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DIVISION III
STATE OF WASHINGTON
By _____

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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

No. 289541

REX AND BRENDA ALLEMAND, husband and wife,

Plaintiffs/Respondent,

v.

STATE FARM INSURANCE COMPANIES, also known as
STATE FARM GENERAL INSURANCE COMPANY; and
STATE FARM FIRE & CASUALTY COMPANY,

Defendant/Appellant.

BRIEF OF RESPONDENTS

Douglas W. Nicholson, WSBA #24854
Cone Gilreath Law Offices
Attorneys for Appellant
200 E. Third Avenue
P.O. Box 499
Ellensburg WA 98926
(509) 925-3191

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I. INTRODUCTION

State Farm concedes that the Allemands' house was built in 1940, and that it lacked a foundation, an electrical system, and a crawl space meeting the building code requirements in effect at the time the house was substantially damaged by an accidental fire. State Farm further concedes that the Allemands could not obtain a building permit to simply repair the damaged portions of their house. Instead, the entire dwelling had to be torn down and rebuilt or replaced. And it was the fire, not any building code enforcement, that set in motion this entire chain of events.

Because the inherent ambiguities in the Allemands' State Farm homeowners' policy must be construed in their favor, they are entitled to the full replacement cost under Coverage A of the policy. Furthermore, State Farm's attempt to avoid the application of the efficient proximate cause rule fails as a matter of law and public policy. Accordingly, the trial court's decision should be affirmed, and the Allemands should be awarded their attorney fees and costs on appeal in this coverage dispute.

II. STATEMENT OF THE CASE

Although State Farm has generally presented an accurate statement of the case, there are a few important points that need to be clarified. Prior to entering its Final Declaratory Judgment (CP 97-99), the trial court entered an

Order Granting the Allemands' Cross-Motion for Summary Adjudication of their declaratory relief action. CP 72-73; *see*, also, the Allemands' said motion at CP 32-43, and the supporting declaration of Rex Allemand at CP 44-45. In granting the Allemands' motion, the trial court considered the following uncontroverted facts: Because of the current building code requirements, the Allemands could not obtain a permit to simply repair the portions of their house that were damaged or destroyed by the fire; instead, they had to tear down the entire house, including the undamaged portions, and rebuild or replace it from scratch. CP 45, 73. State Farm has conceded these facts on appeal. *See* Appellant's Brief at 2-3.

In its memorandum in support of its Motion For Final Declaratory Judgment, State Farm stipulated that it would cost \$96,669.56 to replace the Allemands' house. CP 81-82. It was based upon this stipulation that the trial court entered its Final Declaratory Judgment in the principal amount of \$37,006.01 (\$96,669.56 reduced by the \$59,663.55 previously paid by State Farm). CP 82, 98.¹

¹ At CP 81, State Farm acknowledged the Allemands' position that it would cost \$96,669.56 to replace their house. At CP 82, State Farm agreed to accept this figure, but inadvertently stated it to be \$96,669.59. This error is immaterial.

III. ARGUMENT

A. State Farm's First Assignment of Error, and the Issues Pertaining Thereto, are Not Relevant to This Appeal.

State Farm's first assignment of error states: "The trial court erred by failing to enforce the similar construction requirement in the Loss Settlement provision in Plaintiffs' State Farm homeowners insurance policy." State Farm sets forth the first issue pertaining to this assignment of error as follows: "Did the plaintiffs replace their house with similar construction?" State Farm sets forth the second issue pertaining to its first assignment of error as follows: "Does similar construction include differences necessitated by enforcement of a building ordinance or law?" *See* Appellant's Brief at 3.

The issues raised before the trial court, and those presented on appeal, have nothing to do with whether or not the Allemands replaced their house with similar construction. Indeed, both parties have agreed that the replacement cost is \$96,669.56, which is the amount reflected in the trial court's judgment. CP 81-82, 98. Instead, the fundamental issue on appeal is whether the trial court erred in agreeing with the Allemands' argument that, because the policy is ambiguous, Option OL does not limit the amount available under Coverage A to replace their house. *See* State Farm's second assignment of error, and its third and fourth issues pertaining to its second assignment of

error. Appellant's Brief at 1-2; *see*, also, *id.* at 3.

B. A Fair and Reasonable Interpretation of the Allemands' Ambiguous State Farm Insurance Policy Establishes That Option OL Does Not Operate as a Second Cap on the Amount Available Under Coverage A to Repair or Replace the Dwelling Itself.

1. Introduction.

Relying solely upon inapposite authority, and without any analysis of the actual policy language itself, State Farm simply assumes that the Allemands' policy is unequivocal; therefore, it should be enforced as written. Contrary to State Farm's assumption, however, the policy, when properly read as a whole, is ambiguous; that is, it is subject to more than one reasonable interpretation.

One such interpretation is that Option OL is a separate coverage provision, which provides additional insurance to pay for legally required code upgrades. As such, Option OL's coverage limit operates only as an arguable cap on the amount State Farm will pay for the actual costs of the code upgrades themselves. However, it does not otherwise limit the coverage available for the dwelling under Coverage A of the policy. Moreover, because Option OL's purported coverage limit is so obscurely and confusingly written, the limit arguably does not apply at all.

This interpretation is reasonable and favors the Allemands. Accor-

dingly, the Allemands are entitled to the policy limits available to them for the loss of their dwelling under Coverage A. Before addressing the policy language itself, however, an overview of the law governing insurance policy interpretation and construction is in order.

