

**This Endorsement changes the terms and conditions of the Policy issued. Please read it carefully!**

The Director of Insurance of the state in which this Policy is issued is authorized and directed to accept service of process on behalf of any Syndicate(s) participating hereunder in any suit and upon the request of the Insured, to give a written undertaking to the Insured that he will accept service of process in the event that suit is instituted.

Further, pursuant to any statute of any state of the United States which makes provision therefor, the Syndicate(s) hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for the purpose in the statute, as their true and lawful attorney for the purpose of accepting service of process of any suit instituted by or on behalf of the Insured.

This Endorsement applies solely to service of process and does not modify any forum selection or choice of law provisions contained in the Policy.

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**THIS CLAIMS MADE ANIMAL LIABILITY POLICY (“Policy”) is a manuscript policy, meaning it is a negotiated agreement between the Insured and the Insurer, and as such it may differ significantly from liability policies offered by other insurance companies. As a claims made insurance policy, this Policy contains very strict claim reporting requirements which must be followed as conditions precedent to coverage. The terms of this Policy are contractual and are not merely recitals and all application(s), discovery form(s), warranty form(s), and other forms completed by the Insured to obtain coverage form a part of this Policy and constitute warranties of the Insured to the Insurer.**

**Coverage is provided only for otherwise covered Claims which meet all of the following requirements:**

- (1) Which are first made against an Insured during the Policy Period, and**
- (2) Which result from an Event occurring during the Policy Period, and**
- (3) For which written notice is given to the Insurer in writing during the Policy Period in accordance with the specific informational and timeliness requirements specified in the Policy.**

**In addition, coverage is strictly limited to those activities and operations and at those locations listed, described, and defined herein. Various other provisions of this Policy restrict and limit the coverage provided. Please read the Policy and all Endorsements carefully to determine your rights and duties and what is and is not covered.**

**Claim Expenses reduce the available Limits of Liability stated on the Declarations. In the event of any Claim, the total amount of any Policy premium charged shall be 100% earned and not subject to short-rate or pro-rata adjustment.**

**Throughout the Policy and any Endorsements, the words “you,” “your,” “Insured,” and “Named Insured” refer to the Insured shown on the Declarations and any person or organization qualifying as an Insured under Section II of the Policy. The words “we,” “us,” “our,” “insurer,” and the “Company” refer to the insurance company providing this Policy.**

**Capitalized terms have specific meaning throughout the Policy as defined in the Definitions Section below.**

**The terms of this Policy are contractual and not merely recitals, and the Policy shall be construed as a whole, including all paragraphs, sections, conditions, provisions, exclusions, and Endorsements.**

## **SECTION I — COVERAGE**

### **A. Insuring Agreement**

1. Subject to all other terms and conditions of the Policy, we will pay on your behalf those Damages that you are legally obligated to pay because of Bodily Injury or Property Damage to which this Policy applies:
  - a. Should an Accident involving an Insured Animal causing Bodily Injury or Property Damage result from those specified activities and operations to which this Policy is limited; and
  - b. If such Accident occurs during the Policy Period (including any Policy Period extended by a specifically identified Retroactive Date) stated on the Declarations and within the United States of America or its territories; and
  - c. If any Claim arising out of the Accident is made against you and reported to us in writing during the Policy Period.

manifest or reported. Claims arising from Accidents occurring prior to the coverage date of the Policy are not covered regardless of when Damages are first manifest or discovered.

2. We have both the right and the duty to provide for your defense with respect to a Claim covered by the Policy. We have the exclusive right to designate and appoint legal counsel to represent you and to otherwise control such defense. Notwithstanding anything to the contrary, our duty to provide for such defense will immediately terminate:
  - a. When the applicable Limits of Liability of the Policy are exhausted by payment of Damages and/or Claim Expenses;
  - b. If the Insured fails to fulfill any Self-Insured Retention obligation imposed by this Policy in a timely manner;
  - c. If the Application attached hereto and forming a part hereof, including any supplemental information related thereto, is discovered by us to contain any material misrepresentation of fact; or
  - d. If you violate any of the conditions set forth in this Policy.
3. We have the sole right, but not the duty, under this Policy to settle those otherwise covered Claims for which the proposed amount to be paid as Damages does not exceed the applicable Limits of Liability. Any such settlement will be binding upon the Insured and will not require the Insured's prior consent or ratification. Payment of settlement funds or expenses by us shall not relieve you of your duty to make timely payment of any applicable Self-Insured Retention.
4. We will pay with respect to any Claim we defend:
  - a. All Claim Expenses we incur; or
  - b. All costs of Suit pursuant to statute or order of court after a judgment is entered against the Insured in the Suit; and
  - c. All interest on any judgment that accrues after entry of the judgment and before we pay, tender, or deposit with the court that part of the judgment that does not exceed our Limits of Liability.

Any of the above payments are part of and will reduce the Limits of Liability provided by this Policy.

## B. Exclusions

No coverage is afforded nor shall any duty to defend exist under this Policy for:

1. Any Claim that occurs if at the time of Accident:
  - a. The animal involved, whether owned by the Insured or not, is not specifically scheduled on an Endorsement as an Insured Animal;
  - b. The Insured Animal is not currently and validly registered with the county or state where the Insured resides and where the Insured Animal is housed or kept;
  - c. The Insured Animal is not fully compliant with any and all governmental regulations as prescribed by the municipality, county, or state;
  - d. The Insured Animal is not in full compliance with all requirements prescribed by the county auditor;

the Company by being listed on the Declarations or any Endorsement;

