

No. 125441

Appeal to The Illinois Supreme Court

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Plaintiff-Appellant,

v.

KENT ELMORE and ARDITH SHELDON ELMORE,
Defendants-Appellees.

Appeal from Appellate Court, Fifth District
No. 5-18-0038

Appeal from Effingham County, Illinois
Case No. 16 MR 137
Honorable Judge Allen Lolie

**BRIEF OF APPELLANT STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY**

HEYL, ROYSTER, VOELKER & ALLEN
Attorneys for the Plaintiff-Appellant, STATE
FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY

Michael J. Bedesky
Martin K. Morrissey
105 West Vandalia Street, Suite 100
Edwardsville, Illinois 62025-0467
Telephone 618-656-4646
mbedesky@heyloyster.com
mmorrissey@heyloyster.com

ORAL ARGUMENT REQUESTED

E-FILED
3/4/2020 2:15 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

<i>Pekin Ins. Co. v. Wilson</i> , 237 Ill. 2d 446 (2010)	3
I. THE MECHANICAL DEVICE EXCLUSION IS UNAMBIGUOUS AND PRECLUDES COVERAGE.....	9
A. The Appellate Court Ignored the Applicable Dictionary Definition.	9
<i>Nicor, Inc. v. Capital Associated Elec. & Gas Ins. Servs., Ltd.</i> , 223 Ill. 2d 407 (2006).....	9
<i>Founders Ins. Co. v. Munoz</i> , 237 Ill. 2d 424 (2010)	9
<i>Gillen v. State Farm Mut. Auto. Ins. Co.</i> , 215 Ill. 2d 381 (2005).....	10
<i>de los Reyes v. Travelers Ins. Cos.</i> , 135 Ill. 2d 353 (1990)	11
B. The Appellate Court Erred By Adding A “Self-Powered” Requirement To The Policy Terms.....	11
<i>Cont’l Ins. Co. v. Am. Motorist Ins. Co.</i> , 542 S.E. 2d 607 (Ga. Ct App 2000).....	11
<i>Elk Run Coal Co. v. Canopus US Ins., Inc.</i> , 775 S.E.2d 65 (W Va. 2015)	11
<i>Dauthier v. Pointe Coupee Wood Treating, Inc.</i> , 560 So. 2d 556 (La. Ct. App. 1990)	11
<i>Chatham Corp. v. Dann Ins.</i> , 351 Ill. App. 3d 353, 359 (1st Dist. 2004)	12
<i>Walsh v. State Farm Mut. Auto. Ins. Co.</i> , 91 Ill. App. 2d 156	12
C. The Appellate Court’s Refusal To Enforce The Exclusion Transformed The Motor Vehicle Policy Into A Farm Liability Policy.	13
<i>Rockford Mut. Ins. Co. v. Schuppner</i> , 182 Ill. App. 3d 898 (1st Dist. 1990).....	14
<i>Pekin Ins. Co. v. Wilson</i> , 237 Ill. 2d 446, 455 (2010).....	15

American States Inc. Co. v. Koloms, 177 Ill. 2d 473 (1997)15

**II. THE APPELLATE COURT’S REFUSAL TO ENFORCE
THE MECHANICAL DEVICE EXCLUSION UNFAIRLY
RESTRICTS FREEDOM OF CONTRACT.....15**

Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.,
215 Ill. 2d 121 (2005).....16

NATURE OF THE CASE

INTRODUCTION

This is a declaratory judgment action brought to determine whether the liability coverage under an automobile policy applied to a farm accident. On cross motions for summary judgment, the Trial Court found in State Farm's favor. The Fifth District Appellate Court reversed and entered judgment against State Farm and in favor of Defendant Sheldon Elmore. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

- I. Whether the appellate court erred in finding that the “mechanical device” exclusion in the auto policy was ambiguous and unenforceable.
- II. Whether the appellate court rewrote the policy by improperly rejecting the plain, ordinary meaning of the term “mechanical device.”

STANDARD OF REVIEW

The construction of the provisions of an insurance policy is a question of law for which an appellate court's review is *de novo*. *Pekin Ins. Co. v. Wilson*, 237 Ill. 2d 446 (2010).

STATEMENT OF FACTS

A. THE UNDERLYING COMPLAINT

In a lawsuit filed in Effingham County styled *Kent Elmore, Plaintiff vs. Ardith Sheldon Elmore, Defendant*, Kent Elmore alleged that he was assisting Sheldon in Sheldon's grain farming operation (C. 215, 224, A-78). Sheldon owned a grain auger which was utilized in the work (C. 215, 225, A-79). Allegedly Sheldon had removed a protective barrier on the auger, thereby exposing moving parts, including a screw and shaft (C. 215, 225, A-79). Plaintiff further alleged that Sheldon was negligent in supplying an auger which was unreasonably dangerous because the shield had been removed, in starting the auger without warning plaintiff of his intention to do so, failing to warn Kent that he (Sheldon) had removed the shield, directing Kent to operate the auger even though this would place Kent in a position of unreasonable risk, failing to equip the auger with an appropriate shield or shutoff device and failing to warn Kent of the unprotected moving parts when Sheldon knew or should have known that Kent would not realize the protective guard had been removed or would be distracted by other activities (C. 225-226, A-79-80).

B. THE ACCIDENT AND SETTLEMENT

After a field of corn had been cut by the combine, a grain cart and two grain trucks remained in the field (C. 216, A-70). The corn in these vehicles needed to be transferred to a transport truck (C. 216, A-70). An auger was utilized to move the grain into the transport truck (C. 216, A-70). A tractor powered the auger by means

of a PTO shaft. As the auger turned, it would pull the grain up and dump it into the semi-truck trailer. The auger featured a “hopper” which would receive the grain from the grain trucks. The auger’s hopper was located directly underneath the dumping shoot for the grain. The grain truck’s gate would be raised to allow the grain to pour into the auger (C. 216, A-70).

Kent Elmore backed a grain truck up to the auger with the intention of unloading it (C. 216, A-70). Sheldon owned this truck which was insured by State Farm (C. 216, A-70, C. 235, A-14). Kent intended to open the truck’s rear gate to allow grain to flow into the auger (C. 216, A-70, C. 235, A-14). In order to open the gate Kent wanted extra leverage, so he stepped onto the auger. *Id.* Because the auger did not have a guard, Kent’s foot was exposed to the turning shaft. The auger was moving and turning when Kent Elmore stepped into it. It was moving grain at the time of the accident (C. 216, A-70). Kent was reaching towards the gate at the rear of the truck, and corn was pouring into the auger when the injury occurred. Kent’s foot went into the unguarded auger, resulting in injury (C. 216-217, A-70-71).

Kent ultimately settled his lawsuit against Sheldon. In exchange for releasing all claims against Sheldon, Kent received \$1.9 million dollars from Bishop Mutual Insurance Company, Grinnell Mutual and State Farm Fire and Casualty Company (C. 217, A-71). Kent reserved his rights to pursue additional potential coverage under the State Farm Mutual Automobile Insurance policy issued to Sheldon for the 2002 Ford International truck (C. 217, A-71).

C. THE STATE FARM AUTO POLICY

At the time of the incident described in the *Elmore* complaint State Farm had issued an auto policy to Ardith Sheldon Elmore, number 613 9680-D14-13A (C. 235, A-14, 89). The insured vehicle was a 2002 International 4900 truck (C. 235, A-14, 88). Liability coverage was provided in the amount of \$250,000 for injuries per person/\$500,000 for injuries total per accident (C. 235, A-14, 88). The liability section of the policy stated:

LIABILITY COVERAGE

* * *

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
 - a. the ownership, maintenance, or use of:
 - (1) *Your car*; . . . (C-240, A-19, 94)

The policy's definitions section provided in pertinent part as follows:

DEFINITIONS

You or *Your* means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "you" or "your" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured . . . (C. 240, A-19, 94) . . .

* * *

INSURING AGREEMENT

1. *We* will pay:

- a. damages an **insured** becomes legally liable to pay because of
 - (1) *bodily injury* to others; and
 - (2) damage to property caused by an accident that involves a vehicle for which that **insured** is provided Liability Coverage by this policy . . . (C. 241, A-20, 95).

* * *

The State Farm policy issued to Sheldon Elmore contained a “commercial vehicle” endorsement (C. 276, A-55, 130). That endorsement contained, among other things, the following exclusion:

(b) **Exclusions**

The following are added: . . .

- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN (a). ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE (C. 277, A-56, 131)

D. PRIOR PROCEEDINGS

The Trial Court found that the “mechanical device” exclusion was enforceable and entered summary judgment in favor of State Farm and against Sheldon Elmore (C. 407. A-216). Defendant appealed the decision (A-218). Over the dissent of Justice David Overstreet, (A-237) the Appellate Court, Fifth District, reversed the Trial Court, ruled the mechanical device exclusion was overly broad, vague and ambiguous, and thus entered summary judgment in favor of Elmore and against State Farm (A-224).

ARGUMENT

I. THE MECHANICAL DEVICE EXCLUSION IS UNAMBIGUOUS AND PRECLUDES COVERAGE.

A. The Appellate Court Ignored the Applicable Dictionary Definition.

The State Farm policy does not define the term “mechanical device.” That a term is not defined by the policy does not render it ambiguous. Further, a term is not considered ambiguous merely because the parties can suggest creative possibilities for its meaning. *Nicor, Inc. v. Capital Associated Elec. & Gas Ins. Servs., Ltd.*, 223 Ill. 2d 407, 417 (2006). When a term in an insurance policy is not defined, courts afford that term its plain, ordinary and popular meaning, *i.e.* courts look to its dictionary definition. *Founders Ins. Co. v. Munoz*, 237 Ill. 2d 424, 436 (2010).

Although the Appellate Court looked to the Merriam Webster Dictionary to define the term “hand truck,” the Court ignored the dictionary definition of “mechanical device.” The Appellate Court’s opinion contains no analysis of the dictionary definition of this term. The Merriam Webster Dictionary defines “mechanical” as “of or relating to machinery or tools” as well as “produced or operated by machine or tool.” See <https://www.merriam-webster.com/dictionary/mechanical>. The definition of “device” includes “a piece of equipment or mechanism designed to serve a special purpose or perform a special function.” See <https://www.merriam-webster.com/device>.

There is no dispute about the purpose of the grain auger. The auger was being used to move grain to a higher elevation so it could be loaded into a

transport truck. A tractor powered the auger by means of a PTO shaft. The auger was turning and pulling grain when the accident occurred. As the auger turned, it would pull the grain up and dump it into the semi-truck (C. 216, A-70).

The Trial Court correctly found the auger was a “device” because it was a piece of equipment designed to serve a special purpose or to perform a special function-moving grain from one elevation to another. Further, the auger was indeed “mechanical.” The grain auger relates to machinery and is “operated by a machine or tool.” The “machine” that operated the auger was the tractor (C. 216, A-70). As Justice Overstreet found in his dissent, it was undisputed that the auger was not attached to the insured vehicle, and Kent Elmore conceded that there was little doubt that the auger was a device (A-237 at Par. 33).

Undefined terms in an insurance policy will be given their plain, ordinary and popular meaning *i.e.*, they will be construed with reference to the average, ordinary, reasonable person. *Gillen v. State Farm Mut. Auto. Ins. Co.*, 215 Ill. 2d 381, 393 (2005). Despite this Court’s admonitions, the Appellate Court refused to consider whether the “average, ordinary and reasonable” person would understand that a grain auger qualifies as a “mechanical device.” Although the Appellate Court may not concede the point, perhaps every Illinois farmer who has used an auger would agree that a grain auger is indeed a “piece of equipment” designed to serve a “special purpose” and is “operated by a machine or tool.” As this Court has mandated, the construction a court gives to an insurance policy

should be a natural and reasonable one. *de los Reyes v. Travelers Ins. Cos.*, 135 Ill. 2d 353, 358 (1990).

B. The Appellate Court Erred By Adding A “Self-Powered” Requirement To The Policy Terms.

The Appellate Court went to great lengths to distinguish multiple foreign cases which have found that the mechanical device exclusion is unambiguous and enforceable: *Cont’l Ins. Co. v. Am. Motorist Ins. Co.*, 542 S.E. 2d 607 (Ga. Ct App 2000) (pallet jack); *Elk Run Coal Co. v. Canopi US Ins., Inc.*, 775 S.E.2d 65 (W Va. 2015) (front-end loader); *Dauthier v. Pointe Coupee Wood Treating, Inc.*, 560 So. 2d 556, 558 (La. Ct. App. 1990) (forklift).

In *Continental*, the court found that a pallet jack was not a “hand truck.” Since the pallet jack was designed to carry much larger loads than a dolly or wheelbarrow, and utilized a hydraulic cylinder so that the loads could be lifted from the ground, the pallet jack was a “mechanical device” other than a hand truck. The *Continental* court further found that a hand truck is a small dolly or wheelbarrow used to manually lift and move small loads. *Cont’l Ins. Co.*, 542 S.E. 2d at 611.

In *Dauthier*, the Louisiana court relied upon the Webster’s New World Dictionary definition to determine the meaning of “mechanical device.” The court found that a “mechanical device” was generally understood to be an invention or contrivance having to do with machinery or tools. *Dauthier*, 560 So. 2d at 558. The Court enforced the exclusion since the injuries occurred as a result of movement

of property (pilings) by a mechanical device (forklift) which was not attached to the covered auto (truck). The court found that the mechanical device exclusion clearly and unambiguously excluded coverage for bodily injury resulting from the activity. *Id.*

The Appellate Court distinguished these cases by claiming they featured “self-powered or motorized machines used in commercial settings.” (A-234 at Par. 24). According to the Appellate Court, because the auger at issue was not “self-powered or motorized,” all of the cases cited to the court were factually distinguishable (A-234 at Par. 24-25).

But the State Farm policy contains no requirement that the “mechanical device” be self-powered or feature its own motor. The exclusion merely states that there is no coverage for damages resulting from the “movement of property by means of a mechanical device other than a hand truck, that is not attached to the vehicle described above” (C. 277, A-56, 131). The policy does not require that the alleged “mechanical device” have its own power source. Here, the Appellate Court committed a fundamental error. There is a general and well-established rule that a court will not add terms to the contract of insurance which the parties have not included in the language of the policy. *Chatham Corp. v. Dann Ins.*, 351 Ill. App. 3d 353, 359 (1st Dist. 2004) (quoting, *Walsh v. State Farm Mut. Auto. Ins. Co.*, 91 Ill. App. 2d 156, 164). And contrary to the appellate court’s reasoning, the foreign cases cited are directly on point. The policy does not require that the mechanical

device at issue be self-propelled or contain its own power source. Indeed, the dictionary definition cited above contains no such requirement.

C. The Appellate Court's Refusal To Enforce The Exclusion Transformed The Motor Vehicle Policy Into A Farm Liability Policy.

The accident here was caused by a farm implement. Kent Elmore was injured when he placed his foot into an unguarded grain auger. The allegations of negligence contained in his complaint focus exclusively on the unguarded nature of this device (C. 224-225, A-9-10). Sheldon Elmore's negligence by removing the protective screen on the auger was not an act which would have been covered by an auto policy. Sheldon's negligent modification of his auger was not the type of risk State Farm contemplated when it issued the coverage for Sheldon's truck. The motor vehicle policy here was intended to only apply to the truck. The underwritten risk was only the insured truck, not Sheldon Elmore's farm implements.

The Appellate majority's opinion claims that the insured truck was intended to be used for farming purposes (A-235-236 at Par. 26.). But the State Farm auto policy does not provide broad liability coverage for all aspects of Sheldon Elmore's farming operation. To the contrary, the only liability coverage the policy offers is limited to accidents involving a vehicle for which the insured is provided liability coverage by the policy (C. 241, A-20, 95). The policy defines the **insured** as "you and **resident relatives** for the ownership, maintenance or use of **your car**" (C. 240, A-18, 94). The policy defines "your car" as the vehicle shown

under your car on the declarations page (C. 240, A-19-94). The only insured vehicle on the declarations page is the 2002 International truck (C. 148, A-14, 89). The policy also contains a commercial vehicle endorsement which adds exclusions for damages arising out of the operation, maintenance or use of any equipment that is towed by, mounted on, or carried on any vehicle (C. 276, A-55, 130) as well as the mechanical device exclusion (C. 277, A-56, 131).

The opinion claims that State Farm's interpretation would result in "no coverage" for the unloading of grain from the 2002 grain truck except for injuries arising while unloading the grain with a hand truck. According to the Appellate Court majority, this would lead to "absurd results" (A-235-36 at Par. 26). This statement represents a fundamental misunderstanding of what coverages should apply to this accident. Contrary to the Appellate Court's claim, the exclusion at issue only precludes coverage under *this policy*. The fact that coverage would not be provided under the motor vehicle policy does *not* mean that liability coverage would be unavailable under some *other* policy or policies issued to Sheldon Elmore. Indeed, Kent Elmore received \$1.9 million dollars from Bishop Mutual Insurance Company, Grinnell Mutual and State Farm Fire and Casualty Company (C. 217, A-71). This is because the accident here featured farming equipment which triggered coverage under a farm liability policy. See *Rockford Mut. Ins. Co. v. Schuppner*, 182 Ill. App. 3d 898 (1st Dist. 1990).

"A court's primary objective in construing the language of the [insurance] policy is to ascertain and give effect to the intentions of the parties as expressed in

their agreement.” *Pekin Ins. Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010) (quoting *American States Inc. Co. v. Koloms*, 177 Ill. 2d 473 (1997)). While the dissenting opinion of Justice Overstreet recognized this vital principle, the majority opinion ignored it. The State Farm auto policy which covered the 2002 International truck does not provide broad liability coverage for all aspects of Sheldon Elmore’s farming venture. Thus, the Appellate Court misconstrued the policy and wrongfully altered the scope of liability coverage. The Appellate Court’s concerns about the “average policyholder” attempting to determine which devices would trigger the exclusion are not relevant because the motor vehicle policy was never intended to provide such coverage. Obviously, a farm liability policy, not an auto policy, is designed to provide coverage for injuries resulting from the negligent maintenance of farm implements.

II. THE APPELLATE COURT’S REFUSAL TO ENFORCE THE MECHANICAL DEVICE EXCLUSION UNFAIRLY RESTRICTS FREEDOM OF CONTRACT.

As Justice Overstreet found in his dissent, the Appellate Court’s refusal to apply the unambiguous mechanical device exclusion fundamentally changes the nature of the coverage agreed to between State Farm and its insured, Sheldon Elmore (A-237). Again, Sheldon Elmore purchased an automobile policy from State Farm, not a comprehensive general liability or farm liability policy. In return for the premiums paid by Mr. Elmore, State Farm issued him coverage on his truck. Mr. Elmore did not pay premiums to State Farm to cover farm equipment or farm implements. This Court has held that Illinois law does not expressly forbid

parties to an insurance contract from excluding certain risks from liability coverage. *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 136 (2005). State Farm's auto policy does not violate the Insurance Code or the Motor Vehicle Code. The mechanical device exclusion applies equally to permissive drivers as well as the named insured. The exclusion does not discriminate between the two. As a result, it should be enforceable. *Progressive Universal Ins. Co.*, 215 Ill. 2d at 134. As Justice Overstreet correctly found, the mechanical device exclusion here does not violate Illinois public policy and the appellate court's refusal to apply the exclusion unfairly alters the agreed upon the insurance contract between State Farm and Sheldon Elmore.

CONCLUSION

The Fifth District Appellate Court erred by concluding that the mechanical device exclusion was unenforceable and ambiguous. Appellant State Farm therefore requests that this Court reverse the decision of the Fifth District, Appellate Court, affirm the decision of the trial court and enter judgement in favor of State Farm and against Appellee, Kent Elmore.

Respectfully submitted,

BY: /s/ Michael J. Bedesky
HEYL, ROYSTER, VOELKER & ALLEN
Attorneys for STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

MICHAEL J. BEDESKY
MARTIN K. MORRISSEY
P.O. Box 467
105 West Vandalia Street, Suite 100
Edwardsville, Illinois 62025-0467
Telephone 618-656-4646

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

BY: /s/ Michael J. Bedesky

PROOF OF SERVICE

I certify that on March 4, 2020, I electronically filed and transmitted the foregoing Brief of Appellant and Appendix with the Clerk of the Court for the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other individuals in this case, named below have been served via the Odyssey eFileIL system and via email/sendthisfile.

Christopher A. Koester
Taylor Law Offices, PC
PO Box 668
Effingham, IL 62401
Koester@taylorlaw.net
Wernsing@taylorlaw.net
wade@taylorlaw.net

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109], I certify that the statements set forth in this Certificate of Filing and Proof of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

_____/s/ Debra K. Nuske

APPENDIX

TABLE OF CONTENTS OF APPENDIX

Amended Complaint for Declaratory Judgment filed 1/6/17 (C. 136)	A-2
Plaintiff's Motion for Summary Judgment filed 10/20/17 (C. 212)	A-66
Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment filed 10/20/17 (C. 215)	A-69
Defendant's Motion for Summary Judgment filed 12/4/17 (C. 289)	A-141
Defendants Memorandum of Law in Support of Motion for Summary Judgment filed 12/5/17 (C. 346)	A-198
Effingham County Order filed 1/2/18 (C. 407)	A-216
Notice of Appeal filed 2/1/18 (C. 409)	A-218
Appellate Court Fifth District Opinion filed 9/30/2020	A-224
Order Allowing Petition for Leave to Appeal filed 1/29/2020	A-241
Index to Record on Appeal	A-242

grain auger which lacked a shield or protector barrier. Allegedly as a result of Sheldon's negligence Kent's clothing and right leg became entangled in the auger resulting in an amputation. (Exhibit "A")

5. Prior to the occurrence described in the Elmore complaint Plaintiff State Farm had issued an auto policy to Ardith Shelton Elmore, number 613 9680-D14-13A which was in effect at the time of the occurrence described in the Elmore complaint. The insured vehicle was a 2002 Ford International 4900 truck. The State Farm policy provided liability limits in the amount of \$250,000 per person, \$500,000 per accident. (Exhibit "B")

6. The Liability coverage section of the State Farm policy provides in pertinent part as follows:

LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under the "SYMBOLS" of the Declarations Page.

Additional Definition

Insured means:

1. **You and resident relatives** for:
 - a. The ownership, maintenance, or use of:
 - (1) **Your car;**
 - (2) **A newly acquired car; or**
 - (3) **A trailer; and**
 - b. The maintenance or use of:
 - (1) **A non-owned car; or**
 - (2) **A temporary substitute car; (p. 5)**

* * *

Insuring Agreement

1. **We will pay:**
 - a. Damages an **insured** becomes legally liable to pay because of:
 - (1) **Bodily injury** to others; and
 - (2) **Damage to property.**

Caused by an accident that involves a vehicle for which that **insured** is provided liability coverage by this policy . . . (p. 6)

* * *

The State Farm policy's definitions section states, in pertinent part as follows:

DEFINITIONS

* * *

Trailer means:

2. A farm implement or farm wagon while being pulled on public roads by a **car**.

* * *

Your car means a vehicle shown under "YOUR CAR" on the Declarations Page. **Your car** does not include a vehicle that you no longer own or lease . . . (p. 5)

7. The auger described in the Elmore complaint is neither a "car" nor a "trailer" as these terms are defined by the State Farm policy.

8. The "Commercial Vehicle" endorsement contains the following exclusion:

* * *

b. Exclusions

The following are added:

* * *

- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY; . . .
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE. . . (Endorsement 6018GG.1 (p. 2))

9. The grain auger which injured Kent Elmore is a “mechanical device,” and is therefore excluded under the State Farm policy issued to Sheldon Elmore.

10. An actual controversy exists among Plaintiff and Defendants, and this Court is vested with the power to declare the rights and liabilities of the parties under the terms and provisions of the policy of insurance. This Court can also adjudicate the final rights of the parties and give such other and further relief as may be necessary to enforce the same.

WHEREFORE, State Farm Mutual Automobile Insurance Company prays:

(a) That this Court determine and adjudicate the rights and liabilities of the parties with respect to the policy of insurance described above;

(b) That this Court enter a declaratory judgment in accordance with 735 ILCS 5/2-701, construing the policy of insurance described above and declaring the following:

- (1) That State Farm policy number 613 9680-D14-13A does not provide coverage for the incident described in the Elmore lawsuit filed in the Circuit Court, Fourth Judicial Circuit, Effingham County, Illinois;

- (2) That State Farm owes no duty to defend, and no duty to indemnify Ardith Shelton Elmore under policy number 613 9680-D14-13A for the incident described in the Elmore lawsuit filed in Fourth Judicial Circuit, Effingham County, Illinois;
- (c) For such other and further relief as may in justice be required.

REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.

By: 

Martin K. Morrissey, #06191536
Michael J. Bedesky, #06206550
115 N. Buchanan
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257
(618) 692-4416 (Fax)
mmorrissey@reedarmstrong.com
mbedesky@reedarmstrong.com

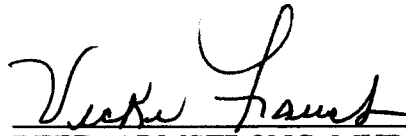
PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document has been served upon the parties by enclosing a copy of same in an envelope addressed to:

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
P.O. Box 668
Effingham, IL 62401
(217) 342-3925
(217) 342-2341 (Fax)
Koester@taylorlaw.net
Attorneys for Kent Elmore

William Tapella
TAPELLA & EBERSPACHER
6009 Park Dr.,
Charleston, IL 61920
(217) 639-7800
(217) 639-7810 (Fax)
tapella@tapellalaw.com
bwilloughby@tapellalaw.com

and by placing in the United States mail, postage fully prepaid, at Edwardsville, IL on this 4
day of January, 2017.



REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257/(618) 692-4416 (Fax)

IN THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

FILED

MAR 31 2016

CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

KENT ELMORE,

Plaintiff,

v.

ARDITH SHELDON ELMORE,

Defendant.

2015-L-44

DEMAND FOR JURY OF TWELVE
(Pursuant to 735 ILCS 5/2-1105(b))

FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, Kent Elmore, by Christopher A. Koesler of Taylor Law Offices, P.C., and as and for his Complaint against the Defendant, Ardith Sheldon Elmore, states:

1. Plaintiff is a resident of Effingham County, Illinois.
2. Defendant is a resident of Clay County, Illinois.
3. Plaintiff is the adult son of Defendant.
4. In May of 2013, Plaintiff was granted a temporary leave of absence from his employer, Oceaneering International in the State of Louisiana, so that he could return to Illinois to assist Defendant in connection with Defendant's grain farming operation.
5. On October 16, 2013, Defendant occupied, possessed and/or leased certain farm property located one mile south of Eberle in Effingham County, Illinois. Defendant conducted his grain farming operation on said property.
6. At the aforementioned time and place, Plaintiff performed certain tasks to assist Defendant in connection with Defendant's grain farming operation, including the transfer of grain from the farm field to the grain elevator.



A

C142

A-008

7. On and prior October 16, 2013, Defendant owned and possessed a grain auger which he utilized in connection with his farming operation in Ellingham County, Illinois.

8. Prior to October 16, 2013, Defendant removed the shield and protective barrier on the auger thereby exposing users of the auger to the moving parts of the auger, including the screw and the shaft.

9. On October 16, 2013, Defendant furnished the auger described in the preceding paragraph to Plaintiff for Plaintiff's use in connection with Defendant's grain farming operation being conducted on that date in the farm field approximately one mile south of Eberle, Illinois.

10. Prior to October 16, 2013, Defendant had not furnished this particular auger to Plaintiff for Plaintiff's use in the grain farming operation.

11. At the aforementioned time and place, Defendant owed a duty to Plaintiff to provide Plaintiff with a reasonably safe and suitable place to work and with reasonably safe and suitable machinery with which to work.

12. On October 16, 2013, Defendant committed one or more or a combination of the following negligent acts and/or omissions:

- a. supplied a grain auger which was unreasonably dangerous to use because Defendant removed the shield protecting users from the moving parts of the auger;
- b. started the auger without warning Plaintiff of his intent to do so;
- c. failed to advise and warn Plaintiff that he had removed the shield and protective barrier so as to expose Plaintiff and his clothing to the moving parts of the grain auger;
- d. failed to provide Plaintiff with proper equipment that was reasonably safe to perform the tasks that Defendant requested the Plaintiff to perform;
- e. failed to provide Plaintiff with a reasonably safe working environment on the date in question;

- f. directed the Plaintiff to use and operate the grain auger even though the Defendant knew, or in the exercise of reasonable care should have known, that Plaintiff would be required to place himself in such a position so as to expose his limbs and clothing near the unprotected and unshielded moving parts of the auger;
- g. supplied Plaintiff with a grain auger or "threshing machine" which was not safely boxed or secured during the operation of the machine in violation of the Farm Machine Safety Act, 740 ILCS 65/1 *et seq.*;
- h. failed to equip the grain auger with an emergency shut-off device or other emergency stopping mechanism;
- i. failed to equip the farm auger with an appropriate shield or safety barrier so as not to expose Plaintiff's limbs and clothing to the moving parts of the auger; and
- j. failed to warn Plaintiff of the exposed and unprotected moving parts of the auger when Defendant knew, or in the exercise of reasonable care should have known, that Plaintiff would not realize the protective guard had been removed by Defendant and/or that Plaintiff would be distracted by other activities occurring in the immediate vicinity of the auger.

13. As a direct and proximate result of one or more or a combination of the aforementioned negligent acts and/or omissions of the Defendant, Plaintiff's clothing and right leg became entangled in the auger thereby amputating Plaintiff's right leg below the knee.


14. As a direct and proximate result of the aforementioned occurrence, Plaintiff sustained the following injuries and damages as a result of Defendant's breach of his duty owed to Plaintiff, including but not limited to:

- a. amputation of Plaintiff's right leg immediately above the knee (additional portion of the leg was required to be amputated during surgery);
- b. past reasonable and necessary medical expenses associated with the care and treatment of Plaintiff's injury and fitting of prosthesis;
- c. future medical expenses and costs associated with Plaintiff's future treatment and repair, maintenance and replacement of prosthetic devices, including foot, ankle and leg prosthetics;
- d. loss of a normal life;

- e. loss of past and future earnings associated with his inability to pursue his vocation as a Remotely Operated Vehicle Superintendent with Oceaneering International;
- f. loss of income associated with his inability to secure other employment which requires walking, standing or lifting;
- g. past and future pain and suffering, including the phantom pains associated with the loss of his right leg;
- h. disfigurement associated with the amputation of his right leg above the knee;
- i. increased risk of future harm resulting from the amputation of his right leg above the knee;
- j. the emotional distress experienced in the past and reasonably to be experienced in the future associated with the loss of his right leg above the knee; and
- k. the past and future disability associated with the loss of his right leg above the knee.

WHEREFORE, the Plaintiff, Kent Elmore, prays that judgment be entered in his favor and against the Defendant, Ardith Sheldon Elmore, in an amount in excess of \$50,000, and for all costs associated with said litigation.

Respectfully submitted,
Kent Elmore, Plaintiff

By: 
Christopher A. Koester of
Taylor Law Offices, P.C.

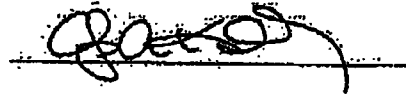
Christopher A. Koester
Taylor Law Offices, P.C.
Attorneys for Plaintiff
122 E. Washington Avenue
Effingham, IL 62401
217-342-3925

PROOF OF MAILING

Christopher A. Koester, counsel for Plaintiff, hereby certifies that he has served a copy of the foregoing First Amended Complaint upon:

Shane M. Carmine
Black, Hedin, Ballard & McDonald, P.C.
P.O. Box 4007
Mt. Vernon, IL 62864

by mailing to him a true copy thereof at the address referred to above in an envelope duly addressed to him, bearing proper first class postage and deposited in the United States mail at Effingham, Illinois, this 31st day of March, 2016.



Christopher A. Koester



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 613 9680-D14-13A including any endorsements, if applicable, for the policy term(s) October 14, 2013, to April 14, 2014, and insuring Sheldon & Betty Elmore of 15606 1st Ave, Mason IL 62443-3701 based on available records.

The following endorsements are included:

6018GG.1 Commercial Vehicle - Effective Date 10-14-12

6913B Amendatory Endorsement - Effective Date 04-15-13

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 16, 2013.

Christopher L Clark

Underwriting Team Manager

Date: 10.24.2016



B



State Farm Mutual Automobile Insurance Company

2701 Ireland Grove Rd
Bloomington IL 61709

NAMED INSURED

AT2

013409

ELMORE, SHELDON & BETTY
15606 1ST AVE
MASON IL 62443-3701

13-2876-66RR A

125441

17987-6-R

MUTL VOL

DECLARATIONS PAGE

POLICY NUMBER 613 9680-D14-13A

POLICY PERIOD APR 14 2010 to OCT 14 2010
12:01 A.M. Standard Time

AGENT

LEON GOBCZYNSKI
312 W WABASH
EFFINGHAM, IL 62401-2668

PHONE:(217)342-3180 or (217)347-4115

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID NUMBER	CLASS
2002	INTL	4900	STAKE	1HTSHADR42H526297	1060000000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	\$48.32
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
	Property Damage Limit	
	Each Accident	
	\$100,000	
C	Medical Payments Coverage	\$4.33
	Limit - Each Person	
	\$10,000	
D	Comprehensive Coverage - \$500 Deductible	\$34.73
G	Collision Coverage - \$500 Deductible	\$66.02
U	Uninsured Motor Vehicle Coverage	\$4.55
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
W	Underinsured Motor Vehicle Coverage	\$11.22
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
Total premium for APR 14 2010 to OCT 14 2010		\$169.17 This is not a bill

IMPORTANT MESSAGES

For information or assistance with any insurance problem, be sure to contact your STATE FARM AGENT first. Your good neighbor agent will be happy to help you. Section 143c of the Illinois Insurance Code requires notification of the following addresses: State Farm Insurance Companies, Illinois Operations Center, 2702 Ireland Grove Road, Bloomington, Illinois 61709-000 Phone 1-800-424-1162 (within Illinois). Office Hours 8 A.M. to 4:30 P.M., Monday through Friday. Or Illinois Department of Insurance Consumer Services Section, Springfield, Illinois 62767. This message is provided by State Farm in compliance with Illinois law.

Replaced policy number 6139680-13.

New Policy Form

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9813B, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
6018GG COMMERCIAL VEHICLE
6055ZZ FARM TRUCK (COVERAGE WHILE TOWING TRAILERS AND FARM IMPLEMENTS).
USE-FARMING.

Agent: LEON GOBCZYNSKI

Telephone: (217)342-3180

Prepared APR 05 2010 2876-002

R

21115/13398
04-2005 (01a025hd)
(01a0251a)

See Reverse Side
(01a0254c)

C 148

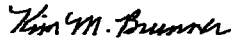
A-014

This policy is issued by State Farm Mutual Automobile Insurance Company.

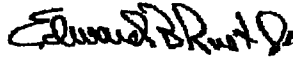
MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

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



Secretary



President



Please read the policy carefully. If there is an accident, contact your State Farm agent or one of our Claim Offices at once. (See "INSURED'S DUTIES" in this policy booklet.)

**State Farm®
Car Policy
Booklet**

**Illinois
Policy Form 9813B**

LOSS OF EARNINGS COVERAGE	34	GENERAL TERMS	37
Additional Definitions	34	When Coverage Applies	37
Insuring Agreement	34	Where Coverage Applies	37
Limit	34	Newly Owned or Newly Leased Car	37
Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	34	Changes to This Policy	38
Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	35	Premium	38
INSURED'S DUTIES	35	Renewal	38
Notice to Us of an Accident or Loss	35	Nonrenewal	38
Notice to Us of a Claim or Lawsuit	35	Cancellation	39
Insured's Duty to Cooperate With Us	35	Assignment	39
Questioning Under Oath	35	Bankruptcy or Insolvency of the Insured	39
Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage	36	Concealment or Fraud	39
Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage	36	Our Right to Recover Our Payments	39
		Legal Action Against Us	40
		Choice of Law	40
		Severability	40

THIS POLICY

1. This policy consists of:
 - a. the most recently issued Declarations Page;
 - b. the policy booklet version shown on that Declarations Page; and
 - c. any endorsements that apply, including those listed on that Declarations Page as well as those issued in connection with any subsequent renewal of this policy.
2. This policy contains all of the agreements between all named insureds who are shown on the Declarations Page and all applicants and:
 - a. *us*; and
 - b. any of *our* agents.
3. *We* agree to provide insurance according to the terms of this policy:
 - a. based on payment of premium for the coverages chosen; and
 - b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET, & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:
 - (1) The named insured shown on the Declarations Page is the sole owner of *your car*.
 - (2) Neither *you* nor any member of *your* household has, within the past three years, had:
 - (a) vehicle insurance canceled or nonrenewed by an insurer; or
 - (b) either:
 - (i) a license to drive; or
 - (ii) a vehicle registration suspended, revoked, or refused.
 - (3) *Your car* is used for pleasure and business.
4. All named insureds shown on the Declarations Page and all applicants agree by acceptance of this policy that:
 - a. the statements in 3.b. above are made by such named insured or applicant and are true; and
 - b. *we* provide this insurance on the basis those statements are true.
5. *Your* purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from the *State Farm Companies*, subject to their applicable eligibility rules.

DEFINITIONS

We define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage. These definitions apply to the singular, plural, possessive, and any other form of these words and phrases. Defined words and phrases are printed in boldface italics.

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

Car means a land motor vehicle with four or more wheels, designed for use primarily on public roads. ***Car*** does not include:

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

Car Business means a business or job where the purpose is to sell, lease, rent, repair, service, modify, transport, store, or park land motor vehicles or any type of trailer.

Fungi means any type or form of fungus or fungi and includes:

1. Mold;
2. Mildew; and
3. Any of the following that are produced or released by fungi:
 - a. Mycotoxins;
 - b. Spores;
 - c. Scents; or
 - d. Byproducts.

Newly Acquired Car means a *car* newly owned by you. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the *car* as an insured vehicle; or
2. the end of the 30th calendar day immediately following the date the *car* is delivered to you.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to you.

Non-Owned Car means a *car* that is in the lawful possession of you or any *resident relative* and that neither:

1. is owned by:
 - a. you;
 - b. any *resident relative*;
 - c. any other *person* who resides primarily in your household; or
 - d. an employer of any *person* described in a., b., or c. above; nor
2. has been operated by, rented by, or in the possession of:
 - a. you; or
 - b. any *resident relative*

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss.

Occupying means in, on, entering, or exiting.

Our means the Company issuing this policy as shown on the Declarations Page.

Owned By means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

Pedestrian means a *person* who is not *occupying*:

1. a motorized vehicle; or
2. a vehicle designed to be pulled by a motorized vehicle.

Person means a human being.

Private Passenger Car means:

1. a *car* of the private passenger type, other than a pickup truck, van, minivan, or sport utility vehicle, designed primarily to carry *persons* and their luggage; or
2. a pickup truck, van, minivan, or sport utility vehicle:
 - a. while not used for:
 - (1) wholesale; or
 - (2) retail pickup or delivery; and
 - b. that has a Gross Vehicle Weight Rating of 10,000 pounds or less.

Resident Relative means a *person*, other than you, who resides primarily with the first *person* shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured, his or her spouse, or a *person* described in 1. above.

State Farm Companies means one or more of the following:

1. State Farm Mutual Automobile Insurance Company;
2. State Farm Fire and Casualty Company; and
3. Subsidiaries or affiliates of either 1. or 2. above.

Temporary Substitute Car means a *car* that is in the lawful possession of the *person* operating it and that:

1. replaces *your car* for a short time while *your car* is out of use due to its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. damage; or
 - e. theft; and
2. neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered a *temporary substitute car* only.

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*; and
 - c. while not used as premises for office, store, or display purposes; or
2. a farm implement or farm wagon while being pulled on public roads by a *car*.

Us means the Company issuing this policy as shown on the Declarations Page.

We means the Company issuing this policy as shown on the Declarations Page.

You or Your means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "*you*" or "*your*" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured.

Your Car means the vehicle shown under "YOUR CAR" on the Declarations Page. *Your Car* does not include a vehicle that *you* no longer own or lease.

If a *car* is shown on the Declarations Page under "YOUR CAR", and *you* ask *us* to replace it with a *car* newly owned by *you*, then the *car* being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date the *car* newly owned by *you* is delivered to *you*;
2. the date this policy is no longer in force; or
3. the date *you* no longer own or lease the *car* being replaced.

LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
 - a. the ownership, maintenance, or use of:
 - (1) *your car*;
 - (2) a *newly acquired car*; or
 - (3) a *trailer*; and
 - b. the maintenance or use of:

(1) a *non-owned car*; or

(2) a *temporary substitute car*;

2. the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured for the maintenance or use of a *car* that is *owned by*, or furnished by an employer to, a *person* who resides primarily in *your* household, but only if such *car* is neither *owned by*, nor furnished by an employer to, the first *person* shown as a named insured on the Declarations Page or that *person's* spouse;

3. any other *person* for his or her use of:
- your car*;
 - a *newly acquired car*;
 - a *temporary substitute car*; or
 - a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent; and

4. any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This provision applies only if the vehicle is neither *owned by*, nor hired by, that other *person* or organization.

Insured does not include the United States of America or any of its agencies.

Insuring Agreement

1. *We* will pay:
- damages an *insured* becomes legally liable to pay because of:
 - bodily injury* to others; and
 - damage to property caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy;
 - attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages; and
 - court costs charged to an *insured* and resulting from that part of a lawsuit:
 - that seeks damages payable under this policy's Liability Coverage; and
 - against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay attorney fees and court costs incurred after *we* deposit in court or pay the amount due under this policy's Liability Coverage;
2. *We* have the right to:
- investigate, negotiate, and settle any claim or lawsuit;
 - defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
 - appeal any award or legal decision
- for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages, fees, and costs described in the Insuring Agreement above, the interest, premiums, costs, and expenses listed below that result from such accident:

- Interest on damages owed by the *insured* that accrues:
 - before a judgment, where owed by law, but only on that part of the judgment *we* pay; and
 - after a judgment. *We* will not pay interest on damages paid or payable by a party other than the *insured* or *us*.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage;

- Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
 - pay for bonds that exceed this policy's applicable Liability Coverage limit;
 - furnish or apply for any bonds; or
 - pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage; and
- The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
 - Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - an arbitration;
 - a mediation; or
 - a trial of a lawsuit; and
 - Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

Limits

The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage - Bodily Injury Limits - Each Person, Each Accident."

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily*

injury to any one *person* injured in any one accident, including all damages sustained by other *persons* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.

The Liability Coverage limit for damage to property is shown on the Declarations Page under "Liability Coverage - Property Damage Limit - Each Accident". The limit shown is the most *we* will pay for all damages resulting from damage to property in any one accident.

These Liability Coverage limits are the most *we* will pay regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Nonduplication

We will not pay any damages or expenses under Liability Coverage:

1. that have already been paid as expenses under Medical Payments Coverage of any policy issued by the *State Farm Companies* to you or any *resident relative*; or
2. that have already been paid under Uninsured Motor Vehicle Coverage or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to you or any *resident relative*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO INTENTIONALLY CAUSES *BODILY INJURY* OR DAMAGE TO PROPERTY;
2. FOR *BODILY INJURY* TO:
 - a. *YOU*;
 - b. *RESIDENT RELATIVES*; AND
 - c. ANY OTHER *PERSON* WHO BOTH RESIDES PRIMARILY WITH AN *INSURED* AND WHO:
 - (1) IS RELATED TO THAT *INSURED* BY BLOOD, MARRIAGE, OR ADOPTION; OR
 - (2) IS A WARD OR FOSTER CHILD OF THAT *INSURED*.

This does not apply when:

- (1) a third party has a right of contribution against a member of the injured *person's* family; or

- (2) any *person* not in the household of the named insured was driving the vehicle of the named insured involved in the accident which is the subject of the claim or lawsuit;

3. OR FOR THAT *INSURED'S* INSURER FOR ANY OBLIGATION UNDER ANY TYPE OF WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY, OR SIMILAR LAW;

4. FOR *BODILY INJURY* TO THAT *INSURED'S* EMPLOYEE WHICH ARISES OUT OF THAT EMPLOYEE'S EMPLOYMENT. This exclusion does not apply to that *insured's* household employee who is neither covered, nor required to be covered, under workers' compensation insurance;

5. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;

6. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;

7. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:

- a. *your car*;
- b. a *newly acquired car*;
- c. a *temporary substitute car*; or
- d. a *trailer owned by you*;

8. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;

9. WHILE MAINTAINING OR USING ANY VEHICLE OTHER THAN *YOUR CAR*, A *NEWLY ACQUIRED CAR*, A *TEMPORARY SUBSTITUTE CAR*, OR A *TRAILER* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;

10. FOR DAMAGE TO PROPERTY WHILE IT IS:

- a. *OWNED BY*;
- b. *RENTED TO*;
- c. *USED BY*;

- d. IN THE CARE OF; OR
 - e. TRANSPORTED BY
YOU, A RESIDENT RELATIVE, OR THE PERSON WHO IS LEGALLY LIABLE FOR THE DAMAGE. This exclusion does not apply to damage to a:
 - a. motor vehicle *owned by* the employer of *you* or any *resident relative* if such damage is caused by an *insured* while operating another motor vehicle;
 - b. residence while rented to or leased to an *insured*; or
 - c. private garage while rented to or leased to an *insured*;
 - 11. FOR LIABILITY ASSUMED UNDER ANY CONTRACT OR AGREEMENT;
 - 12. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
 - 13. WHILE USING A **TRAILER** WITH A MOTOR VEHICLE IF THAT **INSURED** IS NOT PROVIDED LIABILITY COVERAGE BY THIS POLICY FOR THE USE OF THAT MOTOR VEHICLE;
 - 14. FOR THE OWNERSHIP, MAINTENANCE, OR USE OF ANY VEHICLE WHILE IT IS:
 - a. OFF PUBLIC ROADS AND BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving; OR
 - 15. WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.
- If Other Liability Coverage Applies**
- 1. If Liability Coverage provided by this policy and one or more other Car Policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same accident, then:
 - a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by
 - any one of the policies. *We* may choose one or more policies from which to make payment.
 - 2. The Liability Coverage provided by this policy applies as primary coverage for the ownership, maintenance, or use of *your car* or a *trailer* attached to it.
 - a. If
 - (1) a *temporary substitute car* owned or held for sale or lease by a new or used vehicle dealer is loaned to an *insured* while *your car* is being repaired or evaluated for repair by that dealer; and
 - (2) this policy provides bodily injury liability limits of at least \$100,000 for each *person*, \$300,000 for each accident, and property damage liability limits of at least \$50,000 for each accident,
 then this coverage is primary and the insurance carried by the dealer is excess.
 - b. If
 - (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as primary coverage; and
 - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,
 then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as primary coverage.
 - c. If
 - (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as primary coverage; and
 - (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,
 then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as primary coverage.

