ORIGINAL

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Attorneys for Lorena Gaspar

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

| | |
|---|---|
| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs.<br><br>LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,<br><br>Defendants. | SUPREME COURT CASE<br><br>CASE NO. : 45271 |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,<br><br>Defendants, | DISTRICT COURT CASE<br><br>CASE NO. : A491005<br>Consolidated with<br>CASE NO. : A492655 |

FILED

JUN 0 3 2005

CLERK OF SUPREME COURT
BY DEPUTY CLERK

**LORENA GASPAR'S MOTION TO DISMISS APPEAL**

The Plaintiff, Lorena Gaspar, as parent and natural guardian of MANUEL CAZARES, a minor, hereby files this Motion to Dismiss the Appeal filed by FINANCIAL INDEMNITY COMPANY (hereinafter FIC), pursuant to N.R.A.P. 3A..

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05-10912

This Motion is made and based upon the following Memorandum of Points and Authorities, all affidavits and exhibits attached hereto, all papers and pleadings on file with the Court, and upon any oral argument elicited by the Court.

DATED this 2 day of June, 2005.

WILLIAMS & WIESE

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## MEMORANDUM OF POINTS AND AUTHORITIES

### 1) STATEMENT OF FACTS.

On or about August 25, 2004, FIC filed a Complaint against Lorena Gaspar seeking Declaratory Relief. The Complaint was served on Lorena Gaspar on November 15, 2004.[1]

On or about September 24, 2004, Lorena Gaspar filed a Complaint against FIC seeking Declaratory Relief, as well as damages for Breach of Contract, Common Law Bad Faith, as well as Statutory Bad Faith. The Complaint was served on FIC on September 28, 2004.[2]

After Gaspar filed an Answer, FIC filed a Motion to Consolidate the two cases, which Gaspar did not oppose. An Order Consolidating the Cases was filed on November 18, 2004.[3]

On or about March 11, 2005, FIC filed a Motion for Declaratory Relief or in the Alternative Motion for Summary Judgment. On or about April 1, 2005, Lorena Gaspar filed an Opposition to FIC's Motion for Declaratory Relief or in the Alternative Motion for Summary Judgment, and her own Counter-Motion for Declaratory Relief. The Court heard argument on these Motions on April

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[1] A copy of the Complaint is attached as Exhibit 1.

[2] A copy of the Complaint is attached as Exhibit 2.

[3] A copy of the Order for Consolidation is attached as Exhibit 3.

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4, 2005. At that time, the Court granted Lorena Gaspar's Counter-Motion for Declaratory Relief, and denied FIC's Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment. On April 6, 2005, the Court signed the Order,[4] and on April 27, 2005, he signed the concurrent Declaratory Judgment.[5] Such Judgment resolved the parties' adverse claims for Declaratory Relief.

Lorena Gaspar's remaining claims for breach of contract and for bad faith damages against FIC, have not yet been resolved, and the case remains open.

On or about May 16, 2005, FIC filed a Notice of Appeal, and a Case Appeal Statement. On May 20, 2005, FIC filed an Amended Notice of Appeal. On or about May 26, 2005, FIC filed a Docketing Statement.

2) **LEGAL ARGUMENT.**

Pursuant to N.R.A.P. 14(f), Lorena Gaspar hereby files this Motion to Dismiss the Appeal, as there is a jurisdictional defect. Such defect arises from the fact that pursuant to N.R.A.P. 3A, FIC has no standing to appeal. In FIC's Docketing Statement the question is asked, as follows:

> 24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:

FIC's response was "yes."[6]

In fact, as stated previously, the Declaratory Judgment that was entered below, resolved only one issue, and there are several claims remaining below which have not been adjudicated. Pursuant to N.R.A.P., FIC is not appealing from a "final judgment," or from an order pursuant to N.R.A.P. 3A(b)(2), (3), or (4). There was no Rule 54(b) certification of this case by the District Court Judge. Consequently, FIC has no standing to appeal, and the Appeal must be dismissed.

. . . .

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[4] A copy of the Order re: Declaratory Relief is attached as Exhibit 4.

[5] A copy of the Declaratory Judgment is attached as Exhibit 5.

[6] See pg. 6 of the Docketing Statement, which is attached as Exhibit 6.

Due to the fact that Lorena Gaspar would like to move the underlying case forward, and since the Notice of Appeal has divested the District Court of jurisdiction over this case, Lorena Gaspar hereby requests an expedited ruling on this Motion, and further requests costs and fees associated with the filing hereof

DATED this the 2 day of June, 2005

WILLIAMS & WIESE

JERRY A. WIESE II, ESQ
501 S. Rancho Dr., Suite D-22
Las Vegas, Nevada 89106
*Attorney for* Gaspar

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing **Lorena Gaspar's Motion to Dismiss Appeal** was served via facsimile (without exhibits) and by depositing a complete copy of same in the US Mail, first-class postage prepaid and addressed to the undersigned on this the 2nd day of June, 2005

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KURT K HARRIS, ESQ
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Henderson, Nevada 89052
Attorneys for FINANCIAL INDEMNITY
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An employee of Williams & Wiese

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TIME : 06/01/2005 20:24
NAME : WILLIAMS AND WIESE
FAX : 3207760
TEL : 3207755
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FINANCIAL INDEMNITY COMPANY,

Plaintiff,

vs.

LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,

Defendants.

SUPREME COURT CASE

CASE NO. : 45271

---

LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,

Plaintiff,

vs.

FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,

Defendants,

DISTRICT COURT CASE

CASE NO. : A491005
Consolidated with
CASE NO. : A492655

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Attorneys for Financial Indemnity Company

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CLERK

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

A491005

| | | |
|---|---|---|
| FINANCIAL INDEMNITY COMPANY, Plaintiff, vs. LORENA GASPAR, DOES I through X and ROE Corporations or Business Entities I through X, inclusive. Defendants. | Case No.: | A491005 |
| | Dept No.: | VII |

**COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW, Plaintiff, FINANCIAL INDEMNITY COMPANY, a corporation authorized to do business in the State of Nevada (hereinafter "FIC"), by and through its counsel of record, the law office of HARRIS MERRITT CHAPMAN, LTD., and hereby complains and alleges as follows:

**ALLEGATIONS COMMON TO ALL CLAIMS**

1. That at all time relevant herein, FINANCIAL INDEMNITY COMPANY (FIC), was and is a corporation authorized to do business under the laws of Nevada and transacting business in Clark County Nevada.

2. That at all time relevant herein and upon information and belief, LORENA GASPAR, is an

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individual residing in Clark County, Nevada.

3. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of defendants DOES I through X and ROE Corporations or Business Entities I through X, inclusive, are unknown to Plaintiff, who therefore, who therefore sue said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein as DOE and ROE is responsible in some manner for the events and happenings referred to herein, and as a result proximately caused damages to Plaintiff as herein alleged. That Plaintiff will ask leave of this court to amend this Complaint to insert the true names and capacities of DOES I through X and ROE Corporations or Business Entities I through X, inclusive, when the same have been ascertained, and to join such defendants in this action.

4. That Defendant, LORENA GASPAR is the natural mother of Manuel Cazares.

5. That at all times relevant herein, LORENA GASPAR purchased and possessed a Family Car insurance policy, (hereinafter, "Policy"), with FIC which was effective on March 22, 2004. (Exhibit 1.)

6. That the Policy provided Uninsured Motorist and Underinsured Motorist Coverage pursuant to N.R.S. 690B.020.

7. That on or about March 22, 2004, Manuel Cazares, a minor, was involved in an accident with a motor vehicle while riding his bicycle.

8. That Manuel Cazares was riding his bicycle, while in a crosswalk, when he was struck by a motor vehicle.

9. That LORENA GASPAR made a demand for payment upon FIC under the Underinsured coverage portion of the Policy.

10. That GASPAR opened a claim with FIC.

11. That FIC conducted an investigation with regard to the claim, including, but not limited to

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investigation of the claim, investigation into other jurisdictions, correspondence and discussions with Cazares' Counsel, consulting with outside legal counsel and a damage assessment.

12. That FIC considers and defines a bicycle to be a vehicle.

13. That after investigation of the subject incident and the Policy, FIC excluded coverage of this loss based upon the clear provisions and Exclusions contained in the Policy.

14. That FIC responded through counsel regarding this position and their reliance upon the exclusion contained in the Policy. (Exhibit 1, at p. 10)

15. That the Policy clearly excludes coverage for this loss as follows:

> ***Exclusions***
>
> *This coverage does not apply to:*
>
> . . .
>
> *6. To a person while occupying any vehicle with less than four (4) wheels.*

16. That FIC has denied coverage in good faith on this loss based upon the plain wording of the above-stated Exclusion and their detailed investigation of the claim.

17. That FIC in good faith desires to resolve this question in Nevada regarding the validity and enforcement of the Exclusion.

