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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 361951

COURT OF APPEALS, DIVISION III  
IN AND FOR THE STATE OF WASHINGTON

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GRANGE INSURANCE ASSOCIATION,  
a Washington corporation,

Respondent.

v.

MIELKE BROTHERS, INC., a Washington Corporation, and DOUGLAS  
MIELKE, an individual,

Appellant

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BRIEF OF APPELLANTS

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## I. INTRODUCTION

This declaratory relief action was triggered by a lawsuit filed against Mielke Bros., Inc. and Douglas Mielke (the Corporation's president and chairman of its Board of Directors) in January of 2017. One of the plaintiffs in that lawsuit – Robert Mielke – was the managing partner for the Mielke Brothers Partnership, an entity separate and distinct from Mielke Bros., Inc., and plaintiffs Judy Mielke and Cheryl Beymer also had an indirect ownership interest in the Mielke Brothers Partnership.

The Complaint and subsequent Amended Complaint asserted that the plaintiffs had suffered direct and indirect damages by reason of numerous wrongful acts by Douglas Mielke and other corporate shareholders and directors, in breach of their respective fiduciary duties, to the plaintiffs, all of whom were minority shareholders in the Corporation. Among other things, these direct and indirect damages allegedly resulted from wrongful eviction of the Partnership from agricultural lands, threatened eviction of Robert and his family from their residence, and loss of use of agricultural equipment previously leased by the Partnership from the Corporation.

For more than a year, Grange Insurance Association defended these claims for damages under a reservation of rights. However, shortly after the trial court granted Grange's motion for summary judgment in

June of 2018 – the Order which is now on appeal – the carrier withdrew from the defense of the Spokane County litigation.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignments of Error**

The trial court erred by granting summary judgment in favor of Grange Insurance Association.

### **B. Issues Pertaining to Assignments of Error**

Whether the pleadings and other evidence before the trial court relating to certain claims for damages against the insureds precluded a finding as a matter of law that the claims were not covered by the insureds' policy.

## **III. STATEMENT OF THE CASE**

*MBI Ownership Structure.* Defendant, Mielke Brothers, Inc. (“MBI”), was formed on or about March 30, 1973, by founders Carl and Dorothy Mielke, husband and wife, and George and Edwina Mielke, husband and wife. CP 1020-21 [Declaration of Douglas Mielke at ¶ 2]. Over the years subsequent to formation of MBI, the five children of Carl and Dorothy (Douglas, Ronald, Robert, Judy and Cheryl) and George and Edwina's two daughters (Roberta and Susan) were added as shareholders of MBI via transfer of shares from their respective parents. *Id.* In 2005, Carl and Dorothy assigned their remaining 40% interest in MBI to C&D

Mielke, LLC, a newly-formed Washington LLC (“C&D Mielke”); and immediately thereafter, they assigned all of their respective interests in C&D Mielke to their five children. *Id.*

Before MBI was formed, Carl and George — the original “Mielke Brothers” — had farmed together as a partnership known as the Mielke Brothers Partnership (“MBP”). CP 1021 [*Declaration of Douglas Mielke* at ¶ 3]. Nearly all of the assets of the partnership, together with pasture ground and crop-producing ground owned by the brothers, were transferred into the new corporation, MBI. *Id.* However, some assets — primarily, livestock — were retained by the partnership, which entered into lease agreements with MBI for the use of MBI’s pasture ground, crop-producing ground, and equipment. *Id.*

Membership in MBP has changed dramatically over the years. *Id.* No members of George Mielke’s family are currently members of MBP, and Douglas Mielke gave notice of his intention to withdraw from the partnership at the end of 2016. *Id.* Today, the remaining partners are entities owned by Robert Mielke, and C&D Mielke, LLC, and 60% of the LLC is held by Robert and his sisters, Judy and Cheryl. *Id.*

Notwithstanding the terms of the formal lease arrangements, until recently, most of the annual income from MBP was paid over to MBI as rent. CP 1021 [*Declaration of Douglas Mielke* at ¶ 4]. This arrangement

was acceptable to all parties when George and Carl were essentially equal partners, but after Carl's share in MBP devolved to his children in 2005, and George's estate sold his interest in the partnership to two of Carl's sons (Douglas and Robert) after he passed away in 2013, the respective interests owned by the two families were no longer equal. *Id.* Even so, because of the manner in which the partnership and C&D Mielke were structured, Robert Mielke personally benefited financially from a continuation of the various lease agreements between MBP and MBI. *Id.*