- f. The Insured Animal is not wearing its accurate, current, and valid registration tag, issued by the county or state;
  - g. The Insured Animal is not under restraint (at a minimum, by leash, or tether) and under the direct control of the Insured; **see agent commentary on the next page**
  - h. The loss involves a police dog that is on active duty;
  - i. Prior to the loss, the Insured Animal was being abused, tormented, starved, teased, or mistreated by any person;
  - j. The Insured Animal had been running at large immediately prior to the loss;
  - k. The Insured Animal is infected or is alleged to be infected with any virus or infectious disease including, but not limited to, Rabies or West Nile Virus;
  - l. The Insured Animal is engaged in any hunting activity when the loss occurs;
  - m. The Insured Animal is a vicious animal that has been surgically debarked;
  - n. The Insured Animal is known to be a vicious animal or dangerous animal and is not muzzled or otherwise properly restrained; **see agent commentary on the next page**
  - o. The Insured Animal was allowed to run freely near livestock, poultry, any domestic animal, or other animal that is the property of another person; or
  - p. The Insured harbors, keeps, maintains, or owns more than a total of five animals at the same location.
2. Death or physical damage or injury to an Insured Animal.
3. Bodily Injury to:

sample

- a. An employee of an Insured arising out of and in the course of:
  - (1) Employment by an Insured, or
  - (2) Performing duties related to the conduct of the Insured's business; or
- b. The spouse, child, parent, brother, or sister of an employee of an Insured as a consequence of Bodily Injury to such employee.

This Bodily Injury Exclusion applies to any obligation to share Damages with or repay someone else who must pay Damages because of the injury, including Damages awarded for contribution or indemnity suits.

- 4. Bodily Injury or Property Damage for which an Insured is obligated to pay Damages by reason of the assumption of liability under any contract or agreement. This exclusion does not apply to liability for Damages assumed in a contract or agreement specifically approved by the Insurer by endorsement to this Policy, provided the Bodily Injury or Property Damage occurs subsequent to execution of the contract or agreement, or that the Insured would have in the absence of the contract or agreement.
- 5. Bodily Injury or Property Damage arising out of the willful violation of a penal statute or ordinance.
- 6. Bodily Injury or Property Damage expected or intended from the standpoint of any Insured.

## FOR DOG OWNERS ONLY

99.9% of the people who buy dangerous dog liability insurance buy it because they are required by law to buy it. They are required by law to buy it because their dog has bitten or attacked a person, causing bodily injury.

The insurance company assumes that if the dog has hurt one human in the past, it has great probability of hurting another person in the future.

The insurance company also assumes that the dog owner is aware of his dog's propensity to hurt humans in the future.

The insurance company also assumes that the dog owner wants to prevent future injury to humans and that the dog owner will not let his dog play with the neighbor's children, for example, without direct supervision and restraint required to control the dog in the event that the dog attempts to attack the neighbor's child.

Since the average dog bite claim costs insurers over \$50,000 and since the average premium per dog is under \$700 per year, the insurance company needs to reduce the likelihood of having to pay a claim by requiring the dog owner to take precautions to prevent future dog bites.

For example, if you had cancer, would you ONLY buy cancer insurance but NOT take steps to treat the cancer? I think most people would answer this question with a very loud NO. Most people would want to buy cancer insurance AND get medical treatment.

Similarly, the insurance company expects dog owners to take appropriate steps to prevent future dog bites.

As such, items g and n on the previous page make the dog owner responsible for taking precautions to prevent future dog bites.

The bottom line is that the dog owner should make the safety of other humans his first priority.

All dog liability insurers will require the dog owner to take these same steps.

Further, most states' animal control officers and/or state laws will require the dog owner to take these same steps that are required by the insurance company. In fact, many states require even greater precautions such as forbidding the dog to be in the presence of children; even the dog's owner's children are forbidden from being in the presence of dogs with prior bite history .

Finally, history has shown that it is nearly impossible to find sympathetic juries in criminal cases against dog owners who hurt humans **ESPECIALLY WHEN THE DOG OWNER TOOK NO PRECAUTIONS; AND EVEN MORE SO WHEN THE DOG OWNER KNEW HIS DOG HAD THE PROBABILITY OF BITING/ATTACKING HUMANS.** In fact, some dog owners have been convicted of second degree murder, carrying a life sentence. But more commonly, most dog owners are convicted only of manslaughter, typically carrying a term on average of 5 years.

**EVEN IF YOU HAVE INSURANCE, YOU CANNOT ESCAPE CRIMINAL CHARGES AND THE POSSIBILITY OF BEING SENTENCED TO LIFE IMPRISONMENT!!!**

**BE SMART! BE SAFE! TAKE PRECAUTIONS! PROTECT OTHERS AND YOU WILL PROTECT YOURSELF.**

## Jury finds woman guilty of involuntary manslaughter in pit bull attack

By MATTHEW BARAKAT  
Associated Press Writer

December 22 2005

SPOTSYLVANIA, Va. -- A jury Thursday found a pit bull owner guilty of involuntary manslaughter for allowing her dogs to run loose and kill an 82-year-old woman.

The jury recommended Deanna Large, 37, receive three years in prison. The judge has the option to reduce the sentence, but cannot increase it when Large is formally sentenced on Feb. 24.

Large sat quietly as the verdict was read, while the family of victim Dorothy Sullivan quietly wept.

Large, who was also found guilty of two misdemeanor charges of allowing her dogs to run loose, faced up to 10 years in prison. The case marks the first time in Virginia a person has been convicted of manslaughter for the actions of their dogs.

During the trial, witnesses testified Large's pit bulls had long menaced the neighborhood and animal control officers took two of them away last year after they allegedly killed a kitten. At one point, Large had 13 pit bulls in her doublewide trailer.

Sullivan was attacked March 8 by three pit bulls while she took her shih tzu, Buttons, for a walk outside her home. The dog also was killed.

Before jurors began deliberating Large's sentence, Commonwealth's Attorney William Neely argued it was important to set a precedent establishing significant jail time in such cases.

He also cited the gruesome manner in which Sullivan died as he asked for the maximum sentence. Jurors earlier in the week saw autopsy photos that showed

pieces of Sullivan's scalp torn away, chunks of flesh torn from her arm and thigh and bites on her ankle down to the bone.