3. Except as provided in 2. above, the Liability Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as excess coverage; and
- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as excess coverage.

b. If

- (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as excess coverage; and
- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess

that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as excess coverage.

Required Out-of-State Liability Coverage

If

1. an *insured* is in another state of the United States of America, a territory or possession of the United States of America, the District of Columbia, or any province or territory of Canada, and as a nonresident becomes subject to its motor vehicle compulsory insurance law, financial responsibility law, or similar law; and
2. this policy does not provide at least the minimum liability coverage required by such law for such nonresident,

then this policy will be interpreted to provide the minimum liability coverage required by such law.

This provision does not apply to liability coverage required by law for motor carriers of passengers or motor carriers of property.

Financial Responsibility Certification

When this policy is certified under any law as proof of future financial responsibility, and while required during the policy period, this policy will comply with such law to the extent required.

MEDICAL PAYMENTS COVERAGE

This policy provides Medical Payments Coverage if "C" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you* and *resident relatives*:

a. while *occupying*:

- (1) *your car*;
- (2) a *newly acquired car*;
- (3) a *temporary substitute car*;
- (4) a *non-owned car*; or
- (5) a *trailer* while attached to a *car* described in (1), (2), (3), or (4) above; or

b. if struck as a *pedestrian* by a motor vehicle or any type of trailer; and

2. any other *person* while *occupying*:

- a. *your car*;
- b. a *newly acquired car*;
- c. a *temporary substitute car*; or
- d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent.

Medical Expenses mean *reasonable expenses* for *medical services*.

Medical Services mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the *bodily injury*;
2. rendered by a healthcare provider.

- a. who is licensed as a healthcare provider if a license is required by law; and
- b. within the legally authorized scope of that healthcare provider's practice;
3. commonly and customarily recognized throughout the medical profession and within the United States of America as appropriate for the treatment of the *bodily injury*;
4. primarily designed to serve a medical purpose;
5. not experimental; and
6. not for research purposes.

Reasonable Expenses mean the lowest one of the following charges:

1. The usual and customary fees charged by a majority of healthcare providers who provide similar *medical services* in the geographical area in which the charges were incurred;
2. The fee specified in any fee schedule:
 - a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where *medical services* are provided; and
 - b. as prescribed or authorized by the law of the state where *medical services* are provided;
3. The fees agreed to by both the *insured's* healthcare provider and *us*; or
4. The fees agreed upon between the *insured's* healthcare provider and a third party when *we* have a contract with such third party.

Insuring Agreement

We will pay:

1. *medical expenses* incurred because of *bodily injury* that is sustained by an *insured* and caused by a motor vehicle accident if:
 - a. that *insured* is first provided *medical services* within one year immediately following the date of the accident; and
 - b. such *medical expenses* are for *medical services* that are provided within three years immediately following the date of the accident; and
2. funeral expenses incurred for an *insured* who dies within three years immediately following the date of a motor vehicle accident if the death is a direct result of *bodily injury* sustained in such accident.

Determining Medical Expenses

We have the right to:

1. obtain and use:
 - a. utilization reviews;
 - b. peer reviews; and
 - c. medical bill reviews
 to determine if the incurred charges are *medical expenses*;
2. use a medical examination of the *insured* to determine if:
 - a. the *bodily injury* was caused by a motor vehicle accident; and
 - b. the expenses incurred are *medical expenses*; and
3. enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

Arbitration

1. If there is a disagreement as to whether incurred charges are *medical expenses*, then the disagreement will be resolved by arbitration upon written request of the *insured* or *us*.
2. The arbitration will take place in the county in which the *insured* resides unless the parties agree to another location.

The *insured* and *we* will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the *insured* or *we* may petition a court that has jurisdiction to select the third arbitrator.

Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.

3. The arbitrators shall only decide whether incurred charges are *medical expenses*. Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
 - a. *us*;
 - b. the *insured*;
 - c. any assignee of the *insured*; and
 - d. any person or organization with whom the *insured* expressly or impliedly contracts for *medical services*.

5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. *We* do not waive any of *our* rights by submitting to arbitration.

Limit

The Medical Payments Coverage limit is shown on the Declarations Page under "Medical Payments Coverage - Limit - Each Person". This limit is the most *we* will pay for the *medical expenses* and funeral expenses combined, incurred by or on behalf of any one *insured* as a result of any one accident, regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Subject to the limit shown on the Declarations Page, the most *we* will pay for funeral expenses incurred for any one *insured* is \$3,000.

If the injured *person* has been paid damages for the *bodily injury* by or on behalf of the liable party in an amount:

1. less than the injured *person's* total *medical expenses* and funeral expenses, then the most *we* will pay under Medical Payments Coverage is the lesser of:
 - a. the limit of liability of Medical Payments Coverage; or
 - b. the amount by which the total *medical expenses* and funeral expenses exceed the total amount paid by or on behalf of all parties liable for the *bodily injury*; or
2. equal to or greater than the total *medical expenses* and funeral expenses incurred by the injured *person*, then *we* owe nothing under Medical Payments Coverage.

Nonduplication

We will not pay any *medical expenses* or funeral expenses under Medical Payments Coverage that have already been paid:

1. as damages under Liability Coverage, Uninsured Motor Vehicle Coverage, or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. by or on behalf of a party who is legally liable for the *insured's bodily injury*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO IS STRUCK AS A *PEDESTRIAN* BY A MOTOR VEHICLE, *OWNED BY THAT INSURED OR YOU*, IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*;
2. IF ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR ANY SIMILAR LAW APPLIES TO THAT *INSURED'S BODILY INJURY*;
3. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
4. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to:
 - a. the use of a *private passenger car* on a share-the-expense basis; or
 - b. an *insured* while *occupying* a *non-owned car* as a passenger;
5. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer owned by you*;
6. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
7. WHILE MAINTAINING OR USING A *NON-OWNED CAR* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
8. WHO IS EITHER *OCCUPYING* OR STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
9. WHO IS STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT:
 - a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - b. RUNS ON RAILS OR CRAWLER-TREADS;
10. WHOSE *BODILY INJURY* RESULTS FROM WAR OF ANY KIND;

11. WHOSE **BODILY INJURY** RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
12. WHOSE **BODILY INJURY** RESULTS FROM THE DISCHARGE OF A FIREARM;
13. WHOSE **BODILY INJURY** RESULTS FROM EXPOSURE TO **FUNGI**; OR
14. WHO IS **OCCUPYING** A VEHICLE WHILE IT IS:
 - a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Medical Payments Coverage or Similar Vehicle Insurance Applies

1. An *insured* shall not recover for the same *medical expenses* or funeral expenses under both this coverage and other medical payments coverage or similar vehicle insurance.
2. If Medical Payments Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Medical Payments Coverage limits of such policies shall not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
3. The Medical Payments Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car* or a trailer attached to it.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the

State Farm Companies that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and funeral expenses payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

4. Except as provided in 3. above, the Medical Payments Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and

funeral expenses payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*;
4. A *person* authorized by law to receive such payment; or
5. Any *person* or organization that provides the *medical services* or funeral services.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* if "U" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:

- a. not insured or bonded for bodily injury liability at the time of the accident; or

- b. insured or bonded for bodily injury liability at the time of the accident; but

- (1) the limits are less than required by the financial responsibility act of Illinois; or

- (2) the insuring company:

- (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or

- (b) is or becomes insolvent; or

2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:

- a. the *insured*; or

- b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;

2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
5. while located for use as a dwelling or other premises.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?

- b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?

2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:
 - a. \$50,000 for one *person* in any one accident;
 - b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
 - c. the corresponding policy limits.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.
7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".

1. The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,

to or for the *insured*:

- a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or

2. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;

3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW,

PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR

- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES; OR
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION.

If Other Uninsured Motor Vehicle Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
 - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.
 - b. If
 - (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured

Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as

determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at our option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY AND PROPERTY DAMAGE

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* and *property damage* if "U1" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person* *occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Property Damage means damage to *your car* or a *newly acquired car*.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:
 - a. not insured or bonded for bodily injury liability and property damage liability at the time of the accident; or
 - b. insured or bonded for bodily injury liability and property damage liability at the time of the accident; but
 - (1) the limit of liability that applies to:
 - (a) *bodily injury* if the claim is for *bodily injury*; or
 - (b) *property damage* if the claim is for *property damage*

is less than the limits required by the financial responsibility act of Illinois; or

(2) the insuring company:

(a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or

(b) is or becomes insolvent; or

2. with respect to *bodily injury*, a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:
 - a. the *insured*; or
 - b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
5. while located for use as a dwelling or other premises.

Insuring Agreement

We will pay compensatory damages for *bodily injury* and *property damage* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* or *property damage* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Settlement of Loss for Property Damage

Subject to the Limits of Liability, *we* have the right to settle with *you* for the damaged property in one of the following ways:

1. Pay the cost to repair the damaged property, minus any applicable deductible.
 - a. *We* have the right to choose one of the following to determine the cost to repair the damaged property:
 - (1) The cost agreed to by both *you* and *us*;
 - (2) A bid or repair estimate approved by *us*; or
 - (3) A repair estimate that is written based upon or adjusted to:
 - (i) the prevailing competitive price;
 - (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or
 - (iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of

the repair market in the area where the damaged property is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the damaged property to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and re-conditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- b. The cost to repair the damaged property does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
- c. If the repair or replacement of a part results in betterment of that part, then *you* must pay for the amount of the betterment.
- d. If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
2. Pay the agreed upon actual cash value of the damaged property minus any applicable deductible.
 - a. Actual cash value is determined by the market value, age, and condition at the time the *property damage* occurred. Any deductible amount that applies is then subtracted.
 - b. Actual cash value does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
 - c. The damaged property must be given to *us* in exchange for *our* payment, unless *we* agree that *you* may keep the damaged property. If *you* keep the property damaged, then *our* payment will be reduced by the value of the damaged property after the loss, minus any applicable deductible.
 - d. If there is disagreement as to the actual cash value of the damaged property, then the disagreement will be resolved in accordance with the Deciding Fault and Amount provision of this coverage.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?
 - b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?
2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party:
 - a. for the amount of *bodily injury* damages not exceeding the least of:
 - (1) \$50,000 for one *person* in any one accident;
 - (2) \$100,000 for two or more *persons* in any one accident, subject to (1) above; or
 - (3) the corresponding policy limits.
 - b. for the amount of *property damage* not exceeding the lesser of:
 - (1) \$15,000 in any one accident, subject to a \$250 deductible; or
 - (2) the actual cash value of the damaged vehicle.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages under Uninsured Motor Vehicle Coverage for:
 - a. *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law; or
 - b. *property damage*,
 the rules as specified in Illinois Insurance Code 5/143a shall also apply.
7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.
9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. Bodily Injury

- a. The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage - Bodily Injury Limits - Each Person, Each Accident".
The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.
- b. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis.

Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.

- c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.

2. Property Damage

- a. The Uninsured Motor Vehicle Coverage limit for *property damage* is shown on the Declarations Page under "Uninsured Motor Vehicle Coverage - Property Damage Limit - Each Accident".

The most *we* will pay for all *property damage* resulting from any one accident is the limit shown under "Each Accident" reduced by the sum of all payments for *property damage* made by or on behalf of any *person* or organization who is or may be held legally liable for that *property damage*.

- b. The amount payable for *property damage*, for each accident, is subject to a \$250 deductible.
- c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

- 1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid
 to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or

- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to you or any *resident relative*; or

2. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

3. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid,

to or for the *insured* under any physical damage coverage or property insurance policy.

Exclusions

THERE IS NO COVERAGE:

- 1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*;
- 2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;

- 3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
- 4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;

- b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
- 7. FOR **PROPERTY DAMAGE** UNLESS THE **INSURED** CAN:
 - a. IDENTIFY THE OWNER OR DRIVER OF THE **UNINSURED MOTOR VEHICLE** BY NAME AND ADDRESS; AND
 - b. PROVE THE MOTOR VEHICLE TO BE AN **UNINSURED MOTOR VEHICLE**.
- 8. FOR THE FIRST \$250 OF **PROPERTY DAMAGE** RESULTING FROM EACH ACCIDENT; OR
- 9. FOR **PROPERTY DAMAGE**, FOR:
 - a. LOSS OF USE OF THE VEHICLE; OR
 - b. LOSS OF OR DAMAGE TO PERSONAL PROPERTY WHICH WAS IN THE VEHICLE.

If Other Uninsured Motor Vehicle Coverage or If Other Property Damage Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:

(1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and

(2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

b. If

(1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and

(2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If

(1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and

(2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable

limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

4. The Uninsured Motor Vehicle Coverage provided by this policy for *property damage* applies:
 - a. as excess coverage if any other kind of coverage applies to the *property damage*, including coverage provided under the Physical Damage Coverages of this policy; but

- b. only in the amount by which it exceeds that other coverage.

The *State Farm Companies* will pay the proportion of damages payable as excess that the single highest applicable limit provided by any one of the *State Farm Companies* bears to the sum of such amount and the limits of all other physical damage coverage or property damage coverage provided by one or more other sources that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment:

1. to one or more of the following for *bodily injury* damages:
 - a. The *insured*;
 - b. The *insured's* surviving spouse;
 - c. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent person; or
 - d. A *person* authorized by law to receive such payment.
2. to one or more of the following for *property damage*:
 - a. The *insured*;
 - b. The repairer; or
 - c. A creditor shown on the Declarations Page, to the extent of its interest.

UNDERINSURED MOTOR VEHICLE COVERAGE

This policy provides Underinsured Motor Vehicle Coverage for *bodily injury* if "W" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Underinsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is either:
 - a. insured or bonded for bodily injury liability at the time of the accident; or
 - b. self-insured under any motor vehicle financial responsibility law, any motor carrier law, or any similar law; and
2. for which the total limits of insurance, bonds, and self-insurance for bodily injury liability from all sources:
 - a. are less than the Underinsured Motor Vehicle Coverage limits of this policy; or

- b. have been reduced by payments to *persons* other than *you* and *resident relatives* to less than the Underinsured Motor Vehicle Coverage limits of this policy.

Underinsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or furnished or available for the regular use of *you*;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads;
5. while located for use as a dwelling or other premises; or
6. defined as an *uninsured motor vehicle* under Uninsured Motor Vehicle Coverage of this policy.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *underinsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *underinsured motor vehicle* as a motor vehicle.

We will pay only if the limits of liability or portion thereof under all bodily injury insurance bonds, policies, and self-insurance plans applicable to the *underinsured motor vehicle* and its operators have been partially or fully exhausted by payment of judgments or settlements, or have been offered to the *insured* in writing.

Consent to Settlement

The *insured* must notify *us* in writing of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle*, and allow *us* to advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice.

Any agreement between the *insured* and *us* as to the amount due shall be final and shall be binding upon both the *insured* and *us* regardless of the amount of any judgment or any settlement reached between any *insured* and the legally liable *person* or *persons*. No such settlement agreement shall be concluded unless:

1. the *insured* has complied with all other applicable policy terms and conditions; and

2. before the conclusion of the settlement agreement, the *insured*:

- a. has filed suit against the owner or operator of the *underinsured motor vehicle*; and
- b. has not abandoned the suit or settled the suit without preserving *our* rights to recover *our* payments.

The most *we* will pay under the settlement agreement is the amount by which the limits of this coverage exceed the limits of the bodily injury liability insurance of the owner or operator of the *underinsured motor vehicle*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:

- a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *underinsured motor vehicle*?
- b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *underinsured motor vehicle*?

2. If there is no agreement, these questions shall be decided by arbitration.

3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.

4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:

- a. \$50,000 for one *person* in any one accident;
- b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
- c. the corresponding policy limits.

5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.

6. The arbitration shall take place in the county in which the *insured* resides unless the parties

agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.

7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years immediately following:
 - a. the date of tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or
 - b. the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of tentative settlement.

Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. The Underinsured Motor Vehicle Coverage limits are shown on the Declarations Page under "Underinsured Motor Vehicle Coverage - Bodily Injury Limits - Each Person, Each Accident".
 - a. The most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury* is the lesser of:
 - (1) the limit shown under "Each Person" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*; or
 - (2) the total amount of all damages resulting from that *bodily injury* less those amounts actually recovered under the applicable bodily injury insurance

policies, bonds, or other security maintained on the *underinsured motor vehicle*.

- b. Subject to a. above, the most *we* will pay for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident is the limit shown under "Each Accident" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Underinsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Underinsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,
 to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *underinsured motor vehicle*; or
 - b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to you or any *resident relative*; or
2. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY*:
 - a. WHILE *OCCUPYING* A MOTOR VEHICLE OWNED BY YOU OR ANY *RESIDENT RELATIVE* IF IT IS NOT YOUR CAR OR A *NEWLY ACQUIRED CAR*; OR
 - b. THROUGH BEING STRUCK BY A MOTOR VEHICLE OWNED BY ANY *RESIDENT RELATIVE*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* or through being struck by a motor vehicle not owned by one or both of them;
3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
 - c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
7. IF THE UNINSURED MOTOR VEHICLE COVERAGE APPLIES TO THE ACCIDENT; OR

8. UNTIL THE *INSURED* EITHER SETTLES WITH ALL INSURERS OR SELF-INSURERS ISSUING APPLICABLE INSURANCE POLICIES, BONDS, OR OTHER SECURITY MAINTAINED ON THE *UNDERINSURED MOTOR VEHICLE* OR OBTAINS A FINAL JUDGMENT AGAINST THE OWNER OR OPERATOR OF THE *UNDERINSURED MOTOR VEHICLE*.

This does not apply if:

- a. the *insured* has given *us* written notice of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle* and *we* advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice; or
- b. the *insured* or his or her legal representative and *we*:
 - (1) agree that the *insured* has suffered *bodily injury* as a result of the negligent operation, maintenance, or use of an *underinsured motor vehicle*.
 - (2) agree, without arbitration, on the amount of damages that the *insured* is legally entitled to collect; and
 - (3) agree upon settlement in accordance with the Consent to Settlement and Deciding Fault and Amount provisions under this coverage.

If Other Underinsured Motor Vehicle Coverage Applies

1. If Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Underinsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
2. The Underinsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides

Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

3. Except as provided in 2. above, the Underinsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Underinsured Motor Vehicle Coverage

which applies to the accident as excess coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

PHYSICAL DAMAGE COVERAGES

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

This policy provides:

1. Comprehensive Coverage if "D";
 2. Collision Coverage if "G";
 3. Emergency Road Service Coverage if "H";
 4. Car Rental and Travel Expenses Coverage if "R1"
- is shown under "SYMBOLS" on the Declarations Page. If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

Additional Definitions

Covered Vehicle means:

1. *your car*;
2. *a newly acquired car*;
3. *a temporary substitute car*;
4. a camper that is designed to be mounted on a pickup truck and shown on the Declarations Page;
5. a *non-owned car* while it is:
 - a. being driven by an *insured*; or
 - b. in the custody of an *insured* if at the time of the *loss* it is:
 - (1) not being driven; or
 - (2) being driven by a *person* other than an *insured* and being *occupied* by an *insured*;
6. a *non-owned trailer* while it is being used by an *insured*; and
7. a *non-owned camper* while it is being used by an *insured*;

including its parts and its equipment that are common to the use of the vehicle as a vehicle. However, parts and equipment of *trailers* and campers must be securely fixed as a permanent part of the *trailer* or camper.

Daily Rental Charge means the sum of:

1. the daily rental rate;
2. mileage charges; and
3. related taxes.

Insured means *you* and *resident relatives*.

Loss means:

1. direct, sudden, and accidental damage to; or

2. total or partial theft of

a *covered vehicle*. *Loss* does not include any reduction in the value of any *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

Loss Caused By Collision means a *loss* caused by:

1. a *covered vehicle* hitting or being hit by another vehicle or another object; or
2. the overturning of a *covered vehicle*.

Any *loss* caused by missiles, falling objects, wind-storm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal is not a *Loss Caused By Collision*.

Non-Owned Camper means a camper designed to be mounted on a pickup truck that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Non-Owned Trailer means a *trailer* that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Insuring Agreements

1. Comprehensive Coverage

We will pay:

- a. for *loss*, except *loss caused by collision*, to a *covered vehicle*; and
- b. transportation expenses incurred by an *insured* as a result of the total theft of *your car* or a *newly acquired car*. These transportation expenses are payable:

- (1) during the period that:
 - (a) starts on the date *you* report the theft to *us*; and
 - (b) ends on the earliest of:
 - (i) the date the vehicle is returned to *your* possession in a drivable condition;
 - (ii) the date *we* offer to pay for the *loss* if the vehicle has not yet been recovered; or
 - (iii) the date *we* offer to pay for the *loss* if the vehicle is recovered, but is a total loss as determined by *us*; and

- (2) during the period that:
 - (a) starts on the date the vehicle is left at a repair facility if the stolen vehicle is recovered, returned to *your* possession in a drivable condition, and has unrepaid damage that resulted from the total theft; and
 - (b) ends on the date the vehicle is repaired.

These transportation expenses must be reported to *us* before *we* will pay such incurred expenses.

2. Collision Coverage

We will pay for loss caused by collision to a covered vehicle.

3. Emergency Road Service Coverage

We will pay the fair cost incurred by an insured for:

- a. up to one hour of labor to repair a *covered vehicle* at the place of its breakdown;
- b. towing to the nearest repair facility where necessary repairs can be made if a *covered vehicle* is not drivable;
- c. towing a *covered vehicle* out of a location where it is stuck if the vehicle is on or immediately next to a public road;
- d. delivery of gas, oil, battery, or tire necessary to return a *covered vehicle* to driving condition. *We* do not pay the cost of the gas, oil, battery, or tire; and
- e. up to one hour of labor for locksmith services to unlock a *covered vehicle* if its key is lost, stolen, or locked inside the vehicle.

4. Car Rental and Travel Expenses Coverage

a. Car Rental Expense

We will pay the daily rental charge incurred when you rent a car from a car business while your car or a newly acquired car is:

- (1) not drivable; or
- (2) being repaired

as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage.

We will pay this daily rental charge incurred during a period that:

- (1) starts on the date:
 - (a) the vehicle is not drivable as a result of the *loss*; or
 - (b) the vehicle is left at a repair facility if the vehicle is drivable; and
- (2) ends on the earliest of:
 - (a) the date the vehicle has been repaired or replaced;
 - (b) the date *we* offer to pay for the *loss* if the vehicle is repairable but *you* choose to delay repairs; or
 - (c) five days after *we* offer to pay for the *loss* if the vehicle is:
 - (i) a total loss as determined by *us*; or
 - (ii) stolen and not recovered.

The amount of any such *daily rental charge* incurred by *you* must be reported to *us* before *we* will pay such amount.

b. Travel Expenses

We will pay expenses for commercial transportation, lodging, and meals if your car or a newly acquired car is not drivable as a result of a loss which would be payable under Comprehensive Coverage or Collision Coverage. The loss must occur more than 50 miles from your home. We will only pay these expenses if they are incurred by:

- (1) an *insured* during the period that:
 - (a) starts after the *loss* occurs; and
 - (b) ends on the earlier of:
 - (i) the *insured's* arrival at his or her destination or home if the vehicle is left behind for repairs; or

- (ii) the repair of the vehicle if the *insured* waits for repairs before continuing on to his or her destination or returning home; and

- (2) *you*, or any *person you* choose, to travel to retrieve the vehicle and drive it to either the original destination or *your* home if the vehicle was left behind for repairs.

These expenses must be reported to *us* before *we* will pay such incurred expenses.

c. Rental Car – Repayment of Deductible Expense

We will pay the comprehensive deductible or collision deductible an *insured* is required to pay the owner of a car rented from a car business.

Supplementary Payments – Comprehensive Coverage and Collision Coverage

If the *covered vehicle* sustains *loss* for which *we* make a payment under Comprehensive Coverage or Collision Coverage, then *we* will pay reasonable expenses incurred to:

1. tow the *covered vehicle* immediately after the *loss*:
 - a. for a reasonable distance from the location of the *loss* to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable; or
 - b. to any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*. *We* will also pay reasonable expenses incurred to tow the *covered vehicle* for a reasonable distance from this facility to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable;
2. store the *covered vehicle*, if it is not drivable immediately after the *loss*, at:
 - a. any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*; and
 - b. any one repair facility chosen by the owner of the *covered vehicle*, and *we* determine such vehicle is a total loss.

If the owner of the *covered vehicle* consents, then *we* may move the *covered vehicle* at *our* expense to reduce storage costs. If the owner of the *covered vehicle* does not consent, then *we* will pay only the storage costs that would have resulted if *we* had moved the damaged *covered vehicle*; and

3. clean up debris from the *covered vehicle* at the location of the *loss*.

Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage

1. *We* have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

- a. Pay the cost to repair the *covered vehicle* minus any applicable deductible.

- (1) *We* have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

- (a) The cost agreed to by both the owner of the *covered vehicle* and *us*;
- (b) A bid or repair estimate approved by *us*; or

- (c) A repair estimate that is written based upon or adjusted to:

- (i) the prevailing competitive price;
- (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or
- (iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the *covered vehicle* is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the *covered vehicle* to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- (2) The cost to repair the *covered vehicle* does not include any reduction in the value of the *covered vehicle* after it has been repaired, as compared to its value before it was damaged.
- (3) If the repair or replacement of a part results in betterment of that part, then *you* or the owner of the *covered vehicle* must pay for the amount of the betterment.
- (4) If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
- b. Pay the actual cash value of the *covered vehicle* minus any applicable deductible.
 - (1) The owner of the *covered vehicle* and *we* must agree upon the actual cash value of the *covered vehicle*. If there is disagreement as to the actual cash value of the *covered vehicle*, then the disagreement will be resolved by appraisal upon written request of the owner or *us*. Either the owner or *we* may submit written request to the other party within 60 days after *we* offer to pay the actual cash value of the *covered vehicle* minus any applicable deductible. The appraisal will use the following procedures:
 - (a) The owner and *we* will each select a competent appraiser.
 - (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or *we* may petition a court that has jurisdiction to select the third appraiser.
 - (c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.
 - (d) The appraisers shall only determine the actual cash value of the *covered vehicle*. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.
 - (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the *covered vehicle* and *us*.
 - (f) *We* do not waive any of *our* rights by submitting to an appraisal.
 - (2) The damaged *covered vehicle* must be given to *us* in exchange for *our* payment, unless *we* agree that the owner may keep it. If the owner keeps the *covered vehicle*, then *our* payment will be reduced by the value of the *covered vehicle* after the loss; or
 - c. Return the stolen *covered vehicle* to its owner and pay, as described in 1.a. above, for any direct, sudden, and accidental damage that resulted from the theft.
 2. The most *we* will pay for transportation expenses under Comprehensive Coverage is \$25 per day subject to an aggregate limit of \$750 per loss.
 3. The most *we* will pay for loss to a *non-owned trailer* or a *non-owned camper* is \$2,500.

Limits – Car Rental and Travel Expenses Coverage

1. Car Rental Expense

The limit for Car Rental Expense is shown on the Declarations Page under “Limit – Car Rental Expense – Each Day, Each Loss”.

a. The limit shown under “Each Day” is the most *we* will pay for the *daily rental charge*. If

- (1) a dollar amount is shown, then *we* will pay the *daily rental charge* up to that dollar amount;
- (2) a percentage amount is shown, then *we* will pay that percentage of the *daily rental charge*.

b. Subject to the “Each Day” limit, the limit shown under “Each Loss” is the most *we* will pay for Car Rental Expense incurred as a result of any one loss.

2. Travel Expenses

The most *we* will pay for Travel Expenses incurred by all *insureds* as a result of any one loss is \$500.

3. Rental Car – Repayment of Deductible Expense

The most *we* will pay for Rental Car – Repayment of Deductible Expense incurred as a result of any one loss is \$500.

Nonduplication

We will not pay for any loss or expense under the Physical Damage Coverages for which the *insured* or owner of the *covered vehicle* has already received payment from, or on behalf of, a party who is legally liable for the loss or expense.

Exclusions

THERE IS NO COVERAGE FOR:

1. ANY **COVERED VEHICLE** THAT IS:
 - a. INTENTIONALLY DAMAGED; OR
 - b. STOLEN

BY OR AT THE DIRECTION OF AN **INSURED**. This does not apply to the extent of the ownership interest of an **insured** who did not cooperate in or contribute to the **loss** if the **loss** arose out of a pattern of criminal domestic violence and the perpetrator of the **loss** is criminally prosecuted for the act causing the **loss**;
2. ANY **COVERED VEHICLE** WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN **INSURED**;
3. ANY **COVERED VEHICLE** WHILE IT IS USED TO CARRY **PERSONS** FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
4. ANY **COVERED VEHICLE** DUE TO:
 - a. THEFT;
 - b. CONVERSION;
 - c. EMBEZZLEMENT; OR
 - d. SECRETION

BY AN **INSURED**, A CONSIGNEE, AN AGENT OF A CONSIGNEE, OR A **PERSON** WHO OBTAINS POSSESSION OF THE **COVERED VEHICLE** WITH THE PERMISSION OF A CONSIGNEE OR AGENT OF A CONSIGNEE;
5. **LOSS TO YOUR CAR OR A NEWLY ACQUIRED CAR** IF AN **INSURED** VOLUNTARILY RELINQUISHES POSSESSION OF THAT **CAR** TO A **PERSON** OR ORGANIZATION UNDER AN ACTUAL OR PRESUMED SALES AGREEMENT;
6. ANY **COVERED VEHICLE** TO THE EXTENT **OUR** PAYMENT WOULD BENEFIT ANY CARRIER OR OTHER BAILEE FOR HIRE THAT IS LIABLE FOR **LOSS** TO SUCH **COVERED VEHICLE**;
7. **LOSS TO ANY COVERED VEHICLE** DUE TO **FUNGI**. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE **FUNGI** RESULT FROM A **LOSS** THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. **WE** WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF **FUNGI**, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR ANY **COVERED VEHICLE** THAT ARE DUE TO THE EXISTENCE OF **FUNGI**;
8. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
9. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM THE TAKING OF OR SEIZURE OF THAT **COVERED VEHICLE** BY ANY GOVERNMENTAL AUTHORITY;
10. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM WAR OF ANY KIND;
11. **YOUR CAR** WHILE SUBJECT TO ANY:
 - a. LIEN AGREEMENT;
 - b. RENTAL AGREEMENT;
 - c. LEASE AGREEMENT; OR
 - d. SALES AGREEMENT

NOT SHOWN ON THE DECLARATIONS PAGE;
12. ANY **NON-OWNED CAR** WHILE IT IS:
 - a. BEING MAINTAINED OR USED BY ANY **PERSON** WHILE THAT **PERSON** IS EMPLOYED IN OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**; OR
 - b. USED IN ANY BUSINESS OR OCCUPATION OTHER THAN A **CAR BUSINESS**. This exclusion (12.b.) does not apply to a *private passenger car*;
13. ANY PART OR EQUIPMENT OF A **COVERED VEHICLE** IF THAT PART OR EQUIPMENT:
 - a. FAILS OR IS DEFECTIVE; OR
 - b. IS DAMAGED AS A DIRECT RESULT OF:
 - (1) WEAR AND TEAR;
 - (2) FREEZING; OR
 - (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION

OF THAT PART OR EQUIPMENT.

This exclusion does not apply if the **loss** is the result of theft of the **covered vehicle**;
14. ANY PART OR EQUIPMENT:
 - a. THAT IS NOT LEGAL FOR USE IN OR ON THE **COVERED VEHICLE** IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED; OR

- b. THE USE OF WHICH IS NOT LEGAL IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED BECAUSE OF HOW OR WHERE THAT PART OR EQUIPMENT IS INSTALLED IN OR ON THE **COVERED VEHICLE**.

However, if there is a legal version of the part or equipment that is necessary for the safe operation of the **covered vehicle**, then *we* will pay the cost that *we* would otherwise have paid to repair the vehicle with the legal version of the part or equipment. *We* will not pay any cost necessary to modify the vehicle for installation of the legal version of the part or equipment;

15. **TIRES**. This exclusion does not apply if
- loss* is caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal; or
 - loss caused by collision* to another part of the **covered vehicle** causes *loss* to tires;
16. **REMOVABLE PRODUCTS USED FOR STORAGE OF AUDIO, VIDEO, OR OTHER DATA, INCLUDING BUT NOT LIMITED TO TAPES, DISCS, AND MEMORY CARDS, NOR IS THERE COVERAGE FOR THE RECONSTRUCTION OF DATA CONTAINED THEREIN;**
17. **ANY EQUIPMENT USED TO DETECT OR INTERFERE WITH SPEED MEASURING DEVICES;**
18. **A CAMPER, INCLUDING ITS PARTS AND ITS EQUIPMENT, THAT IS:**
- DESIGNED TO BE MOUNTED ON A PICKUP TRUCK;
 - OWNED BY AN INSURED;** AND
 - NOT SHOWN ON THE DECLARATIONS PAGE; OR
19. **ANY COVERED VEHICLE WHILE IT IS:**
- BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (19.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Physical Damage Coverage or Similar Coverage Applies

- If the same *loss* or expense is payable under more than one of the physical damage coverages provided by this policy, then only the one coverage that pays the most for that *loss* or expense applies.
- If any of the physical damage coverages provided by this policy and one or more other policies issued to an *insured* by the *State Farm Companies* apply to the same *loss* or expense, then only one policy applies. *We* will select a policy that pays the most for the *loss* or expense.
- The physical damage coverages provided by this policy apply as primary coverage for a *loss* to *your car*.

If similar coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same *loss* or expense, then the *State Farm Companies* will pay the proportion of the *loss* or expense payable as primary that the maximum amount that may be paid by the *State Farm Companies* bears to the sum of such amount and the limits of all other similar coverage that applies as primary coverage.

- Except as provided in 3. above, the physical damage coverages provided by this policy apply as excess coverage.

If similar coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same *loss* or expense, then the *State Farm Companies* will pay the proportion of the *loss* or expense payable as excess that the maximum amount that may be paid by the *State Farm Companies* bears to the sum of such amount and the limits of all other similar coverage that applies as excess coverage.

Financed Vehicle

- If a creditor is shown on the Declarations Page, then any Comprehensive Coverage or Collision Coverage provided by this policy applies to that creditor's interest in *your car*. Coverage for the creditor's interest is only provided for a *loss* that is payable to *you*.

However, if this policy is cancelled or nonrenewed, then *we* will provide coverage for the creditor's interest until *we* notify the creditor of the termination of such coverage. This coverage for the creditor's interest is only provided for a *loss* that would have been payable to *you* if this policy had not been cancelled or nonrenewed. The date such termination is effective will be at least 10 days after the date *we* mail or

electronically transmit a notice of the termination to the creditor.

2. If *we* pay such creditor, then *we* are entitled to the creditor's right of recovery against *you* to the extent of *our* payment. *Our* right of recovery does not impair the creditor's right to recover the full amount of its claim.

Our Payment Options

1. Comprehensive Coverage and Collision Coverage

- a. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle owned by you*:

- (1) *You*;
- (2) The repairer; or
- (3) A creditor shown on the Declarations Page, to the extent of its interest.

- b. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle not owned by you*:

- (1) *You*;
- (2) The owner of such vehicle;
- (3) The repairer; or
- (4) A creditor, to the extent of its interest.

2. Emergency Road Service Coverage and Car Rental and Travel Expenses Coverage

We may, at *our* option, make payment to one or more of the following:

- a. *You*;
- b. The *insured* who incurred the expense; or
- c. Any party that provided the service for which payment is owed.

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE

This policy provides Death, Dismemberment and Loss of Sight Coverage if "S" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means a *person* whose name is shown under "Death, Dismemberment and Loss of Sight Coverage - Persons Insured" on the Declarations Page.

Insuring Agreement

We will pay the highest applicable benefit shown in the following Death, Dismemberment and Loss of Sight Benefits Schedules if an *insured*:

1. dies; or
2. suffers dismemberment or permanent loss of sight, as described in the schedule

as the direct result of an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause.

The *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer at the time of the accident. The death, dismemberment, or permanent loss of sight must occur within 90 days immediately following the date of the accident.

Benefit

The applicable benefit shown in the schedule is the most *we* will pay for any one *insured* in any one accident. Any benefit paid or payable for dismemberment or permanent loss of sight reduces the death benefit.

Death, Dismemberment and Loss of Sight Benefits Schedules

If the amount shown on the Declarations Page for the *insured* is \$5,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	\$5,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$5,000
Loss of one hand or one foot; or all sight of one eye	\$2,500
Loss of the thumb and a finger on one hand; or any three fingers	\$1,500
Loss of any two fingers	\$1,000

The hand must be cut off through or above the wrist.
The foot must be cut off through or above the ankle.
The whole thumb or finger must be cut off.

If the amount shown on the Declarations Page for the *insured* is \$10,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	\$10,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$10,000
Loss of one hand or one foot; or all sight of one eye	\$5,000
Loss of the thumb and a finger on one hand; or any three fingers	\$3,000
Loss of any two fingers	\$2,000
The hand must be cut off through or above the wrist. The foot must be cut off through or above the ankle. The whole thumb or finger must be cut off.	

The benefits shown in the schedules are doubled for an *insured* who at the time of the accident was *occupying* a *private passenger car* and using a seat belt in the manner recommended by the vehicle's manufacturer.

LOSS OF EARNINGS COVERAGE

This policy provides Loss of Earnings Coverage if "Z" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means a *person* whose name is shown under "Loss of Earnings Coverage - Persons Insured" on the Declarations Page.

Total Disability means the *insured's* inability to work, either full or part time, in his or her occupation or any other similar occupation for which he or she is reasonably fitted by education, training, or experience.

Weekly Earnings means 85% of all earnings for the *insured's* services before any deductions. When *weekly earnings* cannot be determined on a weekly basis an average will be used. The average is 85% of the total earnings for the 52 weeks just prior to the accident divided by 52.

Insuring Agreement

We will pay the *insured* his or her loss of *weekly earnings*, which occur while the *insured* is living, due to continuous *total disability* that:

1. is the direct result of *bodily injury* caused by an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause. At the time of

the accident, the *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer; and

2. starts within 20 days immediately following the date of the accident and lasts for a period of at least 30 consecutive days. *We* will not pay for the first seven days of the 30 day period.

Limit

The most *we* will pay any one *insured* is:

1. \$250 for each full workweek of *total disability*; and
2. a pro rata portion of \$250 for less than a full workweek of *total disability*.

Subject to the workweek limit, the most *we* will pay any one *insured* for all loss of *weekly earnings* due to any one accident is \$15,000.

We will pay once every two weeks the *insured's* loss of *weekly earnings* owed.

Exclusions - Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE DO NOT APPLY TO AN *INSURED*:

1. WHILE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN A *CAR BUSINESS*;
2. WHILE *OCCUPYING*, LOADING, OR UNLOADING:
 - a. AN EMERGENCY VEHICLE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT;
 - b. A VEHICLE, OTHER THAN AN EMERGENCY VEHICLE, WHILE USED IN THE:
 - (1) *INSURED'S BUSINESS*; OR
 - (2) COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN OTHER THAN A *CAR BUSINESS*.

This exclusion (2.b.) does not apply if the vehicle is a *private passenger car*;

- c. A MILITARY VEHICLE; OR
- d. A VEHICLE WHILE IT IS:
 - (1) BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

- (2) ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (2.d.(2)) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
3. WHILE **OCCUPYING**, LOADING, UNLOADING, OR WHO IS STRUCK AS A **PEDESTRIAN** BY:
 - a. A MOTOR VEHICLE THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. A MOTOR VEHICLE THAT IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. A MOTOR VEHICLE OR ANY TYPE OF TRAILER, EITHER OF WHICH IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES; OR
4. FOR DEATH, DISMEMBERMENT, LOSS OF SIGHT, OR **TOTAL DISABILITY** THAT RESULTS FROM:
 - a. WAR OF ANY KIND;
 - b. NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE, OR THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
 - c. THE DISCHARGE OF A FIREARM;
 - d. EXPOSURE TO **FUNGI**;
 - e. SUICIDE OR ATTEMPTED SUICIDE REGARDLESS OF WHETHER THE **INSURED** WAS SANE OR INSANE; OR
 - f. DISEASE except pus-forming infection due to **bodily injury** sustained in the accident.

Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

We may, at our option, make payment to one or more of the following:

1. The **insured**;
2. The **insured's** surviving spouse;
3. A parent or guardian of the **insured**, if the **insured** is a minor or an incompetent **person**; or
4. A **person** or organization authorized by law to receive such payment.

INSURED'S DUTIES

1. **Notice to Us of an Accident or Loss**
The **insured** must give **us** or one of **our** agents notice of the accident or **loss** as soon as reasonably possible. The notice must give **us**:
 - a. **your** name;
 - b. the names and addresses of all **persons** involved in the accident or **loss**;
 - c. the hour, date, place, and facts of the accident or **loss**; and
 - d. the names and addresses of witnesses to the accident or **loss**.
2. **Notice to Us of a Claim or Lawsuit**
 - a. If a claim is made against an **insured**, then that **insured** must immediately send **us** every demand, notice, and claim received.
 - b. If a lawsuit is filed against an **insured**, then that **insured** must immediately send **us** every summons and legal process received.
3. **Insured's Duty to Cooperate With Us**
 - a. The **insured** must cooperate with **us** and, when asked, assist **us** in:
 - (1) making settlements;
 - (2) securing and giving evidence; and
 - (3) attending, and getting witnesses to attend, depositions, hearings, and trials.
 - b. The **insured** must not, except at his or her own cost, voluntarily:
 - (1) make any payment to others; or
 - (2) assume any obligation to others unless authorized by the terms of this policy.
 - c. Any **person** or organization making claim under this policy must, when **we** require, give **us** proof of loss on forms **we** furnish.
4. **Questioning Under Oath**
Under:

- a. Liability Coverage, each *insured*;
- b. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
- c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other *person* or organization making claim or seeking payment;

must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person's* or organization's legal representative, *our* representatives, any *person* or *persons* designated by *us* to record the questions and answers, and no other *person* present.

5. Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage

When there is a *loss*, *you* or the owner of the *covered vehicle* must:

- a. protect the *covered vehicle* from additional damage. *We* will pay any reasonable expense incurred to do so that is reported to *us*;
- b. make a prompt report to the police when the *loss* is the result of theft;
- c. allow *us* to:
 - (1) inspect any damaged property before its repair or disposal;
 - (2) test any part or equipment before that part or equipment is removed or repaired; and
 - (3) move the *covered vehicle* at *our* expense in order to conduct such inspection or testing;
- d. provide *us* all:
 - (1) records;
 - (2) receipts; and
 - (3) invoices

that *we* request and allow *us* to make copies;

- e. not abandon the *covered vehicle* to *us*; and
- f. properly complete and provide all legal documents required to transfer vehicle ownership to *us* upon payment of the actual cash value of the *covered vehicle*, less any applicable deductible.

6. Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage

A *person* making claim under:

- a. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must:

- (1) notify *us* of the claim and give *us* all the details about the death, injury, treatment, and other information that *we* may need as soon as reasonably possible after the injured *insured* is first examined or treated for the injury. If the *insured* is unable to give *us* notice, then any other *person* may give *us* the required notice;
- (2) be examined as reasonably often as *we* may require by physicians chosen and paid by *us*. A copy of the report will be sent to the *person* upon written request;
- (3) provide written authorization for *us* to obtain:
 - (a) medical bills;
 - (b) medical records;
 - (c) wage, salary, and employment information; and
 - (d) any other information *we* deem necessary to substantiate the claim.

If an injured *insured* is a minor, unable to act, or dead, then his or her legal representative must provide *us* with the written authorization.

If the holder of the information refuses to provide it to *us* despite the authorization, then at *our* request the *person* making claim or his or her legal representative must obtain

the information and promptly provide it to *us*; and

- (4) allow *us* to inspect the vehicle that the *insured occupied* in the accident;
- b. Uninsured Motor Vehicle Coverage must report an accident, involving a motor vehicle whose owner and driver remain unknown, to the police within 24 hours and to *us* within 30 days;
- c. Uninsured Motor Vehicle Coverage and Underinsured Motor Vehicle Coverage must send *us* immediately a copy of all lawsuit papers if the *insured* files a lawsuit against the party liable for the accident;
- d. under the Uninsured Motor Vehicle Coverage, if making claim for *property damage*, give *us* the name and address of the owner

of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
- (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and
- e. Loss of Earnings Coverage must:
 - (1) make a claim under this policy;
 - (2) report to *us* when that *person* has a *total disability*; and
 - (3) provide proof of continued *total disability* when *we* ask for it.

GENERAL TERMS

1. When Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur during the policy period. The policy period is shown on the Declarations Page and is for successive periods of six months each for which the renewal premium is paid. The policy period begins and ends at 12:01 AM Standard Time at the address shown on the Declarations Page.

2. Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- a. in the United States of America and its territories and possessions;
- b. in Canada; and
- c. while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Liability Coverage, Medical Payments Coverages, and Physical Damage Coverage also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

3. Newly Owned or Newly Leased Car

If *you* want to insure a *car* newly owned by *you* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then *you* must either:

- a. request *we* replace the *car* currently shown on the Declarations Page of this policy with the *car* newly owned by *you* and pay *us* any added amount due. If *you* make such request while this policy is in force and:
 - (1) before the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date the *car* newly owned by *you* is delivered to *you*. The added amount due will be calculated based on that date; or
 - (2) after the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date and time *you* make the request. The added amount due will be calculated based on that date; or
- b. apply to the *State Farm Companies* for a separate policy to insure the *car* newly owned by *you*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

4. Changes to This Policy

a. Changes in Policy Provisions

We may only change the provisions of this policy by:

- (1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or
- (2) revising this policy to give broader coverage without an additional premium charge. If any coverage provided by this policy is changed to give broader coverage, then *we* will give *you* the broader coverage as of the date *we* make the change effective in the state of Illinois without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.

b. Change of Interest

- (1) No change of interest in this policy is effective unless *we* consent in writing.
- (2) Except under Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage, if a named insured shown on the Declarations Page dies, then the definition of *insured* under each of the coverages provided by this policy is changed to include:

(a) any *person* with lawful custody of *your car*, a *newly acquired car*, or a *temporary substitute car* until a legal representative is qualified; and then

(b) the legal representative of the deceased named insured.