2. Insurance Policy Interpretation and Construction.

"Interpretation of an insurance contract is a matter of law." *McDonald v. State Farm*, 119 Wn.2d 724, 730, 837 P.2d 1000 (1992). "In Washington, insurance policies are construed as contracts. An insurance policy is construed as a whole, with the policy being given a fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." *Weyerhaeuser v. Comm'l Union Ins.*, 142 Wn.2d 654, 665-66, 15 P.3d 115 (2000) (quoting *American Nat'l Fire v. B&L Trucking & Constr. Co.*, 134 Wn.2d 413, 427-28, 951 P.2d 250 (1998)).

"[T]he proper inquiry is not whether a learned judge or scholar can, with study, comprehend the meaning of an insurance contract, but whether the insurance policy contract would be meaningful to the layman . . ." *Dairyland Ins. Co. v. Ward*, 83 Wn.2d 353, 358, 517 P.2d 966 (1974). "The language of insurance policies is to be interpreted in accordance with the way it would be understood by the average man, rather than in a technical sense." *Id.* "In this state, legal technical meanings have never trumped the common

perception of the common man." *Boeing v. Aetna Casualty & Surety Co.*, 113 Wn.2d 869, 881, 784 P.2d 507 (1990).

"It is Hornbook law that where a clause in an insurance policy is ambiguous, the meaning and construction most favorable to the insured must be applied, even though the insurer may have intended another meaning." *Dairyland*, 83 Wn.2d at 358. "Where exceptions to or limitations upon coverage are concerned, this principle applies with added force." *Queen City Farms v. Central Nat'l Ins.*, 126 Wn.2d 50, 83, 882 P.2d 703 (1994). "Limitations [on coverage] . . . must be clear and spelled out with specificity." *Glen Falls Ins. Co. v. Vietzke*, 82 Wn.2d 122, 126-27, 508 P.2d 608 (1973). "A clause is ambiguous when, on its face, it is fairly susceptible to two different interpretations, both of which are reasonable." *American Nat'l Fire*, 134 Wn.2d at 428.

"Undefined terms in an insurance contract must be given their 'plain, ordinary, and popular' meaning." *Boeing*, 113 Wn.2d at 877. "To determine the ordinary meaning of an undefined term, our courts look to standard English language dictionaries." *Id.*

3. The Relevant Insurance Policy Provisions.

The starting point of this analysis must begin with the relevant insurance policy provisions in issue, which include the "Renewal Certificate" (CP

20)(see copy appended hereto); "Coverage A - Dwelling" (CP 52); portions of the "Loss Settlement" provisions applicable to Coverage A (CP 23); and "Option OL - Building Ordinance or Law" (CP 24).

Section I, entitled Coverages, contains the following provision at page 3 of the policy (CP 52):

COVERAGE A – DWELLING

1. **Dwelling.** We cover the dwelling used principally as a private residence on the **residence premises** shown in the **Declarations**.

Page 11 of the policy (CP 23) contains the relevant loss settlement provisions, which are as follows:

SECTION I – LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the **Declarations** apply. We will settle covered property losses according to the following.

COVERAGE A – DWELLING

1. **A1 – Replacement Cost Loss Settlement – Similar Construction.**
 - a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the **Declarations**, the damaged part of the property covered under **SECTION 1 – COVERAGES, COVERAGE A – DWELLING**, except for wood fences, subject to the following:

* * *

- (4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the con-

struction, repair or demolition of a building or other structure, except as provided under **Option OL – Building Ordinance or Law Coverage**.

Thirteen pages later, at page 24 of the policy (CP 24), are the relevant provisions of Option OL. They are as follows:

Option OL – Building Ordinance or Law.

1. Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the **Declarations** of the Coverage A limit shown in the **Declarations** at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

2. Damaged Portions of Dwelling.

When the dwelling covered under **COVERAGE A – DWELLING** is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under **COVERAGE A – DWELLING** is damaged by a Loss Insured we will also pay for:

* * *

- b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:

- (1) the enforcement is directly caused by the same Loss Insured;
 - (2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;
 - (3) the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or land use requirements at the described premises; and
 - (4) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or
- c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

- a. We will not pay for any increased cost of construction under this coverage:
- (1) until the dwelling is actually repaired or replaced at the same or another premises in the same general vicinity;

* * *

- b. We will not pay more for loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:

* * *

- (2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.
- c. We will not pay more under this coverage than the amount you

actually spend:

- (1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law;

Several conclusions can be immediately drawn from the above policy provisions. First, they are not readily understandable to the average lay person and require legal expertise to interpret them. Second, even with such expertise, they remain unclear and subject to more than one reasonable interpretation. Third, the coverage limits available under Coverage A for the dwelling (\$89,866) are separate and distinct from the ostensible coverage limits available under Option OL (\$8,986.60). Fourth, a fair and reasonable interpretation of Option OL's coverage limit is that, if it applies at all, it only limits the amount available to pay for code upgrades; it does not otherwise limit the amount available to repair or replace the dwelling itself under Coverage A. A further analysis of the applicable policy provisions firmly supports these conclusions.

4. Option OL is Ambiguous; Therefore it Must Be Construed in Favor of the Allemands.

The language of Option OL is confusing and ambiguous from the outset. Indeed, the opening paragraph begins by stating that "[t]he total limit of insurance will not exceed an amount equal to the Option OL percentage

shown in the **Declarations** of the Coverage A limit shown in the **Declarations** at the time of loss . . ." CP 24. The body of the policy itself, however, contains no such "Declarations". Although a separate "**Renewal Certificate**" (CP 20) is included with the policy, it nowhere includes the word "Declarations", let alone any "Declarations" clearly and specifically applicable to "Coverage A". In fact, the term "Coverage A" itself does not specifically appear on the "Renewal Certificate". *See* copy appended hereto.

Immediately after its ambiguous reference to "the Declarations", the opening paragraph of Option OL informs the insureds that this optional coverage will provide them with *additional insurance for the dwelling*:

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the **Declarations** . . . *This is an additional amount of insurance* and applies only to the dwelling. CP 24 (italics added).