For some time, Robert and his sisters exercised effective control over the 40% of MBI's stock that was held in the name of C&D Mielke LLC. CP 1022 [*Declaration of Douglas Mielke* at ¶ 5]. In addition, Robert, Judy and Cheryl, have direct control of another 8% of MBI shares that they hold in their own names. *Id.* So long as either Doug Mielke (4%) or Ron Mielke (4%) voted with Robert, his sisters and C&D Mielke LLC, Carl Mielke's family had majority control over MBI's Board of Directors and its operations. *Id.* Moreover, Robert, as MBI's Treasurer, had control of the corporate checkbook, and was able to pay himself a salary, in addition to the money that he received through partnership operations. *Id.*

By early 2016, Robert's payment of overly generous salaries to himself and his children – Robert's salary as Treasurer actually exceeded

Doug Mielke's salary as President of the corporation – and his refusal to divulge relevant financial information concerning operations of both the corporation and the partnership, caused Doug Mielke and Ron Mielke to vote with members of Edwina Mielke's family to remove and replace Robert as Treasurer of MBI, and to terminate the existing leases of equipment, pasture ground and crop producing ground between MBI and the MBP, while reserving the corporation's right to conduct direct farming operations and/or negotiate lease arrangements with third parties. CP 1022 [*Declaration of Douglas Mielke* at ¶ 6].

*Issues / Claims Asserted in the Underlying Litigation.* The current litigation was filed in January of 2017, and the claims asserted in that litigation evolved following that initial filing. Prior to Grange's motion for summary judgment, the most recent complaint was the Amended Complaint dated August 24, 2017, filed by plaintiffs in the underlying litigation – Robert Mielke, Max Mielke, Judy Mielke, Dorothy Mielke, and Cheryl Beymer – against defendants MBI and Douglas Mielke. CP 1030-46 [*Amended Complaint*]. All plaintiffs sued in their individual capacities; however, Robert Mielke, Judy Mielke, and Cheryl Beymer also sued as minority shareholders of Mielke Brothers, Inc. CP 1022 [*Declaration of Douglas Mielke* at ¶ 7]; CP 1030-46 [*Amended Complaint*].

Among other things, plaintiffs alleged that defendants improperly prevented them from entering certain areas of the family farm, including a residence which Robert Mielke and his family claim they have a right to occupy, and that defendants, in breach of the fiduciary duties owed to the plaintiffs as minority shareholders, wrongfully caused the Partnership's leases of crop-producing land, pasture ground and agricultural equipment to be terminated. CP 1037-39, 1043, 1045-46 [*Amended Complaint* at ¶¶ 2.22-2.26, 5.1-5.4, 9.2-9.4]. In addition to seeking dissolution of the corporation and appointment of a receiver, plaintiffs clearly asserted that they suffered direct and indirect damages from the allegedly wrongful actions cited in the complaint. CP 1037-41, 1043, 1045-46 [*Amended Complaint* at ¶¶ 2.22-2.30, 5.1-5.4, 9.2-9.4, 10.1-10.7].

The coverages afforded to defendants through the Grange Insurance Association policies include liability coverage for 1) “injury . . . arising out of . . . [t]he wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor,” *e.g.*, CP 622-23, 632 (Coverage I—Personal and Advertising Injury); and 2) the “[l]oss of use of tangible property that is not physically injured.” *E.g.*, CP 616, 632 (Coverage H—Bodily Injury and Property Damage Liability).

Beginning in April, 2017, Grange Insurance Association initially provided a defense to the underlying litigation, subject to a reservation of rights. In the spring of 2018, Grange moved for entry of declaratory judgment in this action pursuant to CR 56, asserting that the carrier owed no duty to defend or indemnify defendants. Over defendants' opposition, the trial court granted summary judgment in favor of Grange on June 12, 2018 (CP 1246-47), after which, the carrier withdrew from the defense of the underlying litigation.

#### **IV. ARGUMENT**

Summary judgment is appropriate only where the moving party establishes that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. CR 56(c). All facts and inferences must be viewed in the light most favorable to the nonmoving party. *Griffin v. Allstate Ins. Co.*, 108 Wn.App. 133, 137, 29 P.3d 777 (2001).

