

**IN THE SUPREME COURT
STATE OF SOUTH DAKOTA**

**RICHARD PAPOUSEK AND LORAYNA
PAPOUSEK,**

Appeal # 27658

Plaintiffs/Appellants,

vs.

**DeSMET FARM MUTUAL INSURANCE
COMPANY OF SOUTH DAKOTA,**

Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

The Honorable Wally Eklund
Circuit Court Judge

Notice of Appeal filed on November 5, 2015

APPELLANTS' BRIEF

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PRELIMINARY STATEMENT

Richard and Lorayna Papousek seek reversal of the circuit court's grant of summary judgment in favor of DeSmet Farm Mutual Insurance. In this Brief, Papouseks will demonstrate that the circuit court overlooked basic principles of policy interpretation; failed to hold DeSmet to its burden of proving the applicability of a policy exclusion; engaged not in any discernable legal analysis, but in prophesying and speculation; and ignored the only expert testimony in the record. Application of the proper legal standards warrants reversal of the circuit court and entry of summary judgment in Papouseks' favor.

Plaintiffs/Appellants Richard and Lorayna Papousek are referenced as "Papousek." Defendant/ Appellee DeSmet Farm Mutual Insurance is referenced as "DeSmet." Papouseks' Appendix is identified as "App." followed by the appropriate page number. References to the Settled Record are cited as "SR" followed by the appropriate page number.

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JURISDICTIONAL STATEMENT

On October 2, 2015, the circuit court, the Honorable Wally Eklund, issued a Memorandum Decision granting DeSmet's Motion for Summary Judgment and denying Papousek's Motion for Summary Judgment. SR at 255-260. Notice of Entry was served on October 6, 2015. SR at 261-262.

Papousek filed a Notice of Appeal from these rulings on November 5, 2015. SR at 290. This Court has jurisdiction pursuant to SDCL § 15-26A-3(1).

STATEMENT OF LEGAL ISSUES

I. WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DESMET?

The circuit court granted DeSmet's Motion and denied Papouseks', finding that the Papouseks' loss of 93 yearling heifers was not covered by the policy of insurance.

Most Relevant Authority:

Zoo Properties, LLP v. Midwest Fam. Mut. Ins. Co., 2011 SD 11, ¶15, 797 N.W.2d 779, 780.

Auto-Owners Ins. Co. v. Hansen Housing, Inc., 2000 SD 13, ¶122, 604 N.W.2d 504, 511.

Orr v. National Fire Ins. Co. of Hartford, Conn., 210 N.W. 744, 746 (S.D. 1926).

STATEMENT OF THE CASE

This is an appeal from the Seventh Judicial Circuit, Pennington County, Judge Wally Eklund.

In July of 2014, Richard and Lorayna Papousek instituted this declaratory judgment action, seeking a determination of whether the cattle loss they sustained in October 2013 was covered by the policy of insurance issued to them by DeSmet. SR at 3-6. In September of 2015, the parties filed cross motions for summary judgment. The trial court issued a letter decision granting DeSmet's motion and denying Papouseks' motion. Papouseks appeal. *See* SR at 255-260.

STATEMENT OF THE FACTS

A. The Papouseks' Loss.

The Papouseks own and operate a crop and livestock ranch in Quinn, South Dakota, where they raise Black Angus cattle. SR at 3, 108. In early October 2013 (during Winter Storm Atlas), the Papouseks lost 290 cattle, including 93 head of yearling heifers. SR at 9, 109, 110.

Dr. James McConaghy, DVM performed necropsies (i.e., animal autopsies) on a sampling of the yearlings. App. 82. Dr. McConaghy's

examination revealed that their trachea and lungs were filled with fluid, causing them to suffocate, drown, and die:

It appeared that they -- well, when they have too much water in there, they can't exchange oxygen to their bloodstream. And these actually had so much foam in their trachea and all their little airways that they couldn't even pass air in. They were plugged up. The cause of that -- or that results in drowning and death.

App. 82-83.

Although the animals were not submerged in water, the necropsy findings were the same as would be expected in examining an animal who had drowned while submerged in water: "Oftentimes there will be more physical water and it's a faster death, obviously, with falling into a pool, but the extent of the necropsy is the same. They're full of fluid." App. 83.

B. The DeSmet Policy.

In October of 2013, the Papouseks had in force a Farmowners-Ranchowners policy of insurance ("the policy") issued by the Defendant, DeSmet Insurance Co. App. 15-18. The policy included Coverage E, Blanket Farm Personal Property, as shown in the Policy Declarations Page 2, with applicable coverage limits, as follows: \$600,000, Yearlings, 500@ \$1,200. App. 21. It is undisputed that the cattle at issue in this case were insured under the policy.

The yearlings were insured against loss by drowning under

Paragraph 12 of the Farm Perils Section:

12. Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.

When this policy covers livestock, it shall include loss of said livestock by . . . drowning[.]

App. 57. The word “drowning” is not defined in the policy.

Paragraph 2 of the Farm Perils Section excluded loss by inclement weather, smothering, suffocation and asphyxiation:

2. Windstorm or Hail. This does not cover loss:

a. caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether winddriven or not;

...

c. to livestock caused by or resulting from:

...

2) smothering, suffocation or asphyxiation[.]

App. 56.

C. Standard Dictionaries Differ as to whether “Drowning” Requires Submersion.

In the proceedings below, DeSmet contended that “drowning” requires submersion. In support of its position, DeSmet pointed to several standard dictionary definitions, including Merriam-Webster’s Online Dictionary, Webster’s Unabridged Dictionary (2nd edition), the Oxford English Dictionary (7th ed.) and the American Heritage

Dictionary (4th ed.). SR at 226-227. Each of those authorities, except for the American Heritage definition, includes a definition contemplating full submersion in water or other liquid. *Id.*

Papouseks disagreed, arguing that several standard (and medical) dictionaries support the contention that “drowning” may occur without submersion. SR at 96-98. For example, the American Heritage Dictionary Online contains several definitions of “drowning,” including “to die by suffocating in water or another liquid.” SR at 188. The Free Dictionary (online) contains a definition that can reasonably be read to encompass drowning when an internal organ is filled with fluid: “to drench thoroughly or cover with or as if with a liquid.” SR at 198.

D. Standard Dictionaries Agree that Suffocation is a Necessary Element of “Drowning.”

While the authorities differ as to submersion, all appear to agree that “suffocation” is a necessary component of drowning. The authorities cited by DeSmet contemplate “suffocation” as a component of drowning. SR at 226-227. The following standard dictionaries follow suit (emphases added):

- WEBSTER’S NEW WORLD DICTIONARY 445 (College ed. 1962): to *die by suffocation* in water or other liquid; to

kill by suffocation in water or other liquid; to cover with water; flood; inundate; soak.

- WEBSTER'S NEW COLLEGIATE DICTIONARY 350 (1977): to become drowned; to *suffocate* by submersion esp. in water; to submerge esp. by a rise in the water level; to wet thoroughly.
- WEBSTER'S NEW COLLEGIATE DICTIONARY 347 (150th Anniv. ed. 1981): to *suffocate* by submersion esp. in water; to submerge esp. by a rise in the water level; to wet thoroughly.
- WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1987): to become drowned; to *suffocate* by submersion esp. in water; to submerge esp. by a rise in the water level; to soak, drench, or cover with a liquid.
- WEBSTER'S NEW WORLD DICTIONARY 417 (3rd College ed. 1991): to *die by suffocation* in water or other liquid; to kill by *suffocation* in water or other liquid.
- WEBSTER'S II NEW COLLEGE DICTIONARY 347 (1995): To kill by submerging and *suffocating* in a liquid; to drench completely or cover with or as if with a liquid.
- MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 355 (10th ed. 1998): to *suffocate* by submersion esp. in water; to submerge esp. by a rise in the water level; to soak, drench, or cover with a liquid.
- WEBSTER'S ENCYCLOPEDIC DICTIONARY 286 (Deluxe ed. 1993): to die of *suffocation* by immersion in a liquid; to kill by *suffocation* in a liquid; to submerge or flood.

This makes sense: it is not the presence of water *outside* one's body that is the hallmark of drowning, but the presence of water *inside* one's body that causes death. And although the most common

event associated with drowning (swimming) involves submersion, a reasonable person recognizes that it is the inability to breathe – the suffocation and the fluid in the trachea and/or lungs – and not the presence of external liquid that causes a drowning death.¹

ARGUMENT

THE CIRCUIT COURT ERRED IN DENYING PAPOUSEKS’ MOTION FOR SUMMARY JUDGMENT AND GRANTING DESMET’S MOTION.

Standard of Review: This Court reviews the denial of a motion for summary judgment under the *de novo* standard of review. *North Star Mut. Ins. Co. v. Korzan*, 2015 SD 97, ¶12, --- N.W.2d ---.

Insurance policy interpretation is a question of law, also reviewable *de novo*. *Auto-Owners Ins. Co. v. Hansen Housing, Inc.*, 2000 SD 13, ¶22, 604 N.W.2d 504, 511. Under this standard, the Court gives “no deference to the circuit court’s conclusions of law.” *In re Guardianship of S.M.N.*, 2010 SD 31, ¶10, 781 N.W.2d 213, 218.

This Court has “developed special rules of construction that apply when interpreting an insurance policy.” *Zoo Properties, LLP v. Midwest Fam. Mut. Ins. Co.*, 2011 SD 11, ¶5, 797 N.W.2d 779, 780. If a policy is ambiguous, it will be interpreted in the manner most

¹ This is further apparent upon consideration of such phenomena as “dry drowning,” secondary drowning, or waterboarding.

favorable to the insured. *Opperman v. Heritage Mut. Ins. Co.*, 1997 SD 85, ¶4, 566 N.W.2d 487, 489. *See also Hansen Housing, Inc.*, ¶22, 604 N.W.2d at 511.

Whether an insurance contract term is ambiguous is a question of law. *Opperman*, at ¶3, 566 N.W.2d 487, 489. If the policy terms are “fairly susceptible to more than one interpretation,” they will be construed liberally “in favor of the insured and strictly against the insurer.” *Zoo Properties*, at ¶2, 797 N.W.2d at 780. *See also North Star Mut. Ins. Co. v. Peterson*, 2008 SD 36, ¶¶9-10, 749 N.W.2d 528, 531. If there is a “genuine uncertainty as to which of two or more meanings is correct, the policy is ambiguous.” *Zoo Properties*, at ¶2, 797 N.W.2d at 780.

When the terms of an insurance policy are unambiguous, they “cannot be enlarged or diminished by judicial construction.” *Ass Kickin Ranch, LLC v. North Star Mut. Ins. Co.*, 2012 SD 73, ¶10, 822 N.W.2d 724, 727. Insurance policies will not be construed in a manner that results in an absurdity. *Id.*

Finally, “[w]hen an insurer invokes a contract exclusion to disallow coverage, the insurer has the burden of proving that the exclusion applies.” *Hansen Housing*, ¶22, 604 N.W.2d at 511. If two

policy provisions “are inconsistent and both were prepared by the insurer, the one which would defeat the insurance will be rejected” and the “one which affords the most protection to the insured will control and be given effect.” COUCH ON INSURANCE 2d §21:9.

A. The Circuit Court Failed to Analyze the Ambiguity Regarding Submersion.

The policy expressly covers “loss of . . . livestock by . . . drowning.” App. 57. The term “drowning” is not defined in the policy. App. 3. No South Dakota case law or statute provides a definition or interpretation of the word “drown” or “drowning,” in this or any other context. If the word “drowning” is fairly susceptible to two constructions, it is ambiguous and must be construed in favor of the Papouseks. *Zoo Properties*, at ¶5, 797 N.W.2d at 780.

The circuit court failed to conduct any legal analysis to determine whether an ambiguity exists. *See* App. 1-5. The court did not independently examine any dictionary definitions; did not analyze whether the term was fairly susceptible to multiple definitions; and did not identify the definition it was applying to this policy provision. *Id.* Instead, the court recited a definition adopted by a Texas appellate court in a distinguishable case. *See* App. 3.

In *De La Cruz v. Combined Am. Ins. Co.*, 527 S.W.2d 820 (Tex. Civ. App. 1975), the plaintiff's infant daughter suffocated when "dirt thrown by children got in her nose and mouth." *De La Cruz*, 527 S.W.2d at 821. The father sought benefits under an accidental death policy, which provided coverage for drowning but did not mention suffocation. The father argued that drowning should be defined pursuant to a medical dictionary: "Suffocation and death resulting from filling of the lungs with water *or other substances* or fluid so that gas exchange becomes impossible." *Id.* (emphasis added). The court rejected the proposed definition of drowning because there was "no evidence that Yolanda's lungs were filled with water, fluid or other substances." *Id.* The court went on to note that drowning is generally regarded as involving immersion in water or other liquid, while suffocation involves covering the mouth and nose, thereby preventing breathing. *Id.*

De La Cruz's holding and dicta are inapposite. That court was not faced with the question of an ambiguity, nor did it address competing standard dictionary definitions of "drowning." Here, unlike *De La Cruz*, every standard dictionary definition cited by the parties includes reference to suffocation by liquid, and there is

uncontroverted expert testimony that the Papouseks' yearlings drowned via suffocation in liquid. The circuit court disregarded these important distinctions.

The circuit court further erred by surmising that "the general public would believe that drowning occurs when there is a deprivation of life by immersion in water or other liquid," and noted it was "not convinced that the general public would associate what happened to Plaintiffs' cattle to have occurred from drowning." App. 3-4. Not only is this speculative comment without any evidentiary basis, but it also contradicts common knowledge of drowning that occurs without submersion in water, including the phenomenon of dry drowning or secondary drowning, as well as waterboarding.

The court's failure to employ any meaningful legal analysis – including ignoring the "special rules of construction" that apply to insurance policies – was erroneous. Examination of the standard dictionary definitions reveals that the word "drowning" is fairly susceptible to more than one interpretation as it concerns submersion. On the other hand, it is unambiguous as to the element of suffocation. As addressed below, this compels a finding of coverage.

B. The Circuit Court Ignored the Only Record Expert Testimony as to Cause of Death.

“Expert testimony is required when the subject matter at issue does not fall within the common experience and capability of a lay person to judge.” *Caldwell v. John Morrell & Co.*, 489 N.W.2d 353, 362 (S.D. 1992). *See also Buckley v. Fredericks*, 291 N.W.2d 770, 771 (S.D. 1980) (“The test remains whether it is necessary to rely on knowledge and application of principles of science beyond the ken of the average juror.”); *Shearn v. Anderson*, 48 N.W.2d 821 (S.D. 1951) (expert testimony is “indispensable in determining questions which are unfamiliar to ordinary witnesses”). Cause of death is based on scientific, medical knowledge and therefore beyond the ken of an average juror. SDCL § 19-19-701.

The only evidence regarding the cattle’s cause of death is Dr. McConaghy’s opinion.² But the circuit court opted to rely upon the “ordinary public” for purposes of determining the cause of death of the Papouseks’ cattle:

² In the proceedings below, DeSmet challenged Dr. McConaghy’s opinion by pointing to what “numerous other veterinarians” have said in various news reports. SR 222. None of those veterinarians performed necropsies of any of the Papouseks’ cattle. Their veterinarians’ statements to the media are hearsay within hearsay. SDCL § 19-19-801(c). They are irrelevant, misleading, and speculative, as they speak to the possible cause of death of other cattle. SDCL §§ 19-19-401, 402, 403. Additionally, they touch upon a matter – cause of death – that requires an expert opinion. SDCL §§ 19-19-702, 703.

[I]t is predicated [sic] that the ordinary public would believe that Plaintiffs' cattle either died from the effects of (1) "frost, cold-weather, ice, snow or sleet, all whether wind-drive or not . . . blizzards or snowstorms" or (2) "smothering, suffocation or asphyxiation."

App. 3-4. This is legally deficient in many respects. First, it improperly imprints the "ordinary meaning" standard upon the element of medical causation, which is beyond the scope of lay knowledge. Second, it conflates the "plain and ordinary meaning" rule of construction with the burden of proof on a policy exclusion. Third, it is pure speculation.

Dr. McConaghy found the cattle "inhaled such large quantities of rain and then snow" that they suffered "anoxia (lack of oxygen) and eventually cardiac arrest and death." App. 79. According to Dr. McConaghy, this was death by suffocation in water (liquid). App. 83. The circuit court erred by wholly ignoring this evidence in favor of a fictional, "ordinary public" causation standard.

The cause of death was suffocation by water or other fluid, which constitutes "drowning." Section A, *supra*.

C. The Circuit Court Failed to Hold DeSmet to its Burden of Proving an Exclusion and Ignored Applicable Rules of Construction Regarding Conflicting Provisions.

The circuit court found that the “ordinary public” would believe the cattle died as a result of one of the excluded causes. App. 3-4. The court also “predicted” that the Papouseks “would have paid higher premiums” for coverage for “storm induced ‘drowning’ while standing,” and that neither party “truly anticipated any risk associated with non-submerged cattle ‘drowning’ as a result of breathing in rain or snow.” App. 5. These findings have no basis in the evidence and are inconsistent with this Court’s clear direction regarding the application of policy exclusions.

DeSmet has the burden of proving the application of an exclusion. *Hansen Housing, Inc.*, ¶22, 604 N.W.2d at 511. Further, if two clauses “are inconsistent and both were prepared by the insurer, the one which would defeat the insurance will be rejected” and the “one which affords the most protection to the insured will control and be given effect.” COUCH ON INSURANCE 2d §21:9. Exclusions must be strictly construed against the insurer when they are “of uncertain import or reasonably susceptible of a double construction, or negate

coverage provided elsewhere in the policy.” COUCH ON INSURANCE 3d §22:31.

Exclusion 2(a) excludes coverage for death caused by frost, cold weather, ice, snow or sleet. App. 56. DeSmet produced no evidence – and certainly no expert testimony – establishing that the cattle’s death was caused by frost, cold weather, ice, snow or sleet. As such, it did not meet its burden of establishing the applicability of this exclusion.

Exclusion 2(c)(2) excludes coverage for death caused by suffocation. App. 56. As addressed above, “drowning” includes an element of suffocation. Therefore, Exclusion 2(c)(2) is inconsistent with the coverage for drowning and cannot override the coverage for loss by drowning. *Orr v. National Fire Ins. Co. of Hartford, Conn.*, 210 N.W. 744, 746 (S.D. 1926) (“Both of these provisions cannot stand, and, since the former is against the interests of the insured and the latter favorable to him, the latter must prevail.”).

Finally, Exclusion 2(c)(4) excludes coverage for loss by “freezing in blizzards or snowstorms.” App. 56. Again, DeSmet produced no evidence to establish that the Papouseks’ cattle died as a

result of “freezing,” and this exclusion can not serve as a basis to deny coverage.

CONCLUSION

Upon consideration of the various standard dictionary definitions, this Court is compelled to find an ambiguity as to whether “drowning” requires submersion. This ambiguity should be construed in favor of Papouseks and against DeSmet, resulting in a finding that “drowning,” as used in this policy, does not require submersion in water (or other liquid).

The Court should also find that “drowning” unambiguously contemplates suffocation by water or other liquid. This is consistent with every standard dictionary definition cited by the parties.

The cause of death, as established by the only expert testimony in this record, was suffocation by water/liquid filling the cattle’s lungs and trachea. This falls within the definition of “drowning,” rendering the loss covered by the policy.

The policy exclusion for suffocation does not apply because conflicting provisions must be construed in favor of coverage. The other exclusions do not apply because DeSmet did not meet its

burden of proving that the cattle's death falls within any of those exclusions.

Based on the foregoing, the circuit court should be reversed and this Court should direct the entry of summary judgment in favor of Papouseks.

Respectfully submitted this 25th day of January, 2016.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), Appellants' counsel states that the foregoing brief is typed in proportionally spaced typeface in Georgia 14 point. The word processor used to prepare this brief indicated that there are a total of 3,188 words in the body of the brief.

/s/ Sarah Baron Houy
Sarah E. Baron Houy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that January 25, 2016, the foregoing *Appellants' Brief* was filed electronically with the South Dakota Supreme Court and that the original and two copies of the same were filed by mailing the same to:

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APPENDIX

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RE: CIV14-959; Richard Papousek and Lorayna Papousek v. DeSmet Farm Mutual Insurance Company of South Dakota; Respective Motions for Summary Judgment

Dear Counsel:

Both parties have motioned this Court for an Order Granting Summary Judgment in their favor on the issue of the word “drowning.” The Court having considered the record, briefs, and the arguments of counsel, and being fully advised as to all matters pertinent hereto, for the reasons set forth below, hereby **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiffs’ Motion for Summary Judgment.

Summary Judgment

The standard for summary judgment is well settled. The moving party must demonstrate the absence of any genuine issue of material fact and show that it is entitled to a judgment on the merits as a matter of law. *Brandt v.*

County of Pennington, 2013 S.D. 22, ¶7, 827 N.W.2d 871, 874. “The evidence must be viewed most favorably to the nonmoving party and reasonable doubts should be resolved against the moving party. The nonmoving party, however, must present specific facts showing that a genuine, material issue for trial exists.” *Id.* “The party resisting summary judgment is required to ‘show that [it] will be able to place sufficient evidence in the record at trial to support findings on all the elements on which they have the burden of proof.’” *Tolle v. Lev*, 2011 S.D. 65, ¶22, 804 N.W.2d 440, 446 (quoting *Lawrence County v. Miller*, 2010 S.D. 60, ¶ 14, 786 N.W.2d 360, 367). The resisting party cannot overcome a motion for summary judgment with mere general allegations and denials. *Id.*

Factual Background

The Plaintiffs own and operate a crop and livestock ranch in Quinn, South Dakota. The Plaintiffs’ livestock include Black Angus cattle. In October of 2013, the Plaintiffs had in effect a Farmowners-Ranchowners policy of insurance (“the policy”) issued by the Defendant. The policy insured against, *inter alia*, loss of livestock by drowning. The policy did not provide coverage for loss caused by inclement weather. The policy also did not cover loss “caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not.” Finally, the policy also denied coverage for the loss of livestock caused by “running into streams or ditches or against fences or other objects; smothering, suffocation or asphyxiation; fright or freezing in blizzards or snowstorms.”

On or about October 3-5, 2013, an early, record-breaking blizzard named ‘Winter Storm Atlas’ took place in western South Dakota. During that storm, the Plaintiffs’ lost 93 head of yearling due to the inhalation of snow and water, causing their lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and ultimately, death. No cattle were ever submerged in water or any other liquid.

The policy does not define the word drowning. Nonetheless, some dictionaries define drowning as requiring full body submersion in water or other liquid. Others do not define drowning in this way. Typically it is technical or medical dictionaries that define drowning in the later manner.

Legal Discussion

South Dakota law has never defined the word “drowning.” In fact, only a single state has ever defined the word for purposes of its case law. In *De La Cruz v. Combined American Insurance Company*, the Texas appellate court defined the term “drowning” for purposes of determining insurance coverage. 527 S.W.2d 820 (Tex. Civ. App. 1975). The court was asked to determine whether a 16-month old “drowned” when dirt filled her nose and mouth and caused her death. *Id.* The child’s father argued that according to Dorland’s Illustrated Medical Dictionary (25th Ed.) drowning can be defined as “suffocation and death resulting from filling of the lungs with water or other substances or fluid so that gas exchange becomes impossible.” *Id.* at 821 (emphasis added). Despite the fact that the child’s father located a dictionary definition which included dirt inhalation as a manner by which one could drown, the court denied coverage pursuant to the father’s claim. *Id.* The court denied coverage indicating that “unless the words used in...an insurance policy are used in a technical sense, the meaning attributed to them are the ordinary lay meanings” as used by the general public. *Id.* In this regard, the court indicated, “[t]he general public uniformly understands and used the word ‘drowning’ as meaning to deprive of life by immersion in water or other liquid.” *Id.* (citing Webster’s New International Dictionary (2nd Ed.))(emphasis added).

Admittedly, the manner by which Plaintiffs’ cattle have died is closer to drowning than that of *De La Cruz*, most notably given that fact that Plaintiffs allege that rain and snow filled the cattle’s lungs rather than a substance such as dirt. Nonetheless, this Court is not convinced that the general public would associate what happened to Plaintiffs’ cattle to have occurred from drowning. Rather, it is predicated that the ordinary public would believe that Plaintiffs’ cattle

either died from the effects of (1) “frost, cold-weather, ice, snow or sleet, all whether wind-driven or not...blizzards or snowstorms” or (2) “smothering, suffocation or asphyxiation.” Instead, it is believed that the general public would believe that drowning occurs when there is a deprivation of life by immersion in water or other liquid. Such a position would certainly be consistent with the position adopted by the Texas court in *De La Cruz*.

The above position also seems more consistent with the Supreme Court’s decisions in *Ass Kickin Ranch* and *Opperman*. For example, in *Ass Kickin Ranch*, the South Dakota Supreme Court held that an insured was not entitled to coverage for two unassembled wind turbines. 2012 S.D. 73 at ¶¶1-2. The Court found that the policy covered losses suffered for personal property on the insured’s farm. *Id.* at ¶ 1. Nonetheless, the Court found that the policy held a specific exclusion for “windmills, wind chargers, or their towers.” *Id.* at ¶4. The insured argued that since the wind turbines were unassembled, that they consisted of simply piles of parts and hence were not property subject to the policy’s exclusions. *Id.* at ¶11. Despite this argument, the Court held that under the common definition of windmill these unassembled parts were “windmills” exempt from coverage under the policy, even though in their present form these pieces consisted of only parts. *Id.* at ¶12.

In this regard, Plaintiffs’ facts share similarity. While Plaintiffs might be able to claim that in the strict medical sense of the word that their cattle might have drowned, Plaintiffs’ use of the word adheres more so to a technical fact rather than common sense and plain language. Hence, like in *Ass Kickin Ranch*, it is predicted that the South Dakota courts would deny coverage.

The present case also shares facts comparable to *Opperman v. Heritage Mutual Insurance Company*, 1997 S.D. 85, 566 N.W.2d 487. In that case, the South Dakota Supreme Court held that an insured was not entitled to coverage for fire damage to his front end loader. *Id.* The Court was asked to interpret the words “processed” and “warehoused” as the insured’s insurance policy covered “vehicles or self-propelled machines ... you manufacture, process or warehouse, but excluded vehicles “operated principally away from the described premises.” *Id.* (emphasis

added). The insured claimed that the front end loader, which was being housed on the business premises for purposes of repair, was a vehicle being “processed” or “warehoused” in the building. *Id.* at ¶3. The Supreme Court rejected this argument, indicating that “insurance contracts warrant reasonable interpretation, in the context of the risks insured, without stretching terminology.” *Id.* at ¶4. The Court found that the insured’s position would extend coverage to any vehicle the insured even temporarily stored at his business premises. *Id.* Hence, the insured would be able to unilaterally extend the risk covered under his policy without paying premiums associated for such risk. *Id.*

The present case shares facts comparable to that of *Opperman*. Like in *Opperman*, it appears that the Plaintiffs are attempting to stretch terminology and the common meaning of language so as to receive the benefit of coverage despite plain language to the contrary. More notably, it is predicted that much like in the facts of *Opperman* the Plaintiffs would have paid higher premiums had this manner of storm induced “drowning” while standing have been included under their policy’s terms of coverage. As such, it is predicted that neither set of parties truly anticipated any risk associated with non-submerged cattle “drowning” as a result of breathing in rain or snow. Thus, Plaintiffs would be receiving the benefit of coverage without bearing the corresponding premiums associated with providing for such risk. For this reason, it cannot be said that either set of parties truly expected this policy, pursuant to its plain and ordinary meaning, to cover such losses suffered by the Plaintiffs.

[Intentionally left blank]

Conclusion

For the reasons set forth above, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiffs' Motion for Summary Judgment.

Dated this 2nd day of October, 2015.

BY THE COURT,



Honorable Wally Eklund
Circuit Court Judge
Seventh Judicial Circuit

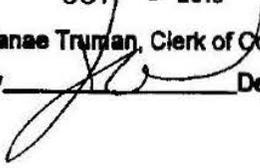
ATTEST:
RANAE TRUMAN,
CLERK OF COURTS

By: 



Pennington County, SD
FILED
IN CIRCUIT COURT

OCT - 2 2015

Ranae Truman, Clerk of Courts
By  Deputy

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF PENNINGTON)
 RICHARD PAPOUSEK and)
 LORAYNA PAPOUSEK,)
)
 Plaintiffs,)
)
 vs.)
)
 DE SMET FARM MUTUAL)
 INSURANCE COMPANY OF SOUTH)
 DAKOTA,)
)
 Defendant.)

IN CIRCUIT COURT
 SEVENTH JUDICIAL CIRCUIT
 51CIV14-000959

JUDGMENT

This Court entered its Memorandum Decision and Order granting summary judgment in favor of Defendant De Smet Farm Mutual Insurance Company of South Dakota and against the above-named Plaintiffs on October 2, 2015, which is incorporated herein. Pursuant to that Decision, it is hereby

ORDERED, ADJUDGED, and DECREED that the above-captioned action against Defendant De Smet Farm Mutual Insurance Company of South Dakota is hereby dismissed, with prejudice, and that Defendant De Smet Farm Mutual Insurance Company of South Dakota recover of the Plaintiffs its costs of defending the action in the sum of \$ _____, which are to be hereafter determined and taxed by the Clerk of Courts.

Dated this 20th day of October, 2015.

BY THE COURT:


 Honorable Wally Eklund
 Circuit Court Judge

ATTEST:
 CLERK OF COURTS

By: 
 Deputy
 (SEAL)



State of South Dakota } Seventh Judicial
 County of Pennington } Circuit Court
 I hereby certify that the foregoing instrument
 is a true and correct copy of the original as
 the same appears on record in my office this

OCT 20 2015

RANAE L. TRUMAN
 Clerk of Courts, Pennington County

Pennington County, SD
 FILED
 IN CIRCUIT COURT

OCT 20 2015

Ranae Truman, Clerk of Courts

By:  Deputy

2:33pm

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

RICHARD PAPOUSEK and)
LORAYNA PAPOUSEK,)
)
Plaintiffs,)
)
vs.)
)
DE SMET FARM MUTUAL)
INSURANCE COMPANY OF)
SOUTH DAKOTA,)
)
Defendant.)

51CIV14-000959

**DEFENDANT’S RESPONSES TO
PLAINTIFFS’ STATEMENT OF
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

1. Papouseks own and operate a crop and livestock ranch in Quinn, South Dakota. Ex. 1 (Richard Papousek Dep.) at 6:1-9; Complaint at ¶4.

RESPONSE: Admit.

2. Papouseks’ livestock includes Black Angus cattle. Ex. 1 (Richard Papousek Dep.) at 6:1-9.

RESPONSE: Admit.

3. In October of 2013, Papouseks had in force a Farmowners-Ranchowners policy of insurance (“the policy”) issued by De Smet Insurance Co., which insured against, *inter alia*, loss of livestock by drowning. Ex. 3 at De Smet-43.

RESPONSE: Admit that the livestock specifically listed under the Coverage E Blanket Farm Personal Property on Declarations Page 2, were covered for loss by drowning.

4. De Smet insured Blanket Farm Personal Property as shown in the Policy Declarations Page 2, with applicable coverage limits, as follows:

\$600,000 Yearlings 500 @ \$1,200

Ex. 3 at De Smet-7.

RESPONSE: Admit.

5. On or about October 3-5, 2013, an “early, record-breaking blizzard named ‘Winter Storm Atlas’ by The Weather Channel took place in western South Dakota.” *Answer and Counterclaim* at ¶6.

RESPONSE: Admit.

6. Papouseks lost 290 cattle in the storm, including 93 head of yearling heifers that were insured property under Coverage E of the policy. Ex. 1 (Richard Papousek Dep.) at 12:1-13,30:14-16; *Answer and Counterclaim* at ¶9.

RESPONSE: Admit.

7. The yearlings died due to inhalation of snow and water, causing their lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and, ultimately, death. Ex. 4.

RESPONSE: Admit that this was included in McConaghy’s report as the cause of death for the cattle. McConaghy testified that multifaceted stresses killed the Papouseks’ cattle, including “[i]nhalation of rainwater, cardiac arrest, maybe less hair and less, you know fat absolutely made them more susceptible to anything; and with cardiac arrest being there, too.” McConaghy Dep. 30:13-22.

8. The yearlings’ cause of death was drowning. Ex. 2 (McConaghy Dep.) at 5:21-7:3, 7:8-20, 9:24-10:2.

RESPONSE: Deny. Plaintiff Richard Papousek admitted that the cattle were not submerged in water. Papousek Dep. 17:7-9, Ex. 10. Therefore, under the plain and ordinary meaning of the word, the cattle did not “drown.” Admit that veterinarian, Jim McConaghy, opined that the cattle drowned under the medical definition of the word as defined in Stedman’s Medical Dictionary.

9. The term “drowning” is not defined in the policy. Ex. 3.

RESPONSE: Admit.

10. Some dictionary definitions of “drowning” contemplate full body submersion in water or other liquid, while others do not. Exs. 5, 6, 7 & 8.

RESPONSE: Admit that standard dictionaries, such as Merriam-Webster, define “drown” as “to suffocate by submersion especially in water” and that specialized, medical dictionaries include definitions that are not within the common understanding of the word “drown.”

Dated this 16th day of September, 2015.

BEARDSLEY, JENSEN & LEE,
Prof. L.L.C.

By: /s/ Jessica L. Larson

Jessica L. Larson
4200 Beach Drive, Suite 3
P.O. Box 9579
Rapid City, SD 57709
Telephone: (605) 721-2800
Facsimile: (605) 721-2801
Email: jl Larson@blackhillslaw.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2015, I served copies of ***Defendant's Responses to Plaintiffs' Statement of Undisputed Material Facts in Support of Motion for Summary Judgment*** upon the following persons by the following means:

| | | |
|--|-----|------------------|
| Michael M. Hickey | [] | First Class Mail |
| Sara Baron Houy | [] | Hand Delivery |
| Bangs, McCullen, Butler, Foye & Simmons, L.L.P. | [x] | Odyssey System |
| P.O. Box 2670 | [] | Electronic Mail |
| Rapid City, SD 57709-2670 | | |

By: /s/ Jessica L. Larson

Jessica L. Larson

STATE OF SOUTH DAKOTA)
)ss
PENNINGTON COUNTY)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

**RICHARD PAPOUSEK AND LORAYNA
PAPOUSEK,**

File No. 51Civ14-000959
Hon. Wally Eklund

Plaintiffs,

vs.

**DESMET FARM MUTUAL INSURANCE
COMPANY OF SOUTH DAKOTA,**

**Plaintiffs' Response to
Defendant's Statement of
Undisputed Material Facts**

Defendant.

Plaintiffs, Richard and Lorayna Papousek, through counsel and pursuant to SDCL §15-6-56, respectfully submit this *Response to Defendant's Statement of Undisputed Material Facts*.

1. Richard and Lorayna Papousek own and operate a ranch in western South Dakota, and typically own 450 mother cows and 400 head of yearling heifers. Larson Aff. Exhibit B: Papousek Dep. 5:13-:6-13.

Response: Admit.

2. The Papouseks had Blanket Farm Personal Property insurance, through De Smet, which provided the following applicable coverage limits:

\$600,000 Yearlings 500 @ \$1,200

Larson Aff. Exhibit B: Papousek Dep. 31:10-18, Ex. 11: Policy, Declarations Page 2.

Response: Admit.

3. On or around October 3-5, 2013, Papouseks lost 93 head of yearling bred heifers during Winter Storm Atlas. Complaint ¶ 10; Larson Aff. Exhibit B: Papousek Dep. 12:1-16.

Response: Admit.

4. Papousek admitted no cattle were submerged in water. Larson Aff. Exhibit B: Papousek Dep. 17:7-9, Ex. 10.

Response: Admit that the cattle's bodies were not fully submerged in water.

5. The De Smet insurance policy includes coverage for drowning:

12. Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock. When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the insured, his employees or tenants, and loss of said livestock by accidental shooting, except by the insured, his employees or tenants.

Larson Aff. Exhibit B: Papousek Dep. Ex. 11: Policy, Q-3A.

Response: Admit.

6. The De Smet insurance policy does not provide coverage for losses caused by inclement weather, as set forth in the policy:

2. Windstorm or Hail. This does not cover loss:

a. caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not;

* * *

c. to **livestock** caused by or resulting from:

- 1) running into streams or ditches or against fences or other objects;
- 2) smothering, suffocation or asphyxiation;
- 3) fright; or
- 4) freezing in blizzards or snowstorms; . . .

Larson Aff. Exhibit B: Papousek Dep. Ex. 11: Policy, Q-2A.

Response: Admit that this provision is found in the policy. Deny that it applies to exclude coverage in this case, as set forth in *Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment*.

7. The plain and ordinary meaning of the word “drown”, which is defined in Merriam-Webster’s online dictionary, is “to suffocate by submersion especially in water.” See Larson Aff. Exhibit A: <http://www.merriam-webster.com/dictionary/drown>.

Response: Deny. Standard dictionaries contain varying definitions of “drown” and “drowning,” as detailed in *Plaintiffs' Brief in Support of Motion for Summary Judgment, Exhibit 5 to the Declaration of Sarah Baron Houy* (filed on Sept. 9, 2015), and *Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment*.

8. Veterinarian, Dr. Jim McConaghy, opined the “cattle inhaled such large quantities of rain and then snow that they actually drowned” as defined in Stedman’s Medical Dictionary “as death within 24 hours after inhalation of water.” Larson Aff. Exhibit C: McConaghy Dep. Ex. 6.

Response: Admit that Dr. McConaghy opined that the cattle drowned. Deny to the extent Defendant seeks to paraphrase Dr. McConaghy’s letter or testimony.

9. McConaghy admitted that dictionaries like Saunders and Stedman’s are specialized, medical dictionaries. Larson Aff. Exhibit C: McConaghy Dep. 33:19-34:3.

Response: Admit that McConaghy agreed those are medical dictionaries.

Dated this 16th day of September, 2015.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: /s/ Sarah Baron Houy
MICHAEL M. HICKEY
SARAH BARON HOUY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
sbaronhouy@bangsmccullen.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

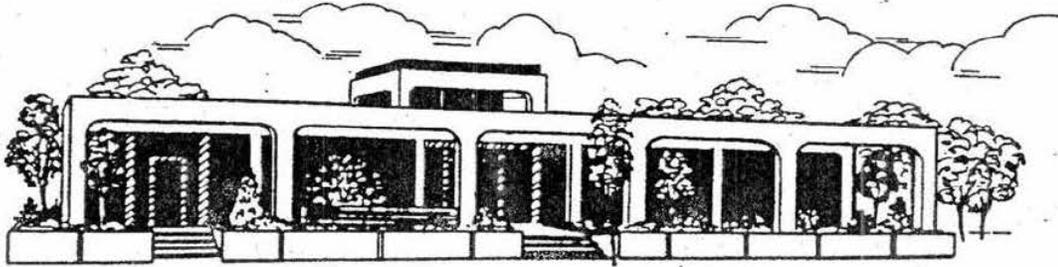
The undersigned certifies that on September 16, 2015, she caused true and correct copies of the above to be served upon each of the persons identified below as follows:

- | | | | |
|--------------------------|------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | First Class Mail | <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Hand Delivery | <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | Electronic Mail | <input checked="" type="checkbox"/> | ECF/Odyssey File & Serve |

Jessica L. Larson
BEARDSLEY JENSEN & LEE, PROF. LLC
4200 Beach Drive; PO Box 9579
Rapid City, SD 57709-9579
ATTORNEYS FOR DEFENDANT

/s/ Sarah Baron Houy
Sarah Baron Houy

IMPORTANT: THIS IS AN ASSESSABLE POLICY
THIS COMPANY IS A STATE MUTUAL INSURER ORGANIZED UNDER
THE LAWS OF THE STATE OF SOUTH DAKOTA.



De Smet Farm Mutual Insurance Company of South Dakota

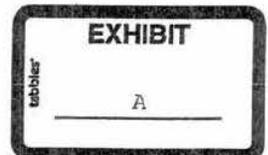
HOME OFFICE
De Smet, South Dakota

FARMOWNERS-RANCHOWNERS POLICY



SERVING SOUTH DAKOTA...FROM SOUTH DAKOTA

DMFO-100
(ED. 6-02)



DeSmet-1

THIS POLICY JACKET WITH THE GENERAL POLICY TERMS, DECLARATIONS PAGE(S),
PERILS SECTION(S), LIABILITY COVERAGE SECTION, AND ENDORSEMENT(S), IF ANY,
ISSUED TO FORM A PART THEREOF, COMPLETES THE WITHIN NUMBERED
HOMEOWNERS POLICY

De Smet Farm Mutual Insurance Company
of South Dakota



P. O. Box 9
De Smet, South Dakota 57231

Phone: 605-854-3337

I, Pat Tvinnereim, a representative of De Smet Farm Mutual Insurance Company of South Dakota, after being duly sworn do certify that to the best of my information, knowledge and belief, the enclosed Insurance Policy of Richard J or Lorayna Papousek

Farmowner-Ranchowners Policy #38146

issued by De Smet Farm Mutual Insurance Company of South Dakota on the 12th day of August, 2014 is a true and correct duplicate of the policy in force on 1st day of February 2013 for Richard J or Lorayna Papousek.

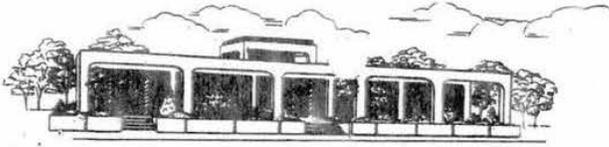
Pat Tvinnereim

Subscribed and sworn to before me this 12th of August, 2014.

Niklas J. J.

Notary Public, South Dakota

My Commission Expires: Oct 14, 2017



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

ENDORSEMENT
 (To Be Attached To Policy)

Name of Insured RICHARD J OR LORAYNA PAPOUSEK
 Address of Insured 19730 FAULSEN RD
QUINN SD 57775
 Effective date OCTOBER 14, 2013

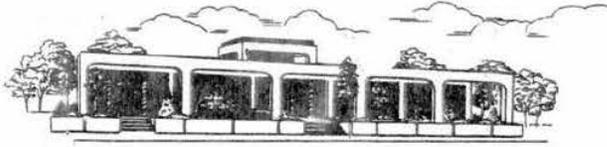
NOTICE HAS BEEN RECEIVED AND IS HEREBY ACCEPTED THAT
 THE LOCATION OF THE 16X70 MOBILE HOME SHALL NOW STAND IN
 RECORD AS BEING 12 ADAMS ST QUINN, PENNINGTON COUNTY, SD.

Date of Policy FEBRUARY 1, 2013 Expiration FEBRUARY 1, 2014

Attached to and forming part of Policy No. FO-038146 of
 De Smet Farm Mutual Insurance Company of South Dakota, issued at its
 Home Office in De Smet, South Dakota.

Dated this 8TH day of NOVEMBER, 2013.

SECRETARY *William A. Peterson*



De Smet Farm Mutual Insurance Company⁵⁴⁴
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FILE # 15-04-11

PROPERTY ADDITIONAL COVERAGE ENDORSEMENT

(To Be Attached to Policy)

DIRECT BILL

Addition to Policy No. FD- 38146 of De Smet Farm Mutual Insurance Company of South Dakota.

In consideration of the sum of SIXTY-SEVEN DOLLARS AND 87 CENTS and of the agreement of the insured to pay all amounts charged against said policy, this company does insure RICHARD J OR LORAYNA PAPDUSEK

From the 28 day of FEBRUARY, 2013 at 12:01 A.M. Standard Time to the 1 day of FEBRUARY, 2014 at 12:01 A.M. Standard Time, the expiration date of said policy, against all direct loss and damage by and from the perils insured against in said policy and any endorsements thereto, in accordance with the terms, provisions, conditions, stipulations and limitations thereof, to the property hereinafter described, but not exceeding the total amount of insurance set opposite such described property, to-wit:

DESCRIPTION OF PROPERTY

INCREASE INLAND MARINE FOR JEWELRY \$ 9,009
 TOTAL \$ 10,034

ADD:

ONE PAIR OF LADIES, STAMPED 14KT WHITE GOLD STUD EARRINGS. MOUNTED IN THE CENTER OF EACH EARRING IN A 14KT WHITE GOLD FOUR PRONG CROWN IS ONE ROUND BRILLIANT DIAMOND. THE APPROXIMATE TOTAL WEIGHT IS 2CT, WITH A CLARITY GRADE OF I1, AND A COLOR GRADE OF H-J. THERE ARE FRICTION POSTS AND BACKS. THE STUD EARRINGS HAVE A HIGH POLISH FINISH.

\$ 9,009

All while located and contained as described in said policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in said policy and any endorsements thereto, but not elsewhere.

Attached to and forming part of Policy No. FD- 38146 of De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota.

995-02

Dated this 7 day of SECRETARY

William D. Porsion 2013



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS-RANCHOWNERS POLICY DECLARATIONS PAGE 2

INSURED: RICHARD J DR LORAYNA MABUSEK

15-04-11

CONTINUATION OF LAND DESCRIPTIONS:

| DESCRIPTION OF FARM PREMISES. | | | |
|-------------------------------|-------------------|----------------------|--------|
| NO. ACRES | SETS OF BUILDINGS | SECTION AND TOWNSHIP | COUNTY |
| 160 | | SEC 4 1N 17E | PE |
| 640 | | SEC 30 1N 17E | PE |
| 160 | | SEC 31 1N 17E | PE |
| 160 | | SEC 29 1N 15E | PE |
| 320 | | SEC 31 1N 15E | PE |
| 640 | | SEC 32 1N 15E | PE |
| 615 | | SEC 5 1S 15E | PE |
| 680 | | SEC 36 1S 16E | PE |
| 80 | | SEC 10 2 18 | HK |
| 80 | | SEC 16 2 18 | HK |
| 160 | | SEC 11 2 18 | HK |
| 320 | | SEC 14 2 18 | HK |
| 160 | | SEC 15 2 18 | HK |
| 480 | | SEC 3 1 18 | HK |
| 7500 | | BLM LEASE | PE |
| 120 | | SEC 27 2 9 | PE |
| 320 | | SEC 30 2 9 | PE |
| 80 | | SEC 31 2 9 | PE |
| 200 | | SEC 32 2 9 | PE |
| 587 | | SEC 36 1N 16E | PE |
| | | 621 TED ST WALL | PE |

COVERAGE E BLANKET FARM PERSONAL PROPERTY

Blanket Exclusion(s) LIVESTOCK, GRAIN

| Limit | Description | Limit | Description |
|---------|---|---------|---|
| 16,000 | 60TH WAGON HPX | 7,500 | FEED WAGON HINKE 970 |
| 50,000 | TRACTOR VERSATILE 976 1994 | 77,000 | TRACTOR JD 7320 2004 |
| 109,000 | TRACTOR JD 7430 2008 W/JD 741 LOADER | 67,000 | TRACTOR JD 7320 2004 W/JD 741 LDR |
| 5,000 | GARDEN TRACTOR JD 725 | 8,500 | TRACTOR JD 2940 1981 2HD |
| 27,000 | GRAIN HEADER SHELBOURNE 2005 | 141,700 | COMBINE SP JD 9760 2009 |
| 6,000 | PORT AUGER FETREL 12X100' | 5,000 | STRAIGHT HEAD JD 930 30' |
| 80,000 | SWATHER SP HR 8040 '08 | 3,500 | PORT AUGER BX71 YELLOW |
| 34,000 | HAY BALER LG RD JD 568 2008 | 11,000 | HAY RAKE VERMEER 8000 '08 |
| 60,000 | SPRAYER JD 4700 1999 | 7,500 | HAY PROCESSOR VERMEER '02 |
| 65,000 | AIR SEEDER JD 1860 W/1900 CART2000 | 7,500 | FLATBED TRAILER PJ 7X26 GOOSENECK |
| 10,000 | STOCK TRAILER FEATHERLITE 7X20 '96 W/TACK ROOM | 1,500 | FLATBED 6X10 |
| 10,000 | ATV HONDA BIG RED 650 '03 | 8,500 | STOCK TRAILER 7X24 EBY '03 |
| 13,000 | HAY GRINDER HAYBUSTER 1100 | 10,000 | ATV HONDA RUBICON 650 '05 (2) @ \$5,000 EACH |
| 2,500 | FERT TANKS 2 @ \$1,250 W/ PUMP | 4,000 | LOADING CHUTE STURDELL |
| 600,000 | YEARLINGS 500 @ \$1200 | 9,000 | GRAIN CART BRENT |
| 25,000 | TOOLS & SUPPLIES | 300,000 | ALFALFA & OTHER HAY |

\$ 1,801,700. TOTAL LIMIT - COVERAGE E

COUNTERSIGNED at De Smet, South Dakota this 3 day of JANUARY, 2013.

William A. Poppen
Secretary

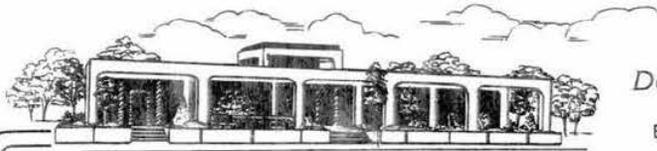
Peter M. Mack
President

DMFD-122
(Ed. 4-91)

DECLARATIONS - CONTINUED ON DECLARATIONS PAGE 3

Serving South Dakota from South Dakota

DeSmet-7



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS-RANCHOWNERS POLICY DECLARATIONS PAGE 3

INSURED: RICHARD J OR LORAYNA PAPPUSEK

15-04-11

COVERAGE F FARM BARN, BUILDINGS, STRUCTURES AND ADDITIONAL DWELLINGS

| Item | Limit | Description |
|------|------------|---|
| 2. | \$ 11,000. | MOBILE HOME 16X70 1 STY STEEL |
| 20. | \$ 12,000. | GRANARY 24X26 STEEL W/LDC 2 |
| 32. | \$ 42,800. | LIVESTOCK SHED 30X150 STEEL W/LDC 2 |
| 35. | \$ 50,600. | METAL GRAIN BIN BU. CAP. 46,000 W/TUBE AERATION |
| 36. | \$ 28,000. | METAL GRAIN BIN BU. CAP. 20,000 W/TUBE AERATION |
| 37. | \$ 26,300. | METAL GRAIN BIN BU. CAP. 5,000 (3) |
| 43. | \$ 6,100. | HOPPER BIN BEHLEN 1100 BU |
| 43.1 | \$ 6,000. | HOPPER BIN FRIESEN 25 TON |
| 44. | \$ 11,400. | MACHINE SHED (ERC) 30X36X12 COLORED STEEL W/LDC #2 |
| 45. | \$ 35,400. | POLE BARN (ERC) 34X104X14 COLORED STEEL |
| 46. | \$ 93,400. | POLE BARN (ERC) 60X99X14 42X81X14 COLORED STEEL W/LDC 2 |
| 47. | \$ 80,000. | MACHINE SHED (ERC) DELUXE 54X75X12 COLORED STEEL (W/HHIST) |
| 48. | \$ 56,100. | MACHINE SHED (ERC) 54X99X14 COLORED STEEL |
| | | \$ 459,100. TOTAL LIMIT - COVERAGE F |

COUNTERSIGNED at De Smet, South Dakota this 3 day of JANUARY, 2013.

William A. Poppen

Secretary

Peter M Mack

President

DMFH-122
(Ed. 4-91)

Serving South Dakota

from South Dakota

DeSmet-8

**– READ THIS ENTIRE POLICY CAREFULLY –
IT IS A LEGAL CONTRACT**

GENERAL POLICY TERMS

The following Table of Contents shows how the policy is organized. It will help **you** locate particular sections of the policy.

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Required state endorsements may also be part of this policy.

Refer to the Definitions for words that have special meaning. These words are shown in "**bold type**".

AGREEMENT

This policy, subject to all of its **terms**, provides property and liability insurance and other described coverages during the **policy** period. In return **you** must pay the required policy cost (premium). Each principal coverage described in this policy applies only if a **limit** is shown on the Declarations for that coverage.

DEFINITIONS

1. The words **you** and **your** mean the person or persons named on the Declarations and **your** spouse if a resident of **your** household. The words **we**, **us** and **our** mean the Company providing this insurance.

2. **Bodily Injury** means bodily harm to a person and includes sickness, disease or death. This also includes required care and loss of services.

Bodily Injury does not mean bodily harm, sickness, disease or death that arises out of:

- a. a communicable disease; or
- b. the actual, alleged or threatened sexual molestation of a person.

3. **Business** means a trade, a profession or an occupation including farming, all whether full or part time. This includes the rental of property to others. It does not include the occasional rental for residential purposes of the part of the **insured premises** normally occupied solely by **your** household.

Business includes services regularly provided by an insured for the care of others and for which an **insured** is compensated. A mutual exchange of like services is not considered compensation.

4. **Credit Card** means a card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit. (It does not include debit cards, fund transfer cards or any similar device used to deposit, withdraw or transfer funds).

5. **Domestic Employee** means a person employed by an **insured** to perform duties that relate to the use and care of the **insured premises**. This includes a person who performs duties of a similar nature elsewhere for an **insured**. This does not include a person while performing duties in connection with the **business** of an **insured**.

6. **Insured** means:

- a. **you**;
- b. **your** relatives if residents of **your** household;
- c. persons under the age of 21 in **your** care or in the care of **your** resident relatives; and
- d. **your** legal representatives if **you** die while insured by this policy. This person is an **insured** only with respect to insurance on covered property and liability arising out of the property. An **insured** at the time of **your** death remains an **insured** while residing on the **insured premises**;

Under Coverage L - Personal Liability and Coverage M - Medical Payments to Others, **insured** also includes:

- e. persons using or caring for watercraft or animals owned by an **insured** and to which this insurance applies; (This does not include persons using or caring for water-craft or animals in the course of **business** or without the owner's consent.); and
- f. persons in the course of performing domestic duties that relate to the **insured premises**.

Each of the above is a separate **insured**, but this does not increase **our limit**.

7. **Insured Premises**:

a. Described location:

- 1) If **you** own the one or two family residence described on the Declarations, the **insured premises** means that residence and grounds at that location.
- 2) If **you** own the one or two family mobile home described on the Declarations, the **insured premises** means that mobile home and grounds at that location.

b. Under Coverage L - Personal Liability and Coverage M - Medical Payments to Others, **insured premises** also includes:

- 1) other premises shown on the Declarations;
- 2) that part of a residential premises acquired and to be used by **you** while this policy is in effect;
- 3) vacant land owned by or rented to an **insured**. This includes land where a **residence** is being built for the use of an **insured**. This does not include farm land or business land;
- 4) **your** cemetery lots and burial vaults or those of **your** resident relatives;
- 5) that part of residential premises, not owned by an **insured**, while temporarily used by an **insured**;
- 6) premises used by **you** in connection with the described location;
- 7) access ways immediately adjoining the **insured premises**; and
- 8) that part of premises occasionally rented to an **insured** for other than **business** purposes.

8. **Limit** means the limit of liability that applies.

9. **Motor Vehicle** means a **motorized vehicle**, a trailer or a semi-trailer, and all attached machinery or equipment, if:

- a. it is subject to **motor vehicle** registration; or
- b. it is designed for use on public roads.

10. **Motorized Vehicle** means a self-propelled land or amphibious vehicle regardless of method of surface contact. This includes parts and equipment.

11. **Recreational Motor Vehicle** means a **motorized vehicle**, a trailer or attached equipment that is designed or is used for leisure time activities and which is not a **motor vehicle**.
12. **Occurrence** means an accident, including loss from continuous or repeated exposure to similar conditions, which results, during the policy period, in bodily injury or property damage neither expected nor intended from the stand point of the **Insured**.
13. **Pollutant** means any solid, liquid, gaseous, thermal or radioactive irritant or contaminant, including acids, al-

kalis, chemicals, fumes, smoke, soot, vapors or waste. Waste includes all materials to be disposed of, recycled, reconditioned or reclaimed.

14. **Property Damage** means physical injury to tangible property. This includes the loss of use.
15. **Residence** means a one or two family house or a one or two family mobile home.
16. **Terms** means all provisions, limitations, exclusions, conditions and definitions used in this policy, or any endorsements or forms made a part of it.

PROPERTY COVERAGES

PRINCIPAL PROPERTY COVERAGES

Coverage A - Residence - We cover the **residence** on the **insured premises** including additions and built-in components and fixtures. We cover house yard fences, driveways, sidewalks and other permanently installed outdoor yard fixtures pertaining to the service of the **residence**.

Coverage A does not cover:

1. outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts and towers;
2. detachable **residence** items covered under Coverage B - Personal Property;
3. trees, plants, shrubs and lawns; and
4. land, including the land on which the **residence** is located, underground water or surface water.

Coverage B - Personal Property

1. We cover personal property owned by or in the care of an **insured**. Coverage for personal property usually on residential premises of an **insured** other than the **insured premises** is limited to 10 percent of the Coverage B **limit**.

This coverage also includes:

- a. all detachable **residence** items such as domestic appliances, window air conditioners, awnings, canopies, window screens, screen doors, storm windows, storm doors, submersible pumps and sump pumps.
 - b. outdoor equipment not permanently installed pertaining to the service of the **residence**; and
 - c. building materials and supplies located on the **insured premises** for use in construction of or to the **residence**.
2. We cover personal property in a newly acquired principal **residence**. The full Coverage B **limit** applies for 30 days

from the date you begin to move. After that, coverage for personal property in a newly acquired principal **residence** is limited to 10 percent of the Coverage B **limit**. This coverage does not extend past the date on which the **policy** expires or the date on which the **policy** is terminated. This does not increase the Coverage B **limit**.

3. At **your** option, personal property owned by a guest or **domestic employee** is covered while it is in that part of residential premises occupied by an **insured**.
4. **Limitations on Certain Property** - The special limits shown below do not increase the Coverage B **limit**. The **limit** for each class is the total **limit per occurrence** for all items in that class.
 - a. \$100 on money, bank notes, bullion, gold other than goldware and gold-plated ware, silver other than silverware and silver-plated ware, platinum, coins, medals, and numismatic property.
 - b. \$500 on securities, commercial paper, bills, letters of credit, abstracts of title, stamps, philatelic property, tickets, accounts, deeds, evidence of debt, passports, manuscripts, unpublished works and other valuable papers; (Commercial paper means drafts, checks, certificates of deposit and notes other than bank notes, including negotiable orders of withdrawal).
 - c. \$1000 for loss by theft of jewelry, watches, precious and semi-precious stones, gems and furs.
 - d. \$1000 for loss by theft of guns and items related to guns.
 - e. \$1000 on watercraft including their trailers, equipment, furnishings and motors.
 - f. \$1000 for loss by theft of silverware, goldware, pewterware and items plated with gold or silver.
 - g. \$1000 on **motorized vehicles** used only to service the **insured premises** and not required to be licensed for road use.
 - h. \$1000 on motorized golf carts not subject to **motor vehicle** registration.

The following property is covered only while on the **Insured premises** and is limited to the amount stated:

- i. \$500 on dismantled camper bodies and trailers not used with watercraft, including their equipment and accessories.

5. Personal Property Not Covered - We do not cover:

- a. property covered by scheduled insurance;
- b. animals, insects, birds or fish;
- c. **motorized vehicles** unless used only to service the **Insured premises** and not required to be licensed for road use;
- d. aircraft including their parts and equipment;
- e. **business** property;
- f. **farm** property;
- g. property of roomers and boarders who are not **insureds**;
- h. outdoor antennas, including TV antennas and satellite TV antenna-reflectors, and their lead-in wiring, accessories, masts and towers, except as covered by any scheduled insurance;
- i. trees, plants, shrubs and lawns;
- j. electronic devices, accessories, or antennas that may be operated from the electrical system of a **motorized vehicle** or watercraft while in or on the **motorized vehicle** or watercraft. This includes films, tapes, wires, discs, records or other media for use with such devices;
- k. books of account, electronic data processing tapes, records, wires, chips, discs or other software media containing business data or personal data; or
- l. loss that results from credit cards, except as provided under Incidental Property Coverages.

Coverage C - Additional Living Costs and Loss of Rent Coverage

We pay the necessary and reasonable increase in living costs **you** incur to maintain the normal standard of living of **your** household if a part of the **Insured premises** is made unfit for use by an insured loss. We pay only for the period of time reasonably required to make the **insured premises** fit for use or to settle **your** household in new quarters, whichever is less. This period of time is not limited by the policy period.

We pay for the rent **you** lose or the fair rental value if the part of the **insured premises** rented or held for rental to others is made unfit for use by an insured loss. We only pay for the period of time reasonably required to make the **insured premises** fit for use. Loss of rent is the amount **you** would have received less the charges and expenses that do not continue while the **insured premises** is unfit for use. This period of time is not limited by the policy period.

We pay **your** additional living costs and loss of rent for up to two weeks if the premises next to the **insured premises** is damaged from a peril insured against by this policy and

you may not, by order of civil authority, use the **Insured premises**. This is not limited by the policy period.

We do not pay for loss of rent or costs due to the cancellation of a lease or an agreement.

INCIDENTAL PROPERTY COVERAGES

This policy provides the following Incidental Property Coverages. They are subject to all of the **terms** of the applicable Principal Property Coverages A or B. They do not increase the **limits** shown for the Principal Property Coverages unless otherwise stated.

1. Emergency Removal

We pay for loss to covered property that is moved from the **Insured premises** to prevent a loss from perils insured against. The property is covered for direct physical loss not excluded, for up to 30 days. This coverage does not extend past the date on which this policy expires.

We pay up to \$100 towing charge to move a covered mobile home that is in danger from a peril insured against.

2. Debris Removal - We pay to remove the debris of covered property after an insured loss.

This coverage does not include costs to:

- a. extract **pollutants** from land or water; or
- b. remove, restore or replace **polluted** land or water.

3. Fire Department Service Charge - We pay up to \$250 for charges you must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

4. Credit Card, Forgery and Counterfeit Money - We pay up to \$1000 if an insured:

- a. by law must pay for the unauthorized use of **credit cards** issued or registered in the name of the **insured**;
- b. has a loss when checks, drafts, notes or negotiable instruments are forged or altered; or
- c. accepts in good faith counterfeit United States or Canadian paper money.

We do not pay for loss if:

- a. the **Insured** has not complied with the rules under which the **credit card** was issued;
- b. the loss is caused by the dishonesty of an **insured**;
- c. the loss results from the **business** of an **insured**;
- d. the loss occurs while a person who is not an **insured** has a **credit card** with the consent of an **insured**; or
- e. the loss involves a debit card, fund transfer card or any similar device used to deposit, withdraw or transfer funds.

5. **Tenant's improvements** - If you are a tenant, we pay for loss by perils insured against to improvements on the **insured premises** made or acquired at your expense. These are permanent fixtures, alterations, decorations and additions.

We pay up to 10 percent of the Coverage B limit.

6. **Grave Markers** - We pay up to \$500 for loss to grave markers and mausoleums caused by a peril that applies to Coverage B.

EXCLUSIONS THAT APPLY TO PROPERTY COVERAGES

We do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

1. **Ordinance or Law** - We do not pay for loss or increased cost which results from the enforcement of a code, ordinance or law which regulates the use, construction, repair or demolition of property. When breakage of glass is covered, we pay to replace the damaged glass with safety glazing materials if required by code, ordinance or law.

2. **Civil Authority** - We do not pay for a loss which results from order of civil authority.

We pay for loss which results from acts of a civil authority to prevent the spread of fire. We do not pay if the fire was caused by an excluded peril.

3. **Nuclear Hazard** - We do not pay for loss which results from nuclear reaction, nuclear radiation or radioactive contamination (whether controlled or uncontrolled; whether caused by, contributed to or aggravated by a peril insured against and whether caused by natural, accidental or artificial means). Loss caused by nuclear hazard is not considered loss caused by Fire, Explosion or Smoke. Direct loss by Fire resulting from the nuclear hazard is covered.

4. **War** - We do not pay for loss which results from declared or undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction, seizure or use of property for a military purpose. It includes the consequences of these. Discharge of a nuclear weapon is deemed an act of war even if it is accidental.

5. **Neglect** - We do not pay for loss which results from the neglect of an insured to use all reasonable means to save and preserve covered property at and after the time of a loss.

6. **Earth Movement** - We do not pay for loss which results from earth movement whether the earth movement results from natural or artificial causes. Earth movement includes but is not limited to:

- a. earthquake, land shock waves or tremors;
- b. landslide, subsidence, sinkhole, erosion;
- c. mudflow;
- d. earth sinking, rising, shifting, expanding or contracting; or
- e. volcanic eruption or effusion including outpouring of lava or ash.