Moreover, the Coverage A loss settlement provisions expressly refer to Option OL as "**Building Ordinance or Law Coverage**". CP 23.

As understood by the average purchaser of insurance, a fair and reasonable interpretation of the above policy language is the following: State Farm will pay up to the Option OL policy limits for the cost of code upgrades themselves, *as additional insurance coverage* for the dwelling under Coverage A. Thus, it does not otherwise preclude the insureds from receiving the

full coverage available to them under Coverage A for a covered peril.

Indeed, given the language and structure of the loss settlement provisions of Coverage A and those of Option OL's "additional" dwelling coverage, a layman could reasonably conclude that they offer two separate, distinct, and stand-alone coverages and policy limits. The fact that Option OL coverage is optional, that it purports to provide additional coverage if included in the policy, and that it is located in the policy thirteen pages after the loss settlement provisions of Coverage A, further add to this conclusion.

Read this way, Coverage A provides a limit of \$89,866 for damages to the dwelling caused by a covered peril; and Option OL provides an additional \$8,986.60 of coverage to pay for the costs of required code upgrades. Option OL, however, does otherwise limit or condition the insured's right to receive the full limit of Coverage A to rebuild or replace the dwelling when the loss is caused by a covered peril.

If State Farm wanted the coverage limits of Option OL to apply as a second cap on Coverage A, it could have worded the policy language differently. "The [insurance] industry knows how to protect itself and it knows how to write exclusions and conditions." *Boeing*, 113 Wn.2d at 887.

The remaining language of Option OL further support the Allemands' interpretation of the policy. It also calls into question whether the purported

coverage limits under Option OL are even enforceable.

Paragraph two of Option OL states: "When the dwelling covered under **COVERAGE A** . . . is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building . . . ordinance or law. . ."

CP 24. Nothing in this language unequivocally precludes the Allemands from recovering the full replacement cost limits under Coverage A. Any such limitation must be clearly and specifically spelled out to be enforceable. *Glen Falls Inc. Co.*, 82 Wn.2d at 126-27. Again, a fair and reasonable interpretation of paragraph two, read in conjunction with paragraph one of Option OL, is that the Option OL policy limit applies, at best, only to the actual costs of the legally required code upgrades themselves; it does not otherwise limit the amount of insurance available under Coverage A.

Paragraph three of Option OL provides that State Farm will also pay for "*loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law.*" CP 24 at ¶3.6 (italics added). The reference to a "loss . . . caused by enforcement is not used anywhere else regarding Option OL. *See* CP 23-24. This language can reasonably be interpreted to mean that the code enforcement itself must be the efficient proximate cause of the loss, in order for Option OL to apply to the undamaged portion of the dwelling.

However, the efficient proximate cause of the "loss to the undamaged portion" of the Allemands' dwelling was the fire, not the enforcement of any building ordinance. In other words, but for the fire, there would have been no need to replace the undamaged portion of the dwelling. Thus, this part of paragraph three does not apply in this case.

Subpart c of paragraph three provides that State Farm will pay for "the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building . . . ordinance or law . . ." CP 24. Although this language appears applicable here, a reasonable interpretation is that the phrase, "the legally required changes", refers to just the legally required code upgrades themselves, not the remainder of the dwelling.

Accordingly, nothing in paragraph three clearly and specifically precludes the Allemands from recovering the policy limit under Coverage A to replace their house. Again, the additional Option OL coverage limit applies only to the actual code upgrades themselves, if at all.

Paragraph four, which is the final section of Option OL, further obfuscates the policy and renders it all the more ambiguous. The paragraph is entitled "**Building Ordinance or Law Coverage Limitations.**" However, it does not place a dollar limit on the amount State Farm will pay for code upgrades. On the contrary, paragraph four simply states that State Farm will

pay "for any increased cost of construction", once the damaged portion of the dwelling is replaced; that it will pay "the amount you actually spend to replace the undamaged portion of the dwelling"; and that it will pay "the amount you actually spend . . . for the increased cost to repair or rebuild the dwelling." No cap is placed on the amount State Farm will pay, other than the amount actually spent. This language, especially since it is found under a separate heading identifying the "coverage limitations" applicable to Option OL, " can reasonably lead the average purchaser of insurance to conclude that he or she is entitled to receive the amount actually spent to comply with current building ordinances or laws.

Even if the insured were to read the policy as a whole, it would still appear that he or she is entitled to the full coverage available under Coverage A, plus the actual amount spent for code upgrades under Option OL's "additional" coverage for the dwelling. First of all, the insured would have to relate paragraph four of Option OL back to paragraph one, which states that the total limit of insurance provided under Option OL "will not exceed an amount equal to the Option OL percentage shown in the **Declarations** of the Coverage Limit shown in the **Declarations** at the time of the loss." CP 24. However, as previously discussed, there are no "Declarations" per se for the insured to refer to. While a learned judge or scholar might understand the

"Renewal Certificate" (CP 20) to be the "Declarations", it is a stretch to presume that the average purchaser of insurance, who is not skilled in the law of insurance contract construction, would share the same understanding.

Moreover, Option OL appears on the "Renewal Certificate" under the heading "**Forms, Options, and Endorsements**", where it is stated as follows:

"Ordinance/Law 10%/ \$8,880 OPT OL".

It is hard to fathom that this language "would be understood by the average man, rather than in [the] technical sense" intended by State Farm. *Dairyland Ins. Co.*, 83 Wn.2d at 358. To the unlearned layman, this language appears as cryptic code; it is not clearly spelled out as a coverage limit on Option OL that is "shown in the **Declarations** of the Coverage A limit shown in the **Declarations**". CP 24. Because limitations on coverage "must be clear and spelled out with specificity", *Glen Falls Ins. Co.*, 82 Wn.2d at 126-27, the insured is entitled to the benefit of the doubt.