18. That this issue has been resolved in other jurisdictions enforcing and upholding similar exclusions.

19. That FIC has been forced to hire the services of an attorney to pursue this matter and to resolve this dispute.

**FIRST CAUSE OF ACTION**
**(Declaratory Judgment)**

20. Plaintiff hereby repeats, realleges and incorporates by this reference the allegations set forth in paragraphs 1 through 19, above, as though fully set forth herein.

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21. W/D The above dispute has arisen within the meaning of N.R.S. 30.010 et. seq. for which a Declaratory Judgment in favor of FIC must issue both under the facts and the law of this case.

22. P Any party interested under a deed or written contract, or whose rights are effected thereby, may have determined any question of construction arising out of the instrument and obtain a declaration of rights, status or other legal relations thereunder, N.R.S. 30.040.

23. P That upon information and belief, FIC and GASPAR entered into a contractual relationship, as outlined above, and which relationship is outlined in the Policy.

24. D That the Policy clearly and unambiguously excludes coverage to persons operating vehicles with less than four wheels.

25. D That the exclusions are prominent and conspicuous.

26. D That upon information and belief, GASPAR was not placed in a disadvantaged or unfair position by the Policy drafted by FIC.

27. D That upon information and belief, the terms of the Policy were not overly oppressive or unfair to GASPAR.

28. D That upon information and belief, GASPAR was not in a position of disadvantage and FIC has dealt with her fairly at all times.

29. D That upon information and belief, the conduct of FIC and its agents, employees, representatives, members, partners, designees, officers, directors, successors and assigns is consistent with the intent and terms of the Policy.

30. W/D That given the actions as outlined above, certain of the Exclusions of the Policy must be deemed valid and effective.

31. D Specifically, FIC seeks a declaration from this Court ruling the Policy Exclusion to be in force and effective.

///

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32. In accordance with N.R.S. 30.010 et. seq., FIC is entitled to Declaratory Judgment declaring certain Exclusions of the Policy valid and enforceable, as outlined above.

33. In any proceeding under N.R.S. 30.010 et. seq., the Court may make such award of costs as may seem equitable and just. N.R.S. 30.120.

34. Because of FIC's reasonable and justified actions, they have retained the services of HARRIS MERRITT CHAPMAN, LTD. in order to seek relief and has incurred costs in seeking said declaration of relief.

WHEREFORE, Plaintiff prays that this Court:

1. Declare Judgment providing certain Exclusions of the Policy valid and enforceable, as alleged above;

2. Award such other relief as this Court deems just and proper in this matter.

DATED this 25th day of August 2004.

**HARRIS MERRITT CHAPMAN, LTD.**

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# EXHIBIT 1

# UNITRIN

SPECIALTY LINES INSURANCE

FINANCIAL INDEMNITY INSURANCE COMPANY

Servicing Office:
PO BOX 10360
Van Nuys, CA 91410-0360

This is your

FAMILY CAR POLICY

# NEVADA

**This policy may have restrictive endorsements attached. If so, please read them carefully. If you have any questions regarding their effect on your coverage, contact your agent for further explanation. These policy provisions with the Declarations Page and any Endorsements, complete this policy.**

**U-696 (08/03)**

# TABLE OF CONTENTS

**Agreement**.....3

**Cancellation Of This Policy**.....16

**Car Damage Coverage**.....11

**General Provisions**.....14

**In Case Of Accident**.....3

**Liability Coverage**.....4

**Expenses for Medical Services**.....7

**Nonrenewal Of This Policy**.....16

**Uninsured Motorist And Underinsured Motorist Coverage**.....8

## IN CASE OF ACCIDENT

### Notice of Accident or Loss

In the event of an accident or **loss**, notice must be given to **us** promptly. The notice must give the time, place, and circumstances of the accident or **loss**, including the names and addresses of injured persons and witnesses.

### Other Duties

A Person or organization claiming any coverage under this policy must also:

1. Cooperate with **us** and assist **us** in any matter concerning a claim or suit
2. Send **us** promptly any legal papers received relating to any claim or suit.
3. Submit to physical and mental examinations at **our** expense by doctors **we** select as often as **we** may reasonably require.
4. Authorize **us** to obtain medical and other records.
5. Provide any written proofs of **loss we** require.
6. Submit to examinations under oath by any person named by **us**, as often as may reasonably be required, at any reasonable time and place that **we** so designate.

A person claiming Uninsured or Underinsured Motorist Coverage must also notify the police within 24 hours if a hit-and-run driver is involved.

A person or organization claiming Car Damage Coverage must also:

1. Take reasonable steps after **loss** to protect the vehicle and its equipment from further **loss**. **We** will pay reasonable expenses incurred in providing that protection.
2. Promptly report the theft of the vehicle or any insured equipment to the police.
3. Allow **us** to inspect and appraise the damaged vehicle or its damaged parts, before its repair or disposal.
4. Include in the notice of accident or **loss** a statement listing **your** interest and interests of all others in the vehicle, any encumbrances on the vehicle (such as a lien or mortgage) and a description (including amounts) of all other insurance covering the vehicle.
5. Allow **us** to examine **your insured car** and provide **us** with all pertinent records and sales invoices.

## AGREEMENT

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

### Definitions Used Throughout This Policy

As used throughout this policy and shown in bold print.

1. **"We", "us"**, and **"our"** mean the Company providing this insurance.
2. **"You"** and **"your"** mean the Policyholder named in the Declarations and spouse if living in the same household.

3. **"Bodily injury"** means bodily injury to or sickness, disease or death of any person. **Bodily injury** does not include any sexually transmitted disease.

4. **"Property damage"** means damage to or destruction of tangible property, including loss of its use.

5. **"Your insured car"** means:
   a. Any vehicle shown in the Declarations.
   b. Any additional **private passenger car** or **utility car** on the date **you** became an owner if all **private passenger** and **utility cars** in **your** household are insured by **us**. This provision applies only if **you**:
      1. Acquire the vehicle during the policy period; and
      2. Ask **us** to insure it within 30 days after **you** become the owner.

      If the vehicle **you** acquire is in addition to any shown in the Declarations, Car Damage Coverage will not apply unless all vehicles shown in the Declarations are afforded Car Damage Coverage. Otherwise, **you** must notify us within 30 days if **you** wish to add Car Damage Coverage.

   c. Any utility trailer you own.

   d. Any **private passenger car, utility car** or **utility trailer** not owned by, or furnished or available for regular use by **you** or a **relative** when used as a temporary substitute vehicle described under sections **a, b,** or **c** of this definition which is out of normal use because of its breakdown, repair, servicing, **loss** or destruction.

6. **"Private passenger car"** means a four-wheel car of the private passenger type.

7. **"Relative"** means a person living in **your** household related to **you** by blood, marriage or adoption, including a ward or foster child.

8. **"Occupying"** means in, on, getting into or out of.

9. **"Utility car"** means a car with a rated load capacity of 2,000 pounds or less, of the pick-up, sedan delivery or panel truck type not used in the business or occupation, other than farming or ranching, of **you** or a **relative**.

10. **"Utility trailer"** means a vehicle designed to be towed by a **private passenger car** or **utility car** if not used as a home, office, store, display trailer, passenger trailer, or for business purposes.

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

12. **"Racing"** means preparation for any planned or organized racing, speed, demolition or stunting contest or activity, or the event itself.

13. **"Crime"** means any felony.

## PART I - LIABILITY

### Coverage A - Liability Coverage

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

**We** will defend any suit or settle any claim for these damages as **we** think appropriate. **We** have no duty to defend any suit or settle any claim for **bodily injury** or **property damage** not covered

under this policy. Our agreement to settle or defend ends when our limit of liability for this coverage has been paid.

**Additional Definitions Used In This Part Only**

As used in this Part:

1. **"Insured person"** or **"insured persons"** mean:
   a. **You** or a **relative.**
   b. Any other person using **your insured car** with your express or implied permission to do so within the scope of your permission.
   c. Any other person or organization with respect only to legal liability for acts or omissions of:
      (1) any person covered under this Part while using **your insured car**; or
      (2) **you** or any **relative** covered under this Part who does not own a **private passenger car, utility car,** or **utility trailer** while using any **private passenger car, utility car** or **utility trailer** other than **your insured car.**
   d. In the event of a sale of **your insured car,** coverage terminates on that car as soon as the buyer takes possession and will not transfer to the new owner.

   But no person shall be considered an **insured person** unless that person's use is with your permission.

2. **"Auto business"** means a business or occupation of selling, repairing, servicing, storing or parking automobiles for use mainly on public highways. This includes road testing and delivery.

**Federal Tort-Claims Act Exclusion**

The following are not an **insured person** under Part I - Liability Coverage of the policy:

1. The United States of America or any of its agencies.

2. Any person for **bodily injury** or **property damage** arising from the operation of a vehicle by that person as an employee of the United States Government when the provisions of the Federal Tort Claims Act apply.