"Do I need to show you those autopsy photos again?" he asked the jury.

One juror replied, "No sir."

Jurors were told about Large's criminal record, including felony convictions for hit-and-run and aggravated sexual battery against a 13-year-old boy.

Defense attorney Eugene Frost argued for a lighter sentence.

"The lesson is learned. She won't own pit bulls again. Deanna Large feels incredibly bad about this," Frost said.

Prosecutors were required to prove that Large owned the dogs that mauled Sullivan and that Large's ownership was so negligent that it rose to the level of "callous disregard" for human life.

Large's attorney argued that prosecutors never proved her ownership of the pit bulls that attacked Sullivan, and also argued that Large had no knowledge that her dogs were dangerous.

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## **Jury gets dog attack case**

Defendant faces up to 10 years in prison

BY KIRAN KRISHNAMURTHY

Dec 22, 2005

SPOTSYLVANIA, VA. -- Neighbors and animal-control officials warned Deanna H. Large that her roaming pit bulls were a menace in the neighborhood, Spotsylvania Commonwealth's Attorney William F. Neely told jurors in closing statements at Large's trial yesterday.

Defense attorney Eugene Frost countered that neither of the two neighbors whose pets were killed by roaming pit bulls before the death of an 82-year-

year-old woman identified any of Large's dogs as the culprits in those earlier attacks. He also said no one specifically told Large that her dogs were a threat.

Jurors today will begin deliberating a verdict in the trial of Large, who is charged with involuntary manslaughter in the death of a woman fatally mauled by pit bulls. Large, 37, faces up to 10 years in prison in a case that apparently would set a legal precedent in Virginia if she is convicted.

Jurors will weigh several points, key among them: whether Large owned any of the dogs involved in the March 8 mauling of Dorothy Sullivan; if Large had knowledge her dogs were dangerous; and whether Large's actions amount to carelessness that was "so gross, wanton and culpable as to show a disregard for human life."

Neely noted that an animal-control officer testified to telling Large that pit bulls matching the description of her dogs had been accused of killing a cat.

Neely also argued it was enough that Large had been told that pit bulls in general were dangerous. "We all know that pit bulls are more naturally aggressive, at least to other dogs, than your golden retriever. That's a factor you can consider," he said.

Frost said Virginia law bars a dog from being declared "dangerous" by a court simply because of its breed. "I'm not saying that the law maybe doesn't need to change," he told the panel of 10 men and four women, including two alternates.

Virginia lawmakers next month will consider several measures aimed at toughening Virginia's dog laws, including specifying a felony charge when a dog severely injures or kills a person. None of the measures address a specific breed of dog.

Large admitted owning only one of the three dogs allegedly involved in the attack. Authorities seized that dog and destroyed it.

An FBI forensic expert testified yesterday that human hairs found in that dog's digestive tract had the "same microscopic characteristics" as hairs found on

several of Sullivan's brushes and combs.

Under defense questioning, the expert said it was "most likely" the hairs found in the dog's stomach had fallen out naturally rather than being forcibly removed.

A sheriff's deputy shot and killed two of the other pit bulls at the scene. One of them was found wearing a choke-chain collar with a brass padlock that, Neely said, matched those later found in Large's house.

Circuit Judge Ann Hunter Simpson yesterday dismissed one of three misdemeanor counts of letting a dog run at large because, she said, the prosecution lacked the evidence to show that Large might have owned the remaining pit bull that was killed.

Several of Large's neighbors offered conflicting testimony as to which dogs she might have owned. Frost sought to portray the rural Partlow-area neighborhood where Large lived as beset by roaming pit bulls belonging to more than one owner.

Joseph Cagnina, a detective, testified that Large admitted to not restraining the dogs and to routinely letting them out to relieve themselves. He also said a fence in her yard had a broken section and that her front door did not lock properly and would open with the "slightest touch."

Sullivan was attacked while walking her Shih Tzu, Buttons, in her own yard. A daughter, Doris Phelps, called 911 after stopping by the house to visit her mother.

Autopsy photographs displayed during the two-day trial showed the top of Sullivan's scalp had been torn, among other severe injuries. The photos were so graphic that the judge excused Sullivan's family from the courtroom before the images were shown. The judge also barred media cameras from recording the photos.

A state medical examiner's report also concluded Sullivan suffered a broken wrist, suggesting she might have been pulled to the ground as the pit bulls possibly attacked Buttons.

Dr. Karl Magura, a state veterinarian, testified yesterday that pit bulls mauling a small dog could become increasingly aggressive if they thought an owner was trying to intervene. "They're the nicest dogs you've ever had" if properly raised, he said, but can be "a problem" if not.

Sweet honey and whole grain oats.

Honey Nut  
Cheerios

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## California couple guilty in dog mauling case

**LOS ANGELES, California (CNN) -- The owners of two dogs that attacked and killed a neighbor in their San Francisco apartment building were found guilty Thursday of all charges against them, including involuntary manslaughter and having a mischievous animal that kills.**

One of the owners, Marjorie Knoller -- who was present during the January 2001 mauling -- was also found guilty of second-degree murder. Courtroom spectators gasped, and Knoller, 46, grimaced, trembled and breathed heavily as the unprecedented verdict was read.

"Oh my God," she mouthed.

Her husband, Robert Noel, 60, sat silently as the verdict was read. He was not at home at the time of the attacks, but jurors apparently agreed with the prosecution's argument that he and his wife had ignored repeated warnings about their two large Presa Canarios -- Bane and Hera -- and knew they were a danger.

The couple was charged in the January 26, 2001, mauling death of Diane Whipple, a 33-year-old San Francisco lacrosse coach. Whipple was killed in the hallway of the apartment building she shared with Knoller and Noel as she returned home from a trip to the grocery store.

The prosecution laid out more than 30 incidents or warnings involving the 100-plus-pound dogs, which since have been destroyed.

Superior Court Judge James Warren set a May 10 sentencing date for the couple.