This only applies while such *person* is maintaining or using *your car*, a *newly acquired car*, or a *temporary substitute car*.

Policy notice requirements are met by mailing the notice to the last known policy address that *we* have on record for the deceased named insured.

c. Joint and Individual Interests

If *you* consists of more than one *person* or entity, then each acts for all to change or cancel the policy.

d. Change of Policy Address

We may change the named insured's policy address as shown on the Declarations Page and in *our* records to the last known address provided to *us* by:

- (1) *you*; or
- (2) the United States Postal Service.

5. Premium

a. Unless as otherwise provided by an alternative payment plan in effect with the *State Farm Companies* with respect to the premium for this policy, the premium is due and payable in full on or before the first day of the policy period shown on the most recently issued Declarations Page or Renewal Notice.

b. The renewal premium for this policy will be based upon the rates in effect, the coverages carried, the applicable limits, deductibles, and other elements that affect the premium that apply at the time of renewal.

c. The premium for this policy may vary based upon the purchase of other insurance from the *State Farm Companies*.

d. The premium for this policy is based upon information *we* have received from *you* or other sources. *You* must inform *us* if any information regarding the following is incorrect or incomplete, or changes during the policy period, and *you* must answer questions *we* ask regarding the following:

- (1) *Your car*, or its use, including annual mileage;
- (2) The *persons* who regularly drive *your car*, including newly licensed family members;
- (3) *Your* marital status; or
- (4) The location where *your car* is primarily garaged.

If the above information or any other information used to determine the premium is incorrect, incomplete, changes during the policy period, or is not provided to *us* when *we* ask, then *we* may decrease or increase the premium during the policy period. If *we* decrease the premium during the policy period, then *we* will provide a refund or a credit in the amount of the decrease. If *we* increase the premium during the policy period, then *you* must pay the amount of the increase.

6. Renewal

We agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless *we* mail a nonrenewal notice or a cancellation notice as set forth in 7. and 8. below.

7. Nonrenewal

If *we* decide not to renew this policy, then, at least 30 days before the end of the current policy period, *we* will mail a nonrenewal notice to

the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page.

8. Cancellation

a. How You May Cancel

You may cancel this policy by providing to *us* advance notice of the date cancellation is effective. *We* may confirm the cancellation in writing.

b. How and When We May Cancel

We may cancel this policy by mailing a written notice to the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page. The notice will provide the date cancellation is effective.

- (1) If *we* mail a cancellation notice because the premium is not paid when due, then the date cancellation is effective will be at least 10 days after the date *we* mail the cancellation notice.

Otherwise, the date cancellation is effective will be at least 30 days after the date *we* mail the cancellation notice.

- (2) After this policy has been in force for more than 59 days, *we* will not cancel this policy before the end of the current policy period unless:

- (a) the premium is not paid when due; or

- (b) *you*, any *resident relative*, or any other *person* who usually drives *your car* has had his or her driver's license under suspension or revocation during the 12 months prior to the notice of the cancellation.

c. Return of Unearned Premium

If the policy is canceled, then premium will be earned on a pro rata basis. Any unearned premium will be returned within 30 days of:

- (1) the date of the notice of cancellation by *us*; or
- (2) the date *we* receive *your* request for cancellation.

9. Assignment

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

10. Bankruptcy or Insolvency of the Insured

Bankruptcy or insolvency of the *insured* or his or her estate will not relieve *us* of *our* obligations under this policy.

11. Concealment or Fraud

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

12. Our Right to Recover Our Payments

- a. Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage payments are not recoverable by *us*. Except as provided in 12.b. below, the following apply to all other coverages:

(1) Subrogation

If *we* are obligated under this policy to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

- (a) doing nothing to impair that legal right;
- (b) executing any documents *we* may need to assert that legal right; and
- (c) taking legal action through *our* representatives when *we* ask.

(2) Reimbursement

If *we* make payment under this policy and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

- (a) hold in trust for *us* the proceeds of any recovery; and
- (b) reimburse *us* to the extent of *our* payment.

- b. Regarding Underinsured Motor Vehicle Coverage, *we* will not exercise *our* right of recovery if:

- (1) the *insured* has given *us* advance notice of settlement with the owner or operator of the *underinsured motor vehicle*; and
- (2) *we* fail to advance the *insured* an amount equal to the tentative settlement within 30 days after *we* receive the notice.

13. Legal Action Against Us

Legal action may not be brought against *us* until there has been full compliance with all the provisions of this policy. In addition, legal action may only be brought against *us* regarding:

- a. Liability Coverage after the amount of damages an *insured* is legally liable to pay has been finally determined by:

- (1) judgment after an actual trial, and any appeals of that judgment if any appeals are taken; or
- (2) agreement between the claimant and *us*.

- b. Medical Payments Coverage if the legal action relating to this coverage is brought against *us* within four years immediately following the date of the accident.

- c. Uninsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:

- (1) presents an Uninsured Motor Vehicle Coverage claim to *us*; and
- (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction,

within two years immediately following the date of the accident, or within two years immediately following the date the insuring company for the owner or driver of the *uninsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the accident.

No legal action may be brought against *us* relating to Uninsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled *Consent to Settlement and Deciding Fault and Amount*.

- d. Underinsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:

- (1) presents an Underinsured Motor Vehicle Coverage claim to *us*; and
- (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction, within two years immediately following:
 - (a) the date of the tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or

- (b) the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the tentative settlement.

No legal action may be brought against *us* relating to Underinsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled *Consent to Settlement and Deciding Fault and Amount*.

- e. Physical Damage Coverages if the legal action relating to these coverages is brought against *us* within one year immediately following the date of the accident or *loss*.

The limitation period specified in a., b., c., d., or e. above is tolled from the date proof of *loss* is filed for the specific coverage involved until the date claim for that coverage is denied in whole or in part.

14. Choice of Law

Without regard to choice of law rules, the law of the state of:

- a. Illinois will control in the event of any disagreement as to the interpretation and application of any provision in this policy; and
- b. Illinois will control in the event of any disagreement as to the interpretation and application of this policy's:
 - (1) Mutual Conditions provision found on the most recently issued Declarations Page, if this policy was issued by the State Farm Mutual Automobile Insurance Company; or
 - (2) Participating Policy provision found on the most recently issued Declarations Page, if this policy was issued by any subsidiary or affiliate of the State Farm Mutual Automobile Insurance Company.

15. Severability

If any provision of this policy is held invalid or unenforceable by a court that has jurisdiction, then:

- a. such provision will remain in full force to the extent not held invalid or unenforceable; and
- b. all other provisions of this policy will remain valid and enforceable.

6018GG.1 COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*;
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE**a. Additional Definition**

The following are added:

(1) *Collision* means:

- (a) a vehicle hitting or being hit by another vehicle or another object; or
- (b) the overturning of a vehicle.

(2) *Pollutants* means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.**(3) *Work* means any work or operations performed by or on behalf of an *insured* including:**

- (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

(1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.**(2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:**

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

(3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
 - (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:
 - (i) WHEN THAT PART OF THE **WORK** DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY **PERSON** OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;
 - (ii) WHEN ALL OF THE **WORK** TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR
 - (iii) WHEN ALL OF THE **WORK** CALLED FOR IN **YOUR** CONTRACT HAS BEEN FINISHED.
- WORK** IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.
- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN (a) ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE.
 - (5) THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR PROPERTY DAMAGE CAUSED BY **POLLUTANTS** THAT:
 - (a) ARE TRANSPORTED BY;
 - (b) ARE CARRIED IN OR UPON;
 - (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR
 - (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.
 - (6) THERE IS NO COVERAGE FOR AN **INSURED** FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY **PERSON**, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT **INSURED** FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:
 - (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF **POLLUTANTS**; OR

(b) IN ANY WAY ASSOCIATED WITH THE COST OF:

- (i) CLEANUP;
- (ii) REMOVAL;
- (iii) CONTAINMENT; OR
- (iv) NEUTRALIZATION OF THE EFFECTS

OF **POLLUTANTS**.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. MEDICAL PAYMENTS COVERAGE

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN **INSURED** WHO IS **OCCUPYING A NON-OWNED CAR**.

(2) THERE IS NO COVERAGE FOR AN **INSURED** WHOSE **BODILY INJURY** RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. PHYSICAL DAMAGE COVERAGES

Exclusions

The following is added:

THERE IS NO COVERAGE FOR **LOSS TO A NON-OWNED CAR, A NON-OWNED TRAILER, OR A NON-OWNED CAMPER**.

6913B AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. The words "spouse", "marriage", and "marital" refer to the legal relationship between two *persons* united together in either:
 - a. a marriage; or
 - b. a civil union
 that is recognized by and valid under Illinois law.

2. **THIS POLICY**

Item 5. is changed to read:

Your purchase of this policy may allow:

- a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or
- b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

3. **LIABILITY COVERAGE**

Insuring Agreement and Supplementary Payments are replaced by the following:

Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:
 - a. *bodily injury* to others; and
 - b. damage to property
 caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.

2. *We* have the right to:

- a. investigate, negotiate, and settle any claim or lawsuit;
- b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
- c. appeal any award or legal decision

for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:

- a. that seeks damages payable under this policy's Liability Coverage; and
- b. against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:

- a. before a judgment, but only the interest on the lesser of:
 - (1) that part of the damages *we* pay; or
 - (2) this policy's applicable Liability Coverage limit; and
- b. after a judgment.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

- a. pay for any bond with a face amount that exceeds this policy's

applicable Liability Coverage limit;

- b. furnish or apply for any bonds; or
- c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

- a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a lawsuit; and
- b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

4. INSURED'S DUTIES

Item d. of 6. **Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage** is changed to read:

- d. A *person* making claim under Uninsured Motor Vehicle Coverage, if making claim for *property damage*, must give *us* the name and address of the owner of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
- (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and

5. GENERAL TERMS

- a. Where Coverage Applies is changed to read:

Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- (1) in the United States of America and its territories and possessions;
- (2) in Canada; and
- (3) while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

- b. The following is added to **GENERAL TERMS**:

Limited Coverage in Mexico

This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plans to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

- a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

- b. **Medical Payments Coverage**

- c. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage** and

Collision Coverage provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF ILLINOIS IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring

in Mexico must be brought in a court that has jurisdiction in the state of Illinois in the United States of America.

c. Paragraph c. of 5. **Premium** is changed to read:

c. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the *State Farm Companies*;

(2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.



6018GG COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*,
 - b. not designed to carry *persons*,
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE

a. Additional Definition

The following are added:

(1) **Collision** means:

- (a) a vehicle hitting or being hit by another vehicle or another object; or
- (b) the overturning of a vehicle.

(2) **Pollutants** means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.

(3) **Work** means any work or operations performed by or on behalf of an *insured* including:

- (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

(1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.

(2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or

(b) designed for:

- (i) snow removal;
- (ii) street cleaning; or
- (iii) road maintenance, other than construction or resurfacing.

(3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
- (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:

- (i) WHEN THAT PART OF THE **WORK** DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY **PERSON** OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;

- (ii) WHEN ALL OF THE **WORK** TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR

- (iii) WHEN ALL OF THE **WORK** CALLED FOR IN **YOUR** CONTRACT HAS BEEN FINISHED.

WORK IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.

- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:

- (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY

COVERAGE BY THIS POLICY;

- (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN 1. ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR

- (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN 1. ABOVE.

- (5) THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR PROPERTY DAMAGE CAUSED BY **POLLUTANTS** THAT:

- (a) ARE TRANSPORTED BY;

- (b) ARE CARRIED IN OR UPON;

- (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR

- (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.

- (6) THERE IS NO COVERAGE FOR AN **INSURED** FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY **PERSON**, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT **INSURED** FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:

- (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF **POLLUTANTS**; OR

- (b) IN ANY WAY ASSOCIATED WITH THE COST OF:

- (i) CLEANUP;
- (ii) REMOVAL;
- (iii) CONTAINMENT; OR
- (iv) NEUTRALIZATION OF THE EFFECTS

OF **POLLUTANTS**.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. **MEDICAL PAYMENTS COVERAGE**

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN **INSURED** WHO IS **OCCUPYING** A **NON-OWNED CAR**.

- (2) THERE IS NO COVERAGE FOR AN **INSURED** WHOSE **BODILY INJURY** RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. **PHYSICAL DAMAGE COVERAGES**

Exclusions

The following is added:

THERE IS NO COVERAGE FOR **LOSS** TO A **NON-OWNED CAR**, A **NON-OWNED TRAILER**, OR A **NON-OWNED CAMPER**.



6055ZZ FARM TRUCK
(Coverage While Towing Trailers and Farm Implements)

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. If the Business Named Insured endorsement is not attached to this policy, then the following exclusion is deleted wherever it appears in the Commercial Vehicle Endorsement:
 - c. while not used as premises for office, store, or display purposes; or

THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A **NON-OWNED CAR**.

2. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car* or a farm truck;
 - b. not designed to carry *persons*; and

2. a farm implement or farm wagon while being pulled on public roads by a *car* or a farm truck.
3. **LIABILITY COVERAGE, MEDICAL PAYMENTS COVERAGE, UNINSURED MOTOR VEHICLE COVERAGE, and UNDERINSURED MOTOR VEHICLE COVERAGE**

Exclusions

The following is added:

THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR DAMAGE TO PROPERTY ARISING OUT OF THE OPERATION OF ANY FARM IMPLEMENT.

EFFINGHAM COUNTY CIRCUIT CLERK
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

vs.

KENT ELMORE AND ARDITH SHELDON
ELMORE,

Defendants.

NO: 16-MR-137

MOTION FOR SUMMARY JUDGMENT

Now comes the plaintiff, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (State Farm), through its attorneys, REED, ARMSTRONG, MUDGE & MORRISSEY, P.C. and pursuant to 735 ILCS 5/2-1005 moves for summary judgment in its favor and against Defendants, Kent Elmore and Ardith Sheldon Elmore. In support of this motion Plaintiff states as follows:

1. Kent Elmore filed a lawsuit against Sheldon Elmore in Effingham County alleging that Kent was assisting Sheldon in connection with Sheldon's grain farming operation. Sheldon possessed a grain auger which lacked a shield or protective barrier. Allegedly as a result of Sheldon's negligence Kent's clothing became entangled in auger, resulting in injury.
2. At the time of the occurrence alleged in the Elmore complaint State Farm had issued an auto policy to Sheldon Elmore which was in effect at the time of the Elmore incident.
3. The State Farm policy contains an exclusion from liability coverage for, among other things, the movement of property by means of a mechanical device other than a hand truck that is not attached to the insured vehicle.

4. As will be discussed in detail in the attached Memorandum of Law, the grain auger which injured Kent Elmore is a "mechanical device" as that term is used in the State Farm policy. Therefore liability coverage is excluded to Sheldon Elmore for the claims brought against him in the Elmore litigation.

WHEREFORE, Plaintiff State Farm prays that this Court grant it summary judgment in its favor and against Defendants Kent Elmore and Sheldon Elmore, and for an order finding that State Farm owes no liability coverage to Sheldon Elmore for the occurrence described in the Elmore lawsuit.

REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.

By: 


Michael J. Bedesky, #06206551
115 N. Buchanan
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257
(618) 692-4416 (Fax)
mbedesky@reedarmstrong.com

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that a copy of the foregoing document was served upon each party, or attorney of record identified below, by email, from the office of Reed, Armstrong, Mudge & Morrissey, P.C. in Edwardsville, Illinois prior to 5:00 p.m. on the 20 day of October, 2017:

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
P.O. Box 668
Effingham, IL 62401
(217) 342-3925
(217) 342-2341 (Fax)
Koester@taylorlaw.net
Attorneys for Kent Elmore

William Tapella
TAPELLA & EBERSPACHER
6009 Park Dr.,
Charleston, IL 61920
(217) 639-7800
(217) 639-7810 (Fax)
tapella@tapellalaw.com
bwilloughby@tapellalaw.com


REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.

EFFINGHAM COUNTY CIRCUIT CLERK
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
vs.	)	NO: 16-MR-137
)	
KENT ELMORE AND ARDITH SHELDON)	
ELMORE,)	
)	
Defendants.)	

**MEMORANDUM OF LAW
IN SUPPORT OF SUMMARY JUDGMENT MOTION**

Now comes the plaintiff, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (State Farm), through its attorneys, REED, ARMSTRONG, MUDGE & MORRISSEY, P.C. and for its memorandum of law in support of summary judgment motion states as follows:

I. FACTS

A. Underlying Complaint

Kent Elmore's first amended complaint (Effingham County number 2015-L-44) alleges, among other things, that Sheldon Elmore possessed or leased farm property located one mile south of Eberle in Effingham County, IL and that Sheldon conducted his grain farming operation on this property. At the time of the incident Kent Elmore was assisting Sheldon in connection with Sheldon's grain farming operation. Sheldon owned a grain auger which he utilized in the farming enterprise. Allegedly Sheldon removed the shield or protective barrier on the auger, thereby exposing users of the auger to moving parts including the screw and the shaft. Allegedly

Sheldon was negligent in supplying a grain auger which was unreasonably dangerous because the shield had been removed, starting the auger without warning Plaintiff of his intention to do so, failing to warn Kent Elmore that he (Sheldon) had removed the shield and protective barrier, directed Kent to operate the grain auger even though this would place Kent in a position of unreasonable risk, failing to equip the auger with the appropriate shield or shutoff device, and failing to warn Kent of the unprotected moving parts when Sheldon knew or should have known that Kent would not realize a protective guard had been removed or be distracted by other activities. (Exhibit "A")

B. Facts of The Accident

After all the corn in the field had been cut by a combine, a grain cart and two other grain trucks remained in the field. The corn in these vehicles was to be transferred to a transport truck. An auger was being utilized to move the grain into the transport truck. A tractor powered the auger by means of a PTO shaft. As the auger turned, it would pull the grain up and dump it into the semi-truck. The auger featured a "hopper" which would receive the grain from the grain trucks. The auger's hopper was located directly underneath the dumping shoot for the grain truck. The grain truck's gate would be raised to let the grain into the auger.

After unloading his grain truck, Sheldon Elmore drove away from the auger. At that point Kent Elmore backed another grain truck up to the auger with the intention of unloading it. This vehicle was owned by Sheldon and insured by State Farm. The plan was to open the rear gate to let the grain into the auger. In order to open the gate, Kent wanted extra leverage, so he stepped on the auger. The auger did not have a guard, so his foot was exposed to the turning shaft. The auger was moving and turning when he stepped into it. It was moving grain at the time of the accident. When he was injured, Sheldon was reaching towards the gate at the rear of

the truck and corn was pouring into the auger. Kent's foot went into the unguarded auger, resulting in serious injury.

Kent Elmore ultimately settled his lawsuit against Sheldon. In exchange for releasing all claims against Sheldon, Kent received \$1.9 million dollars from Bishop Mutual Insurance Company, Grinnell Mutual and State Farm Fire and Casualty. Kent reserved his right to pursue additional potential coverage under the State Farm Mutual Automobile Insurance policy issued to Sheldon for the 2002 Ford International Truck that was being used at the time of the occurrence.

C. State Farm Policy

Prior to the occurrence described in the Elmore complaint State Farm had issued an auto policy to Ardith Sheldon Elmore, #613 9680-D14-13A. The insured vehicle was a 2002 Ford International 4900 truck. The State Farm policy provided liability limits in the amount of \$250/500 per accident (Exhibit "B"). The liability section of the State Farm policy provided in pertinent part as follows:

LIABILITY COVERAGE

This policy provides liability coverage if "A" is shown under the "SYMBOLS" of the Declarations Page.

Additional Definition

Insured means:

1. **You and resident relatives** for:
 - a. The ownership, maintenance, or use of:
 - (1) **Your car;**
 - (2) **A newly acquired car; or**
 - (3) **A trailer; and**

- b. The maintenance or use of:
 - (1) A **non-owned car**; or
 - (2) A **temporary substitute car**; (p. 5)

* * *

Insuring Agreement

- 1. **We will pay:**
 - a. Damages an **insured** becomes legally liable to pay because of:
 - (1) **Bodily injury** to others; and
 - (2) Damage to property.

Caused by an accident that involves a vehicle for which that **insured** is provided liability coverage by this policy . . . (p. 6)

* * *

The State Farm policy's definitions section states, in pertinent part as follows:

DEFINITIONS

* * *

Trailer means:

- 2. A farm implement or farm wagon while being pulled on public roads by a **car**.

* * *

Your car means a vehicle shown under "YOUR CAR" on the Declarations Page. **Your car** does not include a vehicle that **you** no longer own or lease . . . (p. 5)

The "Commercial Vehicle" endorsement contains the following exclusion:

* * *

b. Exclusions

The following are added:

* * *

- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY; . . .
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE. . . (Endorsement 6018GG.1 (p. 2))

III. LAW AND ARGUMENT

An insured is only entitled to indemnity for losses that actually fall within the terms of the insurance policy. American Family Mutual Ins. Co. v. Westfield Insurance Co., 211 Ill.App.4th 110088, 357 Ill.Dec.92, 962 N.E.2d 993 (4th Dist. 2011). Where the insured settles an underlying lawsuit, it must demonstrate that it settled an otherwise covered loss to recover the settlement. Santa's Best Craft, L.L.C. v. Zurich American Ins. Co., 408 Ill.App.3d 173, 346 Ill.Dec. 733, 941 N.E.2d 291 (1st Dist. 2010).

State Farm does not owe coverage to Sheldon Elmore here because this accident resulted from the movement of property by means of a mechanical device – the grain auger.

In Continental Ins. Co. v. American Motorist Ins. Co., 247 Ga App.331, 542 SE 2d 607 (2000) a “pallet jack” was being utilized to move a load of copier paper up a ramp outside a warehouse. One of the workers involved was injured. 247 Ga App. At 331. At issue was potential coverage under a business automobile policy. The policy provided an exclusion for “bodily injury” or “property damage” resulting from the movement of property by a mechanical

device (other than a hand truck) unless the device is attached to the covered auto. 247 Ga App. at 334. The Continental Insurance Court found that the “pallet jack” was not a “hand truck.” The definition of “hand truck” was a hand-operated piece of equipment with low wheels, a ledge on the bottom and handles at the top used to move heavy luggage, packages, cartons, etc. However the “pallet jack” featured a hydraulic pumping mechanism which could lift substantially heavier loads. As a result the pallet jack was a “mechanical device other than a hand truck.” 542 S.E. 2d at 611. Here, as in Continental Insurance, the grain auger which injured Kent Elmore is not a “hand truck.” The grain auger was not designed with handles used to move heavy luggage, packages or cartons. To the contrary, this device contained an auger mechanism designed to move grain from one elevation to another elevation. Further, as in Continental Insurance the grain auger was not “attached to” the insured vehicle – the grain truck owned by Sheldon Elmore. It is undisputed that the grain auger was placed underneath the grain truck’s bed so that when lifted, grain could exit the truck and enter the grain auger. At no point was the grain auger “attached” to the grain truck in any way whatsoever.

In Dauthier v. Pointe Coupee Wood Treating, Inc., 560 So.2d 556 (1990) at issue was whether a forklift was “mechanical device.” In this case the deceased Joseph Dauthier was injured while pilings were being unloaded from a truck by a forklift. The issue on appeal was whether liability coverage was available under the terms of a business auto policy issued by National Indemnity Company. 560 So. 2d at 557. The National policy excluded from coverage bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto. National argued that coverage was excluded under this provision since the decedent’s death resulted from the unloading of property with a mechanical device (a forklift) not attached to the covered auto. Id.

The Dauthier Court looked to a Webster's Dictionary definition of "mechanical" as having to do with or having skill and use of machinery or tools and device as a "mechanical invention or contrivance for some specific purpose." Thus a mechanical device is generally understood to be an invention or contrivance having to do with machinery or tools. 560 So 2d at 558. The Dauthier Court found that the decedent's injuries occurred as a result of the movement of property (the pilings) by a mechanical device (the forklift) that was not attached to the covered auto (the truck). As a result the policy language clearly and unambiguously excluded coverage for bodily injury resulting from the activity at issue. Id.

Here, as was the case in Dauthier the auger fits the definition of "mechanical device" as it is certainly a mechanical invention for a specific purpose – to move grain. As indicated above the auger was no attached to the covered auto – the grain truck. Finally the auger was being utilized to move property – grain when the incident occurred. Accordingly, under Dauthier there is no coverage owed under the State Farm policy.

In Elk Run Cove Co., Inc. v. Canopus U.S. Ins. Inc., 235 W.Va. 513, 775 S.E.2d 65 (2015) a "front-end loader" was being used to load coal into a truck. During this operation the end loader operator lost consciousness, struck the truck, causing injury to the truck driver. 235 W.Va at 515.

Subsequently a coverage dispute developed. One of the issues was whether an auto exclusion in a CGL policy issued by Canopus was applicable. At issue was "loading or unloading" which did not include the movement of property by means of a mechanical device, other than a hand truck that was not attached to the auto. 775 S.E.2d at 74. Although the policy did not define the term "mechanical device" the Elk Run Court found that the front-end loader was a mechanical contrivance or device. Because "loading or unloading" did not include the

movement of property by means of a mechanical device other than a "hand truck" and because the coal was being loaded into the truck using a mechanical device, loading of the coal was not a "use" of an automobile as excluded by the policy.

Under Elk Run here the grain auger constitutes a "mechanical device" as the term would be defined in the State Farm policy. As was the case in Elk Run, because the injury arose out of use of the mechanical device and because the mechanical device was not attached to the State Farm insured grain truck, no coverage is afforded under the State Farm policy.

WHEREFORE, Plaintiff State Farm Mutual Automobile Insurance Company prays that this Court grant its motion for summary judgment, and for an Order finding that State Farm provides no coverage to Ardith Sheldon Elmore for the incident described in the Kent Elmore lawsuit.

REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.

By: 

Michael J. Bedesky, #06206551
115 N. Buchanan
P.O. Box 368
Edwardsville, IL 62025
(618) 656-0257
(618) 692-4416 (Fax)
mbedesky@reedarmstrong.com

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that a copy of the foregoing document was served upon each party, or attorney of record identified below, by email, from the office of Reed, Armstrong, Mudge & Morrissey, P.C. in Edwardsville, Illinois prior to 5:00 p.m. on the 20 day of October, 2017:

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
P.O. Box 668
Effingham, IL 62401
(217) 342-3925
(217) 342-2341 (Fax)
Koester@taylorlaw.net
Attorneys for Kent Elmore

William Tapella
TAPELLA & EBERSPACHER
6009 Park Dr.,
Charleston, IL 61920
(217) 639-7800
(217) 639-7810 (Fax)
tapella@tapellalaw.com
bwilloughby@tapellalaw.com



REED, ARMSTRONG, MUDGE & MORRISSEY,
P.C.

IN THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

FILED

MAR 31 2016

KENT ELMORE,

Plaintiff,

v.

ARDITH SHELDON ELMORE,

Defendant;

CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

2015-L-44

DEMAND FOR JURY OF TWELVE
(Pursuant to 735 ILCS 5/2-1105(b))

FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, Kent Elmore, by Christopher A. Koesler of Taylor Law
Offices, P.C., and as and for his Complaint against the Defendant, Ardith Sheldon Elmore, states:

1. Plaintiff is a resident of Effingham County, Illinois.
2. Defendant is a resident of Clay County, Illinois.
3. Plaintiff is the adult son of Defendant.
4. In May of 2013, Plaintiff was granted a temporary leave of absence from his employer, Oceaneering International in the State of Louisiana, so that he could return to Illinois to assist Defendant in connection with Defendant's grain farming operation.
5. On October 16, 2013, Defendant occupied, possessed and/or leased certain farm property located one mile south of Eberle in Effingham County, Illinois. Defendant conducted his grain farming operation on said property.
6. At the aforementioned time and place, Plaintiff performed certain tasks to assist Defendant in connection with Defendant's grain farming operation, including the transfer of grain from the farm field to the grain elevator.



C 224

7. On and prior October 16, 2013, Defendant owned and possessed a grain auger which he utilized in connection with his farming operation in Edgingham County, Illinois.

8. Prior to October 16, 2013, Defendant removed the shield and protective barrier on the auger thereby exposing users of the auger to the moving parts of the auger, including the screw and the shaft.

9. On October 16, 2013, Defendant furnished the auger described in the preceding paragraph to Plaintiff for Plaintiff's use in connection with Defendant's grain farming operation being conducted on that date in the farm field approximately one mile south of Eberle, Illinois.

10. Prior to October 16, 2013, Defendant had not furnished this particular auger to Plaintiff for Plaintiff's use in the grain farming operation.

11. At the aforementioned time and place, Defendant owed a duty to Plaintiff to provide Plaintiff with a reasonably safe and suitable place to work and with reasonably safe and suitable machinery with which to work.

12. On October 16, 2013, Defendant committed one or more or a combination of the following negligent acts and/or omissions:

- a. supplied a grain auger which was unreasonably dangerous to use because Defendant removed the shield protecting users from the moving parts of the auger;
- b. started the auger without warning Plaintiff of his intent to do so;
- c. failed to advise and warn Plaintiff that he had removed the shield and protective barrier so as to expose Plaintiff and his clothing to the moving parts of the grain auger;
- d. failed to provide Plaintiff with proper equipment that was reasonably safe to perform the tasks that Defendant requested the Plaintiff to perform;
- e. failed to provide Plaintiff with a reasonably safe working environment on the date in question;

- f. directed the Plaintiff to use and operate the grain auger even though the Defendant knew, or in the exercise of reasonable care should have known, that Plaintiff would be required to place himself in such a position so as to expose his limbs and clothing near the unprotected and unshielded moving parts of the auger;
- g. supplied Plaintiff with a grain auger or "threshing machine" which was not safely boxed or secured during the operation of the machine in violation of the Farm Machine Safety Act, 740 ILCS 65/1 *et seq.*;
- h. failed to equip the grain auger with an emergency shut-off device or other emergency stopping mechanism;
- i. failed to equip the farm auger with an appropriate shield or safety barrier so as not to expose Plaintiff's limbs and clothing to the moving parts of the auger; and
- j. failed to warn Plaintiff of the exposed and unprotected moving parts of the auger when Defendant knew, or in the exercise of reasonable care should have known, that Plaintiff would not realize the protective guard had been removed by Defendant and/or that Plaintiff would be distracted by other activities occurring in the immediate vicinity of the auger.

13. As a direct and proximate result of one or more or a combination of the aforementioned negligent acts and/or omissions of the Defendant, Plaintiff's clothing and right leg became entangled in the auger thereby amputating Plaintiff's right leg below the knee.


14. As a direct and proximate result of the aforementioned occurrence, Plaintiff sustained the following injuries and damages as a result of Defendant's breach of his duty owed to Plaintiff, including but not limited to:

- a. amputation of Plaintiff's right leg immediately above the knee (additional portion of the leg was required to be amputated during surgery);
- b. past reasonable and necessary medical expenses associated with the care and treatment of Plaintiff's injury and fitting of prosthesis;
- c. future medical expenses and costs associated with Plaintiff's future treatment and repair, maintenance and replacement of prosthetic devices, including foot, ankle and leg prosthetics;
- d. loss of a normal life;

- e. loss of past and future earnings associated with his inability to pursue his vocation as a Remotely Operated Vehicle Superintendent with Oceaneering International;
- f. loss of income associated with his inability to secure other employment which requires walking, standing or lifting;
- g. past and future pain and suffering, including the phantom pains associated with the loss of his right leg;
- h. disfigurement associated with the amputation of his right leg above the knee;
- i. increased risk of future harm resulting from the amputation of his right leg above the knee;
- j. the emotional distress experienced in the past and reasonably to be experienced in the future associated with the loss of his right leg above the knee; and
- k. the past and future disability associated with the loss of his right leg above the knee.

WHEREFORE, the Plaintiff, Kent Elmore, prays that judgment be entered in his favor and against the Defendant, Ardith Sheldon Elmore, in an amount in excess of \$50,000, and for all costs associated with said litigation.

Respectfully submitted,
Kent Elmore, Plaintiff

By: 
Christopher A. Koester of
Taylor Law Offices, P.C.

Christopher A. Koester
Taylor Law Offices, P.C.
Attorneys for Plaintiff
122 E. Washington Avenue
Effingham, IL 62401
217-342-3925

PROOF OF MAILING

Christopher A. Koester, counsel for Plaintiff, hereby certifies that he has served a copy of the foregoing First Amended Complaint upon:

Shane M. Camine
Black, Hedlin, Ballard & McDonald, P.C.
P.O. Box 4007
Mt. Vernon, IL 62864

by mailing to him a true copy thereof at the address referred to above in an envelope duly addressed to him, bearing proper first class postage and deposited in the United States mail at Effingham, Illinois, this 31st day of March, 2016.



Christopher A. Koester

OCT 15 2015

FILED

OCT - 8 2015

IN THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

KENT ELMORE,

Plaintiff,

v.

ARDITH SHELDON ELMORE,

Defendant.

CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

2013-L-444

DEMAND FOR JURY OF TWELVE
(Pursuant to 735 ILCS 5/2-1105(b))

COMPLAINT

NOW COMES the Plaintiff, Kent Elmore, by Christopher A. Koester of Taylor Law Offices, P.C., and as and for his Complaint against the Defendant, Ardith Sheldon Elmore, states:

1. Plaintiff is a resident of Effingham County, Illinois.
2. Defendant is a resident of Clay County, Illinois.
3. On and prior to October 16, 2013, Defendant owned and possessed a grain auger which he utilized in connection with his farming operation in Effingham County, Illinois.
4. On October 16, 2013, at Defendant's request and/or instruction, Plaintiff performed certain tasks in connection with Defendant's farming operation, including assisting Defendant in connection with transport and moving of grain from a farm field approximately one mile south of Eberle, Illinois. Defendant supplied Plaintiff with an auger which was not properly equipped with a guard or shield to accomplish this task.
5. Prior to October 16, 2013, Defendant removed the shield and protective barrier on the auger thereby exposing users of the auger to the moving parts of the auger, including the screw and the shaft.

10222015

C 229

6. Prior to October 16, 2013, Defendant had not requested Plaintiff utilize this particular auger and Plaintiff had not used this particular auger prior to said date.

7. At the aforementioned time and place, Defendant owed a duty to Plaintiff to provide him with reasonably safe equipment and a reasonably safe work environment so that Plaintiff could safely complete the tasks requested by Defendant.

8. On October 16, 2013, Defendant committed one or more or a combination of the following negligent acts and/or omissions:

- a. supplied a grain auger which was unreasonably dangerous to use because Defendant removed the shield protecting users from the moving parts of the auger;
- b. started the auger without warning Plaintiff of his intent to do so;
- c. failed to advise and warn Plaintiff that he had removed the shield and protective barrier so as to expose Plaintiff and his clothing to the moving parts of the grain auger;
- d. failed to provide Plaintiff with proper equipment that was reasonably safe to perform the tasks that Defendant requested the Plaintiff to perform;
- e. failed to provide Plaintiff with a reasonably safe working environment on the date in question;
- f. directed the Plaintiff to use and operate the grain auger even though the Defendant knew, or reasonably should have known, that Plaintiff would be required to place himself in such a position so as to expose his limbs and clothing near the unprotected and unshielded moving parts of the auger;
- g. supplied Plaintiff with a grain auger or "threshing machine" which was not safely boxed or secured during the operation of the machine in violation of the Farm Machine Safety Act, 740 ILCS 65/1 *et seq.*;
- h. failed to equip the grain auger with an emergency shut-off device or other emergency stopping mechanism;
- i. failed to equip the farm auger with an appropriate shield or safety barrier so as not to expose Plaintiff's limbs and clothing to the moving parts of the auger; and

failed to warn Plaintiff of the exposed and unprotected moving parts of the auger when Defendant knew, or in the exercise of reasonable care should have known, that Plaintiff would not realize the protective guard had been removed by Defendant and/or that Plaintiff would be distracted by other activities occurring in the immediate vicinity of the auger.

9. As a direct and proximate result of one or more or a combination of the aforementioned negligent acts and/or omissions of the Defendant, Plaintiff's clothing and right leg became entangled in the auger thereby amputating Plaintiff's right leg below the knee.

10. As a direct and proximate result of the aforementioned occurrence, Plaintiff sustained the following injuries and damages as a result of Defendant's breach of his duty owed to Plaintiff, including but not limited to:

- a. amputation of Plaintiff's right leg immediately above the knee (additional portion of the leg was required to be amputated during surgery);
- b. past reasonable and necessary medical expenses associated with the care and treatment of Plaintiff's injury and fitting of prosthesis;
- c. future medical expenses and costs associated with Plaintiff's future treatment and repair, maintenance and replacement of prosthetic devices, including foot, ankle and leg prosthetics;
- d. loss of a normal life;
- e. loss of past and future earnings associated with his inability to pursue his vocation as a Remotely Operated Vehicle Superintendent with Oceanetring International;
- f. loss of income associated with his inability to secure other employment which requires walking, standing or lifting;
- g. past and future pain and suffering, including the phantom pains associated with the loss of his right leg;
- h. disfigurement associated with the amputation of his right leg above the knee;
- i. increased risk of future harm resulting from the amputation of his right leg above the knee;
- j. the emotional distress experienced in the past and reasonably to be

experienced in the future associated with the loss of his right leg
above the knee; and

k. the past and future disability associated with the loss of his right leg above
the knee.

WHEREFORE, the Plaintiff, Kent Elmore, prays that judgment be entered in his favor
and against the Defendant, Ardith Sheldon Elmore, in an amount in excess of \$50,000, and for
all costs and for costs associated with said litigation.

Respectfully submitted,

Kent Elmore, Plaintiff

By: 

Christopher A. Koester of
Taylor Law Offices, P.C.

Christopher A. Koester
Taylor Law Offices, P.C.
Attorneys for Plaintiff
122 E. Washington Avenue
Birmingham, IL 62401
217-342-3925

OCT 15 2015

IN THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

KENT ELMORE,

Plaintiff,

v.

ARDITH SHELDON ELMORE,

Defendant.

2015-L-44

FILED

OCT 08 2015

CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

RULE 222 AFFIDAVIT

NOW COMES your affiant, Christopher A. Koester, and under oath states:

1. That he is a duly authorized agent of the Plaintiff, KENT ELMORE, for purposes of making this affidavit.

2. That the damages sought by the Plaintiff in this action exceed \$50,000.00.

Christopher A. Koester of
Taylor Law Offices, P.C.

Subscribed and sworn to before me this 7th day of October, 2015.

Notary Public

Christopher A. Koester
Taylor Law Offices, P.C.
Attorneys for Plaintiff
122 East Washington Avenue
P.O. Box 668
Effingham, Illinois 62401
(217) 342-3925

OFFICIAL SEAL
KATHRYN E. WERNING
Notary Public - State of Illinois
My Commission Expires 8/04/2019

10222015

C 233



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 613 9680-D14-13A including any endorsements, if applicable, for the policy term(s) October 14, 2013, to April 14, 2014, and insuring Sheldon & Betty Elmore of 15606 1st Ave, Mason IL 62443-3701 based on available records.


The following endorsements are included:

6018GG.1 Commercial Vehicle - Effective Date 10-14-12

6913B Amendatory Endorsement - Effective Date 04-15-13

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 16, 2013.



Christopher L Clark
Underwriting Team Manager
Date: 10.24.2016





State Farm Mutual Automobile Insurance Company

2702 Ireland Grove Rd
Bloomington IL 61709

NAMED INSURED

AT2

013409

ELMORE, SHELDON & BETTY
15606 1ST AVE
MASON IL 62443-3701

13-2876-66RR A

17987-6-R

MUTL VOL

DECLARATIONS PAGE

POLICY NUMBER 613 9680-D14-13A

POLICY PERIOD APR 14 2010 to OCT 14 2010
12:01 A.M. Standard Time

AGENT

LEON GOBCZYNSKI
312 W WABASH
EFFINGHAM, IL 62401-2668

PHONE: (217)342-3180 or (217)347-4115

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID NUMBER	CLASS
2002	INTL	4900	STAKE	1HTSHADR42H526297	1060000000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	\$48.32
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
	Property Damage Limit	
	Each Accident	
	\$100,000	
C	Medical Payments Coverage	\$4.33
	Limit, Each Person	
	\$10,000	
D	Comprehensive Coverage - \$500 Deductible	\$34.73
G	Collision Coverage - \$500 Deductible	\$66.02
U	Uninsured Motor Vehicle Coverage	\$1.55
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
W	Uninsured Motor Vehicle Coverage	\$111.22
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$250,000 \$500,000	
Total premium for APR 14 2010 to OCT 14 2010		\$169.17 This is not a bill

IMPORTANT MESSAGES

For information or assistance with any insurance problem, be sure to contact your STATE FARM AGENT first. Your good neighbor agent will be happy to help you. Section 143c of the Illinois Insurance Code requires notification of the following addresses: State Farm Insurance Companies, Illinois Operations Center, 2702 Ireland Grove Road, Bloomington, Illinois 61709-000 Phone 1-800-424-1162 (within Illinois). Office Hours 8 A.M. to 4:30 P.M., Monday through Friday. Or Illinois Department of Insurance Consumer Services Section, Springfield, Illinois 62767. This message is provided by State Farm in compliance with Illinois law.

Replaced policy number 6139680-13.

New Policy Form

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9813B, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
6018GG COMMERCIAL VEHICLE
6055ZZ FARM TRUCK (COVERAGE WHILE TOWING TRAILERS AND FARM IMPLEMENTS).
USE-FARMING.

Agent: LEON GOBCZYNSKI

R

Telephone: (217)342-3180

Prepared APR 05 2010 2876-002

21115/13398
04-2005 (01a025hd)

(01a025te)

See Reverse Side

(01a0254e)

C 235

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

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



Secretary



President



Please read the policy carefully. If there is an accident, contact your State Farm agent or one of our Claim Offices at once. (See "INSURED'S DUTIES" in this policy booklet.)

**State Farm®
Car Policy
Booklet**

**Illinois
Policy Form 9813B**

LOSS OF EARNINGS COVERAGE	34	GENERAL TERMS	37
Additional Definitions	34	When Coverage Applies	37
Insuring Agreement	34	Where Coverage Applies	37
Limit	34	Newly Owned or Newly Leased Car	37
Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	34	Changes to This Policy	38
Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	35	Premium	38
INSURED'S DUTIES	35	Renewal	38
Notice to Us of an Accident or Loss	35	Nonrenewal	38
Notice to Us of a Claim or Lawsuit	35	Cancellation	39
Insured's Duty to Cooperate With Us	35	Assignment	39
Questioning Under Oath	35	Bankruptcy or Insolvency of the Insured	39
Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage	36	Concealment or Fraud	39
Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage	36	Our Right to Recover Our Payments	39
		Legal Action Against Us	40
		Choice of Law	40
		Severability	40

THIS POLICY

1. This policy consists of:
 - a. the most recently issued Declarations Page;
 - b. the policy booklet version shown on that Declarations Page; and
 - c. any endorsements that apply, including those listed on that Declarations Page as well as those issued in connection with any subsequent renewal of this policy.
2. This policy contains all of the agreements between all named insureds who are shown on the Declarations Page and all applicants and:
 - a. *us*; and
 - b. any of *our* agents.
3. *We* agree to provide insurance according to the terms of this policy:
 - a. based on payment of premium for the coverages chosen; and
 - b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET, & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:
 - (1) The named insured shown on the Declarations Page is the sole owner of *your car*.
 - (2) Neither *you* nor any member of *your* household has, within the past three years, had:
 - (a) vehicle insurance canceled or nonrenewed by an insurer; or
 - (b) either:
 - (i) a license to drive; or
 - (ii) a vehicle registration suspended, revoked, or refused.
 - (3) *Your car* is used for pleasure and business.
4. All named insureds shown on the Declarations Page and all applicants agree by acceptance of this policy that:
 - a. the statements in 3.b. above are made by such named insured or applicant and are true; and
 - b. *we* provide this insurance on the basis those statements are true.
5. *Your* purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from the *State Farm Companies*, subject to their applicable eligibility rules.

3
9813B

DEFINITIONS

We define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage. These definitions apply to the singular, plural, possessive, and any other form of these words and phrases. Defined words and phrases are printed in boldface italics.

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

Car means a land motor vehicle with four or more wheels, designed for use primarily on public roads. ***Car*** does not include:

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

Car Business means a business or job where the purpose is to sell, lease, rent, repair, service, modify, transport, store, or park land motor vehicles or any type of trailer.

Fungi means any type or form of fungus or fungi and includes:

1. Mold;
2. Mildew; and
3. Any of the following that are produced or released by fungi:
 - a. Mycotoxins;
 - b. Spores;
 - c. Scents; or
 - d. Byproducts.

Newly Acquired Car means a *car* newly owned by *you*. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by *us* or any other company that describes the *car* as an insured vehicle; or
2. the end of the 30th calendar day immediately following the date the *car* is delivered to *you*.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to *you*.

Non-Owned Car means a *car* that is in the lawful possession of *you* or any *resident relative* and that neither:

1. is owned by:
 - a. *you*;
 - b. any *resident relative*;
 - c. any other *person* who resides primarily in *your* household; or
 - d. an employer of any *person* described in a., b., or c. above; nor

2. has been operated by, rented by, or in the possession of:

- a. *you*; or
- b. any *resident relative*

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or *loss*.

Occupying means in, on, entering, or exiting.

Our means the Company issuing this policy as shown on the Declarations Page.

Owned By means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

Pedestrian means a *person* who is not *occupying*:

1. a motorized vehicle; or
2. a vehicle designed to be pulled by a motorized vehicle.

Person means a human being.

Private Passenger Car means:

1. a *car* of the private passenger type, other than a pickup truck, van, minivan, or sport utility vehicle, designed primarily to carry *persons* and their luggage; or
2. a pickup truck, van, minivan, or sport utility vehicle:
 - a. while not used for:
 - (1) wholesale; or
 - (2) retail pickup or delivery; and
 - b. that has a Gross Vehicle Weight Rating of 10,000 pounds or less.

Resident Relative means a *person*, other than *you*, who resides primarily with the first *person* shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured, his or her spouse, or a *person* described in 1. above.

