

Case No. 83079

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**In the Supreme Court of Nevada**

Electronically Filed  
Oct 21 2021 02:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

AUSTIN LEWIS, an individual,

Appellant,

vs.

MID-CENTURY INSURANCE COMPANY,

Respondent,

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**APPEAL**

from the Second Judicial District Court, State of Nevada

The Honorable Kathleen M. Drakulich, District Judge

District Court Case No. CV20-01047

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**JOINT APPENDIX**

**Vol. 1**

**PAGES 1-148**

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Graham Galloway (SBN 227)

Galloway & Jensen

222 California Avenue

Reno, NV 89509

(775) 333-7555

Attorneys for Appellant

Todd R. Alexander (SBN 10846)

Lemons, Grundy & Eisenberg

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Attorneys for Respondent

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2	Summons Filed	8/4/2020	1	0004-0007

# EXHIBIT 1

# EXHIBIT 1



**CODE: \$1425**  
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.

**AMENDED COMPLAINT**

Plaintiff, AUSTIN LEWIS, by and through his counsel, Graham Galloway of the law firm of Galloway & Jensen, hereby alleges as follows:

1. Plaintiff, at all times herein mentioned, was and is a resident of the State of Nevada.

2. At all times herein mentioned, Defendant MID-CENTURY INSURANCE COMPANY was and is an insurance company duly authorized to transact business as an automobile insurer within the State of Nevada.

3. Plaintiff does not know the true names or capacities of defendants sued herein as ROE CORPORATIONS I-X, and/or DOES I-X, but Plaintiff is informed and believes, and

1 therefore alleges, that each of the defendants are legally responsible for the events and  
2 happenings referred to herein and/or are responsible as an insurance carrier to provide  
3 Uninsured Motorist coverage to Plaintiff. Plaintiff requests leave of this Court to amend this  
4 Complaint to insert the true names and capacities of ROE CORPORATIONS I-X, and/or DOES  
5 I-X when they are ascertained, and to join such defendants in this action and assert the  
6 appropriate charging allegations.

7 4. On or about October 26, 2019, Plaintiff was injured when Joshua Brackett  
8 negligently, carelessly and recklessly operated an automobile so as to cause it to crash with an  
9 off road motorcycle the Plaintiff was riding. As a result of the crash, Plaintiff sustained personal  
10 injuries. Mr. Brackett only had \$15,000.00 in liability limits. Plaintiff's injuries and medical  
11 bills exceed the policy limits of Mr. Brackett's policy.

12 5. On or about October 26, 2019, Plaintiff was insured under a policy of insurance  
13 through Defendant MID-CENTURY INSURANCE COMPANY. This policy was in full force  
14 and effect at the time of the collision.

15 6. Plaintiff has performed all conditions required by his contract of insurance with  
16 Defendant MID-CENTURY INSURANCE COMPANY. As a result of the above described  
17 accident, Plaintiff has made demand upon Defendant MID-CENTURY INSURANCE  
18 COMPANY to pay the Uninsured Motorist coverage to which Plaintiff is entitled under the  
19 contract of insurance. Defendant has refused and continues to refuse to pay Plaintiff under his  
20 uninsured motorist coverage an amount sufficient to adequately compensate Plaintiff for his  
21 injuries claiming an exclusion limits the underinsured motorist coverage to \$25,000. Plaintiff  
22 believes this exclusion does not apply to the Plaintiff's claim, and therefore the Defendant has  
23 breached the terms of the policy

24 7. As a result of Defendant's breach of the insurance contract between Plaintiff and  
25 Defendant MID-CENTURY INSURANCE COMPANY, Defendant MID-CENTURY  
26 INSURANCE COMPANY has become liable to Plaintiff for contract and consequential

1 damages in an amount in excess of Fifteen Thousand and 00/100 Dollars (\$15,000.00).

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
3 follows:

4 1. For contract damages in an amount in excess of Fifteen Thousand and 00/100  
5 Dollars (\$15,000.00);

6 2. For consequential damages according to proof;

7 3. For court costs and attorney's fees;

8 4. For interest as allowed by law; and

9 5. For such other and further relief as this Court deems just and proper.

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

12 DATED this 17<sup>th</sup> day of July, 2020. GALLOWAY & JENSEN

13  
14 By: /s/ Graham Galloway  
15 GRAHAM GALLOWAY  
16 222 California Avenue  
17 Reno, Nevada 89509  
18 (775) 333-7555  
19 Attorney for Plaintiff  
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# EXHIBIT 2

# EXHIBIT 2

1 CODE 4085

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4  
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

7 AUSTIN LEWIS,  
8 Plaintiff(s),

9 vs.

Case No. CV20-01047

10 MID-CENTURY INSURANCE COMPANY,  
11 Defendant(s).  
12 \_\_\_\_\_/

Dept. No. 1

12 **SUMMONS**

13 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
14 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 21 DAYS.**  
15 **READ THE INFORMATION BELOW VERY CAREFULLY.**

16 A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that  
17 document (see complaint or petition). When service is by publication, add a brief statement of the object of the  
18 action. See Nevada Rules of Civil Procedure, Rule 4(b).

19 The object of this action is: Civil - Personal Injury.

20 1. If you intend to defend this lawsuit, you must do the following within 21 days after service of  
21 this summons, exclusive of the day of service:

- 22 a. File with the Clerk of the Court, whose address is shown below, **a formal written**  
23 **answer** to the complaint or petition, along with the appropriate filing fees, in  
24 accordance with the rules of the Court, and;  
25 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address  
26 is shown below.

27 2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may  
28 enter a judgment against you for the relief demanded in the complaint or petition.

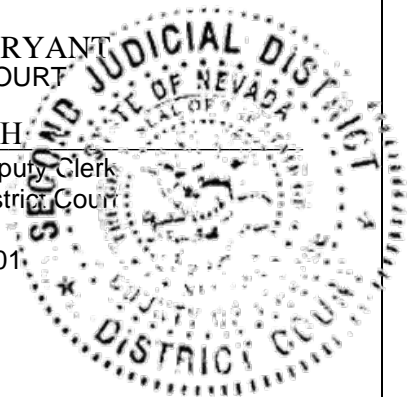
Dated this 14th day of July, 2020.

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURT

25 Name: Graham Galloway, Esq.  
26 Address: 222 California Avenue  
Reno, Nevada 89509  
27 Phone Number: (775) 333-7555

By: /S/ BBLOUGH  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501



STEPHEN F. SISOLAK  
*Governor*

STATE OF NEVADA

TERRY REYNOLDS  
*Director*



BARBARA D. RICHARDSON  
*Commissioner*

DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

1818 East College Parkway, Suite 103  
Carson City, Nevada 89706  
(775) 687-0700 • Fax (775) 687-0787  
Website: doi.nv.gov  
E-mail: insinfo@doi.nv.gov

July 28, 2020

VIA CERTIFIED MAIL  
NO. 7020 0640 0000 9856 0344

MID-CENTURY INSURANCE COMPANY  
ATTN DOREN HOHL  
6301 OWENSMOUTH AVE  
WOODLAND HILLS CA 91367

RE: Austin Lewis vs. Mid-Century Insurance Company  
Second Judicial District Court, Washoe County, Nevada  
Case No. CV20-01047, Dept. No. 1

Dear Mid-Century Insurance Company:

Please find enclosed the following documents: Summons and Amended Complaint. These documents have been served upon the Commissioner of Insurance as your attorney for service of process on July 20, 2020.

The appropriate action should be taken immediately, as you may have only 30 days from the date of this service to respond.

If you have any questions regarding this service, please advise.

Sincerely,

BARBARA D. RICHARDSON  
Commissioner of Insurance

By: /s/ Susan Bell  
Service of Process Clerk

Enclosures

c: Graham Galloway, Esq.

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MID-CENTURY INSURANCE COMPANY  
ATTN DOREN HOHL  
6301 OWENSMOUTH AVE  
WOODLAND HILLS CA 91367  
CERTIFIED MAIL NO. 7020 0640 0000 9856 0344

/s/ Susan Bell  
Employee of the State of Nevada  
Department of Business and Industry  
Division of Insurance

State of Nevada, Division of Insurance  
The document on which this certificate  
is stamped is a full, true and correct  
copy of the original

Date: 7/28/20 By: S. Bell

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**AFFIRMATION**

**Pursuant to NRS 239B.030, the undersigned does affirm that this document does not contain the Social Security number of any person.**

Dated this 4<sup>th</sup> day of August, 2020.

GALLOWAY & JENSEN

/s/Graham Galloway  
GRAHAM GALLOWAY  
222 California Ave  
Reno, NV 89509

*Attorneys for Plaintiff*



# EXHIBIT 3

# EXHIBIT 3

1 **1140**  
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*

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

9 AUSTIN LEWIS, an individual

10 Plaintiff,

11 vs.

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

14 Defendants.

Case No. CV20-01047

Dept. No. 1

15 **ANSWER TO AMENDED COMPLAINT**

16 Defendant, MID-CENTURY INSURANCE COMPANY, by and through its undersigned  
17 counsel, admits, denies, and alleges as follows:

18 1. This answering defendant admits the allegations contained in paragraph 1 of  
19 Plaintiff's Amended Complaint.

20 2. This answering defendant admits the allegations contained in paragraph 2 of  
21 Plaintiff's Amended Complaint.

22 3. This answering defendant is without information sufficient to form a belief as  
23 to the truth or falsity of the allegations contained in paragraph 3 of Plaintiff's Amended  
24 Complaint and, therefore, denies the same.

25 4. This answering defendant is without information sufficient to form a belief as  
26 to the truth or falsity of the allegations contained in paragraph 4 of Plaintiff's Amended  
27 Complaint and, therefore, denies the same.

28 5. This answering defendant admits that Plaintiff was a covered household driver

1 under an insurance policy issued by Mid-Century Insurance Company to Rochelle L. Lewis,  
2 Policy No. 18927-90-72, and that said policy was in effect at the time of the subject collision.  
3 This answering defendant denies, however, that said policy afforded uninsured motorist  
4 coverage for Plaintiff in the injury-causing incident.

5 6. This answering defendant admits that Plaintiff was a covered household driver  
6 under an insurance policy issued by Mid-Century Insurance Company to Rochelle L. Lewis,  
7 Policy No. 18927-90-72, and that said policy was in effect at the time of the subject collision.  
8 This answering defendant denies, however, that said policy afforded uninsured motorist  
9 coverage for Plaintiff in the alleged injury-causing incident.

10 7. This answering defendant denies the allegations contained in paragraph 7 of  
11 Plaintiff's Amended Complaint.

12 **AFFIRMATIVE DEFENSES**

13 1. The Amended Complaint fails to state a claim upon which relief can be granted.

14 2. The alleged injury-causing incident falls within an express, written coverage  
15 exclusion in the subject insurance policy.

16 **WHEREFORE**, defendant prays as follows:

17 1. That plaintiff take nothing by reason of his amended complaint herein and that  
18 the same be dismissed with prejudice.

19 2. That defendant be awarded its costs of suit and attorneys' fees as provided by  
20 law.

21 3. For such other and further relief as the court may deem just and proper.

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

24 Dated: August 28, 2020.

25 Lemons, Grundy & Eisenberg

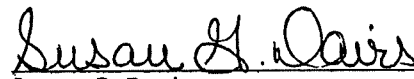
26  
27 By: 

Todd R. Alexander, Esq.  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on August 28, 2020, I e-filed a true and correct copy of the foregoing **ANSWER TO AMENDED COMPLAINT**, 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

LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
SUITE 300  
RENO, NV 89519  
(775) 786-6868

EXHIBIT 4

EXHIBIT 4

3696

**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.

**PRETRIAL ORDER**

The procedures described in this pretrial order are designed to secure a just, speedy, and inexpensive determination of this case. If any party believes a procedure required by this order will not achieve these ends, that party should seek an immediate conference among all parties and this Court so an alternative order may be discussed. **Otherwise, failure to comply with the provisions in this order may result in the imposition of sanctions, which may include, but are not limited to, dismissal of the action or entry of a default.** All references to “counsel” include self-represented litigants.

**I. TRIAL SETTING**

Unless the parties have already done so, counsel for the parties shall set trial no later than twenty (20) days after entry of this order. Please contact the Department 1 Judicial Assistant at Dept1@washoe courts.us to schedule a setting appointment with the Department 1 Judicial Assistant. Plaintiff’s counsel shall prepare the Application for Setting form and email it to the Department 1

Judicial Assistant at Dept1@washoecourts.us after receiving a scheduling appointment. The sections regarding juries only apply if a jury trial is requested.

