Any deductible amount will apply separately to each **loss**.

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

Coverage G - Collision

We will pay for loss to **your insured car** caused by **collision** less any applicable deductibles. Any deductible amount will apply separately to each **loss**.

Coverage H - Towing and Road Service

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

Additional Definitions Used In This Part Only

As used in this part:

1. **Collision** means collision of **your insured car** with another object or upset of **your insured car**.
2. **Loss** means direct and accidental loss of or damage to **your insured car**, including its equipment.
3. **Theft** or **Larceny** means the unlawful taking and removal of **your insured car**, its parts or accessories. It does not include voluntary parting with title or possession by you or others, if induced to do so by trickery or false pretense. Such inducement may be in the form of, but not limited to, transfer of possession without a legal right to do so, embezzlement or concealment by any person in possession of **your insured car** under any of the following:
 1. Bailment lease
 2. Conditional sale
 3. Purchase agreement
 4. Mortgage or other claim or lien.

Supplementary Payments

If you have Comprehensive coverage, we will pay for transportation expenses incurred by you because of the total **theft** of **your insured car**. We will pay up to \$15 per day, but no more than \$450 each **loss**. This coverage begins 48 hours after the **theft** has been reported to us and to the police and ends when the car is returned to use or when we offer settlement for the **loss**.

We will pay up to, but not more than, \$200 for **loss** of clothing or luggage in **your insured car** which belongs to you or a **family member** if the **loss** is caused by:

- a. **Collision** of **your insured car** provided Coverage G - **Collision** is listed as a covered part in the Declarations and **loss** occurs to **your insured car** from the same cause.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

- b. Fire, lightning, flood, earthquake, explosion, falling aircraft, or **theft** of the entire insured car; provided Coverage F- Comprehensive is listed as a covered part in the Declarations and **loss** occurs to **your insured car** from the same cause.

Exclusions

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

1. To **your insured car** while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.
2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination or any consequence of any of these.
3. Caused by **theft** to equipment designed for the reproduction of sound, or any radio receiving or radio receiving and transmitting equipment. This applies to such equipment as a tape or disc player, tape recorder, video cassette recorder, citizens band radio and two-way mobile radio, telephone, television or scanning monitor receiver. It also applies to any electronic device incorporating any of this equipment, as well as accessories and antennas.

This exclusion does not apply to that equipment which is permanently installed in the opening of the dash or console of **your insured car** normally used by the motor vehicle manufacturer for the installation of a radio or sound reproducing device.

4. Caused by **theft** to tapes, discs, records, reels, cassettes, cartridges, carrying cases or other devices for use with equipment designed for the reproduction of sound.
5. To a camper body, canopy or **utility trailer** owned by you or a **family member** and not described in the Declarations. But, coverage does apply to a camper body, canopy or **utility trailer** of which you acquire ownership during the policy period if you ask us to insure it within 30 days after you acquire it.
6. To awnings, cabanas, or equipment designed to provide additional living facilities.
7. Due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. But coverage does apply if the **loss** results from burning of wiring. Also, coverage does apply if the **loss** results from the total **theft** of **your insured car**.
8. To a vehicle not owned by you when used in auto business operations.
9. During any organized or agreed-upon racing or speed contest or demonstration in which **your insured car** has active participation, or in practice or preparation for any such contest.
10. To a **utility car** due to increased cost of repair or replacement of the following furnishings or equipment:
 - a. special carpeting, insulation, wall covering, furniture or bars,
 - b. dining, kitchen and sleeping facilities including enclosures or bathroom facilities.
 - c. height-extending roofs.
 - d. murals, special paint and/or other methods of painting, decals or graphics.
11. To radar detectors.

Limits of Coverage

The amounts shown in the Declarations, in section 3. COVERAGES for Comprehensive and **Collision**, are the limits of liability which apply to Part IV, Coverages F and G. These limits of liability for **loss** shall not exceed:

1. The cost to repair or replace damaged or stolen property with other of like kind and quality, or with new property less an adjustment for physical deterioration and/or depreciation.
2. \$500 for a **utility trailer** not owned by you or a **family member**.

Payment of Loss

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

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Appraisal

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

No Benefit to Bailee

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

Other Insurance

The coverage provided by this policy is excess over any other applicable Comprehensive or **Collision** insurance provided by any other policy which applies to the same **loss**.

PART V - CONDITIONS

1. Policy Period and Territory

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

2. Changes

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

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

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

Policy terms which conflict with laws of Nevada are hereby amended to conform to such laws.

3. Legal Action Against Us

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

4. Transfer Of Your Interest

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

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

5. Our Right to Recover Payment

If any person to or for whom we make payment under this policy has rights of recovery from another, those rights are transferred to us. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after the **accident** to prejudice our rights.

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

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

6. Bankruptcy

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

7. Termination or Reduction of Coverage

a. Nonrenewal

We will mail to you at the address last known to us, or personally deliver to you, notice of nonrenewal not less than 30 days before the end of the policy period, if we decide not to renew or continue this policy.

b. Cancellation of Coverage

1. You may cancel this policy by advising us in writing when at a future date the cancellation is to be effective.
2. We may cancel for non-payment of premium at any time during the policy period by mailing notice to you by U.S. Post Office first class mail to the address last known to us, or by personally delivering the notice, at least 10 days prior to the effective date of such cancellation.
3. If this policy has been in effect 70 days or has been renewed, we may cancel by mailing notice to you by U.S. Post Office first class mail to the address last known to us, or by personally delivering the notice, at least 30 days prior to the effective date of such cancellation, for any of the following reasons:

(a) You purposely misrepresent information in the submission of a claim.

(b) You or any person who regularly operates **your insured car**:

- (1) Has had a driver's license suspended or revoked within the 12 months prior to the date of notice of cancellation;
- (2) Is subject to epilepsy or heart attacks and cannot have a physician certify as to the ability to operate a motor vehicle safely;
- (3) Has been addicted to the use of narcotics or other drugs within the 36 months prior to the notice of cancellation;
- (4) Has been convicted, or forfeited bail, during the 12 months immediately preceding the notice of cancellation for any of the following reasons:
 - (a) Felony;
 - (b) Criminal negligence resulting in death, homicide or assault when using a motor vehicle;
 - (c) Driving while intoxicated or under the influence of drugs, being intoxicated while in, or about, an automobile, or while having custody of an automobile;
 - (d) Leaving the scene of the **accident** without reporting the **accident**.
 - (e) Theft of a motor vehicle.