State Farm Companies means one or more of the following:

1. State Farm Mutual Automobile Insurance Company;
2. State Farm Fire and Casualty Company; and
3. Subsidiaries or affiliates of either 1. or 2. above.

Temporary Substitute Car means a *car* that is in the lawful possession of the *person* operating it and that:

1. replaces *your car* for a short time while *your car* is out of use due to its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. damage; or
 - e. theft; and
2. neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered a *temporary substitute car* only.

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*; and
 - c. while not used as premises for office, store, or display purposes; or
2. a farm implement or farm wagon while being pulled on public roads by a *car*.

Us means the Company issuing this policy as shown on the Declarations Page.

We means the Company issuing this policy as shown on the Declarations Page.

You or **Your** means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "*you*" or "*your*" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured.

Your Car means the vehicle shown under "YOUR CAR" on the Declarations Page. *Your Car* does not include a vehicle that *you* no longer own or lease.

If a *car* is shown on the Declarations Page under "YOUR CAR", and *you* ask *us* to replace it with a *car* newly owned by *you*, then the *car* being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date the *car* newly owned by *you* is delivered to *you*;
2. the date this policy is no longer in force; or
3. the date *you* no longer own or lease the *car* being replaced.

LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
 - a. the ownership, maintenance, or use of:
 - (1) *your car*;
 - (2) a *newly acquired car*; or
 - (3) a *trailer*; and
 - b. the maintenance or use of:

- (1) a *non-owned car*; or
- (2) a *temporary substitute car*;

2. the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured for the maintenance or use of a *car* that is *owned by*, or furnished by an employer to, a *person* who resides primarily in *your* household, but only if such *car* is neither *owned by*, nor furnished by an employer to, the first *person* shown as a named insured on the Declarations Page or that *person's* spouse;

3. any other *person* for his or her use of:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent; and

4. any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This provision applies only if the vehicle is neither *owned by*, nor hired by, that other *person* or organization.

Insured does not include the United States of America or any of its agencies.

Insuring Agreement

1. *We* will pay:
 - a. damages an *insured* becomes legally liable to pay because of:
 - (1) *bodily injury* to others; and
 - (2) damage to property
 caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy;
 - b. attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages; and
 - c. court costs charged to an *insured* and resulting from that part of a lawsuit:
 - (1) that seeks damages payable under this policy's Liability Coverage; and
 - (2) against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay attorney fees and court costs incurred after *we* deposit in court or pay the amount due under this policy's Liability Coverage;
2. *We* have the right to:
 - a. investigate, negotiate, and settle any claim or lawsuit;
 - b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
 - c. appeal any award or legal decision

for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages, fees, and costs described in the Insuring Agreement above, the interest, premiums, costs, and expenses listed below that result from such accident:

1. Interest on damages owed by the *insured* that accrues:
 - a. before a judgment, where owed by law, but only on that part of the judgment *we* pay; and
 - b. after a judgment. *We* will not pay interest on damages paid or payable by a party other than the *insured* or *us*.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage;

2. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
 - a. pay for bonds that exceed this policy's applicable Liability Coverage limit;
 - b. furnish or apply for any bonds; or
 - c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage; and
3. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
 - a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a lawsuit; and
 - b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

Limits

The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage - Bodily Injury Limits - Each Person, Each Accident."

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily*

injury to any one *person* injured in any one accident, including all damages sustained by other *persons* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.

The Liability Coverage limit for damage to property is shown on the Declarations Page under "Liability Coverage - Property Damage Limit - Each Accident". The limit shown is the most *we* will pay for all damages resulting from damage to property in any one accident.

These Liability Coverage limits are the most *we* will pay regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Nonduplication

We will not pay any damages or expenses under Liability Coverage:

1. that have already been paid as expenses under Medical Payments Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. that have already been paid under Uninsured Motor Vehicle Coverage or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO INTENTIONALLY CAUSES *BODILY INJURY* OR DAMAGE TO PROPERTY;
2. FOR *BODILY INJURY* TO:
 - a. *YOU*;
 - b. *RESIDENT RELATIVES*; AND
 - c. ANY OTHER *PERSON* WHO BOTH RESIDES PRIMARILY WITH AN *INSURED* AND WHO:
 - (1) IS RELATED TO THAT *INSURED* BY BLOOD, MARRIAGE, OR ADOPTION; OR
 - (2) IS A WARD OR FOSTER CHILD OF THAT *INSURED*.

This does not apply when:

- (1) a third party has a right of contribution against a member of the injured *person's* family; or

- (2) any *person* not in the household of the named insured was driving the vehicle of the named insured involved in the accident which is the subject of the claim or lawsuit;

3. OR FOR THAT *INSURED'S* INSURER FOR ANY OBLIGATION UNDER ANY TYPE OF WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY, OR SIMILAR LAW;

4. FOR *BODILY INJURY* TO THAT *INSURED'S* EMPLOYEE WHICH ARISES OUT OF THAT EMPLOYEE'S EMPLOYMENT. This exclusion does not apply to that *insured's* household employee who is neither covered, nor required to be covered, under workers' compensation insurance;

5. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;

6. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;

7. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:

- a. *your car*;
- b. a *newly acquired car*;
- c. a *temporary substitute car*; or
- d. a *trailer owned by you*;

8. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;

9. WHILE MAINTAINING OR USING ANY VEHICLE OTHER THAN *YOUR CAR*, A *NEWLY ACQUIRED CAR*, A *TEMPORARY SUBSTITUTE CAR*, OR A *TRAILER* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;

10. FOR DAMAGE TO PROPERTY WHILE IT IS:

- a. *OWNED BY*;
- b. *RENTED TO*;
- c. *USED BY*;

- d. IN THE CARE OF; OR
- e. TRANSPORTED BY

YOU, A RESIDENT RELATIVE, OR THE PERSON WHO IS LEGALLY LIABLE FOR THE DAMAGE. This exclusion does not apply to damage to a:

- a. motor vehicle *owned by* the employer of *you* or any *resident relative* if such damage is caused by an *insured* while operating another motor vehicle;
 - b. residence while rented to or leased to an *insured*; or
 - c. private garage while rented to or leased to an *insured*;
11. FOR LIABILITY ASSUMED UNDER ANY CONTRACT OR AGREEMENT;
 12. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
 13. WHILE USING A **TRAILER** WITH A MOTOR VEHICLE IF THAT **INSURED** IS NOT PROVIDED LIABILITY COVERAGE BY THIS POLICY FOR THE USE OF THAT MOTOR VEHICLE;
 14. FOR THE OWNERSHIP, MAINTENANCE, OR USE OF ANY VEHICLE WHILE IT IS:
 - a. OFF PUBLIC ROADS AND BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving; OR
 15. WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

If Other Liability Coverage Applies

1. If Liability Coverage provided by this policy and one or more other Car Policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same accident, then:
 - a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by

any one of the policies. *We* may choose one or more policies from which to make payment.

2. The Liability Coverage provided by this policy applies as primary coverage for the ownership, maintenance, or use of *your car* or a *trailer* attached to it.

a. If:

- (1) a *temporary substitute car* owned or held for sale or lease by a new or used vehicle dealer is loaned to an *insured* while *your car* is being repaired or evaluated for repair by that dealer; and
- (2) this policy provides bodily injury liability limits of at least \$100,000 for each *person*, \$300,000 for each accident, and property damage liability limits of at least \$50,000 for each accident,

then this coverage is primary and the insurance carried by the dealer is excess.

b. If:

- (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as primary coverage; and
- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as primary coverage.

c. If:

- (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as primary coverage; and
- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as primary coverage.

3. Except as provided in 2. above, the Liability Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as excess coverage; and

- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as excess coverage.

b. If

- (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as excess coverage; and

- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess

that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as excess coverage.

Required Out-of-State Liability Coverage

If:

1. an *insured* is in another state of the United States of America, a territory or possession of the United States of America, the District of Columbia, or any province or territory of Canada, and as a nonresident becomes subject to its motor vehicle compulsory insurance law, financial responsibility law, or similar law; and
2. this policy does not provide at least the minimum liability coverage required by such law for such nonresident,

then this policy will be interpreted to provide the minimum liability coverage required by such law.

This provision does not apply to liability coverage required by law for motor carriers of passengers or motor carriers of property.

Financial Responsibility Certification

When this policy is certified under any law as proof of future financial responsibility, and while required during the policy period, this policy will comply with such law to the extent required.

MEDICAL PAYMENTS COVERAGE

This policy provides Medical Payments Coverage if "C" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you* and *resident relatives*:

a. while *occupying*:

- (1) *your car*;
- (2) a *newly acquired car*;
- (3) a *temporary substitute car*;
- (4) a *non-owned car*; or
- (5) a *trailer* while attached to a *car* described in (1), (2), (3), or (4) above; or

b. if struck as a *pedestrian* by a motor vehicle or any type of trailer; and

2. any other *person* while *occupying*:

- a. *your car*;
- b. a *newly acquired car*;
- c. a *temporary substitute car*; or
- d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent.

Medical Expenses mean *reasonable expenses* for *medical services*.

Medical Services mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the *bodily injury*;
2. rendered by a healthcare provider:

- a. who is licensed as a healthcare provider if a license is required by law; and
 - b. within the legally authorized scope of that healthcare provider's practice;
 3. commonly and customarily recognized throughout the medical profession and within the United States of America as appropriate for the treatment of the *bodily injury*;
 4. primarily designed to serve a medical purpose;
 5. not experimental; and
 6. not for research purposes.
1. obtain and use:
 - a. utilization reviews;
 - b. peer reviews; and
 - c. medical bill reviews
 to determine if the incurred charges are *medical expenses*;
 2. use a medical examination of the *insured* to determine if:
 - a. the *bodily injury* was caused by a motor vehicle accident; and
 - b. the expenses incurred are *medical expenses*; and
 3. enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

Reasonable Expenses mean the lowest one of the following charges:

1. The usual and customary fees charged by a majority of healthcare providers who provide similar *medical services* in the geographical area in which the charges were incurred;
2. The fee specified in any fee schedule:
 - a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where *medical services* are provided; and
 - b. as prescribed or authorized by the law of the state where *medical services* are provided;
3. The fees agreed to by both the *insured's* healthcare provider and *us*; or
4. The fees agreed upon between the *insured's* healthcare provider and a third party when *we* have a contract with such third party.

Insuring Agreement

We will pay:

1. *medical expenses* incurred because of *bodily injury* that is sustained by an *insured* and caused by a motor vehicle accident if:
 - a. that *insured* is first provided *medical services* within one year immediately following the date of the accident; and
 - b. such *medical expenses* are for *medical services* that are provided within three years immediately following the date of the accident; and
2. funeral expenses incurred for an *insured* who dies within three years immediately following the date of a motor vehicle accident if the death is a direct result of *bodily injury* sustained in such accident.

Determining Medical Expenses

We have the right to:

Arbitration

1. If there is a disagreement as to whether incurred charges are *medical expenses*, then the disagreement will be resolved by arbitration upon written request of the *insured* or *us*.
2. The arbitration will take place in the county in which the *insured* resides unless the parties agree to another location.

The *insured* and *we* will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the *insured* or *we* may petition a court that has jurisdiction to select the third arbitrator.

Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.

3. The arbitrators shall only decide whether incurred charges are *medical expenses*. Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
 - a. *us*;
 - b. the *insured*;
 - c. any assignee of the *insured*; and
 - d. any *person* or organization with whom the *insured* expressly or impliedly contracts for *medical services*.

5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. *We* do not waive any of *our* rights by submitting to arbitration.

Limit

The Medical Payments Coverage limit is shown on the Declarations Page under "Medical Payments Coverage - Limit - Each Person". This limit is the most *we* will pay for the *medical expenses* and funeral expenses combined, incurred by or on behalf of any one *insured* as a result of any one accident, regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Subject to the limit shown on the Declarations Page, the most *we* will pay for funeral expenses incurred for any one *insured* is \$3,000.

If the injured *person* has been paid damages for the *bodily injury* by or on behalf of the liable party in an amount:

1. less than the injured *person's* total *medical expenses* and funeral expenses, then the most *we* will pay under Medical Payments Coverage is the lesser of:
 - a. the limit of liability of Medical Payments Coverage; or
 - b. the amount by which the total *medical expenses* and funeral expenses exceed the total amount paid by or on behalf of all parties liable for the *bodily injury*; or
2. equal to or greater than the total *medical expenses* and funeral expenses incurred by the injured *person*, then *we* owe nothing under Medical Payments Coverage.

Nonduplication

We will not pay any *medical expenses* or funeral expenses under Medical Payments Coverage that have already been paid:

1. as damages under Liability Coverage, Uninsured Motor Vehicle Coverage, or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. by or on behalf of a party who is legally liable for the *insured's bodily injury*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO IS STRUCK AS A *PEDESTRIAN* BY A MOTOR VEHICLE, *OWNED BY THAT INSURED OR YOU*, IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*;
2. IF ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR ANY SIMILAR LAW APPLIES TO THAT *INSURED'S BODILY INJURY*;
3. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
4. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to:
 - a. the use of a *private passenger car* on a share-the-expense basis; or
 - b. an *insured* while *occupying* a *non-owned car* as a passenger;
5. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer owned by you*;
6. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
7. WHILE MAINTAINING OR USING A *NON-OWNED CAR* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
8. WHO IS EITHER *OCCUPYING* OR STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
9. WHO IS STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT:
 - a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - b. RUNS ON RAILS OR CRAWLER-TREADS;
10. WHOSE *BODILY INJURY* RESULTS FROM WAR OF ANY KIND;

11. WHOSE **BODILY INJURY** RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
12. WHOSE **BODILY INJURY** RESULTS FROM THE DISCHARGE OF A FIREARM;
13. WHOSE **BODILY INJURY** RESULTS FROM EXPOSURE TO **FUNGI**; OR
14. WHO IS **OCCUPYING** A VEHICLE WHILE IT IS:
 - a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Medical Payments Coverage or Similar Vehicle Insurance Applies

1. An *insured* shall not recover for the same *medical expenses* and funeral expenses under both this coverage and other medical payments coverage or similar vehicle insurance.
2. If Medical Payments Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Medical Payments Coverage limits of such policies shall not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
3. The Medical Payments Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car* or a *trailer* attached to it.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the

State Farm Companies that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and funeral expenses payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

4. Except as provided in 3. above, the Medical Payments Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and

funeral expenses payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*;
4. A *person* authorized by law to receive such payment; or
5. Any *person* or organization that provides the *medical services* or funeral services.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* if "U" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:

- a. not insured or bonded for bodily injury liability at the time of the accident; or

- b. insured or bonded for bodily injury liability at the time of the accident; but

- (1) the limits are less than required by the financial responsibility act of Illinois; or

- (2) the insuring company:

- (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or

- (b) is or becomes insolvent; or

2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:

- a. the *insured*; or

- b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;

2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
5. while located for use as a dwelling or other premises.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?

- b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?

2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:
 - a. \$50,000 for one *person* in any one accident;
 - b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
 - c. the corresponding policy limits.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.
7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".

1. The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,

to or for the *insured*:

- a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or

2. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid,

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle *not owned by* one or both of them;

3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW,

PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR

- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES; OR
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION.

If Other Uninsured Motor Vehicle Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
 - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.
 - b. If:
 - (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured

Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as

16
9813B

determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY AND PROPERTY DAMAGE

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* and *property damage* if "U1" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Property Damage means damage to *your car* or a *newly acquired car*.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:
 - a. not insured or bonded for bodily injury liability and property damage liability at the time of the accident; or
 - b. insured or bonded for bodily injury liability and property damage liability at the time of the accident; but
 - (1) the limit of liability that applies to:
 - (a) *bodily injury* if the claim is for *bodily injury*; or
 - (b) *property damage* if the claim is for *property damage*

is less than the limits required by the financial responsibility act of Illinois; or

(2) the insuring company:

- (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or
 - (b) is or becomes insolvent; or
2. with respect to *bodily injury*, a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:
 - a. the *insured*; or
 - b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
5. while located for use as a dwelling or other premises.

Insuring Agreement

We will pay compensatory damages for *bodily injury* and *property damage* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* or *property damage* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Settlement of Loss for Property Damage

Subject to the Limits of Liability, *we* have the right to settle with *you* for the damaged property in one of the following ways:

1. Pay the cost to repair the damaged property minus any applicable deductible.
 - a. *We* have the right to choose one of the following to determine the cost to repair the damaged property:
 - (1) The cost agreed to by both *you* and *us*;
 - (2) A bid or repair estimate approved by *us*; or
 - (3) A repair estimate that is written based upon or adjusted to:
 - (i) the prevailing competitive price;
 - (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or
 - (iii) a combination of (i) and (ii) above.
- The prevailing competitive price means prices charged by a majority of

the repair market in the area where the damaged property is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the damaged property to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and re-conditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- b. The cost to repair the damaged property does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
 - c. If the repair or replacement of a part results in betterment of that part, then *you* must pay for the amount of the betterment.
 - d. If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
2. Pay the agreed upon actual cash value of the damaged property minus any applicable deductible.
 - a. Actual cash value is determined by the market value, age, and condition at the time the *property damage* occurred. Any deductible amount that applies is then subtracted.
 - b. Actual cash value does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
 - c. The damaged property must be given to *us* in exchange for *our* payment, unless *we* agree that *you* may keep the damaged property. If *you* keep the property damaged, then *our* payment will be reduced by the value of the damaged property after the *loss*, minus any applicable deductible.
 - d. If there is disagreement as to the actual cash value of the damaged property, then the disagreement will be resolved in accordance with the Deciding Fault and Amount provision of this coverage.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?
 - b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?
2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party:
 - a. for the amount of *bodily injury* damages not exceeding the least of:
 - (1) \$50,000 for one *person* in any one accident;
 - (2) \$100,000 for two or more *persons* in any one accident, subject to (1) above; or
 - (3) the corresponding policy limits.
 - b. for the amount of *property damage* not exceeding the lesser of:
 - (1) \$15,000 in any one accident, subject to a \$250 deductible; or
 - (2) the actual cash value of the damaged vehicle.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages under Uninsured Motor Vehicle Coverage for:
 - a. *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law; or
 - b. *property damage*, the rules as specified in Illinois Insurance Code 5/143a shall also apply.
7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.
9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. Bodily Injury

- a. The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.

- b. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis.

Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.

- c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.
2. **Property Damage**
- a. The Uninsured Motor Vehicle Coverage limit for *property damage* is shown on the Declarations Page under "Uninsured Motor Vehicle Coverage - Property Damage Limit - Each Accident".
 The most *we* will pay for all *property damage* resulting from any one accident is the limit shown under "Each Accident" reduced by the sum of all payments for *property damage* made by or on behalf of any *person* or organization who is or may be held legally liable for that *property damage*.
 - b. The amount payable for *property damage*, for each accident, is subject to a \$250 deductible.
 - c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid
 to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or

- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or

2. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

3. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid,

to or for the *insured* under any physical damage coverage or property insurance policy.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;

3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;

- b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
- 7. FOR **PROPERTY DAMAGE** UNLESS THE **INSURED** CAN:
 - a. IDENTIFY THE OWNER OR DRIVER OF THE **UNINSURED MOTOR VEHICLE** BY NAME AND ADDRESS; AND
 - b. PROVE THE MOTOR VEHICLE TO BE AN **UNINSURED MOTOR VEHICLE**.
- 8. FOR THE FIRST \$250 OF **PROPERTY DAMAGE** RESULTING FROM EACH ACCIDENT; OR
- 9. FOR **PROPERTY DAMAGE**, FOR:
 - a. LOSS OF USE OF THE VEHICLE; OR
 - b. LOSS OF OR DAMAGE TO PERSONAL PROPERTY WHICH WAS IN THE VEHICLE.

If Other Uninsured Motor Vehicle Coverage or If Other Property Damage Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable

limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

4. The Uninsured Motor Vehicle Coverage provided by this policy for *property damage* applies:
 - a. as excess coverage if any other kind of coverage applies to the *property damage*, including coverage provided under the Physical Damage Coverages of this policy; but

- b. only in the amount by which it exceeds that other coverage.

The *State Farm Companies* will pay the proportion of damages payable as excess that the single highest applicable limit provided by any one of the *State Farm Companies* bears to the sum of such amount and the limits of all other physical damage coverage or property damage coverage provided by one or more other sources that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment:

1. to one or more of the following for *bodily injury* damages:
 - a. The *insured*;
 - b. The *insured's* surviving spouse;
 - c. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent person; or
 - d. A *person* authorized by law to receive such payment.
2. to one or more of the following for *property damage*:
 - a. The *insured*;
 - b. The repairer; or
 - c. A creditor shown on the Declarations Page, to the extent of its interest.

UNDERINSURED MOTOR VEHICLE COVERAGE

This policy provides Underinsured Motor Vehicle Coverage for *bodily injury* if "W" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Underinsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is either:
 - a. insured or bonded for bodily injury liability at the time of the accident; or
 - b. self-insured under any motor vehicle financial responsibility law, any motor carrier law, or any similar law; and
2. for which the total limits of insurance, bonds, and self-insurance for bodily injury liability from all sources:
 - a. are less than the Underinsured Motor Vehicle Coverage limits of this policy; or

- b. have been reduced by payments to *persons* other than *you* and *resident relatives* to less than the Underinsured Motor Vehicle Coverage limits of this policy.

Underinsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or furnished or available for the regular use of *you*;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads;
5. while located for use as a dwelling or other premises; or
6. defined as an *uninsured motor vehicle* under Uninsured Motor Vehicle Coverage of this policy.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *underinsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *underinsured motor vehicle* as a motor vehicle.

We will pay only if the limits of liability or portion thereof under all bodily injury insurance bonds, policies, and self-insurance plans applicable to the *underinsured motor vehicle* and its operators have been partially or fully exhausted by payment of judgments or settlements, or have been offered to the *insured* in writing.

Consent to Settlement

The *insured* must notify *us* in writing of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle*, and allow *us* to advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice.

Any agreement between the *insured* and *us* as to the amount due shall be final and shall be binding upon both the *insured* and *us* regardless of the amount of any judgment or any settlement reached between any *insured* and the legally liable *person* or *persons*. No such settlement agreement shall be concluded unless:

1. the *insured* has complied with all other applicable policy terms and conditions; and

2. before the conclusion of the settlement agreement, the *insured*:

- a. has filed suit against the owner or operator of the *underinsured motor vehicle*; and
- b. has not abandoned the suit or settled the suit without preserving *our* rights to recover *our* payments.

The most *we* will pay under the settlement agreement is the amount by which the limits of this coverage exceed the limits of the bodily injury liability insurance of the owner or operator of the *underinsured motor vehicle*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *underinsured motor vehicle*?
 - b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *underinsured motor vehicle*?
2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:
 - a. \$50,000 for one *person* in any one accident;
 - b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
 - c. the corresponding policy limits.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties

agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.

7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years immediately following:
 - a. the date of tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or
 - b. the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of tentative settlement.

Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. The Underinsured Motor Vehicle Coverage limits are shown on the Declarations Page under "Underinsured Motor Vehicle Coverage - Bodily Injury Limits - Each Person, Each Accident".
 - a. The most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury* is the lesser of:
 - (1) the limit shown under "Each Person" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*; or
 - (2) the total amount of all damages resulting from that *bodily injury* less those amounts actually recovered under the applicable bodily injury insurance

policies, bonds, or other security maintained on the *underinsured motor vehicle*.

- b. Subject to a. above, the most *we* will pay for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident is the limit shown under "Each Accident" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Underinsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Underinsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,
 to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *underinsured motor vehicle*; or
 - b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies to you* or any *resident relative*; or
2. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY*:
 - a. WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*; OR
 - b. THROUGH BEING STRUCK BY A MOTOR VEHICLE *OWNED BY ANY RESIDENT RELATIVE*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* or through being struck by a motor vehicle not *owned by* one or both of them;
3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
 - c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
7. IF THE UNINSURED MOTOR VEHICLE COVERAGE APPLIES TO THE ACCIDENT; OR

8. UNTIL THE *INSURED* EITHER SETTLES WITH ALL INSURERS OR SELF-INSURERS ISSUING APPLICABLE INSURANCE POLICIES, BONDS, OR OTHER SECURITY MAINTAINED ON THE *UNDERINSURED MOTOR VEHICLE* OR OBTAINS A FINAL JUDGMENT AGAINST THE OWNER OR OPERATOR OF THE *UNDERINSURED MOTOR VEHICLE*. This does not apply if:

- a. the *insured* has given *us* written notice of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle* and *we* advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice; or
- b. the *insured* or his or her legal representative and *we*:
 - (1) agree that the *insured* has suffered *bodily injury* as a result of the negligent operation, maintenance, or use of an *underinsured motor vehicle*.
 - (2) agree, without arbitration, on the amount of damages that the *insured* is legally entitled to collect; and
 - (3) agree upon settlement in accordance with the Consent to Settlement and Deciding Fault and Amount provisions under this coverage.

If Other Underinsured Motor Vehicle Coverage Applies

1. If Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Underinsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
2. The Underinsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides

25
9813B

Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

3. Except as provided in 2. above, the Underinsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Underinsured Motor Vehicle Coverage

which applies to the accident as excess coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

PHYSICAL DAMAGE COVERAGES

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

This policy provides:

1. Comprehensive Coverage if "D";
2. Collision Coverage if "G";
3. Emergency Road Service Coverage if "H";
4. Car Rental and Travel Expenses Coverage if "R1"

is shown under "SYMBOLS" on the Declarations Page. If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

Additional Definitions

Covered Vehicle means:

1. *your car*;
2. a *newly acquired car*;
3. a *temporary substitute car*;
4. a camper that is designed to be mounted on a pickup truck and shown on the Declarations Page;
5. a *non-owned car* while it is:
 - a. being driven by an *insured*; or
 - b. in the custody of an *insured* if at the time of the *loss* it is:
 - (1) not being driven; or
 - (2) being driven by a *person* other than an *insured* and being *occupied* by an *insured*;
6. a *non-owned trailer* while it is being used by an *insured*; and
7. a *non-owned camper* while it is being used by an *insured*;

including its parts and its equipment that are common to the use of the vehicle as a vehicle. However, parts and equipment of *trailers* and campers must be securely fixed as a permanent part of the *trailer* or camper.

Daily Rental Charge means the sum of:

1. the daily rental rate;
2. mileage charges; and
3. related taxes.

Insured means *you* and *resident relatives*.

Loss means:

1. direct, sudden, and accidental damage to; or

2. total or partial theft of

a *covered vehicle*. *Loss* does not include any reduction in the value of any *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

Loss Caused By Collision means a *loss* caused by:

1. a *covered vehicle* hitting or being hit by another vehicle or another object; or
2. the overturning of a *covered vehicle*.

Any *loss* caused by missiles, falling objects, wind-storm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal is not a *Loss Caused By Collision*.

Non-Owned Camper means a camper designed to be mounted on a pickup truck that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Non-Owned Trailer means a *trailer* that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Insuring Agreements

1. Comprehensive Coverage

We will pay:

- a. for *loss*, except *loss caused by collision*, to a *covered vehicle*; and
- b. transportation expenses incurred by an *insured* as a result of the total theft of *your car* or a *newly acquired car*. These transportation expenses are payable:

- (1) during the period that:
 - (a) starts on the date *you* report the theft to *us*; and
 - (b) ends on the earliest of:
 - (i) the date the vehicle is returned to *your* possession in a drivable condition;
 - (ii) the date *we* offer to pay for the *loss* if the vehicle has not yet been recovered; or
 - (iii) the date *we* offer to pay for the *loss* if the vehicle is recovered, but is a total loss as determined by *us*; and

- (2) during the period that:
 - (a) starts on the date the vehicle is left at a repair facility if the stolen vehicle is recovered, returned to *your* possession in a drivable condition, and has unrepaid damage that resulted from the total theft; and
 - (b) ends on the date the vehicle is repaired.

These transportation expenses must be reported to *us* before *we* will pay such incurred expenses.

2. Collision Coverage

We will pay for *loss caused by collision* to a *covered vehicle*.

3. Emergency Road Service Coverage

We will pay the fair cost incurred by an *insured* for:

- a. up to one hour of labor to repair a *covered vehicle* at the place of its breakdown;
- b. towing to the nearest repair facility where necessary repairs can be made if a *covered vehicle* is not drivable;
- c. towing a *covered vehicle* out of a location where it is stuck if the vehicle is on or immediately next to a public road;
- d. delivery of gas, oil, battery, or tire necessary to return a *covered vehicle* to driving condition. *We* do not pay the cost of the gas, oil, battery, or tire; and
- e. up to one hour of labor for locksmith services to unlock a *covered vehicle* if its key is lost, stolen, or locked inside the vehicle.

4. Car Rental and Travel Expenses Coverage

a. Car Rental Expense

We will pay the *daily rental charge* incurred when *you* rent a *car* from a *car business* while *your car* or a *newly acquired car* is:

- (1) not drivable; or
- (2) being repaired

as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage.

We will pay this *daily rental charge* incurred during a period that:

- (1) starts on the date:
 - (a) the vehicle is not drivable as a result of the *loss*; or
 - (b) the vehicle is left at a repair facility if the vehicle is drivable; and
- (2) ends on the earliest of:
 - (a) the date the vehicle has been repaired or replaced;
 - (b) the date *we* offer to pay for the *loss* if the vehicle is repairable but *you* choose to delay repairs; or
 - (c) five days after *we* offer to pay for the *loss* if the vehicle is:
 - (i) a total loss as determined by *us*; or
 - (ii) stolen and not recovered.

The amount of any such *daily rental charge* incurred by *you* must be reported to *us* before *we* will pay such amount.

b. Travel Expenses

We will pay expenses for commercial transportation, lodging, and meals if *your car* or a *newly acquired car* is not drivable as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage. The *loss* must occur more than 50 miles from *your* home. *We* will only pay these expenses if they are incurred by:

- (1) an *insured* during the period that:
 - (a) starts after the *loss* occurs; and
 - (b) ends on the earlier of:
 - (i) the *insured's* arrival at his or her destination or home if the vehicle is left behind for repairs; or

- (ii) the repair of the vehicle if the *insured* waits for repairs before continuing on to his or her destination or returning home; and

- (2) *you*, or any *person you* choose, to travel to retrieve the vehicle and drive it to either the original destination or *your* home if the vehicle was left behind for repairs.

These expenses must be reported to *us* before *we* will pay such incurred expenses.

c. **Rental Car – Repayment of Deductible Expense**

We will pay the comprehensive deductible or collision deductible an *insured* is required to pay the owner of a *car* rented from a *car business*.

Supplementary Payments – Comprehensive Coverage and Collision Coverage

If the *covered vehicle* sustains *loss* for which *we* make a payment under Comprehensive Coverage or Collision Coverage, then *we* will pay reasonable expenses incurred to:

1. tow the *covered vehicle* immediately after the *loss*:
 - a. for a reasonable distance from the location of the *loss* to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable; or
 - b. to any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*. *We* will also pay reasonable expenses incurred to tow the *covered vehicle* for a reasonable distance from this facility to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable;
2. store the *covered vehicle*, if it is not drivable immediately after the *loss*, at:
 - a. any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*; and
 - b. any one repair facility chosen by the owner of the *covered vehicle*, and *we* determine such vehicle is a total loss.

If the owner of the *covered vehicle* consents, then *we* may move the *covered vehicle* at *our* expense to reduce storage costs. If the owner of the *covered vehicle* does not consent, then *we* will pay only the storage costs that would have resulted if *we* had moved the damaged *covered vehicle*; and

3. clean up debris from the *covered vehicle* at the location of the *loss*.

Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage

1. *We* have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

- a. Pay the cost to repair the *covered vehicle* minus any applicable deductible.

- (1) *We* have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

- (a) The cost agreed to by both the owner of the *covered vehicle* and *us*;
- (b) A bid or repair estimate approved by *us*; or
- (c) A repair estimate that is written based upon or adjusted to:
 - (i) the prevailing competitive price;
 - (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or
 - (iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the *covered vehicle* is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the *covered vehicle* to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- (2) The cost to repair the *covered vehicle* does not include any reduction in the value of the *covered vehicle* after it has been repaired, as compared to its value before it was damaged.
- (3) If the repair or replacement of a part results in betterment of that part, then *you* or the owner of the *covered vehicle* must pay for the amount of the betterment.
- (4) If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
- b. Pay the actual cash value of the *covered vehicle* minus any applicable deductible.
 - (1) The owner of the *covered vehicle* and *we* must agree upon the actual cash value of the *covered vehicle*. If there is disagreement as to the actual cash value of the *covered vehicle*, then the disagreement will be resolved by appraisal upon written request of the owner or *us*. Either the owner or *we* may submit written request to the other party within 60 days after *we* offer to pay the actual cash value of the covered vehicle minus any applicable deductible. The appraisal will use the following procedures:
 - (a) The owner and *we* will each select a competent appraiser.
 - (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or *we* may petition a court that has jurisdiction to select the third appraiser.
 - (c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.
 - (d) The appraisers shall only determine the actual cash value of the *covered vehicle*. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.
 - (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the *covered vehicle* and *us*.
 - (f) *We* do not waive any of *our* rights by submitting to an appraisal.
 - (2) The damaged *covered vehicle* must be given to *us* in exchange for *our* payment, unless *we* agree that the owner may keep it. If the owner keeps the *covered vehicle*, then *our* payment will be reduced by the value of the *covered vehicle* after the loss; or
 - c. Return the stolen *covered vehicle* to its owner and pay, as described in 1.a. above, for any direct, sudden, and accidental damage that resulted from the theft.
- 2. The most *we* will pay for transportation expenses under Comprehensive Coverage is \$25 per day subject to an aggregate limit of \$750 per loss.
- 3. The most *we* will pay for loss to a *non-owned trailer* or a *non-owned camper* is \$2,500.

Limits – Car Rental and Travel Expenses Coverage

1. Car Rental Expense

The limit for Car Rental Expense is shown on the Declarations Page under "Limit – Car Rental Expense – Each Day, Each Loss".

- a. The limit shown under "Each Day" is the most *we* will pay for the *daily rental charge*. If:

- (1) a dollar amount is shown, then *we* will pay the *daily rental charge* up to that dollar amount;
- (2) a percentage amount is shown, then *we* will pay that percentage of the *daily rental charge*.

- b. Subject to the "Each Day" limit, the limit shown under "Each Loss" is the most *we* will pay for Car Rental Expense incurred as a result of any one loss.

2. Travel Expenses

The most *we* will pay for Travel Expenses incurred by all *insureds* as a result of any one loss is \$500.

3. Rental Car – Repayment of Deductible Expense

The most *we* will pay for Rental Car – Repayment of Deductible Expense incurred as a result of any one loss is \$500.

Nonduplication

We will not pay for any loss or expense under the Physical Damage Coverages for which the *insured* or owner of the *covered vehicle* has already received payment from, or on behalf of, a party who is legally liable for the loss or expense.

Exclusions

THERE IS NO COVERAGE FOR:

1. ANY **COVERED VEHICLE** THAT IS:
 - a. INTENTIONALLY DAMAGED; OR
 - b. STOLEN

BY OR AT THE DIRECTION OF AN **INSURED**. This does not apply to the extent of the ownership interest of an **insured** who did not cooperate in or contribute to the **loss** if the **loss** arose out of a pattern of criminal domestic violence and the perpetrator of the **loss** is criminally prosecuted for the act causing the **loss**;
2. ANY **COVERED VEHICLE** WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN **INSURED**;
3. ANY **COVERED VEHICLE** WHILE IT IS USED TO CARRY **PERSONS** FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
4. ANY **COVERED VEHICLE** DUE TO:
 - a. THEFT;
 - b. CONVERSION;
 - c. EMBEZZLEMENT; OR
 - d. SECRETION

BY AN **INSURED**, A CONSIGNEE, AN AGENT OF A CONSIGNEE, OR A **PERSON** WHO OBTAINS POSSESSION OF THE **COVERED VEHICLE** WITH THE PERMISSION OF A CONSIGNEE OR AGENT OF A CONSIGNEE;
5. **LOSS TO YOUR CAR** OR A **NEWLY ACQUIRED CAR** IF AN **INSURED** VOLUNTARILY RELINQUISHES POSSESSION OF THAT **CAR** TO A **PERSON** OR ORGANIZATION UNDER AN ACTUAL OR PRESUMED SALES AGREEMENT;
6. ANY **COVERED VEHICLE** TO THE EXTENT OUR PAYMENT WOULD BENEFIT ANY CARRIER OR OTHER BAILEE FOR HIRE THAT IS LIABLE FOR **LOSS** TO SUCH **COVERED VEHICLE**;
7. **LOSS TO ANY COVERED VEHICLE** DUE TO **FUNGI**. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE **FUNGI** RESULT FROM A **LOSS** THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. **WE** WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF **FUNGI**, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR ANY **COVERED VEHICLE** THAT ARE DUE TO THE EXISTENCE OF **FUNGI**;
8. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
9. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM THE TAKING OF OR SEIZURE OF THAT **COVERED VEHICLE** BY ANY GOVERNMENTAL AUTHORITY;
10. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM WAR OF ANY KIND;
11. **YOUR CAR** WHILE SUBJECT TO ANY:
 - a. LIEN AGREEMENT;
 - b. RENTAL AGREEMENT;
 - c. LEASE AGREEMENT; OR
 - d. SALES AGREEMENT

NOT SHOWN ON THE DECLARATIONS PAGE;
12. ANY **NON-OWNED CAR** WHILE IT IS:
 - a. BEING MAINTAINED OR USED BY ANY **PERSON** WHILE THAT **PERSON** IS EMPLOYED IN OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**; OR
 - b. USED IN ANY BUSINESS OR OCCUPATION OTHER THAN A **CAR BUSINESS**. This exclusion (12.b.) does not apply to a *private passenger car*;
13. ANY PART OR EQUIPMENT OF A **COVERED VEHICLE** IF THAT PART OR EQUIPMENT:
 - a. FAILS OR IS DEFECTIVE; OR
 - b. IS DAMAGED AS A DIRECT RESULT OF:
 - (1) WEAR AND TEAR;
 - (2) FREEZING; OR
 - (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION

OF THAT PART OR EQUIPMENT.

This exclusion does not apply if the **loss** is the result of theft of the *covered vehicle*;
14. ANY PART OR EQUIPMENT:
 - a. THAT IS NOT LEGAL FOR USE IN OR ON THE **COVERED VEHICLE** IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED; OR

31
9813B

- b. THE USE OF WHICH IS NOT LEGAL IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED BECAUSE OF HOW OR WHERE THAT PART OR EQUIPMENT IS INSTALLED IN OR ON THE **COVERED VEHICLE**.

However, if there is a legal version of the part or equipment that is necessary for the safe operation of the **covered vehicle**, then *we* will pay the cost that *we* would otherwise have paid to repair the vehicle with the legal version of the part or equipment. *We* will not pay any cost necessary to modify the vehicle for installation of the legal version of the part or equipment;

15. **TIRES.** This exclusion does not apply if:
- loss* is caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal; or
 - loss caused by collision* to another part of the **covered vehicle** causes *loss* to tires;
16. **REMOVABLE PRODUCTS USED FOR STORAGE OF AUDIO, VIDEO, OR OTHER DATA, INCLUDING BUT NOT LIMITED TO TAPES, DISCS, AND MEMORY CARDS, NOR IS THERE COVERAGE FOR THE RECONSTRUCTION OF DATA CONTAINED THEREIN;**
17. **ANY EQUIPMENT USED TO DETECT OR INTERFERE WITH SPEED MEASURING DEVICES;**
18. **A CAMPER, INCLUDING ITS PARTS AND ITS EQUIPMENT, THAT IS:**
- DESIGNED TO BE MOUNTED ON A PICKUP TRUCK;
 - OWNED BY AN INSURED;** AND
 - NOT SHOWN ON THE DECLARATIONS PAGE; OR
19. **ANY COVERED VEHICLE WHILE IT IS:**
- BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (19.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Physical Damage Coverage or Similar Coverage Applies

- If the same *loss* or expense is payable under more than one of the physical damage coverages provided by this policy, then only the one coverage that pays the most for that *loss* or expense applies.
- If any of the physical damage coverages provided by this policy and one or more other policies issued to an *insured* by the **State Farm Companies** apply to the same *loss* or expense, then only one policy applies. *We* will select a policy that pays the most for the *loss* or expense.
- The physical damage coverages provided by this policy apply as primary coverage for a *loss* to *your car*.

If similar coverage provided by one or more sources other than the **State Farm Companies** also applies as primary coverage for the same *loss* or expense, then the **State Farm Companies** will pay the proportion of the *loss* or expense payable as primary that the maximum amount that may be paid by the **State Farm Companies** bears to the sum of such amount and the limits of all other similar coverage that applies as primary coverage.

- Except as provided in 3. above, the physical damage coverages provided by this policy apply as excess coverage.

If similar coverage provided by one or more sources other than the **State Farm Companies** also applies as excess coverage for the same *loss* or expense, then the **State Farm Companies** will pay the proportion of the *loss* or expense payable as excess that the maximum amount that may be paid by the **State Farm Companies** bears to the sum of such amount and the limits of all other similar coverage that applies as excess coverage.

Financed Vehicle

- If a creditor is shown on the Declarations Page, then any Comprehensive Coverage or Collision Coverage provided by this policy applies to that creditor's interest in *your car*. Coverage for the creditor's interest is only provided for a *loss* that is payable to *you*.

However, if this policy is cancelled or nonrenewed, then *we* will provide coverage for the creditor's interest until *we* notify the creditor of the termination of such coverage. This coverage for the creditor's interest is only provided for a *loss* that would have been payable to *you* if this policy had not been cancelled or nonrenewed. The date such termination is effective will be at least 10 days after the date *we* mail or

electronically transmit a notice of the termination to the creditor.

2. If *we* pay such creditor, then *we* are entitled to the creditor's right of recovery against *you* to the extent of *our* payment. *Our* right of recovery does not impair the creditor's right to recover the full amount of its claim.

Our Payment Options

1. Comprehensive Coverage and Collision Coverage

- a. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle owned by you*:

- (1) *You*;
- (2) The repairer; or
- (3) A creditor shown on the Declarations Page, to the extent of its interest.

- b. *We* may, at *our* option, make payment to one or more of the following for *loss* to a *covered vehicle not owned by you*:

- (1) *You*;
- (2) The owner of such vehicle;
- (3) The repairer; or
- (4) A creditor, to the extent of its interest.

2. Emergency Road Service Coverage and Car Rental and Travel Expenses Coverage

We may, at *our* option, make payment to one or more of the following:

- a. *You*;
- b. The *insured* who incurred the expense; or
- c. Any party that provided the service for which payment is owed.

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE

This policy provides Death, Dismemberment and Loss of Sight Coverage if "S" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means a *person* whose name is shown under "Death, Dismemberment and Loss of Sight Coverage - Persons Insured" on the Declarations Page.

Insuring Agreement

We will pay the highest applicable benefit shown in the following Death, Dismemberment and Loss of Sight Benefits Schedules if an *insured*:

1. dies; or
2. suffers dismemberment or permanent loss of sight, as described in the schedule

as the direct result of an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause.

The *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer at the time of the accident. The death, dismemberment, or permanent loss of sight must occur within 90 days immediately following the date of the accident.

Benefit

The applicable benefit shown in the schedule is the most *we* will pay for any one *insured* in any one accident. Any benefit paid or payable for dismemberment or permanent loss of sight reduces the death benefit.

Death, Dismemberment and Loss of Sight Benefits Schedules

If the amount shown on the Declarations Page for the *insured* is \$5,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	\$5,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$5,000
Loss of one hand or one foot; or all sight of one eye	\$2,500
Loss of the thumb and a finger on one hand; or any three fingers	\$1,500
Loss of any two fingers	\$1,000

The hand must be cut off through or above the wrist.
The foot must be cut off through or above the ankle.
The whole thumb or finger must be cut off.

If the amount shown on the Declarations Page for the <i>insured</i> is \$10,000, then <i>we</i> will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:	
Death	\$10,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$10,000
Loss of one hand or one foot; or all sight of one eye	\$5,000
Loss of the thumb and a finger on one hand; or any three fingers	\$3,000
Loss of any two fingers	\$2,000
The hand must be cut off through or above the wrist. The foot must be cut off through or above the ankle. The whole thumb or finger must be cut off.	

The benefits shown in the schedules are doubled for an *insured* who at the time of the accident was *occupying* a *private passenger car* and using a seat belt in the manner recommended by the vehicle's manufacturer.

LOSS OF EARNINGS COVERAGE

This policy provides Loss of Earnings Coverage if "Z" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means a *person* whose name is shown under "Loss of Earnings Coverage - Persons Insured" on the Declarations Page.

Total Disability means the *insured's* inability to work, either full or part time, in his or her occupation or any other similar occupation for which he or she is reasonably fitted by education, training, or experience.

Weekly Earnings means 85% of all earnings for the *insured's* services before any deductions. When *weekly earnings* cannot be determined on a weekly basis an average will be used. The average is 85% of the total earnings for the 52 weeks just prior to the accident divided by 52.

Insuring Agreement

We will pay the *insured* his or her loss of *weekly earnings*, which occur while the *insured* is living, due to continuous *total disability* that:

1. is the direct result of *bodily injury* caused by an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause. At the time of

the accident, the *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer; and

2. starts within 20 days immediately following the date of the accident and lasts for a period of at least 30 consecutive days. *We* will not pay for the first seven days of the 30 day period.

Limit

The most *we* will pay any one *insured* is:

1. \$250 for each full workweek of *total disability*; and
2. a pro rata portion of \$250 for less than a full workweek of *total disability*.

Subject to the workweek limit, the most *we* will pay any one *insured* for all loss of *weekly earnings* due to any one accident is \$15,000.

We will pay once every two weeks the *insured's* loss of *weekly earnings* owed.

Exclusions - Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE DO NOT APPLY TO AN *INSURED*:

1. WHILE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN A *CAR BUSINESS*;
2. WHILE *OCCUPYING*, LOADING, OR UNLOADING:
 - a. AN EMERGENCY VEHICLE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT;
 - b. A VEHICLE, OTHER THAN AN EMERGENCY VEHICLE, WHILE USED IN THE:
 - (1) *INSURED'S BUSINESS*; OR
 - (2) COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN OTHER THAN A *CAR BUSINESS*.