**Additional Payments**

As respects an **insured person, we** will pay, in addition to **our** limit of liability:

1. All costs **we** incur in the settlement of any claim or defense of any suit.

2. Interest on any judgment, including pre-judgment interest, in any suit **we** defend, which accrues before **we** have paid, offered to pay, or deposited in court that portion of the judgment which is not more than **our** limit of liability.

3. Premiums on appeal bonds and attachment bonds required in any suit **we** defend. But **we** will not pay the premium for attachment bonds for an amount in excess of **our** limit of liability. **We** have no obligation to apply for or furnish such a bond.

4. Any charge not exceeding $100 for a bail bond required due to a traffic law violation or auto accident causing **bodily injury** or **property damage** covered by this Part. **We** have no obligation to apply for or furnish such a bond.

5. Any other reasonable expenses incurred at **our** request.

**Exclusion**

This coverage does not apply to:

1. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of a vehicle when used to carry persons or property for a charge. This exclusion does not apply to shared expense car pools.

2. **Bodily injury** or **property damage** caused intentionally by or at the direction of an **insured person.**

3. Any claim for punitive or exemplary damages.

4. **Bodily injury** or **property damage** with respect to which any person is an insured under nuclear energy liability insurance. This exclusion applies even if the limits of that insurance are exhausted.

5. Liability imposed upon or assumed by any **insured person** under any workers' compensation law.

6. **Bodily injury** or **property damage** caused by or sustained by any person while employed or otherwise engaged in the **auto business** and arising out of **auto business** operations.

This exclusion does not apply to ownership, maintenance or use of **your insured car** by **you**, a **relative** or any partner, agent or employee of **you** or a **relative**.

7. **Bodily injury** or **property damage** caused by or sustained by any person arising out of the maintenance or use of any vehicle while that person is employed or otherwise engaged in any business or occupation.

   This exclusion does not apply to the maintenance or use of a:
   a. **private passenger car**;
   b. **utility car** that **you** own if not used in wholesale or retail delivery, including the transport of materials used in any business or occupation, except tools owned by **you**;
   c. **utility trailer** used with a vehicle described in **a** or **b** above.

8. **Property damage** to:
   a. property owned or transported by an **insured person**,
   b. property rented to or in charge of an **insured person**, other than a residence or private garage,
   c. a **motor vehicle** or trailer operated or towed by an **insured person**.

9. **Bodily injury** or **property damage** arising out or the ownership, maintenance or use by an **insured person** of any motorized vehicle with less than four (4) wheels.

10. **Bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle, other than **your insured car**, which is owned by or furnished or available for regular use by **you** or a **relative**.

11. **Bodily injury** to any **insured person**.

12. Liability assumed by an **insured person** in any contract.

13. **Bodily injury** or **property damage** resulting fro the use or operation of **your insured car** in any racing event.

14. **Bodily injury** or **property damage** occurring while **your insured car** is rented or leased to others.

15. **Bodily injury** or **property damage** resulting from the use or operation or **your insured car** in the commission of a crime. This exclusion does not apply to amounts required by the minimum financial responsibility laws of the state in which the accident occurs.

**Conformity With Financial Responsibility Laws**

When **we** certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by the law. Any coverage provided under this provision which is broader than the coverage otherwise provided under this Part, will be excess over any other valid and collectible insurance.

**Limits of Liability**

The limits of liability shown in the Declarations apply subject to the following:

1. The **bodily injury** liability limit for "each person" is the maximum **we** will pay for all damages from **bodily injury** sustained by one person in any one accident. Any claims for care, loss of services, loss of consortium or injury to the relationship shall be included in this limit. This is the maximum **we** will pay regardless of the number of vehicles described in the Declarations, **insured persons**, claims, claimants, policies or vehicles involved in the accident.

2. Subject to the **bodily injury** liability limit for "each person", the **bodily injury** limit for "each accident" is the maximum for **bodily injury** sustained by two or more persons in any one accident. This is the maximum **we** will pay regardless of the number of vehicles described in the Declarations, **insured persons**, claims, claimants, policies or vehicles involved in the accident.

3. The **property damage** liability limit for "each accident" is the maximum for all damages to all property in any one accident. This is the maximum **we** will pay regardless of the number of vehicles described in the Declarations, **insured persons**, claims, claimants, policies or vehicles involved in the accident.

If this policy provides coverage that exceeds the minimum limits required by the applicable financial responsibility laws of the State of Montana, then such coverage in excess of the minimum shall not apply to the operation, maintenance or use of **your insured car** by any person other than **you**, a **relative** or any agent or employee of **you** or a **relative** in the course and scope of their agency or employment, but this limitation does not apply to a liability incurred by **you** or a **relative**.

**Other Insurance**

If there is applicable auto liability insurance on a **loss** covered by this Part, **we** will pay **our** proportionate share as **our** limits of liability bear to the total of all applicable liability limits. Any insurance afforded under this Part for a vehicle **you** do not own, however, is excess over any collectible auto liability insurance.

## PART II - EXPENSES FOR MEDICAL SERVICES

**Coverage B - Medical Payments Coverage**

**We** will pay reasonable expenses incurred within 1 year from the date of the accident for necessary medical and funeral services because of **bodily injury** sustained by an **insured person.**

**Additional Definitions Used In This Part Only**

As used in the Part, **"Insured person"** or **"insured persons"** means:

1. **You** or any **relative** while **occupying** or through being struck by, a highway vehicle or trailer.

2. Any other person while **occupying your insured car** while the vehicle is being used by **you**, a **relative** or another person, if that person's use is with **your** permission.

**Exclusions**

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

1. Sustained while occupying **your insured car** when used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

2. Sustained while **occupying** any vehicle while located for use as a residence or premises.

3. Sustained while **occupying** a motorized vehicle with less than four (4) wheels.

4. Sustained while **occupying** or through being struck by, any vehicle, other than **your insured car**, which is owned by or furnished or available for regular use by **you** or a **relative**.

5. Sustained while **occupying** a vehicle, other than a **private passenger car**, while the vehicle is being used in the business or occupation of an **insured person**. But, this exclusion does not apply to **you** or a **relative**.

6. Occurring during the course of employment if benefits are payable or must be provided under a workers' compensation law or similar law.

7. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of these.

8. Who is covered under any private or governmental benefit, service, or reimbursement plan, or any prepaid plan.

9. Sustained while occupying any vehicle used or operated in any racing event.

10. Sustained while **your insured car** is rented or leased to others.

11. Sustained while in the commission of a crime.

**Limits of Liability**

Regardless of the number of vehicles described in the Declarations, **insured persons**, claims, claimants policies, or vehicles involved in the accident, **we** will pay no more than the limit of liability shown for this coverage in the Declarations for each person injured in any one accident.

Any amount paid or payable for medical expenses under Liability Coverage of this policy shall be deducted from the amounts payable under this Part.

**Other Insurance**

Any auto medical payments insurance provided by this policy is excess over any other applicable auto or other medical payments insurance.

**Our Recovery Rights**

When a person has been paid by **us** under this policy and recovers payment for the same expenses from another, the amount recovered from the other shall be held in trust for **us**, and reimbursed to **us** to the extent of **our** payment, and **we** shall have a lien on such recovery from another.

## PART III - UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE

**Coverage C - Uninsured Motorist And Underinsured Motorist Coverage**

**We** will pay damages which an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle** because of bodily

injury caused by accident and resulting from the ownership, maintenance or use of the uninsured motor vehicle, or underinsured motor vehicle. But, the coverage for property damage does not apply as respects an underinsured motor vehicle.

Determination whether an **insured person** is legally entitled to recover damages or the amount of damages shall be made by agreement between the **insured person** and **us**. If no agreement is reached, the decision may be made by litigation.

**Additional Definitions Used In This Part Only**

As used in this Part:

1. **"Insured person"** means:
   a. **You** or a **relative**.
   b. Any other person **occupying your insured car**.
   c. Any person for damages that person is entitled to recover because of **bodily injury** to **you**, a **relative**, or another occupant of **your insured car**.

   But no person shall be considered an **insured person** unless that person's use is with **your** permission.

2. **"Motor vehicle"** means a land motor vehicle or a trailer but does not include a land motor vehicle or trailer:
   a. Operated on rails or crawler-treads;
   b. Which is a farm-type tractor or equipment designed for use principally off public roads, while not on public roads; or
   c. Located for use as a residence or premises;
   d. Owned or furnished or available for **your** regular use or that of a **relative**;
   e. Owned or operated by a self-insured under any motor vehicle law; or
   f. Owned by a government unit or agency.