(c) There has been a material change in the nature of the risk since the policy inception or renewal which substantially and materially increases the risk of loss beyond that contemplated at the time the policy was issued or last renewed.

(d) The Commissioner determines that continuation of our present volume of premiums would jeopardize our solvency or be hazardous to the interests of our policyholders, creditors or the public.

(e) The Commissioner determines that the continuation of this policy would violate, or place us in violation of, any provision of the Insurance Code of Nevada.

If we cancel, the notice we send you will describe why we are cancelling.

c. Automatic Termination

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

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

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d. Reduction of Coverage

We may reduce coverage limits, increase any deductible, or increase the premium rate of all or any portion of the policy at the time of renewal. You shall have 30 days from the date you receive notice of the altered terms of the policy to cancel the policy. If you elect to cancel under these circumstances, we will refund the pro rata premium of the unexpired portion of the new term.

e. Other Provisions

- (1) If different requirements for cancellation and nonrenewal or termination of policies become applicable because of the laws of Nevada, we will comply with those requirements.
- (2) Mailing of a notice shall be sufficient proof of notice. We may deliver a notice instead of mailing it.
- (3) The effective date and time stated on the notice for cancellation of the entire policy shall become the end of the policy period.
- (4) Termination or change may result in a premium refund. If so, we will send it to you. Our making or offering of a refund is not a condition of cancellation.

If you cancel, the refund will be computed in accordance with the customary short rate table and procedure, except as provided for in subsection d.

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

We shall not cancel or refuse to renew this policy solely because of age, residence, race, color, creed, national origin, ancestry or occupation of any insured under this policy.

RECIPROCAL PROVISIONS

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

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

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

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

- a. A partnership or mutual insurance association.
- b. Any joint liability.

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

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

We hold the Annual Meeting of the members of the Exchange at our Home Office at Los Angeles California, on the first Monday following the 15th day of March of each year at the hour of 2:00 p.m. The Board of Governors may elect to change the time and place of the meeting.

If they do so, you will be mailed a written or printed notice at your last known address at least ten days before such a time. Otherwise, no notice will be sent to you.

The Board of Governors shall be chosen by subscribers from among yourselves. This will take place at the annual meeting or at any special meeting which is held for that purpose. The Board of Governors shall have full power and authority to establish such rules and regulations for our management as are not inconsistent with the subscribers' agreement.

The sample document is not a contract, agreement or policy of insurance - only an issued and signed policy from the insuring entity is the agreement of the issuing company.

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

This policy is non-assessable.

SPECIAL PROVISIONS

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

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

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

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

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

MID-CENTURY INSURANCE COMPANY

Doren E. Hall

Secretary

Paul H. Hopburn

Vice-President

NO MEXICO COVERAGE **Read This Warning Carefully**

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

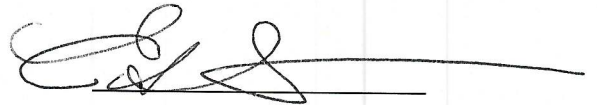
EXHIBIT 5

EXHIBIT 5

DECLARATION OF EILEEN SULLIVAN

I, Eileen Sullivan, do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. I am over eighteen (18) years of age and I am a resident of Douglas County, Nevada.
2. Affiant is the Finance Manager for Carson City Motorsports (CMS).
3. CMS is a licensed dealership of KTM motorcycles.
4. CMS sold a 2017 KTM 250 SX motorcycle to Stephen and Austin Lewis.
5. The KTM 250 SX motorcycle is designed exclusively for off public road use, and is not street legal.



Eileen Sullivan

Dated this 11 day of March, 2021.

EXHIBIT 6

EXHIBIT 6

1 **CODE: 2610**

2 Graham Galloway
3 Nevada State Bar No. 221
4 Galloway & Jensen
5 222 California Avenue
6 Reno, Nevada 89509
7 (775) 333-7555
8 *Attorneys for Plaintiff*

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
10 **THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 AUSTIN LEWIS, an individual,
13
14 Plaintiff,

Case No.: CV20-01047

Dept No.: 1

11 vs.

12 MID-CENTURY INSURANCE COMPANY,
13 ROE CORPORATIONS I-X and
14 DOES I-X inclusive,

15 Defendants.
16 _____/

17 **AFFIDAVIT**

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF WASHOE)

21 I, Austin Lewis, being first duly sworn, depose and say:

22 1. Affiant is the Plaintiff in the matter entitled AUSTIN LEWIS vs. MID-CENTURY
23 INSURANCE COMPANY Case No. CV20-01047.

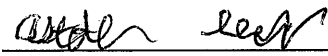
24 2. Affiant believed the UIM coverage under Affiant's policy of insurance with Mid-
25 Century provided \$250,000.00 in coverage.

1 3. Affiant expected the UIM coverage under affiant's policy with Mid-Century applied to
2 the use of his off road KTM motorcycle.

3 AFFIRMATION Pursuant to NRS 239B.030: The undersigned does hereby affirm that
4 the preceding document does not contain the social security number of any person.

5 Further affiant sayeth not.

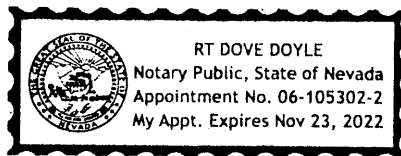
6 DATED this 16 day of March, 2021.

7
8
9 
10 Austin Lewis

11 SUBSCRIBED and SWORN to before me

12 this 16 day of March, 2021.

13 
14 NOTARY PUBLIC



3795
Todd R. Alexander, Esq. NSB #10846
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
(775) 786-6868
tra@lge.net
Attorneys for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual

Plaintiff,

vs.

MID-CENTURY INSURANCE COMPANY, ROE
CORPORATIONS I-X and DOES I-X inclusive,

Defendants.

Case No. CV20-01047

Dept. No. 1

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant, MID-CENTURY INSURANCE COMPANY ("Mid-Century"), by and through its undersigned counsel, hereby replies in support of its motion for summary judgment. This reply brief is based on the following memorandum of points and authorities and any further information this Court deems it appropriate to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

With only one exception, Mid-Century does not dispute the facts set forth in Plaintiff's opposition to Mid-Century's motion as they pertain to the issue of insurance coverage. Importantly, however, this is not a disputed issue of fact. It is a disputed issue of contractual interpretation, which is an issue of law for the Court to decide.