This exclusion (2.b.) does not apply if the vehicle is a *private passenger car*;

- c. A MILITARY VEHICLE; OR
- d. A VEHICLE WHILE IT IS:
 - (1) BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

- (2) ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (2.d.(2)) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
 - 3. WHILE **OCCUPYING**, LOADING, UNLOADING, OR WHO IS STRUCK AS A **PEDESTRIAN** BY:
 - a. A MOTOR VEHICLE THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. A MOTOR VEHICLE THAT IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. A MOTOR VEHICLE OR ANY TYPE OF TRAILER, EITHER OF WHICH IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES; OR
 - 4. FOR DEATH, DISMEMBERMENT, LOSS OF SIGHT, OR **TOTAL DISABILITY** THAT RESULTS FROM:
 - a. WAR OF ANY KIND;
 - b. NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION
- FROM ANY SOURCE, OR THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
- c. THE DISCHARGE OF A FIREARM;
 - d. EXPOSURE TO **FUNGI**;
 - e. SUICIDE OR ATTEMPTED SUICIDE REGARDLESS OF WHETHER THE **INSURED** WAS SANE OR INSANE; OR
 - f. DISEASE except pus-forming infection due to **bodily injury** sustained in the accident.

Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

We may, at our option, make payment to one or more of the following:

- 1. The **insured**;
- 2. The **insured's** surviving spouse;
- 3. A parent or guardian of the **insured**, if the **insured** is a minor or an incompetent **person**; or
- 4. A **person** or organization authorized by law to receive such payment.

INSURED'S DUTIES

- 1. **Notice to Us of an Accident or Loss**
The **insured** must give **us** or one of **our** agents notice of the accident or **loss** as soon as reasonably possible. The notice must give **us**:
 - a. **your** name;
 - b. the names and addresses of all **persons** involved in the accident or **loss**;
 - c. the hour, date, place, and facts of the accident or **loss**; and
 - d. the names and addresses of witnesses to the accident or **loss**.
- 2. **Notice to Us of a Claim or Lawsuit**
 - a. If a claim is made against an **insured**, then that **insured** must immediately send **us** every demand, notice, and claim received.
 - b. If a lawsuit is filed against an **insured**, then that **insured** must immediately send **us** every summons and legal process received.
- 3. **Insured's Duty to Cooperate With Us**
 - a. The **insured** must cooperate with **us** and, when asked, assist **us** in:
 - (1) making settlements;
 - (2) securing and giving evidence; and
 - (3) attending, and getting witnesses to attend, depositions, hearings, and trials.
 - b. The **insured** must not, except at his or her own cost, voluntarily:
 - (1) make any payment to others; or
 - (2) assume any obligation to others unless authorized by the terms of this policy.
 - c. Any **person** or organization making claim under this policy must, when **we** require, give **us** proof of loss on forms **we** furnish.
- 4. **Questioning Under Oath**
Under:

- a. Liability Coverage, each *insured*;
- b. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
- c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other *person* or organization making claim or seeking payment;

must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person's* or organization's legal representative, *our* representatives, any *person* or *persons* designated by *us* to record the questions and answers, and no other *person* present.

5. **Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage**

When there is a *loss*, *you* or the owner of the *covered vehicle* must:

- a. protect the *covered vehicle* from additional damage. *We* will pay any reasonable expense incurred to do so that is reported to *us*;
- b. make a prompt report to the police when the *loss* is the result of theft;
- c. allow *us* to:
 - (1) inspect any damaged property before its repair or disposal;
 - (2) test any part or equipment before that part or equipment is removed or repaired; and
 - (3) move the *covered vehicle* at *our* expense in order to conduct such inspection or testing;
- d. provide *us* all:
 - (1) records;
 - (2) receipts; and
 - (3) invoices

that *we* request and allow *us* to make copies;

- e. not abandon the *covered vehicle* to *us*; and
- f. properly complete and provide all legal documents required to transfer vehicle ownership to *us* upon payment of the actual cash value of the *covered vehicle*, less any applicable deductible.

6. **Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage**

A *person* making claim under:

- a. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must:

- (1) notify *us* of the claim and give *us* all the details about the death, injury, treatment, and other information that *we* may need as soon as reasonably possible after the injured *insured* is first examined or treated for the injury. If the *insured* is unable to give *us* notice, then any other *person* may give *us* the required notice;
- (2) be examined as reasonably often as *we* may require by physicians chosen and paid by *us*. A copy of the report will be sent to the *person* upon written request;
- (3) provide written authorization for *us* to obtain:
 - (a) medical bills;
 - (b) medical records;
 - (c) wage, salary, and employment information; and
 - (d) any other information *we* deem necessary to substantiate the claim.

If an injured *insured* is a minor, unable to act, or dead, then his or her legal representative must provide *us* with the written authorization.

If the holder of the information refuses to provide it to *us* despite the authorization, then at *our* request the *person* making claim or his or her legal representative must obtain

the information and promptly provide it to *us*; and

- (4) allow *us* to inspect the vehicle that the *insured occupied* in the accident;
- b. Uninsured Motor Vehicle Coverage must report an accident, involving a motor vehicle whose owner and driver remain unknown, to the police within 24 hours and to *us* within 30 days;
- c. Uninsured Motor Vehicle Coverage and Underinsured Motor Vehicle Coverage must send *us* immediately a copy of all lawsuit papers if the *insured* files a lawsuit against the party liable for the accident;
- d. under the Uninsured Motor Vehicle Coverage, if making claim for *property damage*, give *us* the name and address of the owner

of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
- (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and
- e. Loss of Earnings Coverage must:
 - (1) make a claim under this policy;
 - (2) report to *us* when that *person* has a *total disability*; and
 - (3) provide proof of continued *total disability* when *we* ask for it.

GENERAL TERMS

1. When Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur during the policy period. The policy period is shown on the Declarations Page and is for successive periods of six months each for which the renewal premium is paid. The policy period begins and ends at 12:01 AM Standard Time at the address shown on the Declarations Page.

2. Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- a. in the United States of America and its territories and possessions;
- b. in Canada; and
- c. while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Liability Coverage, Medical Payments Coverages, and Physical Damage Coverage also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

3. Newly Owned or Newly Leased Car

If *you* want to insure a *car* newly owned by *you* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then *you* must either:

- a. request *we* replace the *car* currently shown on the Declarations Page of this policy with the *car* newly owned by *you* and pay *us* any added amount due. If *you* make such request while this policy is in force and:
 - (1) before the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date the *car* newly owned by *you* is delivered to *you*. The added amount due will be calculated based on that date; or
 - (2) after the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date and time *you* make the request. The added amount due will be calculated based on that date; or
- b. apply to the *State Farm Companies* for a separate policy to insure the *car* newly owned by *you*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

4. Changes to This Policy

a. Changes in Policy Provisions

We may only change the provisions of this policy by:

- (1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or
- (2) revising this policy to give broader coverage without an additional premium charge. If any coverage provided by this policy is changed to give broader coverage, then *we* will give *you* the broader coverage as of the date *we* make the change effective in the state of Illinois without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.

b. Change of Interest

- (1) No change of interest in this policy is effective unless *we* consent in writing.
- (2) Except under Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage, if a named insured shown on the Declarations Page dies, then the definition of *insured* under each of the coverages provided by this policy is changed to include:
 - (a) any *person* with lawful custody of *your car*, a *newly acquired car*, or a *temporary substitute car* until a legal representative is qualified; and then
 - (b) the legal representative of the deceased named insured.

This only applies while such *person* is maintaining or using *your car*, a *newly acquired car*, or a *temporary substitute car*.

Policy notice requirements are met by mailing the notice to the last known policy address that *we* have on record for the deceased named insured.

c. Joint and Individual Interests

If *you* consists of more than one *person* or entity, then each acts for all to change or cancel the policy.

d. Change of Policy Address

We may change the named insured's policy address as shown on the Declarations Page and in *our* records to the last known address provided to *us* by:

- (1) *you*; or
- (2) the United States Postal Service.

5. Premium

- a. Unless as otherwise provided by an alternative payment plan in effect with the *State Farm Companies* with respect to the premium for this policy, the premium is due and payable in full on or before the first day of the policy period shown on the most recently issued Declarations Page or Renewal Notice.
- b. The renewal premium for this policy will be based upon the rates in effect, the coverages carried, the applicable limits, deductibles, and other elements that affect the premium that apply at the time of renewal.
- c. The premium for this policy may vary based upon the purchase of other insurance from the *State Farm Companies*.
- d. The premium for this policy is based upon information *we* have received from *you* or other sources. *You* must inform *us* if any information regarding the following is incorrect or incomplete, or changes during the policy period, and *you* must answer questions *we* ask regarding the following:
 - (1) *Your car*, or its use, including annual mileage;
 - (2) The *persons* who regularly drive *your car*, including newly licensed family members;
 - (3) *Your* marital status; or
 - (4) The location where *your car* is primarily garaged.

If the above information or any other information used to determine the premium is incorrect, incomplete, changes during the policy period, or is not provided to *us* when *we* ask, then *we* may decrease or increase the premium during the policy period. If *we* decrease the premium during the policy period, then *we* will provide a refund or a credit in the amount of the decrease. If *we* increase the premium during the policy period, then *you* must pay the amount of the increase.

6. Renewal

We agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless *we* mail a nonrenewal notice or a cancellation notice as set forth in 7. and 8. below.

7. Nonrenewal

If *we* decide not to renew this policy, then, at least 30 days before the end of the current policy period, *we* will mail a nonrenewal notice to

the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page.

8. Cancellation

a. How You May Cancel

You may cancel this policy by providing to *us* advance notice of the date cancellation is effective. *We* may confirm the cancellation in writing.

b. How and When We May Cancel

We may cancel this policy by mailing a written notice to the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page. The notice will provide the date cancellation is effective.

- (1) If *we* mail a cancellation notice because the premium is not paid when due, then the date cancellation is effective will be at least 10 days after the date *we* mail the cancellation notice.

Otherwise, the date cancellation is effective will be at least 30 days after the date *we* mail the cancellation notice.

- (2) After this policy has been in force for more than 59 days, *we* will not cancel this policy before the end of the current policy period unless:

- (a) the premium is not paid when due; or
- (b) *you*, any *resident relative*, or any other *person* who usually drives *your car* has had his or her driver's license under suspension or revocation during the 12 months prior to the notice of the cancellation.

c. Return of Unearned Premium

If the policy is canceled, then premium will be earned on a pro rata basis. Any unearned premium will be returned within 30 days of:

- (1) the date of the notice of cancellation by *us*; or
- (2) the date *we* receive *your* request for cancellation.

9. Assignment

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

10. Bankruptcy or Insolvency of the Insured

Bankruptcy or insolvency of the *insured* or his or her estate will not relieve *us* of *our* obligations under this policy.

11. Concealment or Fraud

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

12. Our Right to Recover Our Payments

- a. Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage payments are not recoverable by *us*. Except as provided in 12.b. below, the following apply to all other coverages:

(1) Subrogation

If *we* are obligated under this policy to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

- (a) doing nothing to impair that legal right;
- (b) executing any documents *we* may need to assert that legal right; and
- (c) taking legal action through *our* representatives when *we* ask.

(2) Reimbursement

If *we* make payment under this policy and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

- (a) hold in trust for *us* the proceeds of any recovery; and
- (b) reimburse *us* to the extent of *our* payment.

- b. Regarding Underinsured Motor Vehicle Coverage, *we* will not exercise *our* right of recovery if:

- (1) the *insured* has given *us* advance notice of settlement with the owner or operator of the *underinsured motor vehicle*; and
- (2) *we* fail to advance the *insured* an amount equal to the tentative settlement within 30 days after *we* receive the notice.

13. Legal Action Against Us

Legal action may not be brought against *us* until there has been full compliance with all the provisions of this policy. In addition, legal action may only be brought against *us* regarding:

- a. Liability Coverage after the amount of damages an *insured* is legally liable to pay has been finally determined by:

- (1) judgment after an actual trial, and any appeals of that judgment if any appeals are taken; or
- (2) agreement between the claimant and *us*.

- b. Medical Payments Coverage if the legal action relating to this coverage is brought against *us* within four years immediately following the date of the accident.

- c. Uninsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:

- (1) presents an Uninsured Motor Vehicle Coverage claim to *us*; and
- (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction,

within two years immediately following the date of the accident, or within two years immediately following the date the insuring company for the owner or driver of the *uninsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the accident.

No legal action may be brought against *us* relating to Uninsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled *Consent to Settlement and Deciding Fault and Amount*.

- d. Underinsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:

- (1) presents an Underinsured Motor Vehicle Coverage claim to *us*; and
- (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction, within two years immediately following:
 - (a) the date of the tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or

- (b) the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the tentative settlement.

No legal action may be brought against *us* relating to Underinsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled *Consent to Settlement and Deciding Fault and Amount*.

- e. Physical Damage Coverages if the legal action relating to these coverages is brought against *us* within one year immediately following the date of the accident or *loss*.

The limitation period specified in a., b., c., d., or e. above is tolled from the date proof of *loss* is filed for the specific coverage involved until the date claim for that coverage is denied in whole or in part.

14. Choice of Law

Without regard to choice of law rules, the law of the state of:

- a. Illinois will control in the event of any disagreement as to the interpretation and application of any provision in this policy; and
- b. Illinois will control in the event of any disagreement as to the interpretation and application of this policy's:

- (1) Mutual Conditions provision found on the most recently issued Declarations Page, if this policy was issued by the State Farm Mutual Automobile Insurance Company; or
- (2) Participating Policy provision found on the most recently issued Declarations Page, if this policy was issued by any subsidiary or affiliate of the State Farm Mutual Automobile Insurance Company.

15. Severability

If any provision of this policy is held invalid or unenforceable by a court that has jurisdiction, then:

- a. such provision will remain in full force to the extent not held invalid or unenforceable; and
- b. all other provisions of this policy will remain valid and enforceable.

6018GG.1 COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*;
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE**a. Additional Definition**

The following are added:

- (1) **Collision** means:
 - (a) a vehicle hitting or being hit by another vehicle or another object; or
 - (b) the overturning of a vehicle.
- (2) **Pollutants** means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.
- (3) **Work** means any work or operations performed by or on behalf of an *insured* including:
 - (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.
- (2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:
 - (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
 - (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.
- (3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
 - (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:
 - (i) WHEN THAT PART OF THE **WORK** DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY **PERSON** OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;
 - (ii) WHEN ALL OF THE **WORK** TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR
 - (iii) WHEN ALL OF THE **WORK** CALLED FOR IN **YOUR** CONTRACT HAS BEEN FINISHED.
- WORK** IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.
- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN (a) ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE.
 - (5) THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR PROPERTY DAMAGE CAUSED BY **POLLUTANTS** THAT:
 - (a) ARE TRANSPORTED BY;
 - (b) ARE CARRIED IN OR UPON;
 - (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR
 - (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.
 - (6) THERE IS NO COVERAGE FOR AN **INSURED** FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY **PERSON**, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT **INSURED** FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:
 - (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF **POLLUTANTS**; OR

(b) IN ANY WAY ASSOCIATED WITH THE COST OF:

- (i) CLEANUP;
- (ii) REMOVAL;
- (iii) CONTAINMENT; OR
- (iv) NEUTRALIZATION OF THE EFFECTS OF **POLLUTANTS**.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. MEDICAL PAYMENTS COVERAGE

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN **INSURED** WHO IS **OCCUPYING** A **NON-OWNED CAR**.

(2) THERE IS NO COVERAGE FOR AN **INSURED** WHOSE **BODILY INJURY** RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. PHYSICAL DAMAGE COVERAGES

Exclusions

The following is added:

THERE IS NO COVERAGE FOR **LOSS** TO A **NON-OWNED CAR**, A **NON-OWNED TRAILER**, OR A **NON-OWNED CAMPER**.

6913B AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. The words "spouse", "marriage", and "marital" refer to the legal relationship between two *persons* united together in either:

- a. a marriage; or
- b. a civil union

that is recognized by and valid under Illinois law.

2. THIS POLICY

Item 5. is changed to read:

Your purchase of this policy may allow:

- a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or
- b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

3. LIABILITY COVERAGE

Insuring Agreement and Supplementary Payments are replaced by the following:

Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:

- a. *bodily injury* to others; and
- b. damage to property

caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.

2. *We* have the right to:

- a. investigate, negotiate, and settle any claim or lawsuit;
- b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
- c. appeal any award or legal decision

for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:

- a. that seeks damages payable under this policy's Liability Coverage; and
- b. against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:

- a. before a judgment, but only the interest on the lesser of:

- (1) that part of the damages *we* pay; or
- (2) this policy's applicable Liability Coverage limit; and

- b. after a judgment.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

- a. pay for any bond with a face amount that exceeds this policy's

applicable Liability Coverage limit;

- b. furnish or apply for any bonds; or

- c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

- a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:

- (1) an arbitration;
- (2) a mediation; or
- (3) a trial of a lawsuit; and

- b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

4. INSURED'S DUTIES

Item d. of 6. **Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage** is changed to read:

- d. A *person* making claim under Uninsured Motor Vehicle Coverage, if making claim for *property damage*, must give *us* the name and address of the owner of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
- (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and

5. GENERAL TERMS

- a. **Where Coverage Applies** is changed to read:

Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- (1) in the United States of America and its territories and possessions;
- (2) in Canada; and
- (3) while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

- b. The following is added to **GENERAL TERMS**:

Limited Coverage in Mexico

This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plans to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. Liability Coverage

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. Medical Payments Coverage

c. Physical Damage Coverages

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage** and

Collision Coverage provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF ILLINOIS IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring

in Mexico must be brought in a court that has jurisdiction in the state of Illinois in the United States of America.

c. Paragraph c. of 5. **Premium** is changed to read:

c. The premium for this policy may vary based upon:

- (1) the purchase of other products or services from the *State Farm Companies*;
- (2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or
- (3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.



6018GG COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*;
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE

a. Additional Definition

The following are added:

(1) *Collision* means:

- (a) a vehicle hitting or being hit by another vehicle or another object; or
- (b) the overturning of a vehicle.

(2) *Pollutants* means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.

(3) *Work* means any work or operations performed by or on behalf of an *insured* including:

- (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

(1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.

(2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or

(b) designed for:

- (i) snow removal;
- (ii) street cleaning; or
- (iii) road maintenance, other than construction or resurfacing.

(3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
 - (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:
 - (i) WHEN THAT PART OF THE **WORK** DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY **PERSON** OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;
 - (ii) WHEN ALL OF THE **WORK** TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR
 - (iii) WHEN ALL OF THE **WORK** CALLED FOR IN **YOUR** CONTRACT HAS BEEN FINISHED.
- WORK** IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.
- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN 1. ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN 1. ABOVE.
 - (5) THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR PROPERTY DAMAGE CAUSED BY **POLLUTANTS** THAT:
 - (a) ARE TRANSPORTED BY;
 - (b) ARE CARRIED IN OR UPON;
 - (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR
 - (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.
 - (6) THERE IS NO COVERAGE FOR AN **INSURED** FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY **PERSON**, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT **INSURED** FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:
 - (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF **POLLUTANTS**; OR

- (b) IN ANY WAY ASSOCIATED WITH THE COST OF:

- (i) CLEANUP;
- (ii) REMOVAL;
- (iii) CONTAINMENT; OR
- (iv) NEUTRALIZATION OF THE EFFECTS OF **POLLUTANTS**.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. MEDICAL PAYMENTS COVERAGE

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN **INSURED WHO IS OCCUPYING A NON-OWNED CAR.**

- (2) THERE IS NO COVERAGE FOR AN **INSURED WHOSE BODILY INJURY** RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. PHYSICAL DAMAGE COVERAGES

Exclusions

The following is added:

THERE IS NO COVERAGE FOR **LOSS TO A NON-OWNED CAR, A NON-OWNED TRAILER, OR A NON-OWNED CAMPER.**



6055ZZ FARM TRUCK
(Coverage While Towing Trailers and Farm Implements)

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. If the Business Named Insured endorsement is not attached to this policy, then the following exclusion is deleted wherever it appears in the Commercial Vehicle Endorsement:

THERE IS NO COVERAGE FOR AN INSURED FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A NON-OWNED CAR.

2. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car* or a farm truck;
 - b. not designed to carry *persons*; and

- c. while not used as premises for office, store, or display purposes; or

2. a farm implement or farm wagon while being pulled on public roads by a *car* or a farm truck.

3. LIABILITY COVERAGE, MEDICAL PAYMENTS COVERAGE, UNINSURED MOTOR VEHICLE COVERAGE, and UNDERINSURED MOTOR VEHICLE COVERAGE

Exclusions

The following is added:

THERE IS NO COVERAGE FOR AN INSURED FOR BODILY INJURY OR DAMAGE TO PROPERTY ARISING OUT OF THE OPERATION OF ANY FARM IMPLEMENT.

IN THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)
Plaintiff,)	
)
v.)	2016-MR-137
)
KENT ELMORE and)	
ARDITH SHELDON ELMORE,)	
)
Defendants.)	

MOTION FOR SUMMARY JUDGMENT

NOW COMES the Defendant, Kent Elmore, by Christopher A. Koester, of Taylor Law Offices, P.C., its attorneys, and as and for its Motion for Summary Judgment against State Farm Mutual Automobile Insurance Company pursuant to 735 ILCS 5/2-1005, states:

1. On and prior to October 16, 2013, Ardith Sheldon Elmore, (hereinafter referred to as "the insured") owned and possessed a 2002 Ford International 4900 grain truck which was insured by State Farm Mutual Automobile Insurance Company under policy number 613-9680-D14-13A.

2. On October 16, 2013, Kent Elmore, maneuvered the latching mechanism on the rear door of the 2002 Ford International grain truck to allow the corn inside the bed of the insured truck to spill into the hopper and auger system that was positioned immediately behind the truck so that it actually abutted the rear of the grain truck. The positioning of the hopper and auger allowed the corn in the insured truck to spill into the hopper once Kent Elmore maneuvered the latch and lifted the rear door on the grain truck. During this unloading process, but before the unloading process was completed, Kent Elmore's right foot became entangled in

the auger system at the same time as he maneuvered the latching mechanism on the grain truck insured by State Farm. Mr. Elmore lost his right leg above the knee as a result of the traumatic amputation.

3. At all relevant times mentioned herein, the 2002 Ford International 4900 grain truck which was insured by State Farm Mutual Insurance Company under policy number 613-9680-D14-13A. Ardith Sheldon Elmore was the owner of the truck and was a named insured under said policy of insurance. (A copy of the Policy is attached hereto and incorporated herein by reference as "Exhibit A").

4. At all relevant times herein, there was in full force and effect an omnibus statute in Illinois mandating that insurers provide coverage to permissive "users" of a motor vehicle as set forth in 625 ILCS 5/7-317. Section 5/7-317 of the Illinois Insurance Code – Proof of Financial Responsibility, provides:

“(b) Owner’s Policy. – Such owner’s policy of liability insurance:

2. Shall insure the person named therein and any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured.” 625 ILCS 5/7-317.

5. On and prior to October 16, 2013, Ardith Sheldon Elmore used and was “responsible for the use” of the 2002 Ford International 4900 grain truck to unload corn in one of his farm fields in Effingham County, IL. The Illinois Supreme Court in *Schultz v. Illinois Farmers Insurance Company*, N.E.2d, 210 WL 966206 (March 18, 2010), has defined the term “user” simply as “one who makes use of a thing.” One “uses” a grain truck whenever such use “is rationally connected to the vehicle for the purpose of providing transportation or satisfying some other related need of the users.” “Use” of the insured truck certainly included the loading, unloading and transferring of corn from the farm field to the grain elevator.

6. Pursuant to the "completed operations doctrine" which has been adopted by Illinois courts, the State Farm policy provides coverage to its insured "for all acts which occur before the loading and unloading process has been completed." See *Woodside v. Gerken Food Company*, 130 Ill.App. 3d 501, 85 Ill. Dec. 811 (Fifth Dist. 1985); *Toler v. Country Mutual Insurance Company*, 123 Ill.App. 3d 386, 462 N.E. 2d 909 (Fifth Dist. 1984); see *Menard, Inc. v. Country Preferred Insurance Company*, 213 Ill.App. 3d 120340 (Third Dist. 2013).

7. The pleadings and depositions reveal that there is no genuine issue as to any material fact and Defendants Kent Elmore and Ardith Sheldon Elmore are entitled to judgment as a matter of law. Specifically, the pleadings, depositions and affidavits reveal that Ardith Elmore should be afforded liability coverage in the amount of \$250,000 associated with the injury sustained by Kent Elmore.

WHEREFORE, the Defendant, Kent Elmore, prays that summary judgment be entered in his favor and against the Plaintiff, State Farm Mutual Automobile Insurance Company, pursuant to 735 ILCS 5/2-1005 and that Plaintiff be ordered to pay pre-judgment interest and Defendant's costs of suit.

Respectfully submitted,



Christopher A. Koester
Taylor Law Offices, P.C.

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
Attorney for Defendant
122 East Washington Avenue
Effingham, Illinois 62401
(217) 342-3925

CERTIFICATE OF SERVICE

Christopher A. Koester hereby certifies that he has served a copy of the foregoing Motion for Summary Judgment upon:

Michael J. Bedesky
 Reed Armstrong Mudge & Morrissey, P.C.
 115 N. Buchanan
 Edwardsville, IL 62025
mbedesky@reedarmstrong.com

by emailing and mailing to him a true and correct copy thereof at the address referred to above in an envelope addressed to him, bearing proper first class postage and deposited in the United States mail at Effingham, Illinois, this 4th day of December, 2017.


 Christopher A. Koester

Christopher A. Koester
 TAYLOR LAW OFFICES, P.C.
 Attorney for Defendant
 122 East Washington Avenue
 Effingham, Illinois 62401
 (217) 342-3925



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 613 9680-D14-13A including any endorsements, if applicable, for the policy term(s) October 14, 2013, to April 14, 2014, and insuring Sheldon & Betty Elmore of 15606 1st Ave, Mason IL 62443-3701 based on available records.


The following endorsements are included:

6018GG.1 Commercial Vehicle - Effective Date 10-14-12

6913B Amendatory Endorsement - Effective Date 04-15-13

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 16, 2013.


 Christopher L. Clark
 Underwriting Team Manager
 Date: 10.24.2013





State Mutual Automobile Insurance Company

2702 Ireland Grove Rd
Bloomington IL 61709

NAMED INSURED

AT2

13-2875-66RR A

ELMORE, SHELDON & BETTY
15606 1ST AVE
MASON IL 62443-3701

17987-6-R

MUTL VOL

DECLARATIONS PAGE

POLICY NUMBER 613 9680-D14-13A

POLICY PERIOD APR 14 2010 to OCT 14 2010
12:01 A.M. Standard Time

AGENT

LEON GOBCZYNSKI
312 W WABASH
EFFINGHAM, IL 62401-2668

PHONE: (217)342-3180 or (217)347-4115

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION	WEIGHT
2002	INTL	4900	STAKE	1HTSHADR42H526297	1060000000

SYMBOLS COVERAGE & LIMITS

A	Liability Coverage	
	Bodily Injury Limits	
	Each Accident, Each Person	
	\$250,000 \$500,000	
	Property Damage Limits	
	Each Accident	
	\$10,000	
C	Medical Payments Coverage	\$4.33
	Limit Per Person	
	\$10,000	
	Comprehensive Coverage - \$500 Deductible	
G	Collision Coverage - \$500 Deductible	\$66.02
	Uninsured Motor Vehicle Coverage	\$2,000
	Bodily Injury Limits	
	Each Accident, Each Person	
	\$250,000 \$500,000	
W	Underinsured Motor Vehicle Coverage	\$2,000
	Bodily Injury Limits	
	Each Accident, Each Person	
	\$250,000 \$500,000	
Total premium for APR 14 2010 to OCT 14 2010		

IMPORTANT MESSAGE

For information or assistance with any insurance problem, be sure to contact your STATE FARM AGENT first. Your good neighbor agent will be happy to help you. Section 143c of the Illinois Insurance Code requires notification of the following addresses: State Farm Insurance Companies, Illinois Operations Center, 2702 Ireland Grove Road, Bloomington, Illinois 61709-000. Phone 1-800-424-1162 (within Illinois). Office Hours 8 A.M. to 4:30 P.M., Monday through Friday. Or Illinois Department of Insurance Consumer Services Section, Springfield, Illinois 62767. This message is provided by State Farm in compliance with Illinois law.

Replaced policy number 6139680-13.

New Policy Form

EXCEPTIONS, POLICY BOOKLET OR ENDORSEMENTS (See policy booklet & individual endorsements for coverage details)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9813B, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
601866 COMMERCIAL VEHICLE
605577 FARM TRUCK (COVERAGE WHILE TOWING TRAILERS AND FARM IMPLEMENTS).
USE-FARMING.

Agent: LEON GOBCZYNSKI

Telephone: (217)342-3180

Prepared APR 05 2010 2875-002

21115/13396
04-2010 (01 of 25) (01 of 25)

See Reverse Side
(01 of 25)

R

This policy is issued by State Farm Mutual Automobile Insurance Company.

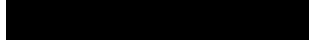
MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

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



Secretary



President



Please read the policy carefully. If there is an accident, contact your State Farm agent or one of our Claim Offices at once. (See "INSURED'S DUTIES" in this policy booklet.)

State Farm®
Car Policy
Booklet

Illinois
Policy Form 9813B

LOSS OF EARNINGS COVERAGE	34	GENERAL TERMS	37
Additional Definitions	34	When Coverage Applies	37
Insuring Agreement	34	Where Coverage Applies	37
Limit	34	Newly Owned or Newly Leased Car	37
Exclusions – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	34	Changes to This Policy	38
Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage	35	Premium	38
INSURED'S DUTIES	35	Renewal	38
Notice to Us of an Accident or Loss	35	Nonrenewal	38
Notice to Us of a Claim or Lawsuit	35	Cancellation	39
Insured's Duty to Cooperate With Us	35	Assignment	39
Questioning Under Oath	35	Bankruptcy or Insolvency of the Insured	39
Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage	36	Concealment or Fraud	39
Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage	36	Our Right to Recover Our Payments	39
		Legal Action Against Us	40
		Choice of Law	40
		Severability	40

THIS POLICY

1. This policy consists of:
 - a. the most recently issued Declarations Page;
 - b. the policy booklet version shown on that Declarations Page; and
 - c. any endorsements that apply, including those listed on that Declarations Page as well as those issued in connection with any subsequent renewal of this policy.
2. This policy contains all of the agreements between all named insureds who are shown on the Declarations Page and all applicants and:
 - a. *us*; and
 - b. any of *our* agents.
3. *We* agree to provide insurance according to the terms of this policy:
 - a. based on payment of premium for the coverages chosen; and
 - b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET, & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:
 - (1) The named insured shown on the Declarations Page is the sole owner of *your car*.
 - (2) Neither *you* nor any member of *your* household has, within the past three years, had:
 - (a) vehicle insurance canceled or nonrenewed by an insurer; or
 - (b) either:
 - (i) a license to drive; or
 - (ii) a vehicle registration suspended, revoked, or refused.
 - (3) *Your car* is used for pleasure and business.
4. All named insureds shown on the Declarations Page and all applicants agree by acceptance of this policy that:
 - a. the statements in 3.b. above are made by such named insured or applicant and are true; and
 - b. *we* provide this insurance on the basis those statements are true.
5. *Your* purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from the *State Farm Companies*, subject to their applicable eligibility rules.

DEFINITIONS

We define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage. These definitions apply to the singular, plural, possessive, and any other form of these words and phrases. Defined words and phrases are printed in boldface italics.

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

Car means a land motor vehicle with four or more wheels, designed for use primarily on public roads. **Car** does not include:

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

Car Business means a business or job where the purpose is to sell, lease, rent, repair, service, modify, transport, store, or park land motor vehicles or any type of trailer.

Fungi means any type or form of fungus or fungi and includes:

1. Mold;
2. Mildew; and
3. Any of the following that are produced or released by fungi:
 - a. Mycotoxins;
 - b. Spores;
 - c. Scents; or
 - d. Byproducts.

Newly Acquired Car means a *car* newly owned by you. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the *car* as an insured vehicle; or
2. the end of the 30th calendar day immediately following the date the *car* is delivered to you.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to you.

Non-Owned Car means a *car* that is in the lawful possession of you or any *resident relative* and that neither:

1. is owned by:
 - a. you;
 - b. any *resident relative*;
 - c. any other *person* who resides primarily in your household; or
 - d. an employer of any *person* described in a., b., or c. above; nor
2. has been operated by, rented by, or in the possession of:
 - a. you; or
 - b. any *resident relative*

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss.

Occupying means in, on, entering, or exiting.

Our means the Company issuing this policy as shown on the Declarations Page.

Owned By means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

Pedestrian means a *person* who is not occupying:

1. a motorized vehicle; or
2. a vehicle designed to be pulled by a motorized vehicle.

Person means a human being.

Private Passenger Car means:

1. a *car* of the private passenger type, other than a pickup truck, van, minivan, or sport utility vehicle, designed primarily to carry *persons* and their luggage; or
2. a pickup truck, van, minivan, or sport utility vehicle:
 - a. while not used for:
 - (1) wholesale; or
 - (2) retail pickup or delivery; and
 - b. that has a Gross Vehicle Weight Rating of 10,000 pounds or less.

Resident Relative means a *person*, other than you, who resides primarily with the first *person* shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured, his or her spouse, or a *person* described in 1. above.

State Farm Companies means one or more of the following:

1. State Farm Mutual Automobile Insurance Company;
2. State Farm Fire and Casualty Company; and
3. Subsidiaries or affiliates of either 1. or 2. above.

Temporary Substitute Car means a *car* that is in the lawful possession of the *person* operating it and that:

1. replaces *your car* for a short time while *your car* is out of use due to its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. damage; or
 - e. theft; and
2. neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered a *temporary substitute car* only.

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*; and
 - c. while not used as premises for office, store, or display purposes; or
2. a farm implement or farm wagon while being pulled on public roads by a *car*.

Us means the Company issuing this policy as shown on the Declarations Page.

We means the Company issuing this policy as shown on the Declarations Page.

You or *Your* means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "*you*" or "*your*" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured.

Your Car means the vehicle shown under "YOUR CAR" on the Declarations Page. *Your Car* does not include a vehicle that *you* no longer own or lease.

If a *car* is shown on the Declarations Page under "YOUR CAR", and *you* ask *us* to replace it with a *car* newly owned by *you*, then the *car* being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date the *car* newly owned by *you* is delivered to *you*;
2. the date this policy is no longer in force; or
3. the date *you* no longer own or lease the *car* being replaced.

LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
 - a. the ownership, maintenance, or use of:
 - (1) *your car*;
 - (2) a *newly acquired car*; or
 - (3) a *trailer*; and
 - b. the maintenance or use of:

(1) a *non-owned car*; or

(2) a *temporary substitute car*;

2. the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured for the maintenance or use of a *car* that is owned by, or furnished by an employer to, a *person* who resides primarily in *your* household, but only if such *car* is neither owned by, nor furnished by an employer to, the first *person* shown as a named insured on the Declarations Page or that *person's* spouse;

3. any other *person* for his or her use of:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent; and

4. any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This provision applies only if the vehicle is neither *owned by*, nor hired by, that other *person* or organization.

Insured does not include the United States of America or any of its agencies.

Insuring Agreement

1. *We* will pay:
 - a. damages an *insured* becomes legally liable to pay because of:
 - (1) *bodily injury* to others; and
 - (2) damage to property caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy;
 - b. attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages; and
 - c. court costs charged to an *insured* and resulting from that part of a lawsuit:
 - (1) that seeks damages payable under this policy's Liability Coverage; and
 - (2) against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay attorney fees and court costs incurred after *we* deposit in court or pay the amount due under this policy's Liability Coverage;

2. *We* have the right to:
 - a. investigate, negotiate, and settle any claim or lawsuit;
 - b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
 - c. appeal any award or legal decision for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages, fees, and costs described in the *Insuring Agreement* above, the interest, premiums, costs, and expenses listed below that result from such accident:

1. Interest on damages owed by the *insured* that accrues:
 - a. before a judgment, where owed by law, but only on that part of the judgment *we* pay; and
 - b. after a judgment. *We* will not pay interest on damages paid or payable by a party other than the *insured* or *us*.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage;

2. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
 - a. pay for bonds that exceed this policy's applicable Liability Coverage limit;
 - b. furnish or apply for any bonds; or
 - c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage; and
3. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
 - a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a lawsuit; and
 - b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

Limits

The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage - Bodily Injury Limits - Each Person, Each Accident."

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily*

injury to any one *person* injured in any one accident, including all damages sustained by other *persons* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.

The Liability Coverage limit for damage to property is shown on the Declarations Page under "Liability Coverage - Property Damage Limit - Each Accident". The limit shown is the most *we* will pay for all damages resulting from damage to property in any one accident.

These Liability Coverage limits are the most *we* will pay regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Nonduplication

We will not pay any damages or expenses under Liability Coverage:

1. that have already been paid as expenses under Medical Payments Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. that have already been paid under Uninsured Motor Vehicle Coverage or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO INTENTIONALLY CAUSES *BODILY INJURY* OR DAMAGE TO PROPERTY;
2. FOR *BODILY INJURY* TO:
 - a. *YOU*;
 - b. *RESIDENT RELATIVES*; AND
 - c. ANY OTHER *PERSON* WHO BOTH RESIDES PRIMARILY WITH AN *INSURED* AND WHO:
 - (1) IS RELATED TO THAT *INSURED* BY BLOOD, MARRIAGE, OR ADOPTION; OR
 - (2) IS A WARD OR FOSTER CHILD OF THAT *INSURED*.

This does not apply when:

- (1) a third party has a right of contribution against a member of the injured *person's* family; or

- (2) any *person* not in the household of the named insured was driving the vehicle of the named insured involved in the accident which is the subject of the claim or lawsuit;

3. OR FOR THAT *INSURED'S* INSURER FOR ANY OBLIGATION UNDER ANY TYPE OF WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY, OR SIMILAR LAW;
4. FOR *BODILY INJURY* TO THAT *INSURED'S* EMPLOYEE WHICH ARISES OUT OF THAT EMPLOYEE'S EMPLOYMENT. This exclusion does not apply to that *insured's* household employee who is neither covered, nor required to be covered, under workers' compensation insurance;
5. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
6. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
7. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer owned by you*;
8. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
9. WHILE MAINTAINING OR USING ANY VEHICLE OTHER THAN *YOUR CAR*, A *NEWLY ACQUIRED CAR*, A *TEMPORARY SUBSTITUTE CAR*, OR A *TRAILER* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
10. FOR DAMAGE TO PROPERTY WHILE IT IS:
 - a. *OWNED BY*;
 - b. *RENTED TO*;
 - c. *USED BY*;

- d. IN THE CARE OF; OR
 - e. TRANSPORTED BY
YOU, A RESIDENT RELATIVE, OR THE PERSON WHO IS LEGALLY LIABLE FOR THE DAMAGE. This exclusion does not apply to damage to a:
 - a. motor vehicle *owned* by the employer of *you* or any *resident relative* if such damage is caused by an *insured* while operating another motor vehicle;
 - b. residence while rented to or leased to an *insured*; or
 - c. private garage while rented to or leased to an *insured*;
 - 11. FOR LIABILITY ASSUMED UNDER ANY CONTRACT OR AGREEMENT;
 - 12. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
 - 13. WHILE USING A **TRAILER** WITH A MOTOR VEHICLE IF THAT **INSURED** IS NOT PROVIDED LIABILITY COVERAGE BY THIS POLICY FOR THE USE OF THAT MOTOR VEHICLE;
 - 14. FOR THE OWNERSHIP, MAINTENANCE, OR USE OF ANY VEHICLE WHILE IT IS:
 - a. OFF PUBLIC ROADS AND BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving; OR
 - 15. WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.
- If Other Liability Coverage Applies**
- 1. If Liability Coverage provided by this policy and one or more other Car Policies issued to *you* or any *resident relative* by the **State Farm Companies** apply to the same accident, then:
 - a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by
- any one of the policies. *We* may choose one or more policies from which to make payment.
 - 2. The Liability Coverage provided by this policy applies as primary coverage for the ownership, maintenance, or use of *your car* or a *trailer* attached to it.
 - a. If
 - (1) a *temporary substitute car* owned or held for sale or lease by a new or used vehicle dealer is loaned to an *insured* while *your car* is being repaired or evaluated for repair by that dealer; and
 - (2) this policy provides bodily injury liability limits of at least \$100,000 for each *person*, \$300,000 for each accident, and property damage liability limits of at least \$50,000 for each accident,
 then this coverage is primary and the insurance carried by the dealer is excess.
 - b. If
 - (1) this is the only Car Policy issued to *you* or any *resident relative* by the **State Farm Companies** that provides Liability Coverage which applies to the accident as primary coverage; and
 - (2) liability coverage provided by one or more sources other than the **State Farm Companies** also applies as primary coverage for the same accident,
 then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as primary coverage.
 - c. If
 - (1) more than one Car Policy issued to *you* or any *resident relative* by the **State Farm Companies** provides Liability Coverage which applies to the accident as primary coverage; and
 - (2) liability coverage provided by one or more sources other than the **State Farm Companies** also applies as primary coverage for the same accident,
 then the **State Farm Companies** will pay the proportion of damages payable as primary that the maximum amount that may be paid by the **State Farm Companies** as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as primary coverage.

3. Except as provided in 2. above, the Liability Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as excess coverage; and

- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as excess coverage.

b. If:

- (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as excess coverage; and

- (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess

that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as excess coverage.

Required Out-of-State Liability Coverage

If:

1. an *insured* is in another state of the United States of America, a territory or possession of the United States of America, the District of Columbia, or any province or territory of Canada, and as a nonresident becomes subject to its motor vehicle compulsory insurance law, financial responsibility law, or similar law; and

2. this policy does not provide at least the minimum liability coverage required by such law for such nonresident,

then this policy will be interpreted to provide the minimum liability coverage required by such law.

This provision does not apply to liability coverage required by law for motor carriers of passengers or motor carriers of property.

Financial Responsibility Certification

When this policy is certified under any law as proof of future financial responsibility, and while required during the policy period, this policy will comply with such law to the extent required.

MEDICAL PAYMENTS COVERAGE

This policy provides Medical Payments Coverage if "C" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you* and *resident relatives*:

a. while *occupying*:

- (1) *your car*;
(2) a *newly acquired car*;
(3) a *temporary substitute car*;
(4) a *non-owned car*; or
(5) a *trailer* while attached to a *car* described in (1), (2), (3), or (4) above; or

b. if struck as a *pedestrian* by a motor vehicle or any type of trailer; and

2. any other *person* while *occupying*:

- a. *your car*;
b. a *newly acquired car*;
c. a *temporary substitute car*; or
d. a *trailer* while attached to a *car* described in a., b., or c. above.

Such vehicle must be used within the scope of *your* consent.

Medical Expenses mean *reasonable expenses* for *medical services*.

Medical Services mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the *bodily injury*;
2. rendered by a healthcare provider:

- a. who is licensed as a healthcare provider if a license is required by law; and
- b. within the legally authorized scope of that healthcare provider's practice;
3. commonly and customarily recognized throughout the medical profession and within the United States of America as appropriate for the treatment of the *bodily injury*;
4. primarily designed to serve a medical purpose;
5. not experimental; and
6. not for research purposes.

Reasonable Expenses mean the lowest one of the following charges:

1. The usual and customary fees charged by a majority of healthcare providers who provide similar *medical services* in the geographical area in which the charges were incurred;
2. The fee specified in any fee schedule:
 - a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where *medical services* are provided; and
 - b. as prescribed or authorized by the law of the state where *medical services* are provided;
3. The fees agreed to by both the *insured's* healthcare provider and *us*; or
4. The fees agreed upon between the *insured's* healthcare provider and a third party when *we* have a contract with such third party.

Insuring Agreement

We will pay:

1. *medical expenses* incurred because of *bodily injury* that is sustained by an *insured* and caused by a motor vehicle accident if:
 - a. that *insured* is first provided *medical services* within one year immediately following the date of the accident; and
 - b. such *medical expenses* are for *medical services* that are provided within three years immediately following the date of the accident; and
2. funeral expenses incurred for an *insured* who dies within three years immediately following the date of a motor vehicle accident if the death is a direct result of *bodily injury* sustained in such accident.

Determining Medical Expenses

We have the right to:

1. obtain and use:
 - a. utilization reviews;
 - b. peer reviews; and
 - c. medical bill reviews
 to determine if the incurred charges are *medical expenses*;
2. use a medical examination of the *insured* to determine if:
 - a. the *bodily injury* was caused by a motor vehicle accident; and
 - b. the expenses incurred are *medical expenses*; and
3. enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

Arbitration

1. If there is a disagreement as to whether incurred charges are *medical expenses*, then the disagreement will be resolved by arbitration upon written request of the *insured* or *us*.
2. The arbitration will take place in the county in which the *insured* resides unless the parties agree to another location.

The *insured* and *we* will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the *insured* or *we* may petition a court that has jurisdiction to select the third arbitrator.

Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.

3. The arbitrators shall only decide whether incurred charges are *medical expenses*. Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
 - a. *us*;
 - b. the *insured*;
 - c. any assignee of the *insured*; and
 - d. any *person* or organization with whom the *insured* expressly or impliedly contracts for *medical services*.

5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. *We* do not waive any of *our* rights by submitting to arbitration.

Limit

The Medical Payments Coverage limit is shown on the Declarations Page under "Medical Payments Coverage - Limit - Each Person". This limit is the most *we* will pay for the *medical expenses* and funeral expenses combined, incurred by or on behalf of any one *insured* as a result of any one accident, regardless of the number of:

1. *insureds*;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Subject to the limit shown on the Declarations Page, the most *we* will pay for funeral expenses incurred for any one *insured* is \$3,000.

If the injured *person* has been paid damages for the *bodily injury* by or on behalf of the liable party in an amount:

1. less than the injured *person's* total *medical expenses* and funeral expenses, then the most *we* will pay under Medical Payments Coverage is the lesser of:
 - a. the limit of liability of Medical Payments Coverage; or
 - b. the amount by which the total *medical expenses* and funeral expenses exceed the total amount paid by or on behalf of all parties liable for the *bodily injury*; or
2. equal to or greater than the total *medical expenses* and funeral expenses incurred by the injured *person*, then *we* owe nothing under Medical Payments Coverage.