3. **"Uninsured Motor Vehicle"** means a **motor vehicle**:
   a. For which there is no evidence of financial responsibility as required by chapter 485 of NRS available at the department of motor vehicles and public safety
   b. For which there is no liability bond or policy applicable at the time of the accident, or to the extent of such deficiency, any liability bond or policy in force is less than the limit specified in the Nevada Financial Responsibility Laws.
   c. For which there is a liability bond or policy applicable at the time of the accident, but the insuring company denies coverage or is declared insolvent, either before or after the accident by a court of competent jurisdiction.
   d. Used without permission of its owner if there in no liability bond or policy applicable to the operator.
   e. Used with the permission of its owner who has a liability policy or bond which does not provide coverage for the operation of the **motor vehicle** by any person other than the owner if there is no liability bond or policy for **bodily injury** applicable to the operator.
   f. Which is a hit-and-run vehicle whose operator or owner is unknown and which strikes:
      (1) **you** or a **relative**
      (2) a vehicle which **you** or a **relative** are **occupying**; or
      (3) **your insured car.**

   An **uninsured motor vehicle** is not an **underinsured motor vehicle**.

4. An **"Uninsured Motor Vehicle"** also means, subject to the terms and conditions of the coverage, an insured other motor vehicle where:
   a. The insuring company of the other **motor vehicle** is unable because of its insolvency to make payment with respect tot he legal liability of its insured within the limits specified in its policy.
   b. The occurrence out of which legal liability arose took place while the uninsured vehicle coverage was in effect.

c. The insolvency of the insured company of the other motor vehicle existed at the time of, or within 2 years after, the accident.

5. **"Underinsured Motor Vehicle"** means a motor vehicle which is insured for **bodily injury** by a liability bond or policy at the time of the accident providing **bodily injury** limits of liability less than the **uninsured motor vehicle bodily injury** liability limits of this coverage.

**Exclusions**

This coverage does not apply to:

1. To a person if that person or the legal representative of that person makes a settlement of a claim without **our** consent.

2. A person while **your insured car** is being used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

3. To a person while occupying or when struck by a **motor vehicle** owned by **you** or a **relative** which is not insured for this coverage under this policy.

4. To **bodily injury** sustained by a person while occupying a **motor vehicle you** or a **relative** for public or livery purposes.

5. To a person while occupying or using any vehicle for **racing**.

6. To a person while occupying any vehicle with less than four (4) wheels.

7. To any claim for punitive or exemplary

This coverage does not apply to the benefit of any insurer or self-insurer under any workers' compensation or disability benefits law or any similar law, or directly to the benefit of the United States or any **state** or political subdivision of the United States or any **state**.

**Limits of Liability**

Limits of liability shown in the Declarations apply, subject to the following:

1. The **bodily injury** liability limit for "each person" is the maximum **we** will pay for all damages from **bodily injury** sustained by one person in any one accident. Any claims for care, loss of services, loss of consortium or injury to the relationship shall be included in this limit. This is the maximum **we** will pay regardless of the number of vehicles described in the Declarations, **insured persons**, claims, claimants, policies, or vehicles involved in the accident. It is the intent of this paragraph not to allow stacking of the limit of liability under this coverage.

2. Subject to the limits of "each person", the **bodily injury** liability limits for "each accident" are the maximum limits of liability **we** will pay as damages from **bodily injury** to two or more persons in one accident. This is the maximum **we** will pay regardless of the number of vehicles described in the Declarations, **insured persons**, claims claimants, policies, or vehicles involved in the accident. It is the intent of this paragraph not to allow stacking of the limit of liability under this coverage.

Any amounts payable will be reduced by:

1. A payment made by the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle** or organization which may be legally liable;

2. Amounts paid or payable under Part I - Liability of this policy;

3. A payment made or amount payable because of the **bodily injury** under any workers' compensation law or disability benefits law or similar law;

4. That part of the damage which an **insured person** may be entitled to recover from the owner of operator of an **uninsured motor vehicle** which represents expenses for medical services paid or payable under Part II - Expenses for Medical Services of this policy; and

**Other Insurance**

If there is other similar insurance on a **loss** covered by this Part, **we** will pay **our** proportionate share as **our** limits of liability bear to the total limits of all applicable similar insurance. If this policy and any other policy providing similar insurance apply to the same accident, the maximum limits of liability under all the policies shall be the highest applicable limits of liability under any one policy. But, any insurance for a vehicle **you** do not own is excess over any other similar insurance.

If there is valid and collectible automobile medical payments insurance available to an **insured person**, the damages which the **insured person** shall be entitled to recover from the owner of operator of an **uninsured motor vehicle** or **underinsured motor vehicle** shall be reduced for purposes of uninsured motorist coverage by the amounts paid or payable under the automobile medical payments insurance.

**Suits Against Us**

An **insured** has no cause of action or right to recover damages for **bodily injury** under the provisions of this policy unless within one year from the date of the accident:

a. a suit for **bodily injury** has been filed against the **uninsured motorist**, in a court of competent jurisdiction, or
b. agreement as to the amount due under the policy has been concluded.

**Conformity to Statute**

This Part is intended to be in full conformity with the Nevada Uninsured Motorist Law. If any Provision of this part conflicts with that Law, it is changed to comply with the Law.

## PART IV - CAR DAMAGE

**Coverage D - Car Damage Coverage**

**We** may pay for loss to **your insured car:**

1. not caused by collision (Coverage D - 1); or

2. caused by collision (Coverage D - 2);
less applicable deductibles

**We** may pay the loss in money or repair or replace damaged or stolen property with the like kind and quality. If **your insured car** is older than two model years from the date of loss, **we** may elect to repair **your insured car** using either after-market parts or recycles used parts. **We** may at any time before the loss is paid or the property is replaced, return at **our** expense, any stolen property either to **you** or to the address shown in the Declarations, with payment for the resulting damage subject to the limits of liability set forth for this coverage. **We** may keep all or part of the property at the agreed or appraised value.

**Additional Definition Used In This Part Only**

As used in this Part

1. **"Collision"** means collision of **your insured car** with another object or upset of **your insured car**. **Loss** caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not deemed loss caused

by **"collision"**. If breakage of glass results from a **collision**, however, **you** may elect to have it treated as loss caused by **collision**.

2. **"Loss"** means direct and accidental loss of or damage to **your insured car**, including its equipment.

**Sound System Coverage**

**We** will pay loss to a sound system, its antenna, speakers, and any other apparatus specifically used with the sound system. If the sound system was not installed by the manufacturer as standard factory equipment, coverage is limited to $500.

**Transportation Expenses**

If there is a total theft of **your insured car**, **we** will pay **you** up to $15 per day, but no more than $450, for the cost of transportation **you** incur. This coverage begins 48 hours after the theft is reported to the police and ends when the car is returned to use or when **we** pay the loss **We** will not pay for transportation costs if there is only a theft of a **utility trailer**. This coverage does not apply if coverage D-5, Rental Reimbursement Coverage, appears on the Declarations.

**Exclusions**

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

1. To **your insured car** while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, acid rain, or any consequences of these.

3. To any of the following items, their accessories or antennas unless you include them in the application, or tell us when you add them to your insured car and pay a premium for them.

   a. Awnings, cabanas or equipment designed to provide additional living space,
   b. Camper shells and custom enclosures for pickup trucks;
   c. Chrome, alloy or magnesium wheels;
   d. Citizens band or two-way radios;
   e. Custom bodywork;
   f. Custom chroming;
   g. Custom interiors;
   h. Custom paint;
   i. Custom wide tread tires or racing slicks;
   j. Scanning monitor receivers;
   k. Telephones;
   l. Television sets.

4. To any device for transmitting, recording, receiving or reproduction of data, sound or pictures that is operated by power from the electrical system, unless the system is factory installed.

5. To any tapes, compact discs, or similar items used with the sound equipment.

6. To any item not permanently attached to **your insured car**.

7. To a camper body or **utility trailer** owned by **you** or a **relative** and not described in the Declarations. But, coverage does apply to a camper body or **utility trailer**, ownership of which **you** acquire during the policy period, if **you** ask **us** to insure it within 30 days after **you** acquire it.

8. Due to wear and tear, freezing, mechanical or electrical breakdown or failure. But, coverage does apply if the **loss** results from the total theft of **your insured car**.

9. To tires. But, coverage does apply if the **loss** results from fire, theft, malicious mischief or vandalism, or if the **loss** to tires occurs with other **loss** to **your insured car**.

10. To a vehicle not owned by **you** when used in auto business operations.

11. Caused intentionally by or at the direction of **you** or a **relative** or anyone else using **your insured car** with **your** express or implied permission.

12. To **your utility trailer** while rented for a fee to any person other than **you** or a **relative**.

13. To **your insured car** while being used or operated in any **racing** event.

14. To **your insured car** while rented or leased to others.

15. To **your insured car** caused by confiscation by any government authority.

16. To **your insured car** arising out of or during its use for the transportation of any explosive substance, flammable liquid, or similar hazardous materials except transportation incidental to **your** ordinary household or farm activities.

17. To **your insured car** which is subject to any bailment, lease, conditional sale or consignment agreement not specifically declared and described in this policy.

18. To **your insured car** while being used by **you** in the commission of a **crime.**

19. Resulting from lack of lubricant, coolant or **loss** resulting from seepage of water.

20. Due to theft or conversion of a **motor vehicle** prior to its delivery to an **insured person**.

21. Due to theft or conversion by the **named insured**, an **insured person**, a **relative**, or any person listed as a driver in the Declarations.