On page two of the opposition, Plaintiff writes, "Mr. Lewis was insured through Mid-Century at the time of this crash, and had uninsured/underinsured limits (UM/UIM) of \$250,000.00." (Plaintiff's Opposition, p. 2, lines 19-20). A more accurate statement would be that the Lewis family's four enumerated automobiles were insured by Mid-Century, and the

1 policy afforded UM/UIM coverage to the occupants of those four enumerated vehicles.

2 One fact left out of Plaintiff's statement of facts is that the off-road motorcycle Mr.
3 Lewis was riding at the time of the accident, a 2017 KTM 250XS, was insured through a
4 separate insurance company, Foremost Insurance Company, but did not carry UM/UIM
5 coverage. (See Exhibit 3 to Plaintiff's Opposition).

6 No reasonable person believes that he or she is insured by his or her automobile
7 insurance policy for bodily injuries sustained while riding an off-road motorcycle, unless the
8 policy is specifically written for that off-road vehicle. Indeed, typical automobile insurance
9 policies, such as the Mid-Century policy at issue here, do not contemplate providing coverage
10 for injuries sustained while riding off-road vehicles. Such injuries are far too common and
11 would render automobile insurance policies far too expensive. This is why automobile
12 policies, like the subject Mid-Century policy, are specifically written to exclude coverage for
13 such off-road activities.

14 As set forth in Mid-Century's motion, the uninsured motorist coverage provision of the
15 subject policy contains the following exclusion:

16 4. This coverage does not apply while **occupying** any vehicle owned by
17 you or a **family member** for which insurance is not afforded under this
18 policy or through being struck by that vehicle.

19 In other words, an insured has UM/UIM coverage only when he or she is occupying a
20 vehicle insured under the subject policy, or a vehicle owned by someone who is not a family
21 member. This exclusion is susceptible to only one reasonable interpretation, and it negates
22 uninsured motorist coverage under the undisputed facts of this case. It is undisputed that
23 Plaintiff was riding an off-road motorcycle owned by his father but not insured under the Mid-
24 Century policy.

25 Whether a contract is ambiguous presents a question of law. *Margrave v. Dermody*
26 *Props.*, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994). A contract is ambiguous if its terms may
27 reasonably be interpreted in more than one way, but ambiguity does not arise simply because
28 the parties disagree on how to interpret their contract. *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123

1 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d
2 492, 493–94 (1954) (concluding that summary judgment was appropriate because the
3 interpretation offered by one party was not reasonable and that, therefore, the contract
4 contained no ambiguity) (*abrogated on other grounds by Wood v. Safeway, Inc.*, 121 Nev. 724,
5 121 P.3d 1026 (2005)). Rather, “an ambiguous contract is ‘an agreement obscure in meaning,
6 through indefiniteness of expression, or having a double meaning.’” *Galardi*, 129 Nev. at 309,
7 301 P.3d at 366 (quoting *Hampton v. Ford Motor Co.*, 561 F.3d 709, 714 (7th Cir.2009)).

8 Plaintiff attempts to introduce ambiguity into the subject exclusion when no such
9 ambiguity exists. In Plaintiff’s opposition, he asks this Court to unreasonably misinterpret the
10 policy language in such a manner as to convey UM/UIM coverage any time he is occupying
11 any off-road vehicle, even though no off-road vehicles were insured under the policy. To do
12 so, Plaintiff focuses on the defined term “motor vehicle,” which does not even appear in the
13 exclusion at issue. In fact, the defined term “motor vehicle” appears only in the definition of
14 what constitutes an “uninsured motor vehicle.” (Mid-Century policy, attached as Exhibit 1 to
15 Mid-Century’s motion, at p. 7) (meaning an uninsured motor vehicle does not include a
16 vehicle designed principally for off-road use—a scenario that is not at issue in this case, as the
17 uninsured vehicle involved in this case was designed for on-road use).

18 To assign merit to Plaintiff’s argument would be to hold that Plaintiff has UM/UIM
19 coverage under the Mid-Century policy whenever he rides an off-road vehicle, even though no
20 such off-road vehicles are insured under the Mid-Century policy.

21 Plaintiff should not be permitted to use a defined term that is not even used in a policy
22 exclusion in an effort to introduce ambiguity into that exclusion. A similar tactic was
23 attempted, and denied, in *Hahn v. Harleysville Ins. Co.*, 356 Wis.2d 830, 2014 WL 4187508
24 (Wisc. App. 2014). In *Hahn*, the claimant sued for underinsured motorist coverage when her
25 husband died in an automobile accident while driving his Kawasaki Mule, an all-terrain vehicle
26 that was not insured under the couple’s Harleysville insurance policy. *Hahn*, 2014
27 WL 4187508, * 1. The only vehicles insured under the Hahns’ policy were a Dodge Ram and a
28 Chrysler Town & Country. *Id.* The UM/UIM endorsement in the policy at issue in *Hahn*

1 contained an exclusion very similar to the one at issue in this case. It stated:

2 We do not provide Underinsured Motorists Coverage for “bodily injury”
sustained:

3 1. By an “insured” while “occupying”, or when struck by, any motor
4 vehicle owned by that “insured” which is not insured for this coverage
under this policy. This includes a trailer of any type used with that
5 vehicle.

6 *Id.* at *2. Citing this exclusion (referred to by the court as the “drive other cars” exclusion),
7 the insurer in *Hahn* denied UM/UIM coverage. *Id.*

8 The plaintiff in *Hahn*, just like the Plaintiff in this case, argued that the exclusion is
9 ambiguous because it was questionable whether the Kawasaki Mule should be considered a
10 “motor vehicle.” *Id.* at *3. Contrary to the plaintiff’s argument, the *Hahn* Court held that
11 “[t]he meaning of the exclusion is plain:

12 an insured is only entitled to receive UIM benefits if he or she is involved
13 in an automobile accident while driving a vehicle for which a premium
14 was paid. There is no other way to read the exclusion. Applying the plain
language of the exclusion to the undisputed facts yields only one
15 conclusion: there is no UIM coverage for *Hahn*. It is undisputed that
Edward was driving his Kawasaki Mule when he was struck by an
16 automobile. It is also undisputed that the policy lists only the Dodge Ram
and the Chrysler Town & Country as covered vehicles—not the Mule. It is
17 further undisputed that the only vehicles for which premiums were paid
were the Ram and the Town & Country—not the Mule. The Mule was not
18 listed on the policy. Because the Mule was not listed on the policy and
because Edward was driving the Mule when he was struck, there is no
coverage under the policy.