## II. PRETRIAL CONFERENCES

A. **Early Pretrial and Scheduling Conference.** No later than ten (10) days after entry of this Order and simultaneously with the trial setting appointment if the trial has not already been set, counsel for the parties shall set a pretrial scheduling conference, to be held within sixty (60) days.

1. Purpose. The pretrial scheduling conference provides the parties with an opportunity to meet directly with the Court in an effort to facilitate the purposes identified at NRCP 16(a), present suggestions regarding the matters identified at NRCP 16(c), and address disputes or problems arising out of the early case conference.

2. Required Attendance. Lead trial counsel for all parties, as well as all unrepresented parties, must attend the pretrial scheduling conference.

3. Stipulation to Vacate Conference. **The parties may stipulate to vacate the pretrial scheduling conference and the Court will order the same** if the Court is provided with a written stipulation stating the agreement of all parties that an early pretrial scheduling conference is not warranted, and including a stipulated scheduling order for entry in this case. The stipulated scheduling order must specify deadlines, using calendar dates, that comply with the provisions of NRCP 16.1(a) and (c) for:

- (a) filing motions to amend the pleadings or to add parties;
- (b) making initial expert disclosures;
- (c) making rebuttal expert disclosures;
- (d) completing discovery proceedings; and
- (e) filing dispositive motions.

The stipulated scheduling order also must specify a calendar date by which all pretrial motions, including dispositive motions and motions limiting or excluding an expert's testimony, must be submitted for decision, said submission date must be no later than thirty (30) calendar days before trial.

///

1           **B. Interim Pretrial Conferences.** This Court is available to meet with the parties  
2 whenever the parties agree a meeting would be beneficial. This Court may also order one or more  
3 pretrial conferences sua sponte or upon motion by any party.

4           **C. Final Pretrial Conference.** At the same time trial is scheduled, the parties must also  
5 schedule the date for a final pretrial conference, to be held no later than thirty (30) days<sup>1</sup> prior to trial.

6                 1. Purpose. The conference is intended to develop a plan for trial, including a  
7 protocol for facilitating the admission of evidence and to address any trial-related disputes, needs, or  
8 requests.

9                 2. Required Attendance. This conference must be attended by:

- 10                         (a) the attorneys who will try the case (the parties, which includes  
11 an authorized representative of any party that is an entity, may  
12 be required to attend); and  
13                         (b) any unrepresented parties.

14                 3. Use of Equipment at Trial. At the final pretrial conference, counsel must advise  
15 the Court fully with respect to the following matters:

- 16                         (a) the equipment to be used during trial, including any request to  
17 use the Court's equipment;  
18                         (b) the presentation software to be used during trial, and whether  
19 each party is able to receive and use digital files of presentation  
20 materials prepared by another;  
21                         (c) any expected use of videoconferencing; and  
22                         (d) the reliability and positioning for any equipment to be brought  
23 to the courtroom.

24           **D. Personal Appearance Required at all Conferences.** Counsel's personal appearance  
25 is required at all conferences, except upon prior approval of the Court.

26           **E. Requests for Telephonic Appearance.** Any request for telephonic appearance by and  
27 attorney and/or witness at a hearing or conference must be made in writing (cc'd to all counsel) to  
28

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<sup>1</sup> See WDCR 6



1 Dept1@washoecourts.us at least ten (10) days prior to the hearing or conference. The written request  
2 must provide the following:

- 3 1. Name of individual requesting telephonic appearance.
- 4 2. Location of individual requesting telephonic appearance.
- 5 3. The name of the party the attorney is representing, if applicable.
- 6 4. The reason for the telephonic attendance request.
- 7 5. Whether the matter set for hearing is contested.

### 8 **III. DISCOVERY**

9 **A. Discovery Deadline.** The deadline to complete discovery and all discovery  
10 proceedings must be set no later than thirty (30) days before commencement of trial.

11 **B. Consultation Before Discovery Motion Practice.** Prior to filing any discovery  
12 motion, the attorney for the moving party must consult with opposing counsel about the disputed  
13 issues. Counsel for each side must present to each other the merits of their respective positions with  
14 the same candor, specificity, and supporting material as would be used in connection with a discovery  
15 motion. The Parties are reminded that the Discovery Commissioner is available to address some  
16 disputes telephonically.

17 **C. Discovery Hearings.** Discovery motions typically are resolved without the need for  
18 oral argument. However, if both sides desire a dispute resolution conference pursuant to NRC  
19 16.1(d), counsel must contact the Discovery Commissioner's office at (775) 328-3293 to obtain a  
20 convenient date and time for the conference. If the parties cannot agree upon the need for a conference,  
21 the party seeking the conference must file and submit a motion in that regard.

22 **D. Effect of Trial Continuance.** A continuance of trial does not extend the deadline for  
23 completing discovery. A request for an extension of the discovery deadline, if needed, must be made  
24 separately or included as part of any motion for continuance of trial. The parties may include an  
25 agreement to extend discovery in a stipulation to continue trial presented for court order.

26 **E. Computer Animations.** If any party intends to offer a computer-generated animation  
27 either as an evidentiary exhibit or an illustrative aid, that party must disclose that intention when expert  
28 disclosures are made pursuant to NRC 16.1(a)(2). A copy of the animation must be furnished to all

1 other parties and the Court no later than 30 days prior to trial. Disclosure of the animation includes  
2 copies of the underlying digital files as well as of the completed animation.

#### 3 **IV. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

4 A. **Notice of Settlement.** In the event that this case is settled prior to trial, the parties must  
5 promptly notify the department Judicial Assistant.

6 B. **Settlement Conference or Alternative Dispute Resolution.** This Court may order,  
7 upon a party's request or sua sponte, that the parties and their attorneys 1) meet in person with a judge  
8 other than the presiding judge in this case and attempt to settle the case, or 2) participate in mediation  
9 or some other appropriate form of alternative dispute resolution in an effort to resolve this case prior  
10 to trial.

#### 11 **V. TRIAL-RELATED PROCEDURES**

12 A. **Motions in Limine.** All motions in limine, except motions in limine to exclude an  
13 expert's testimony, must be submitted for decision no later than fifteen (15) calendar days before trial.

14 B. **All Other Motions.** All motions, except motions in limine as defined above, must be  
15 submitted for decision no later than thirty (30) calendar days before trial.

16 C. **Exhibits.** Trial counsel for the parties shall contact the Courtroom Clerk, Maria Schuck  
17 at maria.schuck@washoecourts.us, no later than fifteen (15) judicial days before trial, to arrange a  
18 date and time to mark trial exhibits. In no event shall the marking of exhibits take place later than the  
19 Monday before trial, without leave of the Court.

20 1. Marking and Objections. All exhibits shall be marked in one numbered series  
21 (Exhibit 1, 2, 3, etc.) and placed in one or more binders provided by counsel, unless the Court permits  
22 a different procedure. When marking the exhibits with the clerk, counsel shall advise the clerk of all  
23 exhibits which may be admitted without objection, and those that may be admissible subject to  
24 objections. Any exhibits not timely submitted to opposing counsel and the clerk may not be offered  
25 or referenced during the trial, without leave of the Court.

26 2. Copies. Counsel must cooperate to insure that the official exhibits and one  
27 identical copy are provided to the Court.

28 ///

1                   3.     Custody of Exhibits. After marking trial Exhibits by the clerk, the exhibits will  
2 remain in the custody of the clerk, until an order is issued directing the disposition or return to counsel.

3                   4.     Demonstrative Exhibits. Demonstrative Exhibits must be disclosed to counsel  
4 and the Court within a reasonable period before their anticipated use to permit appropriate objections,  
5 if any.

6           D.     **Trial Statements.** Trial Statements must conform to WDCR 5. Trial Statements must  
7 be filed and served no later than 5:00 p.m. seven (7) days before trial, unless otherwise ordered by the  
8 Court. They must be served upon other parties by e-filing, personal delivery, fax, or email. If the  
9 matter is a bench trial, findings of fact are to be submitted, not filed, to the Court in Word format to  
10 Dept1@washoecourts.us with the trial statement, but not in lieu of the trial statement.

11           E.     **Jury Instructions and Verdict Forms.** All proposed jury instructions and verdict  
12 forms must be submitted to the Court no later than 5:00 p.m. on the Wednesday before trial, unless  
13 otherwise ordered by the court.<sup>2</sup>

14                   1.     Format. All original jury instructions must be provided to the Court in Word  
15 format electronically at Dept1@washoecourts.us and must be accompanied by a separate copy of each  
16 instruction containing a citation to the form instruction or to the authority supporting that instruction.  
17 All modifications made to instructions taken from statutory authority must be separately underscored  
18 on the citation page.

19                   2.     Exchange. The parties must exchange all proposed jury instructions and verdict  
20 forms no later than seven calendar days before trial, unless otherwise ordered by the Court.

21                   3.     Agreement and Submission. The parties must confer regarding the proposed  
22 jury instructions and verdict forms before they are submitted to the Court and shall use their best  
23 efforts to stipulate to uncontested instructions. All undisputed instructions and verdict forms must be  
24 submitted jointly to the Court; the parties must separately submit any disputed instructions with  
25 supporting research and citations and verdict forms at the time set forth in Section E above.

26                   4.     Disputes and Additional Instructions. After commencement of the trial, the  
27 Court will meet with counsel to determine the jury instructions and verdict forms that will be used. At  
28

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<sup>2</sup> See WDCR 7(8).

1 that time, the Court will resolve all disputes over instructions and verdict forms, and consider the need  
2 for any additional instructions which were not foreseen prior to trial.

3 F. **Juror Notes and Questions.** Jurors will be permitted to take notes during trial. Jurors  
4 will be permitted to submit questions in writing during trial; however, juror questions will be asked  
5 only after the questions are reviewed by counsel and approved by the Court.

6 G. **Use of Electronically Recorded Depositions.** No depositions recorded by other than  
7 stenographic means may be edited until the Court rules on objections. If such a recording is to be used  
8 at trial, it must be edited to eliminate cumulative testimony and to present only matters that are relevant  
9 and material.

10 H. **Evidentiary Rulings.** Every witness that counsel intends to call at trial must be  
11 informed by counsel about any rulings that restrict or limit testimony or evidence (e.g., rulings on  
12 motions in limine) to inform them that they may not offer or mention any evidence that is subject to  
13 that ruling.

14 I. **Examination Limits.** Absent extraordinary circumstances, counsel will be given the  
15 opportunity for one re-direct and one re-cross examination.

## 16 VI. MISCELLANEOUS

17 A. **Civility.** The use of language which characterizes the conduct, arguments or ethics of  
18 another is to be avoided unless relevant to a motion or proceeding before the Court. In the appropriate  
19 case, the Court will upon motion or sua sponte, consider sanctions, including monetary penalties  
20 and/or striking the pleading or document in which such improprieties appear, and may order any other  
21 suitable measure the Court deems to be justified. This section of this Order includes, but is not limited  
22 to, written material exchanged between counsel, briefs or other written materials submitted to the  
23 Court, and conduct at depositions, hearings, trial or meetings with the Court.

24 B. **Communication with Department.** In addition to communication by telephone,  
25 letter, or fax, counsel may communicate with Department 1 by e-mailing Dept1@washoecourts.us.  
26 All written communications must be copied to all opposing counsel and unrepresented litigants.

27 C. **Page Limits.** All pleadings including accompanying legal memoranda submitted in  
28 support of any motion may not exceed twenty (20) pages in length; opposition pleadings may not

1 exceed twenty (20) pages in length; and reply pleadings may not exceed ten pages in length. These  
2 limitations are exclusive of exhibits. A party may file a pleading that exceeds these limits by five  
3 pages, so long as it is filed with a certification of counsel that good cause existed to exceed the standard  
4 page limits and the reasons therefore. Briefs in excess of five pages over these limits may only be  
5 filed with prior leave of the Court, upon a showing of good cause.

6 D. **Request for Accommodation.** Counsel must notify the Court no later than 30 days  
7 before trial of any reasonable accommodation needed because of a disability, or immediately upon  
8 learning of the need if not known in advance.

9 E. **Etiquette and Decorum.** Counsel must at all times adhere to professional standards  
10 of courtroom etiquette and decorum, including but not limited to the following:

- 11 • Counsel may not use speaking objections
- 12 • Counsel must stand when speaking
- 13 • Counsel may not address each other during their respective arguments
- 14 • Counsel must be punctual
- 15 • Counsel must be prepared

## 16 VII. CASE SPECIFIC REQUIREMENTS

17 Not Applicable

18 **IT IS SO ORDERED.**

19 Dated: September 29, 2020.



20  
21 KATHLEEN M. DRAKULICH  
22 DISTRICT JUDGE  
23  
24  
25  
26  
27  
28

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 29<sup>th</sup> day of September, 2020, I  
5 electronically filed the **PRETRIAL ORDER** with the Clerk of the Court by using the ECF system.