22. Due to illegal sale or repossession of **motor vehicle** by the rightful owner.

**Limits of Liability**

1. **Our** limit of liability for **loss** shall not exceed the lesser of:
   a. The actual cash value of the stolen or damaged property; or
   b. The amount necessary to repair or replace the property with other property of like kind and quality.

2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total **loss**.

3. If a repair replacement results in better than like kind or quality, **we** will not pay for the amount of betterment.

4. If **we** elect to pay the cost necessary to repair or replace the property with other property of like kind and quality, **we** will not be liable or require to pay for any reduction, decrease and/or diminution in the value of the property resulting from the **loss** and/or repair or replacement.

5. If the **loss** to **your insured car** is the result of more than one accident, a separate deductible shall reduce **our** limit of liability for **loss** resulting from each accident.

**No Benefit To Bailee**

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

**Other Insurance**

If there is other similar insurance on a **loss** covered by this Part, **we** will pay only that proportion of the **loss** that **our** limit of liability bears to the total limit of all applicable similar insurance. But any insurance afforded under this Part for a vehicle **you** do not own is excess over any other applicable similar insurance.

**Appraisal**

1. If **you** or **we** do not agree on the amount, cause, or extent of the **loss**, either may demand an appraisal of the **loss**. Each will appoint and pay a competent, qualified and practicing appraiser and will equally share other appraisal expenses. The appraisers will select an umpire. If they are unable to agree on an umpire within 20 calendar days, a judge of a court having jurisdiction will select an umpire at the request of either party. Each appraiser and umpire will state separately the actual cash value at the time of the **loss**, or as requested, the amount, cause or extent of the **loss**. If the appraisers fail to agree, then they shall submit their differences to the umpire. An award in writing by any two of the three will determine the amount of the **loss** and will be binding.

2. **We** do not waive any of **our** rights under this policy by agreeing to an appraisal.

**Coverage D5 - Rental Reimbursement Coverage**

You have this coverage if "D5" appears as a coverage on the Declarations.

**We** will pay you up to the limits shown in The Declarations for **your** cost of renting a **private passenger car** from a rental agency or garage, if **your insured car** suffers **loss** paid under (Coverage D-1) **not caused by collision** or (Coverage D-2) **caused by collision** which exceeds the applicable deductible. **We** will not pay mileage charges.

If **your insured car** is not driveable, coverage begins the day after the **loss**. If it is driveable, coverage begins the day **your insured car** is taken to a service facility for repairs due to the **loss**.

Coverage ends when the first of the following occurs:

1. Completion of repairs, or

2. Replacement of the auto, or

3. Two days after **we** offer to pay the actual cash value for **your insured car**.

You must provide us written proof of your rental charges.

## PART V - GENERAL PROVISIONS

**Payment of Premiums**

If **your** initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy is conditioned upon the check, draft, or remittance being honored upon presentment. If the check, draft, or remittance is not honored upon presentment, this policy may, at **our** option be deemed void from its inception. This means that **we** will not be liable under this policy for any claim or damages which would otherwise be covered if the check, draft, or remittance had been honored upon presentment. **We** do not waive any of **our** rights if **we** elect to resubmit a check for payment.

If **you** tender a check to **us** for full or partial payment of **your** premium, other than **your** initial payment, and the check is returned to **us** because of insufficient funds, a closed account, or a stop payment, a service charge will be added to **your** account balance.

If **you** owe **us** any premium on **your** expired or expiring policy, these funds must be paid before **your** policy will be renewed by **us**. Any payment sent by **you** will be used to pay and balance owed on the expired or expiring policy, and any remainder of such payment will be applied to renewal premium.

**Policy Period, Territory**

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

**Changes**

This policy and the Declarations include all the agreements between **you** and **us** relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by **us**.

If there is a change to the information used to develop the policy premium, **we** may adjust **your** premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles;
3. The place of principal garaging of insured vehicles;
4. Coverage, deductibles or limits

If a premium adjustment is necessary, **we** will make the adjustment as of the effective date of change. When a change results in an additional or return premium of $3 or less, no charge or return will be made.

When **we** broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective in **your state**.

**Two Or More Cars Insured**

With respect to any accident to which this and any other policy issued to **you** by **us** applies, the total limit of **our** liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

**Suit Against Us**

**We** may not be sued unless there is full compliance with all of the terms of this policy. **We** may not be sued under the Liability Coverage until the obligation of an **insured person** to pay is finally determined either by judgment against the person after the actual trial or by written agreement of the person, the claimant and **us**. No one shall have any right to make **us** a party to a suit to determine the liability of an **Insured person**. This provision does not apply to Uninsured Motorist and Underinsured Motorist Coverage.

**Our Recovery Rights**

In the event of any payment under this policy, **we** are entitled to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to **us** any papers relating to that recovery, do whatever else is necessary to help **us** exercise those rights and do nothing after **loss** to prejudice **our** rights.

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

**Financial Responsibility Filing**

In the event **we** make a payment required by any financial responsibility filing which **we** would not have been obligated to make under the terms of this policy, **you** agree to reimburse **us** to the extent of **our** payment.

**Bankruptcy**

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

**Assignment**

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

1. The survivor;

2. The legal representative of the deceased person while acting within the scope of duties of a legal representative, and

3. Any person having custody of **your insured car** until a legal representative is appointed.

In the event of a sale of **your insured car** coverage terminates on that car as soon as the buyer takes possession and will not transfer to the new owner.

**Cancellation Of This Policy**

**You** may cancel this policy by returning it to **us** or by advising **us** in writing when at a future date the cancellation is to be effective.

**We** may cancel by mailing notice of cancellation to **you** at the last known address shown in the Declarations or by delivering the notice:

1. Not less than 10 days prior to the effective date of cancellation:
   a. for nonpayment of premium; or
   b. if the policy has been in effect less than 70; or

2. Not less than 30 days prior to the effective date of cancellation for any other circumstance. If this policy has been in effect for 70 days or if this is a continuation or renewal policy, **we** may cancel only:
   a. for a conviction of a **crime** arising our of acts increasing the hazard insured against by **you** or that of any other member of **your** household who is covered as a driver;
   b. for fraud or material misrepresentation **you** make to **us** in obtaining the policy or in the presentation of a claim;
   c. for an act of omission or a violation of any condition of this policy;
   d. for a material change in the risk **we** are insuring;
   e. for a determination by the commissioner of insurance that the continuation of the policy would violate, or place **us** in violation of any provision of the law.

Proof of mailing a notice is proof of notice.

Upon cancellation **you** may be entitled to a premium refund; if so, **we** will send it to **you** within thirty days of the effective date of cancellation, but **our** making or offer of a refund is not a condition of cancellation. If **you** cancel, the refund will be computed in accordance with **our** short rate table and procedure. If **we** cancel, the refund will be computed on a pro rata basis.

**Nonrenewal Of This Policy**

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

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

**Fraud or Misrepresentation**

This policy was issued in reliance on the information provided on your insurance application. **We** may void coverage under this policy if you or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time of application.

**We** may cancel coverage under this policy if you or a relative have knowingly concealed or represented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation of a claim.

No coverage will be provided to any person who has knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

**We** may void this policy for fraud or misrepresentation even after the occurrence of an accident or loss. this means that **we** will not be liable for any claims or damages which would otherwise be covered.

In Witness Whereof, **we** have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by **our** authorized representative.

**John W. Mullen - President**

**Lisa Bage - Secretary**

COMP
JERRY A. WIESE, II, ESQ.
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Attorneys for Plaintiff

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CLERK

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,<br><br>Defendants, | CASE NO. : A492655<br>DEPT NO. : I<br><br>**COMPLAINT**<br><br>Exempt from Arbitration<br>Declaratory Relief |

WILLIAMS & WIESE
Attorneys at Law
1830 East Sahara Avenue, Suite 210
Las Vegas, Nevada 89104
Telephone (702) 320-7755 Facsimile (702) 320-7760

The Plaintiff, LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor, by and through her attorney of record, JERRY A. WIESE II, ESQ., of the law firm of WILLIAMS & WIESE, hereby files her Complaint against the Defendants, and each of them, and asserts as her causes of action, and complains, and alleges, as follows:

**FIRST CAUSE OF ACTION**

1.

At all times relevant hereto, Plaintiff, LORENA GASPAR and MANUEL CAZARES, were and are residents of the County of Clark, State of Nevada.

2.

At all times relevant hereto, Plaintiff is informed and believes that the Defendant, FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, (hereinafter referred to as UNITRIN), was and is a corporate entity and insurance carrier, licensed to do business, and doing business in the State of Nevada, County of Clark.

WILLIAMS & WIESE
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3.

At all times relevant hereto, Plaintiff is informed and believes that the Defendants, and each of them, were engaged in the business of insurance, and were involved in adjusting or handling of claims in the State of Nevada, County of Clark, specifically a claim for underinsured motorist benefits asserted by LORENA GASPAR on behalf of MANUEL CAZARES.