Nonduplication

We will not pay any *medical expenses* or funeral expenses under Medical Payments Coverage that have already been paid:

1. as damages under Liability Coverage, Uninsured Motor Vehicle Coverage, or Underinsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or
2. by or on behalf of a party who is legally liable for the *insured's bodily injury*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. WHO IS STRUCK AS A *PEDESTRIAN* BY A MOTOR VEHICLE, *OWNED BY THAT INSURED OR YOU*, IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*;
2. IF ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR ANY SIMILAR LAW APPLIES TO THAT *INSURED'S BODILY INJURY*;
3. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
4. WHO IS *OCCUPYING* A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to:
 - a. the use of a *private passenger car* on a share-the-expense basis; or
 - b. an *insured* while *occupying a non-owned car* as a passenger;
5. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT *INSURED'S* EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A *CAR BUSINESS*. This exclusion does not apply while maintaining or using:
 - a. *your car*;
 - b. a *newly acquired car*;
 - c. a *temporary substitute car*; or
 - d. a *trailer owned by you*;
6. WHILE THAT *INSURED* IS VALET PARKING A VEHICLE;
7. WHILE MAINTAINING OR USING A *NON-OWNED CAR* IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS* OR VALET PARKING. This exclusion does not apply to the maintenance or use of a *private passenger car*;
8. WHO IS EITHER *OCCUPYING* OR STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
9. WHO IS STRUCK AS A *PEDESTRIAN* BY A VEHICLE THAT:
 - a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - b. RUNS ON RAILS OR CRAWLER-TREADS;
10. WHOSE *BODILY INJURY* RESULTS FROM WAR OF ANY KIND;

11. WHOSE **BODILY INJURY** RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
12. WHOSE **BODILY INJURY** RESULTS FROM THE DISCHARGE OF A FIREARM;
13. WHOSE **BODILY INJURY** RESULTS FROM EXPOSURE TO **FUNGI**; OR
14. WHO IS **OCCUPYING** A VEHICLE WHILE IT IS:
 - a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
 - b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Medical Payments Coverage or Similar Vehicle Insurance Applies

1. An *insured* shall not recover for the same *medical expenses* or funeral expenses under both this coverage and other medical payments coverage or similar vehicle insurance.
2. If Medical Payments Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Medical Payments Coverage limits of such policies shall not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
3. The Medical Payments Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car* or a trailer attached to it.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the

State Farm Companies that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and funeral expenses payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as primary coverage.

4. Except as provided in 3. above, the Medical Payments Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of *medical expenses* and funeral expenses payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and
- (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of *medical expenses* and

funeral expenses payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*;
4. A *person* authorized by law to receive such payment; or
5. Any *person* or organization that provides the *medical services* or funeral services.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* if "U" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:

- a. not insured or bonded for bodily injury liability at the time of the accident; or
- b. insured or bonded for bodily injury liability at the time of the accident; but
 - (1) the limits are less than required by the financial responsibility act of Illinois; or
 - (2) the insuring company:
 - (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or
 - (b) is or becomes insolvent; or

2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:

- a. the *insured*; or
- b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;

2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
 3. *owned by* or rented to any government or any of its political subdivisions or agencies;
 4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
 5. while located for use as a dwelling or other premises.
- b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?

2. If there is no agreement, these questions shall be decided by arbitration.

3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.

4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:

- a. \$50,000 for one *person* in any one accident;
- b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
- c. the corresponding policy limits.

5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.

6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.

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

8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage -- Bodily Injury Limits -- Each Person, Each Accident".

1. The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,

to or for the *insured*:

- a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or
- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or

2. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.
This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;
3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW,

PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR

- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES; OR
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION.

If Other Uninsured Motor Vehicle Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
 - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.
 - b. If:
 - (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured

Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If:

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as

determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

UNINSURED MOTOR VEHICLE COVERAGE — BODILY INJURY AND PROPERTY DAMAGE

This policy provides Uninsured Motor Vehicle Coverage for *bodily injury* and *property damage* if "U1" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Property Damage means damage to *your car* or a *newly acquired car*.

Uninsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is:
 - a. not insured or bonded for bodily injury liability and property damage liability at the time of the accident; or
 - b. insured or bonded for bodily injury liability and property damage liability at the time of the accident; but
 - (1) the limit of liability that applies to:
 - (a) *bodily injury* if the claim is for *bodily injury*; or
 - (b) *property damage* if the claim is for *property damage*

is less than the limits required by the financial responsibility act of Illinois; or

(2) the insuring company:

- (a) denies that its policy provides liability coverage for compensatory damages that result from the accident; or

(b) is or becomes insolvent; or

2. with respect to *bodily injury*, a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:
 - a. the *insured*; or
 - b. the vehicle the *insured* is *occupying* and causes *bodily injury* to the *insured*.

Uninsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or operated by a self-insurer under any motor vehicle financial responsibility law, any motor carrier law, or any similar law;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads; or
5. while located for use as a dwelling or other premises.

Insuring Agreement

We will pay compensatory damages for *bodily injury* and *property damage* an *insured* is legally entitled to recover from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* or *property damage* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *uninsured motor vehicle* as a motor vehicle.

Consent to Settlement

The *insured* must inform *us* of a settlement offer, if any, proposed by or on behalf of the owner or driver of the *uninsured motor vehicle*, and the *insured* must request *our* written consent to accept such settlement offer.

If *we*:

1. consent in writing, then the *insured* may accept such settlement offer.
2. inform the *insured* in writing that *we* do not consent, then the *insured* may not accept such settlement offer and:
 - a. *we* will make payment to the *insured* in an amount equal to such settlement offer. This payment is considered a payment made by or on behalf of the owner or driver of the *uninsured motor vehicle*; and
 - b. any recovery from or on behalf of the owner or driver of the *uninsured motor vehicle* shall first be used to repay *us*.

Settlement of Loss for Property Damage

Subject to the Limits of Liability, *we* have the right to settle with *you* for the damaged property in one of the following ways:

1. Pay the cost to repair the damaged property minus any applicable deductible.
 - a. *We* have the right to choose one of the following to determine the cost to repair the damaged property:
 - (1) The cost agreed to by both *you* and *us*;
 - (2) A bid or repair estimate approved by *us*; or
 - (3) A repair estimate that is written based upon or adjusted to:
 - (i) the prevailing competitive price;
 - (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or
 - (iii) a combination of (i) and (ii) above.
- The prevailing competitive price means prices charged by a majority of

the repair market in the area where the damaged property is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the damaged property to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and re-conditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- b. The cost to repair the damaged property does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
- c. If the repair or replacement of a part results in betterment of that part, then *you* must pay for the amount of the betterment.
- d. If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
2. Pay the agreed upon actual cash value of the damaged property minus any applicable deductible.
 - a. Actual cash value is determined by the market value, age, and condition at the time the *property damage* occurred. Any deductible amount that applies is then subtracted.
 - b. Actual cash value does not include any reduction in the value of the damaged property after it has been repaired, as compared to its value before it was damaged.
 - c. The damaged property must be given to *us* in exchange for *our* payment, unless *we* agree that *you* may keep the damaged property. If *you* keep the property damaged, then *our* payment will be reduced by the value of the damaged property after the loss, minus any applicable deductible.
 - d. If there is disagreement as to the actual cash value of the damaged property, then the disagreement will be resolved in accordance with the Deciding Fault and Amount provision of this coverage.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:
 - a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *uninsured motor vehicle*?
 - b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *uninsured motor vehicle*?
2. If there is no agreement, these questions shall be decided by arbitration.
3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.
4. The written decision of any two arbitrators shall be binding on each party:
 - a. for the amount of *bodily injury* damages not exceeding the least of:
 - (1) \$50,000 for one *person* in any one accident;
 - (2) \$100,000 for two or more *persons* in any one accident, subject to (1) above; or
 - (3) the corresponding policy limits.
 - b. for the amount of *property damage* not exceeding the lesser of:
 - (1) \$15,000 in any one accident, subject to a \$250 deductible; or
 - (2) the actual cash value of the damaged vehicle.
5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.
6. The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages under Uninsured Motor Vehicle Coverage for:
 - a. *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law; or
 - b. *property damage*,
 the rules as specified in Illinois Insurance Code 5/143a shall also apply.
7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years after the date of the accident or within two years immediately following the date the carrier for the uninsured motor vehicle becomes insolvent, if the carrier becomes insolvent within two years immediately following the date of the accident. Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.
9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. Bodily Injury

- a. The Uninsured Motor Vehicle Coverage limits for *bodily injury* are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage - Bodily Injury Limits - Each Person, Each Accident".

The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident.

- b. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis.

Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.

- c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.

2. Property Damage

- a. The Uninsured Motor Vehicle Coverage limit for *property damage* is shown on the Declarations Page under "Uninsured Motor Vehicle Coverage - Property Damage Limit - Each Accident".

The most *we* will pay for all *property damage* resulting from any one accident is the limit shown under "Each Accident" reduced by the sum of all payments for *property damage* made by or on behalf of any *person* or organization who is or may be held legally liable for that *property damage*.

- b. The amount payable for *property damage*, for each accident, is subject to a \$250 deductible.
- c. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - (1) *insureds*;
 - (2) claims made;
 - (3) vehicles insured; or
 - (4) vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

- 1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid
 to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or

- b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*; or

2. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

3. that:

- a. have already been paid;
- b. could have been paid; or
- c. could be paid,

to or for the *insured* under any physical damage coverage or property insurance policy.

Exclusions

THERE IS NO COVERAGE:

- 1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*;
- 2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* a motor vehicle not *owned by* one or both of them;

- 3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
- 4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;

- b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
- c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
- 5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
- 6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;
- 7. FOR **PROPERTY DAMAGE** UNLESS THE **INSURED** CAN:
 - a. IDENTIFY THE OWNER OR DRIVER OF THE **UNINSURED MOTOR VEHICLE** BY NAME AND ADDRESS; AND
 - b. PROVE THE MOTOR VEHICLE TO BE AN **UNINSURED MOTOR VEHICLE**.
- 8. FOR THE FIRST \$250 OF **PROPERTY DAMAGE** RESULTING FROM EACH ACCIDENT; OR
- 9. FOR **PROPERTY DAMAGE**, FOR:
 - a. LOSS OF USE OF THE VEHICLE; OR
 - b. LOSS OF OR DAMAGE TO PERSONAL PROPERTY WHICH WAS IN THE VEHICLE.

If Other Uninsured Motor Vehicle Coverage or If Other Property Damage Coverage Applies

- 1. If Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Uninsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
- 2. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- b. If:
 - (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
 - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage.

- 3. Except as provided in 2. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

- a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
 - (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable

limit bears to the sum of *our* applicable limit and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Uninsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) uninsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

4. The Uninsured Motor Vehicle Coverage provided by this policy for *property damage* applies:
 - a. as excess coverage if any other kind of coverage applies to the *property damage*, including coverage provided under the Physical Damage Coverages of this policy; but

- b. only in the amount by which it exceeds that other coverage.

The *State Farm Companies* will pay the proportion of damages payable as excess that the single highest applicable limit provided by any one of the *State Farm Companies* bears to the sum of such amount and the limits of all other physical damage coverage or property damage coverage provided by one or more other sources that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment:

1. to one or more of the following for *bodily injury* damages:
 - a. The *insured*;
 - b. The *insured's* surviving spouse;
 - c. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent person; or
 - d. A *person* authorized by law to receive such payment.
2. to one or more of the following for *property damage*:
 - a. The *insured*;
 - b. The repairer; or
 - c. A creditor shown on the Declarations Page, to the extent of its interest.

UNDERINSURED MOTOR VEHICLE COVERAGE

This policy provides Underinsured Motor Vehicle Coverage for *bodily injury* if "W" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. *you*;
2. *resident relatives*;
3. any other *person* while *occupying*:
 - a. *your car*;
 - b. a *newly acquired car*; or
 - c. a *temporary substitute car*.

Such vehicle must be used within the scope of *your* consent. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and

4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an *insured* as defined in 1., 2., or 3. above.

Underinsured Motor Vehicle means a land motor vehicle:

1. the ownership, maintenance, and use of which is either:
 - a. insured or bonded for bodily injury liability at the time of the accident; or
 - b. self-insured under any motor vehicle financial responsibility law, any motor carrier law, or any similar law; and
2. for which the total limits of insurance, bonds, and self-insurance for bodily injury liability from all sources:
 - a. are less than the Underinsured Motor Vehicle Coverage limits of this policy; or

- b. have been reduced by payments to *persons* other than *you* and *resident relatives* to less than the Underinsured Motor Vehicle Coverage limits of this policy.
2. before the conclusion of the settlement agreement, the *insured*:
 - a. has filed suit against the owner or operator of the *underinsured motor vehicle*; and
 - b. has not abandoned the suit or settled the suit without preserving *our* rights to recover *our* payments.

Underinsured Motor Vehicle does not include a land motor vehicle:

1. whose ownership, maintenance, or use is provided Liability Coverage by this policy;
2. *owned by*, rented to, or furnished or available for the regular use of *you*;
3. *owned by* or rented to any government or any of its political subdivisions or agencies;
4. designed for use primarily off public roads and not licensed for public road use at the time of the accident. This does not apply while the vehicle is on public roads;
5. while located for use as a dwelling or other premises; or
6. defined as an *uninsured motor vehicle* under Uninsured Motor Vehicle Coverage of this policy.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or driver of an *underinsured motor vehicle*. The *bodily injury* must be:

1. sustained by an *insured*; and
2. caused by an accident that involves the operation, maintenance, or use of an *underinsured motor vehicle* as a motor vehicle.

We will pay only if the limits of liability or portion thereof under all bodily injury insurance bonds, policies, and self-insurance plans applicable to the *underinsured motor vehicle* and its operators have been partially or fully exhausted by payment of judgments or settlements, or have been offered to the *insured* in writing.

Consent to Settlement

The *insured* must notify *us* in writing of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle*, and allow *us* to advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice.

Any agreement between the *insured* and *us* as to the amount due shall be final and shall be binding upon both the *insured* and *us* regardless of the amount of any judgment or any settlement reached between any *insured* and the legally liable *person* or *persons*. No such settlement agreement shall be concluded unless:

1. the *insured* has complied with all other applicable policy terms and conditions; and
2. The arbitration shall take place in the county in which the *insured* resides unless the parties

The most *we* will pay under the settlement agreement is the amount by which the limits of this coverage exceed the limits of the bodily injury liability insurance of the owner or operator of the *underinsured motor vehicle*.

Deciding Fault and Amount

1. The *insured* and *we* must agree to the answers to the following two questions:

- a. Is the *insured* legally entitled to recover compensatory damages from the owner or driver of the *underinsured motor vehicle*?
- b. If the *insured* and *we* agree that the answer to 1.a. above is yes, then what is the amount of the compensatory damages that the *insured* is legally entitled to recover from the owner or driver of the *underinsured motor vehicle*?

2. If there is no agreement, these questions shall be decided by arbitration.

3. The *insured* and *we* shall each select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that such arbitration be submitted to the American Arbitration Association.

4. The written decision of any two arbitrators shall be binding on each party for the amount of *bodily injury* damages not exceeding the least of:

- a. \$50,000 for one *person* in any one accident;
- b. \$100,000 for two or more *persons* in any one accident, subject to a. above; or
- c. the corresponding policy limits.

5. Arbitrator, attorney, and expert witness costs shall be paid by the party who hired such *person*. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties. However, in no event shall the expense to the *insured*, exclusive of fees for attorneys and expert witnesses, reduce recovery below the Illinois Safety Responsibility Law minimum limit.

agree to another place. State court rules governing procedure and admission of evidence shall be used. When the *insured* is seeking damages for *bodily injury* up to, but not in excess of, the limits set forth in the Illinois Safety Responsibility Law, the rules as specified in Illinois Insurance Code 5/143a shall also apply.

7. *We* are not bound by any judgment against any *person* or organization obtained without *our* written consent.
8. Any arbitration or suit against *us* will be barred unless commenced within two years immediately following:
 - a. the date of tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or
 - b. the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of tentative settlement.

Legal action may only be brought against *us* in accordance with the Legal Action Against Us provision of this policy.

9. Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.
10. Regardless of the amount of any award, including any judgment or default judgment, *we* are not obligated to pay any amount in excess of the available limits under this coverage of this policy.

Limits

1. The Underinsured Motor Vehicle Coverage limits are shown on the Declarations Page under "Underinsured Motor Vehicle Coverage - Bodily Injury Limits - Each Person, Each Accident".
 - a. The most *we* will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that *bodily injury* is the lesser of:
 - (1) the limit shown under "Each Person" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*; or
 - (2) the total amount of all damages resulting from that *bodily injury* less those amounts actually recovered under the applicable bodily injury insurance

policies, bonds, or other security maintained on the *underinsured motor vehicle*.

- b. Subject to a. above, the most *we* will pay for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident is the limit shown under "Each Accident" less those amounts actually recovered under the applicable bodily injury insurance policies, bonds, or other security maintained on the *underinsured motor vehicle*.
2. Any amount paid or payable to or for the *insured* under any workers' compensation law, pension code, municipal ordinance, labor union fund, disability benefits law, or similar law shall reduce the amount payable under this coverage. The reduction may be taken only once and shall be first applied to the amount payable by any policy providing coverage on a primary basis. Any remaining reduction shall then be applied to the amount payable by any policy providing coverage on an excess basis. However, social security disability benefits shall not be used to reduce the amount payable under this coverage.
3. These Underinsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
 - a. *insureds*;
 - b. claims made;
 - c. vehicles insured; or
 - d. vehicles involved in the accident.

Nonduplication

We will not pay under Underinsured Motor Vehicle Coverage any damages:

1. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid,
- to or for the *insured*:
 - a. by or on behalf of any *person* or organization who is or may be held legally liable for the *underinsured motor vehicle*; or
 - b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to you or any *resident relative*; or
2. that:
 - a. have already been paid;
 - b. could have been paid; or
 - c. could be paid

to or for the *insured* as expenses under Medical Payments Coverage of this policy, the medical payments coverage of any other policy, or other similar vehicle insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY*;
2. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY*:
 - a. WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*; OR
 - b. THROUGH BEING STRUCK BY A MOTOR VEHICLE *OWNED BY ANY RESIDENT RELATIVE*.

This exclusion does not apply to the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured, while *occupying* or through being struck by a motor vehicle not *owned by* one or both of them;
3. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
4. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, OR DISABILITY BENEFITS INSURANCE COMPANY;
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, PENSION CODE, MUNICIPAL ORDINANCE, LABOR UNION FUND, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
 - c. ANY GOVERNMENT OR ANY OF ITS POLITICAL SUBDIVISIONS OR AGENCIES;
5. FOR PUNITIVE OR EXEMPLARY DAMAGES;
6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR QUIETABLE ACTION;
7. IF THE UNINSURED MOTOR VEHICLE COVERAGE APPLIES TO THE ACCIDENT; OR

8. UNTIL THE *INSURED* EITHER SETTLES WITH ALL INSURERS OR SELF-INSURERS ISSUING APPLICABLE INSURANCE POLICIES, BONDS, OR OTHER SECURITY MAINTAINED ON THE *UNDERINSURED MOTOR VEHICLE* OR OBTAINS A FINAL JUDGMENT AGAINST THE OWNER OR OPERATOR OF THE *UNDERINSURED MOTOR VEHICLE*. This does not apply if:

- a. the *insured* has given *us* written notice of a settlement offer proposed by or on behalf of the owner or operator of the *underinsured motor vehicle* and *we* advance an amount equal to the tentative settlement within 30 days after *we* receive the written notice; or
- b. the *insured* or his or her legal representative and *we*:
 - (1) agree that the *insured* has suffered *bodily injury* as a result of the negligent operation, maintenance, or use of an *underinsured motor vehicle*.
 - (2) agree, without arbitration, on the amount of damages that the *insured* is legally entitled to collect; and
 - (3) agree upon settlement in accordance with the *Consent to Settlement and Deciding Fault and Amount* provisions under this coverage.

If Other Underinsured Motor Vehicle Coverage Applies

1. If Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury*, then:
 - a. the Underinsured Motor Vehicle Coverage limits of such policies will not be added together to determine the most that may be paid; and
 - b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
2. The Underinsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* while *occupying your car*.
 - a. If:
 - (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides

Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as primary coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as primary coverage.

3. Except as provided in 2. above, the Underinsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

a. If

- (1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Underinsured Motor Vehicle Coverage

which applies to the accident as excess coverage; and

- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

b. If

- (1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Underinsured Motor Vehicle Coverage which applies to the accident as excess coverage; and
- (2) underinsured motor vehicle coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of damages payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

PHYSICAL DAMAGE COVERAGES

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

This policy provides:

1. Comprehensive Coverage if "D";
2. Collision Coverage if "G";
3. Emergency Road Service Coverage if "H";
4. Car Rental and Travel Expenses Coverage if "R1"

is shown under "SYMBOLS" on the Declarations Page.

If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

Additional Definitions

Covered Vehicle means:

1. *your car*;
2. a *newly acquired car*;
3. a *temporary substitute car*;
4. a camper that is designed to be mounted on a pickup truck and shown on the Declarations Page;
5. a *non-owned car* while it is:
 - a. being driven by an *insured*; or
 - b. in the custody of an *insured* if at the time of the *loss* it is:
 - (1) not being driven; or
 - (2) being driven by a *person* other than an *insured* and being *occupied* by an *insured*;
6. a *non-owned trailer* while it is being used by an *insured*; and
7. a *non-owned camper* while it is being used by an *insured*;

including its parts and its equipment that are common to the use of the vehicle as a vehicle. However, parts and equipment of *trailers* and campers must be securely fixed as a permanent part of the *trailer* or camper.

Daily Rental Charge means the sum of:

1. the daily rental rate;
2. mileage charges; and
3. related taxes.

Insured means *you* and *resident relatives*.

Loss means:

1. direct, sudden, and accidental damage to; or

2. total or partial theft of

a *covered vehicle*. *Loss* does not include any reduction in the value of any *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

Loss Caused By Collision means a *loss* caused by:

1. a *covered vehicle* hitting or being hit by another vehicle or another object; or
2. the overturning of a *covered vehicle*.

Any *loss* caused by missiles, falling objects, wind-storm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal is not a *Loss Caused By Collision*.

Non-Owned Camper means a camper designed to be mounted on a pickup truck that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Non-Owned Trailer means a *trailer* that is in the lawful possession of an *insured* and that neither:

1. is *owned* by:
 - a. an *insured*;
 - b. any other *person* who resides primarily in *your* household; or
 - c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss*.

Insuring Agreements

1. **Comprehensive Coverage**

We will pay:

- a. for *loss*, except *loss caused by collision*, to a *covered vehicle*; and
- b. transportation expenses incurred by an *insured* as a result of the total theft of *your car* or a *newly acquired car*. These transportation expenses are payable:

- (1) during the period that:
 - (a) starts on the date *you* report the theft to *us*; and
 - (b) ends on the earliest of:
 - (i) the date the vehicle is returned to *your* possession in a drivable condition;
 - (ii) the date *we* offer to pay for the *loss* if the vehicle has not yet been recovered; or
 - (iii) the date *we* offer to pay for the *loss* if the vehicle is recovered, but is a total loss as determined by *us*; and

- (2) during the period that:
 - (a) starts on the date the vehicle is left at a repair facility if the stolen vehicle is recovered, returned to *your* possession in a drivable condition, and has unrepaired damage that resulted from the total theft; and
 - (b) ends on the date the vehicle is repaired.

These transportation expenses must be reported to *us* before *we* will pay such incurred expenses.

2. Collision Coverage

We will pay for *loss caused by collision* to a *covered vehicle*.

3. Emergency Road Service Coverage

We will pay the fair cost incurred by an *insured* for:

- a. up to one hour of labor to repair a *covered vehicle* at the place of its breakdown;
- b. towing to the nearest repair facility where necessary repairs can be made if a *covered vehicle* is not drivable;
- c. towing a *covered vehicle* out of a location where it is stuck if the vehicle is on or immediately next to a public road;
- d. delivery of gas, oil, battery, or tire necessary to return a *covered vehicle* to driving condition. *We* do not pay the cost of the gas, oil, battery, or tire; and
- e. up to one hour of labor for locksmith services to unlock a *covered vehicle* if its key is lost, stolen, or locked inside the vehicle.

4. Car Rental and Travel Expenses Coverage

a. Car Rental Expense

We will pay the *daily rental charge* incurred when *you* rent a *car* from a *car business* while *your car* or a *newly acquired car* is:

- (1) not drivable; or
- (2) being repaired

as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage.

We will pay this *daily rental charge* incurred during a period that:

- (1) starts on the date:
 - (a) the vehicle is not drivable as a result of the *loss*; or
 - (b) the vehicle is left at a repair facility if the vehicle is drivable; and
- (2) ends on the earliest of:
 - (a) the date the vehicle has been repaired or replaced;
 - (b) the date *we* offer to pay for the *loss* if the vehicle is repairable but *you* choose to delay repairs; or
 - (c) five days after *we* offer to pay for the *loss* if the vehicle is:
 - (i) a total loss as determined by *us*; or
 - (ii) stolen and not recovered.

The amount of any such *daily rental charge* incurred by *you* must be reported to *us* before *we* will pay such amount.

b. Travel Expenses

We will pay expenses for commercial transportation, lodging, and meals if *your car* or a *newly acquired car* is not drivable as a result of a *loss* which would be payable under Comprehensive Coverage or Collision Coverage. The *loss* must occur more than 50 miles from *your* home. *We* will only pay these expenses if they are incurred by:

- (1) an *insured* during the period that:
 - (a) starts after the *loss* occurs; and
 - (b) ends on the earlier of:
 - (i) the *insured's* arrival at his or her destination or home if the vehicle is left behind for repairs; or

- (ii) the repair of the vehicle if the *insured* waits for repairs before continuing on to his or her destination or returning home; and

- (2) *you*, or any *person you* choose, to travel to retrieve the vehicle and drive it to either the original destination or *your* home if the vehicle was left behind for repairs.

These expenses must be reported to *us* before *we* will pay such incurred expenses.

- c. **Rental Car – Repayment of Deductible Expense**

We will pay the comprehensive deductible or collision deductible an *insured* is required to pay the owner of a *car* rented from a *car business*.

Supplementary Payments – Comprehensive Coverage and Collision Coverage

If the *covered vehicle* sustains *loss* for which *we* make a payment under Comprehensive Coverage or Collision Coverage, then *we* will pay reasonable expenses incurred to:

1. tow the *covered vehicle* immediately after the *loss*:
 - a. for a reasonable distance from the location of the *loss* to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable; or
 - b. to any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*. *We* will also pay reasonable expenses incurred to tow the *covered vehicle* for a reasonable distance from this facility to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable;
2. store the *covered vehicle*, if it is not drivable immediately after the *loss*, at:
 - a. any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*; and
 - b. any one repair facility chosen by the owner of the *covered vehicle*, and *we* determine such vehicle is a total loss.

If the owner of the *covered vehicle* consents, then *we* may move the *covered vehicle* at *our* expense to reduce storage costs. If the owner of the *covered vehicle* does not consent, then *we* will pay only the storage costs that would have resulted if *we* had moved the damaged *covered vehicle*; and

3. clean up debris from the *covered vehicle* at the location of the *loss*.

Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage

1. *We* have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

- a. Pay the cost to repair the *covered vehicle* minus any applicable deductible.

- (1) *We* have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

- (a) The cost agreed to by both the owner of the *covered vehicle* and *us*;

- (b) A bid or repair estimate approved by *us*; or

- (c) A repair estimate that is written based upon or adjusted to:

- (i) the prevailing competitive price;

- (ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or

- (iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the *covered vehicle* is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the *covered vehicle* to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- (2) The cost to repair the *covered vehicle* does not include any reduction in the value of the *covered vehicle* after it has been repaired, as compared to its value before it was damaged.
 - (3) If the repair or replacement of a part results in betterment of that part, then *you* or the owner of the *covered vehicle* must pay for the amount of the betterment.
 - (4) If *you* and *we* agree, then windshield glass will be repaired instead of replaced;
- b. Pay the actual cash value of the *covered vehicle* minus any applicable deductible.
- (1) The owner of the *covered vehicle* and *we* must agree upon the actual cash value of the *covered vehicle*. If there is disagreement as to the actual cash value of the *covered vehicle*, then the disagreement will be resolved by appraisal upon written request of the owner or *us*. Either the owner or *we* may submit written request to the other party within 60 days after *we* offer to pay the actual cash value of the covered vehicle minus any applicable deductible. The appraisal will use the following procedures:
 - (a) The owner and *we* will each select a competent appraiser.
 - (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or *we* may petition a court that has jurisdiction to select the third appraiser.
 - (c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.
 - (d) The appraisers shall only determine the actual cash value of the *covered vehicle*. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.
 - (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the *covered vehicle* and *us*.
 - (f) *We* do not waive any of *our* rights by submitting to an appraisal.
 - (2) The damaged *covered vehicle* must be given to *us* in exchange for *our* payment, unless *we* agree that the owner may keep it. If the owner keeps the *covered vehicle*, then *our* payment will be reduced by the value of the *covered vehicle* after the loss; or
 - c. Return the stolen *covered vehicle* to its owner and pay, as described in 1.a. above, for any direct, sudden, and accidental damage that resulted from the theft.
2. The most *we* will pay for transportation expenses under Comprehensive Coverage is \$25 per day subject to an aggregate limit of \$750 per loss.
 3. The most *we* will pay for loss to a *non-owned trailer* or a *non-owned camper* is \$2,500.
- Limits – Car Rental and Travel Expenses Coverage**
1. **Car Rental Expense**
The limit for Car Rental Expense is shown on the Declarations Page under "Limit – Car Rental Expense – Each Day, Each Loss".
 - a. The limit shown under "Each Day" is the most *we* will pay for the *daily rental charge*. If:
 - (1) a dollar amount is shown, then *we* will pay the *daily rental charge* up to that dollar amount;
 - (2) a percentage amount is shown, then *we* will pay that percentage of the *daily rental charge*.
 - b. Subject to the "Each Day" limit, the limit shown under "Each Loss" is the most *we* will pay for Car Rental Expense incurred as a result of any one loss.
 2. **Travel Expenses**
The most *we* will pay for Travel Expenses incurred by all *insureds* as a result of any one loss is \$500.
 3. **Rental Car – Repayment of Deductible Expense**
The most *we* will pay for Rental Car – Repayment of Deductible Expense incurred as a result of any one loss is \$500.
- Nonduplication**
We will not pay for any loss or expense under the Physical Damage Coverages for which the *insured* or owner of the *covered vehicle* has already received payment from, or on behalf of, a party who is legally liable for the loss or expense.

Exclusions

THERE IS NO COVERAGE FOR:

1. ANY **COVERED VEHICLE** THAT IS:
 - a. INTENTIONALLY DAMAGED; OR
 - b. STOLEN

BY OR AT THE DIRECTION OF AN **INSURED**. This does not apply to the extent of the ownership interest of an **insured** who did not cooperate in or contribute to the **loss** if the **loss** arose out of a pattern of criminal domestic violence and the perpetrator of the **loss** is criminally prosecuted for the act causing the **loss**;
2. ANY **COVERED VEHICLE** WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN **INSURED**;
3. ANY **COVERED VEHICLE** WHILE IT IS USED TO CARRY **PERSONS** FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
4. ANY **COVERED VEHICLE** DUE TO:
 - a. THEFT;
 - b. CONVERSION;
 - c. EMBEZZLEMENT; OR
 - d. SECRETION

BY AN **INSURED**, A CONSIGNEE, AN AGENT OF A CONSIGNEE, OR A **PERSON** WHO OBTAINS POSSESSION OF THE **COVERED VEHICLE** WITH THE PERMISSION OF A CONSIGNEE OR AGENT OF A CONSIGNEE;
5. **LOSS TO YOUR CAR OR A NEWLY ACQUIRED CAR** IF AN **INSURED** VOLUNTARILY RELINQUISHES POSSESSION OF THAT **CAR** TO A **PERSON** OR ORGANIZATION UNDER AN ACTUAL OR PRESUMED SALES AGREEMENT;
6. ANY **COVERED VEHICLE** TO THE EXTENT OUR PAYMENT WOULD BENEFIT ANY CARRIER OR OTHER BAILEE FOR HIRE THAT IS LIABLE FOR **LOSS** TO SUCH **COVERED VEHICLE**;
7. **LOSS TO ANY COVERED VEHICLE** DUE TO **FUNGI**. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE **FUNGI** RESULT FROM A **LOSS** THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. WE WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF **FUNGI**, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR ANY **COVERED VEHICLE** THAT ARE DUE TO THE EXISTENCE OF **FUNGI**;
8. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM:
 - a. NUCLEAR REACTION;
 - b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
 - c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
9. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM THE TAKING OF OR SEIZURE OF THAT **COVERED VEHICLE** BY ANY GOVERNMENTAL AUTHORITY;
10. **LOSS TO ANY COVERED VEHICLE** THAT RESULTS FROM WAR OF ANY KIND;
11. **YOUR CAR** WHILE SUBJECT TO ANY:
 - a. LIEN AGREEMENT;
 - b. RENTAL AGREEMENT;
 - c. LEASE AGREEMENT; OR
 - d. SALES AGREEMENT

NOT SHOWN ON THE DECLARATIONS PAGE;
12. ANY **NON-OWNED CAR** WHILE IT IS:
 - a. BEING MAINTAINED OR USED BY ANY **PERSON** WHILE THAT **PERSON** IS EMPLOYED IN OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**; OR
 - b. USED IN ANY BUSINESS OR OCCUPATION OTHER THAN A **CAR BUSINESS**. This exclusion (12.b.) does not apply to a *private passenger car*;
13. ANY PART OR EQUIPMENT OF A **COVERED VEHICLE** IF THAT PART OR EQUIPMENT:
 - a. FAILS OR IS DEFECTIVE; OR
 - b. IS DAMAGED AS A DIRECT RESULT OF:
 - (1) WEAR AND TEAR;
 - (2) FREEZING; OR
 - (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION

OF THAT PART OR EQUIPMENT.

This exclusion does not apply if the **loss** is the result of theft of the **covered vehicle**;
14. ANY PART OR EQUIPMENT:
 - a. THAT IS NOT LEGAL FOR USE IN OR ON THE **COVERED VEHICLE** IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED; OR

31
9813B

- b. THE USE OF WHICH IS NOT LEGAL IN THE JURISDICTION WHERE THE **COVERED VEHICLE** IS REGISTERED BECAUSE OF HOW OR WHERE THAT PART OR EQUIPMENT IS INSTALLED IN OR ON THE **COVERED VEHICLE**.

However, if there is a legal version of the part or equipment that is necessary for the safe operation of the **covered vehicle**, then *we* will pay the cost that *we* would otherwise have paid to repair the vehicle with the legal version of the part or equipment. *We* will not pay any cost necessary to modify the vehicle for installation of the legal version of the part or equipment;

15. **TIRES.** This exclusion does not apply if:
- a. *loss* is caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal; or
 - b. *loss* caused by *collision* to another part of the **covered vehicle** causes *loss* to tires;
16. **REMOVABLE PRODUCTS USED FOR STORAGE OF AUDIO, VIDEO, OR OTHER DATA, INCLUDING BUT NOT LIMITED TO TAPES, DISCS, AND MEMORY CARDS, NOR IS THERE COVERAGE FOR THE RECONSTRUCTION OF DATA CONTAINED THEREIN;**
17. **ANY EQUIPMENT USED TO DETECT OR INTERFERE WITH SPEED MEASURING DEVICES;**
18. **A CAMPER, INCLUDING ITS PARTS AND ITS EQUIPMENT, THAT IS:**
- a. **DESIGNED TO BE MOUNTED ON A PICKUP TRUCK;**
 - b. **OWNED BY AN INSURED;** AND
 - c. **NOT SHOWN ON THE DECLARATIONS PAGE; OR**
19. **ANY COVERED VEHICLE WHILE IT IS:**
- a. **BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR**
 - b. **ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING.** This exclusion (19.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Physical Damage Coverage or Similar Coverage Applies

1. If the same *loss* or expense is payable under more than one of the physical damage coverages provided by this policy, then only the one coverage that pays the most for that *loss* or expense applies.
2. If any of the physical damage coverages provided by this policy and one or more other policies issued to an *insured* by the **State Farm Companies** apply to the same *loss* or expense, then only one policy applies. *We* will select a policy that pays the most for the *loss* or expense.
3. The physical damage coverages provided by this policy apply as primary coverage for a *loss* to *your car*.

If similar coverage provided by one or more sources other than the **State Farm Companies** also applies as primary coverage for the same *loss* or expense, then the **State Farm Companies** will pay the proportion of the *loss* or expense payable as primary that the maximum amount that may be paid by the **State Farm Companies** bears to the sum of such amount and the limits of all other similar coverage that applies as primary coverage.
4. Except as provided in 3. above, the physical damage coverages provided by this policy apply as excess coverage.

If similar coverage provided by one or more sources other than the **State Farm Companies** also applies as excess coverage for the same *loss* or expense, then the **State Farm Companies** will pay the proportion of the *loss* or expense payable as excess that the maximum amount that may be paid by the **State Farm Companies** bears to the sum of such amount and the limits of all other similar coverage that applies as excess coverage.

Financed Vehicle

1. If a creditor is shown on the Declarations Page, then any Comprehensive Coverage or Collision Coverage provided by this policy applies to that creditor's interest in *your car*. Coverage for the creditor's interest is only provided for a *loss* that is payable to *you*.

However, if this policy is cancelled or nonrenewed, then *we* will provide coverage for the creditor's interest until *we* notify the creditor of the termination of such coverage. This coverage for the creditor's interest is only provided for a *loss* that would have been payable to *you* if this policy had not been cancelled or nonrenewed. The date such termination is effective will be at least 10 days after the date *we* mail or

electronically transmit a notice of the termination to the creditor.

2. If *we* pay such creditor, then *we* are entitled to the creditor's right of recovery against *you* to the extent of *our* payment. *Our* right of recovery does not impair the creditor's right to recover the full amount of its claim.

Our Payment Options

1. Comprehensive Coverage and Collision Coverage

- a. *We* may, at *our* option, make payment to one or more of the following for *loss* to a covered vehicle owned by *you*:

- (1) *You*;
- (2) The repairer; or
- (3) A creditor shown on the Declarations Page, to the extent of its interest.

- b. *We* may, at *our* option, make payment to one or more of the following for *loss* to a covered vehicle not owned by *you*:

- (1) *You*;
- (2) The owner of such vehicle;
- (3) The repairer; or
- (4) A creditor, to the extent of its interest.

2. Emergency Road Service Coverage and Car Rental and Travel Expenses Coverage

We may, at *our* option, make payment to one or more of the following:

- a. *You*;
- b. The *insured* who incurred the expense; or
- c. Any party that provided the service for which payment is owed.

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE

This policy provides Death, Dismemberment and Loss of Sight Coverage if "S" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means a *person* whose name is shown under "Death, Dismemberment and Loss of Sight Coverage - Persons Insured" on the Declarations Page.

Insuring Agreement

We will pay the highest applicable benefit shown in the following Death, Dismemberment and Loss of Sight Benefits Schedules if an *insured*:

1. dies; or
2. suffers dismemberment or permanent loss of sight, as described in the schedule

as the direct result of an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause.

The *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer at the time of the accident. The death, dismemberment, or permanent loss of sight must occur within 90 days immediately following the date of the accident.

Benefit

The applicable benefit shown in the schedule is the most *we* will pay for any one *insured* in any one accident. Any benefit paid or payable for dismemberment or permanent loss of sight reduces the death benefit.

Death, Dismemberment and Loss of Sight Benefits Schedules

If the amount shown on the Declarations Page for the *insured* is \$5,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	\$5,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$5,000
Loss of one hand or one foot; or all sight of one eye	\$2,500
Loss of the thumb and a finger on one hand; or any three fingers	\$1,500
Loss of any two fingers	\$1,000

The hand must be cut off through or above the wrist.
The foot must be cut off through or above the ankle.
The whole thumb or finger must be cut off.

If the amount shown on the Declarations Page for the *insured* is \$10,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	\$10,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	\$10,000
Loss of one hand or one foot; or all sight of one eye	\$5,000
Loss of the thumb and a finger on one hand; or any three fingers	\$3,000
Loss of any two fingers	\$2,000

The hand must be cut off through or above the wrist.
The foot must be cut off through or above the ankle.
The whole thumb or finger must be cut off.

The benefits shown in the schedules are doubled for an *insured* who at the time of the accident was *occupying* a *private passenger car* and using a seat belt in the manner recommended by the vehicle's manufacturer.

LOSS OF EARNINGS COVERAGE

This policy provides Loss of Earnings Coverage if "Z" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means a *person* whose name is shown under "Loss of Earnings Coverage -- Persons Insured" on the Declarations Page.

Total Disability means the *insured's* inability to work, either full or part time, in his or her occupation or any other similar occupation for which he or she is reasonably fitted by education, training, or experience.

Weekly Earnings means 85% of all earnings for the *insured's* services before any deductions. When *weekly earnings* cannot be determined on a weekly basis an average will be used. The average is 85% of the total earnings for the 52 weeks just prior to the accident divided by 52.

Insuring Agreement

We will pay the *insured* his or her loss of *weekly earnings*, which occur while the *insured* is living, due to continuous *total disability* that:

1. is the direct result of *bodily injury* caused by an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause. At the time of

the accident, the *insured* must be *occupying* or be struck as a *pedestrian* by a land motor vehicle or any type of trailer; and

2. starts within 20 days immediately following the date of the accident and lasts for a period of at least 30 consecutive days. *We* will not pay for the first seven days of the 30 day period.

Limit

The most *we* will pay any one *insured* is:

1. \$250 for each full workweek of *total disability*; and
2. a pro rata portion of \$250 for less than a full workweek of *total disability*.

Subject to the workweek limit, the most *we* will pay any one *insured* for all loss of *weekly earnings* due to any one accident is \$15,000.

We will pay once every two weeks the *insured's* loss of *weekly earnings* owed.

Exclusions -- Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE AND LOSS OF EARNINGS COVERAGE DO NOT APPLY TO AN *INSURED*:

1. WHILE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN A *CAR BUSINESS*;
2. WHILE *OCCUPYING*, LOADING, OR UNLOADING:
 - a. AN EMERGENCY VEHICLE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT;
 - b. A VEHICLE, OTHER THAN AN EMERGENCY VEHICLE, WHILE USED IN THE:
 - (1) *INSURED'S BUSINESS*; OR
 - (2) COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN OTHER THAN A *CAR BUSINESS*.

This exclusion (2.b.) does not apply if the vehicle is a *private passenger car*;

- c. A *MILITARY VEHICLE*; OR
- d. A VEHICLE WHILE IT IS:
 - (1) BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY PREARRANGED OR ORGANIZED RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

- (2) ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (2.d.(2)) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
3. WHILE **OCCUPYING**, LOADING, UNLOADING, OR WHO IS STRUCK AS A **PEDESTRIAN** BY:
 - a. A MOTOR VEHICLE THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. A MOTOR VEHICLE THAT IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. A MOTOR VEHICLE OR ANY TYPE OF TRAILER, EITHER OF WHICH IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES; OR
4. FOR DEATH, DISMEMBERMENT, LOSS OF SIGHT, OR **TOTAL DISABILITY** THAT RESULTS FROM:
 - a. WAR OF ANY KIND;
 - b. NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE, OR THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
 - c. THE DISCHARGE OF A FIREARM;
 - d. EXPOSURE TO **FUNGI**;
 - e. SUICIDE OR ATTEMPTED SUICIDE REGARDLESS OF WHETHER THE **INSURED** WAS SANE OR INSANE; OR
 - f. DISEASE except pus-forming infection due to **bodily injury** sustained in the accident.

Our Payment Options – Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage

We may, at *our* option, make payment to one or more of the following:

1. The **insured**;
2. The **insured's** surviving spouse;
3. A parent or guardian of the **insured**, if the **insured** is a minor or an incompetent **person**; or
4. A **person** or organization authorized by law to receive such payment.

INSURED'S DUTIES

1. **Notice to Us of an Accident or Loss**
The **insured** must give *us* or one of *our* agents notice of the accident or **loss** as soon as reasonably possible. The notice must give *us*:
 - a. *your* name;
 - b. the names and addresses of all **persons** involved in the accident or **loss**;
 - c. the hour, date, place, and facts of the accident or **loss**; and
 - d. the names and addresses of witnesses to the accident or **loss**.
2. **Notice to Us of a Claim or Lawsuit**
 - a. If a claim is made against an **insured**, then that **insured** must immediately send *us* every demand, notice, and claim received.
 - b. If a lawsuit is filed against an **insured**, then that **insured** must immediately send *us* every summons and legal process received.
3. **Insured's Duty to Cooperate With Us**
 - a. The **insured** must cooperate with *us* and, when asked, assist *us* in:
 - (1) making settlements;
 - (2) securing and giving evidence; and
 - (3) attending, and getting witnesses to attend, depositions, hearings, and trials.
 - b. The **insured** must not, except at his or her own cost, voluntarily:
 - (1) make any payment to others; or
 - (2) assume any obligation to others unless authorized by the terms of this policy.
 - c. Any **person** or organization making claim under this policy must, when *we* require, give *us* proof of loss on forms *we* furnish.
4. **Questioning Under Oath**
Under:

- a. Liability Coverage, each *insured*;
- b. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
- c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other *person* or organization making claim or seeking payment;

must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person's* or organization's legal representative, *our* representatives, any *person* or *persons* designated by *us* to record the questions and answers, and no other *person* present.

5. Other Duties Under the Physical Damage Coverages and Uninsured Motor Vehicle Coverage Property Damage

When there is a *loss*, *you* or the owner of the *covered vehicle* must:

- a. protect the *covered vehicle* from additional damage. *We* will pay any reasonable expense incurred to do so that is reported to *us*;
- b. make a prompt report to the police when the *loss* is the result of theft;
- c. allow *us* to:
 - (1) inspect any damaged property before its repair or disposal;
 - (2) test any part or equipment before that part or equipment is removed or repaired; and
 - (3) move the *covered vehicle* at *our* expense in order to conduct such inspection or testing;
- d. provide *us* all:
 - (1) records;
 - (2) receipts; and
 - (3) invoices

that *we* request and allow *us* to make copies;

- e. not abandon the *covered vehicle* to *us*; and
 - f. properly complete and provide all legal documents required to transfer vehicle ownership to *us* upon payment of the actual cash value of the *covered vehicle*, less any applicable deductible.
- 6. Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage**

A *person* making claim under:

- a. Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, or Loss of Earnings Coverage must:

- (1) notify *us* of the claim and give *us* all the details about the death, injury, treatment, and other information that *we* may need as soon as reasonably possible after the injured *insured* is first examined or treated for the injury. If the *insured* is unable to give *us* notice, then any other *person* may give *us* the required notice;
- (2) be examined as reasonably often as *we* may require by physicians chosen and paid by *us*. A copy of the report will be sent to the *person* upon written request;
- (3) provide written authorization for *us* to obtain:
 - (a) medical bills;
 - (b) medical records;
 - (c) wage, salary, and employment information; and
 - (d) any other information *we* deem necessary to substantiate the claim.