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

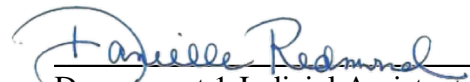
8 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
9 **of electronic filing to the following:**

10 GRAHAM GALLOWAY, ESQ. for AUSTIN LEWIS et al

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

12 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
13 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

14 **[NONE]**

15  
16  
17   
18 Department 1 Judicial Assistant  
19  
20  
21  
22  
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27  
28

# EXHIBIT 5

# EXHIBIT 5

1 **2200**  
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 **MOTION FOR SUMMARY JUDGMENT**

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

23 **INTRODUCTION**

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

27 Plaintiff Austin Lewis was injured when he was riding his off-road motorcycle and  
28 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**

<b><i>Exhibit No.</i></b>	<b><i>Description</i></b>	<b><i>Length of Exhibit</i></b>
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

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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.

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.

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 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)**

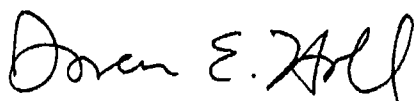
Policy fees which you pay are not part of the premium. They are fully earned when the policy is issued. They are not returnable. However, if we cancel or non-renew your policy during the initial policy period, policy fees will be refunded to you in full.

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.

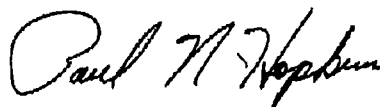
The Company named on the Declarations has caused this policy to be signed by the officers shown below:

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

MID-CENTURY INSURANCE COMPANY



Secretary



Vice-President

#### **NO MEXICO COVERAGE** **Read This Warning Carefully**

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

# 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](http://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

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](http://www.farmers.com) to access  
your account any time!

## 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)

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### **\*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.

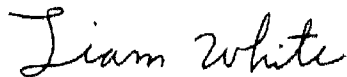
**2. Late Fee: \$10.00** (applied per account)

**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

# EXHIBIT 6

# EXHIBIT 6

**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.**

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

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

25       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 16<sup>th</sup> 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*  
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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 16<sup>th</sup> 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

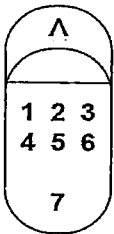
# EXHIBIT 1



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	BEAT 906	DAY OF WEEK SATURDAY	TOW AWAY <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
LOCATION	COLLISION OCCURRED ON: SAND PITS OHV PARK				MO 10/26/2019	DAY YEAR	TIME (2400) 1120	NCIC # 9246	
	MILEPOST INFORMATION:				GPS COORDINATES LATITUDE 38.899456° LONGITUDE - 120.009468°				
	<input type="checkbox"/> AT INTERSECTION WITH:				STATE HWY REL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
	<input checked="" type="checkbox"/> OR: .25 MILE(S) SOUTH OF LAKE TAHOE BLVD.								
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	NAME(FIRST, MIDDLE, LAST) JOSHUA MICHAEL BRACKETT						LICENSE NUMBER 8DME518		
PEDES- TRIAN	STREET ADDRESS 1504 BEL AIRE CIR						OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER		
PARKED VEHICLE	CITY / STATE / ZIP SOUTH LAKE TAHOE CA 96150						OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER		
BICY- CLIST	SEX M	HAIR BRN	EYES BRN	HEIGHT 5-04	WEIGHT 114	MO 11/17/2001	YEAR DAY	RACE W	
OTHER	HOME PHONE (530)545-3428		BUSINESS PHONE NONE		DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER				
INSURANCE CARRIER FINANCIAL INDEMNITY		POLICY NUMBER 4762858							
DIR OF TRAVEL ON STREET OR HIGHWAY E		SAND PITS DIRT TRACK				SPEED LIMIT NA			
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	NAME(FIRST, MIDDLE, LAST) AUSTIN WESLEY LEWIS						LICENSE NUMBER NA		
PEDES- TRIAN	STREET ADDRESS 1316 SKYFIRE CT						OWNER'S NAME <input checked="" type="checkbox"/> SAME AS DRIVER		
PARKED VEHICLE	CITY / STATE / ZIP SPARKS NV 89441						OWNER'S ADDRESS <input checked="" type="checkbox"/> SAME AS DRIVER		
BICY- CLIST	SEX M	HAIR BRN	EYES BRN	HEIGHT 5-04	WEIGHT 160	MO 09/22/1997	YEAR DAY	RACE W	
OTHER	HOME PHONE (775)750-9713		BUSINESS PHONE NONE		DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> DRIVER <input type="checkbox"/> OTHER				
INSURANCE CARRIER NONE		POLICY NUMBER							
DIR OF TRAVEL ON STREET OR HIGHWAY W		SAND PITS DIRT TRACK				SPEED LIMIT NA			
VEHICLE TYPE 01		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 TYP/VEL 					
CA		DOT		CAL-T TCP/PSC MC/MX					
PARTY 3	DRIVER'S LICENSE NUMBER		STATE	CLASS	AIR BAG	SAFETY EQUIP.	VEH. YEAR	MAKE / MODEL / COLOR	
DRIVER	NAME(FIRST, MIDDLE, LAST)						LICENSE NUMBER		
PEDES- TRIAN	STREET ADDRESS						OWNER'S NAME		
PARKED VEHICLE	CITY / STATE / ZIP						OWNER'S ADDRESS		
BICY- CLIST	SEX	HAIR	EYES	HEIGHT	WEIGHT	MO	BIRTHDATE DAY	RACE	
OTHER	HOME PHONE		BUSINESS PHONE		DISPOSITION OF VEHICLE ON ORDERS OF: <input type="checkbox"/> OFFICER <input type="checkbox"/> DRIVER <input type="checkbox"/> OTHER				
INSURANCE CARRIER		POLICY NUMBER							
DIR OF TRAVEL ON STREET OR HIGHWAY						SPEED LIMIT			
VEHICLE TYPE		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 MOTORCYCLE - RIGHT 					
CA		DOT		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	

DATE OF COLLISION (MO. DAY YEAR) <b>10/26/2019</b>		TIME(2400) <b>1120</b>	NCIC # <b>9246</b>	OFFICER I.D. <b>015910</b>	NUMBER <b>9246-2019-00208</b>
OWNER'S NAME		OWNER ADDRESS			NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO
PROPERTY DAMAGE		DESCRIPTION OF DAMAGE			

<b>SEATING POSITION</b>  <p>1 - DRIVER 2 TO 6 - PASSENGERS 7 - STATION WAGON REAR 8 - REAR, OCC TRK, OR VAN 9 - POSITION UNKNOWN 0 - OTHER</p>	<b>SAFETY EQUIPMENT</b> <b>OCCUPANTS</b> A - NONE IN VEHICLE B - UNKNOWN C - LAP BELT USED D - LAP BELT NOT USED E - SHOULDER HARNESS USED F - SHOULDER HARNESS NOT USED G - LAP/SHOULDER HARNESS USED H - LAP/SHOULDER HARNESS NOT USED J - PASSIVE RESTRAINT USED K - PASSIVE RESTRAINT NOT USED P - NOT REQUIRED <b>CHILD RESTRAINT</b> Q - IN VEHICLE USED R - IN VEHICLE NOT USED S - IN VEHICLE USE UNKNOWN T - IN VEHICLE IMPROPER USE U - NONE IN VEHICLE <b>M / C BICYCLE HELMET</b> DRIVER PASSENGER V - NO X - NO W - YES Y - YES	<b>AIR BAG</b> B - UNKNOWN L - AIR BAG DEPLOYED M - AIR BAG NOT DEPLOYED N - OTHER P - NOT REQUIRED <b>EJECTED FROM VEHICLE</b> 0 - NOT EJECTED 1 - FULLY EJECTED 2 - PARTIALLY EJECTED 3 - UNKNOWN	<b>INATTENTION CODES</b> A - CELL PHONE HANDHELD B - CELL PHONE HANDSFREE C - ELECTRONIC EQUIPMENT D - RADIO / CD E - SMOKING F - EATING G - CHILDREN H - ANIMALS I - PERSONAL HYGIENE J - READING K - OTHER
---	--	---	---

ITEMS MARKED BELOW FOLLOWED BY AN ASTERISK (\*) SHOULD BE EXPLAINED IN THE NARRATIVE.

PRIMARY COLLISION FACTOR LIST NUMBER (#) OF PARTY AT FAULT		TRAFFIC CONTROL DEVICES			1	2	3	SPECIAL INFORMATION			1	2	3	MOVEMENT PRECEDING COLLISION		
VC SECTION VIOLATED: CITED <input type="checkbox"/> YES <input type="checkbox"/> NO		A CONTROLS FUNCTIONING						A. HAZARDOUS MATERIAL						A STOPPED		
1 B OTHER IMPROPER DRIVING* WRONG WAY		B CONTROLS NOT FUNCTIONING*						B CELL PHONE HANDHELD IN USE					X	B PROCEEDING STRAIGHT		
OTHER THAN DRIVER*		C CONTROLS OBSCURED						C CELL PHONE HANDSFREE IN USE						C RAN OFF ROAD		
D UNKNOWN*		D NO CONTROLS PRESENT / FACTOR*			X	X	X	D CELL PHONE NOT IN USE						D MAKING RIGHT TURN		
		TYPE OF COLLISION						E SCHOOL BUS RELATED						E MAKING LEFT TURN		
		X A HEAD - ON						F 75 FT MOTORTRUCK COMBO						F MAKING U TURN		
		B SIDE SWIPE						G 32 FT TRAILER COMBO						G BACKING		
		C REAR END						H SAFETY RESTRAINT SYSTEM FAILED						H SLOWING / STOPPING		
WEATHER (MARK 1 TO 2 ITEMS)		D BROADSIDE						I HWY CONSTRUCTION EQUIPMENT						I PASSING OTHER VEHICLE		
X A CLEAR		E HIT OBJECT						J						J CHANGING LANES		
B CLOUDY		F OVERTURNED						K						K PARKING MANEUVER		
C RAINING		G VEHICLE / PEDESTRIAN						L						L ENTERING TRAFFIC		
D SNOWING		H OTHER*:						M						M OTHER UNSAFE TURNING		
E FOG / VISIBILITY FT.								N						N XING INTO OPPOSING LANE		
F OTHER*:								O						O PARKED		
G WIND		MOTOR VEHICLE INVOLVED WITH												P MERGING		
		A NON - COLLISION												Q TRAVELING WRONG WAY		
LIGHTING		B PEDESTRIAN											X	R OTHER*:		
X A DAYLIGHT		X C OTHER MOTOR VEHICLE						OTHER ASSOCIATED FACTORS (MARK 1 TO 2 ITEMS)								
B DUSK - DAWN		D MOTOR VEHICLE ON OTHER ROADWAY			1	2	3									
C DARK - STREET LIGHTS		E PARKED MOTOR VEHICLE						A VC SECTION VIOLATED: CITED: <input type="checkbox"/> YES <input type="checkbox"/> NO								
D DARK - NO STREET LIGHTS		F TRAIN						B VC SECTION VIOLATED: CITED: <input type="checkbox"/> YES <input type="checkbox"/> NO								
E DARK - STREET LIGHTS NOT FUNCTIONING*		G BICYCLE						C VC SECTION VIOLATED: CITED: <input type="checkbox"/> YES <input type="checkbox"/> NO								
ROADWAY SURFACE		H ANIMAL:														
A DRY		I FIXED OBJECT:						D					X	SOBRIETY - DRUG PHYSICAL (MARK 1 TO 2 ITEMS)		
WET		J OTHER OBJECT:						E VISION OBSCUREMENT:					X	A HAD NOT BEEN DRINKING		
C SNOWY - ICY								F INATTENTION*:						B HBD - UNDER INFLUENCE		
D SLIPPERY (MUDDY, OILY, ETC.)								G STOP & GO TRAFFIC						C HBD - NOT UNDER INFLUENCE*		
ROADWAY CONDITION(S) (MARK 1 TO 2 ITEMS)		PEDESTRIAN'S ACTIONS						H ENTERING / LEAVING RAMP						D HBD - IMPAIRMENT UNKNOWN*		
A HOLES, DEEP RUT*		X A NO PEDESTRIANS INVOLVED						I PREVIOUS COLLISION						E UNDER DRUG INFLUENCE*		
B LOOSE MATERIAL ON ROADWAY*		B CROSSING IN CROSSWALK - AT INTERSECTION						J UNFAMILIAR WITH ROAD						F IMPAIRMENT - PHYSICAL*		
C OBSTRUCTION ON ROADWAY*		C CROSSING IN CROSSWALK - NOT AT INTERSECTION						K DEFECTIVE VEH. EQUIP.: CITED: <input type="checkbox"/> YES <input type="checkbox"/> NO						G IMPAIRMENT NOT KNOWN		
D CONSTRUCTION - REPAIR ZONE		D CROSSING - NOT IN CROSSWALK						L UNINVOLVED VEHICLE						H NOT APPLICABLE		
E REDUCED ROADWAY WIDTH		E IN ROAD - INCLUDES SHOULDER						M OTHER*:						I SLEEPY / FATIGUED*		
F FLOODED*		F NOT IN ROAD						N NONE APPARENT								
G OTHER*:		G APPROACHING / LEAVING SCHOOL BUS			X	X	X	O RUNAWAY VEHICLE								
X H NO UNUSUAL CONDITIONS																