4. w/o

At all times relevant hereto, Plaintiff is informed and believes that the Defendants, and each of them, are and were agents, employees, and/or other authorized representatives of each and every other Defendant, and that each Defendant was acting within the course and scope of said employment, or agency relationship, and with the express and/or implied knowledge, permission, and consent of all of the other Defendants herein.

5. ~~V~~

The names and capacities of Defendants Does 1 through 5, and Roe Corporations 1 through 5, whether individual, corporate, associate, or otherwise, are unknown to the Plaintiff at the time of the filing of this Complaint, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and therefore alleges that each of the Defendants, designated as DOES 1 through 5 and ROE CORPORATIONS 1 through 5 are or may be, legally responsible for the events referred to in this action, and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations. Plaintiff specifically believes that such Doe and/or Roe Defendants may include claims adjusters, claims managers, claims supervisors, and/or other individuals or entities employed by or affiliated with State Farm Insurance, and which had a role in making the determination not to provide coverage to the claimant, MANUEL CAZARES.

6. ~~V~~

Plaintiff is informed and believes, and therefore alleges, that Defendants, and each of them, are legally responsible for the damages to the Plaintiff as herein alleged.

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7.

On or about March 22, 2004, MANUEL CAZARES, was a thirteen (13) year old boy, who was on his way to school, crossing Tropicana Avenue, within a marked cross-walk, near the intersection of Morris St., in Clark County, Nevada, when he was struck by a motor vehicle, which was being driven by Erin Elizabeth Young (not a party to this litigation).

8.

On or about March 22, 2004, Manuel Cazares suffered severe, disabling, and permanent injuries, as a result of the subject motor vehicle accident, and he has incurred, and will continue to incur medical bills in the future, in an amount in excess of $150,000.00. Consequently, Erin Elizabeth Young was an underinsured motorist.

9.

Additionally, as a result of the subject motor vehicle accident, MANUEL CAZARES endured physical and mental pain and suffering, worry, anxiety, emotional distress, loss of enjoyment of life, loss of wages or earnings, and loss of earning capacity, and he will continue to endure said losses for an indefinite period of time in the future, in an amount in excess of $10,000.00.

10.

On or about March 22, 2004, Erin Elizabeth Young carried liability insurance on the vehicle she was operating at the time of the accident, with a liability policy limit of $25,000.00 per person.

11.

On or about March 22, 2004, the Plaintiff, LORENA GASPAR, had in full force and effect, a policy of insurance, issued by the Defendant, UNITRIN, Policy Number FCFIPP1005214, which provided Uninsured/Underinsured Motorist Coverage, in the amount of $15,000.00 per person.

12.

The subject UNITRIN insurance policy indicates that an "Insured person" includes the named insured "or a relative."

. . . .

. . . .

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13. W/D

On or about March 22, 2004, the minor child, MANUEL CAZARES, was the natural son, and a "relative of," the named insured, LORENA GASPAR.

14.

The subject UNITRIN insurance policy indicates that "We will pay damages which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle or an underinsured motor vehicle because of bodily injury caused by accident and resulting from the ownership, maintenance or use of the uninsured motor vehicle or underinsured motor vehicle."

15.

The subject UNITRIN insurance policy indicates that "Insured person" means "Any person for damages that person is entitled to recover because of bodily injury to you, a relative, . . ."

16. W/D

On or about May 14, 2004, correspondence was sent to UNITRIN insurance putting them on notice of the subject motor vehicle accident, and providing medical authorizations in compliance with NRS 690B.042.

17. W/D

On or about May 17, 2004, correspondence was sent to UNITRIN insurance, providing a copy of the bill summary from University Medical Center, indicating a bill through May 5, 2004, of $157,845.50. It was also noted in the correspondence that the tortfeasor's policy limit of $25,000.00 had been tendered, and a formal demand for the Underinsured Policy limit was made to UNITRIN.

18.

On or about May 20, 2004, UNITRIN sent correspondence to Plaintiff's counsel entitled "NOTICE OF RESERVATION OF RIGHTS." The Correspondence indicated that coverage may not be afforded for this loss, because "The involved party was riding a bicycle at the time of this loss."

. . . .

. . . .

19.

On or about May 24, 2004, correspondence was again sent to UNITRIN insurance, as the Plaintiff's "second formal demand" for the Underinsured policy limits.

20.

On or about May 25, 2004, correspondence was again sent to UNITRIN insurance, asking UNITRIN to "do the right thing," and compensate MANUEL CAZARES and his family for the damages and injuries he sustained.

21.

On or about June 1, 2004, correspondence was sent by UNITRIN insurance to Plaintiff's counsel indicating that "more time is required to resolve our coverage investigation."

22.

On or about June 3, 2004, correspondence wa again sent to UNITRIN insurance, with a copy of the police report for UNITRIN's review. Documentation of the tortfeasor's policy limits, in the amount of $25,000.00 was provided. A "third formal demand" for the Underinsured policy limits was made.

23.

On or about June 7, 2004, UNITRIN insurance formally denied coverage for this claim. They sent correspondence to Plaintiff's counsel indicating, "We regret to inform you that there is no coverage for this claim." Coverage was denied based upon an exclusion in the policy which indicates that "This coverage does not apply to: To a person while occupying any vehicle with less than four (4) wheels."

24.

The term "vehicle" is not defined in the subject UNITRIN policy of insurance.

25.

On or about July 12, 2004, correspondence was again sent to UNITRIN insurance, citing to various Nevada Supreme Court cases, as well as cases from other states, with regard to UNITRIN'S denial of coverage. The correspondence also indicated that it was the Plaintiff's "final attempt to

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resolve this matter within the policy limit of $15,000.00."

26.

On or about July 23, 2004, correspondence was sent by UNITRIN insurance, indicating that it would "review the information" submitted, and contact Plaintiff's counsel once UNITRIN had made a decision.

27.

On or about August 19, 2004, Plaintiff's counsel was contacted by Kurt Harris, Esq., of the law firm of HARRIS, MERRITT, CHAPMAN, LTD., with regard to the issue of liability, and was informed again that UNITRIN did not believe that coverage was appropriate.

28.

On or about August 20, 2004, correspondence was sent by KURT HARRIS, ESQ., to Plaintiff's counsel, attempting to explain why coverage was not afforded under the subject policy of insurance.

29.

UNITRIN insurance continues to deny coverage for the subject loss, based upon the policy exclusion indicating that coverage does not apply to a person while "occupying any vehicle with less than four (4) wheels."

**FIRST CLAIM FOR RELIEF**
**BREACH OF CONTRACT**

30.

Plaintiff repeats and realleges and incorporates herein by reference, each of the allegations contained in Paragraphs 1 through 29 of the Complaint, as if set forth verbatim herein.

31. w/o

On or about March 22, 2004, MANUEL CAZARES, was a "relative" of the "named insured" LORENA GASPAR, under a policy of insurance issued by UNITRIN, which policy provided Uninsured/Underinsured motorist coverage in the amount of $15,000.00 per person.

. . . .

32.

As a result of the March 22, 2004, motor vehicle accident, the Plaintiff herein, MANUEL CAZARES, has suffered damages and injuries, has incurred medical bills, has suffered pain, suffering, and emotional distress, all in the past, present, and future, in an amount in excess of $150,000.00.

33.

Based upon over $150,000.00 in medical specials, the value of the Plaintiff's claim has a value far in excess of the $25,000.00 available through the tortfeasor's policy of insurance.

34.

At the time of the March 22, 2004, motor vehicle accident, LORENA GASPAR and her minor son, MANUEL CAZARES, had duly performed all conditions, provisions, requirements, and terms of the subject policy of insurance with UNITRIN.

35.

UNITRIN insurance had a contractual obligation to MANUEL CAZARES and LORENA GASPAR, to provide the Uninsured/Underinsured motorist coverage set forth in the UNITRIN policy, and which coverage was paid for by LORENA GASPAR.

36.

UNITRIN insurance has refused to provide Uninsured/Underinsured motorist benefits, to MANUEL CAZARES, as required under the terms of the UNITRIN insurance policy.

37.

Plaintiff contends that UNITRIN'S continued denial of coverage to MANUEL CAZARES, is evidence of UNITRIN's deliberate and systematic refusal to reasonably evaluate claims, and to effectuate prompt, fair, and equitable settlement of such claims.

38.

As a direct and proximate result of the Defendant's breach of the insurance agreement and contract, MANUEL CAZARES was damaged and has incurred, and will continue to incur, injuries . . . .

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and damages in an amount in excess of $150,000.00. Consequently, the Plaintiff seeks damages for the defendant's breach of contract, in an amount in excess of $10,000.00.

39.

It has been necessary for Plaintiff to retain the services of counsel to represent her in the above-entitled matter, and she should be awarded reasonable attorney's fees, and costs of suit incurred herein.

**SECOND CLAIM FOR RELIEF**
**COMMON LAW BAD FAITH**

40.