Knoller faces a sentence of 15 years to life in prison for second-degree murder.

Noel and Knoller both face sentences of two to four years in prison on the involuntary manslaughter charges, while owning a mischievous animal that kills carries a sentence of 16 months to three years.

Long history of complaints

The five-week trial gripped much of the nation as prosecutors described a horrific attack in which Whipple was bitten all over her body -- her throat ripped, her clothes torn off -- by at least one of the dogs.

The jury of seven men and five women saw graphic photos of the victim's ravaged body, with wounds visible from her ankles to her face, and pictures of the blood-stained hallway where the attack occurred. Jurors also heard about a curious relationship the husband-and-wife attorneys had with two state prisoners, including the adoption of one.

The couple's connection to the state prisoners was brought up because prosecutors said they operated a kennel with the inmates that raised attack dogs.

In tearful testimony over three days, Knoller said Bane pulled her down the hallway to Whipple, and she tried in vain to stop the attack. The other dog was loose in the hallway. Knoller insisted she had no idea her "loving" pets were capable of such an attack.

Adding to the courtroom drama was the conduct of her attorney, Nedra Ruiz, who at times cried, sparred with the judge and crawled on the floor to depict the fatal struggle.

Noel did not testify, but his attorney insisted he was blameless, noting he was not home at the time of the attack.

But jurors heard from several witnesses who said the dogs either lunged at them or exhibited aggressive behavior. And the prosecution played television interviews and read letters the couple wrote to state prisoners in which the husband and wife showed little remorse for the fatal mauling.

"Neighbors be damned," Noel wrote in one letter, according to prosecutors.

Don Newton, the jury foreman, said the number of prior incidents involving the dogs undermined the defense claim that the mauling was nothing more than a tragic accident.

"It was a series of actions -- a series of failures to heed warnings, a series of careless taking of the dogs out and allowing them to lunge at people and attack people, that they had fallen into a pattern of actions which were inevitably leading to this result," Newton said.

Verdict represents 'some closure'

Whipple's mother described herself as "very happy" with the verdict.

"I feel that justice was done here," said Penny Whipple Kelly. The owners never took any responsibility for the attack, she said. "They had tried all along to blame my daughter and anybody else they possibly could instead of looking at themselves," she said.

Sharon Smith, Whipple's domestic partner, wept and was hugged by her attorney when the verdict was read. "There's no real joy in this, but certainly some measure of justice was done for Diane today," she told reporters.

The verdict, she said, represented "some closure."

The trial was moved out of San Francisco because of heavy publicity. The case resonated with the city's large gay population because the victim had lived with her life partner, Smith, who successfully sought for life partner, Smith, who successfully sought for the right to sue as a surviving spouse. Ruiz had charged in court that the prosecution was trying to "curry favor" with that community in its pursuit of the case.

The jury reached decisions on four of the counts by Wednesday afternoon, but the verdicts were sealed until the final charge was settled Thursday.

Smith and Whipple's mother both said they were pursuing civil suits in the matter.

Prosecutor Jim Hammer said the verdict should send a message to pet owners that they must be responsible.

"For a muzzle, Diane Whipple would be alive, and they choose not to do it," he said.

At a press conference, he displayed a collegiate lacrosse ring that had belonged to Whipple and was given to him by Smith. He said he kept it in his pocket throughout the trial.

"Hopefully, Diane Whipple's death will prevent other people from dying," he said. "That will be one small part of her legacy."

There was no comment from the defense after Thursday's verdict.

#### Links referenced within this article

LOS ANGELES, California

<http://archives.cnn.com/2002/LAW/03/21/dog.mauling.trial/dateline.losangeles.jpg>

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Uncheck the box to remove the list of links referenced in the article.

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- a. Property you own, use, rent, or occupy regardless of when the Property Damage occurs or was discovered;
  - b. Personal property in your care, custody, or control; or
  - c. Property loaned to you.
8. Bodily Injury or Property Damage which directly or indirectly is the result of an Accident prior to the Policy Period stated on the Declarations, regardless of the date the Bodily Injury or Property Damage was first discovered, first manifest, or reported.
9. Any Claim for punitive or exemplary damages, fines, statutory penalties, or sanctions, whether imposed by law or otherwise, trebled or otherwise multiplied damages or any multiplied portion of a compensatory award, or the return or restitution of legal fees, costs, and expenses. Claims for or awards against any Insured for punitive or exemplary damages, fines, statutory penalties, or sanctions, whether imposed by law or otherwise, trebled or otherwise multiplied damages or any multiplied portion of a compensatory award are not covered by the Policy regardless of whether they are demanded or awarded based upon the conduct of an Insured or upon the conduct of others for whose conduct the Insured may be deemed to be vicariously liable.
10. Any Claim seeking relief other than for monetary damages including, but not limited to, claims for injunctions, temporary restraining orders, or other equitable relief or requiring any Insured to take any action other than the payment of compensatory monetary damages for Bodily Injury or Property Damage as defined herein.
11. Bodily Injury or Property Damage:
- a. Arising out of, resulting from, or caused by or contributed to by exposure to silica products of any kind, including silica dust, including any form of silica in combination with other particulate suspension(s) or dust(s) other than silica.
  - b. Any damages or any loss, cost, or suit by or on behalf of any governmental authority or any other alleged responsible party because of any request, demand, order, or statutory or regulatory requirement that any Insured or any other person or entity should be, or should be responsible for:
    - (1) Assessing the presence, absence, or amount or effects of silica, particulate suspension(s), or dust(s);
    - (2) Identifying, sampling, or testing for, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, abating, disposing of, or mitigating silica, particulate suspension(s), or dust(s); or
    - (3) Responding to silica, particulate suspension(s), or dust(s) in any way other than as described above.
  - c. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with any of the subsections above; or
  - d. Any obligation to share damages with or repay someone else who must pay damages as described in any of the subsections above.