<b>SKETCH</b> <b>FOR SKETCH DIAGRAM, SEE PAGE 4</b> <div style="text-align: center; margin-top: 50px;">○ INDICATE NORTH</div>	<b>MISCELLANEOUS</b>
---	----------------------

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"/>		
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"/>		
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"/>		
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			

AN INTERNATIONALLY ACCREDITED AGENCY

0062

**SKETCH DIAGRAM**

CHP 555 Page 4 (Rev. 04-11) OPI 060

PAGE 4 OF 6

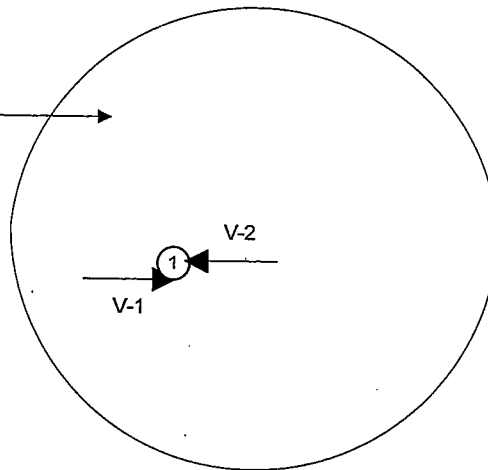
DATE OF INCIDENT 10/26/2019	TIME 1120	NCIC NUMBER 9246	OFFICER I.D. 015910	NUMBER 9246-2019-00208
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ALL MEASUREMENTS ARE APPROXIMATE AND NOT TO SCALE UNLESS STATED (SCALE= )

Sketch

Not to  
ScaleLAKE TAHOE BLVD. ↑

OHV Park and Dirt Motocross Track →

← SAWMILL RD.

PREPARED BY JULIE HEITZMAN	I.D. NUMBER 015910	DATE 10/26/2019	REVIEWER'S NAME RUTH Y. LOEHR 018269	DATE 10/29/2019
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0063

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

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

**SUMMARY**

At the entrance to the OHV park there is a large US Forest Service sign that is in excellent condition. The sign states the codes and regulations regarding the park operation and usage. It also indicates that the intended use of the OHV park is for high clearance vehicles and vehicles that are not street legal (i.e. dirt bikes and quads) and all other vehicles will park a designated distance away from the track in the dirt parking area. This collision occurred on the dirt motocross track. The natural directional flow of the track according to how the jumps were groomed was opposite of the direction Party 1 was traveling in Vehicle 1. It is also not reasonable that Party 2 could have seen Vehicle 1 coming toward the hill due to the height of the jump/hill he was approaching. The jump is referred to as a table top, it is higher and steeper on the approach with a lip 2/3 the way up the hill to create the "jump". The top of the hill levels out and the opposite side is a gradual decline to create the landing area.

Party 1 was driving Vehicle 1 and drove Vehicle 1 wrong way onto the off-road track. Party 2 was driving Vehicle 2 and was traveling west as he got to the table top jump. Party 2 entered the jump and as he was coming down, Party 1 drove Vehicle 1 up the backside of the hill at 10-20 mph. Party 2 came down and landed on top of Vehicle 1 crushing Vehicle 1's windshield. Party 2 was then ejected from Vehicle 2.

18

**AREA OF IMPACT**

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

22

**CAUSE**

Party 1 caused this collision by driving Vehicle 1 improperly. Party 1 was driving Vehicle 1 (Ford Mustang) wrong way on the motocross track. This subsequently caused the collision with Vehicle 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

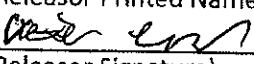
Claim Number: B064326CA19

**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](mailto: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

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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 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)**

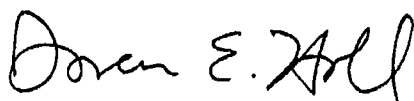
Policy fees which you pay are not part of the premium. They are fully earned when the policy is issued. They are not returnable. However, if we cancel or non-renew your policy during the initial policy period, policy fees will be refunded to you in full.

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.

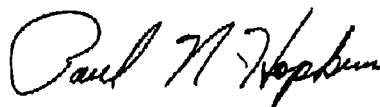
The Company named on the Declarations has caused this policy to be signed by the officers shown below:

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

MID-CENTURY INSURANCE COMPANY



Secretary



Vice-President

#### **NO MEXICO COVERAGE** **Read This Warning Carefully**

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

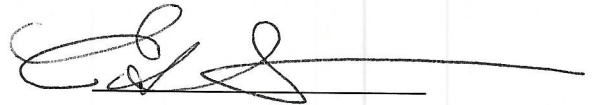
# EXHIBIT 5

# 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.

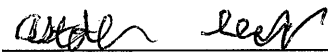
24 2. Affiant believed the UIM coverage under Affiant's policy of insurance with Mid-  
25 Century provided \$250,000.00 in coverage.

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

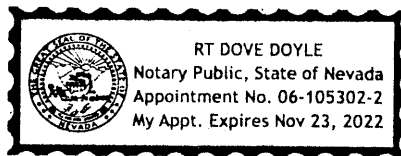


EXHIBIT 7

EXHIBIT 7

**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.

1 **I.**  
2 **FACTS**

3 The facts of this matter are set forth in detail in both the Defendant's Motion for  
4 Summary Judgment and Plaintiff's Opposition to the Defendant's Motion for Summary  
5 Judgment, and are incorporated by reference into this motion as if more fully set forth herein.  
6 The facts necessary for the Court to decide this cross motion are the same facts critical to the  
7 underlying motion for summary judgment brought by the Defendant:  
8

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

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

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

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

18 **II.**  
19 **ARGUMENT**

20 Plaintiff is entitled to partial summary judgment on the issue of the amount of the  
21 underinsured motorist coverage available pursuant to the Mid-Century policy. As set forth in  
22 the Plaintiff's Opposition to Defendant's Motion for Summary Judgment, the opposition being  
23 incorporated into the instant cross motion by reference herein, the definition of "motor vehicle"  
24 contained in the UM/UIM provisions of the Mid-Century policy, define a motor vehicle to not  
25 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 16<sup>th</sup> 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 16<sup>th</sup> day of March, 2021.  
18

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

# EXHIBIT 8

# EXHIBIT 8



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  
was paid. There is no other way to read the exclusion. Applying the plain  
14 language of the exclusion to the undisputed facts yields only one  
conclusion: there is no UIM coverage for *Hahn*. It is undisputed that  
15 Edward was driving his Kawasaki Mule when he was struck by an  
automobile. It is also undisputed that the policy lists only the Dodge Ram  
16 and the Chrysler Town & Country as covered vehicles—not the Mule. It is  
further undisputed that the only vehicles for which premiums were paid  
17 were the Ram and the Town & Country—not the Mule. The Mule was not  
listed on the policy. Because the Mule was not listed on the policy and  
18 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

# EXHIBIT 9

# EXHIBIT 9

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](mailto: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

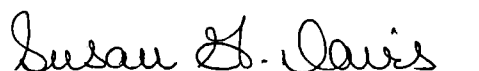
22   
23 By: \_\_\_\_\_

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

# EXHIBIT 10

# EXHIBIT 10

**CODE: 3790**  
Graham Galloway  
Nevada State Bar No. 221  
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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  
24  
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 5<sup>th</sup> 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 5<sup>th</sup> day of April, 2021.

19  
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           |


# EXHIBIT 1

# EXHIBIT 1

DECLARATION OF STEPHEN LEWIS

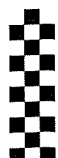
STATE OF NEVADA )  
 ) ss.  
COUNTY OF WASHOE )

1. I am the father of Austin Lewis
2. I am one of the named insureds on the Mid-Century policy of insurance at issue in this matter.
3. I was responsible for reporting my son's crash to Mid-Century.
4. I do not recall giving Mid-Century permission to obtain any information from Foremost.
5. I do not recall giving Foremost permission to release any information to Mid-Century.

  
STEPHEN LEWIS

Dated this 5<sup>th</sup> day of April, 2021

GALLOWAY  
& JENSEN  
222 California Ave  
Reno, NV 89509  
(775) 333-7555



# EXHIBIT 2

# EXHIBIT 2





**FARMERS**  
INSURANCE

# Off-Road Vehicle Insurance Policy



*Underwritten by:*

**Foremost Insurance Company**

GRAND RAPIDS, MICHIGAN

A Stock Company

Home Office

5600 Beech Tree Lane

Caledonia, Michigan 49316

1-800-527-3905

Form 4563 03/13

TRANSFER OF YOUR INTEREST IN THIS POLICY ..... 14  
TWO OR MORE POLICIES ..... 14

Endorsement ..... 15  
LOSS PAYABLE CLAUSE ..... 15

## IMPORTANT NOTICES

THIS INSURANCE POLICY DOES NOT PROVIDE LIABILITY COVERAGE FOR YOUR MAINTENANCE, USE OR OPERATION OF ANY VEHICLE(S) EXCEPT THE OFF-ROAD VEHICLE(S) SHOWN IN THE DECLARATIONS OR AS DESCRIBED IN THE DEFINITION OF "YOUR COVERED OFF-ROAD VEHICLE".

THE COVERAGE PROVIDED BY THIS POLICY DOES NOT INCLUDE LIABILITY COVERAGE FOR BODILY INJURY TO A PASSENGER UNLESS LIABILITY COVERAGE FOR YOUR PASSENGER IS INDICATED IN THE DECLARATIONS.

# Off-Road Vehicle Insurance Policy

## Agreement

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

## Definitions

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. "We", "us" and "our" refer to the Company providing this insurance.

C. For purposes of this policy, an "off-road vehicle" will be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.

E. "Business" includes trade, profession or occupation.

F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

G. "Helmets and safety apparel" means helmets and other apparel specifically designed and produced to minimize injury resulting from "off-road vehicle" accidents.

H. "Newly acquired off-road vehicle":

1. "Newly acquired off-road vehicle" means any "off-road vehicle" you become the owner of during the policy period.
2. Coverage for a "newly acquired off-road vehicle" is provided as described below. If you ask us to insure a "newly acquired off-road vehicle" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired off-road vehicle" will begin at the time you request the coverage.

2. For any coverage provided in this policy except Coverage for Damage to Your Off-Road Vehicle, a "newly acquired off-road vehicle" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage

you begins on the date you become the owner. However, for this coverage to apply to a "newly acquired off-road vehicle" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.

If a "newly acquired off-road vehicle" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.

b. Collision Coverage for a "newly acquired off-road vehicle" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one "off-road vehicle". In this case, the "newly acquired off-road vehicle" will have the broadest coverage we now provide for any "off-road vehicle" shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one "off-road vehicle". If you comply with the 4 day requirement and a loss occurred

before you asked us to insure the "newly acquired off-road vehicle", a Collision deductible of \$500 will apply.

c. Other Than Collision Coverage for a "newly acquired off-road vehicle" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one "off-road vehicle". In this case, the "newly acquired off-road vehicle" will have the broadest coverage we now provide for any "off-road vehicle" shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one "off-road vehicle". If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired off-road vehicle", an Other Than Collision deductible of \$500 will apply.

1. "Occupying" means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

2. "Off-road vehicle" means a self-propelled motorized vehicle which is designed primarily for off-road use and not licensed for use on public roads. "Off-road vehicle" does not include "optional equipment".

K. "Optional equipment" means any "trailer" or any parts, decorations, custom painting, chroming, sidecar, or other item on "your covered off-road vehicle" that was not originally provided by the manufacturer as standard equipment.

L. "Property damage" means physical injury to, destruction of or loss of use of tangible property.

M. "Trailer" means a vehicle designed to be pulled by an "off-road vehicle". "Trailer" does not include "transport trailer".