We do pay for direct loss caused by Fire, Explosion and (if covered by this policy) Theft resulting from earth movement. Explosion does not include volcanic eruption or effusion.

7. **Water Damage** - We do not pay for loss which results from the following:

- a. flood, surface water, waves, tidal water, overflow of a body of water or spray from these, all whether driven by wind or not;
- b. water which backs up through sewers or drains, or overflows from a sump; or
- c. water from any source below the surface of the ground. This includes water which exerts pressure on, or seeps or leaks through or into a building, sidewalk, driveway, foundation, swimming pool or other structure.

We pay for direct loss caused by Fire, Explosion and (if covered by this policy) Theft resulting from water damage. Explosion does not include volcanic eruption or effusion.

8. **Power Disruption, Failure or Fluctuation** - We do not pay for loss which results from the disruption, failure or fluctuation of power or other utility service, whether or not it is caused by a peril insured against by this policy, if the origin or cause of the disruption, failure or fluctuation is not on the insured premises.

9. **Business Interruption** - We do not pay for loss which results from interruption of business.

10. **Wear and Tear** - We do not pay for loss which results from wear and tear, marring, deterioration, inherent vice, latent defect, mechanical breakdown, rust, wet or dry rot, corrosion, mold, contamination or smog.

11. **Intentional Acts** - We do not pay for loss which results

from an act committed by or at the direction of an **insured** and with the intent to cause a loss.

12. **Errors, Omissions and Defects** - We do not pay for loss which results from one or more of the following:
- a. an act, error or omission (negligent or not) relating to:
 - 1) land use;
 - 2) the design, specification, construction, workmanship or installation of property;
 - 3) planning, zoning, development, surveying, siting, grading or compaction; or
 - 4) maintenance of property (including land, struc-

tures or improvements);

whether on or off the **insured premises**;

- b. a defect, a weakness, the inadequacy, a fault or unsoundness in materials used in construction or repair whether on or off the **insured premises**.

We do pay for an ensuing loss unless the ensuing loss itself is excluded.

13. **Birds, Vermin, Rodents, Insects or Domestic Animals** - We do not pay for loss caused by birds, vermin, rodents, insects, or domestic animals.

WHAT YOU MUST DO IN CASE OF LOSS

1. **Notice** - In case of a loss, the **insured** must:

- a. give **us** or **our** agent prompt notice (**We** may request written notice.);
- b. give notice to the police when the act that causes the loss is a crime; and
- c. give notice to the **credit card** company if the loss involves a **credit card**.

The notice to **us** must state:

- a. the name of the **insured**, the kind of policy, the policy number and the time, place and the details of the loss; and
- b. names and addresses of all known potential claimants and witnesses.

2. **Cooperation** - The **insured** must cooperate with **us** in performing all acts required by this policy.
3. **Volunteer Payments** - An **insured** must not make payments, pay or offer rewards or assume obligations or other costs, except at the **insured's** own cost. This does not apply to costs that are allowed by this policy.
4. **Other Duties - Property Coverages** - The **insured** must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. **We** pay for the costs. The **insured** must keep an accurate record of such costs. This does not increase **our limit**.

The **insured** must give to **us** a statement of loss (under oath if **we** request) within 60 days after the loss.

At **our** request the **insured** must:

- a. give **us** a proof of loss, within 60 days after **our** request, that shows:

- 1) the time, place and the details of the loss;
 - 2) the interest of the **insured** and of all others in the property. This includes all mortgages and liens;
 - 3) other insurance policies that may cover the loss;
 - 4) changes in title or use of the property during the policy period;
 - 5) available plans and specifications of buildings or structures;
 - 6) detailed estimates for repair; and
 - 7) in detail, the quantity, description, cost, amount of loss and actual cash value of the personal property involved in the loss. The **insured** must give **us** copies of all bills, receipts and related documents to confirm these.
- b. submit to examination under oath in matters that relate to the loss or claim as often as **we** reasonably request. If more than one person is examined, **we** have the right to examine and receive statements separately from each person and not in the presence of the others;
 - c. show the damaged property as often as **we** reasonably request;
 - d. show records, including tax returns and bank records of all cancelled checks that relate to the value, loss and costs, and permit copies to be made of them as often as **we** reasonably request;
 - e. assist **us** to enforce the right of recovery which the **insured** may have against a party or parties causing the loss;
 - f. show records that prove loss of rents and show receipts for additional living costs; and
 - g. submit evidence or affidavits supporting a claim under Credit Card, Forgery and Counterfeit Money Coverage stating the amount and cause of loss.

5. **Other Duties - Personal Liability Coverage** - In case of an **occurrence** which might result in a claim, the **insured** must promptly give **us** copies of all notices, demands or legal papers that relate to the **occurrence**

or the claim.

At our request, the **insured** must help us:

- a. to settle a claim;
- b. to conduct suits. This includes being at trials and hearings;
- c. to enforce the right of recovery against parties who may be liable to an **insured**;
- d. to secure and give evidence; and
- e. to obtain the attendance of all witnesses.

6. Other Duties - Medical Payments to Others Coverage

- In case of a loss the injured person or someone acting on behalf of that person must:

- a. give **us** written proof of claim (under oath if **we** request) as soon as practical; and
- b. authorize **us** to get copies of medical records.

The injured person must submit to physical exams by doctors chosen by **us** as often as **we** may require.

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. PROPERTY COVERAGES

Actual Cash Value includes deduction for depreciation, however caused.

Insurable Interest and Our Limit - Even if more than one person has an insurable interest in the property covered, **we** pay no more than the amount of **your** interest in the property or the **limit** that applies.

Deductible - This applies to Coverage A - Residence; Coverage B - Personal Property; Debris Removal; and Tenant's Improvements. It applies to all perils insured against unless otherwise shown.

We pay that part of the loss over the deductible. Not more than one deductible applies per **occurrence**.

Loss to a Pair or Set - If there is loss to an item which is part of a pair or set, **we** pay only to replace or repair the item, or **we** pay the difference in the actual cash value of the pair or set just before the loss and the actual cash value just after the loss.

Warranty and Guarantee Coverage - **We** pay only that part of a loss or claim in excess of the amount recoverable by the **insured** as the result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss or claim.

Loss Settlement - Subject to the **terms** shown above, **we** will settle losses according to the Replacement Cost Terms. If the Replacement Cost Terms do not apply, **we** will settle losses according to the Actual Cash Value Terms.

- a. **Replacement Cost Terms** - These apply only to the **residence** covered under Coverage A that has a permanent foundation and roof and do not apply to: mobile homes whether or not on a permanent foundation; all detachable **residence** items such as domestic appliances, window air conditioners, aw-

nings, canopies, window screens, screen doors, storm windows, storm doors, submersible pumps and sump pumps; and outdoor equipment not permanently installed pertaining to the service of the **residence**.

In determining the replacement cost of the residence, do not include the cost of: excavations, brick, stone or concrete foundations; piers and other supports which are below the surface of the ground inside the foundation walls; and underground flues, pipes, wiring and drains.

When the cost to repair or replace exceeds the lesser of \$1,000 or five percent of the **limit** on the damaged residence, **we** do not pay for more than the actual cash value of the loss until repair or replacement is completed.

You may make a claim for the actual cash value of the loss before repairs are made. A claim for an additional amount payable under these **terms** must be made within 180 days after the loss.

- 1) If the **limit** on the damaged residence is less than 80 percent of its replacement cost at the time of loss, **we** pay the larger of the following (but not exceeding the **limit** under this policy):

- a) the actual cash value at the time of the loss; or
- b) that part of the replacement cost of the damaged part which **our limit** on the residence bears to 80 percent of the full current replacement cost of the residence.

- 2) If the **limit** on the damaged residence is at least 80 percent of its replacement cost at the time of loss, **we** pay the smallest of the following:

- a) the **limit** that applies to the residence;
- b) the cost to repair or replace the damage on the same premises using materials of like kind and quality, to the extent practicable; or
- c) the amount spent to repair or replace the damage.

b. **Actual Cash Value Terms** - We pay the lesser of:

- 1) the cost to repair or replace the property with materials of like kind and quality to the extent practicable;
- 2) the actual cash value of the property at the time of loss; or
- 3) (applies only to mobile homes) the difference in the actual cash value just before the loss and the actual cash value just after the loss.

2. **Coverage L - Personal Liability** - The limit shown on the Declarations for Coverage L - Personal Liability is the most we pay for loss for each occurrence. This applies regardless of the number of:

- a. persons insured under this policy;
- b. parties who sustain injury or damage; or
- c. claims made or suits brought.

3. **Coverage M - Medical Payments To Others** - The limit shown on the Declarations for each person for Coverage M - Medical Payments to Others is the most we pay for all medical expenses payable for bodily injury to one person as the result of one accident.

When a limit is shown on the Declarations for each

accident for Coverage M - Medical Payments to Others, the limit is the most we pay for any one accident.

The payment of a claim under Coverage M - Medical Payments to Others does not mean we admit we are liable under Coverage L - Personal Liability.

4. **Metal Covered Residence** - Our limit for appearance loss caused by hail to the exterior metal of a covered residence is 25 per cent of the replacement cost of such metal covering.

5. **Insurance Under More Than One Coverage** - If more than one coverage of this policy applies to a loss, we pay no more than the actual loss.

6. **Insurance Under More Than One Policy** -

Property Coverage - This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

Coverage L - Personal Liability and Coverage M - Medical Payments to Others - This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

PAYMENT OF LOSS OR CLAIM

1. **Your Property** - We adjust each loss with you. We pay an insured loss within 30 days after an acceptable proof of loss is received and the amount of the loss is agreed to in writing. If you and we do not agree, we pay within 60 days after the filing of a written appraisal agreement with you and with us, unless you or we appeal to a Court within 60 days after the written appraisal agreement is filed with you and with us. Payment is made to you unless a loss payee is named.

2. **Additional Living Costs** - If the Insured premises is made unfit for use for more than one month, covered costs are paid on a monthly basis. You must give us proof of such costs.

3. **Damage to Personal Property of Others** - At our option, an insured loss may be adjusted with and paid:

- a. to you on behalf of the owner; or
- b. to the owner. If we pay the owner, we do not have to

pay an insured.

4. **Our Options** - We may:

- a. pay the loss in money; or
- b. rebuild, repair or replace the property with materials of like kind and quality, to the extent practicable. We must give you notice of our intent to do so within 30 days after we receive an acceptable proof of loss.

We may take all or a part of the damaged property at the agreed or appraised value. Property paid for or replaced by us becomes ours.

5. **Liability Coverages** - A person who has secured a judgment against an insured for an insured loss or has liability established by a written agreement between the claimant, an insured and us, is entitled to recover under this policy to the extent of coverage provided.

POLICY CONDITIONS

CONDITIONS APPLICABLE TO ALL COVERAGES

1. **Assignment** - This policy may not be assigned without our written consent.

2. **Cancellation and Nonrenewal** - You may cancel this policy at any time by returning the policy to us for cancellation and paying all obligations then owing by you to us.

We may cancel this policy by written notice of cancellation delivered to **you** or mailed to **you at your** address appearing in the records of this Company by certified mail at least 20 days before the effective cancellation date, which notice will include a written explanation of the specific reasons for cancellation. Proof of delivery or mailing is sufficient proof of such notice.

We refund premium or policy costs for the unexpired policy period on a prorata basis.

Your return premium or policy costs, if any, will be refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium or policy costs is not a condition of cancellation.

We may cancel this policy for any reasonable cause during the first 60 days this policy is in effect, but after 60 days from the effective date of this policy, a notice of cancellation may not be issued unless it is based upon at least one of the following reasons:

- a. Nonpayment of premium or policy costs;
- b. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- c. Discovery of acts or omissions on the part of the named insured which increase any hazard insured against;
- d. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
- e. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- f. A determination by the director of the division of insurance of the State of South Dakota that the continuation of the policy would jeopardize this Company's solvency or would place this Company in violation of the insurance laws of South Dakota;
- g. Violation or breach by the insured of any policy terms or conditions; or
- h. Such other reasons as are approved by the director of the South Dakota Division of Insurance.

If we elect not to renew this policy, we will deliver to **you** or mail to **you at your** address appearing in the records of this Company, a written notice of nonrenewal at least 30 days before the effective renewal date of this policy. Proof of delivery or mailing is sufficient proof of such notice.

3. **Change, Modification or Waiver of Policy Terms** - A waiver or change of the **terms** of this policy must be issued by **us** in writing to be valid. If, in the policy period, we adopt a revision which broadens coverage without an additional premium, the broadened coverage will apply.

Our request for an appraisal or examination under oath does not waive policy **terms**.

4. **Conformity with Statute - Terms** in conflict with the laws of the State of South Dakota, are changed to conform to such laws.
5. **Misrepresentation, Concealment or Fraud** - This policy is void if, before or after a loss:
 - a. an **insured** has willfully concealed or misrepresented:
 - 1) a material fact or circumstance with respect to this insurance; or
 - 2) an **insured's** interest herein.
 - b. there has been fraud or false swearing by an **insured** with respect to this insurance or the subject thereof.
6. **Inspection** - We may, but are not required to, inspect your property and operations. Our inspection or resulting advice or report does not warrant that your property or operations are safe or healthful or comply with laws, rules or regulations.
7. **Recoveries** - This applies if we pay for a loss and lost or damaged property is recovered, or payment is made by those responsible for the loss, or someone for them.
 - a. The **insured** must inform us or we must inform the **insured** if either recovers property or receives payment.
 - b. Proper costs incurred by either party are paid first.
 - c. The **insured** may keep the property. The amount of the claim paid, or a lesser amount to which we agree, must be returned to **us**.
 - d. If the claim paid is less than the agreed loss due to a deductible, or other limiting **terms**, the recovery is prorated between the **insured** and **us** based on the interests of each in the loss.
8. **Subrogation** - If we pay for a loss, we may require that the **insured** assign to **us** the right of recovery up to the amount we pay. We are not liable for a loss if, after the loss, an **insured** impairs our right to recover against others. You may waive your right to recover, in writing, before a loss occurs, without voiding coverage. If we pay a loss to or for an **insured** and the **insured** recovers from another party for the same loss, the **insured** must pay **us** as stated in Recoveries.
9. **Suit Against Us** - No suit may be brought against **us** unless all the **terms** of this policy have been complied with and
 - a. **Property Coverages** - The suit is brought within six years after the loss.
 - b. **Liability Coverages** - The amount of an **insured's** liability has been fixed by:
 - 1) a final judgment against an **insured** which is the result of a trial; or

2) a written agreement of the **insured**, the claimant and **us**.

No person has a right under this policy to join **us** or implead **us** in actions that are brought to fix the liability of an **insured**.

10. **Punitive or Exemplary Damages, or Related Defense Costs** - This policy does not cover punitive or exemplary damages, or related defense costs. This exclusion applies regardless of any other terms of this policy or any endorsements made a part of it.
11. **Bankruptcy of an Insured** - Bankruptcy or insolvency of an **insured** does not relieve **us** of our obligations under this policy.

CONDITIONS APPLICABLE TO PROPERTY COVERAGES ONLY

12. **Abandonment of Property** - An **insured** may not abandon the property to **us** unless **we** agree.
13. **Appraisal** - If **you** and **we** do not agree on the cost to repair or replace, actual cash value of or amount of loss to covered property when loss occurs, either party may demand that these amounts be determined by appraisal.

If either party makes a written demand for appraisal, each shall choose a disinterested appraiser and notify the other of the appraiser's identity within 20 days after receipt of the written demand by the party notified of such appraisal demand. The appraisers will then determine the amount of the damage stating separately, in detail: the cost to repair or replace, actual cash value of, and amount of loss to each building item and item of personal property.

If the two appraisers selected by the parties fail to agree within a reasonable time on the amount of the damage to be determined by them, they shall choose a third disinterested appraiser to act with them. If the two appraisers selected by the parties cannot agree upon a third disinterested appraiser within 15 days after their failure to agree on the amount of the damage to be determined by them, **you** or **we** can ask a judge of a court of record in the state where the property is located to select the third appraiser to act with them to determine the amount of the damage.

A written appraisal agreement so itemized and signed by any two of the appraisers and filed with **you** and with **us** will establish the cost to repair or replace, actual cash value of and amount of loss to each building item and item of personal property, unless **you** or **we** appeal to a court within sixty days after the written appraisal agreement is filed with **you** and with **us**.

The two appraisers selected by **you** and **us** will be paid by the party selecting that appraiser, and the compensation of the third appraiser and other costs of the appraisal shall be shared by **you** and **us**.

14. **No Benefit to Bailee** - Coverage under this policy will not benefit those who are paid to assume custody of the covered property.

15. Mortgage Clause

The word "mortgagee" includes trustee.

a. If a mortgagee is named on the Declarations, a loss payable under Coverage A - Residence or Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings will be paid to the mortgagee and **you**, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages. If **we** deny **your** claim, that denial does not apply to a valid claim of the mortgagee, if the mortgagee has:

- 1) notified **us** of change in ownership, occupancy or substantial change in risk of which the mortgagee became aware;
- 2) paid the premium due under this policy on demand if an **insured** neglected to pay the premium; and
- 3) submitted a signed, sworn proof of loss within 60 days after receiving notice from **us** if an **insured** has failed to do so.

All **terms** of this policy apply to the mortgagee unless changed by this clause.

b. If **we** cancel this policy, **we** will notify the mortgagee at least 10 days before the date cancellation takes effect.

c. If **we** pay the mortgagee for a loss and deny payment to **you**:

- 1) **we** are subrogated, up to the amount **we** paid for the loss, to all the rights of the mortgagee granted under the mortgage on the property; or
- 2) at **our** option, **we** may pay to the mortgagee the whole principal on the mortgage plus the accrued interest. In this event, **we** shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **Secured Party Coverage** - This applies only to coverage on mobile homes and personal property. This entire clause is void unless the name of a secured party is shown on the Declarations. This clause applies only to the interest of a secured party and does not affect the **insured's** rights or duties under the policy.

a. If a secured party is named on the Declarations, a loss payable on property subject to the security interest will be paid to the secured party and **you** as interests may appear. If there is more than one security interest in the same property, the order of payment will be the same as their order of priority.

If **we** deny **your** claim, that denial does not apply to a valid claim of a secured party if the secured party has:

- 1) notified **us** of a change in ownership, occupancy or substantial change in risk of which the secured party became aware;
- 2) paid the premium due under this policy on demand if an **insured** has neglected to pay the premium; and
- 3) submitted a signed, sworn proof of loss within 60 days after receiving notice from **us** if an **insured** has failed to do so.

All **terms** of this policy apply to the secured party unless changed by this clause.

b. If **we** cancel this policy, **we** will notify the secured party at least 10 days before the date cancellation takes effect.

c. If **we** pay the secured party for a loss and deny payment to **you**:

- 1) **we** are subrogated, up to the amount **we** paid for the loss, to all the rights of the secured party granted under the security agreement; or
- 2) at **our** option, **we** may pay the secured party the remaining amount due on the security agreement plus the accrued interest. In this event, **we** shall receive full assignment of the security agreement and securities held as collateral for the agreement.

However, the secured party's interest is not covered for conversion, embezzlement or secretion by an **insured** in possession of the encumbered property, unless specifically insured against and premium paid for such.

Farmowners/Ranchowners—Broad Form Perils Section

We insure against direct physical loss to property covered under **Coverages A—Residence, B—Personal Property and C—Additional Living Costs and Loss of Rent Coverage** caused by the perils shown below, subject to the terms contained in the General Policy Terms, and the exclusions shown below:

1. **Fire or Lightning**
2. **Windstorm or Hail**
 - a. We do not pay for loss caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind driven or not.
 - b. We do not pay for loss to the inside of a **residence**, or to property inside, caused by dust, rain, sand, sleet, snow or water, all whether driven by wind or not, which enter through an opening not made by the direct force of wind or hail.
 - c. We do not pay for loss to watercraft and their trailers, accessories, furnishings, equipment and motors unless inside a fully enclosed building.
3. **Explosion**
4. **Riot or Civil Commotion**
5. **Aircraft**
6. **Vehicles**—We do not pay for loss to fences, driveways or walks caused by **motor vehicles, motorized vehicles or recreational motor vehicles** owned by or operated by an **insured**, employee of an **insured** or occupant of the **insured premises**.
7. **Sudden and Accidental Damage from Smoke**—We do not pay for loss caused by smoke from agricultural smudging or industrial operations.
8. **Vandalism**—We do not pay for loss if the **insured premises** is vacant for more than 30 days in a row just before the loss. A **residence** being built is not vacant.
9. **Glass Breakage**—We cover breakage of glass that is part of a **residence** or part of a detachable **residence** item, including storm doors and windows. We do not pay for loss if the **insured premises** is vacant for more than 30 days in a row just before the loss. A **residence** being built is not vacant.
10. **Theft**—This includes attempted theft and loss of property from a known place when it is likely that theft occurred.
 - a. We do not cover theft by an **insured**.
 - b. We do not cover theft in or to a **residence** being built, or theft of material and supplies for use in construction of the **residence**, until the **residence** is finished and occupied.
 - c. We do not pay for loss of a precious or semi-precious stone from its setting.
 - d. We do not pay for loss that results from the theft of a **credit card**, except as provided under Incidental Property Coverages.
 - e. We do not pay for loss that results from the theft of a debit card, fund transfer card or similar device used for the deposit, withdrawal or transfer of funds.
 - f. We do not cover theft from premises which are vacant for more than 30 days in a row just before the loss.
 - g. We do not cover theft from a part of the **residence** usually occupied solely by an **insured** while it is rented to others.
 - h. We do not cover theft that occurs away from the **Insured premises** of:
 - 1) property while on the part of residential premises which an **Insured** owns, rents or occupies, except for the time while an **Insured** temporarily resides there. We do cover the property of an **Insured** who is a full time student while it is in the living quarters occupied by the student at school;
 - 2) property while unattended in or on any **motor vehicle, recreational motor vehicle** or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered unattended when the **insured** is required to surrender the keys of such vehicle or trailer to a bailee;
 - 3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;
 - 4) trailers and their equipment;
 - 5) campers or camper bodies; or
 - 6) watercraft and their furnishings, equipment and motors.
11. **Falling Objects**
 - a. We do not pay for loss to the inside of a **residence**, or to the property inside, unless the object has first damaged the walls or roof by impact.
 - b. We do not pay for loss to the object which falls.
12. **Weight of Ice, Snow or Sleet** which damages a **residence** or the property inside.

- a. **We do not pay for loss to outdoor equipment not permanently installed.**
 - b. **We do not pay for loss to awnings or canopies and their supports.**
 - c. **We do not pay for loss to gutters or downspouts.**
 - d. **We do not pay for loss to swimming pools, retaining walls, fences, septic tanks, bulkheads, piers, docks, wharves, foundations, patios and paved areas.**
13. **Collapse of a Residence or a Part of a Residence** (Collapse does not mean settling, cracking, shrinking, bulging or expanding.) Unless the damage is directly caused by the collapse of a **residence** or a part of a **residence**.
- a. **We do not pay for loss to awnings or canopies and their supports.**
 - b. **We do not pay for loss to outdoor equipment not permanently installed.**
 - c. **We do not pay for loss to swimming pools, retaining walls, bulkheads, fences, septic tanks, piers, docks, wharves, foundations, patios and paved areas.**

We do not pay for loss by collapse that results from an excluded cause or event.

14. **Sudden and Accidental Tearing Apart, Cracking, Burning or Bulging** of a heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance. **We do not pay for loss caused by freezing.**
15. **Accidental Discharge or Overflow of Liquids or Steam** from a plumbing, heating, air-conditioning or fire

protective sprinkler system, or from a water heater or domestic appliance. (Gutters and downspouts are not part of a plumbing system).

- a. **We do not pay for loss caused by continuous or repeated seepage or leakage.**
 - b. **We do not pay for loss if the residence has been vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.**
 - c. **We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes. (We do pay the reasonable cost of removing and replacing those parts of the residence or mobile home necessary to make repairs.)**
 - d. **We do not pay for loss caused by freezing.**
 - e. **We do not pay for loss on the insured premises caused by discharge or overflow which comes from off the insured premises.**
16. **Freezing** of a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance—**We do not pay for loss on the insured premises while the residence is vacant, unoccupied (including temporary absence) or is being built and is unoccupied. We do pay for such loss if an insured has used reasonable care to:**
- a. maintain heat in the **residence** or mobile home; or
 - b. shut off the liquid supply and completely drain the system, water heater or domestic appliance.
17. **Sudden and Accidental Damage from Artificially Generated Electrical Currents**—**We do not pay for loss to tubes, transistors and similar electronic components.**

Farmowners/Ranchowners—Special Form Perils Section

Coverage A—Residence—This policy covers the residence on the insured premises for risks of direct physical loss unless specifically excluded below or in the General Policy Terms.

Exclusions—Apply to Coverage A—Residence—The following exclusions apply in addition to the exclusions contained in the General Policy Terms:

1. **Freezing, Discharge, Leakage or Overflow—Unoccupied Residence**—If the residence is vacant, unoccupied (including temporary absence) or under construction and unoccupied, the Insured must take reasonable care to:

- a. maintain heat in the residence; or
- b. shut off the water supply and completely empty liquids from any plumbing, heating, air-conditioning or fire protective sprinkler systems, water heaters or domestic appliances.

If the Insured fails to do this, we do not pay for loss caused by freezing or the resulting discharge, leakage or overflow from such system, water heater or domestic appliance.

2. **Freezing, Thawing, Pressure or Weight of Ice, Snow, Sleet or Water**—We do not pay for damage to swimming pools, fences, retaining walls, septic tanks, piers, wharves, docks, foundations, bulkheads, patios and paved areas caused by freezing, thawing, or pressure or weight of ice, snow, sleet or water, whether driven by wind or not.
3. **Theft**—We do not cover theft or attempted theft in or to a residence being built, or theft of materials and supplies for use in construction of the residence, until the residence is finished and occupied, and we do not pay for theft or attempted theft from a residence which is vacant for more than 30 days in a row just before the loss.
4. **Vandalism or Glass Breakage**—We do not pay for loss caused by vandals or breakage of glass while the residence is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.
5. **Seepage or Leakage**—We do not pay for loss caused by repeated or continuous seepage or leakage of liquids or steam from within a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance.

Except as provided above, we pay for loss caused by the accidental leakage, overflow or discharge of liquids or steam from a plumbing, heating, air-conditioning or fire protective sprinkler system, or from a water heater or domestic appliance. We also pay the reasonable cost of removing and replacing those parts of the residence or mobile home necessary to make repairs. We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes.

6. **Settling, Cracking, Shrinking, Bulging or Expanding**—We do not pay for loss caused by the settling, cracking, shrinkage, bulging or expanding of a residence or mobile home, pavements, sidewalks, patios, or other outdoor structures.

7. **Birds, Vermin, Rodents, Insects or Domestic Animals**—We do not pay for loss caused by birds, vermin, rodents, insects or domestic animals.

8. **Smoke**—We do not pay for damage caused by smoke from agricultural smudging or industrial operations.

We pay for an ensuing loss by Fire, Explosion, Smoke or Glass Breakage which results from any of the above, unless the ensuing loss itself is excluded.

Coverage B—Personal Property—This policy, subject to the exclusions contained in the General Policy Terms and the following exclusions, insures against direct physical loss to property covered under Coverage B—Personal Property, caused by the following:

1. **Fire or Lightning**

2. **Windstorm or Hail**

- a. We do not pay for loss caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind driven or not.
- b. We do not pay for loss to property inside a residence caused by dust, rain, sand, sleet, snow or water, all whether wind driven or not, which enter through an opening not made by the direct force of wind or hail.
- c. We do not pay for loss to watercraft and their trailers, accessories, furnishings, equipment and motors unless inside a fully enclosed building.

3. **Explosion**

4. **Riot or Civil Commotion**

5. **Aircraft**

6. **Vehicles**—We do not pay for loss to fences, driveways or walks caused by motor vehicles, motorized vehicles or recreational motor vehicles owned by or operated by an Insured, employee of an Insured or occupant of the Insured premises.

7. **Sudden and Accidental Damage from Smoke**—We do not pay for loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism**—We do not pay for loss if the Insured premises is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.

9. **Glass Breakage**—We cover breakage of glass or other glazing material which forms part of detachable residence items. This includes storm doors and windows.

We do not pay for loss if the Insured premises is vacant

for more than 30 days in a row just before the loss. A residence being built is not vacant.

10. **Theft**—This includes attempted theft and loss of property from a known place when it is likely that theft occurred.

- a. We do not cover theft by an insured.
- b. We do not cover theft in or to a residence being built, or theft of materials and supplies for use in construction of the residence, until the residence is finished and occupied.
- c. We do not pay for loss of a precious or semi-precious stone from its setting.
- d. We do not pay for loss that results from the theft of a credit card, except as provided under Incidental Property Coverages.
- e. We do not pay for loss that results from the theft of a debit card, fund transfer card or similar device used for the deposit, withdrawal or transfer of funds.
- f. We do not cover loss from premises which are vacant for more than 30 days in a row just before the loss.
- g. We do not cover theft from a part of the residence usually occupied solely by an insured while it is rented to others.
- h. We do not cover theft that occurs away from the insured premises of:
 - 1) property while on the part of residential premises which an insured owns, rents or occupies, except for the time while an insured temporarily resides there. We do cover the property of an insured who is a full time student while it is in the living quarters occupied by the student at school;
 - 2) property while unattended in or on any motor vehicle, recreational motor vehicle or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered unattended while the insured is required to surrender the keys of such vehicle or trailer to a bailee;
 - 3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;
 - 4) trailers and their equipment;
 - 5) campers or camper bodies; or
 - 6) watercraft and their furnishings, equipment and motors.

11. **Falling objects**

- a. We do not pay for loss to property inside a residence, unless the object has first damaged the walls or roof by impact.
- b. We do not pay for loss to the object which falls.

12. **Weight of Ice, Snow or Sleet** which damages a residence or the property inside.

- a. We do not pay for loss to outdoor equipment not permanently installed.
- b. We do not pay for loss to awnings or canopies and their supports.

- c. We do not pay for loss to gutters or downspouts.
- d. We do not pay for loss to swimming pools, retaining walls, fences, septic tanks, bulkheads, piers, docks, wharves, foundations, patios and paved areas.

13. **Collapse of a Residence or a Part of a Residence** (Collapse does not mean settling, cracking, shrinkage, bulging or expanding.) Unless the damage is directly caused by the collapse of a residence or a part of a residence.

- a. We do not pay for loss to awnings or canopies and their supports.
- b. We do not pay for loss to outdoor equipment not permanently installed.
- c. We do not pay for loss to swimming pools, retaining walls, bulkheads, fences, septic tanks, piers, docks, wharves, foundations, patios and paved areas.

We do not pay for loss by collapse that results from an excluded cause or event.

14. **Sudden and Accidental Tearing Apart, Cracking, Burning or Bulging** of a heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance. We do not pay for loss caused by freezing.

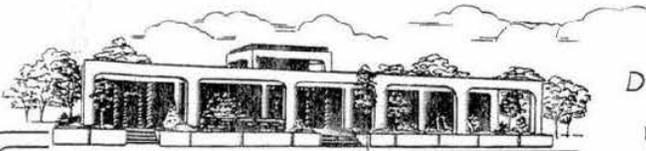
15. **Accidental Discharge or Overflow of Liquids or Steam** from a plumbing, heating, air-conditioning or fire protective sprinkler system, or from a water heater or domestic appliance. (Gutters and downspouts are not part of a plumbing system).

- a. We do not pay for loss caused by continuous or repeated seepage or leakage.
- b. We do not pay for loss if the residence has been vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.
- c. We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes. (We do pay the cost to remove and replace only those parts of the residence needed to repair the system, water heater or domestic appliance.)
- d. We do not pay for loss caused by freezing.
- e. We do not pay for loss on the insured premises caused by discharge or overflow which comes from off the insured premises.

16. **Freezing** of a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance—We do not pay for loss on the insured premises while the residence is vacant, unoccupied (including temporary absence) or is being built and is unoccupied. We do pay for such loss if an insured has used reasonable care to:

- a. maintain heat in the residence or mobile home; or
- b. shut off the liquid supply and completely drain the system, water heater or domestic appliance.

17. **Sudden and Accidental Damage from Artificially Generated Electrical Currents**—We do not pay for loss to tubes, transistors and similar electronic components.



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
 15-04-11

SCHEDULED PERSONAL PROPERTY ENDORSEMENT

We cover the classes of personal property indicated below by a Limit. This coverage is subject to all policy terms that apply to property coverage unless amended by this endorsement.

| Class of Personal Property | Limit | Premium |
|---|-----------|-----------|
| 1. Jewelry, as scheduled. | \$ 9,000 | \$ 79.50 |
| 2. Furs and garments trimmed with fur or consisting principally of fur, as scheduled. | | |
| 3. Camera, camcorders, projection machines, films and related articles of equipment, as scheduled. The insured agrees not to accept payment for use of these items unless specifically permitted under this policy. | | |
| 4. Musical instruments and related articles of equipment, as scheduled. The insured agrees not to accept payment for performing with these instruments unless specifically permitted under this policy. | | |
| 5. Silverware, goldware, items plated with gold or silver, and pewterware, but excluding pens, pencils, flasks, smoking implements or jewelry. | | |
| 6. Golfer's equipment meaning golf clubs, golf clothing and golf equipment, as scheduled. We cover golf balls only for loss by fire or burglary provided there are visible marks of forcible entry into the building, room, or locker. The insured agrees not to accept payment for use of these items unless specifically provided under the policy. | | |
| 7. Fine Arts, as scheduled. This premium is based on your statement that the covered property is on the insured premises or located at: | | |
| 8. Postage Stamps, including 4oz, envelope, official, revenue, watch and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property including their books, pages and mountings, owned by or in the custody or control of an insured. | | |
| 9. Rare and Current Coins, Medals, paper money, bank notes, tokens of money and other numismatic property, including coin albums, containers, frames, cards and display cabinets in use with such collection, owned by or in the custody or control of an insured. | | |
| 10. Guns, as scheduled. | \$ 3,000 | \$ 25.50 |
| 11. Watercraft, as scheduled. | \$ 24,000 | \$ 372.00 |

SCHEDULE

| Article | Description | Limit |
|---------|-------------|-------|
|---------|-------------|-------|

SCHEDULED PERSONAL PROPERTY ENDORSEMENT CONTINUED ON THE FOLLOWING PAGE

The limits shown for each item in this Endorsement are subject to How Much We Pay For Loss Or Claim on page 3 of this Endorsement.

William D. Poppen

Secretary

Peter M. Mack

President

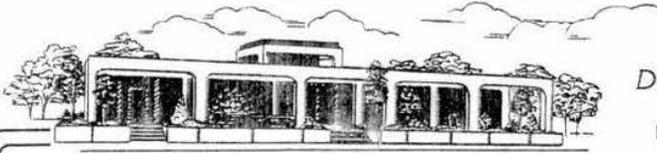
DMFD-110A
 (Ed. 12-91)

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Serving South Dakota

from South Dakota

DeSmet-24



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
 15-04-11

CONTINUATION OF SCHEDULED PERSONAL PROPERTY ENDORSEMENT

SCHEDULE

| Article | Description | Limit |
|-----------------------------------|---|----------|
| JEWELRY | | |
| | ONE LADIES 14K YELLOW GOLD DIAMOND WEDDING SET. CENTER DIAMOND IS MARQUISE CUT, WEIGHS APPROX. 98PTS. SI2 QUALITY, G-H COLOR, MEASURES 8.3 BY 4.2 MM. | \$ 5,400 |
| | SOLDERED TOGETHER WITH SET IS A 1CT. TOTAL WEIGHT MARQUISE DIAMOND BAND. 9 DIAMONDS SET IN A ROW WITH PRONGS. | \$ 1,800 |
| | CENTER DIAMOND IS SET WITH 6 PRONGS. RING WEIGHS 6.00WT. | \$ 500 |
| | ONE LADIES 10K YELLOW GOLD SAPPHIRE AND DIAMOND RING. SAPPHIRE IS MARQUISE CUT AND WEIGHS APPROX. 75PTS. GOOD QUALITY, DEEP BLUE COLOR. PRONG SET ON EACH SIDE ARE 5 BAGUETTE DIAMONDS, TOTAL APPROX. WEIGHT IS 50PTS. SAPPHIRE IS SET WITH 2 END PRONGS. RING WEIGHS 1.00WT. | \$ 1,225 |
| | ONE LADIES 14KT YELLOW GOLD DIAMOND PENDANT. CHANNEL SET IN A "V" STYLE ARE FOURTEEN DIAMONDS RANGING FROM 3PTS TO 7PTS EACH, SI3-11 IN CLARITY AND H-I IN COLOR. CHAIN IS 16" 3MM FOXTAIL WITH A 2" EXTENDER. | \$ 900 |
| BOAT, MOTORS & TRAILER | | |
| | 2000 RANGER 19'10" BOAT | \$11,200 |
| | 1999 MERCURY 200HP OUTBOARD MOTOR | \$ 8,800 |
| | 2003 MERCURY 9.9 4-STROKE MOTOR | \$ 2,000 |
| | 2001 RANGER TRAILER | \$ 2,000 |
| COLLECTOR GUNS | | |
| | WINCHESTER SD CENTENNIAL MODEL 94 30-30 | \$ 2,000 |
| | RUGER 100TH ANNIVERSARY SET OF PISTOLS-A .22 CALIBER AND A .45 LONG COLT | \$ 1,000 |

SCHEDULED PERSONAL PROPERTY ENDORSEMENT CONTINUED ON THE FOLLOWING PAGE

The limits shown for each item in this Endorsement are subject to How Much We Pay For Loss Or Claim on page 3 of this Endorsement.

William A. Poppen

Secretary

Peter M. Mack

President

WOFU-1198
 (Ed. 12-91)

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Serving South Dakota

from South Dakota

(continued)

Scheduled Personal Property Endorsement

PROPERTY COVERED

Scheduled Items—We cover those items for which a coverage limit is shown on the schedule.

EXTENSIONS OF COVERAGE—NEWLY ACQUIRED PROPERTY

We cover items of property newly acquired by the Insured during the policy period as follows, but only if it is of a class of coverage we already cover under this endorsement:

1. **Fine arts**—We cover these newly acquired items for a period of up to 90 days after they are acquired. You must provide us with a complete description of each newly acquired item within this 90-day period and pay the additional premium from the date acquired.

We cover these newly acquired items for their actual cash value. However, the most that we will pay for all such newly acquired items is 25 percent of the coverage limit shown for Fine Arts.

2. **Jewelry, Furs, Photographic Equipment and Musical Instruments**—We cover these newly acquired items for a period up to 30 days after they are acquired. You must provide us with a complete description of each newly acquired item within this 30-day period and pay the additional premium from the date acquired.

We cover these newly acquired items for their actual cash value. The most that we will pay for all such items will be the smaller of the following:

- a. 25 percent of the coverage limit shown for the class of property that the newly acquired item belongs to; or
 - b. \$10,000 for each class of property that the newly acquired item belongs to.
3. This coverage will end at the earliest of the following:
 - a. when the newly acquired items are reported to us.
 - b. the end of the reporting period that applies.
 - c. the expiration date of this coverage.

PROPERTY EXCLUDED

We do not cover:

1. Postage stamps or rare and current coins while in transit or shipped by mail. We do cover these items when they are shipped by registered mail.
2. Fine arts that are on display at fairgrounds or at a national or international exposition unless these locations are shown for this coverage.
3. Golfers' equipment, guns and watercraft that are held for

sale or rent.

4. Musical instruments or photographic equipment used professionally.

PERILS COVERED

We insure against direct physical loss to the property covered by this endorsement unless the loss is caused by or results from a peril that is excluded. The loss must be due to an external cause.

PERILS EXCLUDED

The **Exclusions That Apply To Property Coverages** and the exclusions shown below apply to the property covered by this endorsement.

We do not pay for a loss caused by or that results from any of the following:

1. insects or vermin damage to covered property.
2. delay, loss of market, loss of use, or business interruption.
3. obsolescence, gradual deterioration or depreciation of covered property.

SPECIAL EXCLUSIONS

1. **Postage Stamps or Rare and Current Coin Collections**—We do not pay for a loss caused by or that results from any of the following:

- a. the disappearance of individual stamps, coins or other articles unless the item is scheduled, with a specific limit shown, or if the item is mounted in a volume and the page to which it is attached is also lost.
- b. theft from an unattended vehicle.
- c. dampness.
- d. extremes of temperature.
- e. fading, creasing, scratching, denting, tearing, thinning, inherent defect or depreciation.
- f. transfer of colors.
- g. being handled or worked on.
- h. loss to property which is not an actual part of a postage stamp or rare and current coin collection.

2. **Fine Arts**—We do not pay for a loss caused by or that results from any of the following:

- a. breakage of art glass windows, statuary, marbles, glassware, bric-a-brac, porcelains or similar fragile items. We do cover breakage if it is caused by fire; lightning; windstorm; hail; earthquake; flood; smoke; explosion; aircraft, space-craft or self propelled missiles, or objects that fall from these items; vehicle or an accident to a transporting vehicle; strike; riot; civil

commotion; vandalism; theft or attempted theft, sprinkler damage or collapse of buildings.

- b. repairing, retouching, restoring, adjusting, servicing or maintaining the covered property.

3. **Musical Instruments**—We do not pay for a loss caused by or that results from any of the following:

- a. repairing, adjusting, restoring, servicing or maintaining the covered property.
- b. mechanical or electrical breakdown or failure. If a fire or explosion results, we do cover the loss caused by the fire or explosion.

TERRITORY WHERE COVERAGE APPLIES

- 1. **Fine Arts**—Coverage applies only while the property covered by this endorsement is in the United States or Canada.
- 2. **All Other Property**—Coverage applies while the property covered by this endorsement is anywhere in the world.

HOW MUCH WE PAY FOR LOSS OR CLAIM

- 1. **Fine Arts**—We pay the amount shown for each scheduled article which is agreed to be the value of the article. In case of loss to a pair or set, we pay the full amount of the pair or set as shown in the schedule, and you agree to surrender the remaining article or articles of the pair or set to us.
- 2. **Postage Stamps or Rare and Current Coin Collections**—In case of loss or damage to any scheduled item, the amount payable will be determined in accordance with item 3 below. When coins or stamps are covered on a blanket basis, we pay the cash market

value at the time of loss but not more than \$1,000 on any unscheduled coin collection nor more than \$250 for any one stamp, coin or individual article of any one pair, strip, block, series sheet, cover frame or card.

3. **Other Property**—Unless otherwise stated in this endorsement, the value of the covered property is not agreed upon but shall be ascertained at the time of loss or damage. We pay the lesser of the following amounts:

- a. the actual cash value of the property at the time of loss;
- b. the amount for which the property could reasonably be expected to be repaired or replaced (to the extent practicable) with property substantially identical to the property lost or damaged;
- c. an amount not greater than the insured's interest in the property; or
- d. the applicable limit.

4. **Deductible**—Loss to any item of personal property insured by this endorsement is subject to a deductible of \$250.00 per occurrence.

5. **Loss to a Pair, Set or Parts (Other than Fine Arts):**

- a. **Loss to a pair or set**—In case of a loss to a pair or set, we may elect to:
 - 1) repair or replace any part to restore the pair or set to its value before the loss; or
 - 2) pay the difference between the actual cash value of the pair or set just before the loss and the actual cash value just after the loss.
- b. **Parts**—In case of a loss to any part of covered property, consisting of several parts when complete, we will pay for the value of the part lost or damaged.

OPTIONAL APPRAISAL ENDORSEMENT

This endorsement changes the Appraisal provision in the policy to which this endorsement is attached.

Paragraph 13. Appraisal, of the **Conditions Applicable to Property Coverages Only** under the **POLICY CONDITIONS** portion of the policy is deleted and replaced with the following appraisal provision:

"13. **Appraisal** - If we and you do not agree on the amount of loss, then an appraisal of the loss may be made if both parties agree to the appraisal. If so agreed, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will not be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

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

DSFM - 103
(Ed. 4-00)

FUNGUS, BACTERIA, MOLD AND OTHER HEALTH HAZARDS EXCLUSION ENDORSEMENT

This endorsement changes the coverages provided by the policy to which this endorsement is attached.

Under **EXCLUSIONS THAT APPLY TO PROPERTY COVERAGES:**

Health Hazrds - We do not pay for loss or damage, direct or indirect, caused by, allegedly attributed to or resulting from any FUNGUS, BACTERIA, MOLD, MILDEW, ALGAE, TOXINS, ASBESTOS, LEAD, POLLUTANTS, CONTAMINATION, CHEMICAL, HAZARDOUS MATERIAL, SMOG, CARBON MONOXIDE OR RADON GAS, including any by-products, roots, spores, fibers or scents of or from the same; nor do we pay for any loss, cost or expense to test for, monitor, assess, contain, abate, neutralize or dispose of the same, nor for any consequential repair or replacement.

DSFM-108
(Ed. 3-04)

Theft Coverage Extension Endorsement

For an additional premium, the following items 2) and 3) of Sub-paragraph h. of Section 10 Theft. of the Perils Section of the policy to which this Endorsement is attached, are deleted.

2) property while unattended in or on any **motor vehicle, recreational motor vehicle** or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered

unattended when the **insured** is required to surrender the keys of such vehicle or trailer to a bailee;

3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;

The deductible shown on the policy Declarations applies to the coverage afforded by this Endorsement.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO - 136
(Ed. 7-91)

LIMITED WHIRLPOOL, HOT TUB OR SPA EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached

Notwithstanding any **terms** in the policy to which this endorsement is attached, **we** do not pay for loss to a whirlpool, hot tub or spa, including filters, pipes, pumps and other related equipment, when caused by freezing, unless such hot tub is located within the **residence**, exclusive of the garage, whether attached to such **residence**, or unattached, located on the **insured premises**.

All other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO - 233
(Ed. 3-97)

Replacement Value Endorsement For Coverage B—Personal Property

We agree, subject to the **terms** of this endorsement and of the policy to which it is attached, to extend Coverage B—Personal Property to cover the **replacement value** of personal property covered under Coverage B—Personal Property.

1. **Definition—Replacement value** means the cost to repair the property or replace the property with new property of equivalent kind and quality to the extent practicable, without deduction for depreciation.
2. Personal Property Not Covered for **Replacement Value** - This endorsement does not apply to the following property:
 - a. **business** property and farm property;
 - b. property not owned by an **insured**;
 - c. film, photographs, negatives, films, cassettes, magnetic recordings, or similar property;
 - d. antiques, fine arts, pictures, paintings, postage stamps, numismatic property and other similar articles of art, rarity or antiquity which by their nature cannot be duplicated;
 - e. memorabilia, souvenirs, collectors items and similar items whose age or history contribute to its value;
 - f. items that are outdated or obsolete and are stored or not being used;
 - g. items not maintained in good or workable condition; or

h. property covered by any scheduled insurance.

3. **Our limit** - We pay the lesser, at the time of loss, of the following amounts in excess of the deductible or other limitation applying to the loss for each covered item:
 - a. the applicable **limit** applying to Coverage B—Personal Property;
 - b. an amount not greater than **your** interest in the property;
 - c. the **replacement value** of the property as defined in this endorsement; or
 - d. any special **limit** stated in the policy.

4. When the **replacement value** is more than twice the actual cash value of the damaged property, **we** are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. **You** may make a claim for the actual cash value amount of the loss before repairs are made or replacement is completed. A claim for any additional amount payable under this provision must be made within 180 days after the loss.

This endorsement does not increase the Coverage B—Personal Property **limit**, and all other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO-111A
(Ed. 12-92)

REFRIGERATED FOOD SPOILAGE ENDORSEMENT

We pay up to \$500 for loss from spoilage of food in a freezer or refrigerated unit on the **insured premises**. The spoilage must be caused by change in temperature.

You must maintain the freezer or refrigerated unit in proper working condition and use all reasonable means to reduce loss under this coverage. No deductible applies to this coverage.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-201A
(Ed. 3-93)

Coverage D — Scheduled Farm Personal Property

Coverage F — Farm Barns, Buildings, Structures And Additional Farm Dwellings

DEFINITIONS

1. **Grain** means harvested grain, harvested corn, harvested beans, harvested seeds, ground feed, manufactured and compounded stock foods, in buildings, structures, sacks, wagons or trucks, and each of these items must be insured separately. This does not include **grain** under government loan or seal, unless same is insured as a separate item.
 2. **Hay in Barns** means hay, straw, silage and fodder while in buildings or structures, and each of these items must be insured separately.
 3. **Hay In Stacks** means hay, straw, silage and fodder while in the open, and each of these items must be insured separately.
 4. **Farm implements, Machinery, Vehicles and Equipment** means farm implements, machinery, vehicles and equipment used in the operation of the farm. This does not include **motor vehicles** (other than wagons and trailers designed for farming purposes and used principally on farm premises) camper bodies, watercraft, outboard motors, aircraft, mobile homes, house trailers, and sawmill equipment, or their equipment, tires or parts.
 5. **Borrowed, Rented or Leased Farm Implements, Machinery, Vehicles and Equipment** means farm implements, machinery, vehicles and equipment which are used in the farming operation and in which **you** have no interest as owner or lienholder, but which are in **your** care, custody or control. This does not include **motor vehicles** (other than wagons and trailers designed for farming purposes and used principally on farm premises), camper bodies, watercraft, aircraft, and their equipment, tires and parts, or dealers' demonstration **farm implements, machinery, vehicles and equipment**. This insurance shall be excess insurance over any other valid and collectible insurance available to the owner of such **borrowed farm implements, machinery, vehicles or equipment**.
 6. **Livestock** means cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof.
 7. **Farm Operations Records Expenses** means the expenses **you** incur to reproduce, replace or restore **your** farm operations records. Farm operations records shall include books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, discs, drum, cell and other recording or storage media for electronic data processing, including, but not limited to, records, wires, chips, discs or other software media) pertaining to the operation of the farm. But **we** do cover the cost of blank, unexposed records or software media pertaining to the operation of the farm.
 8. **Household Contents in Described Additional Farm Dwelling**, as scheduled on the Declarations means the **insured's** household contents while in the described additional farm dwelling.
 9. **Additional Farm Dwellings** means farm dwellings, as scheduled on the Declarations, on the **insured premises**. This includes additions, fixtures and outdoor equipment used for servicing such dwellings. This excludes the **residence** covered under Coverage A - Residence.
 10. **Farm Barns, Buildings and Structures** means farm barns, buildings and structures as scheduled on the Declarations. This includes attached sheds and fixtures but excludes farm dwellings or silos attached to a farm barn, building or structure.
 11. **Tenant's Improvements and Betterments** means permanent fixtures, alterations, decoration and additions, made or acquired at **your** expense, which are a part of the described farm barn, building, structure or additional farm dwelling.
- The definition of **insured premises** is modified when used in connection with this form.
1. **Insured Premises** also means:
 - a. the farm premises described on the Declarations;
 - b. other land **you** use for farming; and
 - c. new farm premises acquired or leased during the policy period.

PROPERTY COVERED

Coverage D - Scheduled Farm Personal Property

We cover the classes or items of farm personal property for which a **limit** is stated on the Declarations and only while on the **insured premises**. This coverage is subject to all policy **terms** that apply to property coverages unless amended by this form.

Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings

We cover the items of farm real property located on the **insured premises** and for which a **limit** is stated on the Declarations. This coverage is subject to all policy terms that apply to property coverages unless amended by this form.

INCIDENTAL PROPERTY COVERAGES

This form provides the following Incidental Property Coverages. These incidental coverages are subject to all the **terms** of Coverages D or F. These incidental coverages do not increase the **limit** stated on the Declarations for Coverage D items of farm personal property or Coverage F items of farm real property.

1. **Grain in the Open and Hay in Stacks**- Grain in stacks, shocks, swaths or piles in the open on the **insured premises** and **Hay in Stacks** on the **insured premises** are covered only for loss by fire.
2. **Away from the Premises** -
 - a. **Grain, Hay in Barns and Hay in Stacks** - You may apply up to ten percent of the limit for grain, hay in barns and hay in stacks to cover these items while within 100 miles of the **insured premises**. This does not cover grain, hay in barns and hay in stacks while:
 - 1) being stored or processed in manufacturing plants, public elevators, warehouses, seed houses or drying plants;
 - 2) in transit by common carrier; or
 - 3) in public sales barns and public sales yards.
 - b. **Farm Implements, Machinery, Vehicles and Equipment** - Farm implements, machinery, vehicles, equipment and tools, not otherwise excluded, are covered while they are temporarily off, but within 100 miles of, the **insured premises**.
 - c. **Livestock** - Livestock is covered while temporarily removed from the **insured premises**. This does not cover **livestock** in transit by common carrier, or in locker plants, packing plants, public stock yards, public sales barns and public sales yards.
3. **Materials and Supplies** - The **limit** that applies to a building or other structure includes all materials and supplies intended to be used in the construction, alteration or repair of such building or structure. These items must be on or adjacent to the **insured premises**.
4. **Subsequently Acquired Machinery** - The following insurance shall be excess over any other valid and collectible insurance available to the **insured**.
 - a. **Farm Implements, Machinery, Vehicles and Equipment** - We cover newly acquired **farm implements, machinery, vehicles and equipment** which are not replacement items. Our **limit** on all such items is not more than \$25,000. This coverage applies for 30 days from the date of acquisition or

until the expiration date of this policy, if it occurs first. This coverage will end 30 days from the date of acquisition unless the **insured** reports the acquisition to us. The **insured** must give us a full description of the new farm implement, machinery, vehicle or equipment and pay the additional premium required from the date of acquisition.

- b. **Specifically Insured Farm Implements, Machinery, Vehicles and Equipment** - We cover items acquired as replacements of specifically insured farm implements, machinery, vehicles and equipment. Our **limit** is the smaller of the **limit** specified for the replaced item plus \$25,000, or the actual cash value. The additional \$25,000 limit applies for 30 days from the date of acquisition or until the expiration date of this policy, if it occurs first. Within 30 days of acquisition, the **insured** must report the acquisition to us. The **insured** must give us a full description of the new farm implement, machinery, vehicle or equipment and pay the additional premium required from the date of acquisition. If this is not done, the **limit** for the replaced item applies.

5. Emergency Removal -

- a. We pay for the loss to covered property while removed from the **insured premises** for preservation from damage from perils insured against. Such property is covered against loss from perils insured against for 30 days. This coverage does not extend past the expiration date of the policy.
- b. We pay up to \$100 towing charge to move a covered mobile home endangered by a peril insured against.

6. Debris Removal - The **limit** for each item shown on the Declarations includes the cost for the removal of debris following an insured loss.

7. Fire Department Service Charge - We pay up to \$250.00 for charges **you** must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

PROPERTY NOT COVERED

This form does not cover loss to:

1. Property covered under Coverage A - Residence or Coverage B - Personal Property, or the Incidental Property Coverages pertaining to these coverages.
2. Outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts, towers and private power and light poles unless specifically insured.
3. Trees, plants, shrubs, lawns and growing crops.
4. Devices, accessories, or antennas designed for reproducing, receiving, detecting, transmitting, recording or playing back data, sound or picture while in or on a

Q-2

motorized vehicle, watercraft or farm equipment, other than a tractor, combine or swather.

5. Film, tape, wire, record or other media for use with any device designed for reproducing, receiving, transmitting, recording or playing back of data, sound or picture while in or on a **motorized vehicle, watercraft or farm equipment other than a tractor, combine or swather.**
6. Fences, Driveways and Sidewalks.
7. Submersible pumps, unless specifically insured.
8. **Motor Vehicles, camper bodies, watercraft, outboard motors, aircraft, house trailers, or their equipment, tires and parts.**

FARM PERILS SECTION

This policy insures against direct physical loss to property covered under Coverage D - Scheduled Farm Personal Property and Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings caused by the following perils:

1. **Fire or Lightning.** This does not cover loss:
 - a. caused by or resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, unless fire ensues and then only for the loss caused by such fire;
 - b. to livestock from smothering, suffocation, or asphyxiation caused by or resulting from power, heating or cooling failure unless such failure is the direct result of physical damage to power, heating or cooling equipment situated on the **insured premises** caused by actual physical contact of fire or lightning with such equipment.
2. **Windstorm or Hail.** This does not cover loss:
 - a. caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind-driven or not;
 - b. to the interior of a building, or to the property inside, caused by dust, rain, sand, sleet, snow or water, all whether wind-driven or not. Loss caused by dust, rain, sand, sleet, snow or water is covered if these elements enter through an opening in roof or walls resulting from damage caused by the direct force of wind or hail;
 - c. to **livestock** caused by or resulting from:
 - 1) running into streams or ditches or against fences or other objects;
 - 2) smothering, suffocation, or asphyxiation;
 - 3) fright; or
 - 4) freezing in blizzards or snowstorms;
 - d. to hay, straw, silage and fodder while outside of buildings;
 - e. to grain in stacks, shocks, swaths or piles;
 - f. to the following property:
 - 1) awnings or canopies, including their supports;

- 2) fences;
- 3) seawalls, property line walls, retaining walls and similar walls;
- 4) greenhouses, hothouses, slat houses, trellises, pergolas, cabanas and outdoor equipment used for servicing the premises;
- 5) wharves, docks, piers, boathouses, bulkheads or other structures located over or partially over water and the property therein or thereon; or
- 6) watercraft, including their trailers, furnishings, equipment and outboard motors while such property is outside a fully enclosed building.

3. **Explosion.** This does not cover loss caused by:

- a. explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the **insured**;
- b. shock waves caused by aircraft, known as "sonic boom";
- c. electric arcing;
- d. rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
- e. water hammer;
- f. rupture or bursting of water pipes;
- g. rupture, bursting or operation of pressure relief devices; or
- h. rupture or bursting due to swelling of the contents of any building or structure, caused by water.

4. **Riot or Civil Commotion.**

5. **Aircraft.** This means only direct loss from actual physical contact of an aircraft or objects falling from an aircraft with covered property.

6. **Vehicles.** This means direct loss from actual physical contact of a vehicle with covered property. This does not cover loss caused by vehicles owned or operated by an **insured**, employee of an **insured**, or occupant of the **insured premises**. We do not pay for loss to fences, driveways or walks.

7. **Smoke.** This means only direct loss from smoke due to sudden, unusual and faulty operations of any heating or cooking unit on the **insured premises**. This does not cover loss caused by smoke from fireplaces, agricultural smudging operations, or industrial operations.

8. **Vandalism and Malicious Mischief.** This does not cover loss if the **insured premises** are vacant for 30 consecutive days immediately before the loss.

9. **Theft.** This means any act of stealing or attempt to steal. This does not cover loss:

- a. committed by an **insured**;
- b. disclosed on taking inventory;
- c. by conversion or embezzlement;
- d. by escape or mysterious disappearance;
- e. from premises which are vacant for more than 30 consecutive days immediately before the loss;

- f. due to acceptance of forged or counterfeit checks, or checks or other negotiable instruments not paid upon presentation; or
 - g. due to forgery, swindling, false pretenses, trick, deception, threat, fraud, including farm products fraud, or misrepresentation.
10. **Collision.** This means direct loss to covered farm personal property, caused by:
- a. collision of farm implements or machinery with another object; or
 - b. upset or overturn of farm implements or machinery but not while being transported by common carrier or a machinery dealer or being loaded or unloaded by such common carrier or machinery dealer.

Collision does not cover loss or damage:

- a. caused by the impact of farm implements or machinery with the ground, or hole therein, or with the roadbed, or hole therein, or with a rock or rocks in or upon the ground or roadbed;
 - b. caused by the impact of farm implements or machinery with an object below the surface of the ground;
 - c. due to intake of foreign objects into harvesting equipment;
 - d. caused by falling objects; or
 - e. caused by collapse of a building, or any part thereof.
11. **Glass Coverage.** This means breakage of glass constituting a part of the cab of covered farm implements or machinery.
12. **Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.** When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the insured, his employees or tenants, and loss of said livestock by accidental shooting, except by the insured, his employees or tenants.

HOW MUCH WE PAY FOR LOSS OR CLAIM

"How Much We Pay For Loss or Claim" in the General Policy Terms is deleted and replaced by the following:

1. Losses are settled on the basis of actual cash value including deduction for depreciation, however caused.
2. **Our Limit of Liability -**
 - a. **Farm Property -** For loss to farm property, we pay the lesser of the following amounts:
 - 1) the applicable limit;
 - 2) the amount of **your** interest in the property;
 - 3) the cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
 - 4) the amount computed after applying the deductibles or other limitation applicable to the loss;

- 5) the amount computed by the application of any pro rata clause;
- 6) the amount in excess of the amount recoverable by the **insured** as a result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss.
- 7) any special limit applying to the property;
- 8) the actual cash value of the property at the time of loss; or
- 9) (applies to mobile homes only at **your** option) the amount equal to the difference between the actual cash value of the property immediately before the loss and its actual cash value immediately after the loss.

- b. **Pro Rata Distribution Clause - Coverage D - Our limit** for items separately designated under **Grain, Hay in Barns, and Hay in Stacks** shown on the Declarations shall be calculated separately for each of these items. **Our limit** is the proportion of the amount of insurance for the item that the value of the property covered under the item bears to the total value of the property covered under the item at all locations at the time of loss.

c. **Special Limits of Liability -**

- 1) **Livestock - we** pay no more than the smallest of the following per head of **livestock**:
 - a. 100 percent of the amount obtained by dividing the total insurance on each class of **livestock** insured by the number of head in the class owned by the **insured** at the time of loss.
 - b. the actual cash value of the animal destroyed or damaged.
- 2) **Portable Buildings and Structures - We** pay no more than the proportion of the **limit** for portable buildings or structures as the value of each is to the aggregate value of all such portable buildings or structures owned by the **insured** at the time of loss.
- 3) **Metal Covered Buildings - Our limit** for appearance loss caused by hail to the exterior metal of a metal covered building is 25 per cent of the replacement cost of such metal covering.

3. **Deductibles -**

- a. The deductible applies to all coverages provided by this form except **Fire Department Service Charge** and **Emergency Removal**. The deductible applies to all perils insured against unless otherwise stated on the Declarations or endorsement.
- b. **We** pay only that part of the loss over the deductible stated on the Declarations or endorsement. The deductible applies per **occurrence**.

4. **Insurance Under More Than One Coverage -** If more than one coverage of this policy applies to a loss, **we** pay no more than the actual loss.

5. **Insurance Under More Than One Policy -** This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

VINYL SIDING COLOR FADING EXCLUSION ENDORSEMENT

This policy provides no coverage for color fading or any loss of original color appearance on vinyl siding on residence(s), building(s) and structure(s) insured in the policy to which this endorsement is attached.

All other terms, provisions, conditions, stipulations and agreements to such policy not in conflict herewith, apply.

DSFM-101A
(Ed. 6-09)

Farmowners/Ranchowners

WEIGHT OF ICE, SNOW OR SLEET COVERAGE ENDORSEMENT

Subject to the **terms** of this Endorsement and of the policy to which it is attached, this policy is extended to cover direct physical loss caused by the weight of ice, snow or sleet to building(s) and structure(s) insured under Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings of this policy and to personal property insured under Coverage D - Scheduled Farm Personal Property or Coverage E - Unscheduled Farm Personal Property (Blanket), or both, of this policy, located in a building or structure if the weight of ice, snow or sleet first causes direct physical damage to such building or structure in which such personal property is located. This endorsement shall not extend to nor cover irrigation equipment, including component parts and apparatus associated with irrigation.

This Endorsement does not increase the coverage limits stated in the Declarations of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith, apply.

DMFO-231 B
(Ed. 1-08)

VEHICLE DAMAGE TO BUILDINGS/STRUCTURES COVERAGE ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

For no additional premium, subject to the terms of this Endorsement and of the policy to which it is attached, this policy is extended to cover direct physical loss from actual physical contact of a vehicle or motor vehicle owned or operated by an insured, employee of an insured, or occupant of the insured premises with covered property under Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings.

All other terms of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO-237
(Ed 3-02)

Coverage E — Unscheduled Farm Personal Property (Blanket)

DEFINITIONS

1. **Livestock** means cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof.

The definition of **insured premises** is modified when used in connection with this form.

2. **Insured Premises** also means:

- a. the farm premises described on the Declarations;
- b. other land **you** use for farming; and
- c. new farm premises acquired or leased during the policy period.

PROPERTY COVERED

This policy covers the **insured's** farm personal property usual and incidental to the operation of the farm while on the **insured premises**. This coverage is subject to all policy **terms** that apply to property coverages unless amended by this form.

INCIDENTAL PROPERTY COVERAGES

This form provides the following Incidental Property Coverages. These incidental coverages are subject to all the **terms** of Coverage E. These incidental coverages do not increase the limit stated on the Declaration for Coverage E items of farm personal property.