Plaintiff repeats and realleges and incorporates herein by reference, each of the allegations contained in Paragraphs 1 through 39 of the Complaint, as if set forth verbatim herein.

41.

That at all times mentioned herein the Defendant, UNITRIN insurance, and its agents and representatives, owed a duty to its insured, MANUEL CAZARES, to comply with the covenant of good faith and fair dealing implied in every contract, and to do nothing to injure the right of the insured to receive benefits under the applicable policy of insurance.

42.

That Defendant, UNITRIN insurance, by and through its agents, adjusters, and other representatives, has acted in bad faith and has violated and breached the implied common law covenant of good faith and fair dealing, having continuously failed and refused to provide coverage, to its insured, MANUEL CAZARES.

43.

That as a direct and proximate result of the Defendant's breach of the implied common law covenant of good faith and fair dealing, MANUEL CAZARES, has suffered injuries and damages in an amount in excess of $10,000.00.

. . . .

. . . .

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44.

That the aforesaid conduct of the Defendant was in willful, wanton, and reckless disregard of its insured's interests, to such an extent as to constitute oppression, fraud and actual malice toward its insured, MANUEL CAZARES, thus entitling him to an award of punitive damages, sufficient to punish and make and example of the Defendant, and to preclude the Defendant from treating other insureds the same way in the future.

45.

As a direct and proximate result of the Defendant's breach of the implied covenant of good faith and fair dealing, MANUEL CAZARES was damaged and has suffered injuries and damages, and will continue to suffer such injuries and damages in the future, in an amount in excess of $10,000.00.

46.

It has been necessary for Plaintiff to retain the services of counsel to represent her in the above-entitled matter, and she should be awarded reasonable attorney's fees, and costs of suit incurred herein.

**THIRD CLAIM FOR RELIEF**
**STATUTORY BAD FAITH**

47.

Plaintiff repeats and realleges and incorporates herein by reference, each of the allegations contained in Paragraphs 1 through 46 contained in her Complaint on file herein, as though the same were fully set forth herein verbatim.

48.

That at all times mentioned herein the Defendant, UNITRIN insurance, and its agents, owed a duty to its insured, MANUEL CAZARES, to comply with the Nevada insurance regulations, and the Nevada Revised Statutes, including but not limited to NRS 686A.310.

. . . .

. . . .

49.

That Defendant, through its agents, acted in bad faith and breached and violated the Nevada insurance regulations, and the Nevada Revised Statutes, including but not limited to NRS 686A.310.

50.

That as a direct and proximate result of the Defendant's breach and violation of the Nevada insurance regulations, and the Nevada Revised Statutes, MANUEL CAZARES suffered injuries and damages, and will continue to suffer such injuries and damages in the future, in an amount in excess of $10,000.00.

51.

That the aforesaid conduct of the Defendant was in willful, wanton, and reckless disregard of its insured's interests, to such an extent as to constitute oppression, fraud and actual malice toward its insured, MANUEL CAZARES, thus entitling him to an award of punitive damages, sufficient to punish and make and example of the Defendant, and to preclude the Defendant from treating other insureds the same way in the future.

52.

As a direct and proximate result of the Defendant's breach and violation of the Nevada insurance regulations, and the Nevada Revised Statutes, MANUEL CAZARES was damaged and has suffered injuries and damages, and will continue to suffer such injuries and damages in the future, in an amount in excess of $10,000.00.

53.

It has been necessary for Plaintiff to retain the services of counsel to represent her in the above-entitled matter, and she should be awarded reasonable attorney's fees, and costs of suit incurred herein.

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**FOURTH CLAIM FOR RELIEF**
**DECLARATORY RELIEF**

54.

Plaintiff repeats and realleges and incorporates herein by reference, each of the allegations contained in Paragraphs 1 through 53 contained in her Complaint on file herein, as though the same were fully set forth herein verbatim.

55.

The Defendant, UNITRIN insurance, contends that the subject policy of insurance, precludes coverage for MANUEL CAZARES, due to an exclusion in the policy which reads in part, "This coverage does not apply to a person while occupying any vehicle with less than four (4) wheels."

56.

The Defendant, UNITRIN insurance, knew or reasonably should have known, that the exclusion upon which they rely to deny coverage in the present case, is and was at all times relevant hereto, too vague to be enforced in the State of Nevada.

57.

The Defendant, UNITRIN insurance, knew or reasonably should have known, that the exclusion upon which they rely to deny coverage in the present case, is and was at all times relevant hereto, against Nevada's public policy.

58.

The Defendant, UNITRIN insurance, knew or reasonably should have known, that the exclusion upon which they rely to deny coverage in the present case, is and was at all times relevant hereto, designed and intended to apply to motorcycles, and not to bicycles.

59.

The Plaintiff seeks a declaration by the Court that the exclusion upon which the Defendant has relied to deny coverage in the present case, is and was at all times relevant hereto, too vague to be enforced in the state of Nevada, against Nevada's public policy, and not applicable to bicycles in the State of Nevada.

**WHEREFORE,** Plaintiff prays for Judgment against the Defendants, and each of them, as follows:

**FIRST CLAIM FOR RELIEF**

1. For compensatory, contractual, consequential, and other special damages in an amount in excess of $10,000.00;

2. For general damages in an amount to be proven at the time of trial;

3. For reasonable attorney's fees and costs incurred herein, together with pre-judgment and post-judgment interest; and

4. For such other and further relief as the court may find just and proper under the circumstances.

**SECOND CLAIM FOR RELIEF**

1. For compensatory and special damages in an amount in excess of $10,000.00;

2. For General damages in an amount to be proven at the time of trial;

3. For punitive damages in an amount in excess of $10,000.00, sufficient to punish the Defendant and to deter similar future conduct;

4. For reasonable attorney's fees and costs incurred herein, together with pre-judgment and post-judgment interest; and

5. For such other and further relief as the court may find just and proper under the circumstances.

**THIRD CLAIM FOR RELIEF**

1. For compensatory and special damages in an amount in excess of $10,000.00;

2. For General damages in an amount to be proven at the time of trial;

3. For punitive damages in an amount in excess of $10,000.00, sufficient to punish the Defendant and to deter similar future conduct;

4. For reasonable attorney's fees and costs incurred herein, together with pre-judgment and post-judgment interest; and

. . . .

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5. For such other and further relief as the court may find just and proper under the circumstances.

**FOURTH CLAIM FOR RELIEF**

1. For a Judgment by the Court declaring as a matter of law that the exclusion upon which the Defendant has relied to deny coverage in the present case, is and was at all times relevant hereto, too vague to be enforced in the state of Nevada, against Nevada's public policy, and not applicable to bicycles in the State of Nevada.

DATED this 23 day of September, 2004.

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Nevada Bar No.: 5354
Michael R. Merritt, Esq.
Nevada Bar No.: 5720
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Tele: (702) 492-4936
Fax: (702) 492-4937

Attorneys for Financial Indemnity Company

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs.<br><br>LORENA GASPAR, DOES I through X and ROE Corporations or Business Entities I through X, inclusive.<br><br>Defendants. | Case No.: A491005<br><br>Dept No.: VII<br><br>**(Consolidated with: A492655)** |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, dba UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5, inclusive,<br><br>Defendants. | |

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 29th day of November, 2004, an Order Granting Motion for Consolidation was signed by Judge Bell and filed on November 30, 2004, in the above-entitled

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10120 So. Eastern Avenue, #200
Henderson, Nevada 89052

DEC-01-2004 14:46 From:HMC 7024924937 To:3207760 P.1/5

court.

A copy of said Order is attached hereto.

DATED this 1st day of December, 2004.

**HARRIS MERRITT CHAPMAN, LTD.**

Kurt K. Harris, Esq.
Michael R. Merritt, Esq.
10120 So. Eastern Avenue, #200
Henderson, NV 89052
(702) 492-4936

Attorneys for Financial Indemnity Company

**CERTIFICATE OF SERVICE**

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 10120 South Eastern Avenue, Suite 200, Henderson, Nevada 89052. On December 1, 2004, I served the above referenced document on the parties listed on the attached service list via the following:

☐ **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

■ **VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by the facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served and is attached.





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Attorneys for LORENA GASPAR

☐ **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will maintained with the document and is attached.

■ (State) I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

An employee of HARRIS MERRITT CHAPMAN

HARRIS MERRITT CHAPMAN, LTD.
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ORDR
Kurt K. Harris, Esq.
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Attorneys for Financial Indemnity Company

FILED
Nov 30 12 46 PM '04
Shirley B Rangione
CLERK

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,

Plaintiff,

vs.

FINANCIAL INDEMNITY COMPANY, dba UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5, inclusive,

Defendants.

FINANCIAL INDEMNITY COMPANY,

Plaintiff,

vs.

LORENA GASPAR, DOES I through X and ROE Corporations or Business Entities I through X, inclusive.

Defendants.