Summary judgment orders are reviewed de novo with the appellate court engaging in the same inquiry as the trial court on appeal. *E.g., Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 52, 164 P.3d 454 (2007). Interpretation of an insurance contract is a question of law which is also reviewed de novo. *Id.*

**A. GRANGE’S DUTY TO DEFEND THE UNDERLYING LITIGATION IS SEPARATE AND DISTINCT FROM ITS ULTIMATE OBLIGATION TO INDEMNIFY ITS INSUREDS AGAINST A SETTLEMENT OR JUDGMENT RESULTING FROM THE LITIGATION**

Most standard liability insurance policies impose on the insurer two distinct duties: the duty to defend the insured against lawsuits or claims and the duty to indemnify the insured against any settlements or judgments. *See St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wn.2d 122, 129, 196 P.3d 664 (2008). An insurer's duty to defend is “one of the principal benefits of the liability insurance policy.” *Woo*, 161 Wn.2d at 54. “The entitlement to a defense may prove to be of greater benefit to the insured than indemnity.” *American Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 405, 229 P.3d 693 (2010).

Significantly, the duty to defend is different from and broader than the duty to indemnify. *Am. Best Food*, 168 Wn.2d at 404; *see also Kruger-Willis v. Hoffenberg*, 198 Wn.App. 408, 415 (2017) (characterizing an insurer’s duty to defend as “extremely broad” under Washington law). The duty to defend exists if the policy *conceivably* covers the claim allegations, while the duty to indemnify exists only if the policy *actually* covers the claim. *Am. Best Food*, 168 Wn.2d at 404. Because of this distinction, there may be a duty to defend the insured against third party litigation even when it is ultimately determined that

there is no obligation to indemnify the insured. *See Allstate Ins. Co. v. Bowen*, 121 Wn.App. 879, 883–84, 91 P.3d 897 (2004).

**B. THE DUTY TO DEFEND MAY BE TRIGGERED BY NOT ONLY THE ALLEGATIONS OF THE COMPLAINT, BUT ALSO EVIDENCE OUTSIDE THE FACE OF THE COMPLAINT**

Generally, a duty to defend exists where the facts alleged in the complaint against the insured, if proved, would trigger coverage under the policy. *Am. Best Food*, 168 Wn.2d at 404. If the complaint is ambiguous, it must be construed liberally in favor of triggering a duty to defend. *Woo*, 161 Wn.2d at 53.

Because duty to defend is based on the *potential* for coverage, *Woo*, 161 Wn.2d at 52–53, the duty is triggered if the insurance policy conceivably covers the allegations in the complaint. *Am. Best Food*, 168 Wn.2d at 404. The insured must be given the benefit of the doubt, and a duty to defend will be found unless it is clear from the face of the complaint that the policy does not provide coverage. *Woo*, 161 Wn.2d at 64. “[I]f there is any reasonable interpretation of the facts or the law that could result in coverage, the insurer must defend.” *Am. Best Food*, 168 Wn.2d at 405.

The insurer cannot rely on facts extrinsic to the complaint to deny a duty to defend. *Woo*, 161 Wn.2d at 54. For that reason, it has been held

that the insurer’s duty to defend generally ““must be determined only from the complaint.”” *Woo*, 161 Wn.2d at 53 (quoting *Truck Ins. Exch. v. VanPort Homes, Inc.*, 147 Wn.2d 751, 761, 58 P.3d 276 (2002)).

However, there are two exceptions to this general rule.

First, if the allegations of the complaint are unclear, the insurer must investigate to determine if there are any facts that could conceivably give rise to a duty to defend. *Woo*, 161 Wn.2d at 53–54. Second, if the allegations of the complaint conflict with known facts or are ambiguous or inadequate, the insurer may consider facts outside the complaint in order to trigger – but not to deny – a duty to defend. *Woo*, 161 Wn.2d at 54; *United Servs. Auto. Ass'n v. Speed*, 179 Wn.App. 184, 195-96, 317 P.3d 532, 538-39 (2014).