1. **We** cover the following property while away from the **insured premises**:
 - a. livestock, except while in transit by common carrier, or while in locker plants, packing plants, public stock yards, public sales barns and public sales yards.
 - b. farm implements, machinery, vehicles, equipment and tools, not otherwise excluded, while within 100 miles of the **insured premises**; and
 - c. grain, threshed seeds, threshed beans, hay, straw, fodder, silage, herbicides, pesticides, and fertilizer, ground feed and manufactured and compounded stock foods, except while stored or being processed in public elevators or warehouses, seed houses, drying plants or manufacturing plants.
2. **You** may apply up to 10% of the Coverage E—Unscheduled Farm Personal Property (Blanket) Limit (but not as an additional amount of insurance) to cover grain in stacks, shocks or swaths, only for loss caused by fire.
3. **We** cover hay, straw, silage and fodder in stacks, windrows, bales, piles and silo bags while outside of buildings only for loss caused by fire.

4. **Emergency Removal.** **We** pay for loss to covered property that is moved from the **insured premises** to prevent a loss from perils insured against. The property is covered for direct physical loss not excluded, for up to 30 days. This coverage does not extend past the date on which this policy expires.

5. **Debris Removal.** **We** pay to remove the debris of covered property following an insured loss.

This coverage does not include costs to:

- a. extract **pollutants** from land or water, or
- b. remove, restore or replace **polluted** land or water.

6. **Fire Department Service Charge.** **We** pay up to \$250.00 for charges **you** must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

PROPERTY NOT COVERED

This form does not cover loss to:

1. The following property:

Livestock Grain

2. Property covered under Coverage B or the Incidental Property Coverages pertaining to that coverage;
3. Property specifically insured;
4. Tobacco, cotton, vegetables, root crops, bulbs and fruit;
5. Contents of potato, onion, bulb or fruit cleaning, grading, sorting, packing or storage buildings;
6. Race horses, show horses and show ponies;
7. Contents of chicken fryer or broiler houses, laying houses, poultry brooder houses, duck or turkey houses including fowl therein;
8. Fences, windmills, windchargers and their towers;
9. **Motor vehicles**, camper bodies, watercraft, outboard motors, aircraft, mobile homes, house trailers, and sawmill equipment, or their equipment, tires and parts;
10. Furs, animal pelts and animals other than **livestock**;
11. Bulk milk tanks, bulk feed tanks, barn cleaners, pasteurizers, boilers and any permanent fixtures attached to or within the building;

12. Crops in the open, standing or otherwise, except as provided by this form under Incidental Property Coverages;
13. Trees, plants, shrubs, lawns and growing crops;
14. Portable buildings, portable structures, and silo bags;
15. Irrigation equipment, including pumps, wells and transmission lines;
16. Farm operations records, books of account, electronic processing tapes, records, wires, chips, discs or other software media containing business data;
17. Devices, accessories, or antennas designed for reproducing, receiving, detecting, transmitting, recording or playing back data, sound or picture while in or on a **motor vehicle, motorized vehicle, recreational motor vehicle**, watercraft or farm equipment, other than a tractor, combine or swather;
18. Film, tape, wire, record or other media for use with any device designed for reproducing, receiving, transmitting, recording or playing back of data, sound or picture while in or on a **motor vehicle, motorized vehicle, recreational motor vehicle**, watercraft or farm equipment, other than a tractor, combine or swather;
19. Outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts and towers unless specifically insured;
20. Submersible pumps;
21. Borrowed farm implements, machinery, vehicles and tools;
22. Poultry;
23. Water wells.

FARM PERILS SECTION

This policy insures against direct physical loss to property covered under Coverage E—Unscheduled Farm Personal Property (Blanket) caused by the following perils:

1. **Fire or Lightning.** This does not cover loss:
 - a. caused by or resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, unless fire ensues and then only for the loss caused by such fire;
 - b. to livestock from smothering, suffocation or asphyxiation caused by or resulting from power, heating or cooling failure unless such failure is the direct result of physical damage to power, heating or cooling equipment situated on the **insured premises** caused

by actual physical contact of fire or lightning with such equipment.

2. Windstorm or Hail. This does not cover loss:

- a. caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not;
- b. to the interior of a building, or to the property inside, caused by dust, rain, sand, sleet, snow or water, all whether wind-driven or not. Loss caused by dust, rain, sand, sleet, snow or water is covered if these elements enter through an opening in roof or walls resulting from damage caused by the direct force of wind or hail;
- c. to **livestock** caused by or resulting from:
 - 1) running into streams or ditches or against fences or other objects;
 - 2) **smothering, suffocation or asphyxiation**;
 - 3) fright; or
 - 4) **freezing in blizzards or snowstorms**;
- d. to hay, straw, silage and fodder while outside of buildings.

3. Explosion. This does not cover loss caused by:

- a. explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the **insured**;
- b. shock waves caused by aircraft, known as "sonic boom";
- c. electric arcing;
- d. rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
- e. water hammer;
- f. rupture or bursting of water pipes;
- g. rupture, bursting or operation of pressure relief devices; or
- h. rupture or bursting due to swelling of the contents of any building or structure, caused by water.

4. Riot or Civil Commotion.

5. **Aircraft.** This means only direct loss from actual physical contact of an aircraft or objects falling from an aircraft with covered property.
6. **Vehicles.** This means direct loss from actual physical contact of a vehicle with covered property. This does not cover loss caused by vehicles owned or operated by an **insured**, employee of an **insured**, or occupant of the **insured premises**. We do not pay for loss to fences, driveways or walks.
7. **Smoke.** This means only direct loss from smoke due to sudden, unusual and faulty operations of any heating or cooking unit on the **insured premises**. This does not cover loss caused by smoke from fireplaces, agricultural smudging operations, or industrial operations.

8. **Vandalism and Malicious Mischief.** This does not cover loss if the **insured premises** are vacant for 30 consecutive days immediately before the loss.

9. **Theft.** This means any act of stealing or attempt to steal. This does not cover loss:

- a. committed by an **insured**;
- b. disclosed on taking inventory;
- c. by conversion or embezzlement;
- d. by escape or mysterious disappearance;
- e. from premises which are vacant for more than 30 consecutive days immediately before the loss;
- f. due to acceptance of forged or counterfeit checks, or checks or other negotiable instruments not paid upon presentation; or
- g. due to forgery, swindling, false pretenses, trick, deception, threat, fraud, including farm products fraud, or misrepresentation.

10. **Collision.** This means direct loss to covered farm personal property, caused by:

- a. collision of farm implements or machinery with another object; or
- b. upset or overturn of farm implements or machinery, but not while being transported by common carrier or a machinery dealer or being loaded or unloaded by such common carrier or machinery dealer.

Collision does not cover loss or damage:

- a. caused by the impact of farm implements or machinery with the ground, or hole therein, or with the roadbed, or hole therein, or with a rock or rocks in or upon the ground or roadbed;
- b. caused by the impact of farm implements or machinery with an object below the surface of the ground;
- c. due to intake of foreign objects into harvesting equipment;
- d. caused by falling objects; or
- e. caused by collapse of a building, or any part thereof.

11. **Glass Coverage.** This means breakage of glass constituting a part of the cab of covered farm implements or machinery.

12. **Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.** When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the **insured**, his employees or tenants, and loss of said livestock by accidental shooting, except by the **insured**, his employees or tenants.

HOW MUCH WE PAY FOR LOSS OR CLAIM

"How Much We Pay For Loss or Claim" in the General Policy Terms is deleted and replaced by the following.

1. Losses are settled on the basis of actual cash value including deduction for depreciation, however caused.

2. Our Limit of Liability—

a. **Farm Property**—For loss to farm property, we pay the lesser of the following amounts:

- 1) the applicable limit;
- 2) the amount of **your** interest in the property;
- 3) the cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
- 4) the amount computed after applying the deductibles or other limitation applicable to the loss;
- 5) the amount computed by application of any Coinsurance Clause;
- 6) the amount in excess of the amount recoverable by the **insured** as the result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss;
- 7) any special limit applying to the property; or
- 8) the actual cash value of the property at the time of loss.

b. **Coinsurance Clause**—We pay no more than that proportion of the loss to covered property that the Coverage E—Unscheduled Farm Personal Property (Blanket) limit bears to 90 percent of the actual cash value of the farm personal property at the time of loss. To establish the actual cash value of the farm personal property at the time of loss, at our request, **you** must furnish to **us** an accurate written inventory of the farm personal property at the time of loss.

The calculation of the actual cash value of the farm personal property at the time of loss shall not include the value of farm personal property acquired, not as replacement items, within the previous 30 days.

The value of **livestock** is limited to \$2,000 per head.

c. **Livestock**—Our limit does not exceed \$2,000 per head of **livestock**.

d. **Semen**—Our limit does not exceed \$1,000 on semen.

3. Deductibles—

a. The deductible applies to all coverages provided by this form except **Emergency Removal** and **Fire Department Service Charge**.

The deductible applies to all perils insured against unless otherwise stated on the Declarations or endorsement.

b. We pay only that part of the loss over the deductible stated on the Declarations or endorsement. The

deductible applies per **occurrence**.

4. **Insurance Under More Than One Coverage**—If more than one coverage of this policy applies to a loss, **we** pay no more than the actual loss.

DUPLICATE

5. **Insurance Under More Than One Policy**—This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

Farm Liability Coverage Section

AMENDMENT OF GENERAL POLICY TERMS

1. The following definitions are added:
 - a. **Farming** means the ownership, maintenance or use of premises for the production of crops or the raising or care of livestock, including all necessary operations. **Farming** also includes the operations of roadside stands and **farm** markets maintained principally for the sale of the **insured's** own **farm** products.
 - b. **Farm employee** means an employee of an **insured** whose duties are in connection with the **farming** operations of the **insured**.
2. When used in connection with the Farm Liability Coverage Section, the definitions of **insured**, **insured premises** and **business** are modified as follows:
 - a. **Insured premises** also means the **farm premises** described on the Declarations, other land **you** use for **farming** purposes and new **farm** premises acquired during the policy period.
 - b. **Business** does not include **farming**.
 - c. A person while performing duties as an employee of an **insured** is an **insured** with respect to **farm** implements and other vehicles covered under this policy.
3. **Coverage B - Personal Property** does not apply to **farm** personal property.

PRINCIPAL COVERAGES - LIABILITY AND MEDICAL PAYMENTS TO OTHERS

Coverage L - Personal Liability - We pay, up to our limit, all sums for which an **insured** is liable by law because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies. We will defend a suit seeking damages if that suit resulted from **bodily injury** or **property damage** not excluded under this coverage. We may make investigations and settle claims or suits that we decide are appropriate. We do not have to provide a defense after we have paid an amount equal to our limit as a result of a judgment or written settlement.

Coverage M - Medical Payments to Others - We pay, up to our limit, the necessary **medical expenses** if they are incurred or medically determined within three years from the date of an accident causing **bodily injury** covered by this policy. Medical expenses means the reasonable charges for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing, funeral services, prosthetic devices and eyeglasses, including contact lenses. This applies only to:

1. a person on the **insured premises** with the permission of an **insured**; and

2. a person away from the **insured premises** if the **bodily injury**:

- a. is a result of a condition on an **insured premises**;
- b. is caused by an activity of an **insured**;
- c. is caused by a person in the course of performing duties as a **domestic employee** of an **insured**;
- d. is caused by an animal owned by or in the care of an **insured**; or
- e. if sustained by a **domestic employee** and arises out of and in the course of employment of an **insured**.

INCIDENTAL LIABILITY AND MEDICAL PAYMENTS TO OTHERS COVERAGES

These coverages are subject to all the **terms** of Coverages L - Personal Liability and M - Medical Payments to Others. Except for Claims and Defense Costs and First Aid Expense, they do not increase the **limit** stated for the Principal Coverages.

1. **Damage to Property of Others** - Regardless of an **insured's** legal liability, we pay for property of others damaged by an **insured**, or we repair or replace the property, to the extent practicable, with property of like kind and quality. Our limit for this coverage is \$250 per **occurrence**.

The exclusions that apply to Coverages L and M do not apply to this coverage. However, we do not pay for damage to property:

- a. owned by, rented to or leased to an **insured**, another resident of **your** household, or the tenant of an **insured**;
- b. caused intentionally by an **insured** who has attained the age of 13;
- c. covered under this policy under Property Coverages; or
- d. resulting in whole or in part from:
 - 1) activities related to a **business** of an **insured**;
 - 2) premises owned, rented, or controlled by an **insured**, other than an **insured premises**; or
 - 3) the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of **motor vehicles, motorized vehicles, recreational motor vehicles, farm machinery, farm implements, farm equipment, aircraft or watercraft**.

2. **Contracts and Agreements** - We pay for damages for **bodily injury** or **property damage** resulting from liability assumed by an **insured** under a written contract made before the loss. The loss causing the **bodily injury** or **property damage** must have occurred during

the policy period. This coverage does not extend to a written or oral contract or warranty of **farm goods** or **farm products** by an **insured**, and does not apply to a written or oral contract or warranty in connection with the **business** activities of an **insured**.

3. **Claims and Defense Costs** - If we defend a suit, we pay;

- a. the costs taxed to an **insured**;
- b. the costs incurred by us;
- c. the actual loss of earnings by an **insured** for time spent away from work at **our** request (We pay up to \$50 per day.);
- d. the necessary costs incurred by **you** at **our** request;
- e. the interest which accrues after the entry of a judgment but ending when we tender or pay up to **our limit**;
- f. the premiums on appeal bonds or bonds for the release of attachments up to **our limit** (We are not required to apply for or furnish bonds.);
- g. the premiums up to \$500 per bail bond required of an **insured** because of an accident or a traffic law violation arising out of the use of a vehicle to which this policy applies (We are not required to pay for or furnish bonds.); and
- h. prejudgment interest awarded against an **insured** on that part of the judgment we pay.

4. **First Aid Expense** - We pay the expenses incurred by an **insured** for first aid to persons, other than **insureds**, for **bodily injury** covered by this policy.

5. **Motorized Vehicles** - We pay for the **bodily injury** or the **property damage** which:

- a. occurs on the **insured premises** and is a result of the ownership, maintenance, use, loading or unloading of:

- 1) a **motorized vehicle** if it is not subject to **motor vehicle** registration because of its type or use; or
- 2) a **recreational motor vehicle**;

b. results from:

- 1) a motorized golf cart while used for golfing purposes on a golf course;
- 2) a utility, boat, camp or mobile home trailer, except when the trailer is carried on, is towed by or is attached to a **motor vehicle** or a **recreational motor vehicle**; or
- 3) a **motorized vehicle** which is designed only for use off public roads and which is used mainly to service the **insured premises**, and is not subject to **motor vehicle** registration.

c. results from **insured's** use of a **recreational motor vehicle** which is not owned by an **insured**.

6. **Watercraft** -

- a. We pay for the **bodily injury** or the **property damage** which results from the maintenance, use, loading or unloading of:

- 1) a watercraft while it is on the **insured premises**;
- 2) a watercraft which is not owned by or rented to an **insured** if the loss is a result of the activities of an **insured**;
- 3) a watercraft which is owned by or is rented to an **insured** and which is powered by inboard or inboard/outboard motors which total 50 horsepower or less (not to include any watercraft commonly known as jet skis or wet bikes);
- 4) a sailing vessel with or without auxiliary power which is owned by or is rented to an **insured** and is less than 26 feet in length; or
- 5) a watercraft which is powered by outboard motors which total 25 horsepower or less (not to include any watercraft commonly known as jet skis or wet bikes).
- 6) a watercraft which is rented to an **insured** and is any watercraft commonly known as jet skis or wet bikes.

- b. We pay for the **bodily injury** or the **property damage** which results from the maintenance, use, loading or unloading of a watercraft that is powered by outboard motors which total more than 25 horsepower, if:

- 1) the motors are listed on the Declarations as insured for personal liability;
- 2) the motors are acquired by an **insured** during the policy period and a request for coverage is made within 45 days after they are acquired; or
- 3) the motors are not owned by an **insured**.

7. **Business** - We pay for the **bodily injury** or the **property damage** which results from:

- a. the rental of that part of the **insured premises** that is usually occupied by **you**, as a **residence**;
- b. the rental of other parts of the **insured premises** for use as a **residence** (No family unit may include more than two roomers or boarders.); or
- c. the rental of a part of the **insured premises** for use as a school, studio, office or private garage, only in the event such rental is first reported to **us** by an **insured** and an endorsement is issued by **us** and attached to this policy providing **bodily injury** or the **property damage** coverage for such rental.

EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS

This policy does not apply to **bodily injury** or **property damage** which results directly or indirectly from:

L - 2

1. war (This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction, seizure or use of property for a military purpose. It includes any consequence of any of these. Discharge of a nuclear weapon is deemed a warlike act even if accidental.);
2. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of an aircraft, except for **bodily injury** to a person while performing duties as a **domestic employee** (This exclusion does not apply to model airplanes.);
3. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of a **motor vehicle** owned or operated by or rented or loaned to an **insured**;
4. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of **motorized vehicles** or watercraft owned or operated by or rented or loaned to an **insured**. We do pay:
 - a. for **bodily injury** to a person in the course of performing duties as a **domestic employee**; or
 - b. if coverage is provided for by an Incidental Motorized Vehicle or Watercraft Coverage;
5. the use of a **motorized vehicle** in, or in the practice or the preparation for, racing, speed, pulling, or pushing, demolition or stunt activities or contests;
6. liability imposed by law on an **insured** for the use of a **motorized vehicle**, aircraft or watercraft, except if coverage is provided for by an Incidental Motorized Vehicle or Watercraft Coverage;
7. the rendering of or the failing to render a professional service;
8. activities related to the **business** of an **insured**, except as provided for by an Incidental Business Coverage;
9. premises that are owned, rented or controlled by an **insured** and that are not the **insured premises**. We do pay for **bodily injury** to a person in the course of performing duties as a **domestic employee**;
10. an intentional act of an **insured** or an act done at the direction of an **insured**;
11. custom farming, meaning farming undertaken for others under an oral or written contract, in the event the gross amount of money charged by an **insured** for custom farming operations exceeds \$2000 during any annual policy period;
12. the ownership, operation, maintenance, use, loading or unloading of any implement, machinery, vehicle, equipment, device, instrument or apparatus for the moving of hay stacks, straw stacks, fodder stacks, baled hay or baled straw other than the moving, by the **insured**, of hay stacks, straw stacks, fodder stacks, baled hay or baled straw owned by the **insured**.
13. an **occurrence** for which an **insured** is also an **insured** under a nuclear energy liability policy or would be an **insured** but for the exhaustion of its **limits** (A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or their successors.);
14. the transmission of a communicable disease by an **insured**;
15. the actual, alleged or threatened molestation, including, but not limited to sexual molestation of a person by an **insured**, relative of an **insured**, volunteer performing services for an **insured**, or an occupant of the **insured premises**;
16. any act or omission of an **insured** as an officer or director of any corporation, association or other organization, except the acts of an **insured** as an unpaid volunteer director, officer or trustee of a charitable, religious or civic non-profit corporation, association or other organization. An elected public official shall not be considered an unpaid volunteer director, officer or trustee;
17. personal acts of an **insured** on or off the **insured premises**, unless the **insured** is residing on the **insured premises** described on the Declarations;
18. services, including, but not limited to home day care services, regularly provided by an **insured** for the care of others, and for which services an **insured** is compensated. A mutual exchange of like services is not considered compensation. However, this exclusion does not apply to **bodily injury** or **property damage** that arises from such services if an endorsement is first issued by us and attached to this policy providing **bodily injury** or **property damage** coverage for such services;
19. the discharge, dispersal, release or the escape of **pollutants** into or upon land, water or air. However, this exclusion does not apply to **bodily injury** or **property damage** that arises from the heat, smoke or fumes of a hostile fire on the **insured premises**. Hostile fire is a fire that becomes uncontrollable or breaks out from where it was intended to be;
20. **bodily injury** to a **farm employee** of an **insured** if it occurs in the course of employment; or the consequential injury to a spouse, child, parent, brother or sister of such insured employee.

This exclusion applies whether the **insured** is liable either as an employer or in any other capacity and to any obligation of an **insured** to fully or partially reimburse another for damages arising out of the injury.

This exclusion does not apply to liability assumed by an **insured** under a contract or an agreement.

21. actual or alleged **bodily injury** from the ingestion, inhalation or absorption of lead in any form; actual or alleged **property damage** that results directly or indirectly from any form of lead; any loss, cost or expense arising out of any request, demand or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of lead; or any loss, cost or expense arising out of any claim or suit by or on behalf of any governmental authority for damages resulting from testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of lead.

ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO COVERAGE L - PERSONAL LIABILITY

Coverage L - Personal Liability does not apply to:

1. **bodily injury** to you and if residents of your household, your relatives, and persons under the age of 21 in your care or in the care of your resident relatives;
2. liability assumed under a contract or an agreement, except as provided for by Incidental Contracts and Agreements Coverage;
3. damage to property owned by an **insured**;
4. damage to property that is rented to, occupied by, used by, or in the care, custody or control of an **insured**, except for **property damage** that is caused by fire, smoke or explosion, other than damage to **farm** premises or **farm** property;
5. sickness, disease or death of a **domestic employee** unless a written notice is received by us within 36 months after the end of the policy period in which the injury occurred;
6. **bodily injury** to a person, including a **domestic em-**

ployee, if the **insured** has a workers' compensation policy covering the injury or if benefits are payable or are required to be provided by an **insured** under a worker's compensation, non-occupational disability, occupational disease or like law;

7. **property damage** arising or resulting from substances released or discharged from an aircraft;
8. **bodily injury** or **property damage** to or from products manufactured, produced, grown, sold, handled or distributed by the **insured** if the **bodily injury** or **property damage** arises out of such products, or a part of such products, after the **insured** has relinquished possession thereof to others;
9. **bodily injury** or **property damage** to or from work performed by or for an **insured** if the **bodily injury** or **property damage** arises out of such work or a part of such work; or
10. **bodily injury** or **property damage** to or from premises you sell, give away or abandon, if the **bodily injury** or **property damage** arises out of such premises or a part of such premises.
11. **punitive or exemplary damages or related defense costs**. This exclusion applies regardless of any other terms of this policy or endorsements made a part of it.

ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS

Coverage M - Medical Payments to Others do not apply to **bodily injury** to:

1. an **insured**, a tenant or lessee of any part of the **insured premises**, or any person who resides on the **insured premises**, except a **domestic employee**;
2. a person who is on the **insured premises** because a **business** is conducted or professional services are rendered on the **insured premises**; or
3. a person, including a **domestic employee**, if a workers' compensation policy covers the injury or if benefits are provided under a workers' compensation, non-occupational disability, occupational disease or like law.

TRAMPOLINE EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

Notwithstanding any other **terms** in the policy of which this endorsement becomes a part of, **we** will not pay for any loss or liability, whatsoever, on account of injury, death, emotional distress or the like, arising out of the use of any trampoline, rebounding, tumbling or similar apparatus, owned, operated, rented or used by **you** or for **you**, or deemed to be under **your** control. This exclusion applies to all claims made by any person regardless of the theory of liability including, but not being limited to, claims made regarding the ownership, operation, rental, use, supervision or lack thereof, improper assembly, maintenance, or repair, or on account of any other allegation.

DSFM-100
(Ed. 4-00)

PIT BULL AND CATAHOULA EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

Notwithstanding any other terms in the policy of which this endorsement becomes a part of, we will not pay for any loss or liability, whatsoever, on account of injury, death, emotional distress or the like, caused by or attributable to any Pit Bull or Catahoula owned by you or by any member of your household, or under your possession or care or under the possession or care of any member of your household, whether such ownership, possession or care is long term or temporary. This exclusion applies to all claims made by any person regardless of theory of liability. "Pit Bull" shall include but not be limited to the American Pit Bull Terrier, and any cross or mix breed thereof. "Catahoula" shall include but not be limited to the Louisiana Catahoula Leopard Dog, and any cross or mix breed thereof.

DSFM - 102
(Ed. 4-00)

**FUNGUS, BACTERIA, MOLD AND OTHER HEALTH HAZARDS
EXCLUSION ENDORSEMENT**

This endorsement changes the coverages provided by the policy to which this endorsement is attached.

Under **EXCLUSIONS THAT APPLY TO ALL LIABILITY COVERAGES, WHETHER COVERAGE L - PERSONAL LIABILITY OR COVERAGE M - MEDICAL PAYMENTS TO OTHERS, OR BOTH**, This policy does not apply to **bodily injury** or **property damage** which results directly or indirectly from:

the presence, growth, discharge, release, escape, inhalation, ingestion or coming in contact with any FUNGUS, BACTERIA, MOLD, MILDEW, ALGAE, TOXINS, ASBESTOS, CONTAMINATION, CHEMICAL, HAZARDOUS MATERIAL, SMOG, CARBON MONOXIDE OR RADON GAS, including any by-products, roots, spores, fibers or scents of or from the same; nor do we pay for any loss, cost or expense to test for, monitor, assess, contain, abate, neutralize or dispose of the same, nor for any consequential symptoms or treatment. **Bodily injury** includes injury, illness, allergy or reaction, adverse health effect, infection, toxicity and death.

This exclusion does not apply to any of the above items on or in any good or product intended for human consumption.

DSFM-109
(Ed. 3-04)

Limited Farm Pollution Liability Coverage Endorsement

Exclusion 19. of the EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS in the FARM LIABILITY COVERAGE SECTION of the policy to which this Endorsement is attached relating to the discharge, dispersal, release or escape of **pollutants** into or upon land, water or air will not apply to **bodily injury** or **property damage** arising out of the sudden and accidental discharge, dispersal, release or escape into or upon land, water or air of **pollutants** used in or intended for use in normal and usual farming activities on the **insured premises** or while such **pollutants** used in or intended for use in normal and usual farming activities are being transported by the **insured**, subject to the **terms** of this Endorsement.

EXCESS COVERAGE

Coverage afforded by this Endorsement will be considered excess to funds available through any local, state or federal agency.

ANNUAL AGGREGATE LIMIT

Regardless of the number of **occurrences, insureds**, claims made, suits brought or persons injured, **our total limit** in any one policy year for Coverage L - Personal Liability and Coverage M - Medical Payments to Others provided by this Endorsement will not exceed \$100,000.00.

DEDUCTIBLE

The following deductible amount applies to each loss or claim covered by this Endorsement: \$1,000.00

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-112
(Ed. 1-91)

Snowmobile Endorsement

Liability Coverage Only

Coverage L - Personal Liability and Coverage M - Medical Payments to Others coverage apply to bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of any snowmobile owned by the **Insured** if the bodily injury or property damage occurs on the **farm premises** described on the Declarations, except that portion of such **farm premises** constituting a public highway.

This endorsement does not increase the Coverage L - Personal Liability limit or the Coverage M - Medical Payments to Others **limit** of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith apply.

DMFO-127
(Ed. 4-91)

DUPLICATE

LIMITED LIVESTOCK LIABILITY ENDORSEMENT

We pay for crop damage in excess of \$250.00 per **occurrence**, caused by any horses, mules, cattle, goats, sheep or swine owned by or in the possession of **Insured** which trespass upon land owned by, in the possession of or being cropped by any person other than the **Insured**.

All other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO - 225A
(ED. 3-97)

Farmowners/Ranchowners

LIQUID MILK CONTAMINATION ENDORSEMENT

For no additional premium, subject to the **terms** of this Endorsement and of the policy to which it is attached, the Farm Liability Coverage Section of this policy is extended to include **property damage** to the milk cargo of bulk milk transportation **motor vehicles** resulting from the delivery of contaminated milk to such vehicles by the insured.

Deductible: Loss by the peril insured against by this Endorsement is subject to a \$1,000 deductible per **occurrence**.

This Endorsement does not increase the coverage limits stated in the Declarations of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith, apply.

DMFO-234
(Ed. 4-97)

ENDORSEMENT EXPANDING HAY MOVING IMPLEMENT LIABILITY COVERAGE

Exclusion 12. of the EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS in the FARM LIABILITY COVERAGE SECTION of the policy to which this Endorsement is attached relating to "the ownership, operation, maintenance, use, loading or unloading of any implement, machinery, vehicle, equipment, device, instrument or apparatus for the moving of hay stacks, straw stacks, fodder stacks, baled hay or baled straw other than the moving, by the insured, of hay stacks, straw stacks, fodder stacks, baled hay or baled straw owned by the insured;" is deleted.

All other terms of the policy, including the remaining exclusions, remain in full force and effect.

DMFO - 236
(Ed. 4-00)

DMFO 236

Livestock Collision Endorsement

This policy covers loss by death of any livestock, meaning cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof, owned by an **insured** when the loss is caused by the collision between such animal and a vehicle not owned or operated by an **insured**, an employee of an **insured** or a resident of the **insured's** household. This coverage applies only while the animal is on a public road and is not being transported.

We pay the lesser of the following amounts:

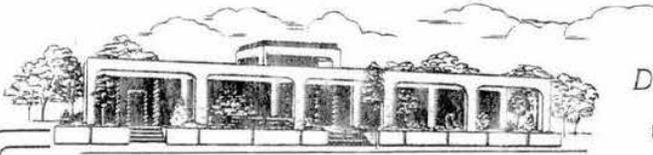
1. the market value of the animal;
2. \$300.00 per animal; or
3. an amount not greater than **your** interest in the animal.

DUPLICATE

No deductible applies to this coverage.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-132
(Ed. 7-91)



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
 15-04-11

FARM EMPLOYER'S LIABILITY COVERAGE SCHEDULE

We agree to provide this coverage based on your statement that the information in the following schedule is correct. It discloses the class of farm employee insured under this endorsement, the total number of days worked and the coverage premium.

| Class | Farm Employees | Premium |
|--|----------------|-----------|
| 1. Occasional Employee(s) Only - (Working not more than 20 days in aggregate) | | \$ |
| 2. Farm Employees-working more than 20 days in aggregate All Employees-Total Months of Employment <u>15</u> | | \$ 405.00 |

DUPLICATE

Coverage L - Personal Liability and Coverage M - Medical Payments to Others are extended to apply to bodily injury to a farm employee while performing duties in connection with the farming operations of an insured.

This coverage includes the following:

1. Coverage L - Personal Liability and Coverage M - Medical Payments to Others apply to bodily injury to a person while performing duties as a farm employee if the bodily injury results:
 - a. from the ownership, use, loading or unloading of aircraft except while the farm employee is engaged in the operation or maintenance of aircraft;
 - b. from the ownership, maintenance, use, loading or unloading of a motor vehicle, motorized vehicle or watercraft; or
 - c. from premises owned, rented or controlled by an insured.
2. Coverage M - Medical Payments to Others applies to bodily injury which occurs on or away from the insured premises and is:
 - a. caused by a person while performing duties as a farm employee; or suffered by a farm employee and arises out of and in the course of employment by an insured.

EXCLUSIONS

1. Coverage L - Personal Liability does not apply to liability for sickness, disease or death of a farm employee unless a written notice is received by us within 36 months after the end of the policy period in which the injury occurred.
2. Coverage L - Personal Liability and Coverage M - Medical Payments to Others do not apply to bodily injury to a farm employee employed in violation of the law with the knowledge or approval of an insured.
3. Coverage L - Personal Liability and Coverage M - Medical Payments to Others do not apply to punitive or exemplary damages for bodily injury to a farm employee employed in violation of the law.
4. Coverage under this endorsement does not apply to liability for bodily injury excluded under the Farm Liability Coverage Section and not specifically covered under this endorsement.

CONDITION

This coverage is subject to the terms of the Farm Liability Coverage Section and this endorsement does not increase the Coverage L - Personal Liability limit or the Coverage M - Medical Payments to Others limit of the policy to which it is attached, and all other terms of the policy not in conflict herewith apply.

DMFD-113
 (Ed. 1-91)

William A. Poppen

Secretary

Peter M. Mack

President



De Smet Farm Mutual Insurance Company
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
 15-04-11

WATERCRAFT
 LIABILITY COVERAGE ONLY

Coverage L - Personal Liability and Coverage H - Medical Payments to Others apply to bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of the watercraft described below:

1. Watercraft powered by an outboard motor or combination of outboard motors totalling more than 25 horsepower.

| Motor A | Horsepower and Description | Owner (if not you) | Description of Watercraft |
|---------|----------------------------|--------------------|---------------------------|
| Motor A | 200HP MERCURY MOTOR | | 19'10" RANGER BOAT |
| Motor B | | | |
| Motor C | | | |
| Motor D | | | |
| Motor E | | | |
| Motor F | | | |
| Motor G | | | |
| Motor H | | | |

2. Watercraft with inboard or inboard/outboard motors totalling more than 50 horsepower or a sailing vessel 26 feet or more in overall length with or without auxiliary power.

| Motor A | Horsepower and Description | Owner (if not you) | Description of Watercraft |
|---------|----------------------------|--------------------|---------------------------|
| Motor A | | | |
| Motor B | | | |
| Motor C | | | |
| Motor D | | | |
| Motor E | | | |
| Motor F | | | |
| Motor G | | | |
| Motor H | | | |

With respect to watercraft with inboard or inboard/outboard motor power or sailing vessels, this insurance does not apply.

- a. to bodily injury to an employee of an insured arising out of and in the course of employment by the insured, if the employee's principal duties are in connection with maintenance or use of watercraft; or
- b. while the watercraft is used to carry persons for a charge or is rented to others.

3. Watercraft commonly known as Jet Skis or Hot Bikes.

| Engine size(cc's) | Owner (if not you) | Description of Watercraft |
|-------------------|--------------------|---------------------------|
| A. | | |
| B. | | |
| C. | | |
| D. | | |
| E. | | |
| F. | | |
| G. | | |
| H. | | |

This endorsement does not increase the Coverage L - Personal Liability limit or the Coverage H - Medical Payments to Others limit of the policy to which it is attached, and all other terms of the policy not in conflict herewith apply.

DMFD-124
 (Ed. 4-95)

William A. Poppen Secretary

Peter M. Mack President

CANCELLATION AND NONRENEWAL OF POLICY ENDORSEMENT

This endorsement changes the Cancellation and Nonrenewal provision in the policy to which this endorsement is attached.

Paragraph 2 under the CONDITIONS provision of the policy is hereby amended to read as follows:

"2 Cancellation and Nonrenewal - You may cancel this policy at any time by returning the policy to **us** for cancellation and paying all obligations then owing by **you** to **us**.

We may cancel this policy by written notice of cancellation delivered to **you** or mailed to **you** at **your** address appearing in the records of this Company at least 20 days before the effective cancellation date, which notice will include a written explanation of the specific reasons for cancellation. Proof of delivery or mailing is sufficient proof of such notice.

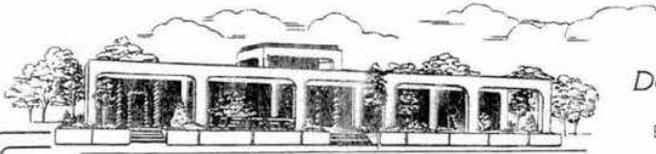
We refund premium or policy costs for the unexpired policy period on a **prorata basis**.

Your return premium or policy costs, if any, will be refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium or policy costs is not a condition of cancellation.

We may cancel this policy for any reasonable cause during the first 60 days this policy is in effect, but after 60 days from the effective date of this policy, a notice of cancellation may not be issued unless it is based upon at least one of the following reasons:

- a. Nonpayment of premium or policy costs;
- b. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining this policy, continuing the policy, or in presenting a claim under the policy;
- c. Discovery of acts or omissions on the part of the named insured which increase any of the hazard insured against;
- d. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
- e. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- f. A determination by the director of the division of insurance of the State of South Dakota that the continuation of the policy would jeopardize this Company's solvency or would place this Company in violation of the insurance laws of South Dakota;
- g. Violation or breach by the insured of any policy terms or conditions; or
- h. Such other reasons as are approved by the director of the South Dakota Division of Insurance.

If **we** elect not to renew this policy, **we** will deliver to **you** or mail to **you** at **your** address appearing in the records of this Company, a written notice of nonrenewal at least 30 days before the effective renewal date of this policy. Proof of delivery or mailing is sufficient proof of such notice."



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FARMOWNERS/RANCHOWNERS
15-04-11

Description of Mortgage Property:

FARM PERSONAL PROPERTY

Loss of damage, if any, under policy, shall be payable to

FIRST NORTHERN BANK

BOX 402

NALL SD 57790

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagee or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 38143 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, Dated FEBRUARY 1, 2013.

RICHARD J DR LERAYNA PAFONSER
19730 FAULSEN RD
RUIXN SD 57775

William D. Poppen

Secretary

Peter M Mack

President



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FARMOWNERS/RANCHOWNERS
15-04-11

Description of Mortgage Property:

2004 JD 7320 TRACTOR

Loss of damage, if any, under policy, shall be payable to

DEENE & CO

ISADA

PO BOX 6800

JUNISTON IA 50131-6800

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 39146 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, Dated MAY 6, 2010.

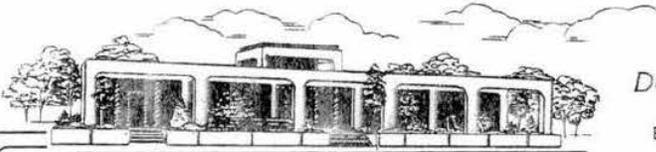
RICHARD J OR LORAYNA FAPUZEK
19730 PAULSEN RD
QUINN SD 57775

William A. Poyson

Secretary

Peter M Mack

President



De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FRANCHISERS/SUBSCRIBERS
13-04-11

Description of Mortgage Property:

2009 JD 9760 COUNTRIE

Loss of damage, if any, under policy, shall be payable to

DEERE & CO
ISADA
PO BOX 3600
JOHNSTON IA 50131-6600

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 38146 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, Dated JULY 11, 2012.

RICHARD J MR LORAYNA PAPIUSEK
19730 PAULSEN RD
QUINN SD 57775

William D. Poppen

Secretary

Peter M. Mack

President

DE SMET FARM MUTUAL INSURANCE COMPANY OF SOUTH DAKOTA
MUTUAL POLICY PROVISIONS

By acceptance of this policy the Named **Insured** becomes a member of the De Smet Farm Mutual Insurance Company of South Dakota, having its Home Office at De Smet, South Dakota and shall, while this policy remains in full force and effect, be entitled to participate in the business at all meetings of the members of the Company, and to vote at all such meetings, and shall be liable to the Company for his or her pro rata share of all losses and expenses of the Company.

IN WITNESS WHEREOF, this Company has executed and attested these presents, but this policy shall not be valid unless the Declaration Page(s) of this policy are countersigned by the President and Secretary of this Company.

William C. Poppen

Secretary

Peter M. Mack

President

Golden Veterinary Services

Jim McConaghy, DVM

308 James Avenue

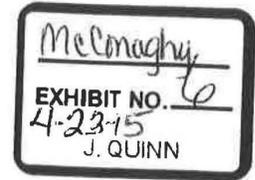
Wall, SD 57790

Phone:

605-279-2077

FAX:

605-279-2659



June 23, 2014

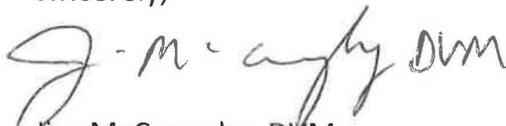
To Whom It May Concern;

On October 16, 2013 Richard Papousek called upon me to determine and verify the causes of death of cattle he lost during the Atlas Blizzard.

I performed complete necropsies on several bred yearling heifers. The only significant findings were in the chest cavity. The lungs were wetter and heavier than normal. On cut sections, clear fluid was present in all airways. In fact, large amounts of this fluid could be seen on the ground in front of the dead animals as it ran from their noses.

It is my opinion that these cattle inhaled such large quantities of rain and then snow that they actually drowned. Drowning is defined in Stedman's Medical Dictionary as death within 24 hours after inhalation of water. This inhalation results in anoxia (lack of oxygen) and eventually cardiac arrest and death.

Sincerely,


Jim McConaghy, DVM

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

_____) File No. 14-959
RICHARD PAPOUSEK and)
LORAYNA PAPOUSEK,)
)
) Plaintiffs,)
)
vs.) Deposition of:
) JIM McCONAGHY, DVM
DeSMET FARM MUTUAL INSURANCE)
COMPANY OF SOUTH DAKOTA,)
)
) Defendant.)
_____)

BEFORE: Jeanne Speck Quinn
Court Reporter and Notary Public
Rapid City, South Dakota

DATE: April 23, 2015 at 9:15 a.m.

PLACE: Golden Veterinary Services
308 James Avenue
Wall, South Dakota

APPEARANCES:

Representing the Plaintiffs: **MR. MICHAEL M. HICKEY**
Bangs, McCullen, Butler,
Foye & Simmons
333 West Boulevard
Suite 400
Rapid City, South Dakota

Representing the Defendant: **MS. JESSICA LARSON**
Beardsley, Jensen &
VonWald
4200 Beach Drive
Rapid City, South Dakota

Also Present: Mr. Richard Papousek
Plaintiff

I N D E X

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| JIM McCONAGHY, DVM | |
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| EXHIBITS: | MARKED ON PAGE |
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| Exhibit 3 - Photocopy of color photo | 8 |
| Exhibit 4 - Photocopy of color photo | 9 |
| Exhibit 5 - Photocopy of color photo | 9 |
| Exhibit 6 - Golden Veterinary Services Correspondence, June 23, 2014 | 11 |
| Exhibit 7 - WeatherSource, Official Weather: Quinn, SD (6 pages) | 19 |
| Exhibit 8 - RC Journal article, Stress killed many cattle in blizzard, state says (3 pages) | 23 |
| Exhibit 9 - Tri-State Livestock News article, Drowning in mud and snow: The insurance debacle following Atlas (5 pages) | 26 |

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| 3 | <p>1 JIM McCONAGHY, DVM, 2 called as a witness, being first duly sworn, testified as 3 follows: 4 EXAMINATION BY MR. HICKEY: 5 Q Morning, Doctor. Mike Hickey is my name. I represent 6 Richard and Lorayna Papousek in this proceeding, and I'm 7 going to be asking you a few questions today. If you 8 don't understand my question, would you please stop me 9 and tell me to correct so we're on the same page; okay? 10 A Uh-huh. 11 Q Would you state your name, please, for the record. 12 A Jim McConaghy. 13 Q And where do you reside? 14 A Wall, South Dakota. 15 Q And what's your occupation? 16 A Large animal veterinarian. 17 Q Okay. And how long have you been a large animal 18 veterinarian? 19 A Since 1999. 20 Q Can you just give me your education and training 21 background, please? 22 A Graduated the Ohio State University in 1999 from the 23 School of Veterinary Medicine. 24 Q So you're a Buckeye? 25 A I'm a Buckeye.</p> | 5 | <p>1 Q And if your records indicated that on or about 2 October 16th, would that be about correct? 3 A Yes. 4 Q And would you just tell me what it was that he asked you 5 to do and what you did do. 6 A He called me to examine a multi-death scene from the 7 October blizzard. He wanted to have me do a necropsy on 8 them and determine the cause of death. 9 Q And did you do that? 10 A Yes. 11 Q And what did you do? 12 A Physically? 13 Q What is a necropsy, I guess? 14 A Oh. Physically, we just open up the animal and examine 15 all organs, all organ systems, and try to determine if 16 there's anything abnormal. 17 Q And how many animals did you examine, if you remember? 18 A Oh. 19 Q And if you don't, that's fine. 20 A 8 to 10, maybe. 21 Q And did you perform a complete necropsy? 22 A Yes. 23 Q And, what, is that kind of the animal equivalent of an 24 autopsy on a human? 25 A Correct.</p> |
| 4 | <p>1 Q All right. They've got a good football team. 2 And have you been practicing veterinarian medicine 3 then since that time? 4 A Yes. 5 Q In South Dakota? 6 A In here, right here in Wall. 7 Q Are you from this area originally? 8 A No, from Ohio. 9 Q Okay. Why did you get out to South Dakota? 10 A I wanted to work with beef cows. 11 Q Okay. Are you licensed to practice in South Dakota? 12 A Yes. 13 Q Do you know Richard and Lorayna Papousek? 14 A Yes. 15 Q How do you know them? 16 A Clients for the past 10 years or so. 17 Q What kind of things have you done for them over the 18 years? 19 A We have -- I've worked on his horses. I've even seen 20 his small animals, his dog and cats. And then, of 21 course, some herd work off and on. 22 Q Directing your attention to October of 2013, did Richard 23 contact you about performing some -- an examination of 24 some cattle that had died in the blizzard? 25 A Yes.</p> | 6 | <p>1 Q Okay. And when you did your examination, did you find 2 any -- what were your findings? 3 A In the abdomen there was no significant findings at all. 4 When we entered the thorax, the chest cavity, we could 5 instantly see there was fluid laying on the outside of 6 the lungs. And then on cut section of the lungs they 7 were wetter and heavier than normal. You could feel the 8 heft. A lung is normally really fluffy and feels like a 9 sponge, and these felt like a wet sponge. They're 10 heavier than you expect. You know, like grabbing the 11 empty milk jug, you know, when you think it's full. 12 On cut section we could squeeze the lung and foam 13 and fluid would ooze out. When we cut through the 14 airways, like the trachea, it was full of foam, which is 15 just water -- or air bubbles trapped in the water. 16 Q When you got into the chest cavity and you found that it 17 was a sponge and heavier -- 18 A Uh-huh. 19 Q -- was that because it was filled with some -- with 20 liquid or water? 21 A Absolutely. 22 Q Okay. And what did you conclude from that, if anything? 23 A It appeared that they -- well, when they have too much 24 water in there, they can't exchange oxygen to their 25 bloodstream. And these actually had so much foam in</p> |

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| 7 | <p>1 their trachea and all their little airways that they</p> <p>2 couldn't even pass air in. They were plugged up. The</p> <p>3 cause of that -- or that results in drowning and death.</p> <p>4 Q Were some pictures taken of --</p> <p>5 A Yes.</p> <p>6 Q -- your --</p> <p>7 (Exhibit 1 marked for identification.)</p> <p>8 Q I show you what has been marked as Exhibit 1. Can you</p> <p>9 just describe what that depicts?</p> <p>10 A Yep. This is the head of the cow. One nostril is</p> <p>11 submersed in water. The foam coming out of the nasal</p> <p>12 passages is exactly what we saw in all of the airways.</p> <p>13 There's just no way she can pass any air right there.</p> <p>14 Q Okay. And was --</p> <p>15 A And this was consistent with all the cattle that we</p> <p>16 necropsied.</p> <p>17 Q So there were pools of water that they were submersed</p> <p>18 in?</p> <p>19 A Yep.</p> <p>20 Q Okay.</p> <p>21 (Exhibit 2 marked for identification.)</p> <p>22 Q Showing what has been marked as Exhibit 2, can you tell</p> <p>23 me what that is?</p> <p>24 A Yes. If you look at the -- I don't know if I can point</p> <p>25 or how to describe it to you, but this area here where</p> | 9 | <p>1 A So where my knife is pointing, that is a longitudinal</p> <p>2 slice through the trachea, once again, just showing all</p> <p>3 the air bubbles.</p> <p>4 Q Okay.</p> <p>5 (Exhibit 4 marked for identification.)</p> <p>6 Q Exhibit 4?</p> <p>7 A Yet again just a close-up of the same.</p> <p>8 Q Okay. Of the trachea?</p> <p>9 A Of the trachea, yes, and fluid therein.</p> <p>10 Q And I've got one more.</p> <p>11 (Exhibit 5 marked for identification.)</p> <p>12 Q And what does that show; same thing?</p> <p>13 A Same thing. I just physically scooped it out on my</p> <p>14 fingers there to show it better.</p> <p>15 Q And that fluid was present both in the trachea as well</p> <p>16 as in the lungs?</p> <p>17 A Yes. Lungs are made up of many tiny little airways that</p> <p>18 wouldn't really be depicted on a photograph, but they</p> <p>19 were completely full.</p> <p>20 Q Okay.</p> <p>21 A If I would squeeze the lung, it was like ringing a</p> <p>22 sponge out. We could make water come out, which is</p> <p>23 abnormal.</p> <p>24 Q And then based upon your examination and the necropsy</p> <p>25 that you performed and your training, did you determine</p> |
| 8 | <p>1 the trachea is on cut section, that is plugged full of</p> <p>2 foam there. (Indicating.)</p> <p>3 Q So --</p> <p>4 A This is an abnormal finding. We should be able to look</p> <p>5 in there like an empty pipe.</p> <p>6 Q So kind of where your thumb is extended --</p> <p>7 A In front of my thumb, yes.</p> <p>8 Q -- there's some white.</p> <p>9 A Yep.</p> <p>10 Q And that's foam from the --</p> <p>11 A That's foam.</p> <p>12 Q Okay. And we're looking into the trachea, you said?</p> <p>13 A Yes, into your windpipe. Yep.</p> <p>14 Q Okay. And that should normally be --</p> <p>15 A Clear.</p> <p>16 Q -- clear?</p> <p>17 A Just like an empty tube.</p> <p>18 Q So, again, does that indicate the presence of liquid or</p> <p>19 water in there?</p> <p>20 A Absolutely. The only thing that causes that.</p> <p>21 Q Okay.</p> <p>22 (Exhibit 3 marked for identification.)</p> <p>23 Q Exhibit 3 is another photo of the autopsy?</p> <p>24 A Yep.</p> <p>25 Q Or necropsy?</p> | 10 | <p>1 a cause of death of these animals?</p> <p>2 A They absolutely died due to drowning.</p> <p>3 Q What you observed there, did that, in essence, differ</p> <p>4 from somebody falling into a pool of water or an animal</p> <p>5 falling into a pool of water and drowning that way?</p> <p>6 A Sure. In my experience, the lungs look very similar to</p> <p>7 one that was submersed in a dam or a pond. Oftentimes</p> <p>8 there will be more physical water and it's a faster</p> <p>9 death, obviously, with falling into a pool, but the</p> <p>10 extent of the necropsy is the same. They're full of</p> <p>11 fluid.</p> <p>12 Q Okay.</p> <p>13 A I guess what I'm trying to say, there will be less foam</p> <p>14 because they didn't have as long a chance to try to</p> <p>15 breathe through that water.</p> <p>16 Q Okay.</p> <p>17 A Does that make sense?</p> <p>18 Q But the bottom line is the same?</p> <p>19 A Same. Yes.</p> <p>20 Q Would you say that the cattle suffocated in water, in</p> <p>21 fluid?</p> <p>22 A Absolutely. And the photos depict that.</p> <p>23 Q Would that be considered a respiratory impairment or</p> <p>24 submersion or immersion in liquid, what you saw there?</p> <p>25 A Yes.</p> |

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| 11 | <p>1 Q You prepared a letter, did you not, in terms of where</p> <p>2 you indicated your opinions as to the cause of death?</p> <p>3 A Correct.</p> <p>4 (Exhibit 6 marked for identification.)</p> <p>5 Q I show you what has been marked as Exhibit Number 6.</p> <p>6 Does that set forth your conclusions and opinions?</p> <p>7 A Yes.</p> <p>8 Q You concluded that the animals died of cardiac arrest;</p> <p>9 is that correct?</p> <p>10 A Yes.</p> <p>11 Q Can you just explain the sequence of how this came</p> <p>12 about?</p> <p>13 A These animals were highly stressed as -- they were</p> <p>14 walking into the wind, rain is coming down hard, they're</p> <p>15 inhaling it. The inhalation of rain or drowning results</p> <p>16 in a decreased exchange of oxygen from the lungs to the</p> <p>17 bloodstream, and as the heart is not receiving enough</p> <p>18 oxygen, basically we go into cardiac arrest.</p> <p>19 Q Okay. You quote a medical dictionary in your letter; is</p> <p>20 that correct?</p> <p>21 A Uh-huh.</p> <p>22 Q And is that Stedman's?</p> <p>23 A Yes.</p> <p>24 Q And is that a recognized authority in the practice of</p> <p>25 veterinary medicine?</p> | 13 | <p>1 that term?</p> <p>2 A Yes.</p> <p>3 Q Would you explain to the record what that is?</p> <p>4 A Dry drowning is if we think of a child that went</p> <p>5 swimming during the day, they lay down at night, some of</p> <p>6 that water that they've inhaled pools while they're</p> <p>7 asleep, plugs up their airways, anoxia, cardiac arrest,</p> <p>8 and death.</p> <p>9 Q And is there a similar concept in animals, such as</p> <p>10 cattle and things like that, where you would have a</p> <p>11 similar type of situation?</p> <p>12 A We are all physiologically the same, all the animals, in</p> <p>13 the way we exchange oxygen, so I would see no reason why</p> <p>14 not.</p> <p>15 Q And that didn't occur in this situation; is that</p> <p>16 correct? Or is it -- are we talking about the same</p> <p>17 thing?</p> <p>18 A We might be, but I don't think so. I think this is more</p> <p>19 direct because these cattle were dying during the fact,</p> <p>20 during the rain. It wasn't after they laid down a week</p> <p>21 later they died or that night they died.</p> <p>22 Q Okay. So this is more of a direct cause and effect?</p> <p>23 A Directly. They're walking, drowning, and dying.</p> <p>24 Q Okay. Have the opinions that you've given here today,</p> <p>25 have they been stated to a reasonable degree of</p> |
| 12 | <p>1 A Yes.</p> <p>2 Q And how does it define "drowning" in that dictionary?</p> <p>3 A Defines "drowning" as death within 24 hours after</p> <p>4 inhalation of water.</p> <p>5 Q And is that your opinion that that's what occurred in</p> <p>6 this situation?</p> <p>7 A Yes.</p> <p>8 Q In your professional opinion, Doctor, does it require</p> <p>9 full body submersion in a liquid or water in order to</p> <p>10 find drowning to be a cause of death?</p> <p>11 A Clearly, no.</p> <p>12 Q There's also a dictionary of -- it's Saunders</p> <p>13 Comprehensive Veterinary Dictionary; is that correct?</p> <p>14 A Uh-huh.</p> <p>15 Q Are you familiar with that?</p> <p>16 A Uh-huh. I've seen it, yes.</p> <p>17 Q Again, is that a recognized --</p> <p>18 A Yes.</p> <p>19 Q -- authority in the area? If it defines "drowning" due</p> <p>20 to suffocation from aspiration of fluids, rather than</p> <p>21 full body submersion in water as a drowning, would you</p> <p>22 agree with that?</p> <p>23 A Yes.</p> <p>24 Q Doctor, does the veterinary medical community recognize</p> <p>25 a concept called "dry drowning"? Are you familiar with</p> | 14 | <p>1 veterinary medicine medical probability?</p> <p>2 A Yes.</p> <p>3 MR. HICKEY: Thank you. That's all the questions</p> <p>4 I have.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MS. LARSON: I have just a couple questions.</p> <p>7 EXAMINATION BY MS. LARSON:</p> <p>8 Q I want to take a look at this letter --</p> <p>9 A Yep.</p> <p>10 Q -- real quick.</p> <p>11 The letter indicates that you were contacted on</p> <p>12 October 16th, 2013; correct?</p> <p>13 A That's what it states, yes.</p> <p>14 Q Do you have any notes from the telephone conversation or</p> <p>15 the necropsy that you performed?</p> <p>16 A Potentially, yes.</p> <p>17 Q I see --</p> <p>18 A I should.</p> <p>19 Q I see that you wrote this letter on June 23rd, 2014.</p> <p>20 A Yep.</p> <p>21 Q How did you put together this letter?</p> <p>22 A We had photos of all these, memory, and I will have</p> <p>23 necropsy notes that we can find for you.</p> <p>24 Q If you could provide me with a copy --</p> <p>25 A Yep.</p> |

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| 15 | <p>1 Q -- of those necropsy notes --</p> <p>2 A Yep.</p> <p>3 Q -- that would be wonderful.</p> <p>4 Did you follow standard procedures in all of the</p> <p>5 necropsies that you performed that day on the cattle?</p> <p>6 A Yes.</p> <p>7 Q Okay. So if you could just explain, you go out to the</p> <p>8 site, and then what's your first step?</p> <p>9 A External examination of the animal and the environment.</p> <p>10 Do you want physically how I --</p> <p>11 Q If you could just run through the systems, maybe, that</p> <p>12 you -- you know, if you always look at the --</p> <p>13 A Okay.</p> <p>14 Q Yeah.</p> <p>15 A All right. Well, what I did is I removed the front leg</p> <p>16 at the scapula and open it up. I remove the back leg at</p> <p>17 the pelvis and I open it up. At that point in time we</p> <p>18 can examine muscle right there and some vessels are</p> <p>19 going to be cut and we can see if there's an abnormal</p> <p>20 color of the blood or something in case of a poisoning.</p> <p>21 Then I proceed to open the abdomen. I skin it</p> <p>22 out, and I open the abdomen, and first I look, just</p> <p>23 physically, if there's any obvious abnormalities. At</p> <p>24 that point we remove the rumen and the intestines, and,</p> <p>25 you know, go through each of those all the way out to</p> | 17 | <p>1 Q In my recollection, the storm began on Thursday night.</p> <p>2 Is that what you recall, as well?</p> <p>3 A I'd be lying if I told you the day of the week.</p> <p>4 Q Okay, sure.</p> <p>5 A I'm sorry.</p> <p>6 Q What was the storm like for you? And my specific</p> <p>7 questions are were you snowed in, yourself?</p> <p>8 A Uh-huh.</p> <p>9 Q How long were you snowed in?</p> <p>10 A Okay. Yes, I was snowed in. I was snowed in for, I</p> <p>11 believe, three days.</p> <p>12 Q What is your address where you live where you would be?</p> <p>13 A 18902 Cedar Butte Road, Wall, South Dakota.</p> <p>14 Q And is that where you were snowed in?</p> <p>15 A Yes.</p> <p>16 Q How much snow did you receive at your location?</p> <p>17 A It's hard to tell, it drifted so much. I don't know.</p> <p>18 Q And did you lose any electricity?</p> <p>19 A Yes.</p> <p>20 Q How many calls, as a veterinarian, did you receive as a</p> <p>21 result of the storm? And if you can't tell me</p> <p>22 exactly --</p> <p>23 A Oh, man.</p> <p>24 Q -- if you could just give me a general.</p> <p>25 A 20.</p> |
| 16 | <p>1 the colon to the rectum. So now we've eliminated the</p> <p>2 back half of the GI tract.</p> <p>3 At that point we can look at the kidneys. They're</p> <p>4 located at the back there. Look at the kidneys,</p> <p>5 bladder, we look at the liver there and the spleen. No</p> <p>6 abnormalities were noted. At that point we open up the</p> <p>7 chest cavity, look at the heart and lungs. And that's</p> <p>8 it.</p> <p>9 I did not do a -- there was no brain examination</p> <p>10 done on this. That's extensive and only indicated in</p> <p>11 cases where we think there was a neurologic condition.</p> <p>12 Q Could you describe the process where you were handling</p> <p>13 the lungs? Did you remove the lungs?</p> <p>14 A Yeah.</p> <p>15 Q Okay.</p> <p>16 A Yeah, remove lungs, and, as photos show, we remove them,</p> <p>17 physically feel them. That is a -- it's a technical</p> <p>18 term, "wetter and heavier" is recognized, and they were</p> <p>19 wetter and heavier.</p> <p>20 We performed cut sections on the lungs to see if</p> <p>21 there's abscesses or pneumonia or something like that</p> <p>22 going on also. We did not find any of that.</p> <p>23 Q Do you -- being a vet in the area, I'm assuming that you</p> <p>24 have some pretty strong memories of the winter storm?</p> <p>25 A Right.</p> | 18 | <p>1 Q Did you see animals in this location?</p> <p>2 A Yes.</p> <p>3 Q Did you go out and look the other animals, live and</p> <p>4 deceased --</p> <p>5 A Yes.</p> <p>6 Q -- on farms and ranches?</p> <p>7 A North, south, east, and west of Wall. I performed maybe</p> <p>8 70 to a hundred necropsies.</p> <p>9 Q Were you the plaintiff's regular vet for his beef</p> <p>10 cattle?</p> <p>11 A No.</p> <p>12 Q Do you know who his regular vet is?</p> <p>13 A No.</p> <p>14 Q Had you ever, in the past, in the one year before this</p> <p>15 October 16th date seen any of his beef cattle, his</p> <p>16 heifers, any livestock?</p> <p>17 A I would have to check the record. I don't know.</p> <p>18 Q Okay. Was October 16th the first day that the plaintiff</p> <p>19 ever contacted you regarding --</p> <p>20 A Yeah --</p> <p>21 Q -- these cattle?</p> <p>22 A -- I know. I can't say for sure. He may have called a</p> <p>23 day before or two days before, but I was busy doing this</p> <p>24 elsewhere, so he might have been on the list. I can't</p> <p>25 say for sure.</p> |

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| 19 | <p>1 Q What did he tell you when he called you?</p> <p>2 A That he had, I believe, 90-some dead animals and he said</p> <p>3 that his insurance company required them to be posted,</p> <p>4 necropsied.</p> <p>5 Q Did he tell you what he was looking for?</p> <p>6 A Nope.</p> <p>7 Q Did he tell you to come and determine whether they had</p> <p>8 drowned?</p> <p>9 A Not that I recall.</p> <p>10 Q Okay. What was the weather like?</p> <p>11 A That day?</p> <p>12 Q Yes.</p> <p>13 A Gee-whiz. I don't know if it was 40 or 50 degrees?</p> <p>14 40's maybe, low 40's.</p> <p>15 Q Does the weather have any effect on a dead animal?</p> <p>16 A Yeah.</p> <p>17 Q What effect might that have?</p> <p>18 A They've become autolytic, which means, layman's terms,</p> <p>19 they start rotting after a while.</p> <p>20 (Exhibit 7 marked for identification.)</p> <p>21 Q I'm going to show you what I believe will be marked as</p> <p>22 Exhibit 7.</p> <p>23 A Uh-huh.</p> <p>24 Q If we could just flip pages. The way that I had to do</p> <p>25 this weather search was by one-week periods.</p> | 21 | <p>1 A I was close.</p> <p>2 Q So what would these cattle lying out in the field for</p> <p>3 12 days --</p> <p>4 A Uh-huh.</p> <p>5 Q -- after their death in weather reaching up to nearly</p> <p>6 70 degrees --</p> <p>7 A Uh-huh.</p> <p>8 Q -- 72 degrees have? How would that affect them?</p> <p>9 A Well, thankfully, we took pictures, and we can see that</p> <p>10 there's no autolysis going on whatsoever.</p> <p>11 I'd show you this. You would have to know what an</p> <p>12 autolytic lung looks like, but this is still a fresh</p> <p>13 lung. They're cold enough at night that it preserves</p> <p>14 them. They cool down during the day enough to preserve</p> <p>15 them through the warmth -- or they cool down at night</p> <p>16 enough to preserve them through the warmth of the day.</p> <p>17 This is still a normal-looking lung.</p> <p>18 MR. HICKEY: What number is that exhibit that</p> <p>19 you're --</p> <p>20 THE WITNESS: 4.</p> <p>21 MR. HICKEY: Thank you.</p> <p>22 Q And if we look at Exhibit Number 1 --</p> <p>23 A Uh-huh.</p> <p>24 Q -- it was noted in Exhibit Number 1 that one of the</p> <p>25 nostrils is submerged in a pool of water.</p> |
| 20 | <p>1 A Sure.</p> <p>2 Q So if we could just move to the third page of this</p> <p>3 weather search, it appears to begin on 10/03 and go</p> <p>4 through 10/11.</p> <p>5 A Uh-huh.</p> <p>6 Q And the columns on the sheet go through the max, mean,</p> <p>7 and minimum temperatures of the week following the</p> <p>8 storm. And you could see that the temperature in the</p> <p>9 week following the storm varied from 39 degrees to</p> <p>10 72 degrees.</p> <p>11 A Uh-huh.</p> <p>12 Q Do you see that?</p> <p>13 A Yep.</p> <p>14 Q And then if you turn the page again, we move on past</p> <p>15 into the next week and you can see the max and the mean</p> <p>16 and the minimum temperatures in the week, in the next</p> <p>17 week following the storm, and it looks like they were,</p> <p>18 again, anywhere, the maximum temperatures were anywhere,</p> <p>19 between 43 degrees and 68 degrees --</p> <p>20 A Uh-huh.</p> <p>21 Q -- is that right?</p> <p>22 A Yep.</p> <p>23 Q And it appears that on October 16th the temperature, the</p> <p>24 minimum temperature, was 28 degrees and the maximum</p> <p>25 temperature was 57.9 degrees.</p> | 22 | <p>1 A Uh-huh.</p> <p>2 Q Is it reasonable to say that that water is melted snow?</p> <p>3 A Yes, or rainwater.</p> <p>4 Q And at the time of the cow's death, there would be no</p> <p>5 way to determine whether there was any water in that</p> <p>6 location?</p> <p>7 A Well, there was water in all low spots because it had</p> <p>8 rained so much, but I wouldn't say that. I guess I</p> <p>9 can't say for sure, no.</p> <p>10 Q So when we talked about the commonality of they're being</p> <p>11 submerged in pools of water, that was likely the result</p> <p>12 of the melting snow?</p> <p>13 A I don't know that. There's rainwater every -- I mean,</p> <p>14 there was mud puddles everywhere before, during, and</p> <p>15 after the storm.</p> <p>16 Q How much snow was received in this area?</p> <p>17 A I'm not a meteorologist. I don't know.</p> <p>18 Q And we'll --</p> <p>19 A I don't know. I wasn't over there during the -- I mean,</p> <p>20 because it did melt fast, too.</p> <p>21 Q And it did melt --</p> <p>22 A I don't doubt --</p> <p>23 Q -- extremely fast; correct?</p> <p>24 A -- there's water, melt water, there, yeah.</p> <p>25 Q And I'm just asking --</p> |

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| 23 | <p>1 A Yeah.</p> <p>2 Q -- it did melt extremely fast. There was a lot of</p> <p>3 precipitation followed by warm weather and --</p> <p>4 A Yep, yep, yep.</p> <p>5 Q Okay. Do you know the State veterinarian?</p> <p>6 A Yep.</p> <p>7 Q Dustin --</p> <p>8 A Odekoven.</p> <p>9 Q -- Odekoven?</p> <p>10 A Yep.</p> <p>11 (Exhibit 8 marked for identification.)</p> <p>12 Q I'm showing you what's been marked as Exhibit 8, which</p> <p>13 is a newspaper article quoting Dustin Odekoven, who is</p> <p>14 the State veterinarian. In the article it shows that</p> <p>15 his opinion was that many of the thousands of cattle</p> <p>16 perished, died, of congestive heart failure brought on</p> <p>17 by stress.</p> <p>18 A Uh-huh.</p> <p>19 Q Do you disagree with that?</p> <p>20 A Nope. There's lots of stresses that can cause</p> <p>21 congestive heart failure.</p> <p>22 Q If you go to the middle of the article with the</p> <p>23 paragraph that says, At least...</p> <p>24 A Yep.</p> <p>25 Q It says, At least they were not lying in water and their</p> | 25 | <p>1 from within its own internal process in creating the</p> <p>2 fluid?</p> <p>3 A Yeah, because I believe that the foam is a result of</p> <p>4 them trying to breathe through it. So -- or maybe I</p> <p>5 didn't answer that right.</p> <p>6 Q No, you --</p> <p>7 A Okay.</p> <p>8 Q And if I am not using correct terminology --</p> <p>9 A No, you're fine.</p> <p>10 Q -- please let me know.</p> <p>11 A Sure.</p> <p>12 Q So are you able to determine that that foam, them</p> <p>13 breathing through the fluid, as I believe you explained</p> <p>14 it --</p> <p>15 A Yes.</p> <p>16 Q -- was them breathing through external fluid that they</p> <p>17 were breathing in, or that it was them breathing through</p> <p>18 the fluid that they were creating in their own systems?</p> <p>19 A I guess that's what I'm trying to say I believe the</p> <p>20 difference is, is we wouldn't be getting that fluid into</p> <p>21 those major airways if it was from their internal</p> <p>22 process that was going on or whatever. I believe, in my</p> <p>23 opinion, I believe that it's from intake.</p> <p>24 Q So there's no way for fluid to get into the trachea --</p> <p>25 A No, I didn't say that.</p> |
| 24 | <p>1 lungs were full of fluid, Odekoven said. There was a</p> <p>2 common thought or misconception out there that they must</p> <p>3 have breathed all that in. That it must have settled in</p> <p>4 their lungs. That is not the case, however, he said.</p> <p>5 Rain drenched the livestock for 12 to 18 hours before</p> <p>6 the blizzard's strong winds and wet snow delivered the</p> <p>7 killing blow. Those cows likely got hypothermic. They</p> <p>8 were cold, Odekoven said.</p> <p>9 As a result, he said, the cardiovascular systems</p> <p>10 of the cattle were working overtime causing hypertension</p> <p>11 or high blood pressure in their lungs. It actually</p> <p>12 caused pulmonary edema and basically caused those lungs</p> <p>13 to fill with water or fluid, Odekoven explained.</p> <p>14 Do you agree or disagree with those statements?</p> <p>15 A That's his opinion, and he didn't post a single cow.</p> <p>16 He's behind a desk.</p> <p>17 Q I understand that completely. And so would you disagree</p> <p>18 that the cattle that you posted were killed by pulmonary</p> <p>19 edema?</p> <p>20 A I don't know that it's pulmonary edema. We see -- I saw</p> <p>21 more fluid. Pulmonary edema is when it's within the</p> <p>22 tissue. These airways were actually full of the water</p> <p>23 and foam.</p> <p>24 Q And is there any way for you to determine 12 days later</p> <p>25 that the fluid came from outside the cow rather than</p> | 26 | <p>1 Q Okay.</p> <p>2 A Yep.</p> <p>3 Q Fluid can get into the trachea --</p> <p>4 A Yep.</p> <p>5 Q -- from internal systems?</p> <p>6 A It could, yes.</p> <p>7 Q And it can cause something like a pulmonary edema?</p> <p>8 A Pulmonary edema -- you said it kind of backwards, but,</p> <p>9 in essence, yes, there could be some pulmonary edema</p> <p>10 that would cause some amount of fluid, but I just don't</p> <p>11 believe this amount of fluid would be explained from</p> <p>12 that.</p> <p>13 Q What would the effect of the 12-day interim period have</p> <p>14 on the fluid?</p> <p>15 A Little to none, that I can suspect.</p> <p>16 Q We're done with this one for now.</p> <p>17 A Okay.</p> <p>18 (Exhibit 9 marked for identification.)</p> <p>19 Q Showing you what's been marked as Exhibit 9.</p> <p>20 A Uh-huh.</p> <p>21 Q This is another news article. I printed this off online</p> <p>22 and it looks a little different --</p> <p>23 A Sure.</p> <p>24 Q -- than if you were to look at it on the screen.</p> <p>25 I want to just take a couple of minutes to go</p> |

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1 through. There are several veterinarians that were
 2 interviewed for this article, and I just want to go
 3 through --
 4 **A** Okay.
 5 **Q** -- and see if you agree or disagree with the opinions
 6 that these veterinarians have. The first veterinarians
 7 were Dr. Warren Crawford and Dr. Wade Crawford of Crook
 8 County Veterinary Services in Sundance, Wyoming, who do
 9 not practice in this area and did not post any animals.
 10 **A** Okay. Uh-huh.
 11 **Q** They had their own cattle deaths out of Caputa where
 12 they lost 65 cows and 4 calves, the story indicates. On
 13 the top of Page 2 it says that they arrived fairly early
 14 following the storm, but did not post any cattle.
 15 We didn't see the point because it was 50 degrees
 16 immediately after the storm allowing for decomposition
 17 of carcasses. Their indication was that posting of the
 18 cattle would not have -- I'm reading into this.
 19 **A** Uh-huh.
 20 **Q** This is not a quote from the story.
 21 **A** Right.
 22 **Q** But that they would not have been able to get accurate
 23 results because of the decomposition. We discussed this
 24 already. Do you still believe that you have
 25 accurately --

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1 **A** Very healthy-looking tissues is what I can say.
 2 Especially for being 12 days old. I mean, it looks like
 3 the next day in this cattle. They were almost
 4 preserved. I think it was cold enough at night.
 5 **Q** Then if we can go down a couple -- maybe a third of the
 6 way down the page. Do you know Dr. Jim Stangle --
 7 **A** Yep.
 8 **Q** -- and it says he's with Golden Veterinary Services --
 9 **A** Yep.
 10 **Q** -- in Millesville?
 11 **A** Yep.
 12 **Q** Is that an affiliate?
 13 **A** He's my partner.
 14 **Q** He's your partner, okay. And your partner has indicated
 15 in this article that most of the deaths were due to
 16 hypothermia.
 17 **A** Uh-huh.
 18 **Q** And he stated that cow deaths were almost always higher
 19 than calf deaths, and that was even more pronounced in
 20 fall-calving herds. My theory is that baby calves are
 21 born with brown adipose tissue, which is a fat that does
 22 nothing but generate heat. That's what it's there for
 23 around the heart and kidneys.
 24 **A** Uh-huh.
 25 **Q** I think the one reason the younger cows survived better

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1 than the adult cattle was because even those spring-
 2 born calves still had some brown adipose tissue, not as
 3 much as fall-born calves, but still some, he explained.
 4 Do you agree or disagree with that comment?
 5 **A** I would agree. And another thing that would render that
 6 a valid statement, the hypothermia, as they're ingesting
 7 all this cold rain, they're going to become hypothermic
 8 faster, too. So, yes.
 9 **Q** He also goes on to indicate that because of the weather
 10 prior to storm, as most of us can remember, and we can
 11 also look at the exhibit regarding the weather, it was
 12 very warm right before the storm.
 13 **A** Yep.
 14 **Q** And he has indicated that the thyroid system was already
 15 gearing up and they had started hairing up for winter,
 16 whereas those fat cows hadn't been taken out of their
 17 thermal neutral zone yet, meaning they were still
 18 slicked off and their thyroid systems hadn't kicked in.
 19 That made them more susceptible to hypothermia in the
 20 storm.
 21 Do you agree with that?
 22 **A** That would absolutely make them more susceptible to
 23 hypothermia.
 24 **Q** Were the cattle that you posted for the plaintiff, was
 25 their cause of death hypothermia?