1. As conditions precedent to coverage provided under this Policy, the Insured represents and warrants the following:
  - a. At the commencement of this Policy each Insured Animal is in sound health and free from known disabilities and vicious tendencies.
  - b. The Insured is the sole owner of each Insured Animal hereby insured. This Policy shall cease to cover an Insured Animal immediately if the Insured sells it or parts with any interest in such Insured Animal, whatsoever, whether temporarily or permanently.
2. Coverage shall be terminated at midnight, local time, immediately prior to the day in which any of the following events occur:
  - a. The Insured fails to provide proper care and attention for an Insured Animal;
  - b. The Insured Animal is removed from the continental United States of America and/or Canada; or
  - c. The Insured Animal is used for some commercial or business purpose that is not specified in the schedule identifying such animal.
3. If the Insurer becomes liable for any payment under this Policy with respect to an Insured Animal, the Insurer shall be subrogated, to the extent of such payment, to all the rights and remedies of the Insured against any party with respect to such Insured Animal and shall be entitled, at their own expense, to sue in the name of the Insured. The Insured shall give to the Insurer, at such assistance in his power as the Insurer may require to secure the rights and remedies and, at Insurer's request, shall execute all documents necessary to enable the Insurer effectively to bring suit in the name of the Insured, including the execution and delivery of the customary form of claim receipt.

## **SECTION II — WHO IS AN INSURED?**

- A. An Insured is any person and/or entity expressly designated on the Declarations as an Insured.
- B. An Insured Animal is any animal specifically identified on the Declarations or any Endorsement as an Insured Animal and for which the required premium is paid.

## **SECTION III — LIMITS OF LIABILITY**

- A. The Limits of Liability shown on the Declarations and the conditions set forth below fix the most we will pay regardless of the number of:
  1. Insured Animals; or
  2. Claims made or Suits brought; or
  3. Persons or organizations making Claims or bringing Suits.
- B. Each Accident Limit of Liability listed on the Declarations is the most we will pay for any combination of Damages and/or Claim Expenses because of all Bodily Injury and Property Damage arising out of any one Accident. Claim Expenses reduce the available Limits of Liability.
- C. This Policy is subject to any and all Sub-limits identified in this Policy, including any identified on the Declarations or on any included Endorsement.
- D. All Claim settlement costs and Claim Expenses are included within the Limits of Liability shown on the Policy Declarations and are not in addition to such Limits of Liability. The Limits of Liability apply to the total sum which the Insured, or the Insurer, become legally obligated to pay by reason of any Bodily Injury or Property

damages, wages, compensation, fee charges, interest, or expenses of doctors, nurses, investigators, attorneys, and other persons relating to any settlement, adjustment, investigation, or defense of any Claim.

E. The following items affect our Limits of Liability as outlined:

1. A single Accident, or the accumulation of more than one Accident during the Policy Period, may cause the per Accident limit and/or the annual aggregate maximum limit to be exhausted at which time the Insured will have no further benefits under the Policy;
2. Upon the exhaustion of our Limits of Liability, the Insured may request the Insurer to reinstate the original Limits of Liability for the remainder of the Policy Period for an additional coverage charge as may be calculated and offered by the Insurer on the Policy issued; although, the Insurer has no obligation to accept the Insured's request; and
3. The Insured understands and agrees that the Insurer has no obligation under the coverage provided by the Policy to notify the Insured of the possibility that the maximum coverage payable is or may be exhausted by any Accident or combination of Accidents that occur or may occur during the Policy Period. The Insured, in his, her, or its sole discretion, must determine if additional coverage should be purchased, and the Insurer has no duty to make a determination or advise the Insured concerning additional coverage.

F. Notwithstanding anything contained in this Policy to the contrary, the Insurer's financial obligation imposed by the coverage with respect to all claims, including any Claim Expenses and other related costs, incurred hereunder shall not exceed the amount specified in the Declaration for the aggregate Limit of Liability.

G. Amounts payable under paragraphs B, C, and D of this section above shall directly diminish the respective Limits of Liability as stated on the Declarations.

H. Our obligation to make any payments under this Policy shall only arise after the payment by the Insured of any SIR amount as specified on the Declarations. The SIR amount shall apply separately to each and every Claim and to each and every Insured. The Insurer shall have no duty to make any payment for the defense or settlement of any Claim, or for the satisfaction of any judgment, until the Insured has paid the SIR. The Limits of Liability of this Policy include the amount of the SIR and are not in excess thereof.

The Insured will pay 100% of the SIR on each and every Claim for Damages and/or Claim Expenses before any payment is due pursuant to the terms of this Policy. The SIR applies to each and every Claim regardless of whether a claimant presents multiple Claims. The following obligations and restrictions apply to the SIR:

1. The Insurer may assume control and defense of all Claims, Suits, and proceedings which, at its sole discretion, may involve this Policy. Such assumption of the control and defense of any Claim, Suit, or proceeding by the Insurer, including the selection and/or appointment of defense counsel by the Insurer, shall not affect the Insured's responsibility to pay the SIR.
2. A separate SIR shall be paid for each Claim. Multiple Claims arising from the same event shall be subject to multiple SIRs.
3. The Insurer, at its sole discretion and without the consent of the Insured, may agree to the payment of all or any part of the SIR in satisfaction of Claim Expenses, settlements, Damages, or judgments.
4. The Insurer, at its sole discretion, may pay the amount of the SIR from its own funds in satisfaction of Claim Expenses, Damages, settlements or judgments. In the event the Insurer chooses to make such payment, the Insured shall reimburse the Insurer within 15 days of the mailing of a demand by the Insurer.
5. The Insurer, at its sole discretion, may direct the Insured to pay all or any part of the SIR to a third party in satisfaction of Claim Expenses incurred or Damages paid or of settlement or judgment amounts. The