N. "Transport trailer" means a non-powered vehicle designed and used for transporting "your covered off-road vehicle".

O. "Your covered off-road vehicle" means:

1. Any "off-road vehicle" shown in the Declarations.

2. A "newly acquired off-road vehicle".

3. Any "off-road vehicle" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

- a. Breakdown;
- b. Repair;

c. Servicing;

d. Loss; or

e. Destruction.

\*This Provision (O.3) does not apply to Coverage for Damage to Your Off-Road Vehicle.

\*NOT covered to borrow  
**PART A — Liability Coverage**

## INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an "off-road vehicle" accident. Damages include pre-judgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of "your covered off-road vehicle".

2. Any person using "your covered off-road vehicle".

3. For "your covered off-road vehicle", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.

4. For any "off-road vehicle", other than "your covered off-road vehicle", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the "off-road vehicle".

## SUPPLEMENTARY PAYMENTS

We will pay on behalf of an "insured":

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.

2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.

3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.

4. Up to \$200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

5. Other reasonable expenses incurred at our request.

These payments will not reduce the limit of liability.

## EXCLUSIONS

A. We do not provide Liability Coverage for any "insured".

1. Who intentionally causes "bodily injury" or "property damage".

2. For "property damage" to property owned or being transported by that "insured".

3. For "property damage" to property:

- Rented to;
- Used by; or
- In the care of;

that "insured".

This Exclusion (A.3.) does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.

5. For that "insured's" liability arising out of the ownership or operation of an "off-road vehicle" while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.

6. While employed or otherwise engaged in the "business" of:

- Selling;
- Repairing;
- Servicing;
- Storing; or
- Parking;

vehicles designed for use mainly on public highways. B. This includes road testing and delivery. This Exclusion (A.6.)

does not apply to the ownership, maintenance or use of "your covered off-road vehicle" by:

- You;
- Any "family member"; or
- Any partner, agent or employee of you or any "family member".

7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" not described in Exclusion A.6.

8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.8.) does not apply to a "family member" using "your covered off-road vehicle" which is owned by you.

9. For "bodily injury" or "property damage" for which that "insured":

- Is an insured under a nuclear energy liability policy; or
- Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- Nuclear Energy Liability Insurance Association;
- Mutual Atomic Energy Liability Underwriters; or
- Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any vehicle, other than "your covered off-road vehicle", which is:

- Owned by you; or
- Furnished or available for your regular use.

2. Any vehicle, other than "your covered off-road vehicle", which is:

- Owned by any "family member"; or
- Furnished or available for the regular use of any "family member".

However, this Exclusion (B.2.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

- Owned by any "family member"; or
- Furnished or available for the regular use of any "family member".

3. Any vehicle:

- Competing in; or
- Practicing or preparing for; any prearranged or organized racing, speed contest or stunt.

4. Any vehicle while it is being used in the course of your "business" for demonstrations, exhibitions, parades, or other activities.

C. We do not provide Liability Coverage for "bodily injury" sustained by any person while "occupying" "your covered off-road vehicle" as a passenger unless the Declarations indicate that Passenger Liability is provided for that "off-road vehicle".

## LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for each person for

Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one "off-road vehicle" accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one "off-road vehicle" accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one "off-road vehicle" accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
  2. Claims made;
  3. Vehicles or premiums shown in the Declarations; or
  4. Vehicles involved in an "off-road vehicle" accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part B of this policy.

## OUT OF STATE COVERAGE

If an "off-road vehicle" accident to which this policy applies occurs in any state or province other than the one in which "your covered off-road vehicle" is principally garaged, we will interpret your policy for that accident as follows:

- A. If the state or province has:
1. A financial responsibility or similar law specifying limits

of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.

2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

- B. No one will be entitled to duplicate payments for the same elements of loss.

## FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

## OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered off-road vehicle", shall be excess over any other collectible insurance.

## PART B — Medical Payments Coverage

### INSURING AGREEMENT

- A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":
1. Caused by accident; and

2. Sustained by an "insured".
- We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.
- B. "Insured" as used in this Part means:
1. You or any "family member";

2. While "occupying"; or
  - b. As a pedestrian when struck by;  
a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered off-road vehicle".

## EXCLUSIONS

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" "your covered off-road vehicle" when it is being used as a public or livery conveyance. This Exclusion (1) does not apply to a share-the-expense car pool.
2. Sustained while "occupying" any vehicle located for use as a residence or premises.
3. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
4. Sustained while "occupying", or when struck by, any vehicle (other than "your covered off-road vehicle") which is:
  - a. Owned by you; or
  - b. Furnished or available for your regular use.
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered off-road vehicle") which is:
  - a. Owned by any "family member"; or
  - b. Furnished or available for the regular use of any "family member".
6. However, this Exclusion (5) does not apply to you.
7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (6) does not apply to a "family member" using "your covered off-road vehicle" which is owned by you.
8. Caused by or as a consequence of:
  - a. Discharge of a nuclear weapon (even if accidental);
  - b. War (declared or undeclared);
  - c. Civil war;
  - d. Insurrection; or
  - e. Rebellion or revolution.
9. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
  - a. Nuclear reaction;
  - b. Radiation; or
  - c. Radioactive contamination.
10. Sustained while "occupying" any vehicle for the purpose of:
  - a. Competing in; or
  - b. Practicing or preparing for, any prearranged or organized racing, speed contest or stunt.

11. Sustained while any vehicle is being used in the course of your "business" for demonstrations, exhibitions, parades, or other activities.

## LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A of this policy.

## OTHER INSURANCE

If this and other medical payments insurance apply to a loss, this insurance is primary. However, any insurance we provide with respect to an "off-road vehicle" you do not own shall be excess over any other collectible insurance providing payments for medical or funeral expenses.

## PART D — Coverage for Damage to Your Off-Road Vehicle

### INSURING AGREEMENT

- A. We will pay for direct and accidental loss to "your covered off-road vehicle" minus any applicable deductible shown in the Declarations. If loss to more than one "your covered off-road vehicle" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered off-road vehicle" caused by:

1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that "off-road vehicle".

2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that "off-road vehicle".

- B. "Collision" means the upset of "your covered off-road vehicle" or its impact with another vehicle or object.

Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
  2. Fire;
  3. Theft or larceny;
  4. Explosion or earthquake;
  5. Windstorm;
  6. Hail, water or flood;
  7. Malicious mischief or vandalism;
  8. Riot or civil commotion;
  9. Contact with bird or animal; or
  10. Breakage of glass.
- If breakage of glass is caused by a "collision", you may elect to have it considered a loss caused by "collision".

### HELMETS AND SAFETY APPAREL

In addition, we will pay, without application of deductible, to a limit of \$1,500, for direct and accidental loss to any "helmets and safety apparel" worn by you or a passenger while "occupying" your covered off-road vehicle.

"your covered off-road vehicle". We will pay for such loss if the loss is caused by "collision" or contact with a bird or animal only if the Declarations indicate that Collision Coverage is provided for that "off-road vehicle".

## EXCLUSIONS

We will not pay for:

1. Loss to "your covered off-road vehicle" which occurs while it is being used as a public or livery conveyance. This Exclusion (1) does not apply to a share-the-expense car pool.

2. Damage due and confined to:

- a. Wear and tear;
- b. Freezing;
- c. Mechanical or electrical breakdown or failure; or
- d. Road damage to tires.

This Exclusion (2) does not apply if the damage results from the total theft of "your covered off-road vehicle".

3. Loss due to or as a consequence of:

- a. Radioactive contamination;
- b. Discharge of any nuclear weapon (even if accidental);
- c. War (declared or undeclared);
- d. Civil war;
- e. Insurrection; or
- f. Rebellion or revolution.

4. Loss to any electronic equipment that reproduces, receives or transmits audio, visual or data signals. This includes but is not limited to:

- a. Radios and stereos;
- b. Tape decks;
- c. Compact disk systems;

- d. Navigation systems;
- e. Internet access systems;
- f. Personal computers;
- g. Video entertainment systems;
- h. Telephones;
- i. Televisions;
- j. Two-way mobile radios;
- k. Scanners; or
- l. Citizens band radios.

This Exclusion (4) does not apply to electronic equipment that is permanently installed in "your covered off-road vehicle".

5. Loss to tapes, records, disks or other media used with equipment described in Exclusion 4.

6. A total loss to "your covered off-road vehicle" due to destruction or confiscation by governmental or civil authorities.

This Exclusion (6) does not apply to the interests of Loss Payees in "your covered off-road vehicle".

7. Loss to any "off-road vehicle" you do not own when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.

8. Loss to any device designed or used for the detection, location, jamming or scrambling of radar, laser, or other speed measuring equipment.

9. Loss to "your covered off-road vehicle" while:

- a. Competing in, or
- b. Practicing or preparing for, any prearranged or organized racing, speed contest, or stunt.

10. Loss to "your covered off-road vehicle" while:

"vehicle" or your "transport trailer" while it is being used in the course of your "business" for demonstrations, exhibitions, parades, or other activities.

- 11. Loss to "optional equipment".
  - 12. Loss to a "transport trailer".
  - 13. Loss caused by theft or larceny of "your covered off-road vehicle" or "optional equipment" while it is in the care, custody or control of:
    - a. Any person you employed to sell it, whether for a fee or not; or
    - b. Any entity engaged in the "business" of selling it.
- 14. LIMIT OF LIABILITY**
- A. Our limit of liability for loss will be the lesser of the:
- 1. Stated amount shown in the Declarations; or
  - 2. Actual cash value of the stolen or damaged property; or
  - 3. Amount necessary to repair or replace the property with other property of like kind and quality.
- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.
- D. We will not pay for loss consisting of actual or perceived reduction of market value after the damaged property has been restored to its pre-loss condition.

**PAYMENT OF LOSS**

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

- 1. You; or
  - 2. The address shown in this policy.
- If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.
- If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

**NO BENEFIT TO BAILEE**

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

**OTHER SOURCES OF RECOVERY**

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to an "off-road vehicle" you do not own will be excess over any other collectible source of recovery including, but not limited to:

- 1. Any coverage provided by the owner of the non-owned "off-road vehicle";
- 2. Any other applicable physical damage insurance;
- 3. Any other source of recovery applicable to the loss.

**APPRAISAL**

A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent and

impartial appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 1. Pay its chosen appraiser; and
  - 2. Bear the expenses of the appraisal and umpire equally.
- B. We do not waive any of our rights under this policy by agreeing to an appraisal.

**PART E — Duties After an Accident or Loss**

We have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us:

- A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B. A person seeking any coverage must:
  - 1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
  - 2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
  - 3. Submit, as often as we reasonably require:
    - a. To physical exams by physicians we select. We will pay for these exams.
    - b. To examination under oath and subscribe the same.

**PART F — General Provisions**

**BANKRUPTCY**

Bankruptcy or insolvency of the "insured" shall not relieve us of any obligations under this policy.

**CHANGES**

- A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B. Midterm Premium Changes

The premium you are charged for this policy is based on information that you provide to us, and on information we gather from other sources. You must immediately inform us if any of the information you have provided to

- 4. Authorize us to obtain:
  - a. Medical reports; and
  - b. Other pertinent records.
- 5. Submit a proof of loss when required by us.
- C. A person seeking Coverage for Damage to Your Off-Road Vehicle must also:
  - 1. Take reasonable steps after loss to protect "your covered off-road vehicle", "optional equipment" or "transport trailer" from further loss. We will pay reasonable expenses incurred to do this.
  - 2. Promptly notify the police if "your covered off-road vehicle", "optional equipment" or "transport trailer" is stolen.
  - 3. Permit us to inspect and appraise the damaged property before its repair or disposal.



us changes, is incomplete, or is incorrect.

Based on the changed, completed, or corrected information, we may decrease or increase the premium for your policy during the policy period. Specifically, you must inform us if any of the following information changes, is incomplete, or is incorrect:

1. The types or use of insured vehicles;
2. The number of drivers of insured vehicles, their ages, and the status of their driving privileges;
3. The number of miles driven;
4. The place where insured vehicles are principally garaged; and,
5. The coverages, deductibles or limits.

If a change resulting from A. or B. requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.

C. If we make a change which broadens coverage under this edition of your policy, without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This Paragraph (C.) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of your policy; or
2. An Amendatory Endorsement.

## FRAUD

We do not provide coverage for any "insured" who has made fraudulent

statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

## LEGAL ACTION AGAINST US

A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until:

1. We agree in writing that the "insured" has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

B. No person or organization has any right under this policy to bring us into any action to determine the liability of an "insured".

## OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights in this Paragraph (A.) do not apply under Part D, against any person using "your covered off-road vehicle" with a reasonable belief that that person is entitled to do so.

B. If we make a payment under this policy and the person to or for whom

payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

## POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered off-road vehicle" or your "transport trailer" while being transported between their ports.