To summarize, even a person well-versed in construing insurance policies would have to carefully scrutinize each section of the policy, and do so with a deliberate eye toward finding in favor of State Farm, in order to accept State Farm's argument in this case. However, "the proper inquiry is not whether a learned judge or scholar can, with study, comprehend the meaning of an insurance contract, but whether the insurance policy contract would be

meaningful to the layman.” *Dairyland*, 82 Wn. 2d at 358.

Accordingly, the Allemands’ State Farm policy should be deemed ambiguous, and the above interpretation offered by the Allemands should be found to be reasonable; therefore, the trial court’s judgment should be affirmed on this basis alone. Moreover, as will be addressed later in this brief, State Farm’s attempt to circumvent the efficient proximate cause rule provides another basis to find in favor of the Allemands. However, before discussing that rule, the cases cited by State Farm, for the proposition that the Allemands’ policy should be construed in its favor, will now be distinguished.

5. The Cases Cited by State Farm are Entirely Inapposite.

State Farm cites *Hess v. North Pacific Ins. Co.*, 122 Wn.2d 180, 859 P.2d 586 (1993) as being analogous to the case at hand. Neither the facts nor the Court’s decision in *Hess*, however, have any application here. In *Hess*, the insured’s summer cabin was destroyed by fire. The agreed actual cash value of the cabin was \$20,000, and the agreed replacement cost was \$43,182.10; however, the insureds did not intend to replace the cabin. Under these facts, the Court framed the issue before it as follows: “The sole issue is whether, under the terms of the policy, the insureds can collect the full replacement cost when they have not replaced the destroyed insured cabin and

stipulated they do not intend to replace it." *Id.* at 182. *Hess* did not involve any of the coverage issues or policy language presented here. In short, *Hess* is wholly inapposite.

State Farm next cites *Roberts v. Allied Group Ins. Co.*, 79 Wn. App. 323, 901 P.2d 317 (1995) and *Dombrosky v. Farmers Ins.*, 84 Wn. App. 245, 928 P.2d 1127 (1996), *review denied* at 131 Wn.2d 1018 (1997), to stand for the proposition that "[s]imilar construction" does not include differences in the new house necessitated by the building code." Appellant's Brief at 11-13. Both cases, however, are readily distinguishable.

In *Roberts*, the insured's home was totally destroyed by fire. Although the policy included a guaranteed replacement cost endorsement, the insurer denied coverage for the increased costs relating to building a new home conforming to current building code requirements. *Roberts*, 79 Wn. App. at 324. In doing so, the insurer relied on language in the guaranteed replacement cost endorsement, which provided that it "will pay the cost of repair or replacement, but not exceeding the replacement cost of that part of the building damaged, for like construction and use on the same premises." *Id.* at 325. Replacement cost was defined as "the cost, at the time of loss, to repair or replace the damaged property with new materials of like kind and quality, without deduction for depreciation." *Id.* Based upon this specific language,

Division One held that the policy did "not include differences in the new structure necessitated by law." *Id.* at 325.

Roberts, however, is clearly distinguishable. As this very Court pointed out in its decision in *DePhelps v. Safeco Ins.*, 116 Wn. App. 441, 449, 65 P.3d 1234 (2003):

An insured can reasonably expect replacements to comply with current building laws. *Starczewski v. Unigard Ins. Group*, 61 Wn. App. 267, 274, 810 P.2d 58 (1991). And the costs of current building code compliance are also recoverable under the 'efficient proximate cause' rule. That rule obligates an insurer to pay for those costs that are proximately caused by the insured event. *Id.*

Safeco contends that the 'equivalent construction and use' language of the DePhelps policy precludes recovery for building code upgrades here. In several decisions, Washington courts have declined to apply *Starczewski* to policies that contain 'equivalent construction and use' language, such as that contained in the DePhelps policy. *See, e.g., Dombrosky v. Farmers Ins. Co.*, 84 Wn. App. 245, 258, 928 P.2d 1127 (1996); *Roberts v. Allied Group Ins. Co.*, 79 Wn. App. 323, 325-26, 901 P.2d 317 (1995).

But those cases are distinguishable. Unlike the policies in Starczewski, Dombrosky, and Roberts, the DePhelps policy expressly covers the cost of compliance with ordinances and building laws. Safeco is required to cover code upgrade costs to restore the structure to its former use as a bed and breakfast. (Emphasis added.)

DePhelps makes clear that, if the policy includes specific code upgrade coverage, a court will not exclude coverage for code upgrades based on

the "equivalent construction" language. Here, the Allemands made code upgrade coverage part of their policy, by acquiring Option OL.

Moreover, Option OL itself nowhere limits the repair or replacement of the dwelling to the use of "new materials of like kind and quality", as did the replacement cost provision of the policy in *Roberts*. Finally, *Roberts* did not address the efficient proximate cause rule, which, had it been raised and addressed, might have resulted in a different outcome.

Roberts was followed in *Dombrosky*, the second case relied upon by State Farm in support of its argument. In *Dombrosky*, the insureds claimed that they were entitled to recover the additional costs required to comply with building codes enacted after they moved into the structure. *Dombrosky*, 84 Wn. App. at 257. The insurance policy excluded direct or indirect losses from the enforcement of any building ordinance or law, unless endorsed in the policy. In addition, the policy stated that payment of replacement costs is limited to "equivalent construction". In upholding the exclusion, the court stated: "Here, 'equivalent construction' has the same effect as 'like kind and quality.' Therefore *Roberts* applies and the expenses related to the new building code are not covered under the policy." *Id.* at 259.