If an injured *insured* is a minor, unable to act, or dead, then his or her legal representative must provide *us* with the written authorization.

If the holder of the information refuses to provide it to *us* despite the authorization, then at *our* request the *person* making claim or his or her legal representative must obtain

the information and promptly provide it to *us*; and

- (4) allow *us* to inspect the vehicle that the *insured occupied* in the accident;
- b. Uninsured Motor Vehicle Coverage must report an accident, involving a motor vehicle whose owner and driver remain unknown, to the police within 24 hours and to *us* within 30 days;
- c. Uninsured Motor Vehicle Coverage and Underinsured Motor Vehicle Coverage must send *us* immediately a copy of all lawsuit papers if the *insured* files a lawsuit against the party liable for the accident;
- d. under the Uninsured Motor Vehicle Coverage, if making claim for *property damage*, give *us* the name and address of the owner

of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
 - (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and
- e. Loss of Earnings Coverage must:
- (1) make a claim under this policy;
 - (2) report to *us* when that *person* has a *total disability*; and
 - (3) provide proof of continued *total disability* when *we* ask for it.

GENERAL TERMS

1. When Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur during the policy period. The policy period is shown on the Declarations Page and is for successive periods of six months each for which the renewal premium is paid. The policy period begins and ends at 12:01 AM Standard Time at the address shown on the Declarations Page.

2. Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- a. in the United States of America and its territories and possessions;
- b. in Canada; and
- c. while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Liability Coverage, Medical Payments Coverages, and Physical Damage Coverage also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

3. Newly Owned or Newly Leased Car

If *you* want to insure a *car* newly owned by *you* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then *you* must either:

- a. request *we* replace the *car* currently shown on the Declarations Page of this policy with the *car* newly owned by *you* and pay *us* any added amount due. If *you* make such request while this policy is in force and:
 - (1) before the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date the *car* newly owned by *you* is delivered to *you*. The added amount due will be calculated based on that date; or
 - (2) after the *car* newly owned by *you* ceases to be a *newly acquired car*, then that *car* newly owned by *you* will be insured by this policy as *your car* beginning on the date and time *you* make the request. The added amount due will be calculated based on that date; or
- b. apply to the *State Farm Companies* for a separate policy to insure the *car* newly owned by *you*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

4. Changes to This Policy

a. Changes in Policy Provisions

We may only change the provisions of this policy by:

- (1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or
- (2) revising this policy to give broader coverage without an additional premium charge. If any coverage provided by this policy is changed to give broader coverage, then *we* will give *you* the broader coverage as of the date *we* make the change effective in the state of Illinois without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.

b. Change of Interest

- (1) No change of interest in this policy is effective unless *we* consent in writing.
- (2) Except under Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage, if a named insured shown on the Declarations Page dies, then the definition of *insured* under each of the coverages provided by this policy is changed to include:
 - (a) any *person* with lawful custody of *your car*, a *newly acquired car*, or a *temporary substitute car* until a legal representative is qualified; and then
 - (b) the legal representative of the deceased named insured.

This only applies while such *person* is maintaining or using *your car*, a *newly acquired car*, or a *temporary substitute car*.

Policy notice requirements are met by mailing the notice to the last known policy address that *we* have on record for the deceased named insured.

c. Joint and Individual Interests

If *you* consists of more than one *person* or entity, then each acts for all to change or cancel the policy.

d. Change of Policy Address

We may change the named insured's policy address as shown on the Declarations Page and in *our* records to the last known address provided to *us* by:

- (1) *you*; or
- (2) the United States Postal Service.

5. Premium

a. Unless as otherwise provided by an alternative payment plan in effect with the *State Farm Companies* with respect to the premium for this policy, the premium is due and payable in full on or before the first day of the policy period shown on the most recently issued Declarations Page or Renewal Notice.

b. The renewal premium for this policy will be based upon the rates in effect, the coverages carried, the applicable limits, deductibles, and other elements that affect the premium that apply at the time of renewal.

c. The premium for this policy may vary based upon the purchase of other insurance from the *State Farm Companies*.

d. The premium for this policy is based upon information *we* have received from *you* or other sources. *You* must inform *us* if any information regarding the following is incorrect or incomplete, or changes during the policy period, and *you* must answer questions *we* ask regarding the following:

- (1) *Your car*, or its use, including annual mileage;
- (2) The *persons* who regularly drive *your car*, including newly licensed family members;
- (3) *Your* marital status; or
- (4) The location where *your car* is primarily garaged.

If the above information or any other information used to determine the premium is incorrect, incomplete, changes during the policy period, or is not provided to *us* when *we* ask, then *we* may decrease or increase the premium during the policy period. If *we* decrease the premium during the policy period, then *we* will provide a refund or a credit in the amount of the decrease. If *we* increase the premium during the policy period, then *you* must pay the amount of the increase.

6. Renewal

We agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless *we* mail a nonrenewal notice or a cancellation notice as set forth in 7. and 8. below.

7. Nonrenewal

If *we* decide not to renew this policy, then, at least 30 days before the end of the current policy period, *we* will mail a nonrenewal notice to

the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page.

8. **Cancellation**

a. **How You May Cancel**

You may cancel this policy by providing to *us* advance notice of the date cancellation is effective. *We* may confirm the cancellation in writing.

b. **How and When We May Cancel**

We may cancel this policy by mailing a written notice to the last known policy address that *we* have on record for the named insured who is shown on the Declarations Page. The notice will provide the date cancellation is effective.

- (1) If *we* mail a cancellation notice because the premium is not paid when due, then the date cancellation is effective will be at least 10 days after the date *we* mail the cancellation notice.

Otherwise, the date cancellation is effective will be at least 30 days after the date *we* mail the cancellation notice.

- (2) After this policy has been in force for more than 59 days, *we* will not cancel this policy before the end of the current policy period unless:

- (a) the premium is not paid when due; or
(b) *you*, any *resident relative*, or any other *person* who usually drives *your car* has had his or her driver's license under suspension or revocation during the 12 months prior to the notice of the cancellation.

c. **Return of Unearned Premium**

If the policy is canceled, then premium will be earned on a pro rata basis. Any unearned premium will be returned within 30 days of:

- (1) the date of the notice of cancellation by *us*; or
(2) the date *we* receive *your* request for cancellation.

9. **Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

10. **Bankruptcy or Insolvency of the Insured**

Bankruptcy or insolvency of the *insured* or his or her estate will not relieve *us* of *our* obligations under this policy.

11. **Concealment or Fraud**

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

12. **Our Right to Recover Our Payments**

- a. Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage payments are not recoverable by *us*. Except as provided in 12.b. below, the following apply to all other coverages:

(1) **Subrogation**

If *we* are obligated under this policy to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

- (a) doing nothing to impair that legal right;
(b) executing any documents *we* may need to assert that legal right; and
(c) taking legal action through *our* representatives when *we* ask.

(2) **Reimbursement**

If *we* make payment under this policy and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

- (a) hold in trust for *us* the proceeds of any recovery; and
(b) reimburse *us* to the extent of *our* payment.

- b. Regarding Underinsured Motor Vehicle Coverage, *we* will not exercise *our* right of recovery if:

- (1) the *insured* has given *us* advance notice of settlement with the owner or operator of the *underinsured motor vehicle*; and
(2) *we* fail to advance the *insured* an amount equal to the tentative settlement within 30 days after *we* receive the notice.

13. Legal Action Against Us

Legal action may not be brought against *us* until there has been full compliance with all the provisions of this policy. In addition, legal action may only be brought against *us* regarding:

- a. Liability Coverage after the amount of damages an *insured* is legally liable to pay has been finally determined by:
 - (1) judgment after an actual trial, and any appeals of that judgment if any appeals are taken; or
 - (2) agreement between the claimant and *us*.
- b. Medical Payments Coverage if the legal action relating to this coverage is brought against *us* within four years immediately following the date of the accident.
- c. Uninsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:
 - (1) presents an Uninsured Motor Vehicle Coverage claim to *us*; and
 - (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction, within two years immediately following the date of the accident, or within two years immediately following the date the insuring company for the owner or driver of the *uninsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the accident.No legal action may be brought against *us* relating to Uninsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled **Consent to Settlement and Deciding Fault and Amount**.
- d. Underinsured Motor Vehicle Coverage if the *insured* or that *insured's* legal representative:
 - (1) presents an Underinsured Motor Vehicle Coverage claim to *us*; and
 - (2) commences legal action by filing a lawsuit against *us*, in a state or federal court that has jurisdiction, within two years immediately following:
 - (a) the date of the tentative settlement with or on behalf of the owner or driver of an *underinsured motor vehicle*; or

- (b) the date the insuring company for the owner or driver of the *underinsured motor vehicle* becomes insolvent, if such insolvency occurs within two years immediately following the date of the tentative settlement.

No legal action may be brought against *us* relating to Underinsured Motor Vehicle Coverage for any causes of action that arise out of or are related to this coverage until there has been full compliance with the provisions titled **Consent to Settlement and Deciding Fault and Amount**.

- e. Physical Damage Coverages if the legal action relating to these coverages is brought against *us* within one year immediately following the date of the accident or *loss*.

The limitation period specified in a., b., c., d., or e. above is tolled from the date proof of *loss* is filed for the specific coverage involved until the date claim for that coverage is denied in whole or in part.

14. Choice of Law

Without regard to choice of law rules, the law of the state of:

- a. Illinois will control in the event of any disagreement as to the interpretation and application of any provision in this policy; and
- b. Illinois will control in the event of any disagreement as to the interpretation and application of this policy's:
 - (1) Mutual Conditions provision found on the most recently issued Declarations Page, if this policy was issued by the State Farm Mutual Automobile Insurance Company; or
 - (2) Participating Policy provision found on the most recently issued Declarations Page, if this policy was issued by any subsidiary or affiliate of the State Farm Mutual Automobile Insurance Company.

15. Severability

If any provision of this policy is held invalid or unenforceable by a court that has jurisdiction, then:

- a. such provision will remain in full force to the extent not held invalid or unenforceable; and
- b. all other provisions of this policy will remain valid and enforceable.

6018GG.1 COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*;
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE

a. Additional Definition

The following are added:

(1) *Collision* means:

- (a) a vehicle hitting or being hit by another vehicle or another object; or
- (b) the overturning of a vehicle.

(2) *Pollutants* means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.

(3) *Work* means any work or operations performed by or on behalf of an *insured* including:

- (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

(1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.

(2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or

(b) designed for:

- (i) snow removal;
- (ii) street cleaning; or
- (iii) road maintenance, other than construction or resurfacing.

(3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
 - (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:
 - (i) WHEN THAT PART OF THE **WORK** DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY **PERSON** OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;
 - (ii) WHEN ALL OF THE **WORK** TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR
 - (iii) WHEN ALL OF THE **WORK** CALLED FOR IN **YOUR** CONTRACT HAS BEEN FINISHED.
- WORK** IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.
- (4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE **INSURED** FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE **INSURED** IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN (a) ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE **INSURED**; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE.
 - (5) THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR PROPERTY DAMAGE CAUSED BY **POLLUTANTS** THAT:
 - (a) ARE TRANSPORTED BY;
 - (b) ARE CARRIED IN OR UPON;
 - (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR
 - (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.
 - (6) THERE IS NO COVERAGE FOR AN **INSURED** FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY **PERSON**, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT **INSURED** FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:
 - (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF **POLLUTANTS**; OR

(b) IN ANY WAY ASSOCIATED
WITH THE COST OF:

- (i) CLEANUP;
- (ii) REMOVAL;
- (iii) CONTAINMENT; OR
- (iv) NEUTRALIZATION OF
THE EFFECTS

OF **POLLUTANTS**.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. MEDICAL PAYMENTS COVERAGE

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN *INSURED* WHO IS *OCCUPYING* A *NON-OWNED CAR*.

(2) THERE IS NO COVERAGE FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. PHYSICAL DAMAGE COVERAGES

Exclusions

The following is added:

THERE IS NO COVERAGE FOR *LOSS* TO A *NON-OWNED CAR*, A *NON-OWNED TRAILER*, OR A *NON-OWNED CAMPER*.

6913B AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. The words "spouse", "marriage", and "marital" refer to the legal relationship between two *persons* united together in either:
 - a. a marriage; or
 - b. a civil unionthat is recognized by and valid under Illinois law.

2. THIS POLICY

Item 5. is changed to read:

Your purchase of this policy may allow:

- a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or
- b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

3. LIABILITY COVERAGE

Insuring Agreement and Supplementary Payments are replaced by the following:

Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:
 - a. *bodily injury* to others; and
 - b. damage to propertycaused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.

2. *We* have the right to:

- a. investigate, negotiate, and settle any claim or lawsuit;
- b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
- c. appeal any award or legal decision

for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:

- a. that seeks damages payable under this policy's Liability Coverage; and
- b. against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:

- a. before a judgment, but only the interest on the lesser of:
 - (1) that part of the damages *we* pay; or
 - (2) this policy's applicable Liability Coverage limit; and
- b. after a judgment.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

- a. pay for any bond with a face amount that exceeds this policy's

applicable Liability Coverage limit;

- b. furnish or apply for any bonds; or
- c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

- a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a lawsuit; and
- b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

4. INSURED'S DUTIES

Item d. of 6. **Other Duties Under Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, Death, Dismemberment and Loss of Sight Coverage, and Loss of Earnings Coverage** is changed to read:

d. A *person* making claim under Uninsured Motor Vehicle Coverage, if making claim for *property damage*, must give *us* the name and address of the owner of the at-fault *uninsured motor vehicle*. If unavailable, the *insured* must give *us*:

- (1) the registration number and a description of the at-fault uninsured motor vehicle; or
- (2) any other available information that establishes that the owner or operator does not have property damage liability coverage applicable to the accident; and

5. **GENERAL TERMS**

a. Where Coverage Applies is changed to read:

Where Coverage Applies

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

- (1) in the United States of America and its territories and possessions;
- (2) in Canada; and
- (3) while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

Death, Dismemberment and Loss of Sight Coverage and Loss of Earnings Coverage apply anywhere in the world.

b. The following is added to **GENERAL TERMS**:

Limited Coverage in Mexico

This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plans to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Medical Payments Coverage**

c. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage and**

Collision Coverage provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF ILLINOIS IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring

in Mexico must be brought in a court that has jurisdiction in the state of Illinois in the United States of America.

c. Paragraph c. of 5. **Premium** is changed to read:

c. The premium for this policy may vary based upon:

- (1) the purchase of other products or services from the *State Farm Companies*;
- (2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or
- (3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.



6018GG COMMERCIAL VEHICLE

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car*;
 - b. not designed to carry *persons*;
 - c. while not used as premises for office, store, or display purposes; and
 - d. while used for pleasure; or
2. a farm implement or farm wagon while pulled on public roads by a *car*.

2. LIABILITY COVERAGE

a. Additional Definition

The following are added:

(1) *Collision* means:

- (a) a vehicle hitting or being hit by another vehicle or another object; or
- (b) the overturning of a vehicle.

(2) *Pollutants* means any solid, liquid or gaseous irritant or contaminant, toxic substance, hazardous substance, or oil in any form.

(3) *Work* means any work or operations performed by or on behalf of an *insured* including:

- (a) any materials, parts, or equipment furnished in connection with such work or operations; and

- (b) any warranties or representations made at any time with respect to the fitness, quality, durability, or performance of such work or operations of the items described in (a) above.

b. Exclusions

The following are added:

(1) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A *NON-OWNED CAR*.

(2) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or

(b) designed for:

- (i) snow removal;
- (ii) street cleaning; or
- (iii) road maintenance, other than construction or resurfacing.

(3) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES ARISING OUT OF *WORK* AFTER IT IS CONSIDERED COMPLETED. *WORK* IS CONSIDERED COMPLETED:

- (a) IF IT HAS BEEN ABANDONED; OR
 - (b) IF IT HAS NOT BEEN ABANDONED, THEN AT THE EARLIEST OF THE FOLLOWING TIMES:
 - (i) WHEN THAT PART OF THE *WORK* DONE AT A JOB SITE HAS BEEN PUT TO ITS INTENDED USE BY ANY *PERSON* OR ORGANIZATION OTHER THAN ANOTHER CONTRACTOR OR SUBCONTRACTOR WORKING ON THE SAME PROJECT;
 - (ii) WHEN ALL OF THE *WORK* TO BE DONE AT THE LOCATION WHERE THE DAMAGES AROSE HAS BEEN FINISHED; OR
 - (iii) WHEN ALL OF THE *WORK* CALLED FOR IN *YOUR* CONTRACT HAS BEEN FINISHED.
- WORK* IS CONSIDERED COMPLETED REGARDLESS OF WHETHER ADDITIONAL SERVICING, MAINTENANCE, CORRECTION, REPAIR, OR REPLACEMENT IS REQUIRED.
- (4) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES RESULTING FROM:
 - (a) THE HANDLING OF PROPERTY BEFORE IT IS MOVED FROM THE PLACE WHERE IT IS ACCEPTED BY THE *INSURED* FOR MOVEMENT INTO OR ONTO A VEHICLE FOR WHICH THE *INSURED* IS PROVIDED LIABILITY COVERAGE BY THIS POLICY;
 - (b) THE HANDLING OF PROPERTY AFTER IT IS MOVED FROM THE VEHICLE DESCRIBED IN 1. ABOVE TO THE PLACE WHERE IT IS FINALLY DELIVERED BY THE *INSURED*; OR
 - (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN 1. ABOVE.
 - (5) THERE IS NO COVERAGE FOR AN *INSURED* FOR *BODILY INJURY* OR PROPERTY DAMAGE CAUSED BY *POLLUTANTS* THAT:
 - (a) ARE TRANSPORTED BY;
 - (b) ARE CARRIED IN OR UPON;
 - (c) ARE RELEASED, DISCHARGED, OR REMOVED FROM; OR
 - (d) ESCAPE OR LEAK FROM ANY MOTOR VEHICLE.
 - (6) THERE IS NO COVERAGE FOR AN *INSURED* FOR ANY CLAIM MADE OR LAWSUIT FILED BY ANY *PERSON*, ORGANIZATION, OR GOVERNMENTAL BODY AGAINST THAT *INSURED* FOR DAMAGES, RESPONSE COSTS, OR SIMILAR COSTS, OR ANY RELATED REMEDIAL ACTION THAT ARE:
 - (a) THE REAL OR ALLEGED RESULT OF THE EFFECTS OF *POLLUTANTS*; OR

- (b) IN ANY WAY ASSOCIATED WITH THE COST OF:
 - (i) CLEANUP;
 - (ii) REMOVAL;
 - (iii) CONTAINMENT; OR
 - (iv) NEUTRALIZATION OF THE EFFECTS OF *POLLUTANTS*.

Exclusions (5) and (6) above do not apply if the *bodily injury* or property damage is the direct, accidental, and instantaneous result of a *collision* which arises out of the use of any vehicle as a motor vehicle for which that *insured* is provided Liability Coverage by this policy.

3. MEDICAL PAYMENTS COVERAGE

Exclusions

The following are added:

- (1) THERE IS NO COVERAGE FOR AN *INSURED* WHO IS *OCCUPYING* A *NON-OWNED CAR*.

- (2) THERE IS NO COVERAGE FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE OPERATION, MAINTENANCE, OR USE OF ANY EQUIPMENT THAT IS TOWED BY, MOUNTED ON, OR CARRIED ON ANY VEHICLE. This exclusion does not apply to equipment:

- (a) mounted on the vehicle and designed solely for the loading or unloading of the vehicle; or
- (b) designed for:
 - (i) snow removal;
 - (ii) street cleaning; or
 - (iii) road maintenance, other than construction or resurfacing.

4. PHYSICAL DAMAGE COVERAGES

Exclusions

The following is added:

THERE IS NO COVERAGE FOR *LOSS* TO A *NON-OWNED CAR*, A *NON-OWNED TRAILER*, OR A *NON-OWNED CAMPER*.



**6055ZZ FARM TRUCK
(Coverage While Towing Trailers and Farm Implements)**

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. If the Business Named Insured endorsement is not attached to this policy, then the following exclusion is deleted wherever it appears in the Commercial Vehicle Endorsement:

THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES ARISING OUT OF THE MAINTENANCE OR USE OF A **NON-OWNED CAR**.

2. DEFINITIONS

Trailer is changed to read:

Trailer means:

1. a trailer:
 - a. designed to be pulled by a *private passenger car* or a farm truck;
 - b. not designed to carry *persons*; and

c. while not used as premises for office, store, or display purposes; or

2. a farm implement or farm wagon while being pulled on public roads by a *car* or a farm truck.

3. LIABILITY COVERAGE, MEDICAL PAYMENTS COVERAGE, UNINSURED MOTOR VEHICLE COVERAGE, and UNDERINSURED MOTOR VEHICLE COVERAGE

Exclusions

The following is added:

THERE IS NO COVERAGE FOR AN **INSURED** FOR **BODILY INJURY** OR DAMAGE TO PROPERTY ARISING OUT OF THE OPERATION OF ANY FARM IMPLEMENT.

IN THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Plaintiff,)
) 2016-MR-137
v.)
)
KENT ELMORE and)
ARDITH SHELDON ELMORE.)
)
Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF KENT ELMORE'S MOTION FOR
SUMMARY JUDGMENT AND IN OPPOSITION TO THE MOTION FOR SUMMARY
JUDGMENT FILED BY STATE FARM MUTUAL AUTOMOBILE COMPANY**

NOW COMES the Defendant, Kent Elmore, by Christopher A. Koester, of Taylor Law Offices, P.C., its attorneys, and as and for its Memorandum of Law in Support of Kent Elmore's Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment Filed by State Farm Mutual Automobile Insurance Company, pursuant to 735 ILCS 5/2-1005, states:

A. Introduction

The sole issue to be decided by this Court on cross-motions for summary judgment filed by Kent Elmore and State Farm is as follows:

Has State Farm satisfied its burden of proving that insurance coverage otherwise afforded to Ardith Sheldon Elmore for liability associated with the injury sustained by Kent Elmore on October 16, 2013 under State Farm Mutual Insurance Company policy number 613-9680-D14-13A is excluded by the State Farm Automobile policy number 613-9680-D14-13A as set forth in Commercial Vehicle endorsement 6018GG? The terms of the exclusion provide:

*(4) THERE IS NO COVERAGE FOR AN **INSURED** FOR DAMAGES RESULTING FROM:*

(C) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN 1. ABOVE.

B. Illinois Statutes and Case Law

1. Illinois Omnibus Statutes 625 ILCS 5/7-601 and 625 ILCS 5/7-317

5/7-601. Required liability insurance policy

(a) No person shall operate, register or maintain registration of, and no owner shall permit another person to operate, register or maintain registration of, a motor vehicle designed to be used on a public highway unless the motor vehicle is covered by a liability insurance policy.

5/7-317. “Motor vehicle liability policy” defined

§ 7-317. “Motor vehicle liability policy” defined. (a) Certification.--A “motor vehicle liability policy”, as that term is used in this Act, means an “owner's policy” or an “operator's policy” of liability insurance, certified as provided in Section 7-315 or Section 7-316 as proof of financial responsibility for the future, and issued, except as otherwise provided in Section 7-316, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) **Owner's Policy.**--Such owner's policy of liability insurance:

1. Shall designate by explicit description or by appropriate reference, all motor vehicles with respect to which coverage is thereby intended to be granted;
2. Shall insure the person named therein and any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured;

2. Relevant Illinois Case Law

a. “Use” of Vehicle does not require “operation” in traditional sense - “Use” includes all acts and steps associated with loading items in vehicle.

- *Menard, Inc. v. Country Preferred Ins. Co.*, 2013 IL App (3d) 120340, ¶ 22. However, we need not look to other cases to determine if Menards was using the vehicle, because the policy itself indicates that “use” includes the loading of the vehicle.
- *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill.2d 391, 401 (2010). The use of an automobile has been held to denote its employment for some purpose of the user. As the New Jersey Supreme Court has explained, “operation” denotes the manipulation of the car's controls in order to propel it as a vehicle[, but “use”] is broader than operation. One uses an automobile whenever such use “is rationally connected to

the vehicle for the purpose of providing transportation or satisfying some other related need of the user.”

b. “Complete Operations Doctrine” utilized in construing coverage for “loading and unloading clause”

- *Toler v. Country Mutual Insurance Co.*, 123 Ill.App.3d 386, 389 (5th Dist. 1984). To properly determine what constitutes loading and unloading, Illinois courts have adopted the “complete operations doctrine.”
- *Woodside v. Gerken Food Co.*, 130 Ill.App.3d 501, 505 (5th Dist. 1985). The complete operations doctrine covers the entire process involved in moving the goods and includes all of the operations necessary to effect a complete delivery.

c. Strict Proximate Causal connection between “use of vehicle” and injury not required

- *Woodside*, 130 Ill.App.3d at 506. It is well settled that some causal relation between an injury and the use of a motor vehicle is necessary for there to be coverage under the “arising out of the use” clause of a vehicle insurance policy. Proximate causation in the strict legal sense, however, is not required, and the loading or unloading that constitutes the vehicle's use need not be the sole cause of the accident. It is sufficient that the events giving rise to the claim arose out of the vehicle's use and are related to it.
- *Toler*, 123 Ill.App.3d at 392. Proximate causation in the strict legal sense is not required, however, and the loading or unloading which constitutes the vehicle's use need not be the sole cause of the accident, as “but for” causation is sufficient to satisfy the policy provision. Applying these rules to the instant case, we note initially that under the relevant standard of causation, there is no requirement of any actual physical contact between the vehicle and the instrumentality that was the immediate cause of the injury.

d. Liberal Construction of Policy in Favor of Coverage

- *State Security Insurance Co. v. Burgos*, 145 Ill.2d 423, 438 (1991). Insurance policies are to be liberally construed in favor of coverage, and where an ambiguity exists in the terms of the contract, the ambiguity will be resolved in favor of the insured and against the insurer.
- *Outboard Marine Corp. v. Liberty Mutual Ins. Co.*, 154 Ill.2d 90, 125 (1992). The duty of an insurer to defend its insured is much broader

than its duty to indemnify. When determining whether the insurer has a duty to defend, the court must compare the allegations contained in the underlying complaint to the language contained in the policy. While liberally construing the underlying complaint in favor of the insured, if the court determines that the allegations fall within, or potentially within, coverage under the policy, the insurer has a duty to defend the insured against the underlying complaint.

C. Argument and Analysis

Courts will apply terms in an insurance policy as written unless those terms contravene public policy. *Illinois Farmers Insurance Co. v. Cisco*, 178 Ill.2d 386, 392 (1997). Statutes are an expression of public policy. *Cates v. Cates*, 156 Ill.2d 76, 110 (1993). Statutes in force at the time an insurance policy was issued are controlling, and a statute's underlying purpose cannot be circumvented by a restriction or exclusion written into an insurance policy. *Cummins v. Country Mutual Insurance Co.*, 178 Ill.2d 474, 482-83 (1997). Accordingly, insurance policy provisions that conflict with a statute are void. *Illinois Farmers Insurance*, 178 Ill.2d at 392.

Section 7-601(a) of the mandatory insurance act in the Illinois Vehicle Code requires that vehicles be insured through a liability insurance policy. 625 ILCS 5/7-601(a). Section 7-317(b)(2) of the safety responsibility law in the Illinois Vehicle Code states that a motor vehicle liability policy “[s]hall insure the person named therein and any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured.” 625 ILCS 5/7-317(b)(2). In *State Farm Mutual Automobile Insurance Co. v. Universal Underwriters Group*, the Supreme Court concluded that section 7-601(a), together with section 7-317(b)(2), mandates that “a liability insurance policy issued to the owner of a vehicle must cover the named insured and any other person using the vehicle with the named insured's permission.” *Universal Underwriters*, 182 Ill.2d 240, 244 (1998).

Section 7-317(b)(2) provides that a motor vehicle owner's policy of liability insurance "[s]hall insure the person named therein and any other person using or responsible for the use of such motor vehicle or vehicles with the express or implied permission of the insured[.]" 625 ILCS 5/7-317(b)(2). Provisions such as this, which extend liability coverage to persons who use the named insured's vehicle with his or her permission, are commonly referred to as "omnibus clauses." Where, as in Illinois, an omnibus clause is required by statute to be included in motor vehicle liability policies, Illinois courts have held that such a clause must be read into every such policy. *Universal Underwriters*, 182 Ill.2d at 243-44.

The principal purpose of this state's mandatory liability insurance requirement is to protect the public by securing payment of their damages. *State Farm Mutual Automobile Insurance Co. v. Smith*, 197 Ill.2d 369, 376 (2001). It is axiomatic that a statute that exists for protection of the public cannot be rewritten through a private limiting agreement. One reason for that rule is that "the members of the public to be protected are not and, of course, could not be made parties to any such contract." *American Country Insurance Co. v. Wilcoxon*, 127 Ill.2d 230, 241 (1989). In accordance with these principles, a statute's requirements cannot be avoided through contractual provisions. Where liability coverage is mandated by the state's financial responsibility law, a provision in an insurance policy that conflicts with the law will be deemed void. The statute will continue to control. *Id.*

1. State Farm Fails to Satisfy Burden of Proof

When determining whether an automobile liability insurance policy covers a particular accident, the courts will construe any coverage granting clauses broadly to afford the greatest possible protection to the insured. *Founders Insurance Co. v. Munoz*, 237 Ill.2d 424, 433 (2010). Exclusions in standard automobile liability insurance policies are strictly construed by the courts in favor of coverage. *Country Mutual Insurance Company v. Bible Pork Inc.*, 2015 IL App (5th)

140211, ¶ 16. The burden is on the insurer to prove a limitation or exclusion applies. *Addison Insurance Co. v. Fay*, 232 Ill.2d 446, 454 (2009). Where an exclusionary clause is relied upon to deny coverage, its applicability must be clear and free from doubt because any doubts as to coverage will be resolved in favor of the insured. *Sentry Insurance v. Continental Casualty Company*, 2017 IL App (1st) 161785, ¶ 38 (quotations omitted). A policy provision that purports to exclude or limit coverage will be read narrowly and will be applied only where its terms are clear, definite, and specific. *Country Mutual Ins. Co. v. Dahms*, 2016 IL App. (1st) 141392, ¶ 66 (quotations omitted).

State Farm cannot exclude coverage in this case. At best, its attempt to exclude coverage is misplaced and confusing. State Farm appears to have asserted and then abandoned different "theories" to exclude coverage.

Serving by way of example, on October 31, 2016, State Farm declared in its denial letter that coverage was being denied because "*it is questionable whether the grain auger described in the Elmore Complaint represents a "car" or "trailer" as that term is defined in the State Farm policy... For that reason State Farm will be filing a declaratory judgment action in Effingham County to adjudicate this issue.*" (See copy of October 31, 2016 letter from Michael J. Bedesky to attorney Christopher A. Koester attached hereto and incorporated herein as "Exhibit A").

On November 1, 2016, State Farm filed its original Complaint for declaratory judgment. In paragraph 7 of its Complaint, State Farm alleged:

7. **The auger described in the Elmore Complaint is neither a "car" nor a "trailer" as these terms are defined by the State Farm policy.**

Curiously, under the Illinois mandatory omnibus coverage requiring insurance coverage for loading and unloading of a covered vehicle, the fact that the auger was neither "a car nor trailer" makes absolutely no difference. Likewise, under the "completed operations doctrine"

which has been adopted by Illinois courts with regard to loading and unloading of insured vehicles, the fact that the auger "was not a car nor a trailer" as defined under the policy is irrelevant.

On November 7, 2016, State Farm filed its Motion to Amend its Complaint for Declaratory Judgment under the guise that it had failed to attach a certified copy of the underlying insurance policy to its original Complaint. Thereafter, State Farm filed its Amended Complaint for Declaratory Judgment on January 6, 2017. In its Amended Complaint, State Farm referenced for the first time in the litigation the exclusion in the policy which references the handling and movement of property by a "mechanical device." Again, there had been no mention of this exclusion during the litigation or any time since the accident which occurred on October 16, 2013.

On October 20, 2017, State Farm filed its Motion for Summary Judgment and Memorandum of Law in support thereof. In its Motion, State Farm failed to even mention the reason coverage was denied on October 31, 2016 as set forth in its original denial letter. Likewise, there is not any mention of the "auger not being a car or trailer" as claimed in State Farm's original Complaint for Declaratory Judgment. Instead, State Farm now appears to rely solely upon the commercial vehicle exclusion 6018GG.1 which had not even been previously attached to the Complaint nor mentioned in the original State Farm denial letter.¹

¹ There is no dispute that State Farm policy number 613-9680-D14-13A affords coverage to Ardith Sheldon Elmore in connection with the injury sustained by Kent Elmore on August October 16, 2013. In fact, the attorneys for the parties have stipulated that State Farm will pay the \$250,000 policy limit in the event the Court determines that there is coverage under Illinois law and the existing policy. (See December 2, 2016 letter to attorney Bedesky from attorney Koester).

State Farm fails to cite a single Illinois case in its Motion and Memorandum of Law to support its assertion that coverage is excluded under the “motorized device” exclusion. Instead, in its attempt to overcome the presumption of coverage, State Farm references three cases from Georgia (2000), Louisiana (1990) and West Virginia (2015). None of these cases represent binding authority upon this Court. Furthermore, the cases are not even “persuasive” because they are inapposite to the case at hand. None of the cases even refer to the mandatory omnibus provisions requiring insurance coverage which are at the very heart of this case. Furthermore, unlike the law in Illinois, there is no presumption of coverage and no suggestion that exclusions must be “free and clear from doubt” before they will be enforced. Accordingly, the cases of *Continental Ins. Co. v. American Motorist Ins. Co.*, 247 Ga App.331, 542 SE 2d 607 (2000), *Dauthier v. Pointe Coupee Wood Treating, Inc.*, 560 So.2d 556 (1990) and *Elk Run Cove Co., Inc. v. Canopus U.S. Ins., Inc.*, 235 W.Va. 513, 775 S.E.2d 65 (2015) are not at all helpful and do not provide any precedential or persuasive authority to allow State Farm to overcome Illinois’ presumption of coverage in this case.

There does not appear to be any Illinois appellate court which has specifically ruled upon this particular “mechanical device” exclusion. However, other states have specifically determined whether the mechanical device exclusion can prevail over the state mandatory omnibus coverage statutes. In each of those cases, the mechanical device exclusion failed and the courts held that the insured did have coverage under the policies. In all of those cases where the state mandatory provision statutes were in effect, the mechanical device exclusions were deemed to be contrary to the state statute requiring insurance and were considered void as against public policy. *Performance Insurance Company v. Jones*, 185 N.J. 406 (Sup.Ct. of N.J. 2005); *Parkway Iron & Metal Co. v. New Jersey Manufacturers Ins. Co.*, 266 N.J.Super.386

(App.Div.) (1993); *Truck Ins. Exchange v. Home Ins. Co.*, 841 P.2d 354 (Col.Ct.App. 1992); *Gulf Underwriters Ins. Co. v. Great West Co.*, 278 Fed.Appx. 454 (2008);

2. “Some Causal Connection” between Use of Insured Grain Truck and Kent Elmore’s Injury

Illinois courts have used two tests to determine whether there is a sufficient causal connection between an injury and the use of a vehicle. The “but for” test (*Menard Inc. v. Country Preferred*, 2013 IL App (3d) 120340 at ¶ 28) and the “reasonable contemplation” test (*Aryainejad v. Economy Fire & Casualty Co.*, 278 Ill.App.3d 1049, 1053 (3d Dist. 1996)) have each been used to determine causation.

Regardless of which test is utilized, it is clear that proximate causation in a strict legal sense is not required. There is no requirement that the actual injury be caused by operation of the vehicle itself. See *Toler*, 123 Ill.App.3d at 392. Likewise, the geographic proximity of the vehicle and the situs of the injury is not necessarily determinative concerning the causation analysis. See *Woodside*, 130 Ill.App.3d at 507. It is also important to note that the unloading of the corn need not be considered the “sole cause” of the accident to satisfy coverage under the loading and unloading policy provisions. See *Toler*, 123 Ill.App.3d at 392.

The Fifth District case of *Woodside v. Gerken*, 130 Ill.App.3d 501, is a very good illustration of how the “some causation” test does not require physical contact with the vehicle or any type of geographic limitations between the location of the car and the situs of the injury. In *Woodside*, the underlying plaintiff was an employee of the Hy-Ho Café in Belleville, Illinois. The “insured vehicle” was a Gerken potato delivery truck which was used to deliver potatoes at the Hy-Ho Café several hours before the plaintiff sustained her injury. On the morning of September 26, 1979, the Gerken delivery person unloaded two sacks of potatoes and placed them

near the doorway entrance of a walk-in storage cooler. The delivery person then drove away in the insured delivery truck. Later that evening, the underlying plaintiff noticed the two sacks of potatoes near the cooler and dragged the potatoes approximately 12 feet to the rear wall the cooler where the potatoes were ordinarily kept. When she was in the process of carrying the second bag of potatoes to the rear wall, the plaintiff slipped and fell on some water in the cooler. There was evidence that there was a persistent leak in the cooler and that the water on the slippery floor was a contributing factor to the fall. The insurer of the Hy-Ho café tendered the defense to the automobile insurer of the Gerken delivery truck. Gerken denied the tender of defense claiming that the unloading of the potatoes was not the proximate cause of the injury because the delivery truck was several miles away at the time of the injury and the delivery had been completed several hours before the injury occurred. The trial court ruled in favor of the Hy-Ho insurer and indicated that the Gerken automobile insurer owed coverage of the accident because, under the “complete operations” doctrine, the delivery of the potatoes was not complete until they were actually taken to the rear of the walk-in cooler where the potatoes were ordinarily stored. The appellate court affirmed the trial court’s entry of summary judgment and provided the following guidance concerning the issue of proximate causation when applying the loading and unloading doctrine:

It is well settled that some causal connection between an injury and the use of a motor vehicle is necessary for there to be coverage under the “arising out of the use” clause of a vehicle insurance policy. Proximate causation in the strict legal sense, however, is not required, and the loading or unloading that constitutes the vehicle’s use need not be the sole cause of the accident. It is sufficient that the events giving rise to the claim arose out of the vehicle’s use and are related to it. This court in *Toler v. Country Mutual Insurance Co.*, 123 Ill. App.3d 386, 78 Ill. Dec. 790, 462 N.E.2d 909 (5th Dist. 1984) characterized the requisite causation as that which would not have occurred “but for” the improper or incomplete delivery. Geographical proximity of the delivery vehicle to the injured party is, therefore, not the sole determinant of the causation issue.”

Id. at 507 (citations omitted).

Likewise, the case of *Menard, Inc. v. Country Preferred Insurance Co.*, 2013 IL App (3d) 120340, provides another illustration of how the “completed operations doctrine” compels coverage for the loading and unloading of an insured vehicle. In *Menard*, the underlying plaintiff, Ruby Bohlen, drove to a Menards store in Champaign, Illinois, to buy bricks. She and the Menard’s employees loaded the bricks into the trunk of her vehicle. During the course of the loading process, the underlying plaintiff tripped and fell over some debris and packing material on the ground located between the bricks and the vehicle.

The underlying plaintiff filed a premises liability suit against the Menard store in the Circuit Court of Champaign County. She complained that Menards was negligent by breaching its duty to maintain a safe premises for its customers. It was a “premises liability” lawsuit. At the time of the accident, the underlying plaintiff maintained an automobile insurance policy through Country Preferred Insurance Company. After Bohlen filed her complaint, Menards requested Country to defend and indemnify Menards in the lawsuit. Country determined that Menards was not covered under the policy and refused the tender of defense. Menards filed declaratory judgment against Country in the Circuit Court of Will County. The trial judge determined that Menards qualified as an insured under the Country policy because the injuries to the underlying plaintiff allegedly were caused by the “use” of her vehicle to load and unload bricks. The court reasoned that “but for” the use of the vehicle to load and unload bricks, the plaintiff would not have been injured. The court also concluded that it was reasonable and foreseeable that Bohlen might be injured while loading the vehicle. Country filed a motion to reconsider which was denied by the trial court. The trial court entered a Supreme Court Rule 304(a) finding and Country filed a notice of appeal.

On appeal, Country raised two issues. First, it argued that the trial court erred in ruling that it had a duty to defend Menards in the Bohlen lawsuit. Second, it argued that if Menards was covered under the policy, then Country must provide excess coverage only, not primary coverage as the court rule.

With regard to the first issue, the appellate court ruled in favor of Menards and against Country, relying on the specific language of the Country policy. With regard to whether Country had a duty to defend Menards, the Court held as follows:

Bohlen's policy with Country Preferred defines an insured as "anyone using an insured vehicle with your permission or the permission of an adult relative." Therefore, to determine if Menards is an insured, we must determine if Menards was "using" Bohlen's vehicle when it was loading bricks into Bohlen's car with her permission.

In its brief, Country Preferred seems to argue that Menards was not using the vehicle when it was loading bricks because "Menards clearly was not using the vehicle in a vehicle sense, i.e., operating and driving it." However, we reject any argument that Illinois law equates "use" of the vehicle with only operating or driving, as "use" has a broader definition. As our Supreme Court has noted, "the use of an automobile has been held to denote its employment for some purpose of the user." See *Schultz v. Illinois Farmers Insurance Company*, 237 Ill.2d 391, 401, 402-403, 341 Ill. Dec 429, 930 N.E.2d 943 (2010). Indeed, as the *Schultz* court noted, some jurisdictions have construed used to include loading and unloading of the vehicle.

Id. at ¶¶ 20-22 (citations omitted).

After determining that Menards was an insured pursuant to the policy language of the Country policy, the appellate court then also determined that Country had a duty to defend Menards in the lawsuit.

Under Illinois law, an insurer has a duty to defend the insured if the underlying complaint alleges facts that fall within, or potentially within, the policy's coverage. *Outboard Marine Corp. v. Liberty Mutual Ins. Co.*, 154 Ill.2d 90, 125, 180 Ill.Dec. 691, 607 N.E.2d 1204 (1992).... To determine if loss is potentially covered under an insurance policy, a court must compare the allegations in the underlying complaint to the policy language. It is the alleged conduct, and not the labeling of the claim in the complaint, which

determines whether there is a duty to defend. Both the underlying complaint and the insurance policy should be liberally construed in favor of the insured.

According to the policy, to be covered, Bohlen's injuries must be "caused by an accident resulting from the use of an insured vehicle, including loading and unloading." To come within the coverage of a "loading and unloading" clause like the one at issue here, an accident (1) must have occurred during the process of loading and unloading the vehicle in question and (2) must be causally connected to the act of loading or unloading. Citing *Toler v. Country Mutual Insurance Co.*, 123 Ill. App.3d 386, 389, 78 Ill.Dec. 790, 462 N.E.2d 909 (5th Dist. 1984). We conclude that Bohlen's complaint alleges facts that potentially satisfy both requirements, and therefore find a duty to defend exists in this case.


Id. at ¶¶ 24-26 (citations omitted).

D. Conclusion

The undisputed facts demonstrate that Kent Elmore was using the insured grain truck to unload and transfer grain when he was injured. The undisputed facts also reveal that the unloading process had not yet been completed at the time Kent lost his leg. Accordingly, there is coverage for this injury under the "complete operations doctrine" because the unloading process had not yet been completed. Finally, because Kent Elmore would not have sustained an injury "but for" the unloading of the corn, there is a causal connection between the use of the vehicle and the injury in question. Likewise, it is reasonable to conclude that the parties would have reasonably contemplated that the grain truck in question would be used to load and unload corn. There is no genuine issue as to any material fact which would prevent this Court from resolving this case by way of summary judgment. The undisputed facts, the policy language and Illinois case law all demonstrate that Ardith Sheldon Elmore was an insured under the STATE FARM policy at issue and that the "mechanical device" exclusion contravenes Illinois omnibus statutes which require coverage under the Elmore policy. Accordingly, Kent Elmore respectfully requests this Court to enter its order declaring that STATE FARM has failed to overcome the

presumption of coverage and satisfy its burden of proving that the "mechanical device" exclusion defeats coverage under the insurance policy.

Respectfully submitted,


Christopher A. Koester of
Taylor Law Offices, P.C.

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
Attorney for Defendant
122 East Washington Avenue
Effingham, Illinois 62401
(217) 342-3925

CERTIFICATE OF SERVICE

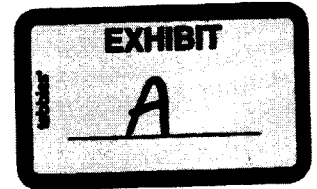
Christopher A. Koester hereby certifies that he has served a copy of the foregoing document upon:

Michael J. Bedesky
Reed Armstrong Mudge & Morrissey, P.C.
115 N. Buchanan
Edwardsville, IL 62025
mbedesky@reedarmstrong.com

by emailing and mailing to him a true and correct copy thereof at the address referred to above in an envelope addressed to him, bearing proper first class postage and deposited in the United States mail at Effingham, Illinois, this 9th day of December, 2017.


Christopher A. Koester

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
Attorney for Defendant
122 East Washington Avenue
Effingham, Illinois 62401
(217) 342-3925



REED ARMSTRONG
MUDGE & MORRISSEY P.C.