## TERMINATION

A. Cancellation

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
  - a. Returning this policy to us; or
  - b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:

## B. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the

a. At least 10 days notice:

- (1) If cancellation is for non-payment of premium; or
- (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or

b. At least 20 days notice in all other cases.

3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:

- a. For nonpayment of premium; or
- b. If your driver's license or that of:

- (1) Any driver who lives with you; or
- (2) Any driver who customarily uses "your covered off-road vehicle";

has been suspended or revoked. This must have occurred.

(1) During the policy period; or

(2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or

c. If the policy was obtained through material misrepresentation.



named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

#### C. Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered-off-road vehicle" or "transport trailer", any similar insurance provided by this policy will terminate as to that "off-road vehicle" or "transport trailer" on the effective date of the other insurance.

#### D. Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you

may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.

3. The effective date of cancellation stated in the notice shall become the end of the policy period.

#### TRANSFER OF YOUR INTEREST IN THIS POLICY

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
  2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered off-road vehicle" or "transport trailer".
- B. Coverage will only be provided until the end of the policy period.

#### TWO OR MORE POLICIES

If this policy and any other insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

This policy is signed at the Home Office by our President and Secretary.

President

Secretary

#### Endorsement

#### LOSS PAYABLE CLAUSE

5303 01/05

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee, shall not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion or embezzlement of "your covered off-road vehicle". However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.

When we pay the loss payee, we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF POLICY PROVISIONS - NEVADA**

6360 04/19

**NOTICE**

The contrasting boldface type contained in this endorsement is in compliance with the Nevada statutory requirements that "anti-stacking" provisions be prominently displayed in the policy, binder or endorsement.

**I. Definitions**

The **Definitions** Section is amended as follows:

The following definitions are replaced:

1. Throughout this policy, "you" and "your" refer to the named insured shown in the Declarations, and:

- a. The spouse; or
- b. A party who has entered into a domestic partnership with the named insured recognized under Nevada law;

If a resident of the same household.

If the spouse or party who has entered into a domestic partnership with the named insured ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse or such party will be considered "you" and "your" under this policy but only until the earlier of:

- a. The end of 90 days following the spouse's or such party's change of residency;
- b. The effective date of another policy listing the spouse or such party as a named insured; or
- c. The end of the policy period.

2. "Family member" means a person related to you by blood, marriage, domestic partnership recognized under Nevada law, or adoption who is a resident of your household. This includes a ward or foster child;

**II. PART A - Liability Coverage**

Part A is amended as follows:

- A. Exclusions B.1. and B.2. are replaced by the following:

**WE DO NOT PROVIDE LIABILITY COVERAGE FOR THE OWNERSHIP, MAINTENANCE, OR USE OF:**

1. **ANY VEHICLE, OTHER THAN "YOUR COVERED OFF-ROAD VEHICLE," WHICH IS:**
  - a. **OWNED BY YOU; OR**
  - b. **FURNISHED OR AVAILABLE FOR YOUR REGULAR USE.**
2. **ANY VEHICLE, OTHER THAN "YOUR COVERED OFF-ROAD VEHICLE," WHICH IS:**

- a. **OWNED BY ANY "FAMILY MEMBER"; OR**
- b. **FURNISHED OR AVAILABLE FOR THE REGULAR USE OF ANY "FAMILY MEMBER".**

**HOWEVER, THIS EXCLUSION (B.2.) DOES NOT APPLY TO YOU WHILE YOU ARE MAINTAINING OR "OCCUPYING" ANY VEHICLE WHICH IS:**

- a. **OWNED BY A "FAMILY MEMBER"; OR**
- b. **FURNISHED OR AVAILABLE FOR THE REGULAR USE OF A "FAMILY MEMBER".**

- B. Paragraph A. of the **Limit Of Liability** Provision is replaced by the following:

**Limit Of Liability**

- A. **THE LIMIT OF LIABILITY SHOWN IN THE DECLARATIONS FOR EACH PERSON FOR BODILY INJURY LIABILITY IS OUR MAXIMUM LIMIT OF LIABILITY FOR ALL DAMAGES, INCLUDING DAMAGES FOR CARE, LOSS OF SERVICES, OR DEATH, ARISING OUT OF "BODILY INJURY" SUSTAINED BY ANY ONE PERSON IN ANY ONE "OFF-ROAD VEHICLE" ACCIDENT. SUBJECT TO THIS LIMIT FOR EACH PERSON, THE LIMIT OF LIABILITY SHOWN IN THE DECLARATIONS FOR EACH ACCIDENT FOR BODILY INJURY LIABILITY IS OUR MAXIMUM LIMIT OF LIABILITY FOR ALL DAMAGES FOR "BODILY INJURY" RESULTING FROM ANY ONE "OFF-ROAD VEHICLE" ACCIDENT.**

**THE LIMIT OF LIABILITY SHOWN IN THE DECLARATIONS FOR EACH ACCIDENT FOR PROPERTY DAMAGE LIABILITY IS OUR MAXIMUM LIMIT OF LIABILITY FOR ALL "PROPERTY DAMAGE" RESULTING FROM ANY ONE "OFF-ROAD VEHICLE" ACCIDENT. THIS IS THE MOST WE WILL PAY REGARDLESS OF THE NUMBER OF:**

1. **"INSUREDS";**
2. **CLAIMS MADE;**
3. **VEHICLES OR PREMIUMS SHOWN IN THE DECLARATIONS; OR**
4. **VEHICLES INVOLVED IN THE "OFF-ROAD VEHICLE" ACCIDENT.**

- C. The limit of liability section entitled **IMPORTANT NOTICE - PERMISSIVE USER LIMIT OF LIABILITY** is removed.

D. The **Other Insurance** Provision is replaced by the following:

**Other Insurance**

If there is other applicable liability insurance:

1. Any insurance we provide for a vehicle you own shall be excess to that of a person engaged in the "business" of:

- |                |                  |
|----------------|------------------|
| a. Selling;    | e. Testing;      |
| b. Repairing;  | f. Road testing; |
| c. Servicing;  | g. Parking; or   |
| d. Delivering; | h. Storing;      |

motor vehicles, if the accident occurs while the vehicle is being operated by that person or that person's employee or agent.

2. Except as provided in 3. and 4. below, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered off-road vehicle," shall be excess over any other collectible insurance.

3. Any insurance we provide for a vehicle you do not own will be primary insurance if the vehicle is insured under a policy affording coverage to a named insured engaged in the "business" of:

- |                |                  |
|----------------|------------------|
| a. Selling;    | e. Testing;      |
| b. Repairing;  | f. Road testing; |
| c. Servicing;  | g. Parking; or   |
| d. Delivering; | h. Storing;      |

motor vehicles. This applies only if an "insured":

- a. Is operating the vehicle; and
- b. Is neither the person engaged in such "business" nor that person's employee or agent.

4. If the vehicle you do not own is a rental private passenger automobile, the following priorities of recovery apply:

<b>FIRST PRIORITY</b>	Any source of recovery purchased as an option from the owner of the rental private passenger automobile.
<b>SECOND PRIORITY</b>	Any policy affording Liability Coverage to the "insured" as a named insured or "family member".
<b>THIRD PRIORITY</b>	Any policy affording Liability Coverage to the owner of the rental private passenger automobile.

5. We will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

**III. PART B - Medical Payments Coverage**

Part B is amended as follows:

**A. Insuring Agreement**

B.1. is replaced by the following:

B. "Insured" as used in this Part means:

1. You or any "family member":
  - a. While "occupying"; or
  - b. As a pedestrian when struck by a motor vehicle or a trailer of any type.

- B. Exclusions 4. and 5. are replaced by the following:

**WE DO NOT PROVIDE MEDICAL PAYMENTS COVERAGE FOR ANY "INSURED" FOR "BODILY INJURY":**

4. **SUSTAINED WHILE "OCCUPYING", OR WHEN STRUCK BY, ANY VEHICLE (OTHER THAN "YOUR COVERED OFF-ROAD VEHICLE") WHICH IS:**

- a. OWNED BY YOU; OR
- b. FURNISHED OR AVAILABLE FOR YOUR REGULAR USE.

5. **SUSTAINED WHILE "OCCUPYING", OR WHEN STRUCK BY, ANY VEHICLE (OTHER THAN "YOUR COVERED OFF-ROAD VEHICLE") WHICH IS:**

- a. OWNED BY ANY "FAMILY MEMBER"; OR
- b. FURNISHED OR AVAILABLE FOR THE REGULAR USE OF "ANY "FAMILY MEMBER".

**HOWEVER, THIS EXCLUSION (5.) DOES NOT APPLY TO YOU.**

- C. Paragraph A. of the **Limit Of Liability** Provision is replaced by the following:

**Limit Of Liability**

- A. **THE LIMIT OF LIABILITY SHOWN IN THE DECLARATIONS FOR THIS COVERAGE IS OUR MAXIMUM LIMIT OF LIABILITY FOR EACH PERSON INJURED IN ANY ONE ACCIDENT. THIS IS THE MOST WE WILL PAY REGARDLESS OF THE NUMBER OF:**

1. "INSUREDS";
2. CLAIMS MADE;
3. VEHICLES OR PREMIUMS SHOWN IN THE DECLARATIONS; OR
4. VEHICLES INVOLVED IN THE ACCIDENT.

#### IV. PART F - General Provisions

Part F is amended as follows:

**A. The Our Right To Recover Payment Provision is amended as follows:**

**Our Right To Recover Payment**

1. This provision does not apply to Part B.
2. Paragraph A. is replaced by the following:
  - A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:
    1. Whatever is necessary to enable us to exercise our rights; and
    2. Nothing after loss to prejudice them.However, our rights in this paragraph (A.) do not apply under:
    1. Part D, against any person using "your covered off-road vehicle" with a reasonable belief that that person is entitled to do so; and
    2. Section 2. of the definition of "uninsured motor vehicle" under Part C.

**B. The following Termination Provision is added:**  
**Termination**

**A. Cancellation**

This policy may be cancelled during the policy period as follows:

1. The named Insured shown in the Declarations may cancel by:
  - a. Returning this policy to us; or
  - b. Giving us advance written or verbal notice of the future date cancellation is to take effect.
2. We may cancel by mailing by first class mail or certified mail to the named Insured shown in the Declarations at the address last known by us:
  - a. At least 10 days' notice if cancellation is for nonpayment of premium; or
  - b. At least 30 days' notice in all other cases.
3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
  - a. For nonpayment of premium; or
  - b. If your driver's license or that of:
    - (1) Any driver who lives with you; or
    - (2) Any driver who customarily uses "your covered off-road vehicle";has been suspended or revoked.

This must have occurred:

- (1) During the policy period; or
- (2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or

c. If the policy was obtained through material misrepresentation.

**B. Nonrenewal**

If we decide not to renew or continue this policy, we will mail notice to the named Insured shown in the Declarations at the address last known by us. Notice will be mailed by first class mail or certified mail at least 30 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than six months, we will have the right not to renew or continue this policy every six months, beginning six months after its original effective date.
2. Six months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. One year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

**C. Automatic Termination**

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered off-road vehicle" or "transport trailer," any similar insurance provided by this policy will terminate as to that "off-road vehicle" or "transport trailer" on the effective date of the other insurance.

**D. Other Termination Provisions**

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

## PLUS ENDORSEMENT

3892 03/17

Includes: 2017 KTM 250 SX VBKSXM236HM288340  
2018 KTM 250 SX-F VBKSXK439JM174890  
2020 KTM 250 SX VBKSXM23XLM271968

This Plus Endorsement is a part of your policy and contains an enhancement that will provide additional coverage to you in the event of an insured loss. The enhanced coverage is:

- HELMETS AND SAFETY APPAREL

This coverage is described in more detail in the endorsement below.

### Definitions

The following definition is changed to read:

#### G. "Newly acquired off-road vehicle":

1. "Newly acquired off-road vehicle" means any "off-road vehicle" you become the owner of during the policy period.
2. Coverage for a "newly acquired off-road vehicle" is provided as described below. If you ask us to insure a "newly acquired off-road vehicle" after the specified time period described below has elapsed, any coverage we provide for a "newly acquired off-road vehicle" will begin on the date and time you request the coverage.
  - a. For any coverage provided in this policy except Collision and Other Than Collision, a "newly acquired off-road vehicle" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date and time you become the owner. However, for this coverage to continue to apply to a "newly acquired off-road vehicle", you must ask us to insure it within 30 days after you become the owner.
  - b. Collision Coverage for a "newly acquired off-road vehicle" begins on the date and time you become the owner. However, for this coverage to continue to apply, you must ask us to insure it within:
    - (1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one "off-road vehicle". In this case, the "newly acquired off-road vehicle" will have the broadest coverage we now provide for any "off-road vehicle" shown in the Declarations.
    - (2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one "off-road vehicle". If you comply with the four day requirement and a loss occurred before you asked us to insure the "newly acquired off-road vehicle", a Collision deductible of \$500 will apply.