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1 MR. HICKEY: Object as asked and answered.
 2 **Q** You can go ahead and answer. He's --
 3 **A** What did he say? I didn't hear what he said.
 4 **Q** He --
 5 MR. HICKEY: I objected that I think you've
 6 previously answered that question.
 7 THE WITNESS: Okay.
 8 MR. HICKEY: But you can answer it again, if you
 9 would like.
 10 **A** Now I forget the question.
 11 **Q** My question is did --
 12 **A** Sorry, I got nervous.
 13 **Q** No, that's fine. My question is did these cattle die
 14 from hypothermia?
 15 **A** I don't think directly from hypothermia. I think it's
 16 a -- it's going to be multi-faceted stresses that killed
 17 them.
 18 **Q** Could you list those stresses?
 19 **A** Inhalation of rainwater, cardiac arrest, maybe less hair
 20 and less, you know, fat absolutely could make them, you
 21 know, more susceptible to anything; and with cardiac
 22 arrest being there, too.
 23 **Q** If we also look up at what the Crawfords had stated up
 24 above, I believe it's the fourth paragraph on Page 2.
 25 **A** Uh-huh.

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1 Q Another factor in making it difficult to draw exact
 2 conclusions is the fact that the lungs are the shock
 3 organ of the bovine, meaning that anything that happens
 4 to a cow will affect her lungs.
 5 Do you agree with that statement?
 6 A True.
 7 Q And so there are many causes that could create abnormal
 8 findings in the lungs in a necropsy?
 9 A There are many causes that could, yes.
 10 Q Do you know Dr. Vicki Cook?
 11 A Yes.
 12 Q In the article she states, again, that she believes most
 13 died of exposure. They got chilled, started inhaling
 14 moisture and were weak enough they could not get rid of
 15 it.
 16 Do you agree with that statement?
 17 A Absolutely.
 18 Q And so it was a multi-cause death?
 19 MR. HICKEY: Who? What is a multi-cause death?
 20 The cows that Vicki Cook is talking about, or the cows
 21 that Mr. Papousek had?
 22 MR. LARSON: The cows that Mr. Papousek had.
 23 A Well, I believe that, yeah, they inhaled moisture. They
 24 could not get rid of it. They drowned. Yeah, I agree
 25 with her.

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1 Q In the next paragraph she says, Considering drowning a
 2 technical component of dying from exposure may be a
 3 stretch, but Cook said that many insurance claims she
 4 helped with had no definition or guidelines for what
 5 they would consider drowning, and that she understands
 6 her client's frustrations regarding their coverage, or
 7 lack thereof.
 8 Did you receive any complaints from your clients
 9 about what their insurance companies were considering
 10 the definition of drowning?
 11 MR. HICKEY: Object to the form of the question as
 12 not relevant. The relevant issue is Mr. Papousek and
 13 his insurance company. You may answer, if you can.
 14 A Yes.
 15 Q Did any of those complaints come in prior to
 16 October 16th, 2013 when you went out to look at these
 17 cattle?
 18 A No. I believe people found out afterward, and they were
 19 irate, yes.
 20 Q Did you know that Mr. Papousek had already been denied
 21 coverage for these cattle?
 22 A No.
 23 Q Did he tell you that --
 24 A Before I posted them?
 25 Q Yes.

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1 A No.
 2 Q Did he tell you that the reason you were coming out was
 3 for insurance coverage?
 4 A Yes.
 5 Q I believe you told me --
 6 A Yep.
 7 Q -- that earlier.
 8 A I said that earlier, yep.
 9 Q Yep. Did you discuss drowning prior to posting the
 10 cattle?
 11 A Probably, because I'd already posted dozens of others.
 12 Q Would your notes from the necropsy indicate that the
 13 cattle drowned?
 14 A Yes. As, I believe, the pictures do also.
 15 Q When we talked about the dictionaries that you had used
 16 to define drowning, Stedman's dictionary, I believe, and
 17 Saunders or Saunders?
 18 A I think Saunders.
 19 Q Saunders Dictionary. Those are specialized
 20 dictionaries; correct?
 21 A I did not have the Saunders. He did. But I have a
 22 Stedman's, yes. It's a medical dictionary. It's not
 23 even -- it covers everything. The Saunders was a
 24 veterinary medical dictionary.
 25 Q And Stedman's is generalized medicine for even humans?

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1 A Yes.
 2 Q But it is a specialized dictionary?
 3 A Yes.
 4 Q It is not your testimony today that the cattle that you
 5 posted had their heads, nose, mouth, respiratory intake
 6 area submerged in water at the time of death; correct?
 7 A Absolutely. As in a puddle of water? They were not
 8 submerged in a puddle of water, no.
 9 Q Okay. Did you rule out other causes of death?
 10 A Yeah. Yes.
 11 Q Can you definitively rule out that the cattle that were
 12 posted did not -- the cause of death was not pulmonary
 13 edema?
 14 A Can I rule it out absolute -- it's my opinion. No. But
 15 my opinion rules it out based on the quantity of that
 16 air/water exchange, foam, in the airways. That's how
 17 I'm ruling it out.
 18 I know we shouldn't talk about other cattle, I
 19 don't suppose, but I did other cattle from the same
 20 blizzard in this general vicinity earlier, and they have
 21 the same thing.
 22 Q Approximately how many cattle were in the area that you
 23 went to in -- where you posted these cattle?
 24 A Dead cattle?
 25 Q Yes.

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1 A In the area, you mean like in this one exact location?
 2 Q Sure.
 3 A We went to several different locations, but maybe where
 4 those pictures are there was probably 10.
 5 Q How did you decide which cattle you were going to post?
 6 A Just ones that -- I guess it might be random, I guess.
 7 Q And did you post cattle from different areas?
 8 A Yes.
 9 Q How long were you on the property?
 10 A For three hours maybe.
 11 Q Would your notes reflect that at all?
 12 A No. Nope.
 13 MS. LARSON: I believe that's all that I have
 14 right now.
 15 MR. HICKEY: Just a couple of follow-up.
 16 FURTHER EXAMINATION BY MR. HICKEY:
 17 Q You were asked earlier whether or not you agreed or
 18 disagreed with Dr. Ode- -- what is it?
 19 A Odekoven.
 20 Q Odekoven? And you kind of gave an explanation, but I'd
 21 like the record to reflect do you agree or disagree with
 22 his opinion that they died of hypothermia?
 23 A I disagree.
 24 Q Okay. And, to your knowledge, did Odekoven perform --
 25 post any cattle?

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1 A To my knowledge, no.
 2 Q And then there's been some other questions based upon
 3 some newspaper articles that you were asked about. Did
 4 any of those questions change your opinions that you
 5 have given in this case?
 6 A No.
 7 MR. HICKEY: Thank you. That's all the questions
 8 I have.
 9 MS. LARSON: I have no follow-up.
 10 THE WITNESS: Thank you.
 11 MR. HICKEY: All right. Doctor, you have the
 12 right to have the deposition typed up, you can read it
 13 and sign it before it's filed. You can also waive the
 14 reading and signing, and it's completely up to you.
 15 THE WITNESS: I waive it.
 16 MR. HICKEY. Okay. Thank you.
 17 (The deposition concluded at 10:03 a.m.)
 18 * * * *
 19
 20
 21
 22
 23
 24
 25

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1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)
 3
 4 I, JEANNE S. QUINN, Court Reporter and Notary
 5 Public, South Dakota, duly commissioned to administer oaths,
 6 certify that I placed the witness under oath before the
 7 witness testified; that the foregoing testimony of said
 8 witness was taken by me in shorthand, and that the same has
 9 been reduced to typewritten form under my supervision; that
 10 the foregoing transcript is a true and correct transcript of
 11 the questions asked, of the testimony given, and of the
 12 proceedings had.
 13 I further certify that I am not related to,
 14 employed by, or in any way associated with any of the
 15 parties to this action, or their counsel, and have no
 16 interest in its event.
 17 Witness my hand and seal at Rapid City, South
 18 Dakota, this 30th day of April 2015.
 19
 20 _____
 21 JEANNE S. QUINN
 My Commission Expires: 08/24/18
 22
 23
 24
 25

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

Appeal No. 27658

RICHARD PAPOUSEK AND LORAYNA PAPOUSEK,
Plaintiffs and Appellants,

vs.

**DE SMET FARM MUTUAL
INSURANCE COMPANY OF SOUTH DAKOTA,**
Defendant/Appellee.

APPELLEE'S BRIEF

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

HONORABLE WALLY EKLUND
Circuit Court Judge

Notice of Appeal Filed November 5, 2015

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PRELIMINARY STATEMENT

Defendant/Appellee De Smet Farm Mutual Insurance Company of South Dakota will be referred to as “De Smet.” Plaintiffs/Appellants will be referred to as “Papouseks.” Reference to the record as reflected in the Clerk’s Alphabetical Index will be referred to as “R.” Documents in the Appendix will be referred to by the letters “APP” followed by the appropriate letter designation.

JURISDICTIONAL STATEMENT

The Appellants appealed from the October 2, 2015, Memorandum Decision granting summary judgment in De Smet’s favor. APP: A, R: 386. The Notice of Entry was served on October 6, 2015. R: 392. The Appellants’ Notice of Appeal was filed on November 5, 2015. R: 421. This Court has jurisdiction pursuant to SDCL § 15-26A-3(1).

STATEMENT OF THE ISSUES

I. Whether the Circuit Court correctly granted summary judgment to De Smet?

The circuit court granted De Smet’s motion finding that, under the plain and ordinary meaning of the terms of the policy, there was no coverage for the 93 heifers that died during the blizzard.

Legal Authority:

SDCL § 58-11-39

Ass Kickin Ranch, LLC v. North Star Mut. Ins. Co., 2012 S.D. 73, 822 N.W.2d 724

De La Cruz v. Combined American Insurance Company, 527 S.W.2d 820 (Tex. Civ. App. 1975)

STATEMENT OF THE CASE

The Papouseks commenced this action in July 2014 seeking a determination of whether the cattle loss they sustained in the October 2013 Winter Storm Atlas was covered by the policy of insurance issued to them by De Smet. R: 3. The parties filed cross-motions for summary judgment. R: 89, 215. The Honorable Wally Eklund, Seventh Judicial Circuit, entered a Memorandum Decision granting De Smet's motion and denying Papouseks' motion. R: 386.

STATEMENT OF THE FACTS

A. Preliminary Statement.

In October 2013, Winter Storm Atlas wreaked havoc on Western South Dakota and caused damage that some have estimated as high as \$1 billion, which included livestock deaths in the tens of thousands. The Papouseks lost 290 head of cattle in the blizzard, which included 93 head of bred heifers. App F: Papousek Dep. 12:1-16; R: 234, Ex. B.

In order to find coverage under their De Smet insurance policy, Papouseks allege that the heifers drowned; however, Richard Papousek admits the cattle were not submerged in water, but instead "drowned standing up." APP: F at 17:7-8, 25:21-26:22. He seeks to put a strained meaning on the term "drown" rather than using the plain and ordinary meaning of the word, which is defined in Merriam-Webster's online dictionary as "to suffocate by submersion especially in water." See R: 234, Ex. A: <http://www.merriam-webster.com/dictionary/drown>. There

is no coverage for the cattle under the policy, and the trial court's ruling should be affirmed.

B. The Papouseks' Cattle Loss in Winter Storm Atlas.

Richard and Lorayna Papousek own and operate a ranch in Western South Dakota, including 6,000 acres of land they own and approximately 8-10,000 acres of leased land, where they grow crops and raise livestock. APP: F at 5:13-6:3. Papouseks typically own 450 mother cows and 400 head of yearling heifers – all Black Angus. APP: F at 6:6-13. The Papouseks had Blanket Farm Personal Property insurance, through De Smet, which provided the following applicable coverage limits:

\$600,000 Yearlings 500 @ \$1,200

APP: E, Policy, Declarations Page 2; R: 104, Ex. 3.

On or around October 3-5, 2013, Papouseks lost 93 head of yearling bred heifers during Winter Storm Atlas. APP: D, ¶3; R: 375. Richard Papousek testified that the storm began with “[a] lot of rain” and then turned to snow “in the middle of the night.” APP: F at 7:11-17. When the storm started, the cattle were in the shelter of trees and draws. APP: F at 7:15-25. In the area where Papouseks' ranch was located, they were never snowed in. APP: F at 8:3-6. Not much snow accumulated, because it was blown around. *Id.* at 10:22-11:10.

By noon the next day, Papousek received word from a neighbor that some of his cattle had died. APP: F at 8:18-9:9. Papousek went out

to find the cattle, but it took several days to determine the total amount lost because the cattle were strung out over 3 miles. APP: F at 10:22-11:25. Papousek testified that he could not tell how the cattle died. APP: F at 10:20-21, 16:1-5. He admitted no cattle were submerged in water. APP: F at 17:7-9, Ex. 10.

C. The De Smet Insurance Policy Excludes Coverage.

The Papouseks' Farmowners-Ranchowners Policy, issued by De Smet, contained the following provisions:

FARM PERILS SECTION

This policy insures against direct physical loss to property covered under Coverage E – Unscheduled Farm Personal Property (Blanket) caused by the following perils:

* * *

2. **Windstorm or Hail.** This does not cover loss:

- a. caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not;

* * *

c. to **livestock** caused by or resulting from:

- 1) running into streams or ditches or against fences or other objects;
- 2) smothering, suffocation or asphyxiation;
- 3) fright; or
- 4) freezing in blizzards or snowstorms; . . .

APP: E, Policy, Q-2A.

12. **Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.** When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the insured, his employees or tenants, and loss of said livestock by accidental shooting, except by the insured, his employees or tenants.

APP: E, Policy, Q-3A.

Papousek contacted his insurance agent, Galen Niederwerder, shortly after the storm, and his agent told him that there would be coverage for the heifers if they had drowned. APP: F at 16:6-15. Shortly after Papousek contacted his agent to inform him about the claim, a De Smet adjuster, Steve Schlechter, came to Papousek's property. APP: F at 16:16-23. Schlechter showed Papousek the policy and discussed various provisions, including those outlined above, with him. APP: F at 16:24-17:12, 22:4-22. Schlechter confirmed that drowning was covered under the policy. APP: F at 34:13-16. After Papousek informed Schlechter that none of the cattle had been submerged in water (and so did not drown), Schlechter informed Papousek that the cattle deaths were not covered under the insurance policy. APP: F at 17:1-12, 22:4-22. After this visit and the denial of coverage, Papousek never contacted anyone at De Smet about this claim. APP: F at 22:23-23:9.

D. Papouseks Seek a Strained Definition of Drowning in an Attempt to Avoid the Valid Policy Exclusion.

Papousek talked to neighbors and others, and formed the opinion that his cattle had "drowned standing up." APP: F at 25:21-26:22, Ex. 12, 13. Then, on October 16, 2013, approximately 12 days after the cattle had died,¹ Papousek had a local veterinarian, Jim McConaghy,

¹ McConaghy testified that animals will start rotting after their death; however, even though he did not post the cattle for 12 days after they died, during a time when the weather reached temperatures ranging from 39 degrees to 72 degrees, McConaghy did not factor these effects into his opinion. APP: G, McConaghy Dep. 19:15-22:9, Ex. 7.

perform necropsies (also known as posting) on some of the deceased cattle. APP F: Papousek Dep. 13:25-14:9, 29:13-15; APP: G, McConaghy Dep. 5:1-10; R: 234, Ex. C. McConaghy was told that he was posting the cattle to determine cause of death for insurance purposes. APP: G at 33:2-4. McConaghy wrote his opinion on cause of death over eight months later, on June 23, 2014. He opined the “cattle inhaled such large quantities of rain and then snow that they actually drowned” as defined in Stedman’s Medical Dictionary² “as death within 24 hours after inhalation of water.” APP: G, Ex. 6. He stated that the inhalation of the water and snow “results in anoxia (lack of oxygen) and eventually cardiac arrest and death.” *Id.* McConaghy testified that the cattle were not submerged in water at the time of death. APP: G at 34:4-8.

Numerous other veterinarians expressed opinions on the cattle deaths from Winter Storm Atlas:

- Dr. Dustin Odekoven, the State veterinarian, opined that many of the cattle that perished in the storm died of congestive heart failure brought on by stress or pulmonary edema. APP: G at Ex. 8. While McConaghy did not agree with all of Odekoven’s opinions, he did agree that there were many stresses that could have caused congestive heart failure. APP: G at 23:12-26:12, Ex. 8.
- Dr. Jim Stangle, McConaghy’s partner, opined that most of the storm’s cattle deaths were due to hypothermia. APP: G at Ex. 9. McConaghy agreed with this opinion: “I would agree. And another thing that would render that a valid statement, the hypothermia, as they’re ingesting all this cold rain, they’re going to become hypothermic faster, too.” APP: G at 28:5-30:17, Ex. 9.

² McConaghy admitted that dictionaries like Saunders and Stedman’s are specialized, medical dictionaries. APP: G at 33:19-34:3.

- Dr. Warren Crawford opined that his own cattle died as a result of hypothermia, stress and exhaustion. He also noted that determining the exact cause of death by necropsy would be difficult because “the lungs are the shock organ of the bovine, meaning anything that happens to a cow will affect her lungs.” APP: G at Ex. 9. McConaghy agreed with this statement, and noted that there are many causes that could create abnormal findings in the lungs in a necropsy. APP: G at 30:23-31:9.

When pressed about the cause of death, McConaghy admitted that multi-faceted stresses killed the Papouseks’ cattle. APP: G at 30:13-17. He said the stresses included “[i]nhalation of rainwater, cardiac arrest, maybe less hair and less, you know, fat absolutely could make them more susceptible to anything; and with cardiac arrest being there, too.” APP: G at 30:18-22.

Following the storm, Papousek received payments from the Livestock Indemnity Fund and other donations that covered approximately half of his total losses (not just the loss on the 93 heifers), which he estimated at \$600,000. APP: F at 36:2-37:5, Ex. 14. In January 2014, Papousek filed a complaint with the SD Division of Insurance where he alleged the following:

I have 500 head of yearling heifers insured for \$1200 per head for lightning and drowning with this company. I lost 93 head of these heifers in the Atlas blizzard. I had a veterinarian post four head of the heifers with the result being drowning. The company said they have to be submerged in water to drown. None of these heifer were submerged in water. They drown standing up. Drowning submerged in water is only one many ways a animal can drown. The company will not pay the claim.

APP: F, Ex. 10.

ARGUMENT AND AUTHORITY

A. Standard of Review.

The standard review on summary judgment requires the Court to determine whether the moving party has demonstrated the absence of any genuine issue of material fact and entitlement to judgment on the merits as a matter of law. *Cole v. Wellmark of South Dakota, Inc.*, 2009 S.D. 108, 776 N.W.2d 240. Insurance contract interpretation, including determining whether an insurance contract is ambiguous, is a question of law and reviewable de novo. *Ass Kickin Ranch, LLC v. North Star Mut. Ins. Co.*, 2012 S.D. 73, ¶ 7, 822 N.W.2d 724, 726 (citations omitted).

B. There is No Coverage under the Plain and Ordinary Meaning of the Policy Terms.

“Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application lawfully made a part of the policy.” SDCL § 58-11-39. “[T]he scope of coverage of an insurance policy is determined from the contractual intent and the objectives of the parties as expressed in the contract.” *Ass Kickin Ranch, LLC*, 2012 S.D. 73 at ¶ 9 (citations omitted). “When an insurer seeks to invoke a policy exclusion as a means of avoiding coverage, the insurer has the burden of proving that the exclusion applies.” *Id.* (quoting *Opperman v. Heritage Mut. Ins. Co.*, 1997 S.D. 85, ¶ 4, 566 N.W.2d 487, 489).

“Ambiguity is not created merely because the parties offer different interpretations of the contract.” *Roden v. General Cas. Co. of Wisconsin*, 2003 S.D. 103 ¶ 10, 671 N.W.2d 622, 625 (citation omitted). A policy “must be construed according to its plain and ordinary meaning and a court cannot make a forced construction or a new contract for the parties.” *Ass Kickin Ranch, LLC*, 2012 S.D. 73 at ¶ 10 (quoting *Stene v. State Farm Mut. Auto. Ins. Co.*, 1998 S.D. 95, ¶ 14, 583 N.W.2d 399, 402) (emphasis added). The rule allowing for ambiguous provisions to be construed in favor of the insured “does not mean, however, that the court may seek out a strained or unusual meaning for the benefit of the insured.” *Roden*, 2003 S.D. 103 at ¶ 10 (quoting *Alverson v. Northwestern Nat. Cas. Co.*, 1997 S.D. 9, ¶ 8, 559 N.W.2d 234, 235). “[W]hen the terms of an insurance policy are unambiguous, these terms ‘cannot be enlarged or diminished by judicial construction.’” *Ass Kickin Ranch, LLC*, 2012 S.D. 73 at ¶ 10 (quoting *Am. Family Mut. Ins. v. Elliot*, 523 N.W.2d 100, 102 (S.D. 1994)).

Although the South Dakota Supreme Court has not defined “drown” in the context of an insurance policy, it has provided guidance for policy interpretation. In *Ass Kickin Ranch*, plaintiffs were seeking coverage for two unassembled wind turbines that were destroyed in a fire under a policy that provided coverage for unscheduled farm personal property. 2012 S.D. 73 at ¶¶ 1-2. The policy excluded coverage for “fences, windmills, windchargers, or their towers” and the insurer denied

coverage for the unassembled wind turbines. *Id.* at ¶ 4. Plaintiffs argued that the “pile of parts” that had never been assembled did not constitute a windmill. *Id.* at ¶ 11.

When discussing the undefined terms of the policy, this Court stated:

Because North Star’s policy did not provide definitions for the terms within the policy exclusion, the circuit court properly relied on definitions from Merriam-Webster’s online dictionary as the plain and ordinary meanings of the terms.

Id. at ¶ 12. The Court found that the unassembled turbines fit under the common definition of windmill, and the parts were excluded from coverage.

The Court determined the exclusion was written broadly and no ambiguity existed:

Ranch further claims North Star should have added language to the existing policy exclusion to explicitly exclude “all parts or components” if it meant for the policy exclusion to apply to the unassembled wind turbines. However, there is no indication in the policy that North Star meant to exclude “fences, windmills, windchargers, or their towers” from coverage only if they were assembled and operating. By using the policy exclusion’s existing language without any language of limitation, North Star demonstrated its intent for the terms used in the policy exclusion to be construed broadly. Essentially, North Star’s use of general terms like “windmill” without language of limitation indicated it meant for the policy exclusion to apply to all windmills, regardless of whether or not they were fully assembled and operating.

Id. at ¶ 16. Under this rationale, it is clear from the De Smet policy that it was intended that cattle losses caused by storms (“frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not . . .

freezing in blizzards or snowstorms”) and suffocation (“smothering, suffocation or asphyxiation”) are not covered under the policy. APP: E, Policy, Q-2A, Q-3A.

The plain and ordinary meaning of a policy term is “that meaning which the particular language conveys to the popular mind; to most people; to the average, ordinary, normal, or reasonable man; to persons with usual and ordinary understanding; and to a businessman or a layman, rather than a lawyer or insurance professional.” 2 Couch on Ins. § 22:38. Merriam-Webster’s online dictionary defines “drown” as “to suffocate by submersion especially in water.” See <http://www.merriam-webster.com/dictionary/drown>.³ Published copies of dictionaries use similar definitions for “drown.” See WEBSTER’S UNABRIDGED DICTIONARY 600 (2d ed. 2001) (defining “drown” as “1. to die under water or other liquid of suffocation . . . 2. to kill by submerging under water or other liquid. . .”); OXFORD ENGLISH DICTIONARY 217 (7th ed. 2012) (“drown” is to “die or kill through submersion in water”); THE AMERICAN HERITAGE DICTIONARY 264 (4th ed. 2001) (“drown . . . 1. To die or kill by suffocating in water or another liquid. 2. To cover with or as if with a liquid . . .”).

In *De La Cruz v. Combined American Insurance Company*, the Texas appellate court reviewed an insurance provision covering drowning. 527 S.W.2d 820 (Tex. Civ. App. 1975). A 16-month-old child suffocated when

³ See also, similar definitions of “drown” at:
<http://dictionary.reference.com/browse/drown>;
<http://www.thefreedictionary.com/drown>.

dirt got in her nose and mouth. The child's father argued that the child had died as a result of drowning, as the word is defined in Dorland's Illustrated Medical Dictionary (25th Ed.) to be "suffocation and death resulting from filling of the lungs with water or other substances or fluid so that gas exchange becomes impossible." *Id.* at 821. The Texas court found this definition did not apply: "unless the words used in, and to describe the coverage afforded under, an insurance policy are used in a technical sense, the meanings attributed to them are the ordinary lay meanings to the general public." *Id.* (citation omitted). "[T]he general public uniformly understands and uses the word 'drowning' as meaning to deprive of life by immersion in water or other liquid." *Id.* (citing Webster's New International Dictionary (2nd Ed.)).

The trial court was not convinced that the general public would associate what happened to the Papouseks' cattle when the snow and rain was inhaled during the blizzard as drowning. APP: A, p.3. "Rather, it is predicated that the ordinary public would believe that Plaintiffs' cattle either died from the effects of (1) 'frost, cold-weather, ice, snow or sleet, all whether wind-driven or not . . . blizzards or snowstorms' or (2) 'smothering, suffocation or asphyxiation.'" APP: A, pp. 3-4. The court determined that the general public would believe "drowning occurs when there is a deprivation of life by immersion in water or other liquid." APP A: p. 4. The trial court looked to *Ass Kickin Ranch* and *Opperman* to support this conclusion. *Id.*

Some form of “submersion” or “immersion” in water or another liquid is required under the common understanding of the term “drown.” However, as Papousek and his veterinarian both testified, there was no submersion of any kind of the cattle in question. The common person understands that drowning occurs with full body submersion (for example, while swimming), and also when only the mouth and nose are submerged in water (as is often taught in baby-sitting courses – a toddler can drown in only two inches of water). The distinction here, is that the common person does not contemplate that drowning includes “inhalation of snow and water, causing [the] lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and, ultimately, death” as set forth by the Papouseks. See APP C, ¶ 7; R: 383.

Papouseks argue that, instead of using standard definitions found in widely-used dictionaries, the term “drown” should be defined using a specialized, medical dictionary, such as Saunders Comprehensive Veterinary Dictionary.⁴ However, this does not meet the legal standard that insurance policy terms “must be construed according to [their] plain and ordinary meaning.” *Ass Kickin Ranch, LLC*, 2012 S.D. 73 at ¶ 10 (citation omitted).

⁴ However, even some medical dictionaries use the definition requiring submersion. See MOSBY’S MEDICAL, NURSING, & ALLIED HEALTH DICTIONARY 516 (5th ed. 1998) (“drowning” means “asphyxiation caused by submersion in a liquid”).

Papouseks have relied on their veterinarian's opinion and testimony to allege that the cause of death of the cattle was drowning. However, all of the facts show that Jim McConaghy was relying on a special medical definition of "drown" and not the plain and ordinary meaning of the word.

- Papousek testified that he could not tell how the cattle died. APP: F at 10:20-21, 16:1-5.
- Papousek admitted no cattle were submerged in water. APP: F at 17:7-9, Ex. 10.
- McConaghy admitted that the cattle were not submerged in water at the time of death. APP: G at 34:4-8.
- McConaghy's opinion relied on the definition of "drown" contained in Stedman's Medical Dictionary. APP: G at Ex. 6.
- McConaghy admitted that dictionaries like Saunders and Stedman's are specialized, medical dictionaries. APP: G at 33:19-34:3.

It is widely recognized that a court should not use a technical or specialized definition, but rather should use the plain and ordinary meaning of the term. In *Riccio v. American Republic Ins. Co.*, the Supreme Court of Pennsylvania addressed this concept when determining the proper definition of "spine." 705 A.2d 422 (Pa. 1997). The court looked at both the Webster's definition and the Dorland's Medical Dictionary definition of the word "spine." *Id.* at 426-427. In doing so, the court held that "Dorland's is a specialized medical dictionary which should not apply to this interpretation of the medical insurance policy since a court's duty in interpreting words of a contract

is to give the words a natural, plain and ordinary meaning.” *Id.* at 427, n. 3.

McConaghy admitted that dictionaries like Saunders and Stedman’s are specialized, medical dictionaries. APP: G at 33:19-34:3. Under the well-recognized legal standard, the specialized, medical definition put forth by Papouseks for “drown” should not be adopted by this court. De Smet contends that this Court should use the common understanding of the word “drown” which can be supported by looking at the general definition, rather than some special definition in a medical text not often used by an ordinary person. “[T]he general public uniformly understands and uses the word ‘drowning’ as meaning to deprive of life by immersion in water or other liquid.” *De La Cruz v. Combined American Insurance Company*, 527 S.W.2d 820, 821 (Tex. Civ. App. 1975) (citing Webster’s New International Dictionary (2nd Ed.)).

Papouseks have cited no legal authority suggesting that it would be proper to use a specialized, technical definition from a medical dictionary instead of adopting the ordinary and plain meaning of the word. Courts should not use specialized medical definitions when interpreting insurance policies. *See Riccio v. American Republic Ins. Co.*, 705 A.2d 422, 427 n. 3 (Pa. 1997) (“Dorland’s is a specialized medical dictionary which should not apply to this interpretation of the medical insurance policy since a court’s duty in interpreting words of a contract is to give the words a natural, plain and ordinary meaning.”). Adopting a medical

definition does not meet the legal standard that insurance policy terms “must be construed according to [their] plain and ordinary meaning.”

Ass Kickin Ranch, LLC, 2012 S.D. 73 at ¶ 10 (citation omitted).

C. De Smet has met its Burden of Proof.

“When an insurer seeks to invoke a policy exclusion as a means of avoiding coverage, the insurer has the burden of proving that the exclusion applies.” *Ass Kickin Ranch, LLC*, 2012 S.D. 73 at ¶ 9 (quoting *Opperman*, 1997 S.D. 85 at ¶ 4). In their brief, Papouseks allege that “De Smet produced no evidence – and certainly no expert testimony – establishing that the cattle’s death was caused by frost, cold weather, ice, snow or sleet.” Appellants’ Brief, p. 15. However, that is simply not true; ample evidence of this fact was presented and undisputed.

De Smet’s evidence came from the Papouseks and their expert:

- In the Complaint, the Papouseks alleged that “[t]he yearlings died due to inhalation of snow and water.” R: 3, ¶ 11.
- Papousek testified that the storm began with “[a] lot of rain” and then turned to snow “in the middle of the night” and that his cattle had “drowned standing up.” APP: F at 7:11-17, 25:21-26:22.
- McConaghy wrote in his report that the “cattle inhaled such large quantities of rain and then snow.” APP: G, Ex. 6.

There is no dispute that the cattle deaths occurred during the devastating blizzard and that the cattle were not submerged in water.

The evidence presented – through the Papouseks’ pleadings, testimony and expert witness – support the trial court’s finding that “Plaintiffs’ cattle either died from the effects of (1) ‘frost, cold-weather, ice, snow or

sleet, all whether wind-driven or not . . . blizzards or snowstorms’ or (2) ‘smothering, suffocation or asphyxiation.’” APP: A, pp. 3-4.

De Smet has shown that the Papouseks’ cattle losses during Winter Storm Atlas were excluded from coverage under the policy. The trial court correctly found “it cannot be said that either set of parties truly expected this policy, pursuant to its plain and ordinary meaning, to cover such losses suffered by the Plaintiffs.” APP: A, p. 5.

CONCLUSION

The unfortunate events of Winter Storm Atlas undeniably resulted in the death of the Papouseks’ cattle. However, the cattle did not drown under the ordinary and plain meaning of the word. Instead, the cattle succumbed to “frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not . . . blizzards or snowstorms” resulting in “smothering, suffocation or asphyxiation” which is not covered under the De Smet insurance policy. APP: E, Policy, Q-2A, Q-3A.

Under the well-recognized legal standard, the specialized, medical definition put forth by Plaintiffs for “drown” should not be adopted by this Court. But instead, the Court should adopt the plain and ordinary meaning, as defined in numerous general dictionaries, such as Merriam-Webster’s online dictionary. There is no dispute as to any material fact, and De Smet is entitled to summary judgment as a matter of law finding that no coverage exists for the losses claimed by the Papouseks.

Respectfully submitted this 11th day of March, 2016.

BEARDSLEY, JENSEN & LEE,
Prof. L.L.C.

By: /s/ Jessica L. Larson

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ORAL ARGUMENT IS RESPECTFULLY REQUESTED

CERTIFICATE OF COMPLIANCE

I, Jessica L. Larson, attorney for the Appellee, hereby certify that pursuant to SDCL § 15-26A-66 the foregoing brief complies with the above mentioned statute in that it is in Bookman Old Style font and that the word processor used to prepare this brief indicated that said brief contains 4,189 words and 21,486 characters (no spaces) in the body of this brief.

Dated this 11th day of March, 2016.

/s/ Jessica L. Larson
Jessica L. Larson

CERTIFICATE OF SERVICE

I certify that on March 11, 2016, I e-mailed a true and correct copy of the foregoing Appellee's Brief to the following:

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I further certify that on March 11, 2016, I e-mailed the foregoing Appellee's Brief and sent the original and two copies of it by U.S. mail, first-class postage prepaid, to:

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BEARDSLEY, JENSEN & LEE,
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Seventh Judicial Circuit Court
PO Box 230
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Craig A. Pfeifle, Presiding Judge
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MAGISTRATE JUDGES

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October 2, 2015

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RE: CIV14-959; Richard Papousek and Lorayna Papousek v. DeSmet Farm Mutual Insurance Company of South Dakota; Respective Motions for Summary Judgment

Dear Counsel:

Both parties have motioned this Court for an Order Granting Summary Judgment in their favor on the issue of the word "drowning." The Court having considered the record, briefs, and the arguments of counsel, and being fully advised as to all matters pertinent hereto, for the reasons set forth below, hereby **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiffs' Motion for Summary Judgment.

Summary Judgment

The standard for summary judgment is well settled. The moving party must demonstrate the absence of any genuine issue of material fact and show that it is entitled to a judgment on the merits as a matter of law. *Brandt v.*

County of Pennington, 2013 S.D. 22, ¶7, 827 N.W.2d 871, 874. “The evidence must be viewed most favorably to the nonmoving party and reasonable doubts should be resolved against the moving party. The nonmoving party, however, must present specific facts showing that a genuine, material issue for trial exists.” *Id.* “The party resisting summary judgment is required to ‘show that [it] will be able to place sufficient evidence in the record at trial to support findings on all the elements on which they have the burden of proof.’” *Tolle v. Lev*, 2011 S.D. 65, ¶22, 804 N.W.2d 440, 446 (quoting *Lawrence County v. Miller*, 2010 S.D. 60, ¶ 14, 786 N.W.2d 360, 367). The resisting party cannot overcome a motion for summary judgment with mere general allegations and denials. *Id.*

Factual Background

The Plaintiffs own and operate a crop and livestock ranch in Quinn, South Dakota. The Plaintiffs’ livestock include Black Angus cattle. In October of 2013, the Plaintiffs had in effect a Farmowners-Ranchowners policy of insurance (“the policy”) issued by the Defendant. The policy insured against, *inter alia*, loss of livestock by drowning. The policy did not provide coverage for loss caused by inclement weather. The policy also did not cover loss “caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not.” Finally, the policy also denied coverage for the loss of livestock caused by “running into streams or ditches or against fences or other objects; smothering, suffocation or asphyxiation; fright or freezing in blizzards or snowstorms.”

On or about October 3-5, 2013, an early, record-breaking blizzard named ‘Winter Storm Atlas’ took place in western South Dakota. During that storm, the Plaintiffs’ lost 93 head of yearling due to the inhalation of snow and water, causing their lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and ultimately, death. No cattle were ever submerged in water or any other liquid.

The policy does not define the word drowning. Nonetheless, some dictionaries define drowning as requiring full body submersion in water or other liquid. Others do not define drowning in this way. Typically it is technical or medical dictionaries that define drowning in the later manner.

Legal Discussion

South Dakota law has never defined the word “drowning.” In fact, only a single state has ever defined the word for purposes of its case law. In *De La Cruz v. Combined American Insurance Company*, the Texas appellate court defined the term “drowning” for purposes of determining insurance coverage. 527 S.W.2d 820 (Tex. Civ. App. 1975). The court was asked to determine whether a 16-month old “drowned” when dirt filled her nose and mouth and caused her death. *Id.* The child’s father argued that according to Dorland’s Illustrated Medical Dictionary (25th Ed.) drowning can be defined as “suffocation and death resulting from filling of the lungs with water or other substances or fluid so that gas exchange becomes impossible.” *Id.* at 821 (emphasis added). Despite the fact that the child’s father located a dictionary definition which included dirt inhalation as a manner by which one could drown, the court denied coverage pursuant to the father’s claim. *Id.* The court denied coverage indicating that “unless the words used in...an insurance policy are used in a technical sense, the meaning attributed to them are the ordinary lay meanings” as used by the general public. *Id.* In this regard, the court indicated, “[t]he general public uniformly understands and used the word ‘drowning’ as meaning to deprive of life by immersion in water or other liquid.” *Id.* (citing Webster’s New International Dictionary (2nd Ed.))(emphasis added).

Admittedly, the manner by which Plaintiffs’ cattle have died is closer to drowning than that of *De La Cruz*, most notably given that fact that Plaintiffs allege that rain and snow filled the cattle’s lungs rather than a substance such as dirt. **Nonetheless, this Court is not convinced that the general public would associate what happened to Plaintiffs’ cattle to have occurred from drowning. Rather, it is predicated that the ordinary public would believe that Plaintiffs’ cattle**

either died from the effects of (1) “frost, cold weather, ice, snow or sleet, all whether wind-driven or not...blizzards or snowstorms” or (2) “smothering, suffocation or asphyxiation.” Instead, it is believed that the general public would believe that drowning occurs when there is a deprivation of life by immersion in water or other liquid. Such a position would certainly be consistent with the position adopted by the Texas court in *De La Cruz*.

The above position also seems more consistent with the Supreme Court’s decisions in *Ass Kickin Ranch* and *Opperman*. For example, in *Ass Kickin Ranch*, the South Dakota Supreme Court held that an insured was not entitled to coverage for two unassembled wind turbines. 2012 S.D. 73 at ¶¶1-2. The Court found that the policy covered losses suffered for personal property on the insured’s farm. *Id.* at ¶ 1. Nonetheless, the Court found that the policy held a specific exclusion for “windmills, wind chargers, or their towers.” *Id.* at ¶4. The insured argued that since the wind turbines were unassembled, that they consisted of simply piles of parts and hence were not property subject to the policy’s exclusions. *Id.* at ¶11. Despite this argument, the Court held that under the common definition of windmill these unassembled parts were “windmills” exempt from coverage under the policy, even though in their present form these pieces consisted of only parts. *Id.* at ¶12.

In this regard, Plaintiffs’ facts share similarity. While Plaintiffs might be able to claim that in the strict medical sense of the word that their cattle might have drowned, Plaintiffs’ use of the word adheres more so to a technical fact rather than common sense and plain language. Hence, like in *Ass Kickin Ranch*, it is predicted that the South Dakota courts would deny coverage.

The present case also shares facts comparable to *Opperman v. Heritage Mutual Insurance Company*, 1997 S.D. 85, 566 N.W.2d 487. In that case, the South Dakota Supreme Court held that an insured was not entitled to coverage for fire damage to his front end loader. *Id.* The Court was asked to interpret the words “processed” and “warehoused” as the insured’s insurance policy covered “vehicles or self-propelled machines ... you manufacture, process or warehouse, but excluded vehicles “operated principally away from the described premises.” *Id.* (emphasis

added). The insured claimed that the front end loader, which was being housed on the business premises for purposes of repair, was a vehicle being “processed” or “warehoused” in the building. *Id.* at ¶3. The Supreme Court rejected this argument, indicating that “insurance contracts warrant reasonable interpretation, in the context of the risks insured, without stretching terminology.” *Id.* at ¶4. The Court found that the insured’s position would extend coverage to any vehicle the insured even temporarily stored at his business premises. *Id.* Hence, the insured would be able to unilaterally extend the risk covered under his policy without paying premiums associated for such risk. *Id.*

The present case shares facts comparable to that of *Opperman*. Like in *Opperman*, it appears that the Plaintiffs are attempting to stretch terminology and the common meaning of language so as to receive the benefit of coverage despite plain language to the contrary. More notably, it is predicted that much like in the facts of *Opperman* the Plaintiffs would have paid higher premiums had this manner of storm induced “drowning” while standing have been included under their policy’s terms of coverage. As such, it is predicted that neither set of parties truly anticipated any risk associated with non-submerged cattle “drowning” as a result of breathing in rain or snow. Thus, Plaintiffs would be receiving the benefit of coverage without bearing the corresponding premiums associated with providing for such risk. For this reason, it cannot be said that either set of parties truly expected this policy, pursuant to its plain and ordinary meaning, to cover such losses suffered by the Plaintiffs.

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Conclusion

For the reasons set forth above, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiffs' Motion for Summary Judgment.

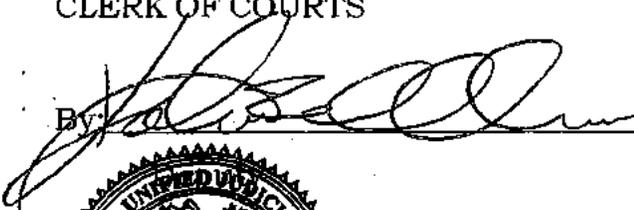
Dated this 2nd day of October, 2015.

BY THE COURT,



Honorable Wally Eklund
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:
RANAE TRUMAN,
CLERK OF COURTS

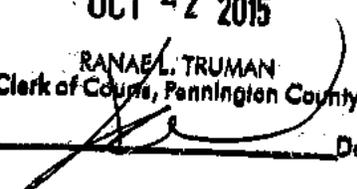
By: 



State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as
the same appears on record in my office this

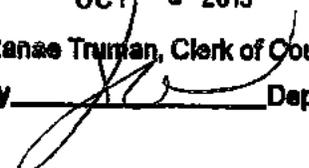
OCT -2 2015

RANAE L. TRUMAN
Clerk of Courts, Pennington County

By  Deputy

Pennington County, SD
FILED
IN CIRCUIT COURT

OCT - 2 2015

Ranae Truman, Clerk of Courts
By  Deputy

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF PENNINGTON)
 RICHARD PAPOUSEK and)
 LORAYNA PAPOUSEK,)
)
 Plaintiffs,)
)
 vs.)
)
 DE SMET FARM MUTUAL)
 INSURANCE COMPANY OF SOUTH)
 DAKOTA,)
)
 Defendant.)

IN CIRCUIT COURT
 SEVENTH JUDICIAL CIRCUIT
 51CIV14-000959

JUDGMENT

This Court entered its Memorandum Decision and Order granting summary judgment in favor of Defendant De Smet Farm Mutual Insurance Company of South Dakota and against the above-named Plaintiffs on October 2, 2015, which is incorporated herein. Pursuant to that Decision, it is hereby

ORDERED, ADJUDGED, and DECREED that the above-captioned action against Defendant De Smet Farm Mutual Insurance Company of South Dakota is hereby dismissed, with prejudice, and that Defendant De Smet Farm Mutual Insurance Company of South Dakota recover of the Plaintiffs its costs of defending the action in the sum of \$ _____, which are to be hereafter determined and taxed by the Clerk of Courts.

Dated this 20th day of October, 2015.

BY THE COURT:


 Honorable Wally Eklund
 Circuit Court Judge

State of South Dakota) Seventh Judicial
 County of Pennington) Circuit Court
 I hereby certify that the foregoing instrument
 is a true and correct copy of the original as
 the same appears on record in my office this

Pennington County, SD
 FILED
 IN CIRCUIT COURT
 OCT 20 2015

OCT 20 2015

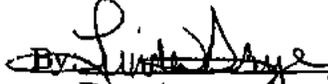
RANAE L. TRUMAN
 Clerk of Courts, Pennington County

Ranae Truman, Clerk of Courts
 By  Deputy

By  Deputy

2:30 P.M. B, P. 1

ATTEST:
 CLERK OF COURTS

By 
 Deputy
 (SEAL)



STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

RICHARD PAPOUSEK and) 51CIV14-000959
LORAYNA PAPOUSEK,)
)

Plaintiffs,)
)

vs.)

DE SMET FARM MUTUAL)
INSURANCE COMPANY OF)
SOUTH DAKOTA,)
)

Defendant.)

**DEFENDANT'S RESPONSES TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

1. Papouseks own and operate a crop and livestock ranch in Quinn, South Dakota. Ex. 1 (Richard Papousek Dep.) at 6:1-9; Complaint at ¶4.

RESPONSE: Admit.

2. Papouseks' livestock includes Black Angus cattle. Ex. 1 (Richard Papousek Dep.) at 6:1-9.

RESPONSE: Admit.

3. In October of 2013, Papouseks had in force a Farmowners-Ranchowners policy of insurance ("the policy") issued by De Smet Insurance Co., which insured against, *inter alia*, loss of livestock by drowning. Ex. 3 at De Smet-43.

RESPONSE: Admit that the livestock specifically listed under the Coverage E Blanket Farm Personal Property on Declarations Page 2, were covered for loss by drowning.

4. De Smet insured Blanket Farm Personal Property as shown in the Policy Declarations Page 2, with applicable coverage limits, as follows:

\$600,000 Yearlings 500 @ \$1,200

Ex. 3 at De Smet-7.

RESPONSE: Admit.

5. On or about October 3-5, 2013, an “early, record-breaking blizzard named ‘Winter Storm Atlas’ by The Weather Channel took place in western South Dakota.” *Answer and Counterclaim* at ¶6.

RESPONSE: Admit.

6. Papouseks lost 290 cattle in the storm, including 93 head of yearling heifers that were insured property under Coverage E of the policy. Ex. 1 (Richard Papousek Dep.) at 12:1-13,30:14-16; *Answer and Counterclaim* at ¶9.

RESPONSE: Admit.

7. The yearlings died due to inhalation of snow and water, causing their lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and, ultimately, death. Ex. 4.

RESPONSE: Admit that this was included in McConaghy’s report as the cause of death for the cattle. McConaghy testified that multifaceted stresses killed the Papouseks’ cattle, including “[i]nhalation of rainwater, cardiac arrest, maybe less hair and less, you know fat absolutely made them more susceptible to anything; and with cardiac arrest being there, too.” McConaghy Dep. 30:13-22.

8. The yearlings’ cause of death was drowning. Ex. 2 (McConaghy Dep.) at 5:21-7:3, 7:8-20, 9:24-10:2.

RESPONSE: Deny. Plaintiff Richard Papousek admitted that the cattle were not submerged in water. Papousek Dep. 17:7-9, Ex. 10. Therefore, under the plain and ordinary meaning of the word, the cattle did not “drown.” Admit that veterinarian, Jim McConaghy, opined that the cattle drowned under the medical definition of the word as defined in Stedman’s Medical Dictionary.

9. The term “drowning” is not defined in the policy. Ex. 3.

RESPONSE: Admit.

10. Some dictionary definitions of “drowning” contemplate full body submersion in water or other liquid, while others do not. Exs. 5, 6, 7 & 8.

RESPONSE: Admit that standard dictionaries, such as Merriam-Webster, define “drown” as “to suffocate by submersion especially in water” and that specialized, medical dictionaries include definitions that are not within the common understanding of the word “drown.”

Dated this 16th day of September, 2015.

BEARDSLEY, JENSEN & LEE,
Prof. L.L.C.

By: /s/ Jessica L. Larson

Jessica L. Larson
4200 Beach Drive, Suite 3
P.O. Box 9579
Rapid City, SD 57709
Telephone: (605) 721-2800
Facsimile: (605) 721-2801
Email: jl Larson@blackhillslaw.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2015, I served copies of ***Defendant's Responses to Plaintiffs' Statement of Undisputed Material Facts in Support of Motion for Summary Judgment*** upon the following persons by the following means:

| | | |
|--|-----|------------------|
| Michael M. Hickey | [] | First Class Mail |
| Sara Baron Houy | [] | Hand Delivery |
| Bangs, McCullen, Butler, Foye & Simmons, L.L.P. | [x] | Odyssey System |
| P.O. Box 2670 Rapid City, SD 57709-2670 | [] | Electronic Mail |

By: /s/ Jessica L. Larson

Jessica L. Larson

STATE OF SOUTH DAKOTA)
)ss
PENNINGTON COUNTY)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

**RICHARD PAPOUSEK AND LORAYNA
PAPOUSEK,**

File No. 51Civ14-000959
Hon. Wally Eklund

Plaintiffs,

vs.

**DESMET FARM MUTUAL INSURANCE
COMPANY OF SOUTH DAKOTA,**

Defendant.

**Plaintiffs' Response to
Defendant's Statement of
Undisputed Material Facts**

Plaintiffs, Richard and Lorayna Papousek, through counsel and pursuant to SDCL §15-6-56, respectfully submit this *Response to Defendant's Statement of Undisputed Material Facts*.

1. Richard and Lorayna Papousek own and operate a ranch in western South Dakota, and typically own 450 mother cows and 400 head of yearling heifers. Larson Aff. Exhibit B: Papousek Dep. 5:13-:6-13.

Response: Admit.

2. The Papouseks had Blanket Farm Personal Property insurance, through De Smet, which provided the following applicable coverage limits:

\$600,000 Yearlings 500 @ \$1,200

Larson Aff. Exhibit B: Papousek Dep. 31:10-18, Ex. 11: Policy, Declarations Page 2.

Response: Admit.

3. On or around October 3-5, 2013, Papouseks lost 93 head of yearling bred heifers during Winter Storm Atlas. Complaint ¶ 10; Larson Aff. Exhibit B: Papousek Dep. 12:1-16.

Response: Admit.

4. Papousek admitted no cattle were submerged in water. Larson Aff. Exhibit B: Papousek Dep. 17:7-9, Ex. 10.

Response: Admit that the cattle's bodies were not fully submerged in water.

5. The De Smet insurance policy includes coverage for drowning:

12. Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock. When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the insured, his employees or tenants, and loss of said livestock by accidental shooting, except by the insured, his employees or tenants.

Larson Aff. Exhibit B: Papousek Dep. Ex. 11: Policy, Q-3A.

Response: Admit.

6. The De Smet insurance policy does not provide coverage for losses caused by inclement weather, as set forth in the policy:

2. Windstorm or Hail. This does not cover loss:

a. caused directly or indirectly by frost, cold-weather, ice (other than hail), snow or sleet, all whether wind-driven or not;

* * *

c. to **livestock** caused by or resulting from:

- 1) running into streams or ditches or against fences or other objects;
- 2) smothering, suffocation or asphyxiation;
- 3) fright; or
- 4) freezing in blizzards or snowstorms; . . .

Larson Aff. Exhibit B: Papousek Dep. Ex. 11: Policy, Q-2A.

Response: Admit that this provision is found in the policy. Deny that it applies to exclude coverage in this case, as set forth in *Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment*.

7. The plain and ordinary meaning of the word “drown”, which is defined in Merriam-Webster’s online dictionary, is “to suffocate by submersion especially in water.” See Larson Aff. Exhibit A: <http://www.merriam-webster.com/dictionary/drown>.

Response: Deny. Standard dictionaries contain varying definitions of “drown” and “drowning,” as detailed in *Plaintiffs' Brief in Support of Motion for Summary Judgment, Exhibit 5 to the Declaration of Sarah Baron Houy* (filed on Sept. 9, 2015), and *Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment*.

8. Veterinarian, Dr. Jim McConaghy, opined the “cattle inhaled such large quantities of rain and then snow that they actually drowned” as defined in Stedman’s Medical Dictionary “as death within 24 hours after inhalation of water.” Larson Aff. Exhibit C: McConaghy Dep. Ex. 6.

Response: Admit that Dr. McConaghy opined that the cattle drowned. Deny to the extent Defendant seeks to paraphrase Dr. McConaghy’s letter or testimony.

9. McConaghy admitted that dictionaries like Saunders and Stedman’s are specialized, medical dictionaries. Larson Aff. Exhibit C: McConaghy Dep. 33:19-34:3.

Response: Admit that McConaghy agreed those are medical dictionaries.

Dated this 16th day of September, 2015.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY: /s/ Sarah Baron Houy
MICHAEL M. HICKEY
SARAH BARON HOUY
333 West Boulevard, Ste. 400
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040
mhickey@bangsmccullen.com
sbaronhouy@bangsmccullen.com
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on September 16, 2015, she caused true and correct copies of the above to be served upon each of the persons identified below as follows:

- | | | | |
|--------------------------|------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | First Class Mail | <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Hand Delivery | <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | Electronic Mail | <input checked="" type="checkbox"/> | ECF/Odyssey File & Serve |

Jessica L. Larson
BEARDSLEY JENSEN & LEE, PROF. LLC
4200 Beach Drive; PO Box 9579
Rapid City, SD 57709-9579
ATTORNEYS FOR DEFENDANT

/s/ Sarah Baron Houy
Sarah Baron Houy

De Smet Farm Mutual Insurance Company
of South Dakota



P. O. Box 9
De Smet, South Dakota 57231

Phone: 605-854-3337

I, Pat Tvinnereim, a representative of De Smet
Farm Mutual Insurance Company of South Dakota, after being duly sworn do
certify that to the best of my information, knowledge and belief, the enclosed
Insurance Policy of Richard J or Lorayna Papousek

Farmowner-Ranchowners Policy #38146

issued by De Smet Farm Mutual Insurance Company of South Dakota on the
12th day of August, 2014 is a true and correct duplicate
of the policy in force on 1st day of February 2013 for
Richard J or Lorayna Papousek

Pat Tvinnereim

Subscribed and sworn to before me this 12th of August, 2014.

Niklas J. J.

Notary Public, South Dakota

My Commission Expires: Oct 14, 2017



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

ENDORSEMENT

(To Be Attached To Policy)

Name of Insured RICHARD J OR LORAYNA PAPDUSEK
 Address of Insured 19730 PAULSEN RD
QUINN SD 57775
 Effective date OCTOBER 14, 2013

NOTICE HAS BEEN RECEIVED AND IS HEREBY ACCEPTED THAT
 THE LOCATION OF THE 16X70 MOBILE HOME SHALL NOW STAND IN
 RECORD AS BEING 12 ADAMS ST QUINN, PENNINGTON COUNTY, SD.

Date of Policy FEBRUARY 1, 2013 Expiration FEBRUARY 1, 2014

Attached to and forming part of Policy No. FD-038146 of
 De Smet Farm Mutual Insurance Company of South Dakota, issued at its
 Home Office in De Smet, South Dakota.

Dated this 8TH day of NOVEMBER, 2013.

SECRETARY *William A. Posson*



De Smet Farm Mutual Insurance Company⁵⁴⁴
 OF SOUTH DAKOTA
 Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

DUPLICATE BILL

FILE # 15-04-11

PROPERTY ADDITIONAL COVERAGE ENDORSEMENT
 (To Be Attached to Policy)

Addition to Policy No. FD-38146 of De Smet Farm Mutual Insurance Company of South Dakota.