19 *Id.*

20 The argument as to whether the Kawasaki Mule should be considered a “motor
21 vehicle” was determined by the court to have been illogical. The court held that it was clear
22 that the vehicle the decedent was driving at the time of the accident “was not listed on the
23 policy and had no premium associated with it.” As the *Hahn* Court put it: “We fail to see,
24 given the clear language of the policy and these undisputed facts, how a reasonable insured
25 would have understood him or herself to have coverage for circumstances in which coverage
26 simply was not bargained for.” *Id.* at *3.

27 Just like the policy in *Hahn*, the Mid-Century policy at issue in this case did not insure
28 the Lewis family’s off-road motorcycle. The Lewis family did not pay a premium to Mid-

1 Century associated with the off-road motorcycle. As noted above, the motorcycle was insured
2 under a separate policy with a separate insurance company, but the Lewis family did not have
3 UM/UIM coverage under that separate policy.

4 Also, just like the exclusion at issue in *Hahn*, the applicable exclusion in this case is
5 unambiguous. It reads, in pertinent part, "This [UM/UIM] coverage does not apply while
6 occupying any vehicle owned by you or a family member for which insurance is not afforded
7 under this policy...." There is only one reasonable way that exclusion can be interpreted.
8 Thus, it is not ambiguous.


9 "In the absence of ambiguity or other factual complexities, contract interpretation
10 presents a question of law that the district court may decide on summary judgment." *Galardi*
11 *v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (quoting *Ellison v. Cal.*
12 *State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)) (internal brackets and
13 quotation marks omitted).

14 Summary judgment in this insurance coverage dispute should be granted in favor of
15 defendant Mid-Century Insurance Company because UM/UIM coverage is excluded under the
16 clear and unambiguous terms of the subject policy, in light of the undisputed facts of this
17 case. Accordingly, Mid-Century Insurance Company respectfully requests the entry of
18 summary judgment in its favor.

19 **The undersigned does hereby affirm that the preceding document does not contain**
20 **the social security number of any person.**

21 Dated: March 25, 2021.

22 Lemons, Grundy & Eisenberg


23
24 By: 

25 Todd R. Alexander, Esq.
26 Attorney for Defendant
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on March 25, 2021, I e-filed a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

Graham Galloway, Esq.
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509


Susan G. Davis

1 **2645**

2 Todd R. Alexander, Esq. NSB #10846
3 Lemons, Grundy & Eisenberg
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 (775) 786-6868
7 tra@lge.net
8 *Attorneys for Defendant*

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 AUSTIN LEWIS, an individual

12 Plaintiff,

13 vs.

14 MID-CENTURY INSURANCE COMPANY, ROE
15 CORPORATIONS I-X and DOES I-X inclusive,

16 Defendants.

Case No. CV20-01047

Dept. No. 1

17 **OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

18 Defendant, MID-CENTURY INSURANCE COMPANY ("Mid-Century"), by and through its
19 undersigned counsel, hereby opposes Plaintiff's cross-motion for summary judgment. This
20 opposition is based on the following memorandum of points and authorities and any further
21 information this Court deems it appropriate to consider.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 This is a dispute over whether the Plaintiff has UM/UIM coverage under his family's
24 auto insurance policy for injuries he sustained while riding his family's off-road motorcycle on
25 an off-road track in Lake Tahoe. The substance of the dispute is laid out in Defendant's
26 motion for summary judgment, which is already fully briefed and submitted for this Court's
27 decision, and it need not be restated at length herein. Defendant hereby incorporates the
28 summary judgment briefing into this opposition by reference.

In short, there is an exclusion in the UM/UIM portion of the Mid-Century policy that
limits coverage to an insured person who is occupying one of the vehicles insured under the

1 policy at the time of an accident. Plaintiff is trying to convince this Court that his off-road
2 motorcycle does not count as a "vehicle," so the exclusion should not apply. Under Plaintiff's
3 logic, he would have UM/UIM coverage any time he is injured while riding any off-road
4 vehicle, regardless of the fact that no such off-road vehicles are insured under the policy.

5 Importantly, the off-road motorcycle Mr. Lewis was riding at the time of the accident,
6 a 2017 KTM 250XS, was insured through a separate insurance company, Foremost Insurance
7 Company, but did not carry UM/UIM coverage.

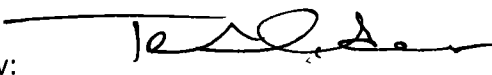
8 As set forth in Mid-Century's motion, the UM/UIM exclusion at issue in this case is
9 susceptible to only one reasonable interpretation, and it is therefore not ambiguous. "In the
10 absence of ambiguity or other factual complexities, contract interpretation presents a
11 question of law that the district court may decide on summary judgment." *Galardi v. Naples*
12 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (quoting *Ellison v. Cal. State Auto*
13 *Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)) (internal brackets and quotation marks
14 omitted).

15 For the reasons set forth in Defendant's motion for summary judgment, Plaintiff's
16 cross-motion for summary judgment should be denied, and Mid-Century Insurance Company
17 respectfully requests the entry of summary judgment in its favor.

18 **The undersigned does hereby affirm that the preceding document does not contain**
19 **the social security number of any person.**

20 Dated: March 29, 2021.

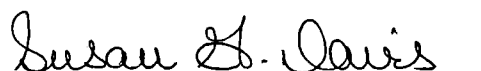
21 Lemons, Grundy & Eisenberg

22 
23 By: _____
24 Todd R. Alexander, Esq.
25 Attorney for Defendant
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on March 29, 2021, I e-filed a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

Graham Galloway, Esq.
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509


Susan G. Davis

CODE: 3790
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual, Case No.: CV20-01047

Plaintiff, Dept No.: 1

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

REPLY IN SUPPORT OF PLAINTIFF'S CROSS-MOTION

FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Austin Lewis, by and through his counsel, Graham Galloway of Galloway and Jensen, hereby submits the following Reply in support of Plaintiff's Cross-Motion for Partial Summary Judgment.