- c. Other Than Collision Coverage for a "newly acquired off-road vehicle" begins on the date and time you become the owner. However, for this coverage to continue to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one "off-road vehicle". In this case, the "newly acquired off-road vehicle" will have the broadest coverage we now provide for any "off-road vehicle" shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one "off-road vehicle". If you comply with the four day requirement and a loss occurred before you asked us to insure the "newly acquired off-road vehicle", an Other Than Collision deductible of \$500 will apply.

### PART D - Coverage for Damage to Your Off-Road Vehicle

The following additional coverage is added:

#### HELMETS AND SAFETY APPAREL

##### Definition

"Helmets and safety apparel" means helmets and other apparel specifically designed and produced to minimize injury resulting from "off-road vehicle" accidents.

##### Insuring Agreement

We will pay, without application of a deductible, up to a limit of \$1,500, for direct, sudden and accidental loss to any "helmets and safety apparel" worn by you or a passenger while "occupying" "your covered off-road vehicle". We will pay for such loss if the loss is caused by "collision" or contact with a bird or animal only if the Declarations indicate that Collision Coverage is provided for that "off-road vehicle".

2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. However, making or offering to make the refund is not a condition of cancellation.

If we cancel this policy, we will calculate any return premium on a pro rata basis. If you cancel, we will calculate any return premium on the basis of 90% of pro rata, subject to any minimum earned premium shown on the Declarations.

3. The effective date of cancellation stated in the notice shall become the end of the policy period.

**C. The Transfer Of Your Interest In This Policy**  
Provision is replaced by the following:

**Transfer Of Your Interest In This Policy**

- A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. The surviving:

- a. Spouse; or

- b. Party who has entered into a domestic partnership with the named insured recognized under Nevada law;

If resident in the same household at the time of death. Coverage applies to the spouse or party who has entered into a

domestic partnership with the named insured as if a named insured shown in the Declarations; and

2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered off-road vehicle".

- B. Coverage will only be provided until the end of the policy period.

- D. The **Two or More Policies** Provision is replaced by the following:

**Two Or More Policies**

IF THIS POLICY AND ANY OTHER INSURANCE POLICY ISSUED TO YOU BY US APPLY TO THE SAME ACCIDENT, THE MAXIMUM LIMIT OF OUR LIABILITY UNDER ALL THE POLICIES SHALL NOT EXCEED THE HIGHEST APPLICABLE SINGLE VEHICLE LIMIT OF LIABILITY UNDER ANY ONE POLICY. THIS IS THE MOST WE WILL PAY REGARDLESS OF THE NUMBER OF:

1. "INSUREDS";
2. CLAIMS MADE;
3. VEHICLES OR PREMIUMS SHOWN IN THE DECLARATIONS; OR
4. VEHICLES INVOLVED IN THE ACCIDENT.

All other provisions of your policy apply.

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# EXHIBIT 3

# EXHIBIT 3

# Top questions to ask about off-road vehicle insurance



by Noelle Kimble



Fall is in the air, but there are still plenty of nice days left to hop on your dirt bike, ATV, dune buggy, golf cart or other off-road vehicle (ORV) and get outdoors. Before you do, you may want to ask your insurance agency some questions about insurance coverage. Foremost Insurance Group has some suggestions to help you get started.

## 1. What typical coverages are available?

"Ask your agent or broker about standard coverages that are available, as well as optional ones you might consider," says Foremost® Senior Product Manager Kevin Henry. "Standard coverages include Collision, Other Than Collision, Liability and Medical Payments. They help provide coverage for damage to your ORV itself or damage or injury that you may cause while riding your ORV."

## 2. Is my safety apparel covered?

"Whether it's helmets, goggles or other clothing that helps minimize injuries from an accident, most companies will offer safety apparel coverage for when these things get damaged," says Henry. "We want riders to be as safe as possible while enjoying the outdoors, so we encourage wearing safety gear."



3. Is there optional equipment coverage available?

"Most people have customized or added options to their ORVs," Henry explains. "Optional Equipment coverage helps cover things like towable trailers, racks and winch kits for your ORV."

4. Am I able to insure my ORV year-round?

"Year-round coverage is definitely something you may want to consider," answers Henry. "Some policies have a lay-up period for colder weather when you may not be able to ride. But when an unusually warm day comes around and you want to take your ORV out, you might be stuck without coverage. A year-round policy lets you take it out whenever Mother Nature's providing good weather and, with some companies, you can do this for the same price as seasonal coverage."

5. What kinds of discounts are available?

"Everybody wants to save money," Henry shares. "Ask what's available for you. Some companies, like Foremost, offer discounts for things like multi-units, multi-policies, maintaining continuous coverage when you renew and for having prior off-road vehicle insurance."

Your safety is number one to us. Stay safe wherever you choose to go on your off-road vehicle.

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# EXHIBIT 11

# EXHIBIT 11

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.<sup>1</sup> *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 <sup>1</sup> 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  
9 **uninsured motor vehicle**.

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

19           Based on the foregoing, and good cause appearing,

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

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

24           IT IS SO ORDERED.

25           DATED this 8<sup>th</sup> day of June, 2021.

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 8<sup>th</sup> 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.

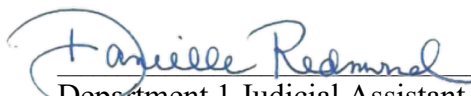
8 I further certify that I transmitted a true and correct copy of the foregoing document by the  
9 method(s) noted below:

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]**

17  
18  
19  
20   
21 Department 1 Judicial Assistant  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 12

# EXHIBIT 12

1 **2540**  
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](mailto:tra@lge.net)  
8 *Attorneys for Defendant*

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

9 AUSTIN LEWIS, an individual

10 Plaintiff,

11 vs.

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

14 Defendants.

Case No. CV20-01047

Dept. No. 1

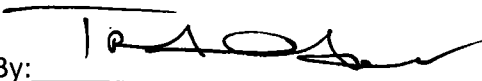
15 **NOTICE OF ENTRY OF ORDER**

16 **PLEASE TAKE NOTICE** that the Order (1) Granting Defendant's Motion for Summary  
17 Judgment; and (2) Denying Plaintiff's Cross-Motion for Partial Summary Judgment was entered  
18 on June 8, 2021. A copy of said Order is attached hereto as **Exhibit 1**.

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

21 Dated: June 9, 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 June 9, 2021, I e-filed a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, 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**

<b><i>Exhibit No.</i></b>	<b><i>Description</i></b>	<b><i>Length of Exhibit</i></b>
1	Order (1) Granting Defendant's Motion for Summary Judgment; and (2) Denying Plaintiff's Cross-Motion for Partial Summary Judgment	7 pages

EXHIBIT 13

EXHIBIT 13

**CODE: 2515**  
Graham Galloway  
Nevada State Bar No. 221  
Galloway & Jensen  
222 California Avenue  
Reno, Nevada 89509  
(775) 333-7555  
*Attorneys for Appellant*

**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.

**NOTICE OF APPEAL**

Notice is hereby given that Austin Lewis, appellant above-named, hereby appeals to the Supreme Court of Nevada from the District Court's Order Granting Defendant's Motion for Summary Judgment; and Denying Plaintiff's Cross-Motion for Partial Summary Judgment entered in this action on June 8, 2021.

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 15<sup>th</sup> day of June, 2021. GALLOWAY & JENSEN

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

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 8<sup>th</sup> day of June, 2021.

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



Case No. 83079

---

**In the Supreme Court of Nevada**

AUSTIN LEWIS, an individual,

Appellant,

vs.

MID-CENTURY INSURANCE COMPANY,

Respondent,

---

**APPEAL**

from the Second Judicial District Court, State of Nevada

The Honorable Kathleen M. Drakulich, District Judge

District Court Case No. CV20-01047

---

**APPELLANT'S OPENING BRIEF**

---

Graham Galloway (SBN 227)

Galloway & Jensen

222 California Avenue

Reno, NV 89509

(775) 333-7555

*Attorneys for Appellant*

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant Austin Lewis is a person.

Mr. Lewis has been represented in this litigation by Graham Galloway of Galloway & Jensen.

Dated this 21<sup>st</sup> day of October, 2021.

GALLOWAY & JENSEN

By: /s/ Graham Galloway  
Graham Galloway SBN 221  
222 California Avenue  
Reno, NV 89509  
775.333.7555  
*Attorneys for Appellant*

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## **JURISDICTION**

This Court has jurisdiction under NRAP 3A(b)(1). The district court granted summary judgment to defendant Mid-Century Insurance Company and denied plaintiff Austin Lewis' cross motion for partial summary judgment on June 8, 2021. (11 App. 137-143) The defendant filed a notice of entry of order on June 9, 2021, (12App.144-146) and Plaintiff Austin Lewis timely appealed on June 15, 2021 (13 App.147-148).

## **ROUTING STATEMENT**

This matter does not fall under any category set forth in NRAP 17(a) or (b). This matter is based upon a breach of contract and the amount in controversy is \$225,000.

## **ISSUES PRESENTED**

1. Did the district court err in finding there were no genuine issues of material fact and the defendant was entitled to judgment as a matter of law?
2. Did the district court err in finding the insurance agreement

was unambiguous?

3. Did the district court err in denying the plaintiff's cross motion for partial summary judgment by failing to find the policy language was ambiguous?

4. Did the district court err in denying the plaintiff's cross motion for partial summary judgment by failing to find the insurance policy provided coverage to the plaintiff?

## **STATEMENT OF THE CASE**

Austin Lewis appeals from an order of the district court granting Mid-Century Insurance Company's (Mid-Century) motion for summary judgment, and denying Austin Lewis' cross motion for partial summary judgment; the Honorable Kathleen Drakulich, District Judge, presiding.

Austin Lewis was riding an off road motorcycle off road when an underinsured motorist collided with him and caused him substantial bodily injuries. Lewis settled with the adverse driver's liability insurer for its policy limits of \$15,000.00 and then presented a claim to Mid-Century for underinsured motorist benefits (UIM). The Mid-Century UIM limits are \$250,000. When Lewis asked for the limits, Mid-Century asserted an "occupying" exclusion and only offered the statutory minimum limits of \$25,000.

Mr. Lewis filed suit against Mid-Century alleging it had breached the insuring agreement by not offering him an appropriate amount for his injuries, and by improperly asserting the "occupying" exclusion to step down the policy limits. Mid-Century denied breaching the insurance agreement, and filed a motion for summary judgment asking



the district court to find its exclusion limited Mr. Lewis' coverage to \$25,000. Mr. Lewis opposed this motion and filed his own motion for partial summary judgment asking the district court to find the UIM limits were \$250,000, or in the alternative, the Mid-Century policy was ambiguous and the exclusion should not be applied to the facts of Mr. Lewis' claim.

The district court found the Mid-Century policy and exclusion were not ambiguous and the exclusion applied to Mr. Lewis' claim. The district court also denied Mr. Lewis' cross motion for partial summary judgment on the question of whether the exclusion was ambiguous and therefore unenforceable. Mr. Lewis appealed this order.

## **STATEMENT OF FACTS**

### **A. THE CRASH**

On October 26, 2019, Austin Lewis was riding his off road motorcycle on a track at what is called the Sand Pits OHV Park just outside of South Lake Tahoe, California. Mr. Lewis was travelling in the proper direction on the track when he went over a large jump. At the same time, Joshua Brackett, driving a Ford Mustang, entered the

track and began driving in the wrong direction. Mr. Brackett drove to the jump and stopped just as Mr. Lewis came off the jump. Mr. Lewis was unaware of Mr. Brackett's presence and his motorcycle landed on top of Mr. Brackett's Mustang. (6 App 60-65) Mr. Lewis sustained four fractured vertebrae as a result of crashing into the Mustang windshield. He also sustained a fractured sternum and a collapsed lung. (6 App 50) Mr. Lewis' medical expenses are currently \$113,477. (6 App 50) Mr. Lewis also missed a substantial amount of work as a loader at UPS.

Mr. Brackett was insured through Financial Indemnity Company for the California statutory minimum liability limits of \$15,000. (6 App 67) Mr. Lewis accepted Mr. Brackett's policy limits and then presented a claim for underinsured motorist benefits (UIM) to his insurer, Mid-Century. Mr. Lewis' UIM limits with Mid-Century are \$250,000 per occurrence. (9 App 86) Mid-Century, in response to the claim, asserted an occupying exclusion that limits the UIM benefits for this matter to the Nevada statutory minimum limits of \$25,000. (6 App 69-71)

Mr. Lewis believes the exclusion does not apply to the facts of this matter, or in the alternative, the policy language is ambiguous and the exclusion is unenforceable.