In consideration of the sum of SIXTY-SEVEN DOLLARS AND 87 CENTS and of the agreement of the insured to pay all amounts charged against said policy, this company does insure RICHARD J DR LORAYNA PAPERUSEK

From the 28 day of FEBRUARY, 2013 at 12:01 A.M. Standard Time to the 1 day of FEBRUARY, 2014 at 12:01 A.M. Standard Time, the expiration date of said policy, against all direct loss and damage by and from the perils insured against in said policy and any endorsements thereto, in accordance with the terms, provisions, conditions, stipulations and limitations thereof, to the property hereinafter described, but not exceeding the total amount of insurance set opposite such described property, to-wit:

DESCRIPTION OF PROPERTY

INCREASE INLAND MARINE FOR JEWELRY \$ 9,009
 TOTAL \$ 19,834

ADD:

ONE PAIR OF LADIES, STAMPED 14KT WHITE GOLD STUD EARRINGS, MOUNTED IN THE CENTER OF EACH EARRING IN A 14KT WHITE GOLD FOUR PRONG CROWN IS ONE ROUND BRILLIANT DIAMOND. THE APPROXIMATE TOTAL WEIGHT IS 2CT, WITH A CLARITY GRADE OF I1, AND A COLOR GRADE OF H-J. THERE ARE FRICTION POSTS AND BACKS. THE STUD EARRINGS HAVE A HIGH POLISH FINISH.

\$ 9,009

All while located and contained as described in said policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in said policy and any endorsements thereto, but not elsewhere.

Attached to and forming part of Policy No. FD-38146 of De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota.

995-02

Dated this 7 day of February, 2013

SECRETARY

William A. Posen 2013



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS-RANCHOWNERS POLICY DECLARATIONS PAGE 2

INSURED: RICHARD J DR LORAYNA HOFHUSEK

15-04-11

CONTINUATION OF LAND DESCRIPTIONS:

| DESCRIPTION OF FARM PREMISES. | | | | |
|-------------------------------|------|--------------|----------------------|--------|
| NO. ACRES | SETS | OF BUILDINGS | SECTION AND TOWNSHIP | COUNTY |
| 160 | | | SEC 6 1N 17E | PE |
| 640 | | | SEC 30 1N 17E | PE |
| 160 | | | SEC 31 1N 17E | PE |
| 160 | | | SEC 29 1N 15E | PE |
| 320 | | | SEC 31 1N 15E | PE |
| 640 | | | SEC 32 1N 15E | PE |
| 615 | | | SEC 5 1S 15E | PE |
| 600 | | | SEC 36 1S 16E | PE |
| 80 | | | SEC 10 2 18 | HK |
| 80 | | | SEC 16 2 18 | HK |
| 160 | | | SEC 11 2 18 | HK |
| 320 | | | SEC 14 2 18 | HK |
| 160 | | | SEC 15 2 18 | HK |
| 480 | | | SEC 3 1 18 | HK |
| 7500 | | | BLM LEASE | PE |
| 120 | | | SEC 29 2 9 | PE |
| 320 | | | SEC 30 2 9 | PE |
| 80 | | | SEC 31 2 9 | PE |
| 200 | | | SEC 32 2 9 | PE |
| 587 | | | SEC 36 1N 16E | PE |
| | | | 621 TED ST WALL | PE |

DECLARATION

COVERAGE E BLANKET FARM PERSONAL PROPERTY

Blanket Exclusion(s) LIVESTOCK, GRAIN

| Limit | Description | Limit | Description |
|---------|------------------------------------|---------|-----------------------------------|
| 16,000 | ROTO MACHN HPX | 7,500 | FEED MACHN WINKE 370 |
| 50,000 | TRACTOR VERSATILE 976 1994 | 77,000 | TRACTOR JD 7320 2004 |
| 109,000 | TRACTOR JD 7430 2008 W/JD 741 | 67,000 | TRACTOR JD 7320 2004 W/JD 741 LDR |
| | LOADER | 8,500 | TRACTOR JD 2940 1981 2HD |
| 5,000 | GARDEN TRACTOR JD 725 | 141,700 | COMBINE SP JD 9760 2009 |
| 27,000 | GRAIN HEADER SHELBOURNE 2005 | 5,000 | STRAIGHT HEAD JD 930 30' |
| 6,000 | PNEU AUGER FETERL 12X100' | 3,500 | PNEU AUGER 8X71 YELLOW |
| 80,000 | SWATHER SP NH 8040 '08 | 11,000 | HAY BALE VERNER 8000 '08 |
| 34,000 | HAY BALE LG RD JD 568 2008 | 7,500 | HAY PROCESSOR VERNER '02 |
| 80,000 | SPRAYER JD 4700 1999 | 7,500 | FLATBED TRAILER PJ 7X26 GOOSENECK |
| 65,000 | AIR SEEDER JD 1860 W/1980 CART2080 | 1,500 | FLATBED 6X18 |
| 10,000 | STUCK TRAILER FEATHERLITE | 8,500 | STUCK TRAILER 7X24 EDY '03 |
| | 7X20 '96 W/TACK ROOM | 18,000 | ATV HONDA RUBICON 650 '05 (2) |
| 10,000 | ATV HONDA BIG RED 650 '08 | | @ \$5,000 EACH |
| 13,000 | HAY GRINDER HAYBUSTER 1100 | 4,000 | LOADING CHUTE STURDELL |
| 2,500 | FERT TANKS 2 @ \$1,250 W/ PUMP | 9,000 | GRAIN CART PRENT |
| 600,000 | YEARLINGS 500 @ \$1200 | 300,000 | ALFALFA & OTHER HAY |
| 25,000 | TOOLS & SUPPLIES | | |

\$ 1,601,700. TOTAL LIMIT - COVERAGE E

COUNTERSIGNED at De Smet, South Dakota this 3 day of JANUARY, 2013.

William A. Poppen

Secretary

Peter M Mack

President

DFM-122 (Ed. 4-91)

DECLARATIONS - CONTINUED ON DECLARATIONS PAGE 3



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS-RANCHOWNERS POLICY DECLARATIONS PAGE 3

INSURED: RICHARD J DR LORAYNA PAPRUSEK

15-04-11

COVERAGE F FARM BARN, BUILDINGS, STRUCTURES AND ADDITIONAL DWELLINGS

| Item | Limit | Description |
|------|------------|---|
| 2. | \$ 11,000. | MOBILE HOME 14X70 1 STY STEEL |
| 20. | \$ 12,000. | GRANARY 24X26 STEEL *LDC 2 |
| 32. | \$ 42,800. | LIVESTOCK SHED 30X156 STEEL *LDC 2 |
| 35. | \$ 50,800. | METAL GRAIN BIN BU. CAP. 46,000 W/TUBE AERATION |
| 36. | \$ 28,000. | METAL GRAIN BIN BU. CAP. 20,000 W/TUBE AERATION |
| 37. | \$ 26,300. | METAL GRAIN BIN BU. CAP. 5,000 (3) |
| 43. | \$ 6,100. | HOPPER BIN BERLEN 1100 BU |
| 43.1 | \$ 6,000. | HOPPER BIN FRIESEN 25 TON |
| 44. | \$ 11,400. | MACHINE SHED (ENC) 30X36X12 COLORED STEEL *LDC #2 |
| 45. | \$ 35,400. | POLE BARN (ENC) 34X104X14 COLORED STEEL |
| 46. | \$ 93,400. | POLE BARN (ENC) 60X99X14 42X81X14 COLORED STEEL *LDC 2 |
| 47. | \$ 80,000. | MACHINE SHED (ENC) DELUXE 54X75X12 COLORED STEEL (W/WHIST) |
| 48. | \$ 56,100. | MACHINE SHED (ENC) 54X99X14 COLORED STEEL |

\$ 459,100. TOTAL LIMIT - COVERAGE F

COUNTERSIGNED at De Smet, South Dakota this 3 day of JANUARY, 2013.

William D. Poppen

Secretary

Peter M Mack

President

DFPD-122
(Ed. 4-91)

**– READ THIS ENTIRE POLICY CAREFULLY –
IT IS A LEGAL CONTRACT**

GENERAL POLICY TERMS

The following Table of Contents shows how the policy is organized. It will help **you** locate particular sections of the policy.

TABLE OF CONTENTS

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| Agreement | 1 |
| Definitions | 1 |
| Property Coverages | |
| Principal Property Coverages | 2 |
| Incidental Property Coverages | 3 |
| Exclusions That Apply To Property Coverages | 4 |
| <p align="center">(The perils that apply to property coverages and the liability and medical payments coverages are on separate forms attached to this policy. Refer to the Perils Section and the Liability Coverage Section)</p> | |
| What you Must Do in Case of Loss | 5 |
| How Much We Pay for Loss or Claim | 6 |
| Payment of Loss or Claim | 7 |
| Policy Conditions | |
| Conditions Applicable to All Coverages | 7 |
| Conditions Applicable to Property Coverages Only | 9 |
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| Perils Section | P-1 |
| Perils | |
| Liability Coverage Section | L-1 |
| Principal Coverages - Liability and Medical Payments to Others | |
| Incidental Liability Coverages | |
| Exclusions | |

Required state endorsements may also be part of this policy.

Refer to the Definitions for words that have special meaning. These words are shown in "**bold type**".

AGREEMENT

This policy, subject to all of its **terms**, provides property and liability insurance and other described coverages during the policy period. In return **you** must pay the required policy cost (premium). Each principal coverage described in this policy applies only if a **limit** is shown on the Declarations for that coverage.

DEFINITIONS

1. The words **you** and **your** mean the person or persons named on the Declarations and **your** spouse if a resident of **your** household. The words **we**, **us** and **our** mean the Company providing this insurance.

2. **Bodily Injury** means bodily harm to a person and includes sickness, disease or death. This also includes required care and loss of services.

Bodily Injury does not mean bodily harm, sickness, disease or death that arises out of:

- a. a communicable disease; or
- b. the actual, alleged or threatened sexual molestation of a person.

3. **Business** means a trade, a profession or an occupation including farming, all whether full or part time. This includes the rental of property to others. It does not include the occasional rental for residential purposes of the part of the **insured premises** normally occupied solely by **your** household.

Business includes services regularly provided by an insured for the care of others and for which an **insured** is compensated. A mutual exchange of like services is not considered compensation.

4. **Credit Card** means a card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit. (It does not include debit cards, fund transfer cards or any similar device used to deposit, withdraw or transfer funds).

5. **Domestic Employee** means a person employed by an **insured** to perform duties that relate to the use and care of the **insured premises**. This includes a person who performs duties of a similar nature elsewhere for an **insured**. This does not include a person while performing duties in connection with the **business** of an **insured**.

6. **Insured** means:

- a. **you**;
- b. **your** relatives if residents of **your** household;
- c. persons under the age of 21 in **your** care or in the care of **your** resident relatives; and
- d. **your** legal representatives if **you** die while insured by this policy. This person is an **insured** only with respect to insurance on covered property and liability arising out of the property. An **insured** at the time of **your** death remains an **insured** while residing on the **insured premises**;

Under Coverage L - Personal Liability and Coverage M - Medical Payments to Others, **insured** also includes:

- e. persons using or caring for watercraft or animals owned by an **insured** and to which this insurance applies; (This does not include persons using or caring for water-craft or animals in the course of **business** or without the owner's consent.); and
- f. persons in the course of performing domestic duties that relate to the **insured premises**.

Each of the above is a separate **insured**, but this does not increase **our** limit.

7. **Insured Premises**:

a. Described location:

- 1) if **you** own the one or two family residence described on the Declarations, the **insured premises** means that residence and grounds at that location.
- 2) if **you** own the one or two family mobile home described on the Declarations, the **insured premises** means that mobile home and grounds at that location.

b. Under Coverage L - Personal Liability and Coverage M - Medical Payments to Others, **insured premises** also includes:

- 1) other premises shown on the Declarations;
- 2) that part of a residential premises acquired and to be used by **you** while this policy is in effect;
- 3) vacant land owned by or rented to an **insured**. This includes land where a **residence** is being built for the use of an **insured**. This does not include farm land or business land;
- 4) **your** cemetery lots and burial vaults or those of **your** resident relatives;
- 5) that part of residential premises, not owned by an **insured**, while temporarily used by an **insured**;
- 6) premises used by **you** in connection with the described location;
- 7) access ways immediately adjoining the **insured premises**; and
- 8) that part of premises occasionally rented to an **insured** for other than **business** purposes.

8. **Limit** means the limit of liability that applies.

9. **Motor Vehicle** means a **motorized vehicle**, a trailer or a semi-trailer, and all attached machinery or equipment, if:

- a. it is subject to **motor vehicle** registration; or
- b. it is designed for use on public roads.

10. **Motorized Vehicle** means a self-propelled land or amphibious vehicle regardless of method of surface contact. This includes parts and equipment.

11. **Recreational Motor Vehicle** means a **motorized vehicle**, a trailer or attached equipment that is designed or is used for leisure time activities and which is not a **motor vehicle**.
12. **Occurrence** means an accident, including loss from continuous or repeated exposure to similar conditions, which results, during the policy period, in bodily injury or property damage neither expected nor intended from the stand point of the **Insured**.
13. **Pollutant** means any solid, liquid, gaseous, thermal or radioactive irritant or contaminant, including acids, al-

kalis, chemicals, fumes, smoke, soot, vapors or waste. Waste includes all materials to be disposed of, recycled, reconditioned or reclaimed.

14. **Property Damage** means physical injury to tangible property. This includes the loss of use.
15. **Residence** means a one or two family house or a one or two family mobile home.
16. **Terms** means all provisions, limitations, exclusions, conditions and definitions used in this policy, or any endorsements or forms made a part of it.

PROPERTY COVERAGES

PRINCIPAL PROPERTY COVERAGES

Coverage A - Residence - We cover the **residence** on the **insured premises** including additions and built-in components and fixtures. We cover house yard fences, driveways, sidewalks and other permanently installed outdoor yard fixtures pertaining to the service of the **residence**.

Coverage A does not cover:

1. outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts and towers;
2. detachable **residence** items covered under Coverage B - Personal Property;
3. trees, plants, shrubs and lawns; and
4. land, including the land on which the **residence** is located, underground water or surface water.

Coverage B - Personal Property

1. We cover personal property owned by or in the care of an **insured**. Coverage for personal property usually on residential premises of an **insured** other than the **insured premises** is limited to 10 percent of the Coverage B limit.

This coverage also includes:

- a. all detachable **residence** items such as domestic appliances, window air conditioners, awnings, canopies, window screens, screen doors, storm windows, storm doors, submersible pumps and sump pumps.
 - b. outdoor equipment not permanently installed pertaining to the service of the **residence**; and
 - c. building materials and supplies located on the **insured premises** for use in construction of or to the **residence**.
2. We cover personal property in a newly acquired principal **residence**. The full Coverage B limit applies for 30 days

from the date you begin to move. After that, coverage for personal property in a newly acquired principal **residence** is limited to 10 percent of the Coverage B limit. This coverage does not extend past the date on which the **policy** expires or the date on which the **policy** is terminated. This does not increase the Coverage B limit.

3. At your option, personal property owned by a guest or **domestic employee** is covered while it is in that part of residential premises occupied by an **insured**.
4. **Limitations on Certain Property** - The special limits shown below do not increase the Coverage B limit. The limit for each class is the total limit per occurrence for all items in that class.
 - a. \$100 on money, bank notes, bullion, gold other than goldware and gold-plated ware, silver other than silverware and silver-plated ware, platinum, coins, medals, and numismatic property.
 - b. \$500 on securities, commercial paper, bills, letters of credit, abstracts of title, stamps, philatelic property, tickets, accounts, deeds, evidence of debt, passports, manuscripts, unpublished works and other valuable papers; (Commercial paper means drafts, checks, certificates of deposit and notes other than bank notes, including negotiable orders of withdrawal).
 - c. \$1000 for loss by theft of jewelry, watches, precious and semi-precious stones, gems and furs.
 - d. \$1000 for loss by theft of guns and items related to guns.
 - e. \$1000 on watercraft including their trailers, equipment, furnishings and motors.
 - f. \$1000 for loss by theft of silverware, goldware, pewterware and items plated with gold or silver.
 - g. \$1000 on **motorized vehicles** used only to service the **insured premises** and not required to be licensed for road use.
 - h. \$1000 on motorized golf carts not subject to **motor vehicle** registration.

The following property is covered only while on the **Insured premises** and is limited to the amount stated:

- i. \$500 on dismantled camper bodies and trailers not used with watercraft, including their equipment and accessories.

5. Personal Property Not Covered - We do not cover:

- a. property covered by scheduled insurance;
- b. animals, insects, birds or fish;
- c. **motorized vehicles** unless used only to service the **Insured premises** and not required to be licensed for road use;
- d. aircraft including their parts and equipment;
- e. **business** property;
- f. **farm** property;
- g. property of roomers and boarders who are not **Insureds**;
- h. outdoor antennas, including TV antennas and satellite TV antenna-reflectors, and their lead-in wiring, accessories, masts and towers, except as covered by any scheduled insurance;
- i. trees, plants, shrubs and lawns;
- j. electronic devices, accessories, or antennas that may be operated from the electrical system of a **motorized vehicle** or watercraft while in or on the **motorized vehicle** or watercraft. This includes films, tapes, wires, discs, records or other media for use with such devices;
- k. books of account, electronic data processing tapes, records, wires, chips, discs or other software media containing business data or personal data; or
- l. loss that results from credit cards, except as provided under Incidental Property Coverages.

Coverage C - Additional Living Costs and Loss of Rent Coverage

We pay the necessary and reasonable increase in living costs you incur to maintain the normal standard of living of your household if a part of the **Insured premises** is made unfit for use by an insured loss. We pay only for the period of time reasonably required to make the **insured premises** fit for use or to settle your household in new quarters, whichever is less. This period of time is not limited by the policy period.

We pay for the rent you lose or the fair rental value if the part of the **insured premises** rented or held for rental to others is made unfit for use by an insured loss. We only pay for the period of time reasonably required to make the **insured premises** fit for use. Loss of rent is the amount you would have received less the charges and expenses that do not continue while the **Insured premises** is unfit for use. This period of time is not limited by the policy period.

We pay your additional living costs and loss of rent for up to two weeks if the premises next to the **insured premises** is damaged from a peril insured against by this policy and

you may not, by order of civil authority, use the **Insured premises**. This is not limited by the policy period.

We do not pay for loss of rent or costs due to the cancellation of a lease or an agreement.

INCIDENTAL PROPERTY COVERAGES

This policy provides the following Incidental Property Coverages. They are subject to all of the terms of the applicable Principal Property Coverages A or B. They do not increase the limits shown for the Principal Property Coverages unless otherwise stated.

1. Emergency Removal

We pay for loss to covered property that is moved from the **insured premises** to prevent a loss from perils insured against. The property is covered for direct physical loss not excluded, for up to 30 days. This coverage does not extend past the date on which this policy expires.

We pay up to \$100 towing charge to move a covered mobile home that is in danger from a peril insured against.

2. Debris Removal - We pay to remove the debris of covered property after an insured loss.

This coverage does not include costs to:

- a. extract pollutants from land or water; or
- b. remove, restore or replace polluted land or water.

3. Fire Department Service Charge - We pay up to \$250 for charges you must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

4. Credit Card, Forgery and Counterfeit Money - We pay up to \$1000 if an insured:

- a. by law must pay for the unauthorized use of credit cards issued or registered in the name of the insured;
- b. has a loss when checks, drafts, notes or negotiable instruments are forged or altered; or
- c. accepts in good faith counterfeit United States or Canadian paper money.

We do not pay for loss if:

- a. the insured has not complied with the rules under which the credit card was issued;
- b. the loss is caused by the dishonesty of an insured;
- c. the loss results from the business of an insured;
- d. the loss occurs while a person who is not an insured has a credit card with the consent of an insured; or
- e. the loss involves a debit card, fund transfer card or any similar device used to deposit, withdraw or transfer funds.

5. **Tenant's Improvements** - If you are a tenant, we pay for loss by perils insured against to improvements on the insured premises made or acquired at your expense. These are permanent fixtures, alterations, decorations and additions.

We pay up to 10 percent of the Coverage B limit.

6. **Grave Markers** - We pay up to \$500 for loss to grave markers and mausoleums caused by a peril that applies to Coverage B.

EXCLUSIONS THAT APPLY TO PROPERTY COVERAGES

We do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

1. **Ordinance or Law** - We do not pay for loss or increased cost which results from the enforcement of a code, ordinance or law which regulates the use, construction, repair or demolition of property. When breakage of glass is covered, we pay to replace the damaged glass with safety glazing materials if required by code, ordinance or law.

2. **Civil Authority** - We do not pay for a loss which results from order of civil authority.

We pay for loss which results from acts of a civil authority to prevent the spread of fire. We do not pay if the fire was caused by an excluded peril.

3. **Nuclear Hazard** - We do not pay for loss which results from nuclear reaction, nuclear radiation or radioactive contamination (whether controlled or uncontrolled; whether caused by, contributed to or aggravated by a peril insured against and whether caused by natural, accidental or artificial means). Loss caused by nuclear hazard is not considered loss caused by Fire, Explosion or Smoke. Direct loss by Fire resulting from the nuclear hazard is covered.

4. **War** - We do not pay for loss which results from declared or undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction, seizure or use of property for a military purpose. It includes the consequences of these. Discharge of a nuclear weapon is deemed an act of war even if it is accidental.

5. **Neglect** - We do not pay for loss which results from the neglect of an insured to use all reasonable means to save and preserve covered property at and after the time of a loss.

6. **Earth Movement** - We do not pay for loss which results from earth movement whether the earth movement results from natural or artificial causes. Earth movement includes but is not limited to:

- a. earthquake, land shock waves or tremors;
- b. landslide, subsidence, sinkhole, erosion;
- c. mudflow;
- d. earth sinking, rising, shifting, expanding or contracting; or
- e. volcanic eruption or effusion including outpouring of lava or ash.

We do pay for direct loss caused by Fire, Explosion and (if covered by this policy) Theft resulting from earth movement. Explosion does not include volcanic eruption or effusion.

7. **Water Damage** - We do not pay for loss which results from the following:

- a. flood, surface water, waves, tidal water, overflow of a body of water or spray from these, all whether driven by wind or not;
- b. water which backs up through sewers or drains, or overflows from a sump; or
- c. water from any source below the surface of the ground. This includes water which exerts pressure on, or seeps or leaks through or into a building, sidewalk, driveway, foundation, swimming pool or other structure.

We pay for direct loss caused by Fire, Explosion and (if covered by this policy) Theft resulting from water damage. Explosion does not include volcanic eruption or effusion.

8. **Power Disruption, Failure or Fluctuation** - We do not pay for loss which results from the disruption, failure or fluctuation of power or other utility service, whether or not it is caused by a peril insured against by this policy, if the origin or cause of the disruption, failure or fluctuation is not on the insured premises.

9. **Business Interruption** - We do not pay for loss which results from interruption of business.

10. **Wear and Tear** - We do not pay for loss which results from wear and tear, marring, deterioration, inherent vice, latent defect, mechanical breakdown, rust, wet or dry rot, corrosion, mold, contamination or smog.

11. **Intentional Acts** - We do not pay for loss which results

from an act committed by or at the direction of an **insured** and with the intent to cause a loss.

12. **Errors, Omissions and Defects** - We do not pay for loss which results from one or more of the following:

a. an act, error or omission (negligent or not) relating to:

- 1) land use;
- 2) the design, specification, construction, workmanship or installation of property;
- 3) planning, zoning, development, surveying, siting, grading or compaction; or
- 4) maintenance of property (including land, struc-

tures or improvements);

whether on or off the **Insured premises**;

b. a defect, a weakness, the inadequacy, a fault or unsoundness in materials used in construction or repair whether on or off the **Insured premises**.

We do pay for an ensuing loss unless the ensuing loss itself is excluded.

13. **Birds, Vermin, Rodents, Insects or Domestic Animals** - We do not pay for loss caused by birds, vermin, rodents, insects, or domestic animals.

WHAT YOU MUST DO IN CASE OF LOSS

1. **Notice** - In case of a loss, the **Insured** must:

- a. give us or our agent prompt notice (We may request written notice.);
- b. give notice to the police when the act that causes the loss is a crime; and
- c. give notice to the **credit card** company if the loss involves a **credit card**.

The notice to us must state:

- a. the name of the **Insured**, the kind of policy, the policy number and the time, place and the details of the loss; and
- b. names and addresses of all known potential claimants and witnesses.

2. **Cooperation** - The **Insured** must cooperate with us in performing all acts required by this policy.

3. **Volunteer Payments** - An **Insured** must not make payments, pay or offer rewards or assume obligations or other costs, except at the **Insured's** own cost. This does not apply to costs that are allowed by this policy.

4. **Other Duties - Property Coverages** - The **Insured** must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. We pay for the costs. The **Insured** must keep an accurate record of such costs. This does not increase our limit.

The **Insured** must give to us a statement of loss (under oath if we request) within 60 days after the loss.

At our request the **insured** must:

- a. give us a proof of loss, within 60 days after our request, that shows:

- 1) the time, place and the details of the loss;
- 2) the interest of the **insured** and of all others in the property. This includes all mortgages and liens;
- 3) other insurance policies that may cover the loss;
- 4) changes in title or use of the property during the policy period;
- 5) available plans and specifications of buildings or structures;
- 6) detailed estimates for repair; and
- 7) in detail, the quantity, description, cost, amount of loss and actual cash value of the personal property involved in the loss. The **Insured** must give us copies of all bills, receipts and related documents to confirm these.

b. submit to examination under oath in matters that relate to the loss or claim as often as we reasonably request. If more than one person is examined, we have the right to examine and receive statements separately from each person and not in the presence of the others;

c. show the damaged property as often as we reasonably request;

d. show records, including tax returns and bank records of all cancelled checks that relate to the value, loss and costs, and permit copies to be made of them as often as we reasonably request;

e. assist us to enforce the right of recovery which the **insured** may have against a party or parties causing the loss;

f. show records that prove loss of rents and show receipts for additional living costs; and

g. submit evidence or affidavits supporting a claim under Credit Card, Forgery and Counterfeit Money Coverage stating the amount and cause of loss.

5. **Other Duties - Personal Liability Coverage** - In case of an occurrence which might result in a claim, the **Insured** must promptly give us copies of all notices, demands or legal papers that relate to the occurrence

or the claim.

At our request, the **insured** must help us:

- a. to settle a claim;
- b. to conduct suits. This includes being at trials and hearings;
- c. to enforce the right of recovery against parties who may be liable to an **insured**;
- d. to secure and give evidence; and
- e. to obtain the attendance of all witnesses.

6. Other Duties - Medical Payments to Others Coverage

- In case of a loss the injured person or someone acting on behalf of that person must:

- a. give **us** written proof of claim (under oath if we request) as soon as practical; and
- b. authorize **us** to get copies of medical records.

The injured person must submit to physical exams by doctors chosen by **us** as often as **we** may require.

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. PROPERTY COVERAGES

Actual Cash Value includes deduction for depreciation, however caused.

Insurable Interest and Our Limit - Even if more than one person has an insurable interest in the property covered, **we** pay no more than the amount of **your** interest in the property or the **limit** that applies.

Deductible - This applies to Coverage A - Residence; Coverage B - Personal Property; Debris Removal; and Tenant's Improvements. It applies to all perils insured against unless otherwise shown.

We pay that part of the loss over the deductible. Not more than one deductible applies per **occurrence**.

Loss to a Pair or Set - If there is loss to an item which is part of a pair or set, **we** pay only to replace or repair the item, or **we** pay the difference in the actual cash value of the pair or set just before the loss and the actual cash value just after the loss.

Warranty and Guarantee Coverage - **We** pay only that part of a loss or claim in excess of the amount recoverable by the **insured** as the result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss or claim.

Loss Settlement - Subject to the **terms** shown above, **we** will settle losses according to the Replacement Cost Terms. If the Replacement Cost Terms do not apply, **we** will settle losses according to the Actual Cash Value Terms.

a. **Replacement Cost Terms** - These apply only to the **residence** covered under Coverage A that has a permanent foundation and roof and do not apply to: mobile homes whether or not on a permanent foundation; all detachable **residence** items such as domestic appliances, window air conditioners, aw-

nings, canopies, window screens, screen doors, storm windows, storm doors, submersible pumps and sump pumps; and outdoor equipment not permanently installed pertaining to the service of the **residence**.

In determining the replacement cost of the residence, do not include the cost of: excavations, brick, stone or concrete foundations; piers and other supports which are below the surface of the ground inside the foundation walls; and underground flues, pipes, wiring and drains.

When the cost to repair or replace exceeds the lesser of \$1,000 or five percent of the **limit** on the damaged residence, **we** do not pay for more than the actual cash value of the loss until repair or replacement is completed.

You may make a claim for the actual cash value of the loss before repairs are made. A claim for an additional amount payable under these **terms** must be made within 180 days after the loss.

1) If the **limit** on the damaged residence is less than 80 percent of its replacement cost at the time of loss, **we** pay the larger of the following (but not exceeding the **limit** under this policy):

- a) the actual cash value at the time of the loss; or
- b) that part of the replacement cost of the damaged part which **our limit** on the residence bears to 80 percent of the full current replacement cost of the residence.

2) If the **limit** on the damaged residence is at least 80 percent of its replacement cost at the time of loss, **we** pay the smallest of the following:

- a) the **limit** that applies to the residence;
- b) the cost to repair or replace the damage on the same premises using materials of like kind and quality, to the extent practicable; or
- c) the amount spent to repair or replace the damage.

b. Actual Cash Value Terms - We pay the lesser of:

- 1) the cost to repair or replace the property with materials of like kind and quality to the extent practicable;
- 2) the actual cash value of the property at the time of loss; or
- 3) (applies only to mobile homes) the difference in the actual cash value just before the loss and the actual cash value just after the loss.

2. Coverage L - Personal Liability - The limit shown on the Declarations for Coverage L - Personal Liability is the most we pay for loss for each occurrence. This applies regardless of the number of:

- a. persons insured under this policy;
- b. parties who sustain injury or damage; or
- c. claims made or suits brought.

3. Coverage M - Medical Payments To Others - The limit shown on the Declarations for each person for Coverage M - Medical Payments to Others is the most we pay for all medical expenses payable for bodily injury to one person as the result of one accident.

When a limit is shown on the Declarations for each

accident for Coverage M - Medical Payments to Others, the limit is the most we pay for any one accident.

The payment of a claim under Coverage M - Medical Payments to Others does not mean we admit we are liable under Coverage L - Personal Liability.

4. Metal Covered Residence - Our limit for appearance loss caused by hail to the exterior metal of a covered residence is 25 per cent of the replacement cost of such metal covering.

5. Insurance Under More Than One Coverage - If more than one coverage of this policy applies to a loss, we pay no more than the actual loss.

6. Insurance Under More Than One Policy -

Property Coverage - This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

Coverage L - Personal Liability and Coverage M - Medical Payments to Others - This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

PAYMENT OF LOSS OR CLAIM

1. Your Property - We adjust each loss with you. We pay an insured loss within 30 days after an acceptable proof of loss is received and the amount of the loss is agreed to in writing. If you and we do not agree, we pay within 60 days after the filing of a written appraisal agreement with you and with us, unless you or we appeal to a Court within 60 days after the written appraisal agreement is filed with you and with us. Payment is made to you unless a loss payee is named.

2. Additional Living Costs - If the Insured premises is made unfit for use for more than one month, covered costs are paid on a monthly basis. You must give us proof of such costs.

3. Damage to Personal Property of Others - At our option, an insured loss may be adjusted with and paid:

- a. to you on behalf of the owner; or
- b. to the owner. If we pay the owner, we do not have to

pay an insured.

4. Our Options - We may:

- a. pay the loss in money; or
- b. rebuild, repair or replace the property with materials of like kind and quality, to the extent practicable. We must give you notice of our intent to do so within 30 days after we receive an acceptable proof of loss.

We may take all or a part of the damaged property at the agreed or appraised value. Property paid for or replaced by us becomes ours.

5. Liability Coverages - A person who has secured a judgment against an insured for an insured loss or has liability established by a written agreement between the claimant, an insured and us, is entitled to recover under this policy to the extent of coverage provided.

POLICY CONDITIONS

CONDITIONS APPLICABLE TO ALL COVERAGES

1. Assignment - This policy may not be assigned without our written consent.

2. Cancellation and Nonrenewal - You may cancel this policy at any time by returning the policy to us for cancellation and paying all obligations then owing by you to us.

We may cancel this policy by written notice of cancellation delivered to **you** or mailed to **you** at **your** address appearing in the records of this Company by certified mail at least 20 days before the effective cancellation date, which notice will include a written explanation of the specific reasons for cancellation. Proof of delivery or mailing is sufficient proof of such notice.

We refund premium or policy costs for the unexpired policy period on a prorata basis.

Your return premium or policy costs, if any, will be refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium or policy costs is not a condition of cancellation.

We may cancel this policy for any reasonable cause during the first 60 days this policy is in effect, but after 60 days from the effective date of this policy, a notice of cancellation may not be issued unless it is based upon at least one of the following reasons:

- a. Nonpayment of premium or policy costs;
- b. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- c. Discovery of acts or omissions on the part of the named insured which increase any hazard insured against;
- d. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
- e. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- f. A determination by the director of the division of insurance of the State of South Dakota that the continuation of the policy would jeopardize this Company's solvency or would place this Company in violation of the insurance laws of South Dakota;
- g. Violation or breach by the insured of any policy terms or conditions; or
- h. Such other reasons as are approved by the director of the South Dakota Division of Insurance.

If we elect not to renew this policy, we will deliver to **you** or mail to **you** at **your** address appearing in the records of this Company, a written notice of nonrenewal at least 30 days before the effective renewal date of this policy. Proof of delivery or mailing is sufficient proof of such notice.

3. **Change, Modification or Waiver of Policy Terms** - A waiver or change of the terms of this policy must be issued by us in writing to be valid. If, in the policy period, we adopt a revision which broadens coverage without an additional premium, the broadened coverage will apply.

Our request for an appraisal or examination under oath does not waive policy terms.

4. **Conformity with Statute** - Terms in conflict with the laws of the State of South Dakota, are changed to conform to such laws.
5. **Misrepresentation, Concealment or Fraud** - This policy is void if, before or after a loss:
 - a. an insured has willfully concealed or misrepresented:
 - 1) a material fact or circumstance with respect to this insurance; or
 - 2) an insured's interest herein.
 - b. there has been fraud or false swearing by an insured with respect to this insurance or the subject thereof.
6. **Inspection** - We may, but are not required to, inspect your property and operations. Our inspection or resulting advice or report does not warrant that your property or operations are safe or healthful or comply with laws, rules or regulations.
7. **Recoveries** - This applies if we pay for a loss and lost or damaged property is recovered, or payment is made by those responsible for the loss, or someone for them.
 - a. The insured must inform us or we must inform the insured if either recovers property or receives payment.
 - b. Proper costs incurred by either party are paid first.
 - c. The insured may keep the property. The amount of the claim paid, or a lesser amount to which we agree, must be returned to us.
 - d. If the claim paid is less than the agreed loss due to a deductible, or other limiting terms, the recovery is prorated between the insured and us based on the interests of each in the loss.
8. **Subrogation** - If we pay for a loss, we may require that the insured assign to us the right of recovery up to the amount we pay. We are not liable for a loss if, after the loss, an insured impairs our right to recover against others. You may waive your right to recover, in writing, before a loss occurs, without voiding coverage. If we pay a loss to or for an insured and the insured recovers from another party for the same loss, the insured must pay us as stated in Recoveries.
9. **Suit Against Us** - No suit may be brought against us unless all the terms of this policy have been complied with and
 - a. **Property Coverages** - The suit is brought within six years after the loss.
 - b. **Liability Coverages** - The amount of an insured's liability has been fixed by:
 - 1) a final judgment against an insured which is the result of a trial; or

2) a written agreement of the **Insured**, the claimant and **us**.

No person has a right under this policy to join **us** or implead **us** in actions that are brought to fix the liability of an **Insured**.

10. **Punitive or Exemplary Damages, or Related Defense Costs** - This policy does not cover punitive or exemplary damages, or related defense costs. This exclusion applies regardless of any other terms of this policy or any endorsements made a part of it.

11. **Bankruptcy of an Insured** - Bankruptcy or insolvency of an **Insured** does not relieve **us** of our obligations under this policy.

CONDITIONS APPLICABLE TO PROPERTY COVERAGES ONLY

12. **Abandonment of Property** - An **Insured** may not abandon the property to **us** unless **we** agree.

13. **Appraisal** - If **you** and **we** do not agree on the cost to repair or replace, actual cash value of or amount of loss to covered property when loss occurs, either party may demand that these amounts be determined by appraisal.

If either party makes a written demand for appraisal, each shall choose a disinterested appraiser and notify the other of the appraiser's identity within 20 days after receipt of the written demand by the party notified of such appraisal demand. The appraisers will then determine the amount of the damage stating separately, in detail: the cost to repair or replace, actual cash value of, and amount of loss to each building item and item of personal property.

If the two appraisers selected by the parties fail to agree within a reasonable time on the amount of the damage to be determined by them, they shall choose a third disinterested appraiser to act with them. If the two appraisers selected by the parties cannot agree upon a third disinterested appraiser within 15 days after their failure to agree on the amount of the damage to be determined by them, **you** or **we** can ask a judge of a court of record in the state where the property is located to select the third appraiser to act with them to determine the amount of the damage.

A written appraisal agreement so itemized and signed by any two of the appraisers and filed with **you** and with **us** will establish the cost to repair or replace, actual cash value of and amount of loss to each building item and item of personal property, unless **you** or **we** appeal to a court within sixty days after the written appraisal agreement is filed with **you** and with **us**.

The two appraisers selected by **you** and **us** will be paid by the party selecting that appraiser, and the compensation of the third appraiser and other costs of the appraisal shall be shared by **you** and **us**.

14. **No Benefit to Bailee** - Coverage under this policy will not benefit those who are paid to assume custody of the covered property.

15. Mortgage Clause

The word "mortgagee" includes trustee.

a. If a mortgagee is named on the Declarations, a loss payable under Coverage A - Residence or Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings will be paid to the mortgagee and **you**, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages. If **we** deny **your** claim, that denial does not apply to a valid claim of the mortgagee, if the mortgagee has:

- 1) notified **us** of change in ownership, occupancy or substantial change in risk of which the mortgagee became aware;
- 2) paid the premium due under this policy on demand if an **Insured** neglected to pay the premium; and
- 3) submitted a signed, sworn proof of loss within 60 days after receiving notice from **us** if an **Insured** has failed to do so.

All terms of this policy apply to the mortgagee unless changed by this clause.

b. If **we** cancel this policy, **we** will notify the mortgagee at least 10 days before the date cancellation takes effect.

c. If **we** pay the mortgagee for a loss and deny payment to **you**:

- 1) **we** are subrogated, up to the amount **we** paid for the loss, to all the rights of the mortgagee granted under the mortgage on the property; or
- 2) at **our** option, **we** may pay to the mortgagee the whole principal on the mortgage plus the accrued interest. In this event, **we** shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **Secured Party Coverage** - This applies only to coverage on mobile homes and personal property. This entire clause is void unless the name of a secured party is shown on the Declarations. This clause applies only to the interest of a secured party and does not affect the **Insured's** rights or duties under the policy.

a. If a secured party is named on the Declarations, a loss payable on property subject to the security interest will be paid to the secured party and you as interests may appear. If there is more than one security interest in the same property, the order of payment will be the same as their order of priority.

If we deny your claim, that denial does not apply to a valid claim of a secured party if the secured party has:

- 1) notified us of a change in ownership, occupancy or substantial change in risk of which the secured party became aware;
- 2) paid the premium due under this policy on demand if an Insured has neglected to pay the premium; and
- 3) submitted a signed, sworn proof of loss within 60 days after receiving notice from us if an Insured has failed to do so.

All terms of this policy apply to the secured party unless changed by this clause.

b. If we cancel this policy, we will notify the secured party at least 10 days before the date cancellation takes effect.

c. If we pay the secured party for a loss and deny payment to you:

- 1) we are subrogated, up to the amount we paid for the loss, to all the rights of the secured party granted under the security agreement; or
- 2) at our option, we may pay the secured party the remaining amount due on the security agreement plus the accrued interest. In this event, we shall receive full assignment of the security agreement and securities held as collateral for the agreement.

However, the secured party's interest is not covered for conversion, embezzlement or secretion by an insured in possession of the encumbered property, unless specifically insured against and premium paid for such.

Farmowners/Ranchowners—Broad Form Perils Section

We insure against direct physical loss to property covered under **Coverages A—Residence, B—Personal Property and C—Additional Living Costs and Loss of Rent Coverage** caused by the perils shown below, subject to the terms contained in the General Policy Terms, and the exclusions shown below:

1. Fire or Lightning

2. Windstorm or Hail

- a. We do not pay for loss caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind driven or not.
- b. We do not pay for loss to the inside of a residence, or to property inside, caused by dust, rain, sand, sleet, snow or water, all whether driven by wind or not, which enter through an opening not made by the direct force of wind or hail.
- c. We do not pay for loss to watercraft and their trailers, accessories, furnishings, equipment and motors unless inside a fully enclosed building.

3. Explosion

4. Riot or Civil Commotion

5. Aircraft

6. **Vehicles**—We do not pay for loss to fences, driveways or walks caused by motor vehicles, motorized vehicles or recreational motor vehicles owned by or operated by an Insured, employee of an Insured or occupant of the insured premises.

7. **Sudden and Accidental Damage from Smoke**—We do not pay for loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism**—We do not pay for loss if the Insured premises is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.

9. **Glass Breakage**—We cover breakage of glass that is part of a residence or part of a detachable residence item, including storm doors and windows. We do not pay for loss if the Insured premises is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.

10. **Theft**—This includes attempted theft and loss of property from a known place when it is likely that theft occurred.

a. We do not cover theft by an Insured.

b. We do not cover theft in or to a residence being built, or theft of material and supplies for use in construction of the residence, until the residence is finished and occupied.

c. We do not pay for loss of a precious or semi-precious stone from its setting.

d. We do not pay for loss that results from the theft of a credit card, except as provided under Incidental Property Coverages.

e. We do not pay for loss that results from the theft of a debit card, fund transfer card or similar device used for the deposit, withdrawal or transfer of funds.

f. We do not cover theft from premises which are vacant for more than 30 days in a row just before the loss.

g. We do not cover theft from a part of the residence usually occupied solely by an Insured while it is rented to others.

h. We do not cover theft that occurs away from the Insured premises of:

- 1) property while on the part of residential premises which an Insured owns, rents or occupies, except for the time while an Insured temporarily resides there. We do cover the property of an Insured who is a full time student while it is in the living quarters occupied by the student at school;
- 2) property while unattended in or on any motor vehicle, recreational motor vehicle or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered unattended when the Insured is required to surrender the keys of such vehicle or trailer to a bailee;
- 3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;
- 4) trailers and their equipment;
- 5) campers or camper bodies; or
- 6) watercraft and their furnishings, equipment and motors.

11. Falling Objects

a. We do not pay for loss to the inside of a residence, or to the property inside, unless the object has first damaged the walls or roof by impact.

b. We do not pay for loss to the object which falls.

12. **Weight of Ice, Snow or Sleet** which damages a residence or the property inside.

- a. **We do not pay for loss to outdoor equipment not permanently installed.**
- b. **We do not pay for loss to awnings or canopies and their supports.**
- c. **We do not pay for loss to gutters or downspouts.**
- d. **We do not pay for loss to swimming pools, retaining walls, fences, septic tanks, bulkheads, piers, docks, wharves, foundations, patios and paved areas.**

13. Collapse of a Residence or a Part of a Residence (Collapse does not mean settling, cracking, shrinking, bulging or expanding.) Unless the damage is directly caused by the collapse of a residence or a part of a residence.

- a. **We do not pay for loss to awnings or canopies and their supports.**
- b. **We do not pay for loss to outdoor equipment not permanently installed.**
- c. **We do not pay for loss to swimming pools, retaining walls, bulkheads, fences, septic tanks, piers, docks, wharves, foundations, patios and paved areas.**

We do not pay for loss by collapse that results from an excluded cause or event.

14. Sudden and Accidental Tearing Apart, Cracking, Burning or Bulging of a heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance. **We do not pay for loss caused by freezing.**

15. Accidental Discharge or Overflow of Liquids or Steam from a plumbing, heating, air-conditioning or fire

protective sprinkler system, or from a water heater or domestic appliance. (Gutters and downspouts are not part of a plumbing system).

- a. **We do not pay for loss caused by continuous or repeated seepage or leakage.**
- b. **We do not pay for loss if the residence has been vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.**
- c. **We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes. (We do pay the reasonable cost of removing and replacing those parts of the residence or mobile home necessary to make repairs.)**
- d. **We do not pay for loss caused by freezing.**
- e. **We do not pay for loss on the insured premises caused by discharge or overflow which comes from off the insured premises.**

16. Freezing of a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance—**We do not pay for loss on the insured premises while the residence is vacant, unoccupied (including temporary absence) or is being built and is unoccupied. We do pay for such loss if an insured has used reasonable care to:**

- a. maintain heat in the residence or mobile home; or
- b. shut off the liquid supply and completely drain the system, water heater or domestic appliance.

17. Sudden and Accidental Damage from Artificially Generated Electrical Currents—**We do not pay for loss to tubes, transistors and similar electronic components.**

Farmowners/Ranchowners—Special Form Perils Section

Coverage A—Residence—This policy covers the residence on the insured premises for risks of direct physical loss unless specifically excluded below or in the General Policy Terms.

Exclusions—Apply to Coverage A—Residence—The following exclusions apply in addition to the exclusions contained in the General Policy Terms:

1. **Freezing, Discharge, Leakage or Overflow—Unoccupied Residence**—If the residence is vacant, unoccupied (including temporary absence) or under construction and unoccupied, the insured must take reasonable care to:

- a. maintain heat in the residence; or
- b. shut off the water supply and completely empty liquids from any plumbing, heating, air-conditioning or fire protective sprinkler systems, water heaters or domestic appliances.

If the Insured fails to do this, we do not pay for loss caused by freezing or the resulting discharge, leakage or overflow from such system, water heater or domestic appliance.

2. **Freezing, Thawing, Pressure or Weight of Ice, Snow, Sleet or Water**—We do not pay for damage to swimming pools, fences, retaining walls, septic tanks, piers, wharves, docks, foundations, bulkheads, patios and paved areas caused by freezing, thawing, or pressure or weight of ice, snow, sleet or water, whether driven by wind or not.

3. **Theft**—We do not cover theft or attempted theft in or to a residence being built, or theft of materials and supplies for use in construction of the residence, until the residence is finished and occupied, and we do not pay for theft or attempted theft from a residence which is vacant for more than 30 days in a row just before the loss.

4. **Vandalism or Glass Breakage**—We do not pay for loss caused by vandals or breakage of glass while the residence is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.

5. **Seepage or Leakage**—We do not pay for loss caused by repeated or continuous seepage or leakage of liquids or steam from within a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance.

Except as provided above, we pay for loss caused by the accidental leakage, overflow or discharge of liquids or steam from a plumbing, heating, air-conditioning or fire protective sprinkler system, or from a water heater or domestic appliance. We also pay the reasonable cost of removing and replacing those parts of the residence or mobile home necessary to make repairs. We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes.

6. **Settling, Cracking, Shrinking, Bulging or Expanding**—We do not pay for loss caused by the settling, cracking, shrinkage, bulging or expanding of a residence or mobile home, pavements, sidewalks, patios, or other outdoor structures.

7. **Birds, Vermin, Rodents, Insects or Domestic Animals**—We do not pay for loss caused by birds, vermin, rodents, insects or domestic animals.

8. **Smoke**—We do not pay for damage caused by smoke from agricultural smudging or industrial operations.

We pay for an ensuing loss by Fire, Explosion, Smoke or Glass Breakage which results from any of the above, unless the ensuing loss itself is excluded.

Coverage B—Personal Property—This policy, subject to the exclusions contained in the General Policy Terms and the following exclusions, insures against direct physical loss to property covered under Coverage B—Personal Property, caused by the following:

1. **Fire or Lightning**

2. **Windstorm or Hail**

- a. We do not pay for loss caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind driven or not.
- b. We do not pay for loss to property inside a residence caused by dust, rain, sand, sleet, snow or water, all whether wind driven or not, which enter through an opening not made by the direct force of wind or hail.
- c. We do not pay for loss to watercraft and their trailers, accessories, furnishings, equipment and motors unless inside a fully enclosed building.

3. **Explosion**

4. **Riot or Civil Commotion**

5. **Aircraft**

6. **Vehicles**—We do not pay for loss to fences, driveways or walks caused by motor vehicles, motorized vehicles or recreational motor vehicles owned by or operated by an Insured, employee of an Insured or occupant of the Insured premises.

7. **Sudden and Accidental Damage from Smoke**—We do not pay for loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism**—We do not pay for loss if the insured premises is vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.

9. **Glass Breakage**—We cover breakage of glass or other glazing material which forms part of detachable residence items. This includes storm doors and windows.

We do not pay for loss if the Insured premises is vacant

for more than 30 days in a row just before the loss. A residence being built is not vacant.

10. **Theft**—This includes attempted theft and loss of property from a known place when it is likely that theft occurred.

- a. We do not cover theft by an **Insured**.
- b. We do not cover theft in or to a residence being built, or theft of materials and supplies for use in construction of the residence, until the residence is finished and occupied.
- c. We do not pay for loss of a precious or semi-precious stone from its setting.
- d. We do not pay for loss that results from the theft of a credit card, except as provided under Incidental Property Coverages.
- e. We do not pay for loss that results from the theft of a debit card, fund transfer card or similar device used for the deposit, withdrawal or transfer of funds.
- f. We do not cover loss from premises which are vacant for more than 30 days in a row just before the loss.
- g. We do not cover theft from a part of the residence usually occupied solely by an **Insured** while it is rented to others.
- h. We do not cover theft that occurs away from the **Insured premises** of:
 - 1) property while on the part of residential premises which an **Insured** owns, rents or occupies, except for the time while an **Insured** temporarily resides there. We do cover the property of an **Insured** who is a full time student while it is in the living quarters occupied by the student at school;
 - 2) property while unattended in or on any motor vehicle, recreational motor vehicle or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered unattended while the **Insured** is required to surrender the keys of such vehicle or trailer to a bailee;
 - 3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;
 - 4) trailers and their equipment;
 - 5) campers or camper bodies; or
 - 6) watercraft and their furnishings, equipment and motors.

11. Falling objects

- a. We do not pay for loss to property inside a residence, unless the object has first damaged the walls or roof by impact.
- b. We do not pay for loss to the object which falls.

12. **Weight of Ice, Snow or Sleet** which damages a residence or the property inside.

- a. We do not pay for loss to outdoor equipment not permanently installed.
- b. We do not pay for loss to awnings or canopies and their supports.

- c. We do not pay for loss to gutters or downspouts.
- d. We do not pay for loss to swimming pools, retaining walls, fences, septic tanks, bulkheads, piers, docks, wharves, foundations, patios and paved areas.

13. **Collapse of a Residence or a Part of a Residence** (Collapse does not mean settling, cracking, shrinkage, bulging or expanding.) Unless the damage is directly caused by the collapse of a residence or a part of a residence.

- a. We do not pay for loss to awnings or canopies and their supports.
- b. We do not pay for loss to outdoor equipment not permanently installed.
- c. We do not pay for loss to swimming pools, retaining walls, bulkheads, fences, septic tanks, piers, docks, wharves, foundations, patios and paved areas.

We do not pay for loss by collapse that results from an excluded cause or event.

14. **Sudden and Accidental Tearing Apart, Cracking, Burning or Bulging** of a heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance. We do not pay for loss caused by freezing.

15. **Accidental Discharge or Overflow of Liquids or Steam** from a plumbing, heating, air-conditioning or fire protective sprinkler system, or from a water heater or domestic appliance. (Gutters and downspouts are not part of a plumbing system).

- a. We do not pay for loss caused by continuous or repeated seepage or leakage.
- b. We do not pay for loss if the residence has been vacant for more than 30 days in a row just before the loss. A residence being built is not vacant.
- c. We do not pay for loss to the system, water heater or domestic appliance from which the liquid or steam escapes. (We do pay the cost to remove and replace only those parts of the residence needed to repair the system, water heater or domestic appliance.)
- d. We do not pay for loss caused by freezing.
- e. We do not pay for loss on the **Insured premises** caused by discharge or overflow which comes from off the **Insured premises**.

16. **Freezing of a plumbing, heating, air-conditioning or fire protective sprinkler system, water heater or domestic appliance**—We do not pay for loss on the **Insured premises** while the residence is vacant, unoccupied (including temporary absence) or is being built and is unoccupied. We do pay for such loss if an **Insured** has used reasonable care to:

- a. maintain heat in the residence or mobile home; or
- b. shut off the liquid supply and completely drain the system, water heater or domestic appliance.

17. **Sudden and Accidental Damage from Artificially Generated Electrical Currents**—We do not pay for loss to tubes, transistors and similar electronic components.



De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
15-04-11

SCHEDULED PERSONAL PROPERTY ENDORSEMENT

We cover the classes of personal property indicated below by a Limit. This coverage is subject to all policy terms that apply to property coverage unless amended by this endorsement.

| Class of Personal Property | Limit | Premium |
|---|-----------|-----------|
| 1. Jewelry, as scheduled. | \$ 9,025 | \$ 79.50 |
| 2. Furs and garments trimmed with fur or consisting principally of fur, as scheduled. | | |
| 3. Camera, camcorders, projection machines, films and related articles of equipment, as scheduled. The insured agrees not to accept payment for use of these items unless specifically permitted under this policy. | | |
| 4. Musical instruments and related articles of equipment, as scheduled. The insured agrees not to accept payment for performing with these instruments unless specifically permitted under this policy. | | |
| 5. Silverware, goldware, items plated with gold or silver, and pewterware, but excluding pens, pencils, flasks, smoking implements or jewelry. | | |
| 6. Golfer's equipment meaning golf clubs, golf clothing and golf equipment, as scheduled. We cover golf balls only for loss by fire or burglary provided there are visible marks of forcible entry into the building, room, or locker. The insured agrees not to accept payment for use of these items unless specifically provided under the policy. | | |
| 7. Fine Arts, as scheduled. This premium is based on your statement that the covered property is on the insured premises or located at | | |
| 8. Postage Stamps, including due, envelope, official, revenue, watch and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property including their books, pages and mountings, owned by or in the custody or control of an insured. | | |
| 9. Rare and Current Coins, medals, paper money, bank notes, tokens of money and other numismatic property, including coin albums, containers, frames, cards and display cabinets in use with such collection, owned by or in the custody or control of an insured. | | |
| 10. Guns, as scheduled. | \$ 3,000 | \$ 25.50 |
| 11. Watercraft, as scheduled. | \$ 24,000 | \$ 372.00 |

SCHEDULE

Article Description Limit

SCHEDULED PERSONAL PROPERTY ENDORSEMENT CONTINUED ON THE FOLLOWING PAGE

The limits shown for each item in this Endorsement are subject to How Much We Pay For Loss Or Claim on page 3 of this Endorsement.

William A. Poppen

Secretary

Peter M. Mack

President

DNFD-110A
(Ed. 12-91)

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De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
15-04-11

CONTINUATION OF SCHEDULED PERSONAL PROPERTY ENDORSEMENT

SCHEDULE

| Article | Description | Limit |
|-----------------------------------|--|----------|
| JEWELRY | | |
| | ONE LADIES 14K YELLOW GOLD DIAMOND WEDDING SET. CENTER DIAMOND IS MARQUISE CUT, WEIGHS APPROX. 98PTS. SI2 QUALITY, G-H COLOR, MEASURES 8.6 BY 4.2 MM. | \$ 5,400 |
| | SOLDERED TOGETHER WITH SET IS A 1CT. TOTAL WEIGHT MARQUISE DIAMOND BAND. 9 DIAMONDS SET IN A ROW WITH PRONGS. | \$ 1,000 |
| | CENTER DIAMOND IS SET WITH 6 PRONGS. RING WEIGHS 6.00WT. | \$ 500 |
| | ONE LADIES 10K YELLOW GOLD SAPPHIRE AND DIAMOND RING. SAPPHIRE IS MARQUISE CUT AND WEIGHS APPROX. 75PTS., GOOD QUALITY, DEEP BLUE COLOR. PRONG SET ON EACH SIDE ARE 5 BAGUETTE DIAMONDS, TOTAL APPROX. WEIGHT IS 50PTS. SAPPHIRE IS SET WITH 2 END PRONGS. RING WEIGHS 1.00WT. | \$ 1,225 |
| | ONE LADIES 14KT YELLOW GOLD DIAMOND PENDANT. CHANNEL SET IN A "U" STYLE ARE FOURTEEN DIAMONDS RANGING FROM 3PTS TO 7PTS EACH, SI2-I1 IN CLARITY AND H-I IN COLOR. CHAIN IS 16" 3MM FOXTAIL WITH A 2" EXTENDER. | \$ 900 |
| BOAT, MOTORS & TRAILER | | |
| | 2000 RANGER 19'10" BOAT | \$11,200 |
| | 1999 MERCURY 200HP OUTBOARD MOTOR | \$ 8,900 |
| | 2003 MERCURY 9.9 4-STROKE MOTOR | \$ 2,000 |
| | 2001 RANGER TRAILER | \$ 2,000 |
| COLLECTOR GUNS | | |
| | WINCHESTER SD CENTENNIAL MODEL 94 30-30 | \$ 2,000 |
| | RUGER 100TH ANNIVERSARY SET OF PISTOLS-A .22 CALIBER AND A .45 LONG COLT | \$ 1,000 |

SCHEDULED PERSONAL PROPERTY ENDORSEMENT CONTINUED ON THE FOLLOWING PAGE

The limits shown for each item in this Endorsement are subject to How Much We Pay For Loss Or Claim on page 3 of this Endorsement.

William A. Poppen

Secretary

Peter M. Mack

President

DHFU-1108
(Ed. 12-91)

(continued)

Scheduled Personal Property Endorsement

PROPERTY COVERED

Scheduled Items—We cover those items for which a coverage limit is shown on the schedule.

EXTENSIONS OF COVERAGE—NEWLY ACQUIRED PROPERTY

We cover items of property newly acquired by the Insured during the policy period as follows, but only if it is of a class of property we already cover under this endorsement:

1. **Fine arts—**We cover these newly acquired items for a period of up to 90 days after they are acquired. You must provide us with a complete description of each newly acquired item within this 90-day period and pay the additional premium from the date acquired.

We cover these newly acquired items for their actual cash value. However, the most that we will pay for all such newly acquired items is 25 percent of the coverage limit shown for Fine Arts.

2. **Jewelry, Furs, Photographic Equipment and Musical Instruments—**We cover these newly acquired items for a period up to 30 days after they are acquired. You must provide us with a complete description of each newly acquired item within this 30-day period and pay the additional premium from the date acquired.

We cover these newly acquired items for their actual cash value. The most that we will pay for all such items will be the smaller of the following:

- a. 25 percent of the coverage limit shown for the class of property that the newly acquired item belongs to; or
 - b. \$10,000 for each class of property that the newly acquired item belongs to.
3. This coverage will end at the earliest of the following:
 - a. when the newly acquired items are reported to us.
 - b. the end of the reporting period that applies.
 - c. the expiration date of this coverage.

PROPERTY EXCLUDED

We do not cover:

1. Postage stamps or rare and current coins while in transit or shipped by mail. We do cover these items when they are shipped by registered mail.
2. Fine arts that are on display at fairgrounds or at a national or international exposition unless these locations are shown for this coverage.
3. Golfers' equipment, guns and watercraft that are held for

sale or rent.

4. Musical instruments or photographic equipment used professionally.

PERILS COVERED

We insure against direct physical loss to the property covered by this endorsement unless the loss is caused by or results from a peril that is excluded. The loss must be due to an external cause.

PERILS EXCLUDED

The Exclusions That Apply To Property Coverages and the exclusions shown below apply to the property covered by this endorsement.

We do not pay for a loss caused by or that results from any of the following:

1. insects or vermin damage to covered property.
2. delay, loss of market, loss of use, or business interruption.
3. obsolescence, gradual deterioration or depreciation of covered property.

SPECIAL EXCLUSIONS

1. **Postage Stamps or Rare and Current Coin Collections—**We do not pay for a loss caused by or that results from any of the following:
 - a. the disappearance of individual stamps, coins or other articles unless the item is scheduled, with a specific limit shown, or if the item is mounted in a volume and the page to which it is attached is also lost.
 - b. theft from an unattended vehicle.
 - c. dampness.
 - d. extremes of temperature.
 - e. fading, creasing, scratching, denting, tearing, thinning, inherent defect or depreciation.
 - f. transfer of colors.
 - g. being handled or worked on.
 - h. loss to property which is not an actual part of a postage stamp or rare and current coin collection.
2. **Fine Arts—**We do not pay for a loss caused by or that results from any of the following:
 - a. breakage of art glass windows, statuary, marbles, glassware, bric-a-brac, porcelains or similar fragile items. We do cover breakage if it is caused by fire; lightning; windstorm; hail; earthquake; flood; smoke; explosion; aircraft, space-craft or self propelled missiles, or objects that fall from these items; vehicle or an accident to a transporting vehicle; strike; riot; civil

commotion; vandalism; theft or attempted theft, sprinkler damage or collapse of buildings.

b. repairing, retouching, restoring, adjusting, servicing or maintaining the covered property.

3. **Musical Instruments**—We do not pay for a loss caused by or that results from any of the following:

a. repairing, adjusting, restoring, servicing or maintaining the covered property.

b. mechanical or electrical breakdown or failure. If a fire or explosion results, we do cover the loss caused by the fire or explosion.

TERRITORY WHERE COVERAGE APPLIES

1. **Fine Arts**—Coverage applies only while the property covered by this endorsement is in the United States or Canada.

2. **All Other Property**—Coverage applies while the property covered by this endorsement is anywhere in the world.

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. **Fine Arts**—We pay the amount shown for each scheduled article which is agreed to be the value of the article. In case of loss to a pair or set, we pay the full amount of the pair or set as shown in the schedule, and you agree to surrender the remaining article or articles of the pair or set to us.

2. **Postage Stamps or Rare and Current Coin Collections**—In case of loss or damage to any scheduled item, the amount payable will be determined in accordance with item 3 below. When coins or stamps are covered on a blanket basis, we pay the cash market

value at the time of loss but not more than \$1,000 on any unscheduled coin collection nor more than \$250 for any one stamp, coin or individual article of any one pair, strip, block, series sheet, cover frame or card.

3. **Other Property**—Unless otherwise stated in this endorsement, the value of the covered property is not agreed upon but shall be ascertained at the time of loss or damage. We pay the lesser of the following amounts:

a. the actual cash value of the property at the time of loss;

b. the amount for which the property could reasonably be expected to be repaired or replaced (to the extent practicable) with property substantially identical to the property lost or damaged;

c. an amount not greater than the insured's interest in the property; or

d. the applicable limit.

4. **Deductible**—Loss to any item of personal property insured by this endorsement is subject to a deductible of \$250.00 per occurrence.

5. **Loss to a Pair, Set or Parts (Other than Fine Arts):**

a. **Loss to a pair or set**—In case of a loss to a pair or set, we may elect to:

1) repair or replace any part to restore the pair or set to its value before the loss; or

2) pay the difference between the actual cash value of the pair or set just before the loss and the actual cash value just after the loss.

b. **Parts**—In case of a loss to any part of covered property, consisting of several parts when complete, we will pay for the value of the part lost or damaged.

OPTIONAL APPRAISAL ENDORSEMENT

This endorsement changes the Appraisal provision in the policy to which this endorsement is attached.

Paragraph 13. Appraisal, of the **Conditions Applicable to Property Coverages Only** under the **POLICY CONDITIONS** portion of the policy is deleted and replaced with the following appraisal provision:

"13. **Appraisal** - If we and you do not agree on the amount of loss, then an appraisal of the loss may be made if both parties agree to the appraisal. If so agreed, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will not be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

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

DSFM - 103
(Ed. 4-00)

FUNGUS, BACTERIA, MOLD AND OTHER HEALTH HAZARDS EXCLUSION ENDORSEMENT

This endorsement changes the coverages provided by the policy to which this endorsement is attached.