Stated somewhat differently, “[f]acts that are extrinsic to the pleadings, but readily available to the insurer, may give rise to the duty.” *Nat'l Sur. Corp. v. Immunex Corp.*, 176 Wn.2d 872, 879, 297 P.3d 688 (2013). The foregoing principle is particularly important in the case at bar, because the underlying litigation has been ongoing – and evolving – since January of 2017. Grange Insurance defended this litigation pursuant to a reservation of rights for more than a year prior to moving for summary judgment, and pleadings which have been filed in connection

with this lawsuit are a matter of public record, and readily available to Grange. CP 1023-1218.

**C. RULES OF CONSTRUCTION FOR INSURANCE CONTRACTS ARE DESIGNED TO FAVOR THE INTERESTS OF THE INSURED, AT THE EXPENSE OF THE INSURANCE COMPANIES THAT DRAFT THEM**

Long-standing precedent has made it very clear that the rules of construction for insurance contracts are designed to favor insureds at the expense of the insurance companies who drafted the agreements.

Consistent with that general approach, the Washington Supreme Court has identified the following principles of construction for insurance contracts:

(1) The terms of the insurance policy must be given their usual, popular and ordinary meaning unless the entirety of the agreement clearly demonstrates a contrary intent. *Town of Tieton v. Gen. Ins. Co. of America*, 61 Wash.2d 716, 380 P.2d 127 (1963); *Zinn v. Equitable Life Ins. Co. of Iowa*, 6 Wash.2d 379, 107 P.2d 921 (1940). (2) A contractual term, reasonably susceptible of two different constructions, must be construed against the party who drafted the same. *Wise v. Farden*, 53 Wash.2d 162, 332 P.2d 454 (1958). (3) The meaning and construction most favorable to the insured must be applied even though the insurer may have intended another meaning. *Selective Logging Co. v. Gen. Casualty Co. of America*, 49 Wash.2d 347, 301 P.2d 535 (1956); *Zinn v. Equitable Life Ins. Co. of Iowa, supra*. (4) In construing a contract, each part, if possible, should be so construed that all parts thereof shall have some effect. *Hollingsworth v. Robe Lumber Co.*, 182 Wash. 74, 45 P.2d 614 (1935); *Fardig v. Reynolds*, 55 Wash.2d 540, 348 P.2d 661 (1960).

*Safeco Ins. Co. of Am. v. McManemy*, 72 Wn.2d 211, 212–13, 432 P.2d 537 (1967).

**D. GRANGE INSURANCE HAS A CONTINUING DUTY TO DEFEND THE CLAIMS EXPRESSLY AND IMPLICITLY ASSERTED AGAINST DOUGLAS MIELKE AND MIELKE BROS., INC. IN THE LITIGATION DEFINED BY THE AUGUST 24, 2017, AMENDED COMPLAINT AND THE OTHER PLEADINGS AUTHORED BY THE PLAINTIFFS THEREIN**

The allegations from the underlying litigation giving rise to Grange Insurance Association’s duty to defend are addressed below.

**1. Grange Insurance Has an Obligation to Defend Not Only Douglas Mielke, But Also, the Corporation against Claims that the Plaintiffs Incurred Damages in Their Respective Capacities as Third Parties by Reason of the Wrongful Actions of Majority Shareholders and Directors of MBI**

Grange Insurance has conceded that Douglas Mielke, in his capacity as officer, director or shareholder of MBI, qualifies as an insured under MBI’s Farming and Personal Liability Insurance (Coverages H, I and J), to the extent that claims against him relate to “his duties as an officer or director of MBI or his liability as a stockholder of MBI.” CP 506.

In point of fact, all of the purportedly wrongful actions by Douglas Mielke are alleged to have been committed either in his capacity as an officer or director of MBI, or in his capacity as one of the majority

shareholders of the corporation, and it is undeniable that all of the officers, directors and majority shareholders of a corporation owe fiduciary duties to the minority shareholders.

The central issue in this ongoing litigation – vigorously opposed by MBI and Douglas Mielke – is whether actions of the majority shareholders and Directors of MBI which have been challenged by the plaintiffs are wrongful either because they are “oppressive” as to the minority shareholders in a definitional sense, or because they are “oppressive” in the sense that they are contrary to reasonable expectations of the minority, derived from the spoken and unspoken understandings of the founders regarding the purpose for which MBI was originally established. *See Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 709-711, 64 P.3d 1 (2003).