The Defendant argues in both its reply in support of its own motion for summary judgment, as well as its opposition to the Plaintiff's cross motion for partial summary judgment, that it has excluded coverage for the Plaintiff's claim, and there is no ambiguity in its policy

1 language. The exclusion relied upon by Mid-Century, by itself, seems clear. The problem in
2 this case, though, is when you read the policy as a whole, the exclusion does not cover the
3 claim brought by Mr. Lewis, or at a minimum, an ambiguity arises that must be construed
4 against Mid-Century.

5 **I.**

6 **THE POLICY LANGUAGE DOES NOT SUPPORT MID-CENTURY'S**
7 **INTERPRETATION OF THE COVERAGE**

8 UM/UIM insurance applies to an insured who has been injured by an uninsured or
9 underinsured motorist. It applies even when the insured is not occupying a vehicle. For
10 example, if an insured is a pedestrian or a bicyclist and is hit by an uninsured or underinsured
11 motorist, coverage extends to the injured policyholder. In this case, Mr. Lewis was riding an
12 off road motorcycle, a "dirt bike", when he was struck by an underinsured vehicle. Under the
13 specific language of Mid Century's policy, the dirt bike is not a vehicle for purposes of the
14 underinsured motorist coverage afforded Mr. Lewis. The policy specifically provides a
15 definition of what a vehicle is, and specifically excludes from the definition of a motor vehicle
16 any vehicle "designed principally for use off public roads including, but not limited to dune
17 buggies, go-carts, all terrain vehicles of two or more wheels, mini-bikes ...". Mr. Lewis' dirt
18 bike, by definition, is not a motor vehicle, and if it is not a vehicle for purposes of the UM/UIM
19 coverage, then the exclusion relied upon by the defendant can not apply. If the dirt bike is not a
20 vehicle, then Mr. Lewis was not occupying a vehicle, and therefore the exclusion for owned
21 vehicles does not apply. How can you exclude coverage for a non owned vehicle, if the insured
22 was not occupying a vehicle as defined by the language of the policy?
23
24

25 Mid-Century argues the definition of vehicle does not apply to the exclusion because

1 the definition was not used in the exclusion. This ignores the specific language of the policy.
2 The definition of a vehicle is set forth under the UM/UIM coverage heading: **Additional**
3 **Definitions Used In This Part Only.** This heading does not limit the definition in any manner,
4 and nowhere is there language that says the definition of a motor vehicle does not apply to any
5 exclusions under the UM/UIM coverage. In fact, the exact opposite is true: the definitions are
6 for use in the entire UM/UIM coverage section of the policy. If Mid-Century wanted to not
7 include its definition of a motor vehicle in the exclusion, it simply should have said the
8 definition of motor vehicle set forth in the UM/UIM section of the policy does not apply to any
9 exclusions in the UM/UIM coverage section of the policy.
10

11 Mid-Century also argues the definition of motor vehicle in the UM/UIM section of the
12 policy somehow only applies to the "uninsured motor vehicle". In other words, according to
13 the Defendant's interpretation, the definition now relied upon by the Plaintiff only applies to the
14 vehicle responsible for the crash. That is a flat out misstatement of the definitional section of
15 the policy. The policy reads as follows:

16 **PART II-UNINSURED MOTORIST**
17 **COVERAGE C-UNINSURED MOTORIST COVERAGE**

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

24 **Additional Definitions Used In This Part Only**

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

a. Operated on rails or crawler treads

b. Designed principally for use off public roads, including, but
not limited to, dune buggies, go-carts, all terrain vehicles of two or
more wheels, mini-bikes farm tractors and other farm equipment,
stock cars and all other racing cars, and all other vehicles with
similar characteristics.

1 c. Used as a residence or office.

2 3. **Uninsured motor vehicle** means a **motor vehicle** which is:

3 a. Not insured by a **bodily injury** liability bond or policy at the
4 time of the **accident**.

5 d. Insured by a **bodily injury** liability bond or policy at the time
6 of the **accident** which provides coverage in amounts less than the
7 **damages** which the **insured person** is legally entitled from the
8 owner or operator of that vehicle.

9 Nowhere in the above section governing UM/UIM coverage is the definition of a motor
10 vehicle limited to only the uninsured vehicle. If Mid-Century had wanted to limit the definition
11 of motor vehicle it could have simply placed language in this section to that effect; they could
12 have stated the definition only applies to the underinsured vehicle. Likewise, if Mid-Century
13 had wanted to exclude off road vehicles like Mr. Lewis' dirt bike, it could have changed the
14 definition of the term motor vehicle. Mid-Century, however, specifically and unambiguously
15 defined motor vehicle to not include the dirt bike Mr. Lewis was riding at the time of the crash.
16 It cannot come back now and say it was a motor vehicle when the definition for the UM/UIM
17 section unambiguously says it is not a vehicle.

18 **II.**

19 **NEW AUTHORITY RAISED IN DEFENDANT'S REPLY**

20 Mid-Century cites for the first time in its reply to its motion for summary judgment to
21 an unpublished opinion of the Court of Appeals of Wisconsin, *Hahn v. Harleysville Ins. Co.*,
22 356 Wis.2d 830 (2014). The policy language at issue in *Hahn* is completely different than the
23 language in Mr. Lewis' policy, and therefore, this case is of no precedential or persuasive value.
24 Beyond that, Mid-Century's citation to the unpublished decision of a Wisconsin court is
25 improper. Former Nevada Supreme Court Rule 123 governing citation to unpublished

1 decisions was repealed, but Nevada Rules of Appellate Procedure 36 only allows the citation of
2 unpublished opinions of the Nevada Supreme Court, not unpublished opinions of courts from
3 other states.

4 Even if the *Hahn* decision is considered, it is of no value to this matter. The policy of
5 insurance in *Hahn*, unlike the Mid-Century policy in this matter, did not set forth a definition
6 for motor vehicle, which was a critical basis for the Wisconsin court's decision to uphold the
7 exclusion at issue. The Mid-Century policy issued to Mr. Lewis, on the other hand,
8 affirmatively defines Mr. Lewis' dirt bike to not be a vehicle. In *Hahn*, moreover, the crash
9 occurred on a public highway, another important fact for the Wisconsin court. Mr. Lewis' crash
10 did not happen on a public road; it occurred off road.