Under **EXCLUSIONS THAT APPLY TO PROPERTY COVERAGES:**

Health Hazards - We do not pay for loss or damage, direct or indirect, caused by, allegedly attributed to or resulting from any FUNGUS, BACTERIA, MOLD, MILDEW, ALGAE, TOXINS, ASBESTOS, LEAD, POLLUTANTS, CONTAMINATION, CHEMICAL, HAZARDOUS MATERIAL, SMOG, CARBON MONOXIDE OR RADON GAS, including any by-products, roots, spores, fibers or scents of or from the same; nor do we pay for any loss, cost or expense to test for, monitor, assess, contain, abate, neutralize or dispose of the same, nor for any consequential repair or replacement.

DSFM-108
(Ed. 3-04)

Theft Coverage Extension Endorsement

For an additional premium, the following items 2) and 3) of Sub-paragraph h. of Section 10 Theft. of the Perils Section of the policy to which this Endorsement is attached, are deleted.

2) property while unattended in or on any **motor vehicle, recreational motor vehicle** or trailer, other than a public conveyance, unless the loss is a result of forcible entry into such vehicle or trailer while all doors, windows or other openings thereof are closed and locked and there are visible marks of the forcible entry. Property is not considered

unattended when the **Insured** is required to surrender the keys of such vehicle or trailer to a bailee;

3) property while unattended in or on private watercraft unless the loss is a direct result of forcible entry into a securely locked compartment and unless there are physical marks of the forcible entry;

The deductible shown on the policy Declarations applies to the coverage afforded by this Endorsement.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO - 136
(Ed. 7-91)

LIMITED WHIRLPOOL, HOT TUB OR SPA EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached

Notwithstanding any **terms** in the policy to which this endorsement is attached, **we do not pay** for loss to a whirlpool, hot tub or spa, including filters, pipes, pumps and other related equipment, when caused by freezing, unless such hot tub is located within the **residence**, exclusive of the garage, whether attached to such **residence**, or unattached, located on the **insured premises**.

All other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO - 233
(Ed. 3-97)

Replacement Value Endorsement For Coverage B—Personal Property

We agree, subject to the terms of this endorsement and of the policy to which it is attached, to extend Coverage B—Personal Property to cover the **replacement value** of personal property covered under Coverage B—Personal Property.

1. **Definition—Replacement value** means the cost to repair the property or replace the property with new property of equivalent kind and quality to the extent practicable, without deduction for depreciation.
2. **Personal Property Not Covered for Replacement Value** - This endorsement does not apply to the following property:
 - a. **business** property and farm property;
 - b. property not owned by an **insured**;
 - c. film, photographs, negatives, films, cassettes, magnetic recordings, or similar property;
 - d. antiques, fine arts, pictures, paintings, postage stamps, numismatic property and other similar articles of art, rarity or antiquity which by their nature cannot be duplicated;
 - e. memorabilia, souvenirs, collectors items and similar items whose age or history contribute to its value;
 - f. items that are outdated or obsolete and are stored or not being used;
 - g. items not maintained in good or workable condition; or

h. property covered by any scheduled insurance.

3. **Our limit** - We pay the lesser, at the time of loss, of the following amounts in excess of the deductible or other limitation applying to the loss for each covered item:
 - a. the applicable **limit** applying to Coverage B—Personal Property;
 - b. an amount not greater than **your** interest in the property;
 - c. the **replacement value** of the property as defined in this endorsement; or
 - d. any special **limit** stated in the policy.

4. When the **replacement value** is more than twice the actual cash value of the damaged property, **we** are not liable for more than the actual cash value of the loss until actual repair or replacement is completed. **You** may make a claim for the actual cash value amount of the loss before repairs are made or replacement is completed. A claim for any additional amount payable under this provision must be made within 180 days after the loss.

This endorsement does not increase the Coverage B—Personal Property **limit**, and all other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

REFRIGERATED FOOD SPOILAGE ENDORSEMENT

We pay up to \$500 for loss from spoilage of food in a freezer or refrigerated unit on the **insured premises**. The spoilage must be caused by change in temperature.

You must maintain the freezer or refrigerated unit in proper working condition and use all reasonable means to reduce loss under this coverage. No deductible applies to this coverage.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-201A
(Ed. 3-93)

Coverage D —Scheduled Farm Personal Property

Coverage F — Farm Barns, Buildings, Structures And Additional Farm Dwellings

DEFINITIONS

1. **Grain** means harvested grain, harvested corn, harvested beans, harvested seeds, ground feed, manufactured and compounded stock foods, in buildings, structures, sacks, wagons or trucks, and each of these items must be insured separately. This does not include grain under government loan or seal, unless same is insured as a separate item.
 2. **Hay in Barns** means hay, straw, silage and fodder while in buildings or structures, and each of these items must be insured separately.
 3. **Hay in Stacks** means hay, straw, silage and fodder while in the open, and each of these items must be insured separately.
 4. **Farm Implements, Machinery, Vehicles and Equipment** means farm implements, machinery, vehicles and equipment used in the operation of the farm. This does not include motor vehicles (other than wagons and trailers designed for farming purposes and used principally on farm premises) camper bodies, watercraft, outboard motors, aircraft, mobile homes, house trailers, and sawmill equipment, or their equipment, tires or parts.
 5. **Borrowed, Rented or Leased Farm Implements, Machinery, Vehicles and Equipment** means farm implements, machinery, vehicles and equipment which are used in the farming operation and in which you have no interest as owner or lienholder, but which are in your care, custody or control. This does not include motor vehicles (other than wagons and trailers designed for farming purposes and used principally on farm premises), camper bodies, watercraft, aircraft, and their equipment, tires and parts, or dealers' demonstration farm implements, machinery, vehicles and equipment. This insurance shall be excess insurance over any other valid and collectible insurance available to the owner of such borrowed farm implements, machinery, vehicles or equipment.
 6. **Livestock** means cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof.
 7. **Farm Operations Records Expenses** means the expenses you incur to reproduce, replace or restore your farm operations records. Farm operations records shall include books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, discs, drum, cell and other recording or storage media for electronic data processing, including, but not limited to, records, wires, chips, discs or other software media) pertaining to the operation of the farm. But we do cover the cost of blank, unexposed records or software media pertaining to the operation of the farm.
 8. **Household Contents In Described Additional Farm Dwelling**, as scheduled on the Declarations means the Insured's household contents while in the described additional farm dwelling.
 9. **Additional Farm Dwellings** means farm dwellings, as scheduled on the Declarations, on the Insured premises. This includes additions, fixtures and outdoor equipment used for servicing such dwellings. This excludes the residence covered under Coverage A - Residence.
 10. **Farm Barns, Buildings and Structures** means farm barns, buildings and structures as scheduled on the Declarations. This includes attached sheds and fixtures but excludes farm dwellings or silos attached to a farm barn, building or structure.
 11. **Tenant's Improvements and Betterments** means permanent fixtures, alterations, decoration and additions, made or acquired at your expense, which are a part of the described farm barn, building, structure or additional farm dwelling.
- The definition of **insured premises** is modified when used in connection with this form.
1. **Insured Premises** also means:
 - a. the farm premises described on the Declarations;
 - b. other land you use for farming; and
 - c. new farm premises acquired or leased during the policy period.

PROPERTY COVERED

Coverage D - Scheduled Farm Personal Property

We cover the classes or items of farm personal property for which a limit is stated on the Declarations and only while on the **insured premises**. This coverage is subject to all policy terms that apply to property coverages unless amended by this form.

Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings

We cover the items of farm real property located on the **Insured premises** and for which a **limit** is stated on the Declarations. This coverage is subject to all policy terms that apply to property coverages unless amended by this form.

INCIDENTAL PROPERTY COVERAGES

This form provides the following Incidental Property Coverages. These incidental coverages are subject to all the terms of Coverages D or F. These incidental coverages do not increase the **limit** stated on the Declarations for Coverage D items of farm personal property or Coverage F items of farm real property.

1. **Grain in the Open and Hay in Stacks**- Grain in stacks, shocks, swaths or piles in the open on the **Insured premises** and **Hay in Stacks** on the **Insured premises** are covered only for loss by fire.

2. Away from the Premises -

a. **Grain, Hay in Barns and Hay in Stacks** - You may apply up to ten percent of the limit for grain, hay in barns and hay in stacks to cover these items while within 100 miles of the **Insured premises**. This does not cover grain, hay in barns and hay in stacks while:
1) being stored or processed in manufacturing plants, public elevators, warehouses, seed houses or drying plants;
2) in transit by common carrier; or
3) in public sales barns and public sales yards.

b. **Farm Implements, Machinery, Vehicles and Equipment**- Farm implements, machinery, vehicles, equipment and tools, not otherwise excluded, are covered while they are temporarily off, but within 100 miles of, the **Insured premises**.

c. **Livestock** - Livestock is covered while temporarily removed from the **Insured premises**. This does not cover livestock in transit by common carrier, or in locker plants, packing plants, public stock yards, public sales barns and public sales yards.

3. **Materials and Supplies** - The **limit** that applies to a building or other structure includes all materials and supplies intended to be used in the construction, alteration or repair of such building or structure. These items must be on or adjacent to the **Insured premises**.

4. **Subsequently Acquired Machinery** - The following insurance shall be excess over any other valid and collectible insurance available to the **insured**.

a. **Farm Implements, Machinery, Vehicles and Equipment** - We cover newly acquired farm implements, machinery, vehicles and equipment which are not replacement items. Our **limit** on all such items is not more than \$25,000. This coverage applies for 30 days from the date of acquisition or

until the expiration date of this policy, if it occurs first. This coverage will end 30 days from the date of acquisition unless the **Insured** reports the acquisition to us. The **Insured** must give us a full description of the new farm implement, machinery, vehicle or equipment and pay the additional premium required from the date of acquisition.

b. **Specifically Insured Farm Implements, Machinery, Vehicles and Equipment** - We cover items acquired as replacements of specifically insured farm implements, machinery, vehicles and equipment. Our **limit** is the smaller of the **limit** specified for the replaced item plus \$25,000, or the actual cash value. The additional \$25,000 limit applies for 30 days from the date of acquisition or until the expiration date of this policy, if it occurs first. Within 30 days of acquisition, the **Insured** must report the acquisition to us. The **Insured** must give us a full description of the new farm implement, machinery, vehicle or equipment and pay the additional premium required from the date of acquisition. If this is not done, the **limit** for the replaced item applies.

5. Emergency Removal -

a. We pay for the loss to covered property while removed from the **Insured premises** for preservation from damage from perils insured against. Such property is covered against loss from perils insured against for 30 days. This coverage does not extend past the expiration date of the policy.

b. We pay up to \$100 towing charge to move a covered mobile home endangered by a peril insured against.

6. **Debris Removal** - The **limit** for each item shown on the Declarations includes the cost for the removal of debris following an insured loss.

7. **Fire Department Service Charge** - We pay up to \$250.00 for charges you must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

PROPERTY NOT COVERED

This form does not cover loss to:

1. Property covered under Coverage A - Residence or Coverage B - Personal Property, or the Incidental Property Coverages pertaining to these coverages.

2. Outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts, towers and private power and light poles unless specifically insured.

3. Trees, plants, shrubs, lawns and growing crops.

4. Devices, accessories, or antennas designed for reproducing, receiving, detecting, transmitting, recording or playing back data, sound or picture while in or on a

motorized vehicle, watercraft or farm equipment, other than a tractor, combine or swather.

5. Film, tape, wire, record or other media for use with any device designed for reproducing, receiving, transmitting, recording or playing back of data, sound or picture while in or on a **motorized vehicle**, watercraft or farm equipment other than a tractor, combine or swather.
6. Fences, Driveways and Sidewalks.
7. Submersible pumps, unless specifically insured.
8. **Motor Vehicles**, camper bodies, watercraft, outboard motors, aircraft, house trailers, or their equipment, tires and parts.

FARM PERILS SECTION

This policy insures against direct physical loss to property covered under Coverage D - Scheduled Farm Personal Property and Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings caused by the following perils:

1. Fire or Lightning. This does not cover loss:

- a. caused by or resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, unless fire ensues and then only for the loss caused by such fire;
- b. to livestock from smothering, suffocation, or asphyxiation caused by or resulting from power, heating or cooling failure unless such failure is the direct result of physical damage to power, heating or cooling equipment situated on the **insured premises** caused by actual physical contact of fire or lightning with such equipment.

2. Windstorm or Hail. This does not cover loss:

- a. caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind-driven or not;
- b. to the interior of a building, or to the property inside, caused by dust, rain, sand, sleet, snow or water, all whether wind-driven or not. Loss caused by dust, rain, sand, sleet, snow or water is covered if these elements enter through an opening in roof or walls resulting from damage caused by the direct force of wind or hail;
- c. to **livestock** caused by or resulting from:
 - 1) running into streams or ditches or against fences or other objects;
 - 2) smothering, suffocation, or asphyxiation;
 - 3) fright; or
 - 4) freezing in blizzards or snowstorms;
- d. to hay, straw, silage and fodder while outside of buildings;
- e. to grain in stacks, shocks, swaths or piles;
- f. to the following property:
 - 1) awnings or canopies, including their supports;

- 2) fences;
- 3) seawalls, property line walls, retaining walls and similar walls;
- 4) greenhouses, hothouses, slat houses, trellises, pergolas, cabanas and outdoor equipment used for servicing the premises;
- 5) wharves, docks, piers, boathouses, bulkheads or other structures located over or partially over water and the property therein or thereon; or
- 6) watercraft, including their trailers, furnishings, equipment and outboard motors while such property is outside a fully enclosed building.

3. Explosion. This does not cover loss caused by:

- a. explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the **insured**;
- b. shock waves caused by aircraft, known as "sonic boom";
- c. electric arcing;
- d. rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
- e. water hammer;
- f. rupture or bursting of water pipes;
- g. rupture, bursting or operation of pressure relief devices; or
- h. rupture or bursting due to swelling of the contents of any building or structure, caused by water.

4. Riot or Civil Commotion.

5. **Aircraft**. This means only direct loss from actual physical contact of an aircraft or objects falling from an aircraft with covered property.

6. **Vehicles**. This means direct loss from actual physical contact of a vehicle with covered property. This does not cover loss caused by vehicles owned or operated by an **insured**, employee of an **insured**, or occupant of the **insured premises**. We do not pay for loss to fences, driveways or walks.

7. **Smoke**. This means only direct loss from smoke due to sudden, unusual and faulty operations of any heating or cooking unit on the **insured premises**. This does not cover loss caused by smoke from fireplaces, agricultural smudging operations, or industrial operations.

8. **Vandalism and Malicious Mischief**. This does not cover loss if the **insured premises** are vacant for 30 consecutive days immediately before the loss.

9. **Theft**. This means any act of stealing or attempt to steal. This does not cover loss:

- a. committed by an **insured**;
- b. disclosed on taking inventory;
- c. by conversion or embezzlement;
- d. by escape or mysterious disappearance;
- e. from premises which are vacant for more than 30 consecutive days immediately before the loss;

- f. due to acceptance of forged or counterfeit checks, or checks or other negotiable instruments not paid upon presentation; or
 - g. due to forgery, swindling, false pretenses, trick, deception, threat, fraud, including farm products fraud, or misrepresentation.
10. **Collision.** This means direct loss to covered farm personal property, caused by:
- a. collision of farm implements or machinery with another object; or
 - b. upset or overturn of farm implements or machinery but not while being transported by common carrier or a machinery dealer or being loaded or unloaded by such common carrier or machinery dealer.

Collision does not cover loss or damage:

- a. caused by the impact of farm implements or machinery with the ground, or hole therein, or with the roadbed, or hole therein, or with a rock or rocks in or upon the ground or roadbed;
 - b. caused by the impact of farm implements or machinery with an object below the surface of the ground;
 - c. due to intake of foreign objects into harvesting equipment;
 - d. caused by falling objects; or
 - e. caused by collapse of a building, or any part thereof.
11. **Glass Coverage.** This means breakage of glass constituting a part of the cab of covered farm implements or machinery.
12. **Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.** When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the **Insured**, his employees or tenants, and loss of said livestock by accidental shooting, except by the **Insured**, his employees or tenants.

HOW MUCH WE PAY FOR LOSS OR CLAIM

"How Much We Pay For Loss or Claim" in the General Policy Terms is deleted and replaced by the following:

1. Losses are settled on the basis of actual cash value including deduction for depreciation, however caused.
2. **Our Limit of Liability -**
 - a. **Farm Property -** For loss to farm property, we pay the lesser of the following amounts:
 - 1) the applicable limit;
 - 2) the amount of **your** interest in the property;
 - 3) the cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
 - 4) the amount computed after applying the deductibles or other limitation applicable to the loss;

- 5) the amount computed by the application of any pro rata clause;
- 6) the amount in excess of the amount recoverable by the **Insured** as a result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss.
- 7) any special limit applying to the property;
- 8) the actual cash value of the property at the time of loss; or
- 9) (applies to mobile homes only at **your** option) the amount equal to the difference between the actual cash value of the property immediately before the loss and its actual cash value immediately after the loss.

b. **Pro Rata Distribution Clause - Coverage D - Our limit** for items separately designated under **Grain, Hay in Barns, and Hay in Stacks** shown on the Declarations shall be calculated separately for each of these items. **Our limit** is the proportion of the amount of insurance for the item that the value of the property covered under the item bears to the total value of the property covered under the item at all locations at the time of loss.

c. **Special Limits of Liability -**

- 1) **Livestock - we pay no more than the smallest of the following per head of livestock:**
 - a. 100 percent of the amount obtained by dividing the total insurance on each class of **livestock** insured by the number of head in the class owned by the **Insured** at the time of loss.
 - b. the actual cash value of the animal destroyed or damaged.
- 2) **Portable Buildings and Structures - We pay no more than the proportion of the limit for portable buildings or structures as the value of each is to the aggregate value of all such portable buildings or structures owned by the Insured at the time of loss.**
- 3) **Metal Covered Buildings - Our limit for appearance loss caused by hail to the exterior metal of a metal covered building is 25 per cent of the replacement cost of such metal covering.**

3. **Deductibles -**

- a. The deductible applies to all coverages provided by this form except **Fire Department Service Charge and Emergency Removal**. The deductible applies to all perils insured against unless otherwise stated on the Declarations or endorsement.
- b. **We pay only that part of the loss over the deductible stated on the Declarations or endorsement. The deductible applies per occurrence.**

4. **Insurance Under More Than One Coverage - If more than one coverage of this policy applies to a loss, we pay no more than the actual loss.**

5. **Insurance Under More Than One Policy - This insurance is excess over other valid and collectible insurance that applies to the loss or claim.**

VINYL SIDING COLOR FADING EXCLUSION ENDORSEMENT

This policy provides no coverage for color fading or any loss of original color appearance on vinyl siding on residence(s), building(s) and structure(s) insured in the policy to which this endorsement is attached.

All other terms, provisions, conditions, stipulations and agreements to such policy not in conflict herewith, apply.

DSFM-101A
(Ed. 6-09)

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WEIGHT OF ICE, SNOW OR SLEET COVERAGE ENDORSEMENT

Subject to the **terms** of this Endorsement and of the policy to which it is attached, this policy is extended to cover direct physical loss caused by the weight of ice, snow or sleet to building(s) and structure(s) insured under Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings of this policy and to personal property insured under Coverage D - Scheduled Farm Personal Property or Coverage E - Unscheduled Farm Personal Property (Blanket), or both, of this policy, located in a building or structure if the weight of ice, snow or sleet first causes direct physical damage to such building or structure in which such personal property is located. This endorsement shall not extend to nor cover irrigation equipment, including component parts and apparatus associated with irrigation.

This Endorsement does not increase the coverage limits stated in the Declarations of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith, apply.

DMFO-231 B
(Ed. 1-08)

VEHICLE DAMAGE TO BUILDINGS/STRUCTURES COVERAGE ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

For no additional premium, subject to the terms of this Endorsement and of the policy to which it is attached, this policy is extended to cover direct physical loss from actual physical contact of a vehicle or motor vehicle owned or operated by an insured, employee of an insured, or occupant of the insured premises with covered property under Coverage F - Farm Barns, Buildings, Structures and Additional Farm Dwellings.

All other terms of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO-237
(Ed 3-02)

Coverage E — Unscheduled Farm Personal Property (Blanket)

DEFINITIONS

1. **Livestock** means cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof.

The definition of **insured premises** is modified when used in connection with this form.

2. **Insured Premises** also means:
 - a. the farm premises described on the Declarations;
 - b. other land you use for farming; and
 - c. new farm premises acquired or leased during the policy period.

PROPERTY COVERED

This policy covers the **insured's** farm personal property usual and incidental to the operation of the farm while on the **insured premises**. This coverage is subject to all policy terms that apply to property coverages unless amended by this form.

INCIDENTAL PROPERTY COVERAGES

This form provides the following Incidental Property Coverages. These incidental coverages are subject to all the terms of Coverage E. These incidental coverages do not increase the limit stated on the Declaration for Coverage E items of farm personal property.

1. **We** cover the following property while away from the **insured premises**:
 - a. livestock, except while in transit by common carrier, or while in locker plants, packing plants, public stock yards, public sales barns and public sales yards.
 - b. farm implements, machinery, vehicles, equipment and tools, not otherwise excluded, while within 100 miles of the **insured premises**; and
 - c. grain, threshed seeds, threshed beans, hay, straw, fodder, silage, herbicides, pesticides, and fertilizer, ground feed and manufactured and compounded stock foods, except while stored or being processed in public elevators or warehouses, seed houses, drying plants or manufacturing plants.
2. **You** may apply up to 10% of the Coverage E—Unscheduled Farm Personal Property (Blanket) Limit (but not as an additional amount of insurance) to cover grain in stacks, shocks or swaths, only for loss caused by fire.
3. **We** cover hay, straw, silage and fodder in stacks, windrows, bales, piles and silo bags while outside of buildings only for loss caused by fire.

4. **Emergency Removal.** We pay for loss to covered property that is moved from the **insured premises** to prevent a loss from perils insured against. The property is covered for direct physical loss not excluded, for up to 30 days. This coverage does not extend past the date on which this policy expires.

5. **Debris Removal.** We pay to remove the debris of covered property following an insured loss.

This coverage does not include costs to:

- a. extract **pollutants** from land or water; or
- b. remove, restore or replace **polluted** land or water.

6. **Fire Department Service Charge.** We pay up to \$250.00 for charges you must pay when a fire department is called to save or protect covered property from a peril insured against. No deductible applies to this coverage.

PROPERTY NOT COVERED

This form does not cover loss to:

1. The following property:

Livestock Grain

2. Property covered under Coverage B or the Incidental Property Coverages pertaining to that coverage;
3. Property specifically insured;
4. Tobacco, cotton, vegetables, root crops, bulbs and fruit;
5. Contents of potato, onion, bulb or fruit cleaning, grading, sorting, packing or storage buildings;
6. Race horses, show horses and show ponies;
7. Contents of chicken fryer or broiler houses, laying houses, poultry brooder houses, duck or turkey houses including fowl therein;
8. Fences, windmills, windchargers and their towers;
9. **Motor vehicles**, camper bodies, watercraft, outboard motors, aircraft, mobile homes, house trailers, and sawmill equipment, or their equipment, tires and parts;
10. Furs, animal pelts and animals other than **livestock**;
11. Bulk milk tanks, bulk feed tanks, barn cleaners, pasteurizers, boilers and any permanent fixtures attached to or within the building;

12. Crops in the open, standing or otherwise, except as provided by this form under Incidental Property Coverages;
13. Trees, plants, shrubs, lawns and growing crops;
14. Portable buildings, portable structures, and silo bags;
15. Irrigation equipment, including pumps, wells and transmission lines;
16. Farm operations records, books of account, electronic processing tapes, records, wires, chips, discs or other software media containing business data;
17. Devices, accessories, or antennas designed for reproducing, receiving, detecting, transmitting, recording or playing back data, sound or picture while in or on a **motor vehicle, motorized vehicle, recreational motor vehicle**, watercraft or farm equipment, other than a tractor, combine or swather;
18. Film, tape, wire, record or other media for use with any device designed for reproducing, receiving, transmitting, recording or playing back of data, sound or picture while in or on a **motor vehicle, motorized vehicle, recreational motor vehicle**, watercraft or farm equipment, other than a tractor, combine or swather;
19. Outdoor antennas, including TV antennas and satellite TV antenna-reflectors, their lead-in wiring, accessories, masts and towers unless specifically insured;
20. Submersible pumps;
21. Borrowed farm implements, machinery, vehicles and tools;
22. Poultry;
23. Water wells.

FARM PERILS SECTION

This policy insures against direct physical loss to property covered under Coverage E—Unscheduled Farm Personal Property (Blanket) caused by the following perils:

1. Fire or Lightning. This does not cover loss:

- a. caused by or resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated, unless fire ensues and then only for the loss caused by such fire;
- b. to livestock from smothering, suffocation or asphyxiation caused by or resulting from power, heating or cooling failure unless such failure is the direct result of physical damage to power, heating or cooling equipment situated on the **insured premises** caused

by actual physical contact of fire or lightning with such equipment.

2. Windstorm or Hail. This does not cover loss:

- a. caused directly or indirectly by frost, cold weather, ice (other than hail), snow or sleet, all whether wind-driven or not;
- b. to the interior of a building, or to the property inside, caused by dust, rain, sand, sleet, snow or water, all whether wind-driven or not. Loss caused by dust, rain, sand, sleet, snow or water is covered if these elements enter through an opening in roof or walls resulting from damage caused by the direct force of wind or hail;
- c. to **livestock** caused by or resulting from:
 - 1) running into streams or ditches or against fences or other objects;
 - 2) smothering, suffocation or asphyxiation;
 - 3) fright; or
 - 4) freezing in blizzards or snowstorms;
- d. to hay, straw, silage and fodder while outside of buildings.

3. Explosion. This does not cover loss caused by:

- a. explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the **insured**;
- b. shock waves caused by aircraft, known as "sonic boom";
- c. electric arcing;
- d. rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
- e. water hammer;
- f. rupture or bursting of water pipes;
- g. rupture, bursting or operation of pressure relief devices; or
- h. rupture or bursting due to swelling of the contents of any building or structure, caused by water.

4. Riot or Civil Commotion.

5. **Aircraft.** This means only direct loss from actual physical contact of an aircraft or objects falling from an aircraft with covered property.

6. **Vehicles.** This means direct loss from actual physical contact of a vehicle with covered property. This does not cover loss caused by vehicles owned or operated by an **insured**, employee of an **insured**, or occupant of the **insured premises**. We do not pay for loss to fences, driveways or walks.

7. **Smoke.** This means only direct loss from smoke due to sudden, unusual and faulty operations of any heating or cooking unit on the **insured premises**. This does not cover loss caused by smoke from fireplaces, agricultural smudging operations, or industrial operations.

8. **Vandalism and Malicious Mischief.** This does not cover loss if the **Insured premises** are vacant for 30 consecutive days immediately before the loss.

9. **Theft.** This means any act of stealing or attempt to steal. This does not cover loss:

- a. committed by an **insured**;
- b. disclosed on taking inventory;
- c. by conversion or embezzlement;
- d. by escape or mysterious disappearance;
- e. from premises which are vacant for more than 30 consecutive days immediately before the loss;
- f. due to acceptance of forged or counterfeit checks, or checks or other negotiable instruments not paid upon presentation; or
- g. due to forgery, swindling, false pretenses, trick, deception, threat, fraud, including farm products fraud, or misrepresentation.

10. **Collision.** This means direct loss to covered farm personal property, caused by:

- a. collision of farm implements or machinery with another object; or
- b. upset or overturn of farm implements or machinery, but not while being transported by common carrier or a machinery dealer or being loaded or unloaded by such common carrier or machinery dealer.

Collision does not cover loss or damage:

- a. caused by the impact of farm implements or machinery with the ground, or hole therein, or with the roadbed, or hole therein, or with a rock or rocks in or upon the ground or roadbed;
- b. caused by the impact of farm implements or machinery with an object below the surface of the ground;
- c. due to intake of foreign objects into harvesting equipment;
- d. caused by falling objects; or
- e. caused by collapse of a building, or any part thereof.

11. **Glass Coverage.** This means breakage of glass constituting a part of the cab of covered farm implements or machinery.

12. **Electrocution, Drowning, Attack by Animals and Accidental Shooting of Livestock.** When this policy covers livestock, it shall include loss of said livestock by electrocution, drowning, attack by dogs and wild animals, except loss caused by dogs belonging to the **insured**, his employees or tenants, and loss of said livestock by accidental shooting, except by the **insured**, his employees or tenants.

HOW MUCH WE PAY FOR LOSS OR CLAIM

"How Much We Pay For Loss or Claim" in the General Policy Terms is deleted and replaced by the following.

1. Losses are settled on the basis of actual cash value including deduction for depreciation, however caused.

2. Our Limit of Liability—

a. **Farm Property**—For loss to farm property, we pay the lesser of the following amounts:

- 1) the applicable limit;
- 2) the amount of **your** interest in the property;
- 3) the cost of repairing or replacing the property with materials of equivalent kind and quality to the extent practicable;
- 4) the amount computed after applying the deductibles or other limitation applicable to the loss;
- 5) the amount computed by application of any Coinsurance Clause;
- 6) the amount in excess of the amount recoverable by the **insured** as the result of any coverage or indemnity under a Warranty or Guarantee by any manufacturer, dealer or contractor which applies to such loss;
- 7) any special limit applying to the property; or
- 8) the actual cash value of the property at the time of loss.

b. **Coinsurance Clause**—We pay no more than that proportion of the loss to covered property that the Coverage E—Unscheduled Farm Personal Property (Blanket) limit bears to 90 percent of the actual cash value of the farm personal property at the time of loss. To establish the actual cash value of the farm personal property at the time of loss, at our request, **you** must furnish to **us** an accurate written inventory of the farm personal property at the time of loss.

The calculation of the actual cash value of the farm personal property at the time of loss shall not include the value of farm personal property acquired, not as replacement items, within the previous 30 days.

The value of **livestock** is limited to \$2,000 per head.

c. **Livestock**—Our limit does not exceed \$2,000 per head of **livestock**.

d. **Semen**—Our limit does not exceed \$1,000 on semen.

3. Deductibles—

a. The deductible applies to all coverages provided by this form except **Emergency Removal** and **Fire Department Service Charge**.

The deductible applies to all perils insured against unless otherwise stated on the Declarations or endorsement.

b. We pay only that part of the loss over the deductible stated on the Declarations or endorsement. The

deductible applies per **occurrence**.

4. **Insurance Under More Than One Coverage**—If more than one coverage of this policy applies to a loss, we pay no more than the actual loss.

5. **Insurance Under More Than One Policy**—This insurance is excess over other valid and collectible insurance that applies to the loss or claim.

DUPPLICATE

Farm Liability Coverage Section

AMENDMENT OF GENERAL POLICY TERMS

1. The following definitions are added:

- a. **Farming** means the ownership, maintenance or use of premises for the production of crops or the raising or care of livestock, including all necessary operations. **Farming** also includes the operations of roadside stands and farm markets maintained principally for the sale of the **insured's** own farm products.
- b. **Farm employee** means an employee of an **insured** whose duties are in connection with the **farming** operations of the **insured**.

2. When used in connection with the Farm Liability Coverage Section, the definitions of **Insured**, **insured premises** and **business** are modified as follows:

- a. **Insured premises** also means the **farm premises** described on the Declarations, other land you use for **farming** purposes and new **farm** premises acquired during the policy period.
- b. **Business** does not include **farming**.
- c. A person while performing duties as an employee of an **insured** is an **insured** with respect to **farm** implements and other vehicles covered under this policy.

3. **Coverage B - Personal Property** does not apply to **farm** personal property.

PRINCIPAL COVERAGES - LIABILITY AND MEDICAL PAYMENTS TO OTHERS

Coverage L - Personal Liability - We pay, up to our limit, all sums for which an **insured** is liable by law because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies. We will defend a suit seeking damages if that suit resulted from **bodily injury** or **property damage** not excluded under this coverage. We may make investigations and settle claims or suits that we decide are appropriate. We do not have to provide a defense after we have paid an amount equal to our limit as a result of a judgment or written settlement.

Coverage M - Medical Payments to Others - We pay, up to our limit, the necessary **medical expenses** if they are incurred or medically determined within three years from the date of an accident causing **bodily injury** covered by this policy. Medical expenses means the reasonable charges for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing, funeral services, prosthetic devices and eyeglasses, including contact lenses. This applies only to:

1. a person on the **Insured premises** with the permission of an **insured**; and

2. a person away from the **insured premises** if the **bodily injury**:

- a. is a result of a condition on an **insured premises**;
- b. is caused by an activity of an **insured**;
- c. is caused by a person in the course of performing duties as a **domestic employee** of an **insured**;
- d. is caused by an animal owned by or in the care of an **insured**; or
- e. if sustained by a **domestic employee** and arises out of and in the course of employment of an **insured**.

INCIDENTAL LIABILITY AND MEDICAL PAYMENTS TO OTHERS COVERAGES

These coverages are subject to all the **Terms** of Coverages L - Personal Liability and M - Medical Payments to Others. Except for Claims and Defense Costs and First Aid Expense, they do not increase the **limit** stated for the Principal Coverages.

1. **Damage to Property of Others** - Regardless of an **Insured's** legal liability, we pay for property of others damaged by an **insured**, or we repair or replace the property, to the extent practicable, with property of like kind and quality. Our limit for this coverage is \$250 per **occurrence**.

The exclusions that apply to Coverages L and M do not apply to this coverage. However, we do not pay for damage to property:

- a. owned by, rented to or leased to an **insured**, another resident of **your** household, or the tenant of an **insured**;
- b. caused intentionally by an **insured** who has attained the age of 13;
- c. covered under this policy under Property Coverages; or
- d. resulting in whole or in part from:

- 1) activities related to a **business** of an **insured**;
- 2) premises owned, rented, or controlled by an **insured**, other than an **insured premises**; or
- 3) the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of **motor vehicles, motorized vehicles, recreational motor vehicles, farm machinery, farm implements, farm equipment, aircraft or watercraft**.

2. **Contracts and Agreements** - We pay for damages for **bodily injury** or **property damage** resulting from liability assumed by an **insured** under a written contract made before the loss. The loss causing the **bodily injury** or **property damage** must have occurred during

the policy period. This coverage does not extend to a written or oral contract or warranty of **farm goods** or **farm products** by an **insured**, and does not apply to a written or oral contract or warranty in connection with the **business** activities of an **insured**.

3. **Claims and Defense Costs** - If we defend a suit, we pay;

- a. the costs taxed to an **insured**;
- b. the costs incurred by us;
- c. the actual loss of earnings by an **insured** for time spent away from work at **our** request (We pay up to \$50 per day.);
- d. the necessary costs incurred by **you** at **our** request;
- e. the interest which accrues after the entry of a judgment but ending when we tender or pay up to **our limit**;
- f. the premiums on appeal bonds or bonds for the release of attachments up to **our limit** (We are not required to apply for or furnish bonds.);
- g. the premiums up to \$500 per bail bond required of an **insured** because of an accident or a traffic law violation arising out of the use of a vehicle to which this policy applies (We are not required to pay for or furnish bonds.); and
- h. prejudgment interest awarded against an **insured** on that part of the judgment we pay.

4. **First Aid Expense** - We pay the expenses incurred by an **insured** for first aid to persons, other than **insureds**, for **bodily injury** covered by this policy.

5. **Motorized Vehicles** - We pay for the **bodily injury** or the **property damage** which:

- a. occurs on the **insured premises** and is a result of the ownership, maintenance, use, loading or unloading of:

- 1) a **motorized vehicle** if it is not subject to **motor vehicle** registration because of its type or use; or
- 2) a **recreational motor vehicle**;

b. results from:

- 1) a motorized golf cart while used for golfing purposes on a golf course;
- 2) a utility, boat, camp or mobile home trailer, except when the trailer is carried on, is towed by or is attached to a **motor vehicle** or a **recreational motor vehicle**; or
- 3) a **motorized vehicle** which is designed only for use off public roads and which is used mainly to service the **insured premises**, and is not subject to **motor vehicle** registration.

c. results from **insured's** use of a **recreational motor vehicle** which is not owned by an **insured**.

6. **Watercraft** -

a. We pay for the **bodily injury** or the **property damage** which results from the maintenance, use, loading or unloading of:

- 1) a watercraft while it is on the **insured premises**;
- 2) a watercraft which is not owned by or rented to an **insured** if the loss is a result of the activities of an **insured**;
- 3) a watercraft which is owned by or is rented to an **insured** and which is powered by inboard or inboard/outboard motors which total 50 horsepower or less (not to include any watercraft commonly known as jet skis or wet bikes);
- 4) a sailing vessel with or without auxiliary power which is owned by or is rented to an **insured** and is less than 26 feet in length; or
- 5) a watercraft which is powered by outboard motors which total 25 horsepower or less (not to include any watercraft commonly known as jet skis or wet bikes).
- 6) a watercraft which is rented to an **insured** and is any watercraft commonly known as jet skis or wet bikes.

b. We pay for the **bodily injury** or the **property damage** which results from the maintenance, use, loading or unloading of a watercraft that is powered by outboard motors which total more than 25 horsepower, if:

- 1) the motors are listed on the Declarations as insured for personal liability;
- 2) the motors are acquired by an **insured** during the policy period and a request for coverage is made within 45 days after they are acquired; or
- 3) the motors are not owned by an **insured**.

7. **Business** - We pay for the **bodily injury** or the **property damage** which results from:

- a. the rental of that part of the **insured premises** that is usually occupied by **you**, as a **residence**;
- b. the rental of other parts of the **insured premises** for use as a **residence** (No family unit may include more than two roomers or boarders.); or
- c. the rental of a part of the **insured premises** for use as a school, studio, office or private garage, only in the event such rental is first reported to **us** by an **insured** and an endorsement is issued by **us** and attached to this policy providing **bodily injury** or the **property damage** coverage for such rental.

EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS

This policy does not apply to **bodily injury** or **property damage** which results directly or indirectly from:

1. war (This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction, seizure or use of property for a military purpose. It includes any consequence of any of these. Discharge of a nuclear weapon is deemed a warlike act even if accidental.);
2. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of an aircraft, except for **bodily injury** to a person while performing duties as a **domestic employee** (This exclusion does not apply to model airplanes.);
3. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of a **motor vehicle** owned or operated by or rented or loaned to an **insured**;
4. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading or unloading of **motorized vehicles** or watercraft owned or operated by or rented or loaned to an **insured**. We do pay:
 - a. for **bodily injury** to a person in the course of performing duties as a **domestic employee**; or
 - b. if coverage is provided for by an Incidental Motorized Vehicle or Watercraft Coverage;
5. the use of a **motorized vehicle** in, or in the practice or the preparation for, racing, speed, pulling, or pushing, demolition or stunt activities or contests;
6. liability imposed by law on an **insured** for the use of a **motorized vehicle**, aircraft or watercraft, except if coverage is provided for by an Incidental Motorized Vehicle or Watercraft Coverage;
7. the rendering of or the failing to render a professional service;
8. activities related to the **business** of an **insured**, except as provided for by an Incidental Business Coverage;
9. premises that are owned, rented or controlled by an **insured** and that are not the **insured premises**. We do pay for **bodily injury** to a person in the course of performing duties as a **domestic employee**;
10. an intentional act of an **insured** or an act done at the direction of an **insured**;
11. custom farming, meaning farming undertaken for others under an oral or written contract, in the event the gross amount of money charged by an **insured** for custom farming operations exceeds \$2000 during any annual policy period;
12. the ownership, operation, maintenance, use, loading or unloading of any implement, machinery, vehicle, equipment, device, instrument or apparatus for the moving of hay stacks, straw stacks, fodder stacks, baled hay or baled straw other than the moving, by the **insured**, of hay stacks, straw stacks, fodder stacks, baled hay or baled straw owned by the **insured**;
13. an **occurrence** for which an **insured** is also an **insured** under a nuclear energy liability policy or would be an **insured** but for the exhaustion of its **limits** (A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or their successors.);
14. the transmission of a communicable disease by an **insured**;
15. the actual, alleged or threatened molestation, including, but not limited to sexual molestation of a person by an **insured**, relative of an **insured**, volunteer performing services for an **insured**, or an occupant of the **insured premises**;
16. any act or omission of an **insured** as an officer or director of any corporation, association or other organization, except the acts of an **insured** as an unpaid volunteer director, officer or trustee of a charitable, religious or civic non-profit corporation, association or other organization. An elected public official shall not be considered an unpaid volunteer director, officer or trustee;
17. personal acts of an **insured** on or off the **insured premises**, unless the **insured** is residing on the **insured premises** described on the Declarations;
18. services, including, but not limited to home day care services, regularly provided by an **insured** for the care of others, and for which services an **insured** is compensated. A mutual exchange of like services is not considered compensation. However, this exclusion does not apply to **bodily injury** or **property damage** that arises from such services if an endorsement is first issued by us and attached to this policy providing **bodily injury** or **property damage** coverage for such services;
19. the discharge, dispersal, release or the escape of **pollutants** into or upon land, water or air. However, this exclusion does not apply to **bodily injury** or **property damage** that arises from the heat, smoke or fumes of a hostile fire on the **insured premises**. Hostile fire is a fire that becomes uncontrollable or breaks out from where it was intended to be;
20. **bodily injury** to a **farm employee** of an **insured** if it occurs in the course of employment; or the consequential injury to a spouse, child, parent, brother or sister of such insured employee.

This exclusion applies whether the **insured** is liable either as an employer or in any other capacity and to any obligation of an **insured** to fully or partially reimburse another for damages arising out of the injury.

This exclusion does not apply to liability assumed by an **insured** under a contract or an agreement.

21. actual or alleged **bodily injury** from the ingestion, inhalation or absorption of lead in any form; actual or alleged **property damage** that results directly or indirectly from any form of lead; any loss, cost or expense arising out of any request, demand or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of lead; or any loss, cost or expense arising out of any claim or suit by or on behalf of any governmental authority for damages resulting from testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of lead.

ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO COVERAGE L - PERSONAL LIABILITY

Coverage L - Personal Liability does not apply to:

1. **bodily injury** to **you** and if residents of **your** household, **your** relatives, and persons under the age of 21 in **your** care or in the care of **your** resident relatives;
2. liability assumed under a contract or an agreement, except as provided for by Incidental Contracts and Agreements Coverage;
3. damage to property owned by an **insured**;
4. damage to property that is rented to, occupied by, used by, or in the care, custody or control of an **insured**, except for **property damage** that is caused by fire, smoke or explosion, other than damage to **farm** premises or **farm** property;
5. sickness, disease or death of a **domestic employee** unless a written notice is received by **us** within 36 months after the end of the policy period in which the injury occurred;
6. **bodily injury** to a person, including a **domestic em-**

ployee, if the **insured** has a workers' compensation policy covering the injury or if benefits are payable or are required to be provided by an **insured** under a worker's compensation, non-occupational disability, occupational disease or like law;

7. **property damage** arising or resulting from substances released or discharged from an aircraft;
8. **bodily injury** or **property damage** to or from products manufactured, produced, grown, sold, handled or distributed by the **insured** if the **bodily injury** or **property damage** arises out of such products, or a part of such products, after the **insured** has relinquished possession thereof to others;
9. **bodily injury** or **property damage** to or from work performed by or for an **insured** if the **bodily injury** or **property damage** arises out of such work or a part of such work; or
10. **bodily injury** or **property damage** to or from premises **you** sell, give away or abandon, if the **bodily injury** or **property damage** arises out of such premises or a part of such premises.
11. **punitive or exemplary damages or related defense costs**. This exclusion applies regardless of any other terms of this policy or endorsements made a part of it.

ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS

Coverage M - Medical Payments to Others do not apply to **bodily injury** to:

1. an **insured**, a tenant or lessee of any part of the **insured premises**, or any person who resides on the **insured premises**, except a **domestic employee**;
2. a person who is on the **insured premises** because a **business** is conducted or professional services are rendered on the **insured premises**; or
3. a person, including a **domestic employee**, if a workers' compensation policy covers the injury or if benefits are provided under a workers' compensation, non-occupational disability, occupational disease or like law.

TRAMPOLINE EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

Notwithstanding any other **terms** in the policy of which this endorsement becomes a part of, **we** will not pay for any loss or liability, whatsoever, on account of injury, death, emotional distress or the like, arising out of the use of any trampoline, rebounding, tumbling or similar apparatus, owned, operated, rented or used by **you** or for **you**, or deemed to be under **your** control. This exclusion applies to all claims made by any person regardless of the theory of liability including, but not being limited to, claims made regarding the ownership, operation, rental, use, supervision or lack thereof, improper assembly, maintenance, or repair, or on account of any other allegation.

DSFM-100
(Ed. 4-00)

PIT BULL AND CATAHOULA EXCLUSION ENDORSEMENT

This endorsement changes the coverage provided by the policy to which this endorsement is attached.

Notwithstanding any other terms in the policy of which this endorsement becomes a part of, we will not pay for any loss or liability, whatsoever, on account of injury, death, emotional distress or the like, caused by or attributable to any Pit Bull or Catahoula owned by you or by any member of your household, or under your possession or care or under the possession or care of any member of your household, whether such ownership, possession or care is long term or temporary. This exclusion applies to all claims made by any person regardless of theory of liability. "Pit Bull" shall include but not be limited to the American Pit Bull Terrier, and any cross or mix breed thereof. "Catahoula" shall include but not be limited to the Louisiana Catahoula Leopard Dog, and any cross or mix breed thereof.

DSFM - 102

(Ed. 4-00)

FUNGUS, BACTERIA, MOLD AND OTHER HEALTH HAZARDS EXCLUSION ENDORSEMENT

This endorsement changes the coverages provided by the policy to which this endorsement is attached.

Under **EXCLUSIONS THAT APPLY TO ALL LIABILITY COVERAGES, WHETHER COVERAGE L - PERSONAL LIABILITY OR COVERAGE M - MEDICAL PAYMENTS TO OTHERS, OR BOTH**, This policy does not apply to **bodily injury** or **property damage** which results directly or indirectly from:

the presence, growth, discharge, release, escape, inhalation, ingestion or coming in contact with any **FUNGUS, BACTERIA, MOLD, MILDEW, ALGAE, TOXINS, ASBESTOS, CONTAMINATION, CHEMICAL, HAZARDOUS MATERIAL, SMOG, CARBON MONOXIDE OR RADON GAS**, including any by-products, roots, spores, fibers or scents of or from the same; nor do we pay for any loss, cost or expense to test for, monitor, assess, contain, abate, neutralize or dispose of the same, nor for any consequential symptoms or treatment. **Bodily injury** includes injury, illness, allergy or reaction, adverse health effect, infection, toxicity and death.

This exclusion does not apply to any of the above items on or in any good or product intended for human consumption.

DSFM-109
(Ed. 3-04)

Limited Farm Pollution Liability Coverage Endorsement

Exclusion 19. of the EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS in the FARM LIABILITY COVERAGE SECTION of the policy to which this Endorsement is attached relating to the discharge, dispersal, release or escape of **pollutants** into or upon land, water or air will not apply to **bodily injury** or **property damage** arising out of the sudden and accidental discharge, dispersal, release or escape into or upon land, water or air of **pollutants** used in or intended for use in normal and usual farming activities on the **insured premises** or while such **pollutants** used in or intended for use in normal and usual farming activities are being transported by the **insured**, subject to the **terms** of this Endorsement.

EXCESS COVERAGE

Coverage afforded by this Endorsement will be considered excess to funds available through any local, state or federal agency.

ANNUAL AGGREGATE LIMIT

Regardless of the number of **occurrences**, **insureds**, claims made, suits brought or persons injured, our total **limit** in any one policy year for Coverage L - Personal Liability and Coverage M - Medical Payments to Others provided by this Endorsement will not exceed \$100,000.00.

DEDUCTIBLE

The following deductible amount applies to each loss or claim covered by this Endorsement: \$1,000.00

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-112

(Ed. 1-91)

DUPLICATE
POLICY
FORM

Snowmobile Endorsement

Liability Coverage Only

Coverage L - Personal Liability and Coverage M - Medical Payments to Others coverage apply to bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of any snowmobile owned by the **Insured** if the bodily injury or property damage occurs on the **farm premises** described on the Declarations, except that portion of such **farm premises** constituting a public highway.

This endorsement does not increase the Coverage L - Personal Liability limit or the Coverage M - Medical Payments to Others **limit** of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith apply.

DMFO-127
(Ed. 4-91)

DUPLICATE

LIMITED LIVESTOCK LIABILITY ENDORSEMENT

We pay for crop damage in excess of \$250.00 per **occurrence**, caused by any horses, mules, cattle, goats, sheep or swine owned by or in the possession of **Insured** which trespass upon land owned by, in the possession of or being cropped by any person other than the **Insured**.

All other **terms** of the policy to which this endorsement is attached, not in conflict herewith, apply.

DMFO - 225A
(ED. 3-97)

LIQUID MILK CONTAMINATION ENDORSEMENT

For no additional premium, subject to the **terms** of this Endorsement and of the policy to which it is attached, the Farm Liability Coverage Section of this policy is extended to include **property damage** to the milk cargo of bulk milk transportation **motor vehicles** resulting from the delivery of contaminated milk to such vehicles by the insured.

Deductible: Loss by the peril insured against by this Endorsement is subject to a \$1,000 deductible per **occurrence**.

This Endorsement does not increase the coverage limits stated in the Declarations of the policy to which it is attached, and all other **terms** of the policy not in conflict herewith, apply.

DMFO-234
(Ed. 4-97)

ENDORSEMENT EXPANDING HAY MOVING IMPLEMENT LIABILITY COVERAGE

Exclusion 12. of the EXCLUSIONS THAT APPLY TO COVERAGE L - PERSONAL LIABILITY AND TO COVERAGE M - MEDICAL PAYMENTS TO OTHERS in the FARM LIABILITY COVERAGE SECTION of the policy to which this Endorsement is attached relating to "the ownership, operation, maintenance, use, loading or unloading of any implement, machinery, vehicle, equipment, device, instrument or apparatus for the moving of hay stacks, straw stacks, fodder stacks, baled hay or baled straw other than the moving, by the insured, of hay stacks, straw stacks, fodder stacks, baled hay or baled straw owned by the insured;" is deleted.

All other terms of the policy, including the remaining exclusions, remain in full force and effect.

DMFO - 236
(Ed. 4-00)

Duplicate

Livestock Collision Endorsement

This policy covers loss by death of any livestock, meaning cattle, sheep, swine, goats, horses, mules, donkeys and hybrids thereof, owned by an **insured** when the loss is caused by the collision between such animal and a vehicle not owned or operated by an **insured**, an employee of an **insured** or a resident of the **insured's** household. This coverage applies only while the animal is on a public road and is not being transported.

We pay the lesser of the following amounts:

1. the market value of the animal;
2. \$300.00 per animal; or
3. an amount not greater than **your** interest in the animal.

DUPLICATE

No deductible applies to this coverage.

All other **terms** of the policy to which this Endorsement is attached apply.

DMFO-132
(Ed. 7-91)



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
15-04-11

FARM EMPLOYER'S LIABILITY COVERAGE SCHEDULE

We agree to provide this coverage based on your statement that the information in the following schedule is correct. It discloses the class of farm employee insured under this endorsement, the total number of non days worked and the coverage premium.

| Class | Farm Employees | Premium |
|--|----------------|-----------|
| 1. Occasional Employee(s) Only - (Working not more than 20 days in aggregate) | | \$ |
| 2. Farm Employees-working more than 20 days in aggregate All Employees-Total Months of Employment <u>15</u> | | \$ 405.00 |

DUPLICATE

Coverage L - Personal Liability and Coverage H - Medical Payments to Others are extended to apply to bodily injury to a farm employee while performing duties in connection with the farming operations of an insured.

This coverage includes the following:

- Coverage L - Personal Liability and Coverage H - Medical Payments to Others apply to bodily injury to a person while performing duties as a farm employee if the bodily injury results:
 - from the ownership, use, loading or unloading of aircraft except while the farm employee is engaged in the operation or maintenance of aircraft;
 - from the ownership, maintenance, use, loading or unloading of a motor vehicle, motorized vehicle or watercraft; or
 - from premises owned, rented or controlled by an insured.
- Coverage H - Medical Payments to Others applies to bodily injury which occurs on or away from the insured premises and is:
 - caused by a person while performing duties as a farm employee; or suffered by a farm employee and arises out of and in the course of employment by an insured.

EXCLUSIONS

- Coverage L - Personal Liability does not apply to liability for sickness, disease or death of a farm employee unless a written notice is received by us within 36 months after the end of the policy period in which the injury occurred.
- Coverage L - Personal Liability and Coverage H - Medical Payments to Others do not apply to bodily injury to a farm employee employed in violation of the law with the knowledge or approval of an insured.
- Coverage L - Personal Liability and Coverage H - Medical Payments to Others do not apply to punitive or exemplary damages for bodily injury to a farm employee employed in violation of the law.
- Coverage under this endorsement does not apply to liability for bodily injury excluded under the Farm Liability Coverage Section and not specifically covered under this endorsement.

CONDITION

This coverage is subject to the terms of the Farm Liability Coverage Section and this endorsement does not increase the Coverage L - Personal Liability limit or the Coverage H - Medical Payments to Others limit of the policy to which it is attached, and all other terms of the policy not in conflict herewith apply.

DMFU-113
(Ed. 1-91)

William A. Poppen Secretary

Peter M. Mack President



De Smet Farm Mutual Insurance Company

OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

FARMOWNERS/RANCHOWNERS
15-04-11

WATERCRAFT

LIABILITY COVERAGE ONLY

Coverage L - Personal Liability and Coverage M - Medical Payments to Others apply to bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of the watercraft described below:

1. Watercraft powered by an outboard motor or combination of outboard motors totalling more than 25 horsepower.

| Motor | Horsepower and Description | Owner (if not you) | Description of Watercraft |
|---------|----------------------------|--------------------|---------------------------|
| Motor A | 200HP MERCURY MOTOR | | 19'10" RANGER BOAT |
| Motor B | | | |
| Motor C | | | |
| Motor D | | | |
| Motor E | | | |
| Motor F | | | |
| Motor G | | | |
| Motor H | | | |

DUPLICATE

2. Watercraft with inboard or inboard/outboard motors totalling more than 50 horsepower or a sailing vessel 26 feet or more in overall length with or without auxiliary power.

| Motor | Horsepower and Description | Owner (if not you) | Description of Watercraft |
|---------|----------------------------|--------------------|---------------------------|
| Motor A | | | |
| Motor B | | | |
| Motor C | | | |
| Motor D | | | |
| Motor E | | | |
| Motor F | | | |
| Motor G | | | |
| Motor H | | | |

With respect to watercraft with inboard or inboard/outboard motor power or sailing vessels, this insurance does not apply.

- a. to bodily injury to an employee of an insured arising out of and in the course of employment by the insured, if the employee's principal duties are in connection with maintenance or use of watercraft; or
- b. while the watercraft is used to carry persons for a charge or is rented to others.

3. Watercraft commonly known as Jet Skis or Hot Bikes.

| Engine | Engine size(cc's) | Owner (if not you) | Description of Watercraft |
|--------|-------------------|--------------------|---------------------------|
| A. | | | |
| B. | | | |
| C. | | | |
| D. | | | |
| E. | | | |
| F. | | | |
| G. | | | |
| H. | | | |

This endorsement does not increase the Coverage L - Personal Liability limit or the Coverage M - Medical Payments to Others limit of the policy to which it is attached, and all other terms of the policy not in conflict herewith apply.

DNFD-124
(Ed. 4-95)

William A. Poppen Secretary

Peter M. Mack President

CANCELLATION AND NONRENEWAL OF POLICY ENDORSEMENT

This endorsement changes the Cancellation and Nonrenewal provision in the policy to which this endorsement is attached.

Paragraph 2 under the CONDITIONS provision of the policy is hereby amended to read as follows:

"2 Cancellation and Nonrenewal - You may cancel this policy at any time by returning the policy to **us** for cancellation and paying all obligations then owing by **you** to **us**.

We may cancel this policy by written notice of cancellation delivered to **you** or mailed to **you** at **your** address appearing in the records of this Company at least 20 days before the effective cancellation date, which notice will include a written explanation of the specific reasons for cancellation. Proof of delivery or mailing is sufficient proof of such notice.

We refund premium or policy costs for the unexpired policy period on a **prorata basis**.

Your return premium or policy costs, if any, will be refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium or policy costs is not a condition of cancellation.

We may cancel this policy for any reasonable cause during the first 60 days this policy is in effect, but after 60 days from the effective date of this policy, a notice of cancellation may not be issued unless it is based upon at least one of the following reasons:

- a. Nonpayment of premium or policy costs;
- b. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining this policy, continuing the policy, or in presenting a claim under the policy;
- c. Discovery of acts or omissions on the part of the named insured which increase any of the hazard insured against;
- d. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
- e. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- f. A determination by the director of the division of insurance of the State of South Dakota that the continuation of the policy would jeopardize this Company's solvency or would place this Company in violation of the insurance laws of South Dakota;
- g. Violation or breach by the insured of any policy terms or conditions; or
- h. Such other reasons as are approved by the director of the South Dakota Division of Insurance.

If **we** elect not to renew this policy, **we** will deliver to **you** or mail to **you** at **your** address appearing in the records of this Company, a written notice of nonrenewal at least 30 days before the effective renewal date of this policy. Proof of delivery or mailing is sufficient proof of such notice."



De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FARMOWNERS/RANCHOWNERS
15-04-11

Description of Mortgage Property:

FARM PERSONAL PROPERTY

Loss of damage, if any, under policy, shall be payable to

FIRST WESTERN BANK
BOX 302
WALL SD 57790

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 28146 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, dated FEBRUARY 1, 2013.

RICHARD J DR LORAYNA PAULSEN
19730 PAULSEN RD
QUINN SD 57775

William A. Poppen

Secretary

Peter M. Mack

President



De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FARMOWNERS/RANCHOWNERS
15-04-11

Description of Mortgage Property:

2004 JD 7320 TRACTOR

Loss of damage, if any, under policy, shall be payable to

DEERE & CO
LSAUA
PO BOX 6600
JOHNSTON IA 50131-6600

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notices of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 28146 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, dated MAY 6, 2010.

RICHARD J OR LORAYNA PAPPUSER
19730 PAULSEN RD
QUINN SD 57775

William A. Poppen

Secretary

Peter M. Mack

President



De Smet Farm Mutual Insurance Company
OF SOUTH DAKOTA

Box 9 • De Smet, South Dakota 57231 • (605) 854-3337

STANDARD MORTGAGE CLAUSE

FARMOWNERS/RANCHOWNERS
15-04-11

Description of Mortgage Property:

2009 JD 9760 COMBINE

Loss of damage, if any, under policy, shall be payable to

DEERE & CO
ISADA
PO BOX 3608
JOHNSTON IA 50131-6308

mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for 60 days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued thereon to the date of such payment, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of their claim.

Attached to and forming part of Policy No. 20146 of the De Smet Farm Mutual Insurance Company of South Dakota, issued at its Home Office in De Smet, South Dakota, Dated JULY 11, 2012.

RICHARD J DR LERAYMA PAMOUSEK
19730 PAULSEN RD
QUINN SD 57775

William D. Pappan

Secretary

Peter M. Mack

President

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

_____) File No. 14-959
RICHARD PAPOUSEK and)
LORAYNA PAPOUSEK,)
)
Plaintiffs,)
)
vs.) Deposition of:
) RICHARD PAPOUSEK
DeSMET FARM MUTUAL INSURANCE)
COMPANY OF SOUTH DAKOTA,)
)
Defendant.)
_____)

BEFORE: Jeanne Speck Quinn
Court Reporter and Notary Public
Rapid City, South Dakota

DATE: April 24, 2015 at 9:30 a.m.

PLACE: Bangs, McCullen, Butler,
Foye & Simmons
333 West Boulevard
Suite 400
Rapid City, South Dakota

APPEARANCES:

Representing the Plaintiffs: **MR. MICHAEL M. HICKEY**
Bangs, McCullen, Butler,
Foye & Simmons
333 West Boulevard
Suite 400
Rapid City, South Dakota

Representing the Defendant: **MS. JESSICA LARSON**
Beardsley, Jensen &
VonWald
4200 Beach Drive
Rapid City, South Dakota

Also Present: Mrs. Lorayna Papousek
Plaintiff

I N D E X

WITNESS: PAGE

RICHARD PAPOUSEK

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* * * *

3

1 RICHARD PAPOUSEK,
 2 called as a witness, being first duly sworn, testified as
 3 follows:
 4 EXAMINATION BY MS. LARSON:
 5 Q Will you please state your name and address for the
 6 record.
 7 A Richard Joe Papousek, 19730 Paulson Road, Quinn, South
 8 Dakota 57775.
 9 Q Have you ever had your deposition taken before?
 10 A Yes.
 11 Q When was that?
 12 A Three years ago.
 13 Q And what action was that taken for?
 14 A It was insurance claim on preventive planting for a
 15 neighbor.
 16 Q Were you involved in that lawsuit?
 17 A No.
 18 Q Okay. So with that deposition and you observing the
 19 other depositions that have been taken in this case,
 20 there's just a couple things that I'd like to go through
 21 with you to remind you. The court reporter is taking
 22 everything down, and so we have to be careful to answer
 23 out loud. And I will try to ask good questions, but if
 24 you ever are confused or not sure what I'm trying to ask
 25 you, please let me know and I'll be sure to clear that

4

1 up.
 2 And if you answer one of my questions, I'm going
 3 to assume that you understood what I was asking you; is
 4 that --
 5 A Okay.
 6 Q Great. How long have you lived at your current
 7 location?
 8 A Since 1989.
 9 Q Where did you live before then?
 10 A Two miles south of the current address.
 11 Q Okay. Have you always been involved in the ranching
 12 business?
 13 A Yes.
 14 Q Have you ever had any outside employment?
 15 A In high school and college.
 16 Q What did you do in high school and college?
 17 A Worked in a service station and a mobile home sales lot.
 18 Q Where did you go to college?
 19 A Redding, California, and Chico, California.
 20 Q Where were you born?
 21 A Martin, South Dakota.
 22 Q Earlier your wife indicated that you've been married for
 23 22 years; is that correct?
 24 A Correct.
 25 Q Do you have any children?

5

1 A We have one, and she has two, and I have one.
 2 Q What are their names?
 3 A Evan, Rhiannon, Meghan, and Lissa.
 4 Q Are any of your children involved in the ranch business?
 5 A Yes.
 6 Q And which children are involved?
 7 A Evan and Lissa.
 8 Q And what do they do?
 9 A Mainly they are like an employee.
 10 Q Ranch hand?
 11 A Yeah. Yep. They're not involved in the business end of
 12 it or anything like that.
 13 Q And I asked your wife is this a sole proprietorship
 14 business?
 15 A Yes.
 16 Q And you and your wife are the only owners?
 17 A Yes.
 18 Q How much land do you own?
 19 A 6,000 acres.
 20 Q Do you lease any of that property?
 21 A No.
 22 Q Do you lease other land that --
 23 A Yes.
 24 Q How much land do you lease?
 25 A Approximately 8 to 10,000.

6

1 Q And what does your operation include? And I'm asking,
 2 you run a cattle operation; do you grow crops also?
 3 A Crops and livestock.
 4 Q What crops do you grow?
 5 A Wheat, corn, millet, milo.
 6 Q And what does your livestock operation look like? Are
 7 you -- do you have any dairy cows or is it all beef
 8 cattle?
 9 A All Black Angus cattle.
 10 Q Black Angus. How many head of cattle do you run at this
 11 time?
 12 A Approximately 4 to 450 mother cows, and approximately
 13 400 head of yearling heifers.
 14 Q If I could take you back to, let's say, October 1st,
 15 2013 --
 16 A Uh-huh.
 17 Q -- how many head of cattle did you have then, if you can
 18 recall?
 19 A The figures would be close to what I have now. I, you
 20 know, can't recall exactly.
 21 Q Would it be a similar breakdown with the 4, 450
 22 mother --
 23 A Oh, yes.
 24 Q Where were the cattle located at that time? And when I
 25 say "at that time," I mean immediately prior to the

7

1 storm.

2 **A** The corner of Big Foot Road and Highway 14 on the south

3 side of 14.

4 **Q** Were they all pastured together?

5 **A** Yes.

6 **Q** And was this on property that you owned or that you were

7 leasing?

8 **A** Lease.

9 **Q** I'm going to start asking questions about the storm now.

10 **A** Okay.

11 **Q** To the best of your recollection, could you describe how

12 you recall the storm starting and did it start with

13 rain?

14 **A** A lot of rain.

15 **Q** Do you remember when it started snowing?

16 **A** I do not remember the date. It was in the middle of the

17 night probably.

18 **Q** Did you do anything with your livestock, with your

19 cattle, after the storm started?

20 **A** While it was raining we made sure they were in the

21 shelter of the creek.