6. In the event the Insured fails to reimburse the Insurer for any SIR amount advanced by the Insurer and the Insurer incurs collection expenses, the Insurer shall be entitled to recover such collection expenses, including reasonable attorneys' fees and expenses, from the Insured to the extent permitted by law.
7. The Insurer has the right, but not the duty, to settle any covered Claim for which the proposed amount to be paid in Damages and Claim Expenses does not exceed the applicable Limits of Liability. Such settlements are binding on the Insured and do not require the Insured's prior consent or ratification.
  - a. Any settlement agreed to by the Insurer pursuant to its settlement right shall be subject to cancellation by the Insurer if the Insured fails to pay the SIR timely.
  - b. If any settlement agreed to by the Insurer is not concluded due to the failure of the Insured to pay the SIR for any reason, the liability of the Insurer for all Claims Expenses, Damages, and/or settlement and judgment amounts shall be limited to the amount for which the Claim could have been settled but for the Insured's failure to tender the SIR.
8. The Policy shall have available at the option of the Insurer, medical benefits payable as expenses in excess of any other collectible insurance or benefit available to any injured third party. The maximum benefit is \$1,000.00 per person, with an aggregate limit of \$5,000.00 per Policy Period.
9. This Policy shall not apply to any Claim first reported to the Insurer while the Insured is in default in the payment of any SIR due from the Insured.
10. Failure to timely pay the SIR as required shall be considered to be the same as failure to pay premium when due, and the Insurer may, at its sole discretion, cancel the Policy for such non payment subject to the same notice requirements as set forth in the Policy for cancellation for non-payment of premium. Such cancellation shall not relieve the Insured of its duty to pay any SIR, and the Insurer may offset any return premium due to the Insured against any unpaid SIR and take any other necessary steps to collect any unpaid SIR.

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## SECTION IV — CONDITIONS

### A. Notice of Accident, Potential Claim, Claim, or Suit

1. As an express condition precedent to coverage under this Policy, you must give us immediate written notice, as soon as possible and in no event later than 72 hours, of any incident, event, occurrence, loss, or Accident which might give rise to a Claim covered by this Policy. Written notice must be given to: Claims Direct Access, P.O. Box 4439, Sandy, Utah 84091-4439, U.S.A. Phone: (877) 585-2849 or (801) 304-5530; Fax: (877) 452-6909 or (801) 304-5536, and include:
  - a. How, when, and where the incident, event, occurrence, loss, or Accident took place;
  - b. The names and addresses of any injured persons and witnesses; and
  - c. The nature and location of any injury or damage arising out of the Accident.
2. You and any other involved Insured must:
  - a. Immediately or at the earliest practicable moment, and in no event later than 10 days after receipt by you, send us copies of any demands, notices, summonses, or legal papers received in connection with any Claim or Suit and act in all diligence and prudence to resolve the Claim or Suit; provided, however, that no settlement in excess of any applicable SIR will be agreed to by the Insured without the Insurers' express written consent;
  - b. Authorize us to obtain records and other information;

trial. Additionally, in the course of investigation or defense, the Insurer may require written and/or sworn statements concerning the Claim; and

- d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the Insured, or which provides similar benefits to the Insured, because of injury or damage to which this Policy may also apply.
3. No Insured will, except at his own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our prior consent in excess of any applicable SIR without prior written consent of the Insurer.

## B. Legal Action Against Us

No person or organization has a right under this Policy to:

1. Join the Insurer as a party or otherwise bring them into a Suit asking for Damages from an Insured; or
2. Sue the Insurer under this Policy unless all of the terms of the Policy have been fully complied with by the Insured.

A person or organization may sue the Insurer to recover on an Agreed Settlement or a final judgment obtained after an actual trial against an Insured, but the Insurer will not be liable for Damages that are not payable under the terms of this Policy or that are in excess of the applicable Limits of Liability available to an Insured.

## C. Other Insurance

1. If other valid and collectible insurance, whether primary, excess, or contingent or on any other basis, including any form of self-insurance or self-insured retention, is available to an Insured for a loss covered under this Policy, then:
  - a. This Coverage is excess over the other insurance, including any form of self-insurance or self-insured retention; and
  - b. We will have no duty to defend any Claim or Suit that any other insurer has a duty to defend. If no other insurer or issuer of a form of self-insurance or self-insured retention defends, we may undertake to do so, but we will then be entitled to enforce the Insured's rights against those other insurers, self-insurers, or self-insured entity for defense costs, contribution, or indemnity.
2. When both this Policy and other insurance, whether primary, excess, or contingent or on any other basis, including any form of self-insurance or self-insured retention, apply to the loss on the same basis, we will not be liable under this Policy for a greater proportion of the loss than that stated in the applicable contribution provision below:
  - a. If all such other insurance provides for contribution by equal shares, we shall not be liable for a greater proportion of such loss than that which would be payable if each Insurer or self-insured entity contributes an equal share until the share of each Insurer or self-insured entity equals the lowest applicable Limits of Liability under any one policy or the full amount of the loss is paid. With respect to any amount of the loss not so paid, each remaining Insurer or self-insured entity will then contribute an equal share of the remaining amount of the loss until each such Insurer has paid its limit in full or the full amount of the loss is paid.
  - b. If all such other insurance does not provide for contribution by equal shares, the Insurer shall not be liable for a greater proportion of such loss than the applicable Limits of Liability under this Policy bears to the total applicable Limits of Liability of all other valid and collectible insurance applicable to such loss.

all of the policies and coverage contracts shall not exceed the highest applicable Limits of Liability or Sublimit under any one policy or coverage contract. This condition does not apply to any policy or coverage contract issued by us, or an affiliated company, specifically to apply as excess insurance over this Policy.