However, *Dombrosky* is also clearly distinguishable. As in *Roberts*, and unlike the Allemands' State Farm policy, the insurance policy in *Dom-*

brosky did not provide any coverage for compliance with building code requirements. Moreover, the effect of the efficient proximate cause rule, and whether the insurance policy language was ambiguous, were not raised in *Dombrosky*. Instead, the Dombroskys, in what was essentially a bad faith action against Farmers, argued (1) that Farmers waived its right to assert the policy language regarding loss settlement, and (2) that Farmers was equitably estopped from relying upon the loss settlement provisions. *Id.* at 255-56.

Furthermore, the insurance policy in *Dombrosky* used the language "equivalent construction", whereas the Allemands' State Farm policy refers to "similar construction", which State Farm failed to define. CP 23. The words "equivalent" and "similar" have different meanings. Equivalent means "that which is equal in value, quantity, force, meaning, etc. to something else". See *Webster's, New Twentieth Century Dictionary* (2d Ed. Unabridged).

The adjective "similar", by contrast, is defined by the same dictionary as follows: "Like, resembling; having a general resemblance but not exactly the same". The on-line source, *Dictionary.com*, defines "similar" as "having a likeness or resemblance, esp. in a general way: two similar houses." In short, *Dombrosky*, like *Roberts*, involved the interpretation and construction of completely different policy language, as well as different issues on appeal.

Accordingly, both cases should be found inapplicable to the resolution

of the policy language and issues presented in this appeal. It is respectfully submitted that *Starczewski and DePhelps* are far more applicable to the facts and issues at hand, despite State Farm's attempts to distinguish them.

C. The Efficient Proximate Cause Rule Should Apply to Allow the Allemands to Receive the Full Benefits of Their Insurance Policy.

1. The Efficient Proximate Cause Rule.

“The efficient proximate cause rule states that where a peril specifically insured against sets other causes into motion which, in an unbroken sequence, produce the result for which recovery is sought, the loss is covered, even though other events within the chain of causation are excluded from coverage.” *McDonald*, 119 Wn.2d at 731. “Stated in another fashion, where an insured risk itself sets into operation a chain of causation in which the last step may have been an excepted risk, the excepted risk will not defeat recovery.” *Id.* (quoting *Villella v. Pacific Employees Mut. Ins. Co.*, 106 Wn.2d 806, 815, 725 P.2d 957 (1986)). “An insured can reasonably expect replacements to comply with current building laws. . . . And the costs of current building code compliance are also recoverable under the ‘efficient proximate cause’ rule. That rule obligates an insurer to pay for those costs that are proximately caused by the insured event.” *DePhelps*, 116 Wn. App. at 449 (citing *Starczewski v. Unigard Insurance*, 61 Wn. App. 267, 274, 810 P.2d 58

(1991), *review denied* at 117 Wn.2d 1017 (1991).

In *Starzewski*, the court made clear that the efficient proximate cause rule trumps a building code upgrade exclusion where the initial cause of the loss was a covered peril. As in the case at bar, in *Starzewski*, a building was only partially destroyed by a fire; however, the insured was required to demolish the building and remodel it to conform with present building code standards. The insurance policy in question contained a building code exclusion.

Based on these facts, the court stated:

We hold, as a matter of law, that the average person would believe that 'the amount necessary to repair or replace the damaged property' includes the amount necessary to comply with mandatory building codes enacted after the policy was issued. . . . We also hold that Unigard may not rely on its exclusion of coverage for losses 'resulting directly or indirectly from . . . any ordinance or law regulating the use, construction, repair, or demolition of property' to deny an insured amounts necessary to comply with building codes under a 'repair or replace' type of clause. . . . Under the facts of this case, Unigard's exclusion would also be rendered ineffective by the 'efficient proximate cause' rule, since any additional repair costs due to code requirements resulted predominantly from the fire, not from the enforcement of any ordinance or law.

Starzewski, 61 Wn. App. at 274 (citations omitted).

In the case at bar, there are no unresolved factual issues. Under current local code requirements, the Allemands could not obtain a building permit to simply repair the damage to their house. Instead, they had to obtain a

permit to demolish and rebuild or replace the entire dwelling. CP 45. Because the fire was the efficient proximate cause of both the damage to the structure, and the need to completely rebuild or replace it, in order to meet current building code requirements, the Allemands should recover the full replacement cost of their house.

State Farm argues that the efficient proximate cause rule does not apply in this case, because Option OL does not exclude the coverage available under the loss settlement provisions applicable to Coverage A; instead, it only limits the amount of coverage available. *See* Appellant's Brief at 16-17. State Farm's argument is misplaced. Although State Farm characterizes Option OL as simply a limitation imposed on Coverage A, it in effect operates as a partial or conditional exclusion, since it substantially eliminates the coverage that would otherwise exist under Coverage A. As such, it deprives the Allemands of the very coverage they thought they were getting when they purchased their State Farm homeowner's policy.

Moreover, State Farm's attempt to distinguish *Starczewski*, based upon the *Roberts and Dombrosky* decisions, is of no avail. It was the "like kind and quality" and "equivalent construction" language of the policies before them upon which the courts in *Roberts* and *Dombrosky* distinguished their decisions from *Starczewski*. *See Roberts*, 79 Wn. App. at 325; *Dom-*

brosky, 84 Wn. App. at 358-59. The "similar construction" language in the Allemands' policy, by contrast, is essentially indistinguishable from the corresponding policy language in *Starzewski*.

In *Starzewski*, the loss settlement provision stated: "Covered Property Losses are settled at *actual cash value at the time of loss*, but not exceeding the *amount necessary to repair or replace* the damaged property." *Starzewski*, 61 Wn. App. at 269 (italics original). Given this language, the court held, as a matter of law, "that the average person would believe that 'the amount necessary to repair or replace the damaged property' includes the amount necessary to comply with mandatory building codes enacted after the policy was issued." *Id.* at 274. The loss settlement provision of the Allemands is virtually identical: State Farm "will pay the cost to repair or replace with similar construction . . . the damaged part of the property." The only difference is that Allemands' policy adds the phrase "with similar construction" after the words "repair or replace." This slight modification is immaterial; the language is functionally the same.