22 **Q** Where is that?

23 **A** In that pasture.

24 **Q** Okay. Can you describe the shelter of the creek?

25 **A** Just trees and draws.

8

1 **Q** What creek is that? Does it have a name?

2 **A** I don't think that creek has a name. I really don't.

3 **Q** How often did you go out to see the cattle?

4 **A** We were with the cattle every day.

5 **Q** Were you ever snowed in, in your home?

6 **A** No.

7 **Q** Did your home ever lose electricity?

8 **A** Yes.

9 **Q** And was that throughout the operation, throughout the

10 farm, or the ranch, or was it just the home?

11 **A** Throughout the whole building facilities.

12 **Q** Okay. You indicated that you were with the cattle

13 throughout the storm. I'm assuming this was an

14 off-and-on basis, or were you --

15 **A** No. We aren't with the cattle continuously. I didn't

16 know if that's what you meant, but, no, we were with the

17 cattle prior to the storm, you know, during the day.

18 **Q** At what point did you find out about any of the cattle

19 deaths?

20 **A** Approximately noon to 1 o'clock the next day.

21 **Q** I'm going to ask a question that you may not remember

22 the answer to. It's my recollection that the storm

23 started on the evening of October 3rd with the rain.

24 Does that sound right to you?

25 **A** It was in that -- I'm not positive on the dates.

9

1 **Q** Okay. If we say it started on the evening of

2 October 3rd, when you say noon the next day, do you mean

3 the 4th or do you mean the 5th?

4 **A** The 4th.

5 **Q** So the day after the rain started, by noon the next day

6 you already knew about some cattle deaths?

7 **A** Yes.

8 **Q** Did you know the extent of the deaths at that time?

9 **A** No.

10 **Q** How did you find out about the cattle who had died?

11 **A** I had a neighbor call me and tell me we had dead cattle.

12 **Q** Which neighbor was that?

13 **A** Roger Fourtune.

14 **Q** Could you spell the last name?

15 **A** F-O-U-R-T-U-N-E.

16 **Q** How did -- did Roger tell you how he knew that the

17 cattle had --

18 **A** He lived close -- he lives close to where the cattle

19 were.

20 **Q** So he had seen them?

21 **A** Yes.

22 **Q** And what did he tell you?

23 **A** Just we had dead cattle.

24 **Q** Did he tell you why he thought they died?

25 **A** No.

10

1 **Q** When did you go and see the cattle yourself?

2 **A** Around noon to 1 o'clock that -- the day we're speaking

3 of.

4 **Q** And can you describe what you saw when you went out

5 there?

6 **A** Dead cattle laying all over.

7 **Q** Did you have a count at that point of how many were

8 dead?

9 **A** Oh, no.

10 **Q** What did you do that day when you saw the dead cattle?

11 **A** We tried to help anything that was live.

12 **Q** Were you able to save any?

13 **A** No.

14 **Q** When you say "we," who was with you?

15 **A** My hired man.

16 **Q** And who is that?

17 **A** Dan Paulson.

18 **Q** Does Dan still work for you?

19 **A** Yes.

20 **Q** Could you tell how the cattle had died?

21 **A** No.

22 **Q** How much snow was on the ground at that point?

23 **A** It was hard to tell because it was blowing and, you

24 know, it varied.

25 **Q** Where you found the dead cattle, were there

11

1 accumulations of snow there?

2 A Some of them. Some of them not.

3 Q There were drifts?

4 A Yes.

5 Q What mode of transportation were you on when you were

6 out looking for these cattle?

7 A Pickup.

8 Q And you were able to get around okay in a pickup?

9 A Yes. We also had a tractor there for feeding them, the

10 survivors.

11 Q How long, whether it was that day or several days later,

12 did it take you to determine how many cattle you had

13 lost?

14 A It was several days later.

15 Q Were the cattle found in one location?

16 A No.

17 Q Where were they found?

18 A From the pasture to three miles south of the pasture.

19 Q Were they found strung out through that whole stretch or

20 were they found in clumps? Can you describe that a

21 little bit more?

22 A It varied. They're -- you'd run into a group of them or

23 else they'd just be randomly laying.

24 Q Did you find all of your cattle?

25 A Yes.

12

1 Q Were you able to determine at some point the total lost?

2 A Oh, yes.

3 Q And how many total cattle did you lose in the storm?

4 A Total cattle --

5 Q Yes.

6 A -- insured, or total cattle?

7 Q Total cattle.

8 A 290.

9 Q And now would you break those down into the separate

10 kinds of cattle that were lost, if you could?

11 A I cannot break the cows and calves down, but there were

12 93 head of bred heifers. The rest were in cows and

13 calves.

14 Q So of the 197 cows and calves that were lost, do you

15 recall whether you lost more cows or more calves?

16 A I think it was more cows.

17 Q Of the 93 bred heifers that are at issue here, can you

18 tell me the locations of where you found the deceased

19 cattle?

20 A In that zero to three miles.

21 Q And were they, were the 93 bred heifers, in a group or

22 were they spread out over the --

23 A They were spread out.

24 Q These 290 were -- they were not separated by any fence

25 or they were all in the same pasture?

13

1 A The cows and calves were in a separate pasture.

2 Q And the bred heifers, were they in the same creek

3 shelter at the start of the storm?

4 A All the bred heifers were, yes.

5 Q Okay. Are you surrounded by other ranches --

6 A Yes.

7 Q -- in your location? Did your neighbor sustain similar

8 losses?

9 A Yes.

10 Q We are here to determine the cause of death,

11 essentially -- well, no, that's not right. I apologize.

12 We're here to talk about drowning, basically.

13 A Okay.

14 Q You have, in your Declaratory Judgment action, alleged

15 that these 93 head of bred heifers drowned.

16 A Correct.

17 Q And that was the cause of their death. When did you

18 first form the opinion that the cattle drowned?

19 A When I hired Dr. McConaghy.

20 Q When was that?

21 A Oh, a week, 10 days after the storm.

22 Q You were present yesterday during Dr. McConaghy's

23 deposition; correct?

24 A Yes.

25 Q And you heard him testify that he came to your location,

14

1 came to the ranch, to look at these cattle on

2 October 16th, 2013; correct?

3 A Correct.

4 Q Is that your recollection also?

5 A Yes.

6 Q Did you contact him prior to that time?

7 A Maybe two or three days prior.

8 Q Why did you call him?

9 A To determine the cause of death on the heifers.

10 Q Were you present with him when he came out to the ranch

11 and posted the cattle?

12 A Yes.

13 Q How many did he post?

14 A 7 to 10.

15 Q Okay. And when you and I say "post," we're talking about

16 the necropsy?

17 A Right. Right.

18 Q Okay. So prior to Dr. McConaghy coming out and

19 performing the necropsy, you had no opinion on how the

20 cattle died?

21 A We suspicioned they drowned.

22 Q And what made you form that suspicion?

23 A As the one picture shows, the fluid coming from

24 nostrils.

25 Q Do you have any training in veterinary science?

15

1 A No, ma'am.

2 Q Okay. Who was your normal veterinarian?

3 A Bill and Norma Headlee.

4 Q Will you say that again?

5 A Bill and Norma Headlee.

6 Q Okay. Did you contact them after the storm?

7 A No.

8 Q Why?

9 A I wanted a vet -- Bill and Norma has been my

10 veterinarian all my life. I wanted an outside vet to

11 come in and give me the honest opinion. I didn't want

12 any connection.

13 Q Where did you get Dr. McConaghy's name from?

14 A He worked a few horses for us.

15 Q Had he posted any of your neighbor's cattle?

16 A I believe so.

17 Q Do you know if he posted any of them prior to coming to

18 your residence?

19 A I do not.

20 Q Did you tell Dr. McConaghy that you wanted him to

21 determine whether or not the cattle drowned?

22 A I wanted a cause of death.

23 Q Did you discuss drowning with him at all prior to him

24 posting the cattle?

25 A No.

16

1 Q Is it accurate to say that you, yourself, could not

2 determine how the cattle died?

3 A That's correct.

4 Q You had to have Dr. McConaghy come in and tell you?

5 A Correct.

6 Q At what point did you contact DeSmet?

7 A Shortly after the storm.

8 Q Do you recall who you spoke with?

9 A Galen Niederwerder.

10 Q How many conversations did you have with Galen?

11 A Oh, two or three maybe.

12 Q And what did he tell you?

13 A He said the cattle were covered for drowning.

14 Q And this was before the vet came out; correct?

15 A Correct.

16 Q Who else did you speak with at DeSmet?

17 A There was an adjuster at my place.

18 Q Do you recall his name?

19 A I do not.

20 Q Do you recognize the name Steve Schlechter?

21 A Yep. That's him. I'm terrible on names.

22 Q Yeah. Do you remember when he was out to your place?

23 A Shortly after the claim.

24 Q And that was also before Dr. McConaghy was out there?

25 A Correct.

17

1 Q Do you remember conversations you had with

2 Mr. Schlechter?

3 A He showed me the policy. Not a lot of the conversation.

4 He asked me if any were submerged in water.

5 Q And what did you tell him?

6 A No.

7 Q And none of the cattle were submerged in water; correct?

8 A Correct.

9 Q None of them were in the creek?

10 A There was some in the creeks.

11 Q But there -- they were not submerged in the water?

12 A No.

13 Q Did all of the cattle die from the same cause?

14 A I believe so.

15 Q Okay. At least the 7 to 10 that were posted,

16 Dr. McConaghy didn't give any indication that any of

17 those died of different causes?

18 A They were all the same cause.

19 (Exhibit 10 marked for identification.)

20 Q I'm going to show you what we have marked as Exhibit 10.

21 A Okay.

22 Q Can you tell me what that is?

23 A It looks like a complaint form for my policy.

24 Q Did you fill this out?

25 A I do not recall.

18

1 Q Let's go through it and make sure that the information

2 on it is accurate then.

3 A Okay.

4 Q It says that it's dated January 10th, 2014. Is that

5 your recollection of when you would have filed a

6 complaint with the Division of Insurance in this matter?

7 A It would be around there.

8 Q Then if we go down to complaint text this indicates, as

9 you have stated, that you lost 93 head of heifers in the

10 Atlas blizzard, and that you had a veterinarian post 4

11 head of the heifers with the result being drowning.

12 Do you recall why there's a discrepancy in the

13 numbers?

14 A I do not. There were a lot of numbers thrown around in

15 my head at that time.

16 Q Sure. And we may be able to get that information more

17 accurately from the veterinarian's notes; is that

18 correct?

19 A That's correct.

20 Q Okay. If he has a number in his notes of how many

21 cattle he posted, is that likely the number that were

22 posted that day?

23 A Yes.

24 Q If we move on, this complaint also says that none of

25 these heifers were submerged in water. They drowned

19

1 standing up.

2 Is that an accurate reflection of what you had

3 stated to the division?

4 **A** Yes.

5 **Q** And you still agree with that?

6 **A** Yes.

7 (Exhibit 11 marked for identification.)

8 **Q** I'm going to show you what's been marked as Exhibit 11.

9 I only have one copy of the Exhibit 11, so you may need

10 to share with your attorney. This is a copy of the

11 insurance -- excuse me -- the insurance policy that was

12 in place at the time of the storm. I'm going to ask you

13 to turn to the Bates stamp on the bottom, if you see

14 they're DeSmet and followed by numbers. I'm going to

15 ask you to turn to Page 6.

16 **A** (Complied.)

17 **Q** This appears to be the Declarations page of your

18 insurance policy. Does that look right to you?

19 **A** Yes.

20 **Q** And if you look under E, Unscheduled Farm Personal

21 Property (Blanket) --

22 **A** Uh-huh.

23 **Q** -- it appears that you paid premiums for unscheduled

24 farm personal property coverage; correct?

25 **A** Correct.

20

1 **Q** I'll ask you to turn the page, and if we look at the

2 blanket farm personal property, the second item from the

3 bottom in the first column are these yearlings, 500 at

4 \$1,200?

5 **A** Yes.

6 **Q** And the 93 bred heifers that we're talking about in this

7 lawsuit, this is where you are seeking coverage;

8 correct?

9 **A** Correct.

10 **Q** Were you familiar with your insurance policy prior to

11 this litigation?

12 **A** Mostly.

13 **Q** I'm going to have you turn then to Coverage E, which

14 starts on Page 41.

15 **A** (Complied.)

16 **Q** And this begins the Coverage E - Unscheduled Farm

17 Personal Property (Blanket), which is the coverage that

18 we were just talking about, the premium being paid for

19 on the 500 head of heifers.

20 **A** Okay.

21 **Q** And if you turn to Page 42, under the Farm Perils

22 Section, this section has -- I'll go ahead and let you

23 read the first paragraph under the Farm Perils Section.

24 You don't have to read it out loud. Just read it to

25 yourself. "This policy insures..."

21

1 **A** (Complied.)

2 **Q** So is your reading of that consistent with mine where

3 now this list is going to tell you the coverages for

4 your blanket property?

5 **MR. HICKEY:** I'm just going to object. I think

6 that calls for a legal conclusion.

7 **MS. LARSON:** Sure.

8 **MR. HICKEY:** But to the extent that you understand

9 it, that's fine.

10 **A** That is my opinion. It's worded in a lot of words that

11 are legal.

12 **Q** Okay. If we could just look at Paragraph 2, Windstorm

13 or Hail, This does not cover loss. And then your policy

14 lists various items that are not covered under your

15 policy. Could you read (a)?

16 **MR. HICKEY:** Well, just for the purposes of the

17 record, the documents speaks for itself. But go ahead

18 and read it.

19 **Q** I just want to give you a chance to read it before I ask

20 a question about it.

21 **A** (Reading document.) Okay.

22 **Q** Were you familiar with this provision of the policy

23 prior to the storm?

24 **A** No.

25 **Q** Okay. And then also (c) under No. 2.

22

1 **A** (Reading document.) No, again.

2 **Q** No, you were not familiar with that provision?

3 **A** No.

4 **Q** Did you discuss these provisions with anyone at DeSmet

5 while they were adjusting this claim?

6 **A** Steve brought this out to me.

7 **Q** Did he go through these provisions with you?

8 **A** He read them.

9 **Q** Okay. Did you discuss -- did he tell you the day that

10 he was at your house that there was no coverage for the

11 cattle that had died?

12 **A** Not unless they drowned.

13 **Q** Let's go through that a little bit more carefully. So

14 Steve came to your place, talked about the insurance

15 policy with you. What did he tell you about your

16 coverage?

17 **A** He said they had to be submerged in water to drown.

18 **Q** And you had already told him that they were not

19 submerged in water; correct?

20 **A** Correct.

21 **Q** So at that point did he deny coverage?

22 **A** Yes.

23 **Q** So when Steve had left that day, you had the

24 understanding that your insurance company was saying

25 there was no coverage for the cattle that had died?

23

1 A He told me they did not have coverage for -- they have

2 coverage for submerged in water, the definition of his

3 drowning.

4 Q Did you ever speak with anyone at DeSmet after Steve

5 left your house that day?

6 A I don't believe so.

7 Q Did you ever provide the results that the vet gave you

8 to DeSmet?

9 A No. Not that I remember.

10 Q I'll have you turn the page to Page 43.

11 A (Complied.)

12 Q If you look at No. 12.

13 A (Reading document.) Okay.

14 Q This is the provision that indicates that livestock --

15 when this policy covers livestock, it shall include loss

16 of said livestock by electrocution, drowning, and then

17 it goes on to include other items. And so this is the

18 provision of the policy that you have made your claim in

19 this case; correct?

20 A I believe so, yes.

21 Q We may talk about this policy later, but I'll let you

22 move it aside for right now.

23 A Okay.

24 Q So I may have asked this question already, but after you

25 spoke with Steve Schlechter at your house that day, did

24

1 you ever have any contact personally with anyone at

2 DeSmet?

3 MR. HICKEY: You did ask that. But you can answer

4 it again.

5 A I don't recall having any contact with anybody.

6 Q Okay.

7 (Exhibit 12 marked for identification.)

8 Q I'm going to show you what's been marked as Exhibit 12.

9 I will tell you that this is an article out of AgWeek

10 that I printed, and the printout looks different than it

11 does if you were to go onto the computer screen. The

12 picture printed out separate. It was included in the

13 article on the computer.

14 If you look at the first page of the article, is

15 this you --

16 A Yes.

17 Q -- in the picture?

18 The picture indicates that in the caption that it

19 was photographed on October 15th, 2013. Is that your

20 recollection?

21 A It has to be close in there.

22 Q And do you recall if you were interviewed on that same

23 day?

24 A Yes.

25 Q The caption of the picture says that 110 cows and 88

25

1 calves died drifting away from the "wall of the

2 Badlands" where they became disoriented and plummeted

3 their deaths.

4 A This is correct.

5 Q Are any of these cattle in the 110 cows and 88 calves

6 included in the 93?

7 A No. These are separate pasture.

8 Q And so these cattle fell off a ridge; is that correct?

9 And --

10 A No. They just went in here and couldn't get out.

11 Q Okay. So when it says, "plummeted to their deaths" --

12 A Yeah, drama.

13 Q Okay.

14 MR. HICKEY: Gotta sell the AgWeek some way, don't

15 we?

16 THE WITNESS: Yeah.

17 Q So then if you could turn to the next page, and you

18 believe that the interview was the same day the picture

19 was taken?

20 A Yes, as I recall.

21 Q If you could look actually on the last page of this

22 exhibit towards the end of the article it says, Papousek

23 says the losses are hard to figure out. I'm pretty sure

24 they drowned standing up, he says of his cattle, but

25 these insurance companies do not want to define

26

1 drowning, Papousek says.

2 They think drowning happens in a dam. I've talked

3 to professionals, veterinarians, that say that isn't

4 necessarily the definition of drowning.

5 What veterinarians had you talked with at this

6 time?

7 A At that time I might have talked to Jim McConaghy -- no,

8 I did not talk to Jim. I talked to Jim Wolf.

9 Q Who's Jim Wolf?

10 A A veterinarian out of Fort Pierre, South Dakota.

11 Q And what did he tell you?

12 A There are various ways of drowning.

13 Q And this was prior to you having any of your cattle

14 posted; correct?

15 A I believe so.

16 Q You said they drowned standing up. Is that something a

17 veterinarian told you?

18 A No. That was my belief.

19 Q Okay. Did you talk to any other vets?

20 A I don't believe so.

21 Q How did you know Jim Wolf?

22 A Personal friend.

23 (Exhibit 13 marked for identification.)

24 Q I'm showing you now what's been marked as Exhibit 13.

25 This is an article printed from Ag-at-Large. Is that

27

1 you in the picture on the first page of Exhibit 13?
 2 **A** Yes.
 3 **Q** And where are these cattle in the picture located?
 4 **A** About 8 miles west of where the heifers were at.
 5 **Q** Are these cattle in the picture cattle that you had
 6 owned?
 7 **A** Yes.
 8 **Q** If you turn the page, the caption says that this was
 9 taken on October 15th. Is this a separate person than
 10 the one that interviewed you for the AgWeek article?
 11 **A** I only interviewed with one person.
 12 **Q** Okay.
 13 **A** I've never seen this article.
 14 **Q** On the second page there's another photograph. Is that
 15 you, as well?
 16 **A** It looks like it.
 17 **Q** And the caption of that picture says, I photographed
 18 Richard Papousek talks on the phone on October 15th
 19 about what constitutes a, quote, drowned, end quote,
 20 beef animal for insurance purposes.
 21 Do you recall when this photograph was taken?
 22 **A** I don't. He took pictures that day we was out there,
 23 but I don't recall even who I'd have been talking to.
 24 **Q** So on October 15th, if this caption is accurate, you
 25 don't remember who you were talking to in this phone

28

1 call?
 2 **A** No. I make a lot of phone calls.
 3 **Q** And the caption is saying that it was trying to figure
 4 out what constitutes a "drowned" beef doesn't help
 5 refresh any memory or --
 6 **A** I talked to Jim Wolf about it and he offered a
 7 professional opinion. Everybody has their own opinion.
 8 It could have been a fellow rancher I was even talking
 9 with. I'm not sure.
 10 **Q** This would have been prior to when Dr. McConaghy was at
 11 your property to do the necropsies?
 12 **A** I believe so.
 13 **Q** You said everyone has their own opinion and that you
 14 talked to other ranchers. Who are the other ranchers
 15 that you talked to?
 16 **A** I can't give you all their names. You get around
 17 ranchers and they all just bullshit.
 18 **Q** Did any of your other neighbors or rancher friends that
 19 you talked to have issues with their insurance companies
 20 about the definition of "drowning"?
 21 **A** Yes. Farm Bureau paid my neighbor right on the spot.
 22 **Q** Who's that neighbor?
 23 **A** Pat Guptill.
 24 **Q** Do you know what his insurance policy said?
 25 **A** No, I don't know his policy. That's not my business.

29

1 **Q** Do you have any -- have you had any other conversations
 2 with other ranchers regarding this issue about drowning
 3 and what "drowning" means?
 4 **A** Just in conversation.
 5 **Q** And who are those ranchers?
 6 **A** There again, there's various talk, you know. Just
 7 neighbors, you know, passing. You know, you just have a
 8 conversation. That's why I wanted a professional
 9 opinion. That's why Dr. McConaghy was hired.
 10 **Q** So these conversations about what drowning was happened
 11 before Dr. McConaghy was there?
 12 **A** It was suspicion then.
 13 **Q** And if he was out on the 16th, that would have been
 14 12 days after the cattle had died?
 15 **A** Yes, approximately.
 16 (Exhibit 14 marked for identification.)
 17 **Q** I'm going to show you what's been marked as Exhibit 14.
 18 This is an article from AgWeek. It appears it was
 19 published October 6, 2014, and it's called, Winter Storm
 20 Atlas one year later.
 21 Do you recall giving another interview to AgWeek
 22 about the storm a year after?
 23 **A** They called me.
 24 **Q** I just have a couple of questions, and I'm going to
 25 refer to all of these articles, just to clear things up.

30

1 In the first article, which is Exhibit --
 2 **A** 12.
 3 **Q** -- 12, on the caption here it says the cattle losses
 4 were 110 cows, 88 calves, and elsewhere he lost 86 bred
 5 heifers.
 6 **A** That is not accurate.
 7 **Q** In the second article, which is -- no, not the second
 8 article, I apologize. In the third article, which is
 9 Exhibit 14 towards the bottom where you'll see your
 10 name, Richard Papousek of Quinn, South Dakota --
 11 **A** Uh-huh.
 12 **Q** -- lost 230 head of cattle.
 13 **A** This guy had a hard time with numbers.
 14 **Q** So today when you told me 290, that is your final count?
 15 **A** That is the final count, and 93 of those were bred
 16 heifers.
 17 **Q** Okay.
 18 **A** We found bodies later, too, you know. We didn't find
 19 them all in one day.
 20 **Q** And so at this point you have been able to do a full
 21 accounting?
 22 **A** Oh, yes.
 23 **Q** These numbers here where you have indicated discussion
 24 about receiving donations, did you give -- did you
 25 provide this information to AgWeek for this article?

31

1 **A** Yes. They asked.
 2 **Q** And I will let you take a look at what you're being
 3 quoted as saying, and then I just want to ask you if you
 4 can tell me if everything in here other than the number
 5 of 230 head of cattle is accurate.
 6 **A** (Reading document.) I t's close.
 7 **Q** Is there anything that you would like to clear up?
 8 **A** On the indemnity payments, it's less than that because
 9 we had to pay some back.
 10 **Q** Okay. Here where it says Papousek says -- we're
 11 supposed to get a judge to rule on it, Papousek says,
 12 indicating the case is worth about 125,000 to him.
 13 If we look at Exhibit 11, which is the insurance
 14 policy --
 15 **A** Uh-huh.
 16 **Q** -- Page 7. You agree that each bred heifer was insured
 17 for a limit of \$1,200; correct?
 18 **A** Correct.
 19 **Q** Do you know if any of your neighbors or other ranchers
 20 that you know well use Dr. McConaghy as their vet?
 21 **A** I do not know.
 22 **Q** I'm just going to take one minute to look at my notes.
 23 **A** That's fine.
 24 **Q** Did you have any other insurance covering these 93 bred
 25 heifers?

32

1 **A** No, ma'am.
 2 MS. LARSON: Those are all the questions I have
 3 for you today.
 4 MR. HICKEY: I just have a couple follow-up. I
 5 just want to make sure I'm understanding.
 6 EXAMINATION BY MR. HICKEY:
 7 **Q** It looks like the policy was issued on or about
 8 February 1st of 2013; is that correct?
 9 **A** Yes.
 10 **Q** With respect to the valuations set out on Page 7 under
 11 Coverage E, looks like that's all typed. Do you type
 12 that in or how -- do you know how that was, those
 13 numbers, were arrived at?
 14 **A** I do not type it in. They -- Galen Niederwerder, I'm
 15 sure, is the one that listed that.
 16 **Q** Okay. Did you value the heifers, 500 heifers, at \$1,200
 17 or how did that come about, if you know, if you
 18 remember?
 19 **A** They were valued when they were younger.
 20 **Q** Okay. So how did that number come about, if you know?
 21 **A** I put that amount on them as 12-month-old calves, so to
 22 speak.
 23 **Q** Okay. And so I just want to make sure that I'm
 24 understanding. That's a number that you would have
 25 arrived at or believed that they were valued at when the

33

1 policy was issued?
 2 **A** Yes.
 3 **Q** Okay. And I don't know the answer, so I'm going to ask
 4 you. When these cattle passed away or died in October,
 5 what, they would be, what, six months older,
 6 approximately?
 7 **A** They would have been ten months older.
 8 **Q** Ten months older? Are they more valuable or less
 9 valuable at that point in time or does the cattle prices
 10 fluctuate?
 11 **A** Their siblings, putting it that way, their sisters
 12 brought an average of \$2,850.
 13 **Q** Okay. But for purposes of insurance, they were insured
 14 for \$1,200 each --
 15 **A** Yes.
 16 **Q** -- is that basically right?
 17 Okay. When Steve came out to talk with you about
 18 adjusting, how long was he with you?
 19 **A** 15 minutes.
 20 **Q** Okay. Did he go out and look -- do you remember when
 21 that was?
 22 **A** Not exactly.
 23 **Q** Did he go out and look at cattle?
 24 **A** No.
 25 **Q** Did he go out and perform an autopsy --

34

1 **A** No.
 2 **Q** -- or a necropsy?
 3 **A** No.
 4 **Q** To your knowledge, has the insurance company ever hired
 5 or did they ever hire a vet to go out and do a posting
 6 of your cattle?
 7 **A** No.
 8 **Q** Did they ever offer to do that?
 9 **A** No.
 10 **Q** When Steve was out there for the 15 minutes, did he go
 11 through the policy with you?
 12 **A** He showed me those parts that Jessica mentioned.
 13 **Q** Okay. Do you remember the sequence in which he showed
 14 you those parts? Did he show you, for example, the
 15 definition of that drowning was covered?
 16 **A** He showed me that, yes.
 17 **Q** Okay. Then he turned -- did he then say, but there's
 18 exclusions?
 19 **A** No.
 20 **Q** Or did he do it the other way around; if you remember?
 21 **A** I don't remember that for sure.
 22 **Q** Okay. When you purchased the policy, and who did you
 23 get that from?
 24 **A** Galen Niederwerder.
 25 **Q** Did he go through the exclusions and definitions of

35

1 covered property and the exclusions that are applicable
 2 to it?
 3 **A** No.
 4 **Q** And this is a policy that DeSmet just issues; correct?
 5 **A** Yes.
 6 **Q** And do they negotiate with you and say, well, we'll take
 7 out this coverage if you want this, or is it pretty
 8 much, here it is, take it or leave it?
 9 **A** There never has been any negotiations.
 10 **Q** Okay. This is their document, and when you sign up for
 11 it, this is what you get, kind of; is that fair?
 12 **A** That's pretty fair wording.
 13 **Q** Okay. I've got to find that -- in Exhibit 14, which is
 14 an Exhibit, I guess, dated in, it says, October 6th of
 15 2014; correct?
 16 **A** Correct.
 17 **Q** And then it has a discussion. Do you remember who you
 18 talked with at that time? Is it the same guy or a
 19 different guy?
 20 **A** The same guy.
 21 **Q** Okay. It says that it's a Mikkel Pates, P-A-T-E-S?
 22 **A** I believe, yeah.
 23 **Q** Is that the guy?
 24 **A** Yes.
 25 **Q** Okay.

36

1 **A** Pates, I think he pronounced it.
 2 **Q** Pates, okay. What is the Livestock Indemnity Program?
 3 **A** That is a government program that was put in the 2014
 4 Farm Bill. It's a program for cattle loss.
 5 **Q** So that was like a, what, a federal program that was --
 6 **A** Yeah.
 7 **Q** -- adopted after the storm? Or --
 8 **A** Yes. It was adopted after the storm.
 9 **Q** Okay.
 10 **A** It is for disasters and livestock.
 11 **Q** Okay. And then up above there's also that you've got 13
 12 bred heifers and 8,000 in cash from donations, the
 13 heifer donations?
 14 **A** Yes.
 15 **Q** And then there was a relief fund; what was that?
 16 **A** Ranchers Relief Fund.
 17 **Q** Okay. And was that something that was put together
 18 later on after the blizzard, if you know?
 19 **A** It was after the blizzard. South Dakota Stockgrowers
 20 headed that up.
 21 **Q** Okay. And I guess at that time, at least, you indicated
 22 that you believed that you had -- that those things had
 23 covered about half of your loss; is that correct?
 24 **A** Correct.
 25 **Q** And that your total losses were in the neighborhood of

37

1 \$600,000?
 2 **A** Yes.
 3 **Q** And that would include your cows, your calves, the bred
 4 heifers, and other elements of damage, as well?
 5 **A** Not all elements, but, yes, the cattle loss.
 6 **Q** Okay. And then, lastly, a couple of times you've talk
 7 about that it's your belief that the cattle drowned
 8 standing up?
 9 **A** Correct.
 10 **Q** Why do you -- how do you -- why do you say that, I
 11 guess? I'm just curious. As opposed to lying down
 12 or --
 13 **A** I found cattle going along and they just collapsed.
 14 Their legs would be back just like they were walking
 15 along and just died standing up. (Indicating.)
 16 **Q** Okay. But whether they died standing up or they died
 17 when they hit the, I mean --
 18 **A** Yeah.
 19 **Q** You don't know that?
 20 **A** I don't know that.
 21 **Q** I was just curious about what "standing up" meant.
 22 **A** It would be tough to remain standing.
 23 **Q** Did the State vet ever come out to your place?
 24 **A** No.
 25 **Q** Did he ever examine any of your cattle?

38

1 **A** Absolutely not.
 2 **Q** Other than Dr. McConaghy, were there any other vets that
 3 actually came out and examined your cattle or posted any
 4 of your cattle or anything like that?
 5 **A** No.
 6 **Q** And the reason -- what was the reason that you hired
 7 Dr. McConaghy?
 8 **A** To determine the cause of death.
 9 MR. HICKEY: That's all the questions I have.
 10 MS. LARSON: I have no follow-up.
 11 MR. HICKEY: Richard, you have the right to have
 12 this deposition typed up, you can read it and sign it.
 13 You can also waive the reading and signing of your
 14 deposition, and I'll get you a copy of it so you can go
 15 ahead and waive it, if you'd like to.
 16 THE WITNESS: I'll waive it.
 17 (The deposition concluded at 10:36 a.m.)
 18 * * * *
 19
 20
 21
 22
 23
 24
 25

SD EForm - 1997 V2



Your Name Richard Papousek Date: 01/10/2014

Address 19730 Paulsen Rd.

City Quinn State S.D. Zip 67776

Email rpap@gwtc.net

Daytime Phone 615-3585 Evening Phone 386-2635

Insurance Company De Smet Farm Mutual

Person Insured Richard Papousek

Type of Insurance

Property/Casualty

- Private Auto
- Commercial Auto
- Fire
- Homeowners
- Renters
- Farm/Ranch Owner
- Mobile Homeowner
- Workers Compensation
- Crop/Hail
- Other (please specify) _____

Life and Health

- Individual Life
- Group Life
- Long Term Care
- Individual Health
- Group Health
- Dental
- Medicare Supplement
- Medicare Part D
- Disability
- Other (please specify) _____

Policy Number 38146

Claim Number _____

Complaint Against: Name _____
 Address _____
 Telephone _____

If complaint is against agent or adjuster, please include an address and telephone number.

Complaint (continued on next page)

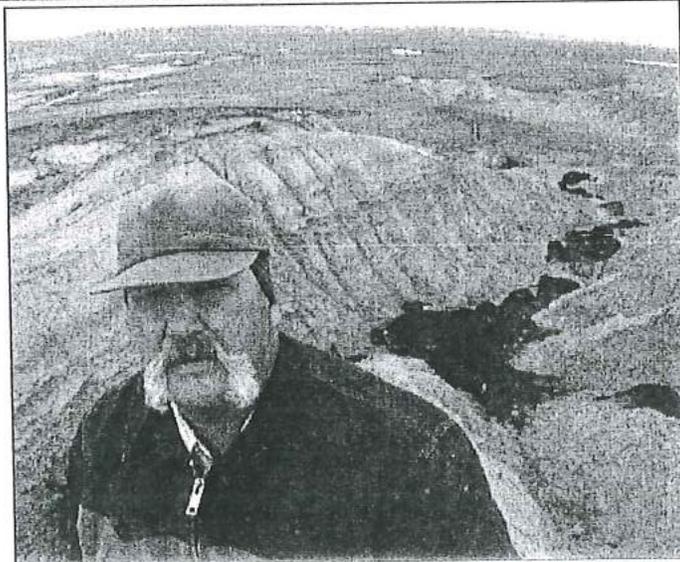
I have 500 head of yearling helpers insured for \$1200 per head for lightning and drowning with this company. I lost 93 head of these helpers in the Atlas blizzard. I had a veterinarian post four head of the helpers with the result being drowning. The company said they have to be submerged in water to drown. None of these heifer were submerged in water. They drown standing up. Drowning submerged in water is only one many ways a animal can drown. The company will not pay the claim.

Papousek
EXHIBIT NO. 10
 4-24-15
 J. QUINN

AGWEEK

Published October 16, 2013, 12:00 AM

Richard Papousek



Richard Papousek, 60, of Quinn, S.D., says 110 cows and 88 calves died drifting away from the "wall of the Badlands" where they became disoriented and plummeted to their deaths. It took until Oct. 10 to discover all of the losses. Elsewhere he lost 86 bred heifers. Photographed Oct. 15, 2013, at Wall, S.D. (Forum News Service/Agweek/Mikkel Pates)(EMBARGO TO OCT. 22, 1 A.M.)
Read the article: Sinking in

Papousek
EXHIBIT NO. 12
4-24-15
J. QUINN

AGWEEK

Published October 21, 2013, 10:12 AM

Sinking in

Richard Papousek says the impact of the early Oct. 4 blizzard on his cattle ranch in Pennington County, S.D., still hasn't been completely realized

By: Mikkel Patas, Agweek

QUINN, S.D. — Richard Papousek says the impact of the early Oct. 4 blizzard on his cattle ranch in Pennington County, S.D., still hasn't been completely realized. It's been slow to sink in.

Papousek ranches with his wife, Lorayna, who works with the farm and ranch, but also is a school teacher in a one-room schoolhouse. Besides the cattle, they raise wheat, corn and millet.

"I didn't think that storm was that bad when it was going on," Papousek says, remembering the blizzard that ran Oct. 3 to 5 and blasted western South Dakota, and southwest North Dakota. "You could see quite a ways during the storm, but that snow was so wet — just heavy, heavy wet snow."

Adnan Akyuz, North Dakota state climatologist, doesn't think the region ever had a blizzard "of this intensity this early in the season. Usually it's well into November before we get one this bad," he says. "This was unusually early with unusually large amounts of snow."

Some areas in the Dakotas received nearly as much snow in one day as they normally receive in an entire winter, he says. He blames a weather system in which southerly flow carrying moisture collided with a northerly flow bearing cold.

"This system was just so unusual," he says. "There were just incredible snowfall totals."

Papousek's pastures are in three general locations. He typically runs about 450 head of mother cows. They also handle 350 to 500 head of yearlings a year, depending on the availability of pasture. The standard plan is to sell bred heifers in Philip every January. This fall, they were holding about 100 of their own bred heifers as replacements to rebuild the herd. They had about 230 bred heifers to sell.

The day before the blizzard, they'd taken precautions, moving animals into protected areas, but to no avail.

"Now we have 137 of them left," Papousek says.

Sickening reality

The tragedy began to sink in hard on Oct. 5 and 6 when Papousek finally got to a set of yearlings south of Quinn and they had all perished.

They had become disoriented in the snow, and drifted about five miles south to Interstate Highway 90 and up to three miles east. Some crossed Interstate 90.

"You get down there and see that and you almost get sick to your stomach — I did anyhow." There were 75 dead yearlings along I-90.

Even more grisly was a second herd on pasture along the famous "wall of the Badlands," near the town of Wall. Now it's death valley — ravines filled with the carcasses of dozens of his cows.

They'd been placed on the lowlands, presumably protected by the wall. But the animals found a way up a ravine and onto the plateau above, and then got lost, disoriented, and wandered back over to the precipice to their death.

Luckily, one had survived and a farm employee, Mike Luedeman, found and saved it. It was a rare positive outcome.

Helping hands

The emotional impact is blatant. Papousek says the cattle are kind of like family. They're not children, of course, but the rancher does everything he can to keep them alive and prospering.

"They're your livelihood; you've got to treat them good," he says.

Financially, the storm has been devastating.

"I told my wife that at 60 years old, I'm not so sure I want to rebuild this thing. I was thinking about maybe retiring instead of working for the rest of my living days."

Neighbors Troy and Dawn Richter often have 300 to 320 pregnant mother cows this time of year. The storm probably reduced the herd by 100 head. Last year, the mother cows were worth about \$1,500 to \$1,800, but this year, Troy thinks they could go up to \$2,200 or more because of strong calf prices. Some ranchers might look out of state for calves to rebuild herds.

Richter, 45, figures the storm cost his family \$300,000 to \$350,000.

One of the poignant aspects of the situation is how it brings out the best in people.

Richter says he's appreciated the help from friends and neighbors.

"We've been awful fortunate to have some awful good neighbors," he says. "There hasn't been a day yet that I haven't been on the phone with all of them, once or twice a day, wondering who can help who where. That's what'll get a person through a deal like this — your friends and your neighbors."

The Richters sold calves in Philip. The calves averaged 560 pounds and brought \$1.88 per pound — an excellent price. He says his family will be meeting soon to figure out the next step, financially. The Richters have five children, including two in college at South Dakota State University in Brookings, so there are lots of things to figure out.

Struggling together

The Papouseks have a lot invested in their herd, and in the area. The family has lived here since 1949. Papousek and a brother, Duane, split a partnership about 15 years ago. Richard started his current herd of Angus. He prefers the lighter, 1,200-pound cows, in part because they eat less grass in the dry years.

Richard has a stepson, Evan, who teaches agriculture in Wagner, S.D. He's helped during the crisis and at other times, but has asthma and isn't likely to farm full-time. Daughter, Lissa, is a junior in college in Chadron, Neb., and would like to teach school and run the ranch on the side someday.

On Oct. 15, Papousek says he should be weaning calves now, but it's so muddy he's not doing it for fear of pneumonia and because of the inconvenience of hauling in feed.

"I suppose we're going to have to wait until it freezes up to bring in the cattle to the lots and feed them," he says.

Instead, he was helping Richter haul home some stray cows that had been accumulated at the Papousek place on Oct. 9, but couldn't immediately be moved, in part because of high water near the Richter place.

Papousek says the losses are hard to figure out.

"I'm pretty sure they 'drowned' standing up," he says of his cattle, but these insurance companies "do not want to define drowning," Papousek says. "They think drowning happens in a dam. I've talked to professionals, veterinarians that say that isn't necessarily the definition of drowning." He's talking with lawyers, but isn't sure how it'll end.

"I was planning on kind of cutting back in about five years, not being in the center of a refinance deal," Papousek says, adding that he'd been planning on doing more hunting and fishing. He has a boat at Pierre, on the Missouri River. Other than breaking a leg and ankle in a fall from a ladder in March 2012, he's in good health.

But the future is uncertain. The only bright side for sure is that the extra moisture this year will mean the surviving cattle will eat well in the spring.

Tags: blizzard 13, winter storm atlas, livestock, updates, blizzard

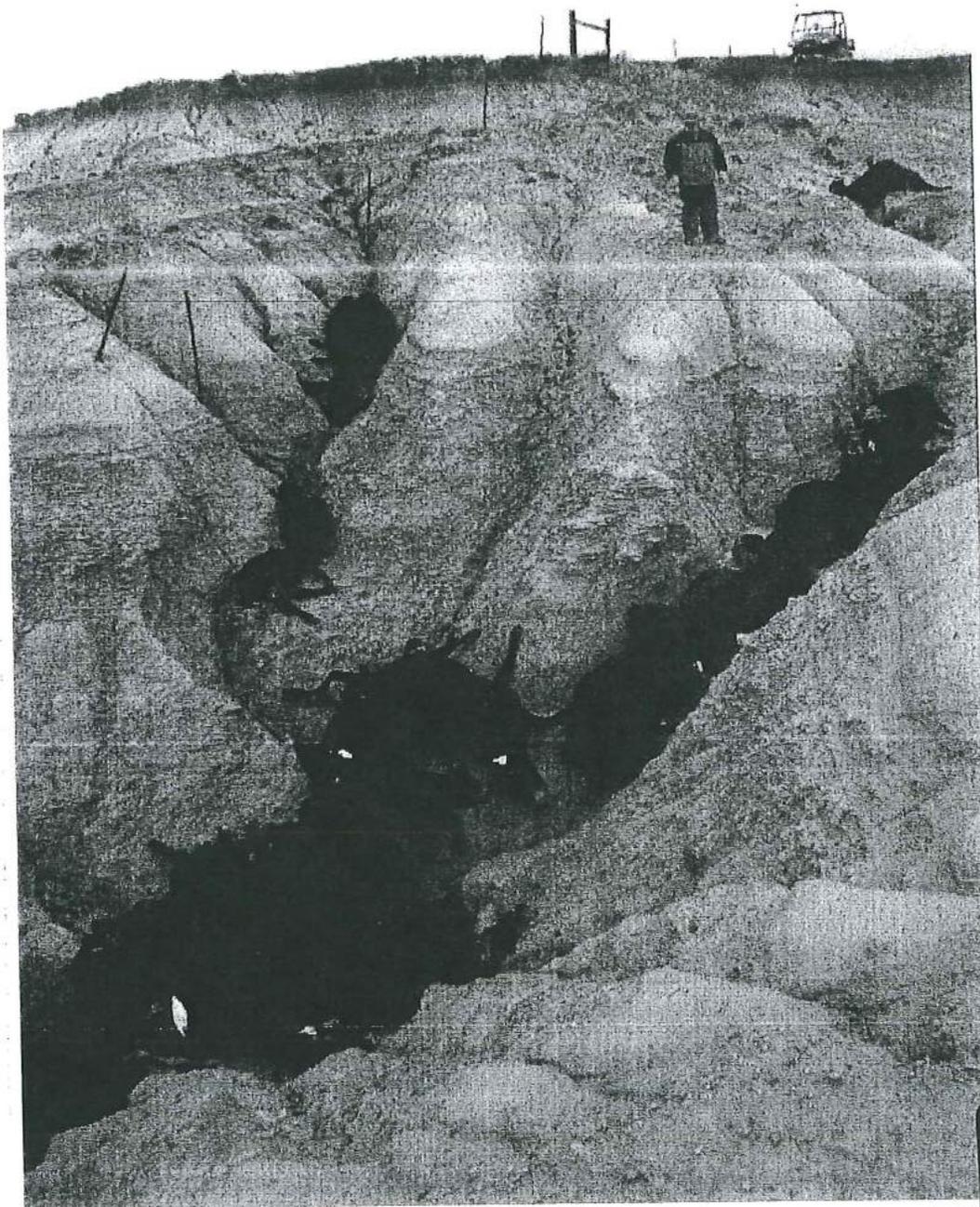
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Blizzard-struck cattle producers still deciding how to dispose of dead

Posted on October 25, 2013



Rapousek
EXHIBIT NO. 13
4-24-15
J. QUINN

On Oct. 15, I shot this picture of some of Richard Papousek's cattle that had wandered up a Badlands wall near the town of Wall, S.D., during an Oct. 4 blizzard, and then were forced over a steeper area to their death.

On Oct. 24, ranching victims of the Oct. 4, 2013, blizzard in western South Dakota are still working on how to properly get rid of dead cattle. The weather disaster is clearly historic and devastating financially for individuals and for communities that depend on them.

Richard Papousek of Quinn, S.D., who lost cattle near Wall, says he's still working to get sufficient paperwork to a lawyer over whether his cattle that had insurance can be considered drowned if their lungs were heavy with water – asphyxiated — but they did not become submerged in surface water like a river, creek or stock dam.

As for the piles of Papousek's cattle in places like one pasture just east and south of the city of Wall, he says there are still questions on how to handle them.

"We discussed it at a meeting last night," Papousek says, referring to a group of ranchers that graze on public lands. "I think we'll be able to maybe burn them. If we can, we'll get a bunch of old (wooden) posts and putt them in there. I think that might work." There were even more that have recently shown up than when I went to his place on Oct. 14.



I photographed Richard Papousek talks on the phone on Oct. 15 about what constitutes a "drowned" beef animal for insurance purposes. Ten days later, he says he's still working on that issue.

It isn't clear whether the federal government's return to work will hasten any relief for producers like Papousek. The U.S. Department of Agriculture's livestock aid

programs aren't currently in effect, but the USDA's Farm Service Agency has urged producers to keep track of losses in case programs eventually become available.

This entry was posted in Uncategorized by ag-at-large. Bookmark the permalink [<http://ag-at-large.areavoices.com/2013/10/25/blizzard-struck-cattle-producers-still-deciding-how-to-dispose-of-dead/>].

AGWEEK

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Winter Storm Atlas one year later

Gary Cammack says ranchers who stop in at his Cammack Ranch Supply store in Union Center, S.D., have been commenting about how the clouds, mist and fog in some of the waning days of September remind them of the weather just before the blizzard that hit the region Oct. 3 to 5, 2013.

By: Mikkel Pates, Agweek

FARGO, N.D. — Gary Cammack says ranchers who stop in at his Cammack Ranch Supply store in Union Center, S.D., have been commenting about how the clouds, mist and fog in some of the waning days of September remind them of the weather just before the blizzard that hit the region Oct. 3 to 5, 2013.

"People were telling me it created a tiny flashback; it's definitely on their minds," says Cammack, a Republican state representative and his party's unopposed nominee for state senate.

Ranchers who lived through it remember how the weather turned from 80 degrees to a fast-moving blizzard, later named Atlas. Union Center was dubbed the "epicenter" of the livestock damage, according to officials at the time.

A year ago, the initial predictions started at 3 to 6 inches of snow. Then it increased to 6 to 12 inches — still nothing to write home about. Ranchers who could move their cattle closer to home did so. Winds up to 70 mph drove into the hides of cattle that hadn't grown their winter coats. The wind drove them over cliffs in the Badlands and into creeks and draws to their deaths.

Ranches in the Black Hills picked up nearly 5 feet of snow, but the cattle damages were the most stunning to the east out on the plains, in South Dakota towns such as Phillip, Wall, Faith and Union Center.

It took weeks to count up the losses. Some of the financial accounting took months and some say it will never be known. Animals had sometimes drifted 10 to 12 miles from home. Some were found under snow drifts that didn't melt for more than a month before the true winter would set in.

43,000 head

Based on relief programs, the South Dakota governor's office figured 43,000 animals lost their lives, including entire herds of cattle and strings of horses. Cammack, who now thinks the true losses are closer to 60,000 animals, says there was the financial loss, but the immediate impact on ranchers was the loss of life.

"People who came over a hill and saw their losses for the first time were thinking that they had failed in their responsibilities as the steward of that living thing that had died," he says. "The economics come into it, but it was far from their first thought."

Emotional support from relief efforts offered a big boost. Miles City, Mont., rancher Ty Linger helped establish the Heifers for South Dakota campaign, which would send thousands of herd replacements and money to storm-stricken ranchers. Many people gave some of the best cattle they had.

Linger, 34, says the Heifers for South Dakota project allowed the donation of 1,145 bred heifers to qualifying recipients. Including the value of the calf and at today's increased values, that conservatively would be worth \$3.5 million, he says.

The formal project wound down in June 2014, but a couple of ranch families have approached him about donating more cattle this fall, and so the organization will resume, he says, but not on the multi-state level it was at the height of the effort.

"We'll start accepting heifers in the next couple of weeks for delivery in mid-November," Linger says.

Linger remembers knowing he had to take action after seeing news reports the Monday after the weekend storm.

"It really pulled on my heart," he remembers. "If I'd gotten a gooseneck trailer full, I would have been tickled, but we got over 100 times over that."

People who wish to donate can contact Linger at 406-853-3188, email the organization at heifersford@outlook.com, or send funds to the North Central Resource Conservation Development, 800 West Dakota Ave., Pierre, S.D., 57501. He says the organization still has some carryover donated funds that will be turned into cattle and donations this fall.

The South Dakota stock grower and sheep grower associations and friends pushed the Rancher Relief Fund, supported by rural and urban well-wishers both near and from across the world. The fund compensated animal losses of all types with a total of \$5.4 million, including \$1.6 million that went to Meade County, which includes Sturgis and Union Center. Other hard-hit counties were Pennington and Custer.

"The only thing that matched the devastation of the blizzard was the volume and frequency of the generosity that followed," Cammack says. "It's overwhelming. There are literally a thousand stories that will never be told because people did some generous thing and the donor wanted to be anonymous."

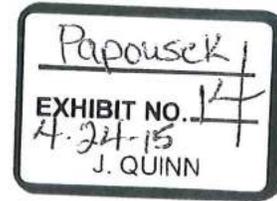
Richard Papousek of Quinn, S.D., lost 230 head of cattle — about 37 percent of his herd. The relief efforts of people all over the country were immeasurable, says Papousek, who was featured by Agweek in the aftermath of the blizzard.

"The generosity and the current prices we're getting for our cattle," have gotten the family through.

The heifer donation brought him 13 bred heifers and \$8,000 in cash. The relief fund itself brought \$60,000. People in the town of Wagner, S.D., where his son is an agriculture teacher, donated \$6,500.

He and his wife, Lorayna, received \$250,000 through the Livestock Indemnity Program. He says the totals account for about half of the \$600,000 in financial losses they sustained.

Papousek hired a veterinarian to come to his ranch and do a forensic study of some of his dead animals, arguing they technically had drowned with too much moisture and water in their lungs, so should be covered by insurance. His insurance company denied the claim. He took his case to the South Dakota



Insurance Commission, which recommended the company pay the indemnity. The company declined and now the case is pending in Pennington County district court.

"We're supposed to get a judge to rule on it," Papousek says, indicating the case is worth about \$125,000 to him.

Farm bill support

Just based on raw cattle numbers, the economic loss is approaching \$100 million, Cammack says. But he adds the losses were even larger because 70 percent of the cattle lost were mature cows.

"Rancher after rancher I talked to said that was the case," he says. "The mature cow that died in October was carrying the 2014 calf crop in her belly. That's a loss of the cow that died there, but the calf she was carrying. You've lost future income, lost genetics."

Leaders hailed the private relief efforts as a vital lift, but the average value of cows and calves at the time of the storm was probably \$1,500. The relief fund provided about \$125 per animal — less than a tenth of the value.

State government officials, including the governor and lieutenant governor, were on the scene.

"Everybody was pulling in the same direction," Cammack says.

But the heavy lifting on the financial side came from the federal government with the passage of the farm bill in February 2014 and the speedily reconstituted Livestock Indemnity Program. Ranchers were eligible for up to \$150,000 per individual and \$250,000 per active ranching couple. The program paid 75 percent of the value at the time of the storm.

Michael Scuse, a top U.S. Department of Agriculture official who later was promoted to undersecretary of agriculture for farm and foreign agricultural services, made sure his troops were ready to deliver aid as soon as it was passed into law.

Scuse visited the region twice and was applauded for putting his heart and USDA's muscle into the efforts. Signup for the program was available within 60 days of President Barack Obama signing the farm bill.

According to USDA's Farm Service Agency office in Huron, S.D., the state was No. 1 in LIP payments for the nation, so far in 2014 providing \$32.8 million of the nation's \$49 million paid out on 2013 calendar losses.

To compare, LIP payments for 2012 in the state had been \$209,944, says Lynn Stoltenburg, a state FSA program specialist. The program doesn't keep track of how many animals it compensated for, but he says the October 2013 storm accounted for the lion's share of the damage.

Cammack believes the LIP program "accelerated the economic recovery by at least a decade, and that might be an understatement." He says the federal government met its true purpose, which is to "do for folks what they can't do for themselves."

Rebuilding together

Even with the financial help, however, ranchers suffered. Some cattle losses weren't fully deductible because the animals had been raised as replacements within a herd and couldn't be sufficiently documented as a proven cost. And ranchers pay taxes on income from government and private programs.

Famously, cowboys don't cry, Cammack says. But as ranchers slowly dug out and made it to the store, at tiny Union Center, Cammack would regularly ask how they'd fared in the blizzard. More than one would start to respond and then disappear to the coffee pot in the back of the store, or to the restroom, and not come back until they'd gathered themselves.

Cammack particularly remembers one bachelor rancher who came into the store and announced to Cammack that he'd gotten "married." It was a kind of joke the man had seemed to have rehearsed to put some humor in the situation.

"He said, 'Three weeks ago I got married to Mother Nature. She took the cows, and I kept my land.'"

National impacts

As devastating as it was, Atlas didn't have a huge effect on the nation's livestock economy. A 60,000 animal loss is half of the nation's daily cattle kill of about 120,000 — a drop in the bucket. The five-year drought in southern states such as Texas and Oklahoma was having a bigger effect.

Rising cattle prices both increased the value of animals ranchers needed to replenish herds and increased the value of what they had left.

"If prices would have been at the level they were at in 2012 and early 2013, it would have been hard to recoup as we have," Papousek says. Calf prices today are \$500 more than they were a year ago, he says.

South Dakota State University climate specialists last week called the blizzard an "anomaly" that occurs about once every 10 years, but with devastatingly poor timing in this case. There has been an increase in water vapor in the air since 1966, but it doesn't necessarily account for extreme conditions and not necessarily attributable to a changing climate, says Laura Edwards, an SDSU climate field specialist.

As the anniversary of the storm approached, South Dakotans were listening to predictions of another fall rain and temperatures dipping into the 30s on Oct. 2. There were no blizzard predictions yet.

But ranchers needed to ask whether winter could come that early a second time because it already has. Rapid City, S.D., had received 8 inches of snow on Sept. 11, 2014, the earliest since 1888, according to the National Weather Service.

Tags: winter storm atlas, blizzard 13, livestock, agribusiness, updates, blizzard

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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
COUNTY OF PENNINGTON) SEVENTH JUDICIAL CIRCUIT

_____) File No. 14-959
RICHARD PAPOUSEK and)
LORAYNA PAPOUSEK,)
)
) Plaintiffs,)
)
) Deposition of:
vs.)
) JIM McCONAGHY, DVM
)
DeSMET FARM MUTUAL INSURANCE)
COMPANY OF SOUTH DAKOTA,)
)
)
) Defendant.)
_____)

BEFORE: Jeanne Speck Quinn
Court Reporter and Notary Public
Rapid City, South Dakota

DATE: April 23, 2015 at 9:15 a.m.

PLACE: Golden Veterinary Services
308 James Avenue
Wall, South Dakota

APPEARANCES:

Representing the Plaintiffs: **MR. MICHAEL M. HICKEY**
Bangs, McCullen, Butler,
Foye & Simmons
333 West Boulevard
Suite 400
Rapid City, South Dakota

Representing the Defendant: **MS. JESSICA LARSON**
Beardsley, Jensen &
VonWald
4200 Beach Drive
Rapid City, South Dakota

Also Present: Mr. Richard Papousek
Plaintiff

I N D E X

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| Exhibit 6 - Golden Veterinary Services Correspondence, June 23, 2014 | 11 |
| Exhibit 7 - WeatherSource, Official Weather: Quinn, SD (6 pages) | 19 |
| Exhibit 8 - RC Journal article, Stress killed many cattle in blizzard, state says (3 pages) | 23 |
| Exhibit 9 - Tri-State Livestock News article, Drowning in mud and snow: The insurance debacle following Atlas (5 pages) | 26 |

* * * *

3

1 JIM McCONAGHY, DVM,
 2 called as a witness, being first duly sworn, testified as
 3 follows:
 4 EXAMINATION BY MR. HICKEY:
 5 Q Morning, Doctor. Mike Hickey is my name. I represent
 6 Richard and Lorayna Papousek in this proceeding, and I'm
 7 going to be asking you a few questions today. If you
 8 don't understand my question, would you please stop me
 9 and tell me to correct so we're on the same page; okay?
 10 A Uh-huh.
 11 Q Would you state your name, please, for the record.
 12 A Jim McConaghy.
 13 Q And where do you reside?
 14 A Wall, South Dakota.
 15 Q And what's your occupation?
 16 A Large animal veterinarian.
 17 Q Okay. And how long have you been a large animal
 18 veterinarian?
 19 A Since 1999.
 20 Q Can you just give me your education and training
 21 background, please?
 22 A Graduated the Ohio State University in 1999 from the
 23 School of Veterinary Medicine.
 24 Q So you're a Buckeye?
 25 A I'm a Buckeye.

4

1 Q All right. They've got a good football team.
 2 And have you been practicing veterinarian medicine
 3 then since that time?
 4 A Yes.
 5 Q In South Dakota?
 6 A In here, right here in Wall.
 7 Q Are you from this area originally?
 8 A No, from Ohio.
 9 Q Okay. Why did you get out to South Dakota?
 10 A I wanted to work with beef cows.
 11 Q Okay. Are you licensed to practice in South Dakota?
 12 A Yes.
 13 Q Do you know Richard and Lorayna Papousek?
 14 A Yes.
 15 Q How do you know them?
 16 A Clients for the past 10 years or so.
 17 Q What kind of things have you done for them over the
 18 years?
 19 A We have -- I've worked on his horses. I've even seen
 20 his small animals, his dog and cats. And then, of
 21 course, some herd work off and on.
 22 Q Directing your attention to October of 2013, did Richard
 23 contact you about performing some -- an examination of
 24 some cattle that had died in the blizzard?
 25 A Yes.

5

1 Q And if your records indicated that on or about
 2 October 16th, would that be about correct?
 3 A Yes.
 4 Q And would you just tell me what it was that he asked you
 5 to do and what you did do.
 6 A He called me to examine a multi-death scene from the
 7 October blizzard. He wanted to have me do a necropsy on
 8 them and determine the cause of death.
 9 Q And did you do that?
 10 A Yes.
 11 Q And what did you do?
 12 A Physically?
 13 Q What is a necropsy, I guess?
 14 A Oh. Physically, we just open up the animal and examine
 15 all organs, all organ systems, and try to determine if
 16 there's anything abnormal.
 17 Q And how many animals did you examine, if you remember?
 18 A Oh.
 19 Q And if you don't, that's fine.
 20 A 8 to 10, maybe.
 21 Q And did you perform a complete necropsy?
 22 A Yes.
 23 Q And, what, is that kind of the animal equivalent of an
 24 autopsy on a human?
 25 A Correct.

6

1 Q Okay. And when you did your examination, did you find
 2 any -- what were your findings?
 3 A In the abdomen there was no significant findings at all.
 4 When we entered the thorax, the chest cavity, we could
 5 instantly see there was fluid laying on the outside of
 6 the lungs. And then on cut section of the lungs they
 7 were wetter and heavier than normal. You could feel the
 8 heft. A lung is normally really fluffy and feels like a
 9 sponge, and these felt like a wet sponge. They're
 10 heavier than you expect. You know, like grabbing the
 11 empty milk jug, you know, when you think it's full.
 12 On cut section we could squeeze the lung and foam
 13 and fluid would ooze out. When we cut through the
 14 airways, like the trachea, it was full of foam, which is
 15 just water -- or air bubbles trapped in the water.
 16 Q When you got into the chest cavity and you found that it
 17 was a sponge and heavier --
 18 A Uh-huh.
 19 Q -- was that because it was filled with some -- with
 20 liquid or water?
 21 A Absolutely.
 22 Q Okay. And what did you conclude from that, if anything?
 23 A It appeared that they -- well, when they have too much
 24 water in there, they can't exchange oxygen to their
 25 bloodstream. And these actually had so much foam in

7

1 their trachea and all their little airways that they
 2 couldn't even pass air in. They were plugged up. The
 3 cause of that -- or that results in drowning and death.
 4 Q Were some pictures taken of --
 5 A Yes.
 6 Q -- your --
 7 (Exhibit 1 marked for identification.)
 8 Q I show you what has been marked as Exhibit 1. Can you
 9 just describe what that depicts?
 10 A Yep. This is the head of the cow. One nostril is
 11 submersed in water. The foam coming out of the nasal
 12 passages is exactly what we saw in all of the airways.
 13 There's just no way she can pass any air right there.
 14 Q Okay. And was --
 15 A And this was consistent with all the cattle that we
 16 necropsied.
 17 Q So there were pools of water that they were submersed
 18 in?
 19 A Yep.
 20 Q Okay.
 21 (Exhibit 2 marked for identification.)
 22 Q Showing what has been marked as Exhibit 2, can you tell
 23 me what that is?
 24 A Yes. If you look at the -- I don't know if I can point
 25 or how to describe it to you, but this area here where

8

1 the trachea is on cut section, that is plugged full of
 2 foam there. (Indicating.)
 3 Q So --
 4 A This is an abnormal finding. We should be able to look
 5 in there like an empty pipe.
 6 Q So kind of where your thumb is extended --
 7 A In front of my thumb, yes.
 8 Q -- there's some white.
 9 A Yep.
 10 Q And that's foam from the --
 11 A That's foam.
 12 Q Okay. And we're looking into the trachea, you said?
 13 A Yes, into your windpipe. Yep.
 14 Q Okay. And that should normally be --
 15 A Clear.
 16 Q -- clear?
 17 A Just like an empty tube.
 18 Q So, again, does that indicate the presence of liquid or
 19 water in there?
 20 A Absolutely. The only thing that causes that.
 21 Q Okay.
 22 (Exhibit 3 marked for identification.)
 23 Q Exhibit 3 is another photo of the autopsy?
 24 A Yep.
 25 Q Or necropsy?

9

1 A So where my knife is pointing, that is a longitudinal
 2 slice through the trachea, once again, just showing all
 3 the air bubbles.
 4 Q Okay.
 5 (Exhibit 4 marked for identification.)
 6 Q Exhibit 4?
 7 A Yet again just a close-up of the same.
 8 Q Okay. Of the trachea?
 9 A Of the trachea, yes, and fluid therein.
 10 Q And I've got one more.
 11 (Exhibit 5 marked for identification.)
 12 Q And what does that show; same thing?
 13 A Same thing. I just physically scooped it out on my
 14 fingers there to show it better.
 15 Q And that fluid was present both in the trachea as well
 16 as in the lungs?
 17 A Yes. Lungs are made up of many tiny little airways that
 18 wouldn't really be depicted on a photograph, but they
 19 were completely full.
 20 Q Okay.
 21 A If I would squeeze the lung, it was like ringing a
 22 sponge out. We could make water come out, which is
 23 abnormal.
 24 Q And then based upon your examination and the necropsy
 25 that you performed and your training, did you determine

10

1 a cause of death of these animals?
 2 A They absolutely died due to drowning.
 3 Q What you observed there, did that, in essence, differ
 4 from somebody falling into a pool of water or an animal
 5 falling into a pool of water and drowning that way?
 6 A Sure. In my experience, the lungs look very similar to
 7 one that was submersed in a dam or a pond. Oftentimes
 8 there will be more physical water and it's a faster
 9 death, obviously, with falling into a pool, but the
 10 extent of the necropsy is the same. They're full of
 11 fluid.
 12 Q Okay.
 13 A I guess what I'm trying to say, there will be less foam
 14 because they didn't have as long a chance to try to
 15 breathe through that water.
 16 Q Okay.
 17 A Does that make sense?
 18 Q But the bottom line is the same?
 19 A Same. Yes.
 20 Q Would you say that the cattle suffocated in water, in
 21 fluid?
 22 A Absolutely. And the photos depict that.
 23 Q Would that be considered a respiratory impairment or
 24 submersion or immersion in liquid, what you saw there?
 25 A Yes.