#### D. Premium

1. We will compute the premium for this Policy in accordance with our rules and rates at the time coverage is issued or renewed on behalf of the Insured.
2. The premiums shown on this Policy as the advance premiums are minimum-earned and deposit premiums only. At the close of each audit period, we will compute the earned premium for the Policy Period shown on the Declarations. Audit premiums are due and payable on notice to the Insured. If the sum of the advance and audit premiums paid for the Policy Period is greater than the earned premium charge, any prepaid premium charges become the fully earned premiums for the Policy Period.
3. The Insured must keep records of the information we need for coverage charge computation and send us copies at such times as we may request them.
4. In the event of any Claim, the minimum, fully-earned premium for the Policy will be 100% of the total premium stated on the Declarations, and such minimum, fully-earned premium will replace any other minimum-earned premiums charged and will not be subject to short-rate or pro-rata adjustment.

#### E. Insured's Representation

By accepting this Policy, you agree that

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1. The statements on the Declarations, attached Application, and any supplemental applications for insurance are accurate and complete representations made by you to us;
2. We have issued this Policy in reliance upon the submitted Application and any supplemental information provided by you; and
3. You are subject to all the Policy provisions.

#### F. Transfer of Rights of Recovery Against Others To Us

If an Insured has rights to recover all or a part of any payment for Damages or Claim Expenses we have made under this Policy from any person or organization, those rights are hereby transferred to the Insurer. The Insured must do nothing after the loss to impair these rights. At our request, the Insured will bring Suit or transfer those rights to us and will do all things we request to assist us to enforce those rights and collect payments made under the Policy.

#### G. Non-Assignable

The interest of the Insured under this Policy cannot be assigned without the prior written consent of the Insurer.

#### H. Cancellation and Non-Renewal

1. The Insured shown on the Declarations may cancel this Policy by mailing a request to cancel to the Insurer. No prior notice to the Policy's regular coverage ending date is required.

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium or upon your failure to pay any SIR premium or any other cost or fee required to be paid under the terms of this Policy; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. The Insurer will mail or deliver any notice of cancellation or any other notice to be delivered under the Policy to the Insured's mailing address shown on the Declarations or on any written Endorsement changing such address.
  4. Notice of cancellation will state the effective date of cancellation and the Policy Period will end on that date.
  5. If this Policy is cancelled by the Insured or Insurer, the premium for the period from the date of cancellation to the expiration date will be refunded at the greater of 40% of the total Policy premium and the short-rate, all of which will be deemed the minimum, fully-earned premium for the cancelled Policy. The total premium will be deemed the minimum, fully-earned premium in the event a Claim is made at anytime on the Policy prior to cancellation. The cancellation will be effective even if we have not made or offered a refund.
  6. If notice is mailed, a prepaid proof of mailing is sufficient proof of notice to the Insured. Notice deposited in the mail in the manner described above shall be effective when so deposited.
  7. If the Insurer decides not to renew this Policy, the Insurer is not required to send any notice of such non-renewal.
  8. At no time will cancellation of this Policy for any reason require the Insurer to refund an amount of premium over or above the minimum, fully-earned premium set out in this Policy.

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#### I. Changes

This Policy, including any Endorsements, contains all of the agreements between the Insured and the Insurer concerning the insurance provided by the Policy. The coverage terms can be amended or waived only by Endorsement issued by us and made a part of the Policy. Endorsements adding additional Insureds, coverage, or otherwise materially changing the Policy will require additional premium to be collected from the Insured before the Endorsement will become effective. Additional premium associated with any Endorsement will be calculated by the Insurer based upon its then current rates; although, no specific rate is guaranteed to the Insured. Notice to any agent, broker, or service provider, or knowledge possessed by any agent, broker, service provider, or by any other person, shall not effect, waive, or change any part of the coverage provided the Insured under the Policy, or limit the Insurer from asserting any right under the terms of the Policy.

#### J. Examinations, Inspections, and Surveys

The Insurer has the right, but is not obligated to:

1. Examine and audit your books and records as they relate to this Policy at anytime during the Policy period and up to three years thereafter;
2. Make inspections and surveys of the Insured and its Insured Animals at anytime;
3. Prepare reports on the results of the inspections and surveys, and provide copies of said reports to the Insured; and
4. Recommend and/or require acts to be completed as a condition precedent to continued coverage under the Policy.

The initial premium for this Policy represents a minimum estimated premium based upon the exposures you told us you would have when you requested coverage. We expressly retain the right to conduct a premium audit of your records at anytime to determine if the exposures are ultimately greater than you told us. This premium audit may take the form of a request of you to provide proof of exposures by completing a self-audit form and supplying any type of supporting business records (such as proving gross receipts) or an audit conducted by our agent by physically inspecting your books and records. In the event you fail to comply with any premium audit request, including failing to provide any requested information, you authorize us to assume additional exposures and charge and collect from you the greater of an additional premium equal to 25% of the original premium and the actual amount due based upon any premium audit findings. You also expressly agree to pay any costs associated with our efforts to collect any additional premium due from you. Under no circumstance will the minimum estimated premium be reduced as the result of any premium audit—the original premium represents a minimum premium for the Policy.

L. False or Fraudulent Claim

If any Insured shall make any Claim under this Policy knowing such Claim to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

### SECTION V — DEFINITIONS

A. "Accident" means an incident, event, or circumstance which is unexpected and unintended from the standpoint of any Insured.

B. "Agreed Settlement" means a settlement and/or release of liability signed and/or authorized in writing by the Insurer.

C. "Application" means the application for insurance coverage form, and any information provided therewith, completed by or for or on behalf of the Insured requesting insurance coverage from the Insurer.

D. "Bodily Injury" means physical injury to a person's body, including death, but shall exclude:

1. Sickness or disease sustained by any person or death resulting therefrom; and
2. Mental or emotional distress, mental anguish, humiliation, embarrassment, mental anxiety, or other emotional, psychological or mental injury, or any physical manifestation thereof.

E. "Claim(s)" means any demand for Damages, including a written demand, a civil action, Suit, or institution of arbitration proceeding.