October 31, 2016

Christopher A. Koester
TAYLOR LAW OFFICES, P.C.
122 E. Washington Ave.
Effingham, IL 62401

STEPHEN C. MUDGE *
MARTIN K. MORRISSEY
MICHAEL J. BEDESKY
BRYAN L. SKELTON *
WILLIAM B. STARNES *
DOMINIQUE N. SEYMOUR
MICHAEL C. HOBIN
TORI L. WALLS *
TARA J. ENGLISH
ERISHA A. PARKS *
JOSHUA N. SEVERIT
JENNIFER M. WAGNER
TRAVIS M. POUR
HARRY C. ARMSTRONG
SENEE

Shane M. Carnine
BLACK HEDON, BALLARD & MCDONALD, P.C.
P. O. Box 4007
Mt. Vernon, IL 62864

Mike Ryan
RYAN, BENNETT & RADLOFF
300 Richmond Ave E
Mattoon, IL 61938

William Tapella
TAPELLA & EBERSPACHER
6009 Park Dr.,
Charleston, IL 61920

* ALSO LICENSED TO
PRACTICE IN MISSOURI

RE: ***Elmore vs. Elmore***
Effingham County No: 2015-L-44

Dear Gentlemen:

Our firm has been retained by State Farm Mutual Automobile Insurance Company (State Farm) regarding the auto policy issued to Ardith Sheldon Elmore which was in effect at the time of the October 16, 2013 accident. The purpose of this letter is to inform you that State Farm may have no duty to pay, indemnify, defend or otherwise perform under the policy referenced above for the following reasons:

The Elmore complaint alleges that Kent Elmore was assisting in a grain farm operation when his clothing and right leg became entangled in a grain auger resulting in

The policy defines "your car" as the vehicle shown under "YOUR CAR" on the Declarations page. The policy defines "trailer" means, among other things a farm implement or farm wagon while being pulled on public roads by a car. (p. 5)

It is questionable whether the grain auger described in the Elmore complaint represents a "car" or "trailer" as that term is defined in the State Farm policy. For that reason State Farm will be filing a declaratory judgment action in Effingham County to adjudicate this issue. State Farm Mutual Automobile Insurance Company has concluded that neither defense nor indemnity is applicable to Ardith Sheldon Elmore under vehicle policy number 6139-680-13, for the incident described in Effingham County case number 2015-L-44.

Any action taken by State Farm, or any of its authorized representatives to investigate, evaluate, pay, defend or otherwise adjust any claim presented, shall not waive any terms or conditions of the policy mentioned above, nor shall any such actions waive any of our other rights.

The Company does not intend, by this letter, to waive any policy defenses not stated above, but specifically reserves its rights to assert such additional policy defenses at that time.

Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a consumer division in Chicago at 100 West Randolph Street, Suite 5-570, Chicago, IL 60601-3251 and in Springfield at 320 W. Washington Street, Springfield, IL 62767.

If you have any questions, please contact my office.

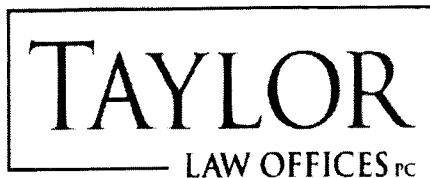
Sincerely,



Michael J. Bedesky

MJB/vlf

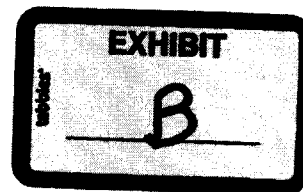
Cc: Martin K. Morrissey



CHRISTOPHER A. KOESTER

Attorney at Law
koester@taylorlaw.net

December 2, 2016



Via Email & U.S. Mail

Mr. Michael J. Bedesky
Reed Armstrong Mudge & Morrissey, P.C.
115 N. Buchanan
Edwardsville, IL 62025

Re: *State Farm Mutual Automobile Ins. Co. v. Kent Elmore, et al.*
Effingham County Case No.: 16-MR-137

Dear Mike:

It was a pleasure speaking with you this morning regarding the potential resolution of Kent Elmore's claim against Sheldon Elmore. We discussed a resolution whereby a Release would be provided to the State Farm insured, Sheldon Elmore, while preserving State Farm Auto's right to litigate the coverage dispute more fully described in the Amended Complaint for Declaratory Judgment. Specifically, the tentative agreement would include the following terms:

1. Kent Elmore would provide a Release to Sheldon Elmore specifically carving out an exception to allow the parties to litigate the declaratory judgment action with State Farm Auto. Grinnell would pay its \$1 million policy limit (which has already been offered) and State Farm Fire would immediately pay the amount of money to be agreed upon between the parties.¹ The ability to provide a Release to Sheldon Elmore would 1) eliminate Sheldon's personal exposure over and above the policy limit, and 2) avoid future attorneys' fees and expenses associated with preparing for our February trial, including depositions of experts in Las Vegas, NV and Chicago. I suspect the avoidance of these expenses and risks will go a long way in closing the current settlement gap between State Farm Fire and Kent Elmore.
2. State Farm Automobile Insurance Company would agree to tender its \$250,000 policy limit in the event that the court determines that there is coverage under Illinois law and the policy. In the event the court rules that there is no coverage, State Farm Auto would not be required to remit any payment. State Farm Auto and the Plaintiff would preserve its right to appeal the ruling of the trial court.

¹ Currently, State Farm Fire has offered the additional amount of \$650,000 (presumed value of at least \$1.9 million) while Kent has agreed to accept 1.97 million (presumed value of \$2.22 million)

It is my understanding that you will recommend this proposal to State Farm Auto and that you expect to be in a position to let me know later today whether we have an agreement.

With regard to our discussion regarding the omnibus issue, we briefly discussed Illinois case law wherein coverage was provided notwithstanding the fact that the injury did not involve an accident wherein the vehicle was being used "as a vehicle." One of the cases we discussed was *Toler v. Country Mutual Insurance Company*, wherein the court concluded that coverage existed in connection with a shooting incident involving the loading and unloading of a gun in a truck. I have enclosed the following authorities regarding the omnibus issue with this letter, including:

1. *Toler v. Country Mutual Insurance Company*, 462 N.E.2d 909, 123 Ill.App.3d 386 (5th Dist. 1984);
2. *Menard, Inc. v. Country Preferred Insurance Company*, 992 N.E.2d 643, 372 Ill.Dec. 801, (3rd Dist. 2013);
3. Illinois Omnibus Statute 625 ILCS 5/7-317; and
4. *Woodside v. Gerkin Food Co.*, 130 Ill.App.3d 501, 474 N.E.2d 771 (5th Dist. 1985).

Finally, we discussed preparing a stipulation of facts and procedure consistent with our tentative agreement to resolve this insurance dispute. This will allow us to avoid future depositions and additional discovery. I am hopeful that we can have the proposed stipulation agreed to by the end of next week. Of course, if the parties are interested in resolving the insurance coverage dispute, we can certainly explore whether there may be common ground on these issues. It does not appear that the State Farm Auto endorsement 6018GG.1 has ever been tested by the courts and I question whether the exclusion will override the omnibus statute and case law interpreting same in any event.

I look forward to confirming these issues later today and I further look forward to working with you on this case.

Thank you.

Very truly yours,

Christopher A. Koester

CAK/kew
Encl.

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
Effingham SHELBY COUNTY, ILLINOIS

FILED

JAN 2 2018

STATE FARM MUTUAL AUTO INSURANCE CO.,

Plaintiff,

vs.

KENT ELMORE and ARDITH SHELDON ELMORE,

Defendants.

2016-MR137

J.R.K.
CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

ORDER

Plaintiff filed an amended motion for declaratory judgment on January 6, 2017. On October 20, 2017, Plaintiff filed a motion for summary judgment. On December 4, 2017, Defendant Kent Elmore (Defendant) filed a motion for summary judgment. On December 6, 2017, the court conducted a hearing on those motions for summary judgment. The matter was taken under advisement. Plaintiff was granted ten days to file a responsive pleading with supplements. Defendant was to supply the court with foreign jurisdiction cases. Both parties have complied in a timely manner. The court has considered those materials along with the pleadings, the arguments of counsel and the relevant statutory and case law. The matter is now taken off of advisement.

The parties agree that there are no factual disputes in this case, so it is ripe for disposition via summary judgment. The court, therefore, will not go into a lengthy discussion of the facts. The parties agree that the policy exclusion at issue is a case of first impression in Illinois. The only issue in this case is whether or not coverage existed for this accident.

Plaintiff's main argument is that coverage is excluded under the terms of the liability policy acquired by Defendant Ardith Sheldon Elmore. Specifically, Plaintiff relies on the exclusionary language of the policy found in Paragraph (4)(b) which states:

THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED...

Plaintiff argues that by definition, the grain auger which caused injury to defendant is a mechanical device, not a hand truck. Additionally, it is undisputed that the auger was not attached to the covered vehicle. Defendant does not concede that the auger is a mechanical device.

The court agrees with Plaintiff that the auger is clearly a mechanical device, not a hand truck or other non-mechanical device. There is no dispute that the truck was in use at the time of the accident and that the said use did bear a causal connection to the injury. The court also agrees with the Defendant that the unloading of the grain was completing a task.

The court does not find that this above exclusion is ambiguous, therefore, it is not necessary to liberally construe the policy. The only remaining issue is whether or not the above exclusion is valid or against public policy.

Defendant cites three foreign cases where vehicle insurance policies contained similar mechanical device exclusions. In each of those three cases, the courts found that the exclusion was invalid even though it was clear that mechanical devices had a connection to the loading or unloading of the insured vehicles. All of those jurisdictions found that the mechanical device exclusions were against public policy. Those cases are certainly persuasive in the case at hand, however, Plaintiff claims that the court need not look past *Progressive Universal Ins. Co. of Illinois vs. Liberty Mutual Fire Ins. Co.*, 215 Ill. 2d 121 (2005) (*Progressive*).

The court has reviewed *Progressive* and finds that Illinois public policy does not preclude insurers from having reasonable exclusions in a policy so long as it does not differentiate between the insured and a permissive user. The exclusion at issue makes no such distinction. In this case, the court concurs with Plaintiff's analysis of *Progressive* and does find that it is controlling in this case. The exclusion at issue in this case is not ambiguous, against public policy or in violation of the statutes cited by Defendant.

Plaintiff's motion for summary judgment is granted. Defendant's motion for summary judgment is denied.

1-2-18
Dated


Judge

APPEAL TO THE FIFTH DISTRICT APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff - Appellee,)

v.)

KENT ELMORE and)
ARDITH SHELDON ELMORE,)

Defendants- Appellant.)

2016-MR-137

NOTICE OF APPEAL

NOW COMES the Defendant, Kent Elmore, by Christopher A. Koester, of Taylor Law Offices, P.C., his attorneys, and hereby appeals to the Fifth District Appellate Court of Illinois the following order entered by Judge Allan Lolie in the Circuit Court of the Fourth Judicial Circuit, Effingham County, Illinois:

1. January 2, 2018 Order granting Plaintiff's Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment.

Respectfully submitted,
Kent Elmore, Defendant- Appellant,

By: _____

Christopher A. Koester of
Taylor Law Offices, P.C.
His Attorney


Christopher A. Koester #6208370
TAYLOR LAW OFFICES, P.C.
Attorney for Defendant-Appellant
122 East Washington Avenue
Effingham, Illinois 62401
(217) 342-3925
koester@taylorlaw.net
wernsing@taylorlaw.net

CERTIFICATE OF SERVICE

Christopher A. Koester hereby certifies that he has served a copy of the foregoing document upon:

Michael J. Bedesky
Reed Armstrong Mudge & Morrissey, P.C.
115 N. Buchanan
Edwardsville, IL 62025
mbedesky@reedarmstrong.com

by emailing and mailing to him a true and correct copy thereof at the address referred to above in an envelope addressed to him, bearing proper first class postage and deposited in the United States mail at Effingham, Illinois, this 1st day of February, 2018.



Christopher A. Koester

Christopher A. Koester #6208370
TAYLOR LAW OFFICES, P.C.
Attorney for Defendant- Appellant
122 East Washington Avenue
Effingham, Illinois 62401
(217) 342-3925
koester@taylorlaw.net
wernsing@taylorlaw.net

FILED

FEB - 1 2018

CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE INS
Plaintiff

vs.

Case No. 2016MR000137

ELMORE, KENT
Defendant

INFORMATION CONCERNING NOTICE OF APPEAL

- (1) Date Notice of Appeal Filed: February 1, 2018
- (2) Attach copy of Notice of Appeal.
- (3) State appeal of judgment or order appealed from Order
entered on January 2, 2018
- (4) Reporter or Reporters taking report of proceedings:
 - (a) Name: Michelle Pachesa
Address: 120 N. Main St., Room 125, Hillsboro, IL 62049
Dates Notes Taken: December 6, 2017
 - (b) Name: _____
Address: _____
Date notes taken: _____
 - (c) Name: _____
Address: _____
Date notes taken: _____
 - (d) Name: _____
Address: _____
Date notes taken: _____
 - (e) Name: _____
Address: _____
Date notes taken: _____
 - (f) Name: _____
Address: _____
Date notes taken: _____
- (5) Judge who entered order or judgment appealed from:
 - (a) Name: Judge Allan F. Lolie
 - (b) Address: 120 W Jefferson, Effingham IL 62401
 - (c) Date order entered: January 2, 2018

C 411

- (6) Date report of proceedings is due in Clerk's office:
____March 22, 2018_____
- (7) Date record on appeal is to be filed with Appellate Court:
____April 5, 2018_____

SCHEDULE OF APPEAL

FILED

FEB - 1 2018

J. H. K.
CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

- (1) Name of Case: STATE FARM MUTUAL AUTOMOBILE INS
Plaintiff
vs.
ELMORE, KENT
Defendant
- (2) Number of Case: 2016MR000137
- (3) Date Judgment/Order entered: January 2, 2018
- (4) Date Notice of Appeal filed: February 1, 2018
- (5) Party filing appeal: atty Christopher Koester on behalf of
Kent Elmore
- (6) Date Notice sent to:
(a) Appeals Court: February 1, 2018 by e-file
(b) Chief Judge's Office: February 1, 2018
- (7) Date Information sheet sent to:
(a) Appeals Court: February 1, 2018 by e-file
(b) Reporters: February 1, 2018
(c) Chief Judge's Office: February 1, 2018
- (8) Date Report of Proceedings due to be filed: March 22, 2018
Extended to: _____
- (9) Date Record on Appeal to be filed: April 5, 2018
Extended to: _____
- (10) Date Report of Proceedings filed: _____
- (11) Date Record on Appeal filed: _____
- (12) Date of Opinion from Appellate Court: _____
- (13) Date Mandate from Appellate Court filed: _____
- (14) Date copy of Mandate sent to:
(a) Appellant's attorney: _____
(b) Appellee's attorney: _____
(c) Judge: _____
(d) Chief Judge's Office: _____
- (15) Date hearing on Mandate: _____

FILED

FEB - 1 2018

STATE OF ILLINOIS
IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY

J.P.N.
CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

STATE FARM MUTUAL AUTOMOBILE INS
Plaintiff

vs.

Case No. 2016MR000137

ELMORE, KENT
Defendant

CERTIFICATE OF MAILING

I, John P. Niemerg, Circuit Clerk of Effingham County, do hereby certify that I mailed to each of the following persons, at his or her address mentioned below, postage prepaid, a copy of the Notice of Appeal and Information Concerning Notice of Appeal this day 2/01/2018.

NAME
John J. Flood
Clerk of the Appellate Court

ADDRESS
e-file

Office of the Chief Judge

221 South 7th Street
Fayette County Courthouse
Vandalia, IL 62471


Judge Allan F. Lolie

120 W Jefferson
Effingham County Gov't Center
Effingham, IL 62401

Michelle Pachesa

120 N. Main St., Room 125
Hillsboro, IL 62049

(Seal of the Court)


Clerk of the Circuit Court
By: _____ ldr _____

✓ C 414

NOTICE
Decision filed 09/30/19. The text
of this decision may be changed
or corrected prior to the filing of
a Petition for Rehearing or the
disposition of the same.

2019 IL App (5th) 180038

NO. 5-18-0038

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

STATE FARM MUTUAL AUTOMOBILE	)	Appeal from the
INSURANCE COMPANY,	)	Circuit Court of
	)	Effingham County.
Plaintiff-Appellee,)	
)	
v.	)	No. 16-MR-137
)	
KENT ELMORE and ARDITH SHELDON)	
ELMORE,)	
)	
Defendants	)	Honorable
	)	Allan F. Lolie,
(Kent Elmore, Defendant-Appellant).	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court, with opinion.
Justice Chapman concurred in the judgment and opinion.
Presiding Justice Overstreet dissented, with opinion.

OPINION

¶ 1 Defendant Kent Elmore was severely injured while unloading a grain truck which was owned by his father, Ardith Sheldon Elmore (Sheldon), and insured by plaintiff, State Farm Mutual Automobile Insurance Company (State Farm). Kent filed a claim seeking damages for his injuries under Sheldon’s State Farm auto policy. State Farm then filed this action, seeking a judgment declaring that the “mechanical device” exclusion in the auto policy was applicable and barred coverage for Kent’s injuries. State Farm and Kent filed cross-motions for summary judgment. The

circuit court found that the “mechanical device” exclusion was unambiguous and enforceable, and entered a summary judgment in favor of State Farm. Kent now appeals.¹

¶ 2 On appeal, Kent contends that the circuit court erred in denying his motion for summary judgment and granting State Farm’s motion for summary judgment because the “mechanical device” exclusion in the State Farm auto policy was ambiguous and contrary to the purpose of the mandatory motor vehicle liability laws of Illinois. For reasons that follow, we reverse the order of the circuit court entering a summary judgment for State Farm and denying Kent’s motion for summary judgment. Pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we enter a summary judgment in favor of defendant, Kent Elmore.

¶ 3

I. BACKGROUND

¶ 4 On October 16, 2013, Kent was helping his father, Sheldon, harvest corn from one of Sheldon’s fields. At one point during the day, Kent was helping transfer a load of corn from Sheldon’s grain truck into a transport truck. A grain auger with a hopper attached at its lower end was being used to collect and move the corn from the grain truck into the transport truck. Kent backed the grain truck up to the auger so that the auger’s hopper abutted the rear of the truck. The auger’s hopper was located directly beneath the grain truck’s dumping shoot. As the corn was being emptied from the dumping shoot into the hopper, the rotating auger blades would draw corn from the hopper and carry it up toward the top of the auger, eventually depositing it into the transport truck. The auger was powered by a tractor equipped with a “power take off” (PTO) shaft. After Kent aligned the hopper under the dumping shoot, Kent grabbed two levers located on the back gate of the grain truck in order to open it and release the corn out of the truck and into the hopper. Kent wanted

¹Ardith Sheldon Elmore did not appeal the judgment, and he has not entered an appearance or otherwise participated in this appeal.

extra leverage to open the truck's back gate, so he stepped up onto the auger. The protective shield covering the auger's moving parts had been removed. As Kent stepped up onto the auger, his right foot became entangled in the turning auger blades. Kent suffered a traumatic amputation of his right leg above the knee.

¶ 5 Sheldon had furnished the grain truck and the auger-hopper equipment that Kent was using at the time he was injured. The grain truck, a 2002 Ford International 4900, was owned by Sheldon and insured under an auto policy issued by State Farm. Sheldon was a named insured on the policy.

¶ 6 On March 31, 2016, Kent filed a negligence action against Sheldon seeking to recover for his injuries under Sheldon's auto policy. On November 1, 2016, State Farm filed this declaratory judgment action asking the court to determine the rights and liabilities of the parties under the terms and provisions of the auto policy. In the original complaint for declaratory judgment, State Farm asserted that there was no coverage under the auto policy because Kent's injury was caused by an auger, and the auger was neither a car nor a trailer, and was thus not an insured vehicle within the meaning of the auto policy. On January 6, 2017, State Farm filed an amended complaint adding an allegation that the auger was a mechanical device and was thereby excluded from coverage under the "mechanical device" exclusion ("Endorsement 6018GG.1.") in the policy. A certified copy of the State Farm policy in effect at the time of the occurrence was attached to the complaint for declaratory judgment.

¶ 7 The Declarations Page of the State Farm policy identified the insured vehicle as a 2002 International Model 4900 truck to be used in farming operations. The Declarations Page also showed that the bodily injury liability limits were \$250,000 per person and \$500,000 per accident. The following policy documents were attached to the Declarations Page: "State Farm® **Car Policy Booklet**"; two endorsements identified as "**6018GG. COMMERCIAL VEHICLE**" and

“6018GG.1 COMMERCIAL VEHICLE”; an endorsement identified as “6913B AMENDATORY ENDORSEMENT”; and a one-page document entitled “6055ZZ FARM TRUCK (Coverage While Towing Trailers and Farm Implements).”

¶ 8 The liability section of the State Farm[®] Car Policy Booklet provided in pertinent part:

“LIABILITY COVERAGE

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
 - a. the ownership, maintenance, or use of:
 - (1) *your car*;

3. any other *person* for his or her use of:
 - a. *your car*:

Such vehicle must be used within the scope of *your* consent;

* * *

Insuring Agreement

1. **We** will pay:
 - a. damages an *insured* becomes legally liable to pay because of:
 - (1) *bodily injury* to others; and

- (2) damage to property caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.”

¶ 9 The “mechanical device” exclusion referenced in State Farm’s amended complaint was set forth in the endorsement identified as “**6018GG.1 COMMERCIAL VEHICLE.**” The preface to the endorsement indicates the endorsement is a part of the policy, and further provides: “Except for changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.” Subsection b of the Liability Coverage section of the endorsement adds four categories of policy exclusions, including the following “mechanical device” exclusion.

“LIABILITY COVERAGE

b. Exclusions

* * *

- (4) THERE IS NO COVERAGE FOR AN *INSURED* FOR DAMAGES RESULTING FROM:

* * *

- (c) THE MOVEMENT OF PROPERTY BY MEANS OF A MECHANICAL DEVICE, OTHER THAN A HAND TRUCK, THAT IS NOT ATTACHED TO THE VEHICLE DESCRIBED IN (a) ABOVE.”

¶ 10 On October 20, 2017, State Farm filed a motion for summary judgment and a supporting memorandum. In its pleadings, State Farm stated that it had denied coverage for Kent’s injuries based on the “mechanical device” exclusion in the commercial vehicle endorsement (Endorsement 6018GG.1) to the policy.

¶ 11 In its supporting memorandum, State Farm described its version of the unloading process as follows:

“An auger was being utilized to move grain into the transport truck. A tractor powered the auger by means of a PTO shaft. As the auger turned, it would pull the grain up and dump it into the semi-truck. The auger featured a ‘hopper’ which would receive the grain from the grain trucks. The auger’s hopper was directly underneath the dumping shoot for the grain truck.”

State Farm argued that Kent was injured while using the grain auger, that the grain auger was a “mechanical device” within the meaning of the policy, and that because Kent’s injuries resulted from the movement of property by means of a “mechanical device, other than a hand truck,” there was no coverage under the policy for the occurrence. Noting that this was a matter of first impression for Illinois courts, State Farm pointed to decisions from other jurisdictions in which reviewing courts found similar “mechanical device” exclusions valid and enforceable. A certified copy of the State Farm auto policy was attached in support of the summary judgment motion.

¶ 12 On December 4, 2017, Kent filed his motion for summary judgment and opposition to State Farm’s motion for summary judgment. Kent argued that the policy provided coverage for the occurrence because he was using the grain truck to unload corn at the time of the injury, and there was a causal connection between the use of the insured vehicle and his injury. Kent further argued that the “mechanical device” exclusion was confusing and violated the public policy underlying the mandatory motor vehicle liability insurance laws in Illinois. Kent agreed that there were no Illinois cases addressing this exclusion and pointed to decisions from other jurisdictions in which courts determined that similar “mechanical device” exclusions were contrary to the state’s omnibus insurance laws.

¶ 13 On December 6, 2017, the circuit court held a hearing on the cross-motions for summary judgment. During the hearing, State Farm’s attorney advised the court that if State Farm did not have the “mechanical device” exclusion in the policy, “there would be coverage” for Kent’s injuries. The court took the matter under advisement.

¶ 14 On January 2, 2018, the circuit court issued an order granting State Farm’s motion for summary judgment and denying Kent’s motion for summary judgment. The court found that the auger was a “mechanical device” and that the “mechanical device” exclusion was not ambiguous. The court also found that the “mechanical device” exclusion did not violate the law or the public policy underlying mandatory insurance laws in Illinois. Citing *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121 (2005), the court determined that Illinois public policy does not preclude insurers from having reasonable exclusions, like the “mechanical device” exclusion, so long as the exclusion does not differentiate between the insured and permissive users. The court found that the exclusion at issue made no such distinction and concluded that *Progressive Universal* was controlling.

¶ 15 II. ANALYSIS

¶ 16 On appeal, Kent contends that the circuit court erred in entering summary judgment in favor of State Farm and denying his motion for summary judgment. Kent argues that the “mechanical device” exclusion in the endorsement to the State Farm auto policy is ambiguous and contrary to the public policy underlying the mandatory liability insurance laws in Illinois.

¶ 17 Summary judgment is appropriate only where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmoving party, show that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012). The construction of an insurance policy and a

determination of the rights and obligations thereunder are questions of law for the court, and thus, are appropriate for disposition by summary judgment. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010). Additionally, whether the insurance policy comports with statutory requirements presents questions of law properly decided on a motion for summary judgment. *Schultz*, 237 Ill. 2d at 399. Orders granting or denying summary judgment are subject to *de novo* review. *Progressive Universal*, 215 Ill. 2d at 128. *De novo* review is also appropriate where the resolution of an appeal turns on questions of statutory and contractual interpretation. See *Progressive Universal*, 215 Ill. 2d at 128.

¶ 18 When interpreting the language of an insurance policy, we apply the general rules governing the interpretation of contracts. *Schultz*, 237 Ill. 2d at 399. A court’s primary objective in construing the language of an insurance policy is to ascertain and give effect to the intentions of the parties as expressed by the language of the policy. *Schultz*, 237 Ill. 2d at 400. “To ascertain the intent of the parties and the meaning of the words used in the insurance policy, the court must construe the policy as a whole, taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the entire contract.” *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993). If the policy’s terms are clear and unambiguous, they must be given their plain, ordinary, and popular meaning. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). Alternatively, if the policy terms are susceptible to more than one reasonable meaning or are “ ‘obscure in meaning through indefiniteness of expression,’ ” the terms are ambiguous and will be strictly construed against the drafter. *Central Illinois Light Co.*, 213 Ill. 2d at 153 (quoting *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 330 (2004)).

¶ 19 Parties to an insurance contract may agree to the scope of coverage and which risks are excluded from coverage, but the risks excluded must be set forth in clear and unambiguous language. *Cherry v. Elephant Insurance Co.*, 2018 IL App (5th) 170072, ¶ 12. The insurer bears the burden to affirmatively demonstrate the applicability of an exclusion. *Pekin Insurance Co. v. Miller*, 367 Ill. App. 3d 263, 267 (2006). If the language in a policy provision limiting the insurer’s liability is unambiguous, the provision will be applied as written, unless it contravenes public policy. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). Provisions that limit or exclude coverage are interpreted liberally in favor of the insured and against the insurer. *Munoz*, 237 Ill. 2d at 433. A court will neither strain to find an ambiguity where none exists nor adopt an interpretation which rests on tenuous distinctions that the average person, for whom the policy is written, cannot be expected to understand. *Munoz*, 237 Ill. 2d at 433. An insurance contract is not to be interpreted in a factual vacuum. *Glidden v. Farmers Automobile Insurance Ass’n*, 57 Ill. 2d 330, 336 (1974). A term that appears unambiguous at first blush might not be so when viewed in the context of the particular factual setting in which the policy was issued. *Glidden*, 57 Ill. 2d at 336.

¶ 20 Throughout the proceedings in the circuit court and on appeal, State Farm has stated that if not for the “mechanical device” exclusion, there would be coverage for this occurrence. Therefore, we must determine whether the exclusion is valid and enforceable. Initially, we consider Kent’s claim that the “mechanical device” exclusion is ambiguous.

¶ 21 The “mechanical device” exclusion at issue is set forth in commercial vehicle endorsement **6018GG.1 Commercial Vehicle**. Subsection b.(4)(c) of that endorsement provides that there is no liability coverage for damages resulting from “the movement of property by means of a mechanical

device, other than a hand truck, that is not attached to the vehicle described in (a) above.”² The term “mechanical device” is not defined in the endorsement or the policy.

¶ 22 As noted earlier, State Farm and Kent have both indicated that they found no reported decisions in which an Illinois court has construed this “mechanical device” exclusion. Thus, this appears to be a matter of first impression. It is State Farm’s position that the mechanical device exclusion is clear and unambiguous. State Farm has suggested that any tool that is used with, or that has a relationship to machinery, may be deemed a “mechanical device.” During the hearing in the circuit court, State Farm argued that courts in other jurisdictions have found that similar “mechanical device” exclusions were unambiguous and barred coverage for injuries resulting from the use of various devices. State Farm cited the following decisions in support of its argument: *Continental Insurance Co. v. American Motorist Insurance Co.*, 542 S.E.2d 607 (Ga. Ct. App. 2000) (a pallet jack, with a hydraulic pumping mechanism, was found to be a “mechanical device other than a hand truck” within the meaning of a business auto policy); *Elk Run Cove Co. v. Canopus U.S. Insurance, Inc.*, 775 S.E.2d 65 (W. Va. 2015)³ (front-end loader was treated as a “mechanical device,” for purposes of construing an auto exclusion in a CGL policy); *Dauthier v. Pointe Coupee Wood Treating, Inc.*, 560 So. 2d 556, 558 (La. Ct. App. 1990) (forklift was classified as “mechanical device”). State Farm also invited the circuit court to adopt the *Dauthier* court’s definition of “mechanical device.” *Dauthier*, 560 So. 2d at 558.

¶ 23 In *Dauthier*, the decedent had driven a truck full of pilings to a wood treating company where they were to be unloaded. While the decedent was using a forklift to unload the pilings from the

²While this exclusion refers to the “vehicle described in (a) above,” subsection (a) of the endorsement is a definitional subsection, and there is no vehicle defined or described in that subsection. Further, there seems to be no correlative subsection (a) in the policy. This obscure reference alone creates confusion within this paragraph of the policy.

³In *Elk Run Cove Co.*, the Supreme Court of Appeals of West Virginia found the trial court had erred in in applying the auto exclusion provision under the facts of that case. 775 S.E.2d 65.

truck, the forklift became unbalanced. Decedent, along with two others, attempted to stand on the back of the forklift to balance it, but the forklift tipped over. The decedent was thrown to the ground and suffered fatal injuries. *Dauthier*, 560 So. 2d at 557. Decedent's widow filed suit against the owner of the truck. The truck was covered under a business auto policy. The policy contained an exclusion for " '[b]odily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto.' " *Dauthier*, 560 So. 2d at 557. Dauthier argued that the "mechanical device" exclusion in the business auto policy was ambiguous and that the policy did not clearly establish what constituted a "mechanical device." The Louisiana Court of Appeal consulted Webster's New World Dictionary (3d College ed. 1988), which defined "mechanical" as " 'having to do with, or having skill in the use of, machinery or tools' " and "device" as " 'a mechanical invention or contrivance for some specific purpose.' " *Dauthier*, 560 So. 2d at 558. The *Dauthier* court found that a "mechanical device" is generally understood to be "an invention or contrivance having to do with machinery or tools." *Dauthier*, 560 So. 2d at 558. The court acknowledged that the term "mechanical device" was "a very broad term," but found no indication the parties to the insurance contract intended otherwise. *Dauthier*, 560 So. 2d at 558. The court concluded that the forklift fit "within the generally prevailing meaning" of the term "mechanical device," and that the exclusion was not ambiguous. *Dauthier*, 560 So. 2d at 558.

¶ 24 In *Dauthier*, and the other cases cited by State Farm, the devices at issue, *i.e.*, the forklift, the hydraulic pallet jack, and the front loader, were self-powered or motorized machines used in commercial settings. There would be very little dispute as to whether these were, or were not, mechanical devices, considering the circumstances. In contrast, the auger in this case was not self-powered or motorized. Standing alone, the auger was simply a large cylindrical structure with metal helical blades. The auger had no ability to turn and move grain without an external power source,

and its blades turned only if attached to the tractor's PTO shaft. Even then, the auger would not work effectively to pull the grain unless the RPMs of the tractor were increased, depending on the weight of the grain in the hopper. Thus, we find that the cases cited by State Farm are factually distinguishable.

¶ 25 State Farm has argued that any tool that is used with, or that has a relationship to machinery, may be deemed a "mechanical device." Under State Farm's expansive definition of the term "mechanical device," liability coverage would be afforded only for injuries arising when grain is unloaded from the insured truck by hand or by a hand truck. As with other terms in the exclusion, the term "hand truck" is not defined. "Hand truck" is defined in Merriam Webster's Collegiate Dictionary 565 (11th ed. 2014) as "a small hand-propelled truck." Webster's Third International Dictionary 1028 (1971) defines "hand truck" as "a small hand-propelled truck or wheelbarrow."

¶ 26 An insurance policy must be interpreted to give effect to the mutual intention of the parties. It is not to be interpreted in a vacuum. Our supreme court has long held that when determining whether an ambiguity exists, courts should consider the subject matter of the contract, the facts surrounding its execution, the situation of the parties and the predominate purpose of the contract. *Dora Township v. Indiana Insurance Co.*, 78 Ill. 2d 376, 378 (1980); *Glidden*, 57 Ill. 2d at 336. Here, the 2002 International grain truck insured by State Farm was intended to be used for farming purposes. This intent is plainly identified on the Declarations Page of the policy. Considering that the insured truck would be used for farming purposes, the parties could not have contemplated that a wheelbarrow "device" would be a reasonably feasible or effective method for unloading grain from the large grain truck identified on the Declarations Page. Under State Farm's interpretation of the policy exclusion, there is, in effect, no coverage at all for the unloading of grain from this 2002 grain truck, except for injuries arising while unloading the grain with a hand truck. This interpretation

would lead to an absurd result. Even if ascribing such an expansive definition of the term “mechanical device” within a commercial endorsement was a customary use or practice within the insurance industry, there was certainly no evidence or argument that the customary exclusion was commonly known to purchasers of auto insurance, such as Sheldon Elmore. This case does not involve a dispute between two insurance companies. The language of an insurance policy should be viewed from the standpoint of an average lay person who is untrained in complexities of the commercial insurance industry.

¶ 27 Finally, ascribing the insurer’s overly broad interpretation to the term “mechanical device” would allow the insurer to unilaterally decide whether a particular device is, or is not, a “mechanical device” after the loss has occurred. We cannot conclude that the parties contemplated that the “mechanical device” exclusion would be given such a broad effect.

¶ 28 After considering the policy as a whole and taking into consideration the type of insurance for which the parties contracted, and the subjects, risks, and purposes of the insurance, we find that the “mechanical device” exclusion is overly broad and vague, and does not permit the average policyholder to discern which devices used in the loading and unloading process would trigger the exclusion and result in a denial of coverage. It bears repeating that an exclusion must be set forth in clear and unambiguous language. This policy does not do that. The insured could not have understood, with clarity, what devices were, or were not, included in the exclusion. We find that the term “mechanical device” is ambiguous, as that term was undefined, overly broad, and vague. Therefore, the “mechanical device” exclusion must be construed against the insurer and in favor of coverage. Given our disposition of this issue, we need not consider Kent’s remaining arguments.

¶ 30 Policy exclusions must be specific and clear in order to be enforced. In this case, we find that the language in the “mechanical device” exclusion is overly broad and ambiguous. The exclusion must therefore be construed in favor of coverage. Accordingly, the order of the circuit court entering summary judgment in favor of State Farm and denying the summary judgment motion by defendant, Kent Elmore, is reversed. Pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we enter summary judgment in favor of defendants.

¶ 31 Reversed; judgment entered for defendants.

¶ 32 PRESIDING JUSTICE OVERSTREET, dissenting:

¶ 33 I respectfully dissent. I agree with the trial court that the exclusion found in section (b)(4)(c) of the policy, which excludes liability coverage for an insured for damages resulting from the movement of property by means of a mechanical device that is not attached to the vehicle, applies. Here, it is undisputed that the auger was not attached to the insured vehicle, and the defendant concedes that “[t]here is little doubt that the auger [was] a [‘]device.[’]” The grain auger was being utilized to transfer grain from the grain truck into the transport truck. As the auger turned, it pulled the grain up and dumped it into the semi-trailer truck for transport. Considering the plain and ordinary meanings of the words “mechanical,” “device,” and “auger,” I would conclude that the only reasonable interpretation is that the grain auger, operated by the tractor, was a “mechanical device.” See <https://merriam-webster.com/dictionary/device> (“device” is “a piece of equipment or a mechanism designed to serve a special purpose or perform a special function”); <https://www.merriam-webster.com/dictionary/mechanical> (“mechanical” is “of or relating to machinery or tools” or “produced or operated by machine or tool”); see also <https://merriam-webster.com/dictionary/auger> (“auger” is “any of various tools or devices with a helical shaft or part

that are used for boring holes *** or moving loose material”). I disagree with the majority’s interpretation that the auger was not a mechanical device because it was not self-powered or motorized. See *Lindstrom v. Houzenga*, 177 Ill. App. 3d 1, 2 (1988) (auger described as “mechanical device[] by which grain is moved from one bin to another”); *Allen v. Kewanee Machinery & Conveyor Co.*, 23 Ill. App. 3d 158, 158 (1974) (auger described as “device used in the moving and lifting of grain,” which is placed into one end of the auger and “by mechanical means” conveyed by the auger to the discharge point).

¶ 34 I also disagree with the majority’s conclusion that the “mechanical device” exclusion is ambiguous because the term is overly broad and vague. That the exclusion could conceivably apply in other factual circumstances does not mean that the exclusion is ambiguous as to the grain auger. See *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 440 (2010) (“That the exclusion could conceivably apply in other factual circumstances does not mean that the exclusion is ambiguous as to unlicensed drivers.”); *Joe Cotton Ford, Inc. v. Illinois Emcasco Insurance Co.*, 389 Ill. App. 3d 718, 723 (2009) (language of exclusion may be broader than in other policies, but that does not make the language ambiguous); *Oakley Transport, Inc. v. Zurich Insurance Co.*, 271 Ill. App. 3d 716, 721 (1995) (although “arising out of” policy language has been held to be broad and vague, it is not ambiguous). Instead, the policy’s terms are clear and unambiguous and must be given their plain, ordinary, and popular meaning. See *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). The “mechanical device” exclusion at issue here clearly and unambiguously applies to the facts established by the record on appeal. See *Joe Cotton Ford*, 389 Ill. App. 3d at 723.

¶ 35 I believe that the majority’s conclusion merely restricts the parties’ freedom to make their own contracts and exclude certain risks from liability coverage, and this conclusion is contrary to supreme court law (*Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance*

Co., 215 Ill. 2d 121, 136 (2005) (Illinois law does not “expressly forbid parties to an insurance contract from excluding certain risks from liability coverage”)), which we are bound to follow (*Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004) (“After our supreme court has declared the law with respect to an issue, this court must follow that law, as only the supreme court has authority to overrule or modify its own decisions.”)). Pursuant to the “mechanical device” policy exclusion, there is no liability coverage for an insured or a permissive user if the damages result from the movement of property by means of a mechanical device not attached to the insured vehicle. See *Founders Insurance Co.*, 237 Ill. 2d at 445 (upheld exclusionary provision that applied equally to both named insureds and permissive drivers). “Just as public policy demands adherence to statutory requirements, it is in the public’s interest that persons not be unnecessarily restricted in their freedom to make their own contracts.” *Progressive Universal Insurance Co.* 215 Ill. 2d at 129 (neither the language of the mandatory liability insurance statute nor the rules of statutory construction will support conclusion that insurers are forbidden from excluding certain types of risks from coverage).

¶ 36 I would thus conclude that the circuit court properly entered summary judgment in favor of State Farm, finding that its liability coverage excluded damages for Kent’s injuries, which were sustained as a result of the movement of property by means of a mechanical device not attached to the vehicle for which the insured was provided liability coverage.

2019 IL App (5th) 180038

NO. 5-18-0038

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

STATE FARM MUTUAL AUTOMOBILE	)	Appeal from the
INSURANCE COMPANY,	)	Circuit Court of
	)	Effingham County.
Plaintiff-Appellee,)	
)	
v.	)	No. 16-MR-137
)	
KENT ELMORE and ARDITH SHELDON)	
ELMORE,)	
)	
Defendants	)	Honorable
	)	Allan F. Lolie,
(Kent Elmore, Defendant-Appellant).	)	Judge, presiding.

Opinion Filed: September 30, 2019

Justices: Honorable Judy L. Cates, J.

Honorable Melissa A. Chapman, J.,
Concurs
Honorable David K. Overstreet, P.J.,
Dissents

**Attorneys
for
Appellant** Christopher A. Koester, Kara J. Wade, Taylor Law Offices, P.C., 122 East
Washington Avenue, P.O. Box 668, Effingham, IL 62401

**Attorneys
for
Appellee** Michael J. Bedesky, Martin K. Morrissey, Reed, Armstrong, Mudge &
Morrissey, P.C., 115 N. Buchanan, P.O. Box 368, Edwardsville, IL 62025



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 29, 2020

In re: State Farm Mutual Automobile Insurance Company, Appellant, v.
Kent Elmore, Appellee. Appeal, Appellate Court, Fifth District.
125441

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

A black rectangular box redacting the signature of the Clerk of the Supreme Court.

Clerk of the Supreme Court

INDEX TO RECORD ON APPEAL

Common Law Record

	Certification of Record	C 1
	Common Law Record- Table of Contents	C 2
	Docket Sheets	C 4
11/1/2016	Complaint for Declaratory Judgment	C 6
	Exhibit A: First Amended Complaint filed in The Fourth Judicial Circuit, Effingham County, Illinois, entitled, "Kent Elmore v. Ardith Sheldon Elmore," bearing Case No. 2015 L 44	C 10
	Exhibit B: Policy No. 613 9680-D14-13A issued by State Farm insuring Sheldon and Betty Elmore	C 15
11/1/2016	Entry of Appearance by Reed, Armstrong, Mudge & Morrissey, P.C. on behalf of State Farm Mutual Automobile Insurance Company	C 68
11/7/2016	Plaintiff's Motion to Amend to add Exhibit B to complaint for declaratory judgment	C 69
11/10/2016	Order granting Plaintiff's Motion to Amend	C 124
11/14/2016	Summons directed to Kent Elmore	C 125
11/14/2016	Summons directed to Ardith Sheldon Elmore	C 126
11/14/2016	Letter dated 11/7/2016 from Christopher A. Koester of Taylor Law Offices advising he has been authorized to accept service of process on behalf of Kent Elmore	C 127
11/14/2016	Letter dated 11/9/2016 from William R. Tapella of The Tabella & Eberspacher Law Firm formally accepting service on behalf of Ardith Sheldon Elmore	C 128
12/2/2016	Answer of Kent Elmore	C 129
1/6/2017	Plaintiff's Motion for Leave to File Amended Complaint	C 132
1/6/2017	Order granting Motion for Leave to File Amended Complaint	C 135

1/6/2017	Amended Complaint for Declaratory Judgment	C 136
	Exhibit A: First Amended Complaint filed in The Fourth Judicial Circuit, Effingham County, Illinois, entitled, "Kent Elmore v. Ardith Sheldon Elmore," bearing Case No. 2015 L 44	C 142
	Exhibit B: Policy No. 613 9680-D14-13A issued by State Farm insuring Sheldon and Betty Elmore	C 147
1/25/2017	Notice of Hearing on Cross-Motions for Summary Judgment	C 200
3/21/2017	Kent Elmore's Motion for Substitution of Judge as a Matter of Right	C 202
3/21/2017	Notice of Hearing on Motion for Substitution of Judge as a Matter of Right	C 204
3/27/2017	Kent Elmore's Motion to Continue hearing on Cross-Motions for Summary Judgment and Motion for Substitution of Judge as a Matter of Right	C 206
3/28/2017	Order continuing hearing on Cross-Motions for Summary Judgment and Motion for Substitution of Judge as a Matter of Right (no new date set)	C 208
3/28/2017	Order for Substitution of Judge	C 209
5/18/2017	Notice of Hearing on Cross-Motions for Summary Judgment	C 210
10/20/2017	Plaintiff's Motion for Summary Judgment	C 212
10/20/2017	Plaintiff's Memorandum of Law in Support of Summary Judgment Motion	C 215
	Exhibit A: First Amended Complaint filed in The Fourth Judicial Circuit, Effingham County, Illinois, entitled, "Kent Elmore v. Ardith Sheldon Elmore," bearing Case No. 2015 L 44	C 224
	Exhibit B: Policy No. 613 9680-D14-13A issued by State Farm insuring Sheldon and Betty Elmore	C 234
11/8/2017	Notice of Hearing on Plaintiff's Motion for Summary Judgment	C 287

12/4/2017	Kent Elmore's Motion for Summary Judgment	C 289
	Exhibit A: Policy No. 613 9680-D14-13A issued by State Farm insuring Sheldon and Betty Elmore	C 293
12/5/2017	Memorandum of Law in Support of Kent Elmore's Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment filed by State Farm Mutual Automobile Company	C 346
	Exhibit A: Letter dated 10/31/2016 from Reed Armstrong Mudge & Morrissey, PC to counsel regarding State Farm policy	C 360
	Exhibit B: Letter dated 12/2/2016 from Taylor Law Offices to Reed Armstrong Mudge & Morrissey, P.C. regarding possible resolution of Kent Elmore's claim	C 362
12/12/2017	Plaintiff's Response to Defendants' (sic) Summary Judgment Motion	C 364
1/2/2018	Order granting Plaintiff's Motion for Summary Judgment and denying Defendant Kent Elmore's Motion for Summary Judgment	C 407
2/1/2018	Notice of Appeal	C 409
2/1/2018	Information Concerning Notice of Appeal	C 411
2/2/2018	Notice of receipt and docketing of Notice of Appeal from Appellate Court, Fifth District	C 419
2/2/2018	Letter to Effingham County Circuit Clerk from Taylor Law Offices requesting preparation of record on appeal	C 423
2/2/2018	Letter to Court Reporter requesting certified copy of transcript of proceedings held 12/6/2017	C 424
2/13/2018	Letter to Taylor Law Offices noting filing of docketing statement and setting due dates	C 425

End of Common Law Record

Report of Proceedings

	Table of Contents	R 1
12/6/2017	Report of Proceedings – Motions for Summary Judgment – held before The Honorable Allan F. Lolie	R 2

End of Report of Proceedings

Exhibits

	Table of Contents	E 1
	Deposition Transcript of Kent Elmore taken 8/22/2016 in Case No. 15 L 44, <i>Kent Elmore v. Ardith Sheldon Elmore</i> with exhibits	E 2
	Release of All Claims dated by and between Kent Elmore and Ardith Sheldon Elmore (undated and unsigned)	E 62

End of Exhibits

End of Record on Appeal