11 Interestingly, the *Hahn* court cites to and discusses a case with similar facts where the
12 Court of Appeals for Wisconsin held policy language was ambiguous and required the insurer
13 to extend underinsured motorist coverage. In *Ruenger v. Soodsma*, 281 Wis.2d 228, 695 N.W.
14 2d 840 the Wisconsin Court of Appeals addressed what it called an "occupying exclusion" that
15 excluded UIM coverage when the insured was occupying a vehicle not insured under the
16 policy. The bulk of the case discusses other policy language not relevant to this case, but the
17 insurer in that case relied upon the occupying exclusion to deny coverage to its insured who
18 was operating a skip loader when she was hit by someone who was underinsured. The skip
19 loader was not listed as a covered or insured auto, and the insurer denied UIM coverage. The
20 *Ruenger* court noted that "a provision that is unambiguous in itself may be ambiguous in the
21 context of the entire policy". The Wisconsin Court of Appeals found the exclusion to be
22 unambiguous by itself, but when read with the UIM coverage provisions, an ambiguity arose.
23 The court felt the coverage provision, the language providing for UIM coverage, did not clearly
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25

1 state the coverage only applied when occupying a named or insured auto.

2 Here, in the instant matter, the exclusion, when read by itself as urged by Mid-Century,
3 is clear and excludes coverage when the insured is occupying a vehicle not named under the
4 policy. However, like the skip loader in the *Ruenger* case, the dirt bike in this matter is by
5 definition not a vehicle, and therefore, the exclusion does not apply. Mid-Century could and
6 should have been clear in the coverage language and provided the UIM coverage only applied
7 when the insured was operating a covered vehicle, or could and should have included the off
8 road motorcycle in the definition of motor vehicle if it wanted to exclude the dirt bike from
9 coverage in this situation.

11 III.

12 EVIDENCE OF OTHER INSURANCE IS PAROLE

13 EVIDENCE AND INADMISSIBLE

14 Finally, Mid-Century raises for the first time in its reply to its own motion for summary
15 judgment the issue of a separate policy with Foremost that allegedly covered the bike. The
16 Foremost policy is mentioned as one of the reasons Mid-Century dropped down the coverage
17 for Mr. Lewis' claim (Exhibit 3 to Plaintiff's Opposition). How Mid-Century obtained this
18 information is concerning. While Foremost is a company affiliated with Mid-Century, it is a
19 separate company, and Stephen Lewis, Austin's father, does not recall ever giving permission to
20 Foremost to release this information to Mid-Century, nor does he recall ever giving Mid-
21 Century permission to obtain information from Foremost. (Declaration of Stephen Lewis
22 attached as **Exhibit 1**). It appears this information was improperly obtained and Mid-Century
23 should not be permitted to use it for any purpose.

24 Even if Mid-Century somehow properly obtained the information regarding any
25

1 Foremost policy, it is parole evidence and inadmissible for purposes of contradicting the terms
2 of the subject insurance contract. The definition of motor vehicle in the Mid-Century policy
3 issued to the Lewis family unambiguously defines a motor vehicle to not include the dirt bike
4 Austin Lewis was riding at the time of his crash. Any evidence of another insurance policy is
5 simply parole evidence that is inadmissible to change the terms of the Mid-Century UM/UIM
6 coverage language.

7 Finally, in response to Mid-Century's suggestion the Lewis' could not reasonably expect
8 UM/UIM coverage if they had Foremost coverage, Foremost does not provide UM/UIM
9 coverage for off road vehicles in Nevada. Attached hereto as **Exhibit 2** is a copy of a standard
10 Foremost off road vehicle insurance policy, and UM/UIM coverage is not afforded to off road
11 vehicles. Attached as **Exhibit 3** is a set of frequently asked questions about off-road vehicle
12 insurance taken from Foremost's web site. The very first question outlines the coverages
13 available for off-road vehicles, and it confirms UM/UIM coverage is not offered by Foremost.
14 It would be hard for the Lewis' to expect UM/UIM coverage from Foremost when it is not even
15 offered by Foremost in the State of Nevada.
16

17 IV.

18 CONCLUSION

19 For all of the above reasons, as well as those set forth in Plaintiff's Opposition to
20 Motion for Summary Judgment, Plaintiff requests the Court enter an Order granting partial
21 summary judgment that the Mid-Century occupying exclusion does not apply to this matter,
22 and the full UIM limits of \$250,000.00 are available to the Plaintiff. In order for the Defendant
23 to prevail, the Court has to completely ignore the definition of "motor vehicle" Mid-Century
24 placed in the UM/UIM portion of its contract of insurance with Mr. Lewis. The definition of
25

1 motor vehicle applies to all of the provisions of the UM/UIM coverage without any limitations.
2 Mid-Century's interpretation of its policy is not supported by the policy language itself; there is
3 no language that says the definition of motor vehicle does not apply to the occupying exclusion
4 as asserted by the Defendant. Mid-Century chose the language at issue, and it did not properly
5 exclude UIM coverage for Mr. Lewis' dirt bike. Mid-Century could have easily changed the
6 definition of motor vehicle or limited UIM coverage to only when an insured is occupying a
7 named or covered vehicle. They failed to do that, and it is fatal to its claim that its entitled to
8 judgment as a matter of law. The policy affirmatively provides UIM coverage to Mr. Lewis for
9 this crash, or in the alternative, the UIM language is ambiguous and has to be construed against
10 the drafter of the language, Mid-Century, and in favor of full coverage for Mr. Lewis.
11

12 Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the
13 preceding document does not contain the social security number of any person.

14 Respectfully Submitted this 5th day of April, 2021.

15 GALLOWAY & JENSEN

16
17 By: /s/ Graham Galloway
18 GRAHAM GALLOWAY
19 222 California Avenue
20 Reno, Nevada 89509
21 (775) 333-7555
22 *Attorney for Plaintiff*
23
24
25

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN
3 and that on this date I served a true and correct copy of the preceding document addressed to
4 the following:

5 Todd Alexander
6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

9 ☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully
10 prepaid, an envelope containing the preceding document at Reno, Nevada, in the ordinary
course of business.

11 ☐ **COURTESY COPY VIA FACSIMILE**

12 ☐ **BY PERSONAL SERVICE:** An employee of Galloway & Jensen personally
13 delivered the preceding document by hand delivery to the offices of the address named above.

14 ☐ **BY MESSENGER SERVICE:** Reno Carson Messenger Service received from
15 Galloway & Jensen the preceding document for delivery to the offices of the address named
above.