The plaintiffs in the underlying litigation asserted that these allegedly wrongful and oppressive actions resulted in monetary damages to the minority shareholders in their respective capacities as third parties – either directly as individuals (as in the case of Robert Mielke’s personal claim for wrongful invasion of his right to reside on the Mielke family farm property), or indirectly (as in the corporate actions directed at the Mielke Brothers Partnership, owned and controlled by Robert, Judy and Cheryl). CP 1030-87. As minority shareholders of a closely held corporation, the plaintiffs are permitted to bring suit in their own names,

and that is what they have done. *E.g., LaHue v. Keystone Inv. Co.*, 6 Wn.App. 765, 496 P.2d 343 (1972); *Action in Own Name by Shareholder of Closely Held Corporation*, 10 A.L.R. 6th 293 (2006).

Although one of the remedies sought by the plaintiffs is dissolution of MBI pursuant to RCW 23B.14.300 – an outcome which would trigger catastrophic tax consequences for not only Grange’s insured, but all of MBI’s shareholders – an alternative remedy for “oppressive” conduct would be an award of compensatory damages. *Scott, supra*, 148 Wn.2d at 717. This remedy was identified in briefing submitted by the minority shareholders in support of a motion for summary judgment (CP 1077), and allegations regarding damages also appeared in several parts of the Amended Complaint. CP 1037-41, 1043, 1045-46.

**2. Grange Insurance Has an Obligation to Continue to Defend the Claims of Wrongful Eviction from Corporate Agricultural Property**

As conceded by counsel for Grange Insurance, the Coverage I of MBI’s Farming and Personal Liability Insurance, and in particular, SECTION V, 18.c., is intended to cover, among other things, damages from “The wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.” *E.g., CP 506, 513, 622-23, 632.*

In their Amended Complaint, the plaintiffs in the underlying action asserted that MBI, acting through its directors and majority shareholders, wrongfully prevented the Mielke Brothers Partnership (an entity separate and distinct from MBI in which minority shareholders Robert, Judy and Cheryl together hold a majority interest) from continuing to occupy and farm pasture ground and crop-producing ground owned by MBI, resulting in damages from loss of use. This eviction from MBI property is purportedly wrongful in part because it damages and constitutes “oppression” of the minority shareholders, and in part because it is purportedly contrary to the purpose for which the corporation was originally formed. CP 1023, 1038-39, 1045-46, 1048-87.

Grange will likely assert that Plaintiffs have not explicitly alleged an enumerated cause of action entitled “wrongful eviction.” However, an insurer’s duty to defend is not so simple or formulaic. The question is not whether certain words of art appear together in a complaint, but rather whether the underlying theory of the plaintiffs’ claims are analogous to claims of wrongful entry or invasion of the right of private occupancy. *See Kitsap Cnty. v. Allstate Ins. Co.*, 136 Wn.2d 567, 571, 964 P.2d 1173 (1998); *Cle Elum Bowl, Inc. v. North Pac. Ins. Co.*, 96 Wn.App. 698, 981 P.2d 872 (1999).

Courts evaluating whether claims fit within personal injury coverage “must look to the type of offense that is alleged.” *Kitsap Cnty.*, 136 Wn.2d at 580. “If those claims are analogous to claims for the offenses of wrongful entry, wrongful eviction, or other invasion of the right of private occupancy then there is coverage under the personal injury provisions of the policies in question . . . .” *Id.* To argue simply that the plaintiffs did not allege a violation “of the precise offenses that are enumerated in the personal injury coverage provisions” is insufficient to establish that no coverage exists. *Id.* at 585-86. Plaintiffs’ claims in the underlying litigation are analogous to wrongful eviction or invasion of the right of private occupancy and therefore trigger Grange’s duty to defend under the policy.

Spokane Superior Court Judge Moreno denied motions for preliminary injunctions and summary judgment filed by the plaintiffs – counsel hired by Grange Insurance successfully defended the motions in question – but these issues are scheduled for trial before Judge Moreno in June of 2019. CP 1023-24.

### **3. Grange Insurance Has an Obligation to Continue to Defend the Claims of Wrongful Eviction Relating to Robert’s Residence**

As mentioned in the previous subsection, the Coverage I of MBI’s Farming and Personal Liability Insurance is intended to cover, among

other things, damages from “wrongful eviction,” which is broadly defined in SECTION V, 18.c., as “The wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.” CP 632.