## B. THE MID-CENTURY POLICY LANGUAGE

The relevant portions of the Mid-Century policy are set forth in Part II of the contract entitled **UNINSURED MOTORIST**.<sup>1</sup> The UM language is as follows:

### **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 vehicle:

---

<sup>1</sup> In *Hall v. Farmers Insurance Exchange*, 105 Nev. 19, 786 P.2d 884 (1989), the Court, interpreting NRS 687B.145(2), held underinsured motorist coverage (UIM) was a built in component of uninsured motorist coverage (UM).

- 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 vehicle 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**.
  - 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.

The exclusion relied upon by Mid-Century reads as follows:

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. (5 App 35)

Mr. Lewis, on the other hand, relies upon the definitional language set forth 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 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. (5 App 34)

### **SUMMARY OF ARGUMENT**

The district court, in its order granting Mid-Century summary judgment, determined the occupying exclusion was not ambiguous and applied because Mr. Lewis was occupying a vehicle he owned that was not insured under the policy. Mr. Lewis believes the district court erroneously failed to find the dirt bike was not a vehicle as defined by the contract, and therefore the occupying exclusion does not apply. Alternatively, Mr. Lewis contends the definition of "motor vehicle" and the absence of a definition for "vehicle" in the UM/UIM portion of the policy, creates an ambiguity which renders the occupying exclusion unenforceable.

### **STANDARD OF REVIEW**

The standard of review of an order granting summary judgment is de novo and without deference to the findings of the district court. *Wood v. Safeway, Inc.*, 121 Nev. 724. 121 P.3d 1026 (2005). When

reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in the light most favorable to the nonmoving party. *Id.* at 1029. This standard applies to all issues in this appeal.

## **ARGUMENT**

### **A. THE LEWIS DIRT BIKE BY DEFINITION IS NOT A VEHICLE AND NOT SUBJECT TO THE OCCUPYING EXCLUSION**

Mid-Century argues the Lewis dirt bike was a "vehicle", and because it was owned by Mr. Lewis and not insured under the subject policy, the occupying exclusion applies to limit Mr. Lewis' underinsured motorist's claim. Curiously, there is no definition of "vehicle" in the policy. The general definition section for the policy sets forth various definitions, but all utilize the word "car". There are definitions for "private passenger car", "utility car and "additional car", but no definition for the term "vehicle". (5 App 30).

Part II of the policy, which is entitled Uninsured Motorist, contains a separate section captioned **Additional Definitions Used In**

**This Part Only.** There the term "motor vehicle" is defined and specifically excludes Mr. Lewis' dirt bike from the definition of a motor vehicle:

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

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

The Lewis dirt bike is an off road vehicle. As such, it is not a motor vehicle for purposes of the UIM coverage under the Mid-Century policy. If the dirt bike is not a vehicle, Mr. Lewis cannot be occupying a vehicle for purposes of the Mid- Century exclusion. The exclusion relied upon by Mid-Century only applies if Mr. Lewis is occupying an owned vehicle that is not insured under the policy. Here, the dirt bike, according to the definition set forth in the portion of the policy expressly dealing with UM/UIM claims, is not a vehicle. Mr. Lewis' dirt bike is a motorcycle (arguably a two wheel all terrain vehicle as well), that is designed principally (in this case exclusively) for use off public roads. By definition the exclusion does not apply, and the step down or limitation of the UIM limits is not activated

Mid-Century argued in the district court that Mr. Lewis could not



use the UM/UIM section definition of motor vehicle because it was not a term used in the exclusion.(8 App 100) First, the definition of motor vehicle set forth in Part II applies to all of Part II, including the fourth exclusion relied upon by Mid-Century. There is no limiting language; the definition does not say it only applies to the coverage and not to the exclusions. The definition applies to the exclusion, as it does to all of the provisions of Part II.

Secondly, if the definition of motor vehicle does not apply, how is the term vehicle that is used in the exclusion to be defined? Is the insured to you use the definition commonly associated with the word? *Merriam- Webster* defines vehicle to be:

1 : a means of carrying or transporting something // planes, trains, and other *vehicles*: such as

a : **MOTOR VEHICLE**

b : a piece of mechanized equipment

*Merriam-Webster.com Dictionary*, Merriam-Webster,

<https://www.merriam-webster.com/dictionary/vehicle>. Accessed 14, Oct.

2021

The common everyday definition of vehicle includes the term motor vehicle, which the Mid-Century UM/UIM section defines to not

include Mr. Lewis' off road motorcycle. Mid-Century attempts to ignore the definition of motor vehicle, and argued in the district court it only applies to the definition of the uninsured vehicle. There is no language in the definition of motor vehicle that restricts its application to the definition of an uninsured vehicle. If Mid-Century wants to use a different definition of vehicle other than what is contained in the policy, or as defined by *Merriam-Webster*, then it is simply laying the foundation for Appellant's next argument, that an ambiguity exists in the policy language which renders the exclusion unenforceable.

**B. MID-CENTURY'S LANGUAGE FOR UNDERINSURED MOTORIST COVERAGE IS AMBIGUOUS**

As detailed above, the Mid-Century policy does not define the word "vehicle". The policy does define "motor vehicle" in the definitional section applicable to the UM/UIM coverage. Mid-Century, though, argues this definition somehow does not apply because the term "motor vehicle" does not appear in the exclusion. So this begs the question: how is an insured to know what is meant when the word "vehicle" is used in the occupying exclusion?

Implicit in Mid-Century's position is the term "vehicle", as set forth in the occupying exclusion, is broadly defined and includes off road vehicles such as Mr. Lewis' dirt bike. But nowhere is there language in the insurance agreement that says the term "vehicle" is to be more broadly interpreted to mean something more than a motor vehicle. Mid-Century has created an ambiguity by not defining "vehicle". It defined additional car, replacement car, private passenger car, motor vehicle and uninsured motor vehicle, but it never defines just the plain word vehicle. Yet it now says vehicle means something other than motor vehicle, and it simply ignores the definition it has set forth in its policy.

Fundamental tenets of insurance law govern the Court's interpretation of the insurance contract language involved in this matter. An insurance policy is a contract of adhesion and should be interpreted broadly, affording the greatest possible coverage to the insured.

In *Benchmark ins. Co. v. Sparks*, 127 Nev. 407, 254 P.3d 617 (2011), this Court stated:

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

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

And in *Rubin v. State Farm Mut. Auto. Ins .Co.*, 118 Nev 299, 303-304, 43 P.3d 1018 (2002), this Court held "A seemingly clear policy can be rendered ambiguous when applying the policy to the facts leads to

multiple reasonable interpretations.

Finally, the Court has held clauses providing coverage are broadly construed to afford the insured the greatest possible coverage, while exclusions are interpreted narrowly to limit their application, and once again afford the insured the greatest amount of protections. *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 329 P.3d 614 (2014) quoting *Nat'l Union Fire Ins. Co. of the State of Pa., Inc., v. Reno's Exec. Air, Inc.*, 100 Nev. 360, 365, 682 P.2d 1380 (1984).

In the instant matter, when the exclusion put forth by Mid-Century is read by itself, it appears to be unambiguous. It uses the term vehicle, and if this is given a broad interpretation, seems to suggest Mr. Lewis's dirt bike is excluded from the UIM coverage. On the other hand, if the exclusion is read in conjunction with the UM/UIM definition of motor vehicle, a question arises as to whether the dirt bike is an excluded vehicle. Mr. Lewis believes the definition for motor vehicle that is set forth in the UM/UIM section of the policy applies to all provisions of the UIM coverage, including the exclusions. Mid-Century, on the other hand, argues some other definition of vehicle applies to the exclusion. Thus, there are two competing interpretations

that by definition, create an ambiguity.

In *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev.156, 252 P.3d 668 (2011), this Court ruled that if an insurer wants to exclude coverage it must:

"(1) Write the exclusion in obvious and unambiguous language in the policy.

(2) Establish that the interpretation excluding coverage is the only interpretation of the exclusion that can be fairly made, and

(3) Establish that the exclusion clearly applies to this particular case."

Again, the exclusion, by itself, seems clear. The question then becomes is the exclusion still clear once read with the other policy language, in particular, the definition of motor vehicle found in UM/UIM section. That definition is not limited to the coverage portion of the policy or in any other fashion. Mid-Century argues since it is not used in the exclusion it does not apply. But Mid-Century has not defined what vehicle means anywhere in the policy, let alone in the UIM section. Is the typical unsophisticated insured (Mr. Lewis was 22

years old at the time of the crash), going to know Mid-Century believes there is a difference between a motor vehicle and a vehicle? Could Mid-Century have defined what it meant by using the word vehicle? Is the *Merriman-Webster* definition of vehicle that defines it as a motor vehicle not applicable to the exclusion? Is the use of the term motor vehicle so similar to the word vehicle an insured is not going to appreciate the difference? The answers to these questions lead to only one conclusion, the exclusion, once read with the definitions in the UIM section, are susceptible to differing interpretations. Mid-Century cannot establish its interpretation is the only one that can be fairly made.

The Wisconsin Court of Appeals addressed a fact pattern similar to the instant one in *Ruenger v. Soodma*, 281 Wis.2d 228, 695 N.W. 840 (2005). In *Ruenger* the insured was operating a skip loader on the side of a highway when she was hit by an underinsured motorist. While the majority of the case discusses other policy language, the insurer asserted an occupying exclusion that the Court addressed. The skip loader was not listed as a covered or insured auto, and the insurer denied UIM benefits on that basis. The Wisconsin Court of Appeals initially determined the occupying exclusion was unambiguous by itself,

but when read with all of the UIM coverage provisions, an ambiguity arose. The Court found the exclusionary clause did not clearly inform the insured there would be no coverage if she was not occupying a covered auto. The occupying clause language in *Ruenger* was similar to the Mid-Century clause language, except in *Ruenger* the clause read there was no coverage if the insured was occupying a non covered auto versus the Mid-Century exclusion where there is no coverage for an owned vehicle .

If the insurance policy has ambiguous terms, the Court has to interpret the policy against the drafter. *Powell*, 127 Nev. at 156, 252, P.3d at 672.

**C. THE DISTRICT COURT IMPROPERLY CONSIDERED PAROLE EVIDENCE**

Mid-Century, in its opposition to Mr. Lewis' cross motion for partial summary judgment, referred to a policy of insurance issued by Foremost Insurance Company that provided certain coverages to Mr. Lewis. (8 App 98) The Foremost policy is parole evidence that cannot be used to interpret the terms of Mid-Century's policy. Mid-Century



argued it was appropriate to consider the Foremost policy because of Mr. Lewis' expectations, but as set forth in Lewis' reply in support of the cross motion for summary judgment, Foremost does not offer UM/UIM for motorcycles. (10App 113, 120-136)

Moreover, the longstanding rule of interpreting insurance contracts is that if an ambiguity in the contract exists, the ambiguity is construed against the insurer. *Benchmark Ins. Co. v. Sparks*, 127 Nev. 407, 254 P.3d 667 (2011). The reference to the Foremost policy is inappropriate, factually incorrect and undercuts the rule of construing ambiguities against the insurer. The district court should not have considered the Foremost policy.

### **CONCLUSION**

The district court erred in entering summary judgment for Mid-Century, and in denying Mr. Lewis' cross motion for partial summary judgment. Mid-Century was not entitled to judgment as a matter of law. Its occupying exclusion does not apply to the facts of this case, or in the alternative, the exclusion, when read in conjunction with the definition of motor vehicle set forth in the UM/UIM portion of the

policy, creates an ambiguity that should have been construed against the enforcement of the Mid-Century exclusion. Mr. Lewis requests this Court set aside the district court's summary judgment for Mid-Century, and direct the district court to enter partial summary judgment in favor of Mr. Lewis as sought in Mr. Lewis' cross motion for partial summary judgment.

Dated this 21<sup>st</sup> day of October, 2021.

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## **CERTIFICATE OF COMPLIANCE**

1. I certify that this brief complies with the formatting, type-face, and type-style requirements of NRAP 31(a)(4)-(6) because it was prepared in Microsoft Word 2007 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.
2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NARP 32(a)(7)(C), it contains 4,532 words.
3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 21<sup>st</sup> day of October, 2021.

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## **CERTIFICATE OF SERVICE**

I certify that on October 21<sup>st</sup>, 2021, I submitted the foregoing  
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