16 ☒ **BY ELECTRONIC FILING (e-Flex)**

17
18 DATED this 5th day of April, 2021.

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20 /s/ Yennifer Sanchez
Yennifer Sanchez
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EXHIBIT LIST

Lewis v. Mid-Century

- | | |
|-----------|---|
| Exhibit 1 | Declaration of Stephen Lewis |
| Exhibit 2 | Copy of Standard Foremost Off Road Vehicle Insurance Policy |
| Exhibit 3 | Frequently asked questions about off-road vehicle |

2682

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

AUSTIN LEWIS, an individual,

Plaintiff,

vs.

Case No.: CV20-01047

Dept. No.: 1

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

**ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND
(2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Currently before the Court is Defendant Mid-Century Insurance Company's ("Mid-Century" or "Defendant") *Motion for Summary Judgment* ("Motion") filed March 3, 2021. On March 16, 2021, Plaintiff Austin Lewis ("Mr. Lewis" or "Plaintiff") filed *Plaintiff's Opposition to Motion for Summary Judgment* ("Opposition"). On March 25, 2021, Mid-Century filed a *Reply in Support of Motion for Summary Judgment* ("Reply"), and submitted the matter to the Court for consideration.

Also before the Court is *Plaintiff's Cross Motion for Partial Summary Judgment* ("Cross-Motion") filed March 17, 2021. On March 29, 2021, Mid-Century filed an *Opposition to Plaintiff's Cross-Motion for Partial Summary Judgment* ("Opposition to Cross-Motion"). On April 5, 2021, Mr. Lewis filed a *Reply in Support of Plaintiff's Cross-Motion for Partial Summary Judgment* ("Reply to Cross-Motion"), and submitted the matter to the Court for consideration.

1 In the Motion, Mid-Century argues that summary judgment in this insurance coverage dispute
2 should be granted in favor of Mid-Century, maintaining that uninsured motorist coverage under the
3 Mid-Century policy is excluded pursuant to the undisputed facts of this case. *See* Motion. On the
4 other hand, Mr. Lewis asserts in the Cross-Motion that he is entitled to partial summary judgment on
5 the issue of the amount of the underinsured motorist limits available to him under Mid-Century's
6 policy, and that the limiting exclusion language asserted by Mid-Century does not apply to the facts
7 of this matter. *See* Cross-Motion. As detailed below, this Court finds that Mid-Century is entitled to
8 judgment as a matter of law and grants its Motion.

9 **I. Background**

10 **a. Pleadings**

11 This is a dispute over insurance coverage in a first-party, uninsured motorist claim. Mr. Lewis
12 asserts the following allegations in support of his claim for breach of the operative insurance contract:

- 13 1. On or about October 26, 2019, Plaintiff was injured when Joshua Brackett negligently,
14 carelessly, and recklessly operated an automobile so as to cause it to crash with an off-road
15 motorcycle Plaintiff was riding. As a result of the crash, Plaintiff sustained personal injuries,
16 and Plaintiff's injuries and medical bills exceeded Mr. Brackett's \$15,000.00 liability limit
17 set forth in his policy. Am. Compl. at ¶ 4.
- 18 2. On or about October 26, 2019, Plaintiff was insured under a policy of insurance ("Policy")
19 through Mid-Century, which was in full force and effect at the time of the collision. *Id.* at ¶
20 5.
- 21 3. Plaintiff has performed all conditions required by his Policy with Mid-Century, and has made
22 a demand upon Mid-Century to pay the uninsured motorist coverage to which Plaintiff is
23 entitled under the Policy. Mid-Century refuses to pay Plaintiff under his uninsured motorist
24 coverage an amount sufficient to adequately compensate Plaintiff for his injuries claiming an
25 exclusion limits the underinsured motorist coverage to \$25,000.00. Plaintiff believes this
26 exclusion does not apply to his claim, and therefore Defendant has breached the terms of the
27 Policy. *Id.* at ¶ 6.

28 ///

1 4. As a result of Defendant's breach of the Policy between Plaintiff and Mid-Century, Mid-
2 Century has become liable to Plaintiff for contract and consequential damages. *Id.* at ¶ 7.

3 Notably, Mid-Century admits that Plaintiff was a covered household driver under the Policy,
4 issued by Mid-Century to Rochelle L. Lewis, Policy No. 18927-90-72, and that said Policy was in
5 effect at the time of the subject collision; however, Mr. Century denies that the Policy afforded
6 uninsured motorist coverage for Plaintiff in the alleged injury-causing incident. Ans. to Am. Compl.
7 at ¶¶ 5, 6.

8 **b. Insurance Policy**

9 In Part II of the Policy, entitled Uninsured Motorist, provides that Mid-Century

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

14 Mot., Ex. 1 (Policy) at 7. Notably, "[t]his coverage does not apply while **occupying** any vehicle
15 owned by you or a **family member** for which insurance is not afforded under this policy or through
16 being struck by that vehicle." *Id.* at 8.

17 The Policy likewise defines "Motor vehicle" and "Uninsured motor vehicle" the definitions
18 of which are to be considered only in Part II:

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

- 21 a. Operated on rails or crawler-treads.
22 b. Designated principally for use of public roads, including, but not limited
23 to, dune buggies, go-carts, all terrain vehicles of two or more wheels,
24 mini-bikes, farm tractors and other farm equipment, stock cars and all
other racing cars, and all other vehicles of similar characteristics.
25 c. Used as a residence or office.

26 3. **Uninsured motor vehicle** means a **motor vehicle** which is:

- 27 a. Not insured by a **bodily injury** liability bond or policy at the time of the
28 **accident**.

....

Uninsured motor vehicle, however, does not mean a vehicle:

- a. Insured under the liability coverage of this policy.

1 b. Owned by or furnished or available for regular use by your or any **family**
2 **member**.

3 *Id.* at 7-8.

4 The only vehicles insured under the Policy are as follows: (1) 2013 Audi A7 Quattro; (2) 2007
5 Chevrolet Colorado; (3) 2018 Ford F350; and (4) 1997 Ford F150. *See* Mot., Ex. 2 (Policy
6 Declaration).