11

1 Q You prepared a letter, did you not, in terms of where
 2 you indicated your opinions as to the cause of death?
 3 A Correct.
 4 (Exhibit 6 marked for identification.)
 5 Q I show you what has been marked as Exhibit Number 6.
 6 Does that set forth your conclusions and opinions?
 7 A Yes.
 8 Q You concluded that the animals died of cardiac arrest;
 9 is that correct?
 10 A Yes.
 11 Q Can you just explain the sequence of how this came
 12 about?
 13 A These animals were highly stressed as -- they were
 14 walking into the wind, rain is coming down hard, they're
 15 inhaling it. The inhalation of rain or drowning results
 16 in a decreased exchange of oxygen from the lungs to the
 17 bloodstream, and as the heart is not receiving enough
 18 oxygen, basically we go into cardiac arrest.
 19 Q Okay. You quote a medical dictionary in your letter; is
 20 that correct?
 21 A Uh-huh.
 22 Q And is that Stedman's?
 23 A Yes.
 24 Q And is that a recognized authority in the practice of
 25 veterinary medicine?

12

1 A Yes.
 2 Q And how does it define "drowning" in that dictionary?
 3 A Defines "drowning" as death within 24 hours after
 4 inhalation of water.
 5 Q And is that your opinion that that's what occurred in
 6 this situation?
 7 A Yes.
 8 Q In your professional opinion, Doctor, does it require
 9 full body submersion in a liquid or water in order to
 10 find drowning to be a cause of death?
 11 A Clearly, no.
 12 Q There's also a dictionary of -- it's Saunders
 13 Comprehensive Veterinary Dictionary; is that correct?
 14 A Uh-huh.
 15 Q Are you familiar with that?
 16 A Uh-huh. I've seen it, yes.
 17 Q Again, is that a recognized --
 18 A Yes.
 19 Q -- authority in the area? If it defines "drowning" due
 20 to suffocation from aspiration of fluids, rather than
 21 full body submersion in water as a drowning, would you
 22 agree with that?
 23 A Yes.
 24 Q Doctor, does the veterinary medical community recognize
 25 a concept called "dry drowning"? Are you familiar with

13

1 that term?
 2 A Yes.
 3 Q Would you explain to the record what that is?
 4 A Dry drowning is if we think of a child that went
 5 swimming during the day, they lay down at night, some of
 6 that water that they've inhaled pools while they're
 7 asleep, plugs up their airways, anoxia, cardiac arrest,
 8 and death.
 9 Q And is there a similar concept in animals, such as
 10 cattle and things like that, where you would have a
 11 similar type of situation?
 12 A We are all physiologically the same, all the animals, in
 13 the way we exchange oxygen, so I would see no reason why
 14 not.
 15 Q And that didn't occur in this situation; is that
 16 correct? Or is it -- are we talking about the same
 17 thing?
 18 A We might be, but I don't think so. I think this is more
 19 direct because these cattle were dying during the fact,
 20 during the rain. It wasn't after they laid down a week
 21 later they died or that night they died.
 22 Q Okay. So this is more of a direct cause and effect?
 23 A Directly. They're walking, drowning, and dying.
 24 Q Okay. Have the opinions that you've given here today,
 25 have they been stated to a reasonable degree of

14

1 veterinary medicine medical probability?
 2 A Yes.
 3 MR. HICKEY: Thank you. That's all the questions
 4 I have.
 5 THE WITNESS: Okay.
 6 MS. LARSON: I have just a couple questions.
 7 EXAMINATION BY MS. LARSON:
 8 Q I want to take a look at this letter --
 9 A Yep.
 10 Q -- real quick.
 11 The letter indicates that you were contacted on
 12 October 16th, 2013; correct?
 13 A That's what it states, yes.
 14 Q Do you have any notes from the telephone conversation or
 15 the necropsy that you performed?
 16 A Potentially, yes.
 17 Q I see --
 18 A I should.
 19 Q I see that you wrote this letter on June 23rd, 2014.
 20 A Yep.
 21 Q How did you put together this letter?
 22 A We had photos of all these, memory, and I will have
 23 necropsy notes that we can find for you.
 24 Q If you could provide me with a copy --
 25 A Yep.

15

1 Q -- of those necropsy notes --

2 A Yep.

3 Q -- that would be wonderful.

4 Did you follow standard procedures in all of the

5 necropsies that you performed that day on the cattle?

6 A Yes.

7 Q Okay. So if you could just explain, you go out to the

8 site, and then what's your first step?

9 A External examination of the animal and the environment.

10 Do you want physically how I --

11 Q If you could just run through the systems, maybe, that

12 you -- you know, if you always look at the --

13 A Okay.

14 Q Yeah.

15 A All right. Well, what I did is I removed the front leg

16 at the scapula and open it up. I remove the back leg at

17 the pelvis and I open it up. At that point in time we

18 can examine muscle right there and some vessels are

19 going to be cut and we can see if there's an abnormal

20 color of the blood or something in case of a poisoning.

21 Then I proceed to open the abdomen. I skin it

22 out, and I open the abdomen, and first I look, just

23 physically, if there's any obvious abnormalities. At

24 that point we remove the rumen and the intestines, and,

25 you know, go through each of those all the way out to

16

1 the colon to the rectum. So now we've eliminated the

2 back half of the GI tract.

3 At that point we can look at the kidneys. They're

4 located at the back there. Look at the kidneys,

5 bladder, we look at the liver there and the spleen. No

6 abnormalities were noted. At that point we open up the

7 chest cavity, look at the heart and lungs. And that's

8 it.

9 I did not do a -- there was no brain examination

10 done on this. That's extensive and only indicated in

11 cases where we think there was a neurologic condition.

12 Q Could you describe the process where you were handling

13 the lungs? Did you remove the lungs?

14 A Yeah.

15 Q Okay.

16 A Yeah, remove lungs, and, as photos show, we remove them,

17 physically feel them. That is a -- it's a technical

18 term, "wetter and heavier" is recognized, and they were

19 wetter and heavier.

20 We performed cut sections on the lungs to see if

21 there's abscesses or pneumonia or something like that

22 going on also. We did not find any of that.

23 Q Do you -- being a vet in the area, I'm assuming that you

24 have some pretty strong memories of the winter storm?

25 A Right.

17

1 Q In my recollection, the storm began on Thursday night.

2 Is that what you recall, as well?

3 A I'd be lying if I told you the day of the week.

4 Q Okay, sure.

5 A I'm sorry.

6 Q What was the storm like for you? And my specific

7 questions are were you snowed in, yourself?

8 A Uh-huh.

9 Q How long were you snowed in?

10 A Okay. Yes, I was snowed in. I was snowed in for, I

11 believe, three days.

12 Q What is your address where you live where you would be?

13 A 18902 Cedar Butte Road, Wall, South Dakota.

14 Q And is that where you were snowed in?

15 A Yes.

16 Q How much snow did you receive at your location?

17 A It's hard to tell, it drifted so much. I don't know.

18 Q And did you lose any electricity?

19 A Yes.

20 Q How many calls, as a veterinarian, did you receive as a

21 result of the storm? And if you can't tell me

22 exactly --

23 A Oh, man.

24 Q -- if you could just give me a general.

25 A 20.

18

1 Q Did you see animals in this location?

2 A Yes.

3 Q Did you go out and look the other animals, live and

4 deceased --

5 A Yes.

6 Q -- on farms and ranches?

7 A North, south, east, and west of Wall. I performed maybe

8 70 to a hundred necropsies.

9 Q Were you the plaintiff's regular vet for his beef

10 cattle?

11 A No.

12 Q Do you know who his regular vet is?

13 A No.

14 Q Had you ever, in the past, in the one year before this

15 October 16th date seen any of his beef cattle, his

16 heifers, any livestock?

17 A I would have to check the record. I don't know.

18 Q Okay. Was October 16th the first day that the plaintiff

19 ever contacted you regarding --

20 A Yeah --

21 Q -- these cattle?

22 A -- I know. I can't say for sure. He may have called a

23 day before or two days before, but I was busy doing this

24 elsewhere, so he might have been on the list. I can't

25 say for sure.

19

1 Q What did he tell you when he called you?

2 A That he had, I believe, 90-some dead animals and he said

3 that his insurance company required them to be posted,

4 necropsied.

5 Q Did he tell you what he was looking for?

6 A Nope.

7 Q Did he tell you to come and determine whether they had

8 drowned?

9 A Not that I recall.

10 Q Okay. What was the weather like?

11 A That day?

12 Q Yes.

13 A Gee-whiz. I don't know if it was 40 or 50 degrees?

14 40's maybe, low 40's.

15 Q Does the weather have any effect on a dead animal?

16 A Yeah.

17 Q What effect might that have?

18 A They've become autolytic, which means, layman's terms,

19 they start rotting after a while.

20 (Exhibit 7 marked for identification.)

21 Q I'm going to show you what I believe will be marked as

22 Exhibit 7.

23 A Uh-huh.

24 Q If we could just flip pages. The way that I had to do

25 this weather search was by one-week periods.

20

1 A Sure.

2 Q So if we could just move to the third page of this

3 weather search, it appears to begin on 10/03 and go

4 through 10/11.

5 A Uh-huh.

6 Q And the columns on the sheet go through the max, mean,

7 and minimum temperatures of the week following the

8 storm. And you could see that the temperature in the

9 week following the storm varied from 39 degrees to

10 72 degrees.

11 A Uh-huh.

12 Q Do you see that?

13 A Yep.

14 Q And then if you turn the page again, we move on past

15 into the next week and you can see the max and the mean

16 and the minimum temperatures in the week, in the next

17 week following the storm, and it looks like they were,

18 again, anywhere, the maximum temperatures were anywhere,

19 between 43 degrees and 68 degrees --

20 A Uh-huh.

21 Q -- is that right?

22 A Yep.

23 Q And it appears that on October 16th the temperature, the

24 minimum temperature, was 28 degrees and the maximum

25 temperature was 57.9 degrees.

21

1 A I was close.

2 Q So what would these cattle lying out in the field for

3 12 days --

4 A Uh-huh.

5 Q -- after their death in weather reaching up to nearly

6 70 degrees --

7 A Uh-huh.

8 Q -- 72 degrees have? How would that affect them?

9 A Well, thankfully, we took pictures, and we can see that

10 there's no autolysis going on whatsoever.

11 I'd show you this. You would have to know what an

12 autolytic lung looks like, but this is still a fresh

13 lung. They're cold enough at night that it preserves

14 them. They cool down during the day enough to preserve

15 them through the warmth -- or they cool down at night

16 enough to preserve them through the warmth of the day.

17 This is still a normal-looking lung.

18 MR. HICKEY: What number is that exhibit that

19 you're --

20 THE WITNESS: 4.

21 MR. HICKEY: Thank you.

22 Q And if we look at Exhibit Number 1 --

23 A Uh-huh.

24 Q -- it was noted in Exhibit Number 1 that one of the

25 nostrils is submerged in a pool of water.

22

1 A Uh-huh.

2 Q Is it reasonable to say that that water is melted snow?

3 A Yes, or rainwater.

4 Q And at the time of the cow's death, there would be no

5 way to determine whether there was any water in that

6 location?

7 A Well, there was water in all low spots because it had

8 rained so much, but I wouldn't say that. I guess I

9 can't say for sure, no.

10 Q So when we talked about the commonality of they're being

11 submerged in pools of water, that was likely the result

12 of the melting snow?

13 A I don't know that. There's rainwater every -- I mean,

14 there was mud puddles everywhere before, during, and

15 after the storm.

16 Q How much snow was received in this area?

17 A I'm not a meteorologist. I don't know.

18 Q And we'll --

19 A I don't know. I wasn't over there during the -- I mean,

20 because it did melt fast, too.

21 Q And it did melt --

22 A I don't doubt --

23 Q -- extremely fast; correct?

24 A -- there's water, melt water, there, yeah.

25 Q And I'm just asking --

23

1 A Yeah.

2 Q -- it did melt extremely fast. There was a lot of

3 precipitation followed by warm weather and --

4 A Yep, yep, yep.

5 Q Okay. Do you know the State veterinarian?

6 A Yep.

7 Q Dustin --

8 A Odekoven.

9 Q -- Odekoven?

10 A Yep.

11 (Exhibit 8 marked for identification.)

12 Q I'm showing you what's been marked as Exhibit 8, which

13 is a newspaper article quoting Dustin Odekoven, who is

14 the State veterinarian. In the article it shows that

15 his opinion was that many of the thousands of cattle

16 perished, died, of congestive heart failure brought on

17 by stress.

18 A Uh-huh.

19 Q Do you disagree with that?

20 A Nope. There's lots of stresses that can cause

21 congestive heart failure.

22 Q If you go to the middle of the article with the

23 paragraph that says, At least...

24 A Yep.

25 Q It says, At least they were not lying in water and their

24

1 lungs were full of fluid, Odekoven said. There was a

2 common thought or misconception out there that they must

3 have breathed all that in. That it must have settled in

4 their lungs. That is not the case, however, he said.

5 Rain drenched the livestock for 12 to 18 hours before

6 the blizzard's strong winds and wet snow delivered the

7 killing blow. Those cows likely got hypothermic. They

8 were cold, Odekoven said.

9 As a result, he said, the cardiovascular systems

10 of the cattle were working overtime causing hypertension

11 or high blood pressure in their lungs. It actually

12 caused pulmonary edema and basically caused those lungs

13 to fill with water or fluid, Odekoven explained.

14 Do you agree or disagree with those statements?

15 A That's his opinion, and he didn't post a single cow.

16 He's behind a desk.

17 Q I understand that completely. And so would you disagree

18 that the cattle that you posted were killed by pulmonary

19 edema?

20 A I don't know that it's pulmonary edema. We see -- I saw

21 more fluid. Pulmonary edema is when it's within the

22 tissue. These airways were actually full of the water

23 and foam.

24 Q And is there any way for you to determine 12 days later

25 that the fluid came from outside the cow rather than

25

1 from within its own internal process in creating the

2 fluid?

3 A Yeah, because I believe that the foam is a result of

4 them trying to breathe through it. So -- or maybe I

5 didn't answer that right.

6 Q No, you --

7 A Okay.

8 Q And if I am not using correct terminology --

9 A No, you're fine.

10 Q -- please let me know.

11 A Sure.

12 Q So are you able to determine that that foam, them

13 breathing through the fluid, as I believe you explained

14 it --

15 A Yes.

16 Q -- was them breathing through external fluid that they

17 were breathing in, or that it was them breathing through

18 the fluid that they were creating in their own systems?

19 A I guess that's what I'm trying to say I believe the

20 difference is, is we wouldn't be getting that fluid into

21 those major airways if it was from their internal

22 process that was going on or whatever. I believe, in my

23 opinion, I believe that it's from intake.

24 Q So there's no way for fluid to get into the trachea --

25 A No, I didn't say that.

26

1 Q Okay.

2 A Yep.

3 Q Fluid can get into the trachea --

4 A Yep.

5 Q -- from internal systems?

6 A It could, yes.

7 Q And it can cause something like a pulmonary edema?

8 A Pulmonary edema -- you said it kind of backwards, but,

9 in essence, yes, there could be some pulmonary edema

10 that would cause some amount of fluid, but I just don't

11 believe this amount of fluid would be explained from

12 that.

13 Q What would the effect of the 12-day interim period have

14 on the fluid?

15 A Little to none, that I can suspect.

16 Q We're done with this one for now.

17 A Okay.

18 (Exhibit 9 marked for identification.)

19 Q Showing you what's been marked as Exhibit 9.

20 A Uh-huh.

21 Q This is another news article. I printed this off online

22 and it looks a little different --

23 A Sure.

24 Q -- than if you were to look at it on the screen.

25 I want to just take a couple of minutes to go

1 through. There are several veterinarians that were
 2 interviewed for this article, and I just want to go
 3 through --
 4 **A** Okay.
 5 **Q** -- and see if you agree or disagree with the opinions
 6 that these veterinarians have. The first veterinarians
 7 were Dr. Warren Crawford and Dr. Wade Crawford of Crook
 8 County Veterinary Services in Sundance, Wyoming, who do
 9 not practice in this area and did not post any animals.
 10 **A** Okay. Uh-huh.
 11 **Q** They had their own cattle deaths out of Caputa where
 12 they lost 65 cows and 4 calves, the story indicates. On
 13 the top of Page 2 it says that they arrived fairly early
 14 following the storm, but did not post any cattle.
 15 We didn't see the point because it was 50 degrees
 16 immediately after the storm allowing for decomposition
 17 of carcasses. Their indication was that posting of the
 18 cattle would not have -- I'm reading into this.
 19 **A** Uh-huh.
 20 **Q** This is not a quote from the story.
 21 **A** Right.
 22 **Q** But that they would not have been able to get accurate
 23 results because of the decomposition. We discussed this
 24 already. Do you still believe that you have
 25 accurately --

1 **A** Very healthy-looking tissues is what I can say.
 2 Especially for being 12 days old. I mean, it looks like
 3 the next day in this cattle. They were almost
 4 preserved. I think it was cold enough at night.
 5 **Q** Then if we can go down a couple -- maybe a third of the
 6 way down the page. Do you know Dr. Jim Stangle --
 7 **A** Yep.
 8 **Q** -- and it says he's with Golden Veterinary Services --
 9 **A** Yep.
 10 **Q** -- in Milesville?
 11 **A** Yep.
 12 **Q** Is that an affiliate?
 13 **A** He's my partner.
 14 **Q** He's your partner, okay. And your partner has indicated
 15 in this article that most of the deaths were due to
 16 hypothermia.
 17 **A** Uh-huh.
 18 **Q** And he stated that cow deaths were almost always higher
 19 than calf deaths, and that was even more pronounced in
 20 fall-calving herds. My theory is that baby calves are
 21 born with brown adipose tissue, which is a fat that does
 22 nothing but generate heat. That's what it's there for
 23 around the heart and kidneys.
 24 **A** Uh-huh.
 25 **Q** I think the one reason the younger cows survived better

1 than the adult cattle was because even those spring-
 2 born calves still had some brown adipose tissue, not as
 3 much as fall-born calves, but still some, he explained.
 4 Do you agree or disagree with that comment?
 5 **A** I would agree. And another thing that would render that
 6 a valid statement, the hypothermia, as they're ingesting
 7 all this cold rain, they're going to become hypothermic
 8 faster, too. So, yes.
 9 **Q** He also goes on to indicate that because of the weather
 10 prior to storm, as most of us can remember, and we can
 11 also look at the exhibit regarding the weather, it was
 12 very warm right before the storm.
 13 **A** Yep.
 14 **Q** And he has indicated that the thyroid system was already
 15 gearing up and they had started hairing up for winter,
 16 whereas those fat cows hadn't been taken out of their
 17 thermal neutral zone yet, meaning they were still
 18 slicked off and their thyroid systems hadn't kicked in.
 19 That made them more susceptible to hypothermia in the
 20 storm.
 21 Do you agree with that?
 22 **A** That would absolutely make them more susceptible to
 23 hypothermia.
 24 **Q** Were the cattle that you posted for the plaintiff, was
 25 their cause of death hypothermia?

1 **MR. HICKEY:** Object as asked and answered.
 2 **Q** You can go ahead and answer. He's --
 3 **A** What did he say? I didn't hear what he said.
 4 **Q** He --
 5 **MR. HICKEY:** I objected that I think you've
 6 previously answered that question.
 7 **THE WITNESS:** Okay.
 8 **MR. HICKEY:** But you can answer it again, if you
 9 would like.
 10 **A** Now I forget the question.
 11 **Q** My question is did --
 12 **A** Sorry, I got nervous.
 13 **Q** No, that's fine. My question is did these cattle die
 14 from hypothermia?
 15 **A** I don't think directly from hypothermia. I think it's
 16 a -- it's going to be multi-faceted stresses that killed
 17 them.
 18 **Q** Could you list those stresses?
 19 **A** Inhalation of rainwater, cardiac arrest, maybe less hair
 20 and less, you know, fat absolutely could make them, you
 21 know, more susceptible to anything; and with cardiac
 22 arrest being there, too.
 23 **Q** If we also look up at what the Crawfords had stated up
 24 above, I believe it's the fourth paragraph on Page 2.
 25 **A** Uh-huh.

31

1 Q Another factor in making it difficult to draw exact
 2 conclusions is the fact that the lungs are the shock
 3 organ of the bovine, meaning that anything that happens
 4 to a cow will affect her lungs.
 5 Do you agree with that statement?
 6 A True.
 7 Q And so there are many causes that could create abnormal
 8 findings in the lungs in a necropsy?
 9 A There are many causes that could, yes.
 10 Q Do you know Dr. Vicki Cook?
 11 A Yes.
 12 Q In the article she states, again, that she believes most
 13 died of exposure. They got chilled, started inhaling
 14 moisture and were weak enough they could not get rid of
 15 it.
 16 Do you agree with that statement?
 17 A Absolutely.
 18 Q And so it was a multi-cause death?
 19 MR. HICKEY: Who? What is a multi-cause death?
 20 The cows that Vicki Cook is talking about, or the cows
 21 that Mr. Papousek had?
 22 MR. LARSON: The cows that Mr. Papousek had.
 23 A Well, I believe that, yeah, they inhaled moisture. They
 24 could not get rid of it. They drowned. Yeah, I agree
 25 with her.

32

1 Q In the next paragraph she says, Considering drowning a
 2 technical component of dying from exposure may be a
 3 stretch, but Cook said that many insurance claims she
 4 helped with had no definition or guidelines for what
 5 they would consider drowning, and that she understands
 6 her client's frustrations regarding their coverage, or
 7 lack thereof.
 8 Did you receive any complaints from your clients
 9 about what their insurance companies were considering
 10 the definition of drowning?
 11 MR. HICKEY: Object to the form of the question as
 12 not relevant. The relevant issue is Mr. Papousek and
 13 his insurance company. You may answer, if you can.
 14 A Yes.
 15 Q Did any of those complaints come in prior to
 16 October 16th, 2013 when you went out to look at these
 17 cattle?
 18 A No. I believe people found out afterward, and they were
 19 irate, yes.
 20 Q Did you know that Mr. Papousek had already been denied
 21 coverage for these cattle?
 22 A No.
 23 Q Did he tell you that --
 24 A Before I posted them?
 25 Q Yes.

33

1 A No.
 2 Q Did he tell you that the reason you were coming out was
 3 for insurance coverage?
 4 A Yes.
 5 Q I believe you told me --
 6 A Yep.
 7 Q -- that earlier.
 8 A I said that earlier, yep.
 9 Q Yep. Did you discuss drowning prior to posting the
 10 cattle?
 11 A Probably, because I'd already posted dozens of others.
 12 Q Would your notes from the necropsy indicate that the
 13 cattle drowned?
 14 A Yes. As, I believe, the pictures do also.
 15 Q When we talked about the dictionaries that you had used
 16 to define drowning, Stedman's dictionary, I believe, and
 17 Saunders or Saunders?
 18 A I think Saunders.
 19 Q Saunders Dictionary. Those are specialized
 20 dictionaries; correct?
 21 A I did not have the Saunders. He did. But I have a
 22 Stedman's, yes. It's a medical dictionary. It's not
 23 even -- it covers everything. The Saunders was a
 24 veterinary medical dictionary.
 25 Q And Stedman's is generalized medicine for even humans?

34

1 A Yes.
 2 Q But it is a specialized dictionary?
 3 A Yes.
 4 Q It is not your testimony today that the cattle that you
 5 posted had their heads, nose, mouth, respiratory intake
 6 area submerged in water at the time of death; correct?
 7 A Absolutely. As in a puddle of water? They were not
 8 submerged in a puddle of water, no.
 9 Q Okay. Did you rule out other causes of death?
 10 A Yeah. Yes.
 11 Q Can you definitively rule out that the cattle that were
 12 posted did not -- the cause of death was not pulmonary
 13 edema?
 14 A Can I rule it out absolute -- it's my opinion. No. But
 15 my opinion rules it out based on the quantity of that
 16 air/water exchange, foam, in the airways. That's how
 17 I'm ruling it out.
 18 I know we shouldn't talk about other cattle, I
 19 don't suppose, but I did other cattle from the same
 20 blizzard in this general vicinity earlier, and they have
 21 the same thing.
 22 Q Approximately how many cattle were in the area that you
 23 went to in -- where you posted these cattle?
 24 A Dead cattle?
 25 Q Yes.

1 A In the area, you mean like in this one exact location?
 2 Q Sure.
 3 A We went to several different locations, but maybe where
 4 those pictures are there was probably 10.
 5 Q How did you decide which cattle you were going to post?
 6 A Just ones that -- I guess it might be random, I guess.
 7 Q And did you post cattle from different areas?
 8 A Yes.
 9 Q How long were you on the property?
 10 A For three hours maybe.
 11 Q Would your notes reflect that at all?
 12 A No. Nope.
 13 MS. LARSON: I believe that's all that I have
 14 right now.
 15 MR. HICKEY: Just a couple of follow-up.
 16 FURTHER EXAMINATION BY MR. HICKEY:
 17 Q You were asked earlier whether or not you agreed or
 18 disagreed with Dr. Ode- -- what is it?
 19 A Odekoven.
 20 Q Odekoven? And you kind of gave an explanation, but I'd
 21 like the record to reflect do you agree or disagree with
 22 his opinion that they died of hypothermia?
 23 A I disagree.
 24 Q Okay. And, to your knowledge, did Odekoven perform --
 25 post any cattle?

1 A To my knowledge, no.
 2 Q And then there's been some other questions based upon
 3 some newspaper articles that you were asked about. Did
 4 any of those questions change your opinions that you
 5 have given in this case?
 6 A No.
 7 MR. HICKEY: Thank you. That's all the questions
 8 I have.
 9 MS. LARSON: I have no follow-up.
 10 THE WITNESS: Thank you.
 11 MR. HICKEY: All right. Doctor, you have the
 12 right to have the deposition typed up, you can read it
 13 and sign it before it's filed. You can also waive the
 14 reading and signing, and it's completely up to you.
 15 THE WITNESS: I waive it.
 16 MR. HICKEY. Okay. Thank you.
 17 (The deposition concluded at 10:03 a.m.)
 18 * * * *
 19
 20
 21
 22
 23
 24
 25

1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)
 3
 4 I, JEANNE S. QUINN, Court Reporter and Notary
 5 Public, South Dakota, duly commissioned to administer oaths,
 6 certify that I placed the witness under oath before the
 7 witness testified; that the foregoing testimony of said
 8 witness was taken by me in shorthand, and that the same has
 9 been reduced to typewritten form under my supervision; that
 10 the foregoing transcript is a true and correct transcript of
 11 the questions asked, of the testimony given, and of the
 12 proceedings had.
 13 I further certify that I am not related to,
 14 employed by, or in any way associated with any of the
 15 parties to this action, or their counsel, and have no
 16 interest in its event.
 17 Witness my hand and seal at Rapid City, South
 18 Dakota, this 30th day of April 2015.
 19
 20 _____
 21 JEANNE S. QUINN
 22 My Commission Expires: 08/24/18
 23
 24
 25

Golden Veterinary Services

Jim McConaghy, DVM

308 James Avenue

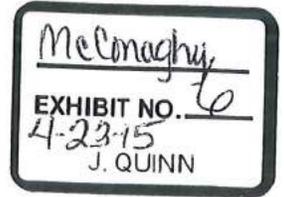
Wall, SD 57790

Phone:

605-279-2077

FAX:

605-279-2659



June 23, 2014

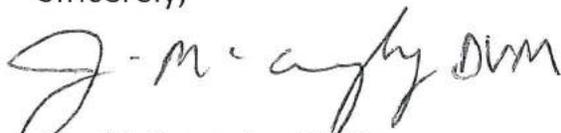
To Whom It May Concern;

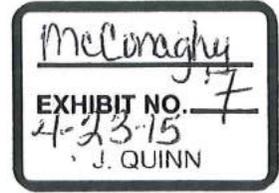
On October 16, 2013 Richard Papousek called upon me to determine and verify the causes of death of cattle he lost during the Atlas Blizzard.

I performed complete necropsies on several bred yearling heifers. The only significant findings were in the chest cavity. The lungs were wetter and heavier than normal. On cut sections, clear fluid was present in all airways. In fact, large amounts of this fluid could be seen on the ground in front of the dead animals as it ran from their noses.

It is my opinion that these cattle inhaled such large quantities of rain and then snow that they actually drowned. Drowning is defined in Stedman's Medical Dictionary as death within 24 hours after inhalation of water. This inhalation results in anoxia (lack of oxygen) and eventually cardiac arrest and death.

Sincerely,


Jim McConaghy, DVM



Official Weather; Quinn, SD

[view the tutorial video](#)

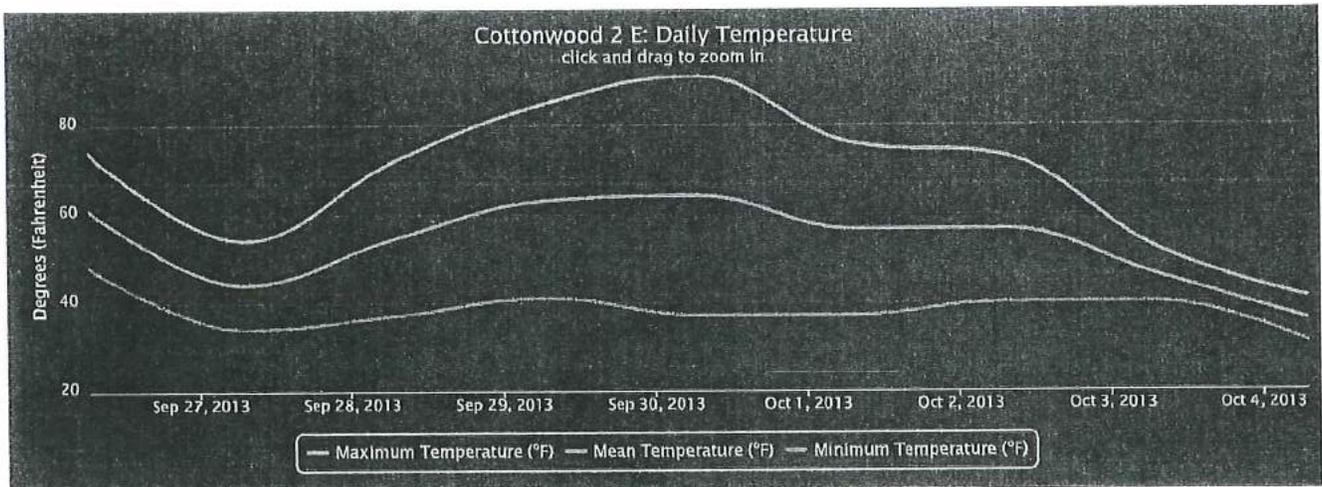
Temperature history is provided as part of this free report. Rain, snow and more are available in [Premium Weather History Reports](#).

Data Sources

This weather data comes from the United States Government's National Oceanic and Atmospheric Administration (NOAA), specifically, the National Climatic Data Center (NCDC) and the National Weather Service (NWS). Data compiled from these government sources is widely regarded as reliable and authoritative and used in our industry as standard and acceptable to rely on. The data is quality controlled by both NCDC and Weather Source.

Weather Station Information

| | | | |
|---------------|------------------|--------------------|--------|
| Station Name: | Cottonwood 2 E | Weather Source ID: | 19601 |
| City: | Kadoka, SD 57543 | NWS ID: | CWDS2 |
| Latitude: | 43.9611° | COOP ID: | 391972 |
| Longitude: | -101.861° | | |
| Elevation: | 2413 ft. | | |



| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|-----------------|-----------------|------------|------------|------------|
| 9/26/2013 07:00 | 9/27/2013 07:00 | 73.9 | 61.0 | 48.0 |
| 9/27/2013 07:00 | 9/28/2013 07:00 | 54.0 | 44.0 | 34.0 |
| 9/28/2013 07:00 | 9/29/2013 07:00 | 72.0 | 54.5 | 37.0 |

| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|-----------------|-----------------|------------|------------|------------|
| 9/29/2013 07:00 | 9/30/2013 07:00 | 84.9 | 63.0 | 41.0 |
| 9/30/2013 07:00 | 10/1/2013 07:00 | 91.0 | 64.0 | 37.0 |
| 10/1/2013 07:00 | 10/2/2013 07:00 | 75.9 | 56.5 | 37.0 |
| 10/2/2013 07:00 | 10/3/2013 07:00 | 73.0 | 56.5 | 39.9 |
| 10/3/2013 07:00 | 10/4/2013 07:00 | 52.0 | 46.0 | 39.9 |
| 10/4/2013 07:00 | 10/5/2013 07:00 | 41.0 | 36.0 | 30.9 |

Table Legend

- Begin Time Begin date/time (in Local Time) for the period summarized by the corresponding row
- End Time End date/time (in Local Time) for the period summarized by the corresponding row
- Max. Temp. Maximum temperature in degrees Fahrenheit ¹
- Mean Temp. Mean temperature in degrees Fahrenheit ²
- Min. Temp. Minimum temperature in degrees Fahrenheit ¹

Footnotes

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- 2 Mean temperature is the average of the daily minimum and maximum temperatures.*



Official Weather: Quinn, SD

[view the tutorial video](#)

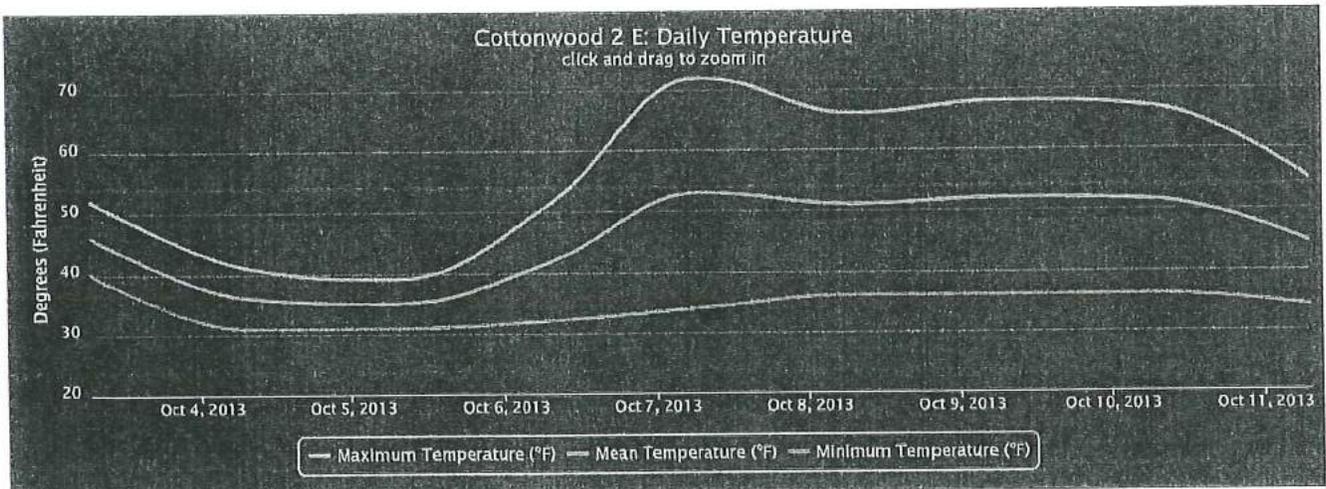
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| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|-----------------|-----------------|------------|------------|------------|
| 10/3/2013 07:00 | 10/4/2013 07:00 | 52.0 | 46.0 | 39.9 |
| 10/4/2013 07:00 | 10/5/2013 07:00 | 41.0 | 36.0 | 30.9 |
| 10/5/2013 07:00 | 10/6/2013 07:00 | 39.0 | 35.0 | 30.9 |

| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|------------------|------------------|------------|------------|------------|
| 10/6/2013 07:00 | 10/7/2013 07:00 | 51.1 | 41.6 | 32.0 |
| 10/7/2013 07:00 | 10/8/2013 07:00 | 72.0 | 53.0 | 34.0 |
| 10/8/2013 07:00 | 10/9/2013 07:00 | 66.0 | 51.0 | 36.0 |
| 10/9/2013 07:00 | 10/10/2013 07:00 | 68.0 | 52.0 | 36.0 |
| 10/10/2013 07:00 | 10/11/2013 07:00 | 66.9 | 51.5 | 36.0 |
| 10/11/2013 07:00 | 10/12/2013 07:00 | 55.0 | 44.5 | 34.0 |

Table Legend

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Official Weather: Quinn, SD

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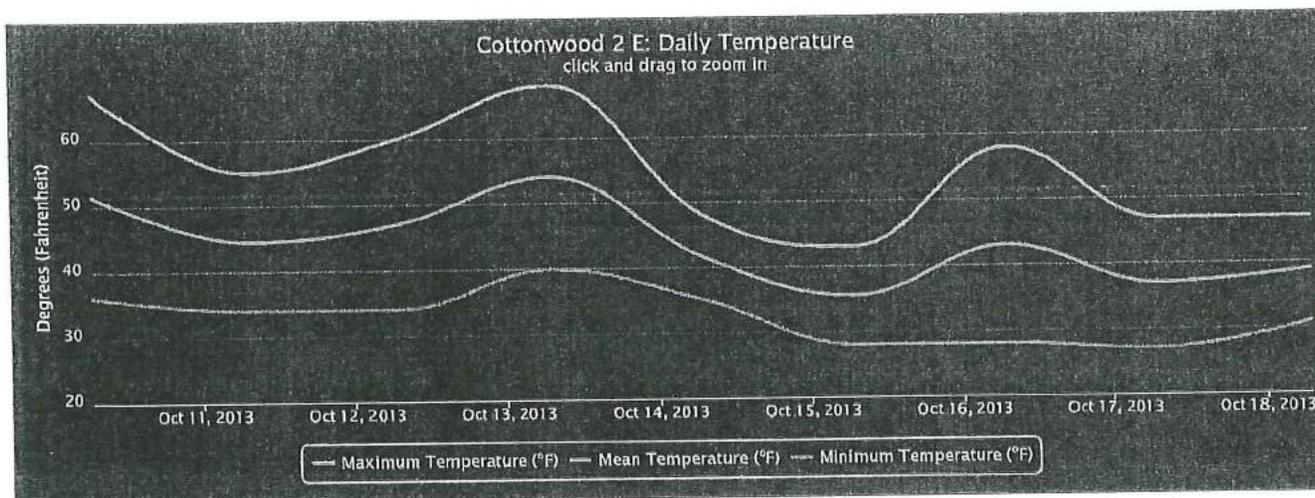
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Data Sources

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| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|------------------|------------------|------------|------------|------------|
| 10/10/2013 07:00 | 10/11/2013 07:00 | 66.9 | 51.5 | 36.0 |
| 10/11/2013 07:00 | 10/12/2013 07:00 | 55.0 | 44.5 | 34.0 |
| 10/12/2013 07:00 | 10/13/2013 07:00 | 60.1 | 47.1 | 34.0 |

| Begin Time | End Time | Max. Temp. | Mean Temp. | Min. Temp. |
|------------------|------------------|------------|------------|------------|
| 10/13/2013 07:00 | 10/14/2013 07:00 | 68.0 | 54.0 | 39.9 |
| 10/14/2013 07:00 | 10/15/2013 07:00 | 48.0 | 41.6 | 35.1 |
| 10/15/2013 07:00 | 10/16/2013 07:00 | 43.0 | 35.5 | 28.0 |
| 10/16/2013 07:00 | 10/17/2013 07:00 | 57.9 | 43.0 | 28.0 |
| 10/17/2013 07:00 | 10/18/2013 07:00 | 46.9 | 37.0 | 27.0 |
| 10/18/2013 07:00 | 10/19/2013 07:00 | 46.9 | 38.9 | 30.9 |

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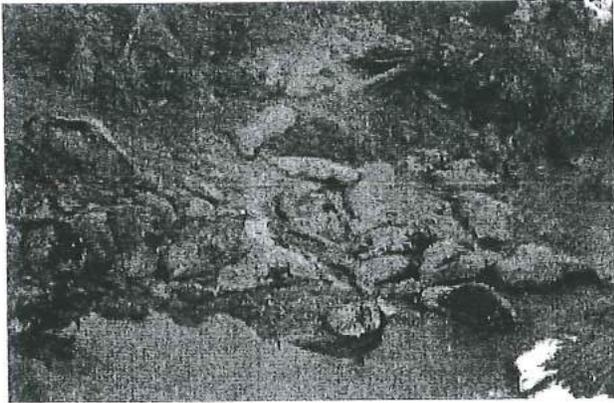
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Stress killed many cattle in blizzard, state says



NOVEMBER 07, 2013 5:00 AM • ANDREA J. COOK
JOURNAL STAFF

Many of the thousands of cattle that perished as a result of the Oct. 4 blizzard died of congestive heart failure brought on by stress, according to the state veterinarian, who also released updated totals on livestock deaths from the storm.

At the one-month anniversary of the blizzard, Dr. Dustin Oedekoven said his office has verified the deaths of 13,977

cattle, 1,257 sheep, 287 horses and 40 bison.

Many of those animals died on dry land after being pummeled by rain, snow and unrelenting winds, he said.

"At least they were not lying in water and their lungs were full of fluid," Oedekoven said. "There was a common thought or misconception out there that they must have breathed all that in. That it must have settled in their lungs."

That's not the case, however, he said. Rain drenched the livestock for 12 to 18 hours before the blizzard's strong winds and wet snow delivered the killing blow.

"Those cows likely got hypothermic. They were cold," Oedekoven said.

As a result, he said, the cardiovascular systems of the cattle were working overtime, causing hypertension or high blood pressure in their lungs.

"It actually caused pulmonary edema and basically caused those lungs to fill with water or fluid," Oedekoven explained.

Other animals that died that weekend walked over steep banks or wandered into waterways or stock dams. There were reports of stock trampling each other inside shelters. In some cases, those shelters collapsed, killing animals where they stood. Ranchers also found livestock buried in snow banks.

Oedekoven believes there are still producers who have not reported their losses and he fears some may never reveal their losses.

"It's too personal of an issue and we understand that," Oedekoven said.

Meanwhile, a fund to help ranchers restock their herds is growing.



The Rancher Relief Fund now has received more than \$700,000 in donations, according to Silvia Christen, executive director of the South Dakota Stockgrowers. The fund was established by the Black Hills Area Community Foundation and is administered by the Stockgrowers, South Dakota Cattlemen's Association and the South Dakota Sheep Growers Association.

Fundraising events are continuing throughout the state, with some even scheduled in February during the Black Hills Stock Show, Christen said. The fund has provided some financial assistance for producers with immediate needs, she said.

Donations are coming from businesses and private individuals, Christen said. Rollover auctions at livestock auction barns across the state have been successful, too, she added.

"It's been pretty incredible and impressive to see that grow," Christen said of the fund. "It's humbling to see where all the people are and where it's coming from and how many people care about what's happening out here."

A series of community meetings that brought together a variety of agencies with programs available to support producers were successful, Christen said. Similar meetings are scheduled in Eagle Butte on Nov. 14 and Interior on Nov. 16.

"I'm struggling with what's next. The long-term part of this recovery is going to be a challenge for us all," Christen said.

In part, the future for some producers could depend on the passage of a farm bill and their individual lenders, she said.

"And what these individual ranch families all decide to do as they move forward now," Christen said.

Oedekoven is encouraging producers to report their losses to his offices. All information is kept confidential and reporting forms are available at: <http://aib.sd.gov/>, or by calling 773-3321.

"As a central collection point, we will hopefully have a way to provide a verified number of the animals that were lost and measure the impact of the disaster," Oedekoven said.

South Dakota's congressional delegation has referred to the estimated losses frequently while urging the passage of a farm bill, which is now being debated by a conference committee in Washington, D.C.

Confirmed livestock deaths from the October blizzard

Cattle 13,977

Sheep 1,257

Horses 287

Bison 40

(Information provided by the South Dakota Animal Industry Board. To report livestock losses visit: <http://aib.sd.gov/> for more information)

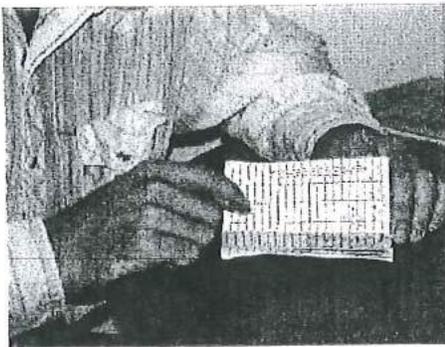
Pennington County will close two livestock disposal pits on Thursday, Nov. 14.

Heather Hamilton-Maude
for Tri-State Livestock News

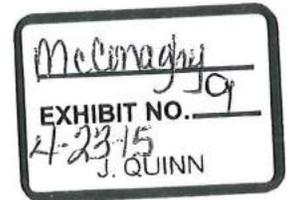
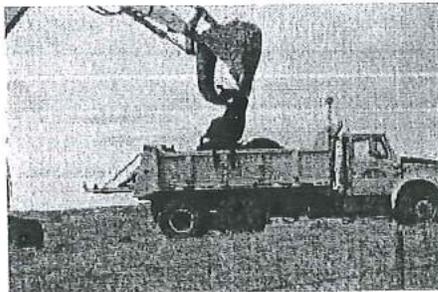
February 24, 2014

Drowning in mud and snow: The insurance debacle following Atlas

ving may have been causes of death in
Photo by Heather Hamilton-Maude



Good records were helpful for producers to determine the number of head and ages of cattle lost in the storm. Photo by Heather Hamilton-Maude



The cause of death for thousands of head of cattle that perished in "Atlas" may have been drowning. Area veterinarians also blame the unique warm, wet autumn conditions leading up to the storm. Photo by Heather Hamilton-Maude

What the vets say

Dr. Warren Crawford and Dr. Wade Crawford. Crook County Veterinary Services. Sundance, Wyo.

Father and son veterinarian team Dr. Warren Crawford and Dr. Wade Crawford don't practice in an area severely affected by Atlas. However, they were renting summer ground south of Caputa, S.D., and lost 65 cows and four calves of their own in the storm.

"We arrived fairly early following the storm, but did not post any cattle. We didn't see the point because it was 50 degrees immediately after the storm, allowing for decomposition of carcasses. There are many different theories of death, but I don't know that anyone will ever know for sure because it was such a severe storm that caused such extensive death," said Wade.

While they may never know for certain, Wade and Warren have extensively discussed the storm, and possible causes of death in their livestock.

"In my opinion, our loss was primarily the result of hypothermia, stress and exhaustion. In our situation, the calves survived at a much higher rate, which backs our theory due to the fact that they didn't have the stress the cows did – they were drawing energy from that cow throughout the storm. The cows began running out of nutrients and were unable to meet their own metabolic needs after two days of a body temperature at 87 degrees and a calf sucking on them" noted Warren:

Another factor making it difficult to draw exact conclusions is the fact that the lungs are the shock organ of the bovine, meaning anything that happens to a cow will affect her lungs. Wade noted that this would only add to the difficulty of determining exact cause of death via necropsy.

Both men added that their opinions were derived solely from their situation, that the storm was "an odd deal all the way through," and that theories are all most will ever have on what actually happened to the majority of cattle lost.

Dr. Jim Stangle. Golden Veterinary Services. Milesville, S.D.

Dr. Jim Stangle had many clients in some of the hardest hit areas of the Atlas blizzard. He stated that in his opinion most deaths were due to hypothermia, and provided insight as to why calves and thinner cows many have survived better than expected.

"Cow deaths were almost always higher than calf deaths, and that was even more pronounced in fall-calving herds. My theory is that baby calves are born with brown adipose tissue, which is a fat that does nothing but generate heat – that's what it's there for around the heart and kidneys. I think one reason the younger cattle survived better than adult cattle was because even those spring born calves still had some brown adipose tissue – not as much as fall born calves, but still some," he explained.

The puzzling concept of poorer conditioned cattle out-surviving their heavier counterparts in many cases was another result of the storm that Stangle pondered extensively.

"My theory there is that those poorer conditioned cows were more affected by the milder temperatures of early fall. Their thyroid system was already gearing up and they had started hairing up for winter, whereas those fat cows hadn't been taken out of their thermal neutral zone yet, meaning they were still slicked off and their thyroid systems hadn't kicked in. That made them more susceptible to hypothermia in the storm," he stated.

He also wonders if some cattle went down from muscle compartmentalization, and in hindsight wishes he had taken muscle samples from some of the many he posted to see if that was a factor.

While not positive on the physiological cause of all deaths, the physical cow killers were obvious to Stangle.

"The two biggest killers in this storm were good fences and dams. Beyond that there was no rhyme nor reason to the deaths. But, I am extremely proud of my clients and the efforts they went through to protect their cattle. There is a tremendous amount of pride and loss at the same time in this thing. They all worked their butts off, trying to get everything right, whether they lost 10 or hundreds, and I really respect them for that," he noted.

Dr. Vicki Cook. Cook Veterinary Services. Rapid City, S.D.

Dr. Cook's rancher client's losses ranged from minimal to catastrophic, and she saw situations of inhaled moisture in lungs, suffocation due to piling behind windbreaks, buildings or on fencelines, and obvious drowning in bodies of water while helping identify and verify ownership and numbers.

"In general, I believe most died of exposure. They got chilled, started inhaling moisture, and were weak enough they could not get rid of it," she stated.

Considering drowning a technical component of dying from exposure may be a stretch, but Cook said that many insurance claims she helped with had no definition or guidelines for what they would consider drowning, and that she understands her client's frustration regarding their coverage, or lack thereof.

"There isn't a good way to say it – you can say they drowned, but that's a 'kind of, sort of, maybe but not really' thing. Yes they inhaled moisture, and if I was a rancher picking up the dead cows and watching gallons of fluid drain from their noses and mouths, I understand how that would be drowning in their eyes. But, from an insurance standpoint it was challenging to determine what they wanted for information and would consider as drowning," she noted.

While she described the entire event as a mess she hopes to never relive, Cook said those clients with the best records had the easiest time determining where they stood, both personally and from an insurance standpoint, following the storm.

"The better records they had, the more they knew and better off they were after the storm in all regards. Those who only had calf sale records and my preg-checking numbers struggled more. I hope none of them ever have to go through it again," she said.

Dr. Erica Koller. Cheyenne River Animal Hospital. Edgemont, S.D.

Dr. Koller's clients suffered widespread losses in the storm from a variety of factors. However, dealing with insurance companies in the instances of obvious drowning – one rancher lost 100 head in a single irrigation ditch, caused the most frustration for her in Atlas's aftermath.

"One main issue that blindsided our customers was insurance. They thought they were covered, by at least drowning, and in many instances had legitimate cases of cows in reservoirs, irrigation ditches, culverts or dams, and were told by their insurance company that they would not cover anything related to the storm. They completely ignored their clients," began Koller.

When posting cattle following the storm and writing reports for insurance companies, Koller said she struggled due to a lack of information provided.

"I wondered how to define drowning, as most insurance companies had no definition included with the policy. There was also no requirement on how many they wanted necropsied. So, I just posted as many as I could on my own time, and got about 20 samples from random cattle belonging to various clients," she explained, adding those samples varied from minor to extreme lung damage and liquid retention.

Koller also called the state vet lab and spoke with a pathologist, asking if they could tell the difference between drowning from hypertension or submersion.

"He basically said there was no good pathological difference between lung fluid due to severe exhaustion and hypertension before death versus physically drowning," she stated.

As a result of that information, Koller said her clinic did the best they could in writing reports, focusing primarily on cattle that died in legitimate submersion drowning instances.

"I feel wiser to have gone through the storm and the after effects, because I now know which insurance companies and agents are there to help producers and have an understanding of ranching.

"We found many that do crops but have not a clue on cattle and don't understand the husbandry practices and general management we use. We had people in the agriculture business asking us why they weren't in barns or another pasture and just did not understand that it didn't matter. As is true with many service positions, some agents are truly customer advocates, and others are just doing a job," she concluded.

Dr. Lynn Stadheim. Triple R Vet, Belle Fourche, S.D.

Dr. Stadheim had to wait until mid-week following the blizzard to begin helping clients search for cattle and look at those that perished. However, he said that in order to determine death, he considered the weeks and months that preceded the storm.

"It took me a long time to think through the entire scenario, and you have to go back and look at the summer we had first. It was an abnormally high moisture year, resulting in very lush grass well into fall. To me, those cattle full of that lush grass were more susceptible. They were packing 30-40 pounds of water weight they normally wouldn't be that time of year," he began.

The lush grass was accompanied by mild fall temperatures and saturated soils, meaning the cattle Stadheim pregged prior to the storm were still completely slicked off, and that even a fraction of the moisture the storm brought would have caused the soils to be muddy and heavy.

"Those cattle walked and walked in that storm, and most were on those gumbo-type soils that are very heavy. Packing that mud would have been very tiring, and eventually they just played out and fell into an abnormal posture for death where their hind legs were straight out behind them and their nose was shoved straight into the dirt, sometimes submerged in mud or water," stated Stadheim.

The posture the cattle perished in provided important information as to their cause of death.

"When they fell into that posture there was no sign of a struggle or of laying on their side and kicking – there was none of that, and that is not normal. This was the first time I saw that type of body position on more than one head, and most I saw were in that posture. The majority of those cattle died from drowning. Period. They were too weak to raise their head out of that muddy water, and that's what happened," said Stadheim.

Of the insurance claims Stadheim provided reports for, he said his clients have not had any issues, and that he finds frustration with those in his field who came out stating it could have been "this or that."

"This storm was a bad deal, and those people hired you as a vet to do a job. I believe you should either say you don't know and leave it at that, or that this is what it is and here's why. Fumbling in the gray area doesn't help anyone," he concluded.

Following the October, 2013 Atlas blizzard, many producers were relying on insurance they believed would cover drowning and suffocation losses to help ease the financial burden placed upon them. The reality for many was that their insurance companies would not pay for losses resulting from the storm, causing frustration and questions regarding what actually killed cattle in Atlas, and why insurance companies were so often unwilling to work with their rancher clients.

"My policy stated it covered drowning from external causes, and that is what happened in my instance. The cows that died in the storm breathed in cold, wet rain and snow, washing away the surfactant that keeps lung tissue from sticking together, which is called ciliated epithelium. As the tissue stuck together, it reduced the area available for oxygen storage, resulting in the cattle slowly suffocating in a liquid they inhaled, which is a definition of drowning," began Richard Perli, who ranches southeast of Rapid City, S.D., of the issue he took with his insurance company telling him the 50 cows and six calves he lost in Atlas would not be covered.

Perli, like many of his neighbors, had multiple head necropsied by his veterinarian, who filed a report with his insurance claim. Within the report, Perli's vet stated his cattle had lungs that were, "heavy and moist and the cows drained water out of their nasal cavities when moved around. I found the cows died from drowning."

His adjuster told Perli that he heard South Dakota State Veterinarian Dustin Oedekoven's report stating the cattle most likely died from congestive heart failure and resulting pulmonary edema, and that he took that to mean they succumbed to the elements. He chose to take that report over the practicing veterinarian's diagnosis of death.

Oedekoven confirmed that was the most logical cause of death in his opinion, which was formed by South Dakota State University (SDSU) extension personnel and animal disease diagnostics lab employees, most specifically after studying a paper by Russ Daily in addition to conversations with numerous practicing vets in the affected area. He did not see any of the cattle in person following the storm.

The Saunders Comprehensive Veterinary Dictionary, Third Edition, states: "Drowning: Death from suffocation resulting from aspiration of water or other substance or fluid. Drowning occurs because the liquid prevents breathing."

"I never intended the listing of one possible cause of death to cut the amount of an insurance payment, and would much prefer to see the insurance companies pay out to their customers who have paid their premiums. I would also not dispute any vets who were in the field and made a different statement for a specific animal or animals' cause of death," said Oedekoven.

Pulmonary edema, or left-sided heart failure, occurs following extreme physical exertion, to the point that a lack of energy leads the animal to collapse. From there other issues can arise, including hypertension or increased pressure within the capillaries of the lung tissue. As a result of that increased pressure, some capillaries start to leak and the serum from the blood actually leaks into the lungs, filling them with fluid.

"There is a drowning event with pulmonary edema. The contentious point is whether the drowning occurred from fluid within that animal's own body as a result of physiological fatigue from stress rather than the scenario of breathing that fluid in," stated Oedekoven.

He added that pulmonary edema was not the only cause of death he provided in reports following the blizzard. Hypothermia, exhaustion, drowning, suffocation from being buried in snow, and in some cases traumatic injury, such as being hit by cars, were also attributed to livestock deaths in Oedekoven's report.

"I encouraged people to work directly with their insurance companies and practicing vets to make determinations. I would also suggest in any claim filing scenario to get a copy of the policy so the vet can see what it says and make their call in a truthful way that is in accordance with that policy," continued Oedekoven.

While many producers continue to fight their insurance companies and in some cases pursue legal action, Perli among them, others were happy with their company's response following the blizzard. In most cases, those people had policies with Farm Bureau Financial Services.

"We offer a unique optional coverage within the policy for freezing or smothering that not all companies do," began Farm Bureau Financial Services spokesperson Nancy Doll.

She added that agents, adjustors and a dozen additional staff, who were brought into the area following the storm, spent the better part of a month in the field with their customers. But, even with those additional resources, the conditions made it impossible to reach all clients with a practicing veterinarian in the days following the storm.

"The vets couldn't be everywhere so we applied common sense to the law and allowed our adjustors to verify cause of death. Not all companies did this. The agent and adjustor rode with one client/member in his plan to locate cattle; others four-wheeled for miles on end with customers to do the same. That type of activity went on throughout the month of October," she explained.

In total, Farm Bureau responded to 45 claims related to the storm, and to-date 44 have been settled.

"We have heard good feedback and a high degree of satisfaction from those who filed claims. Our agents work very hard to help our client/members be prepared for the unexpected. We believe that, when things go wrong, you need your insurance to go right. Regardless of who you're insured with, you need an agent and adjustor who will deliver on that promise," Doll continued.

For Perli, the entire experience has been incredibly disheartening. While he continues to work on his claim and pursue possible legal action, he has also switched insurance companies to ensure he does not face a similar experience in the future.

"It doesn't say much for an insurance company that you've been with for a long time when they back out in any way possible to prevent providing a service you pay for. I dropped my old company and switched to Farm Bureau early in 2014. I have better insurance now, with a company that worked for their customers when they needed them to," he concluded.

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**IN THE SUPREME COURT
STATE OF SOUTH DAKOTA**

**RICHARD PAPOUSEK AND LORAYNA
PAPOUSEK,**

Appeal # 27658

Plaintiffs/Appellants,

vs.

**DeSMET FARM MUTUAL INSURANCE
COMPANY OF SOUTH DAKOTA,**

Defendant/Appellee.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

The Honorable Wally Eklund
Circuit Court Judge

Notice of Appeal filed on November 5, 2015

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ARGUMENT

A. Comments by Other Veterinarians to the Media are Insufficient to Overcome the Only Expert Testimony in this Record.

DeSmet challenges Dr. McConaghy's opinions on the cattle's cause of death by pointing to what "numerous other veterinarians" have said in various news reports. In support of its argument, DeSmet cites to questions its counsel asked of Dr. McConaghy during his deposition, wherein counsel pointed to comments by other veterinarians in news articles. *Appellee's Brief* at 6-7. This is wholly insufficient to rebut Dr. McConaghy's expert opinions.

"Expert testimony is required when the subject matter at issue does not fall within the common experience and capability of a lay person to judge." *Caldwell v. John Morrell & Co.*, 489 N.W.2d 353, 362 (S.D. 1992). *See also Buckley v. Fredericks*, 291 N.W.2d 770, 771 (S.D. 1980) ("The test remains whether it is necessary to rely on knowledge and application of principles of science beyond the ken of the average juror."); *Shearn v. Anderson*, 48 N.W.2d 821 (S.D. 1951) (expert testimony is "indispensable in determining questions which are unfamiliar to ordinary witnesses").

DeSmet has not identified Dr. Oedekoven, Dr. Stangle, or Dr. Crawford as an expert witness. *See generally* SR. It has not produced expert reports from any of these veterinarians, has not specified any opinions it intends to elicit from these doctors, and has not identified the bases for any proffered opinions. *Id.* None of those veterinarians performed necropsies of any of the Papouseks' cattle; in fact, neither Dr. Oedekoven nor Dr. Crawford posted any cattle at all. Papousek App. at 87, 88, 90 (McConaghy Dep. 24:9-16, 27:5-9, 35:24-36:1).

These veterinarians' statements to the media are hearsay within hearsay. SDCL § 19-19-801(c). They are irrelevant, misleading, and speculative, as they speak to the possible cause of death of other cattle. SDCL §§ 19-19-401, 402, 403. Additionally, they touch upon a matter – cause of death – that requires an expert opinion. SDCL §§ 19-19-702, 703.

Despite counsel's efforts to confuse or "trip-up" Dr. McConaghy in his deposition, his testimony was clear: he did not agree that Papouseks' cattle died from hypothermia. Papousek App. 90 (McConaghy Dep. 35:17-23). Instead, they "absolutely" suffocated in water. Papousek App. 83 (McConaghy Dep. 10:20-25).

B. Applicable Rules of Construction Mandate Reversal of the Circuit Court.

An ambiguity exists as to whether “submersion” is a necessary component of drowning. *Appellants’ Brief* at 4-5. Papouseks submit this ambiguity is not relevant upon consideration of the fact that “drowning” unambiguously contemplates suffocation in liquid,¹ which is undisputedly what happened in this case. *See Appellants’ Brief* at 5-6. To the extent the ambiguity is relevant, it must be construed in Papouseks’ favor and in favor of a finding of coverage. *See generally Zoo Properties, LLP v. Midwest Fam. Mut. Ins. Co.*, 2011 SD 797 N.W.2d 779; *North Star Mut. Ins. Co. v. Peterson*, 2008 SD 36, 749 N.W.2d 528.

Furthermore, DeSmet cannot defeat the principle that when two insurance policy provisions are inconsistent, the provision affording “the most protection to the insured will control and be given effect.” COUCH ON INSURANCE 2D §21:9. An exclusion that negates a

¹ DeSmet focuses largely on impropriety of utilizing specialized medical dictionaries in this case. *Appellee’s Brief* at 14-16. But Papouseks are not advocating that specialized dictionaries should displace the plain and ordinary meaning of a term. Rather, the varying medical definitions simply highlight the ambiguity that exists concerning the issue of submersion. SR at 96-98. Additionally, the medical definitions aid in explaining why what the Papouseks’ cattle suffered is, medically, “drowning.” Papousek App. at 79. Importantly, Dr. McConaghy testified that Papouseks’ cattle not only suffered from “medical” drowning, but also from “plain and ordinary” drowning. Papousek App. at 83-84 (McConaghy Dep. at 9:24-12:24, 13:4-14:2).

coverage provision elsewhere in the policy must be construed strictly against the insurer. COUCH ON INSURANCE 3D §22:31. Exclusion 2(c)(2) is inconsistent with the coverage for drowning and must be rejected. *Appellants' Brief* at 15. And, DeSmet has produced no competent evidence² establishing that any of the causes excluded under 2(a), 2(c)(2), or 2(c)(4) were the cause of the cattle's death. *Caldwell*, 489 N.W.2d at 362.

CONCLUSION

Based on the foregoing, and for those reasons stated in *Appellants' Brief*, the circuit court should be reversed and this Court should direct the entry of summary judgment in favor of Papouseks.

² An allegation in a complaint is not competent evidence of causation. *Appellee's Brief* at 16 (citing Paragraph 11 of the complaint, which alleged that the yearlings died "due to inhalation of snow and water[.]"). In fact, DeSmet's brief improperly quotes the Complaint by failing to provide the entirety of that allegation: "The yearlings died due to inhalation of snow and water, causing their lungs to fill with water and resulting in anoxia (lack of oxygen), cardiac arrest, and, ultimately, death." SR at 3.

Similarly, the quoted deposition testimony of Richard Papousek about his remembrance of the storm and that the cattle died "standing up" is not competent evidence as to cause of death. *Appellee's Brief* at 16.

Finally, McConaghy's letter describing the chain of events that led to the drowning is, again, disingenuously quoted by DeSmet. *Id.* McConaghy's actual letter states: "It is my opinion that these cattle inhaled such large quantities of rain and then snow *that they actually drowned.*" Papousek App. at 79 (emphasis added).

Respectfully submitted this 23rd day of March, 2016.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), Appellants' counsel states that the foregoing brief is typed in proportionally spaced typeface in Georgia 14 point. The word processor used to prepare this brief indicated that there are a total of 924 words in the body of the brief.

/s/ Sarah Baron Houy
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that March 23, 2016, the foregoing *Appellants' Reply Brief* was filed electronically with the South Dakota Supreme Court and that the original and two copies of the same were filed by mailing the same to:

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