Indeed, because "similar" means "having a general resemblance but not exactly the same", *Webster's, supra*, there is no practical difference between the two loss settlement provisions. Obviously, "to repair or replace the damaged property" would, at a minimum, require the use of "similar" con-

struction materials, but not necessarily "equivalent" materials, in order to be covered under the policy. (An insured cannot upgrade the quality of the damaged property without paying extra for the improvement.)

Accordingly, the reasoning in *Starzewski* is applicable here; therefore, the efficient proximate cause rule applies to trump State Farm's building code exclusion, which exists as a blanket exclusion unless the insured elects to purchase the separate, optional "coverage" available under Option OL. Option OL, however, is simply a thinly veiled attempt by State Farm to circumvent the efficient proximate cause rule. Moreover, its promise of "an additional amount of insurance" for the dwelling (CP 24) is entirely illusory; thus, it should be held to violate public policy.

2. State Farm's Attempt to Circumvent the Efficient Proximate Cause Rule Should be Deemed Void and Unenforceable as a Matter of Public Policy.

Accordingly to the loss settlement provisions applicable to the dwelling under Coverage A, the costs of complying with building code requirements are expressly excluded, unless the insured has opted for the additional coverage ostensibly provided under Option OL. The relevant language states:

(4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under **Option OL – Building Ordinance or Law Coverage**. CP 23.

The first paragraph of Option OL then expressly leads the insureds to believe that this optional provision provides them with *additional coverage*. The paragraph, which is entitled "Coverage Provided", states: "This is *an additional amount of insurance* and applies only to the dwelling." CP 24 (italics added). This representation of "an additional amount of insurance" for the dwelling is, however, misleading and deceptive.

Had they not added Option OL, the Allemands' policy would have had a blanket building code exclusion. Thus, they would have been entitled to the full replacement cost available under Coverage A. As *Starczewski* makes clear, as a matter of law, a building code exclusion, or at least one worded like the Allemands', does not trump the efficient proximate cause rule. *Starczewski*, 61 Wn. App. at 274. By adding the Option OL coverage, however, the Allemands unknowingly *reduced* the amount available to them under Coverage A in this case, at least according to State Farm's argument. In other words, they paid more to get less.

By conveniently labeling Option OL as a "limitation" on the coverage otherwise available under Coverage A, State Farm has not only undermined the efficient proximate cause rule, it has left the Allemands high and dry, since they are woefully short of being fully compensated for the loss of their

home. Simply put, although in theory their house could be repaired for \$50,676.95 but for the building code requirements, the reality is that the house could not be legally repaired; instead, it had to be totally demolished and rebuilt or replaced. CP 45.

The implications of State Farm's interpretation of Option OL extend far beyond this particular case. It is a matter of common knowledge that building code regulations and requirements change with time. It is also a matter of common knowledge that many people own homes that were built decades ago, and that such homes are not in compliance with current building code requirements. Thus, such homeowners could find themselves in the same predicament as the Allemands under State Farm's interpretation of its standard homeowners' insurance policy.

Any time an older house is substantially damaged, it will inevitably have to be brought into compliance with current building code ordinances. This, in turn, may require that the entire house be torn down and replaced. For example, in the Allemands' case, a new foundation was required in order to meet current building code requirements; and the entire fire-damaged dwelling would have had to have been torn down to install the foundation.

Under the Allemands' interpretation of their State Farm policy, they are entitled up to Option OL policy limit to pay for the code-required new

foundation. If the cost of the foundation exceeds the Option OL coverage limit, then the Allemands' would have to make up the difference out of their own pocket. However, they are still entitled to the full replacement cost of the dwelling itself under Coverage A, since the efficient proximate cause of the loss, and the need to comply with the current building code requirements, was the fire.

However, if this Court accepts State Farm's interpretation, then Option OL operates as a second cap on Coverage A, which reduces the amount available for the dwelling whenever the dwelling must be rebuilt or replaced to meet building code requirements, notwithstanding the fact that the efficient proximate cause of the loss was a covered peril. As a result, the homeowner ends up being grossly underinsured.

As State Farm correctly notes, at page 16 of Appellant's Brief, there appear to be no Washington case interpreting a specified limit for building ordinance or law coverage as contained in the Allemands' State Farm policy. Accordingly, the Allemands request that this Court take the opportunity to declare the limitation imposed by Option OL on Coverage A as being against public policy, at least to the extent that State Farm would like to have the Option OL limitation interpreted, if not entirely. Indeed, because State Farm's interpretation of Option OL results in an insured paying more to receive less,

it should be viewed as being tantamount to a constructive fraud, or at least as a deceptive act or practice by State Farm.

"As a matter of public policy, limitations [on coverage] . . . must be clear and spelled out with specificity." *Glen Falls Ins. Co.*, 82 Wn.2d at 126-27. "Although public policy supports the fair treatment of insurers, this concern is secondary to the protection of insureds and innocent third parties." *Schwindt v. Commonwealth Ins. Co.*, 140 Wn.2d 348, 358, 997 P.2d 353 (2000). "[L]imitations in insurance contracts which are contrary to public policy and statute will not be enforced . . ." *State Farm Insurance v. Emerson*, 102 Wn.2d 477, 481, 687 P.2d 1139 (1984).

The term 'public policy,' . . . embraces all *acts* or contracts which tend clearly to injure the public health, the public morals, *the public confidence in the purity of the administration of the law*, or to undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel. (Italics ours.) 6 R.C.L. §120, p. 712.