Case No.: A492655
Dept No.: I

**ORDER GRANTING MOTION FOR CONSOLIDATION**

Seeking Consolidation With:

**Case: A491005**
**Dept: VII**

**Date of Hearing: 11-08-04**
**Time of Hearing: ----------**

**ORDER GRANTING MOTION FOR CONSOLIDATION**

Upon reading the Motion for Consolidation by FINANCIAL INDEMNITY COMPANY, (hereinafter "FIC"), and there being no Opposition to the Motion, it is to the satisfaction of the

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Court, and the Court finds:

IT IS HEREBY ORDERED that Case No.: A492655 and Case No.: A491005 be consolidated into Case No.: A491005.

IT IS FURTHER ORDERED that Department VII shall exercise jurisdiction over all future proceedings of this matter.

DATED this 29 day of Nov., 2004.

STEWART L. BELL
DISTRICT COURT JUDGE

Submitted by:

**HARRIS MERRITT CHAPMAN, LTD.**

Kurt K. Harris, Esq.
10120 So. Eastern Avenue, #200
Henderson, NV 89052
(702) 492-4936
Attorneys for Financial Indemnity Company

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112-024/pleading/gaspar v FIC/006 ORDER granting MOT CONSOLIDATION

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Attorneys for Lorena Gaspar

FILED

APR 20 4 12 PM '05

CLERK

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs<br><br>LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,<br><br>Defendants | CASE NO A491005<br>DEPT NO VII |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5, and ROE CORPORATIONS 1 through 5, inclusive,<br><br>Defendants, | Consolidated with<br><br>CASE NO A492655<br>DEPT NO I |

**NOTICE OF ENTRY OF ORDER**

TO FINANCIAL INDEMNITY COMPANY, Defendant, and

TO KURT K HARRIS, ESQ , Attorney for Defendant

YOU WILL PLEASE TAKE NOTICE that an order was entered in the above-entitled

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matter on the 12th day of April, 2005, a copy of which is attached hereto

DATED this 20 day of April, 2005.

WILLIAMS & WIESE

JERRY A WIESE II, ESQ
Nevada Bar No 005546
501 S Rancho Drive, Suite D-22
Las Vegas, Nevada 89106

**CERTIFICATE OF MAILING**

THE UNDERSIGNED does hereby certify that the above and foregoing **NOTICE OF ENTRY OF ORDER** was hereby served on the 20 day of April, 2005, by placing a true, complete copy of same in a sealed envelope and depositing in the US Mail, first-class, postage prepaid and addressed to the following individual

HARRIS MERRITT CHAPMAN, LTD
KURT K HARRIS, ESQ
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Attorneys for FINANCIAL INDEMNITY

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Attorneys for Lorena Gaspar

FILED
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CLERK

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs.<br><br>LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,<br><br>Defendants. | CASE NO. : A491005<br>DEPT. NO. : VII |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,<br><br>Defendants, | Consolidated with<br><br>CASE NO. : A492655<br><br>**ORDER** |

FINANCIAL INDEMNITY COMPANY's Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment, and LORENA GASPAR's Counter-Motion for Declaratory Relief, came on for hearing before the above-entitled Court on Monday, April 4, 2005, on the 9:00 a.m. calendar. FINANCIAL INDEMNITY COMPANY was represented by counsel, KURT K. HARRIS, ESQ., of the law firm of HARRIS MERRITT CHAPMAN, LTD. LORENA GASPAR was represented by counsel, JERRY A. WIESE II, ESQ., of the law firm of WILLIAMS

. . .

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& WIESE. The Court having reviewed the papers and pleadings on file, having heard oral argument from both counsel, and other good cause appearing therefor,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Financial Indemnity Company's Motion for Declaratory Relief is hereby DENIED, as is the Alternative Motion for Summary Judgment DENIED

**IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Lorena Gaspar's Counter-Motion for Declaratory Relief is hereby GRANTED, consistent with the DECLARATORY JUDGMENT executed concurrently herewith.

DATED this 19 day of April, 2005.

STEWART L. BELL

HONORABLE JUDGE STEWART L. BELL

Respectfully Submitted by:

WILLIAMS & WIESE

JERRY A. WIESE II, ESQ.
Nevada Bar No. 005546
501 S. Rancho Dr , Suite D-22
Las Vegas, Nevada 89106
*Attorney for Plaintiff, Gaspar*

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs.<br><br>LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,<br><br>Defendants. | CASE NO. : A491005<br>DEPT. NO. : VII |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,<br><br>Defendants, | Consolidated with<br><br>CASE NO. : A492655<br><br>**DECLARATORY JUDGMENT** |

The parties' opposing Motions for Declaratory Relief, were filed and came on for hearing before the above-entitled Court on Monday, April 4, 2005, on the 9:00 a.m. calendar. FINANCIAL INDEMNITY COMPANY was represented by counsel, KURT K. HARRIS, ESQ., of the law firm of HARRIS MERRITT CHAPMAN, LTD. LORENA GASPAR was represented by counsel, JERRY A. WIESE II, ESQ., of the law firm of WILLIAMS & WIESE. The Court having reviewed the papers and pleadings on file, having heard oral argument from both counsel, and other good cause appearing therefor, the Court enters the following Findings of Fact and Conclusions of Law:

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**FINDINGS OF FACT.**

The Court hereby finds that the following policy exclusion, which indicates that with regard to UM/UIM coverage,

"This coverage does not apply to: to a person while occupying any vehicle with less than four (4) wheels,"

such policy exclusion is found to be invalid as applied to the facts of the present case.

This Court further is of the opinion that the subject policy exclusion, as set forth above, was intended to apply to motorcycles, and not to bicycles.

The Court further finds it to be ridiculous that Financial Indemnity Company would provide coverage if Manuel Cazares had been riding a bicycle "with training wheels," but since his bicycle did not have training wheels, there was no coverage.

**CONCLUSIONS OF LAW.**

Based upon the forgoing, this Court concludes that the above-referenced exclusionary policy language to be invalid when applied to the facts of the subject case.

The Court concludes that the intent of the parties was that the above-referenced exclusionary policy language was to preclude coverage for "motorcycles," not for "bicycles."

The Court concludes that the exclusionary policy language to be void and against the public policy of the State of Nevada.

The Court finally concludes that on or about March 22, 2004, when Manuel Cazares was riding his bicycle across Tropicana Ave., the Financial Indemnity Company policy at issue in this

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case, "did" provide UM/UIM coverage, and the above-referenced exclusion cannot be used to defeat coverage.

DATED this _____ day of April, 2005.

HONORABLE JUDGE STEWART L. BELL

Respectfully Submitted by:

WILLIAMS & WIESE

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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| FINANCIAL INDEMNITY COMPANY,<br><br>Plaintiff,<br><br>vs.<br><br>LORENA GASPAR, DOES I through X and ROE CORPORATIONS or Business Entities I through X, inclusive,<br><br>Defendants. | CASE NO. : A491005<br>DEPT. NO. : VII |
| LORENA GASPAR, as parent and natural guardian of MANUEL CAZARES, a minor,<br><br>Plaintiff,<br><br>vs.<br><br>FINANCIAL INDEMNITY COMPANY, d/b/a UNITRIN INSURANCE, DOES 1 through 5; and ROE CORPORATIONS 1 through 5; inclusive,<br><br>Defendants, | Consolidated with<br><br>CASE NO. : A492655<br><br>**ORDER** |

FINANCIAL INDEMNITY COMPANY's Motion for Declaratory Relief, or in the Alternative, Motion for Summary Judgment, and LORENA GASPAR's Counter-Motion for Declaratory Relief, came on for hearing before the above-entitled Court on Monday, April 4, 2005, on the 9:00 a.m. calendar. FINANCIAL INDEMNITY COMPANY was represented by counsel, KURT K. HARRIS, ESQ., of the law firm of HARRIS MERRITT CHAPMAN, LTD. LORENA GASPAR was represented by counsel, JERRY A. WIESE II, ESQ., of the law firm of WILLIAMS

. . . .



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& WIESE. The Court having reviewed the papers and pleadings on file, having heard oral argument from both counsel, and other good cause appearing therefor,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Financial Indemnity Company's Motion for Declaratory Relief is hereby DENIED, as is the Alternative Motion for Summary Judgment DENIED.

**IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Lorena Gaspar's Counter-Motion for Declaratory Relief is hereby GRANTED, consistent with the DECLARATORY JUDGMENT executed concurrently herewith.

DATED this 12 day of April, 2005.

STEWART L. BELL

HONORABLE JUDGE STEWART L. BELL

Respectfully Submitted by:

WILLIAMS & WIESE

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23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes.....X.....No.....

25. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

Yes.....No.....X..... **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.**

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes.....No.....X.....

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

NRAP 3A(b)(1) - Judgment is final

## VERIFICATION

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

Financial Indemnity Company
Name of appellant

Kurt K. Harris, Esq.
Name of counsel of record

May 26, 2005
Date

Signature of counsel of record

Clark County, Nevada
State and county where signed