F. "Claim Expenses" mean:

1. All fees, costs, and expenses charged by any lawyer or other service provider designated by the Insurer to represent the Insured; and
2. All other fees, costs, and expenses, including the Insurer's own internal fees, costs, and expenses, or those of an affiliate, resulting from the investigation, adjustment, defense, and appeal of a Claim, as authorized by the Company.

The determination of the Insurer as to the reasonableness of Claim Expenses shall be conclusive on the Insured. All Claim Expenses reduce the available Policy limits.

G. "Damages" means a compensatory sum, monetary judgment, award, or settlement an Insured is or may reasonably become legally obligated to pay as the result of an Accident, but does not include fines or statutory penalties, sanctions, whether imposed by law or otherwise, punitive, exemplary, treble damages, or

- H. "Declarations" means the summary of coverage provided in conjunction with this Policy setting forth essential terms that are expressly deemed a part of this Policy.
- I. "Endorsement" means any additional coverage or limitation of coverage contained in any attachment or addendum to this Policy. Any Endorsement is an indispensable and indivisible part of this Policy.
- J. "Insured Animal" is any animal specifically identified on the Declarations or any Endorsement as an Insured Animal and for which the required premium is paid
- K. "Limit(s) of Liability" means the maximum amount the Insurer will be obligated to pay for an otherwise covered Claim, including payment for Claim Expenses, Damages, or any other sums due under this Policy, the amount of which is set forth on the Declarations.
- L. "Policy" means the Policy issued by the Insurer to the Insured including all Endorsements thereto.
- M. "Policy Period" means the period of time beginning on the "Effective Date," as stated on the Declarations, and ending on the earlier of the initial "Expiration Date," as stated on the Declarations, and any effective cancellation date pursuant to the terms of the Policy regardless of any renewal. Any renewal starts a new Policy Period for the renewal term from the "Effective Date" of such renewal and ending on the earlier of any effective cancellation date of the renewal pursuant to the terms of the renewed Policy and the "Expiration Date" set forth on the renewal documents.
- N. "Property Damage" means:
1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  2. Loss of use of tangible property that is not physically damaged. All such loss shall be deemed to occur at the time of the Accident that caused it.
- O. "Retroactive Date" means any date expressly identified on the Declarations as the Retroactive Date. An expressly identified Retroactive Date shall be considered the Effective Date for determining the Policy Period. If no Retroactive Date is expressly identified on the Declarations, no coverage is provided for any period of time before the Effective Date.
- P. "Self-Insured Retention" or "SIR" means the amount set forth on the Declarations that the Insured will pay for each and every Claim for any combination of Damages and/or Claim Expenses otherwise covered under this Policy. The Insured will pay 100% of the Self-Insured Retention before any payment is due pursuant to the terms of this Policy.
- Q. "Sub-limit" means a limited portion of the aggregate Limit of Liability under the Policy, identified for a specific Accident, person, or type or nature of loss covered under this Policy. Sub-limits effective under the Policy are identified on the Declarations or in Endorsements attached to the Policy. All Sub-limits are expressly subject to and deplete any other applicable Sub-limit(s) and the aggregate Limit of Liability. Sub-limits are within, and not in addition to, the aggregate Limit of Liability. Both Sub-limits and any aggregate Limit of Liability are reduced by Claims Expenses. Specific Sub-limits are further defined as follows:
1. Any "Per Person" Sub-limit limits the portion of the aggregate Limit of Liability the Insurer may be obligated to pay as the result of Bodily Injury and/or Property Damage sustained by any person involved in an otherwise covered Accident to such person, aggregated with all Damages claimed by other person(s) through, or as a result of, the Bodily Injury and/or Property Damage sustained by the person involved in the Accident, including but not limited to Claims for loss of consortium or other Damages by immediate family members, relatives, or third parties.

an Accident. Any Per Accident Sub Limits are Expressly Subject to any Applicable Per Person Sub Limits.

R. "Suit" means any proceeding seeking recovery for Damages for Bodily Injury or Property Damage, including:

1. Any civil action filed in a court of law;
2. An arbitration proceeding to which you must submit or do submit with our consent; or
3. Any other alternative dispute resolution proceeding to which you submit with our consent.

## **SECTION VI— REIMBURSEMENT**

In the event we provide a defense for an Insured under the Policy and it is at any time determined that any Claim or theory of recovery for which a defense has been provided by us is not covered under the Policy, we expressly reserve the right to seek reimbursement of any Damages and/or Claim Expenses associated with any such Claim or theory of recovery from the Insured, including reimbursement on a prorated basis for that portion of any Claim or theory of recovery not covered if multiple Claims or theories of recovery have been asserted.

## **SECTION VII — CONFORMITY TO STATUTE & SEVERABILITY**

Any portions of this Agreement that are in conformity with federal, state, or local laws are to be deemed amended to conform to such laws. Further, the provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

## **SECTION VIII — MUTUAL AFFIRMATION**

Pursuant to the signature, facsimile or otherwise, appearing on the Application, quote, warranty form, Policy, or any other document provided to the Insurer to obtain insurance coverage, the parties affirm that all provisions serve to embody and articulate the entire agreement between the parties hereto, and that the parties unqualifiedly accept and agree to abide by the terms and conditions of the Policy.

## **SECTION IX — GOVERNING LAW**

This Agreement is entered into in the State of Utah and the Agreement, and any rights, remedies, or obligations provided for in this Agreement, shall be construed and enforced in accordance with the laws of Utah.

## **SECTION X — FORUM SELECTION AND CONSENT TO JURISDICTION**

The Insured represents that they have purposefully directed their actions to procure the insurance services of the Insurer contained in this Policy and has and/or will make continuous and systematic requests for the Insurer's services on their behalf, and acknowledges that the Insurer's principal place of business is Utah. The Insured acknowledges that by entering into this Agreement the Insured is deemed to be transacting business within the State of Utah, and the Insured consents to the jurisdiction of the courts of the State of Utah to hear and decide claims or disputes arising between the parties related to coverage issues and any payments due the Insurer under the Policy.