7 **II. Legal Authority**

8 NRCP 56(a) instructs that a “court shall grant summary judgment if the movant shows that
9 there is no genuine dispute as to material fact and the movant is entitled to judgment as a matter of
10 law.” A genuine issue of material fact exists when the evidence is such that a rational trier of fact
11 could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026,
12 1031 (2005). When deciding whether summary judgment is appropriate, the court must view all
13 evidence in light most favorable to the non-moving party and accept all properly supported evidence,
14 factual allegations, and reasonable inferences favorable to the non-moving party as true. *C. Nicholas*
15 *Pereos, Ltd. v. Bank of Am.*, 131 Nev. 436, 441, 352 P.3d 1133, 1136 (2015); *NGA No. 2 Ltd. Liab.*
16 *Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

17 **III. Analysis**

18 In both the Motion and Cross-Motion, each party seeks a determination regarding the
19 interpretation of the Policy with respect to the uninsured motorist coverage. *See Galardi v. Naples*
20 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (“[I]n the absence of ambiguity or other
21 factual complexities, contract interpretation presents a question of law that the district court may
22 decide on summary judgment.” (internal quotation marks omitted)). Mid-Century argues that the
23 applicable exclusion is susceptible to only one reasonable interpretation—which negates uninsured
24 motorist coverage under the undisputed facts of this case: “[t]his coverage does not apply while
25 **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under
26 this policy or through being struck by that vehicle.” Mot. at 3:27-4:16 (quoting Policy); *see also*
27 *Galardi*, 129 Nev. at 309, 301 P.3d at 366 (“A contract is ambiguous if its terms may reasonably be
28 interpreted in more than one way, but ambiguity does not arise simply because the parties disagree

1 on how to interpret their contract.” (internal citation omitted)). Mid-Century contends that Mr. Lewis
2 was riding an off-road motorcycle owned by the Lewis family, and that said motorcycle was not
3 insured under the Policy; therefore, Mid-Century maintains that uninsured motorist coverage under
4 the Mid-Century policy is excluded under the undisputed facts of this case.¹ *Id.* at 4:17-22.

5 In Plaintiff’s Opposition, as well as his Cross-Motion, Plaintiff asserts that the definition of
6 “motor vehicle” contained in the UM/UIM provisions of the Policy, defines a motor vehicle to not
7 include an off-road motorcycle, and therefore the exclusion does not apply to limit coverage to the
8 Plaintiff. Opp’n at 3:5-4:13; *see also* Cross-Mot. at 2:21-3:2. In the alternative, Plaintiff asserts at a
9 minimum that an ambiguity exists in the UM/UIM language between the exclusion and the definition
10 of “motor vehicle,” such that the language in the Policy must be construed against Defendant. Opp’n
11 at 4:14-7:19; Cross-Mot. at 3:2-3:6.

12 In consideration of the foregoing arguments, as well as the operative legal authority, this Court
13 finds good cause to grant Mid-Century’s Motion. The Policy and the Policy Declaration directly
14 answer the question presented to the Court, and this Court is unpersuaded by Plaintiff’s arguments to
15 the contrary. And as the material facts are not in dispute, this Court may properly interpret the Policy,
16 which presents a question of law, on summary judgment. *See Galardi*, 129 Nev. at 309, 301 P.3d at
17 366. As an initial matter, the Policy Declaration reveals, and the parties do not dispute, that the KTM
18 motorcycle, driven by Plaintiff at the time of the incident, is *not* covered by the Policy. *See* Policy
19 Declaration. The pertinent exclusion contained in the Policy explicitly states, “[T]his coverage does
20 not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is
21 not afforded under this policy or through being struck by that vehicle.” *See* Policy. Based on the
22 foregoing, uninsured motorist coverage under the Policy is excluded pursuant to the undisputed facts
23 of this case—namely, that Mr. Lewis was driving a KTM motorcycle at the time of the accident,
24 which was owned by the Lewis family, but not otherwise insured under the Policy.

25 Plaintiff’s arguments to the contrary do not alter this conclusion. Plaintiff claims that the
26 definition of “motor vehicle” set forth in the operative section, which excludes off-road vehicles from

27
28 ¹ Mid-Century asserts a similar argument in its Opposition to Cross-Motion, maintaining that under Plaintiff’s logic, he
would have UM/UIM coverage any time he is injured while riding any off-road vehicle, regardless of the fact that no such
off-road vehicles are insured under the Policy. *See* Opp’n to Cross-Mot.

1 the definition of “motor vehicle” somehow applies to the word “vehicle” included in the exception—
2 rendering the exclusion inapplicable to Plaintiff. This argument lacks merit. First, “motor vehicle”
3 is a defined term, and that term is not utilized in the exclusion. Instead, that term is utilized in the
4 following context:

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

9 Policy at 7. In other words, if a person covered by the Policy was injured by the owner of an uninsured
10 motor vehicle, *i.e.*, a land motor vehicle other than one “[d]esigned principally for use off public
11 roads,” then the Policy would cover such injuries. *See id.* Therefore, this Court rejects Plaintiff’s
12 characterization that this defined term somehow applies to the word “vehicle” in the exclusion, or
13 otherwise renders the exclusion ambiguous. In fact, this Court agrees with Mid-Century’s contention
14 that to adopt Plaintiff’s logic would require Mid-Century, under the Policy, to provide UM/UIM
15 coverage any time Plaintiff is injured while riding any off-road vehicle, regardless of the fact that no
16 such off-road vehicles are insured under the Policy. Thus, summary judgment is granted in favor of
17 Mid-Century.

18 Based on the foregoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Defendant Mid-Century Insurance Company’s *Motion for*
20 *Summary Judgment* is GRANTED.

21 IT IS HEREBY FURTHER ORDERED that Plaintiff Austin Lewis’ *Cross Motion for Partial*
22 *Summary Judgment* is DENIED.

23 IT IS SO ORDERED.

24 DATED this 8th day of June, 2021.

25 
26 _____
27 KATHLEEN M. DRAKULICH
28 DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV20-01047

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 8th day of June, 2021, I electronically
5 filed the **ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;**
6 **AND (2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT** with the Clerk of the Court by using the ECF system.

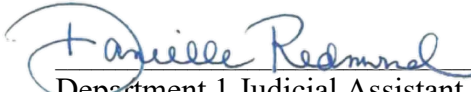
8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
11 **of electronic filing to the following:**

12 TODD ALEXANDER, ESQ. for MID-CENTURY INSURANCE COMPANY

13 GRAHAM GALLOWAY, ESQ. for AUSTIN LEWIS et al

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
16 **[NONE]**

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21 Department 1 Judicial Assistant
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