In their Amended Complaint, the plaintiffs in the underlying litigation also asserted that MBI, acting through its directors and majority shareholders, wrongfully threatened to evict Robert Mielke from the residence that he has occupied for many years on the Mielke family farm. This alleged invasion of Robert’s claimed right to occupy a dwelling on MBI’s property is purportedly wrongful because it damages and constitutes an act of “oppression” of this particular minority shareholder, while other shareholders who are part of the working majority have not been threatened with eviction, and one majority shareholder – namely, Edwina Mielke – has been permitted to occupy a residence on the Mielke family farm without payment of rent. CP 1024, 1037-38, 1045, 1089-1112.

MBI agrees that Robert Mielke was threatened with eviction if he failed to pay the rent demanded by MBI for continued use of a residence on the MBI premises. However, MBI has asserted that there were valid business reasons for these actions; that Robert as a minority shareholder

did not have a reasonable expectation (derived from the spoken and unspoken understandings of the founders) that MBI would continue the previous practice of providing him a residence without payment of rent; that Robert and the other minority shareholders supported the decision to waive rent for Edwina Mielke; and further, that the rent demanded by MBI is reasonable, in accordance with fair market rates, and not objectively oppressive. CP 1024. Plaintiffs' theory is scheduled to be tried in Spokane County Superior Court in June of 2019.

**4. Grange Insurance Has an Obligation to Continue to Defend the Claims of Loss of Use Relating to MBI Equipment**

In SECTION V, 20.b. of MBI's Farming and Personal Liability Insurance, the Grange Insurance policy broadly defines the term, "property damage," to include "Loss of use of tangible property that is not physically injured." *E.g.*, CP 616, 632.

In their Amended Complaint, the plaintiffs also asserted that MBI, acting through its directors and majority shareholders, has wrongfully attempted to prevent Mielke Brothers Partnership (an entity in which minority shareholders Robert, Judy and Cheryl together hold a controlling ownership interest) from continuing to utilize equipment owned by MBI, notwithstanding the fact that such equipment is allegedly essential for the partnership's farming operations. CP 1024-25, 1039-41. This claim was

further elucidated via pleadings filed in the underlying action. *See* CP 1114-1218. For example, Robert Mielke claimed that he was entitled to substantial damages related to the alleged loss of use of the rental equipment. *E.g.*, CP 1117-18, 1126-27, 1134.

Essentially, this is a claim for loss of use of MBI equipment. MBI's actions – and the damages allegedly resulting from those actions – are purportedly wrongful because they constitute acts of “oppression” of the minority shareholders who hold a controlling interest in the Mielke Brothers Partnership, while other shareholders who are part of the working majority are permitted to utilize the equipment in question. In addition, plaintiffs have claimed that the Mielke Brothers Partnership purchased much of the equipment in question, and should therefore be permitted to utilize it without charge. Defendants concede that the equipment lease between MBI and the Mielke Brothers Partnership was terminated, but assert that MBI is the owner of the equipment in question, and further contend that that termination of the equipment lease does not constitute oppressive conduct. CP 1025.

Plaintiffs' assertions regarding their alleged right to use the disputed equipment and/or recover damages for loss of use clearly fall within the ambit of MBI's Farming and Personal Liability Insurance, and

these claims are also scheduled to be tried in Spokane County Superior Court in June of 2019.

**V. CONCLUSION**

Many disputed issues of material fact remain to be determined in the underlying litigation before the parties can possibly know whether MBI's minority shareholders will obtain a judgment for which Grange Insurance Association has a duty to indemnify Mielke Bros., Inc. and/or Douglas Mielke. However, based upon the claims asserted in the underlying litigation by MBI's minority shareholders, it is clear that Grange Insurance Association has at least a duty to defend the litigation to its conclusion. The trial court's June 12, 2018 Order granting summary judgment in favor of Grange Insurance Association should be reversed, and this matter should be remanded to the lower court for trial.

RESPECTFULLY SUBMITTED, this 18<sup>th</sup> day of October, 2018.

RANDALL | DANSKIN, P.S.

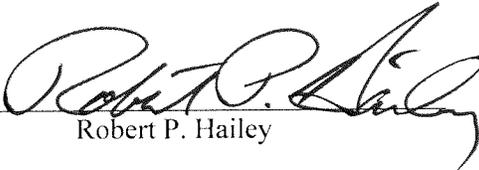
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on the 18<sup>th</sup> day of October, 2018, addressed to the following:

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