LaPoint v. Richards, 66 Wn. 2d 585, 594-95, 403 P.2d 889 (1965) (quoting *Goodier v. Hamilton*, 172 Wn. 60, 62, 19 P.2d 392 (1933)).

An insurance contract may violate public policy where it is prohibited by statute, contrary to public morals, or condemned by judicial decision. *American Home Assur. v. Cohen*, 124 Wn.2d 865, 874, 881 P.2d 1001 (1994). Here, both the statutes governing the business of insurance, and the

many judicial decisions of this state upholding the efficient proximate cause rule, compel a finding that State Farm's attempt to circumvent the efficient proximate cause rule violates public policy.

Because the business of insurance is a matter of great public policy concern, the Legislature has deemed it necessary to codify it. For example, RCW 48.01.020 states: "All insurance and insurance transactions in this state, or affecting subjects located wholly or in part to be performed within this state, and all persons having to do therewith are governed by this code." RCW 48.30.010(1) states, in relevant part: "No person engaged in the business of insurance shall engage in . . . unfair or deceptive acts or practices in the conduct of such business. . . ." RCW 48.30.040 states: "No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein." State Farm's attempt to circumvent the efficient proximate cause rule, by excluding building code coverage unless the insured purchases Option OL, which then operates to reduce the coverage available under Coverage A when extensive code upgrades come into play, is, at a minimum, an unfair or a deceptive act or practice, in derogation of the law.

Moreover, the efficient proximate cause rule itself is a well-

established public policy of this state, the purpose of which is to ensure that insureds are fully compensated for covered losses. *See, e.g., Starczweski*, 61 Wn. App. 267; *Villella*, 106 Wn.2d 806; *DePhelps*, 116 Wn. App. 441; *McDonald*, 119 Wn.2d 724; *Pluta v. United Services Auto. Ass'n*, 72 Wn. App. 902, 866 P.2d 690 (1994), review denied at 124 Wn.2d 1018 (1974); *Safeco Insurance v. Hirschmann*, 112 Wn.2d 621, 773 P.2d 413 (1989); *Graham v. Public Employees Mut. Ins. Co.*, 98 Wn.2d 533, 656 P.2d 1077 (1983); *NW. Bedding v. Nat'l Fire Ins.*, 154 Wn. App. 787, ___ P.3d ___ (February 11, 2010).

The appellate courts of this state have, on several occasions, struck down an insurer's insertion of language into its policy in an effort to circumvent the efficient proximate cause rule. *See, e.g., Hirschmann*, 112 Wn.2d 621; *Villella*, 106 Wn.2d 806; and *Pluta*, 72 Wn. App. 902.

In *Hirschmann*, the Supreme Court addressed the issue of whether Safeco could circumvent the efficient proximate cause rule, by including language in its policy stating that it will "not cover loss caused by any of the following excluded perils, whether occurring alone or in any sequence with a covered peril: . . . Earth Movement, meaning: a. earthquake, landslide; mud flow, earth sinking, rising or shifting; . . ." *Hirschmann*, 112 Wn.2d at 624. Safeco had rewritten its policy, so that the above-quoted language replaced a

prior clause, which stated: "We do not cover loss resulting directly or indirectly from [listed excluded perils]." *Id.* Safeco rewrote the clause to get around the Court of Appeals' earlier decision in *Safeco Insurance v. Hirschmann*, 52 Wn. App. 469, 475, 760 P.2d 969 (1988), which held that the earlier version of the clause did not preclude coverage under the efficient proximate cause rule. *Id.* at 624-25. The Supreme Court, however, held that the change in language failed to circumvent the efficient proximate cause rule; thus, it affirmed the Court of Appeals. *Id.* at 631.

In reaching its holding, the *Hirschmann* Court stated that its prior decision in *Villella, supra*, indicated that insurance carriers may not alter policy language to circumvent the efficient proximate cause rule:

In *Villella* we noted the specific language in Pemco's policy that purported to exclude coverage. It was uncontroverted that an excluded peril 'contributed to or aggravated' the loss. Nevertheless, we declined to allow the insurer to circumvent the rule by use of this exclusionary clause. Similarly, we decline to allow Safeco to circumvent the rule by use of *its* exclusionary clause.

Id. at 629 (italics original).

In *Pluta*, the Court of Appeals, following *Hirschmann* and *Villella*, held:

We see little difference between language excluding a loss 'whether occurring alone or in any sequence with a covered peril' and language excluding a loss otherwise covered if it contributes 'in any way with a cause or event excluded . . . '. The contingent

exclusion in this case clearly circumvents the efficient proximate cause rule.

The trial court erred in holding that the losses were not covered. The decision of the trial court is reversed.

Pluta, 72 Wn. App. at 907.

Because State Farm's interpretation of Option OL seeks to circumvent the efficient proximate cause rule; because it runs afoul of the laws governing the business of insurance; because it is an ambiguous policy exclusion or limitation; and because it leads insureds to believe they are getting additional coverage for their dwelling, when in fact they are getting less, Option OL should be deemed void and unenforceable as a matter of public policy.²

3. State Farm Has Cited No Applicable Authority in its Attempt to Circumvent the Efficient Proximate Cause Rule.

After acknowledging that it found no Washington case interpreting the specific limit for building ordinance or law coverage as contained in the Allemands' policy, State Farm argues that "a similar code upgrade limitation was part of the insurance policy at issue in *Everett v. State Farm*, 162 Cal. App. 4th 649, 75 Cal. Rptr.3d 812 (2008)." Appellant's Brief at 16. This California decision, however, is not binding upon this Court. *Riojas v. Grant*

² Although the public policy argument was not raised below, this Court can uphold the trial court's decision on any basis reflected in the record. *Wendle v. Farrow*, 102 Wn.2d 380, 382, 686 P.2d 480 (1984).

County PUD, 117 Wn. App. 694, 700, 72 P.3d 1093 (2003). Moreover, the facts are readily distinguishable. As State Farm acknowledges, in *Everett*, "there was no dispute about the applicability and validity of the limit of coverage for code upgrades but only whether the cost of the code upgrades met or exceeded that limit." Appellant's Brief at 16.

In *Everett*, the insured's home was destroyed by fire. The declaration page of the policy provided a dwelling limit in the amount of \$92,300, and a dwelling extension limit in the amount of \$9,230; it also contained Option ID, which provided an additional \$18,460 of dwelling coverage, and "Ordinance/Law" coverage in the amount of \$9,230. *Id.* at 654. State Farm paid \$138,654.48 for the structural loss, which took into account the increased sum under "Option ID", the increase for inflation, and the "Ordinance/Law" coverage. *Id.* Regarding the "Ordinance/Law" coverage, the only issue on appeal was whether the judgment should be reversed because State Farm did not pay the policy limits under this coverage. *Id.* at 655, 658-59. The California Court of Appeals found that, "[b]ecause Everett failed to show that she either incurred, or would incur, the cost for code upgrades up to the policy limits, this assertion does not support a claim for breach of contract." *Id.* at 659. In short, the issue was decided based on the sufficiency of the evidence, not on an interpretation of the policy language.

Indeed, *Everett* never addressed the application of the efficient proximate cause rule on the "Ordinance/Law" coverage limitation of the policy; nor did it address the issue of whether the "Ordinance/Law" coverage was ambiguous when read in conjunction with the loss settlement provisions applicable to the dwelling. It is precisely these issues, however, that are presented on appeal in the case at bar, and which distinguish it from *Everett*.

D. The Allemands are Entitled to Their Attorney Fees and Costs on Appeal.

"An award of attorneys fees is required in any legal action where the insurer compels the insured to assume the burden of legal action, to obtain the full benefit of his insurance contract". *Schlener v. Allstate Ins. Co.*, 121 Wn. App. 384, 388, 88 P.3d 993 (2004) (quoting *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 53, 811 P.2d 673 (1991)). "An award of fees is appropriate under *Olympic Steamship* where the insurer forces the insured to litigate questions of coverage . . ." *Id.* at 388-89. The insured is also entitled to recover "**all** of the expenses necessary to establish coverage", not just the statutory costs allowed under RCW 4.84.010. *Panorama Vill. v. Allstate Ins. Co.*, 144 Wn.2d 130, 144, 26 P.3d 910 (2001) (emphasis original).

The sole controversy here involves a question of the coverage available under the policy. Indeed, the parties have stipulated to the value of the

claim (e.g., the replacement cost of the Allemands' house). CP 82. Moreover, the trial court awarded the Allemands their attorney fees in this coverage dispute (CP 98), which State Farm has not challenged. The Allemands are, therefore, also entitled to reasonable attorney fees and expenses on appeal, pursuant to RAP 18.1(a).

IV. CONCLUSION

State Farm's argument rests, *ipse dixit*, upon the conclusion that the Allemands' homeowners' policy is unambiguous; therefore, it must be enforced as written. State Farm, however, fails to analyze the policy language itself in an effort to explain why the policy is not ambiguous. Instead, State Farm simply cites a few inapposite cases for the proposition that the policy should be enforced as written.

Moreover, State Farm's argument, that the Allemands admit that but for the current building law ordinances, their house *could have* been repaired for the amount paid by State Farm, is an illusory red herring, and of no consequence in deciding this case. The simple fact is that the Allemands' house could not be legally repaired; instead, it had to be completely demolished and rebuilt from the ground up.

As established above, the Allemands' insurance policy is ambiguous and susceptible to more than one reasonable interpretation. The Allemands

have offered the following reasonable interpretation: Option OL provides the insureds with the security of having additional insurance coverage available to pay for the legally required code upgrades themselves. As such, Option OL's coverage limit operates only as an arguable cap on the amount available for this purpose; it does not operate to reduce the coverage limits otherwise available for the dwelling under Coverage A.

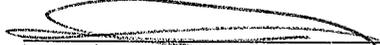
Finally, the ambiguity issue aside, State Farm's interpretation of the Allemands' policy seeks to circumvent the efficient proximate cause rule; and it does so in a manner that deceives the insureds into believing that, by making option OL part of the policy, they are acquiring "additional insurance" coverage for the dwelling, when, in fact, under the facts presented, they are actually *reducing* the amount of coverage available for the dwelling. As such, Option OL, at least as interpreted by State Farm, should be deemed void and unenforceable as a matter of public policy.

For these reasons, the trial court's judgment should be affirmed. The Allemands should also be awarded their attorney fees and costs on appeal.

DATED this 13TH day of July, 2010.

Respectfully submitted,

CONE GILREATH LAW OFFICES

By: 
Douglas W. Nicholson, WSBA #24854
Attorney for Respondents

Appendix

State Farm Homeowners' Insurance Policy

"RENEWAL CERTIFICATE"

(Found at CP 20-21)



State Farm Fire and Casualty Company

PO Box 5000
Dupont, WA 98327-5000

C-15- 2711-F489 F H

ALLEMAND, REX A & BRENDA
PO BOX 783
KITTITAS WA 98934-0783



Location: 111 RAILROAD AVE
KITTITAS WA
98934

SFPP No: 0021083315

Loss Settlement Provisions (See Policy)
A1 Replacement Cost - Similar Construction
B1 Limited Replacement Cost - Coverage B

Forms, Options, and Endorsements

Homeowners Policy	FP-7955
Ordinance/Law 10%/ \$8,880	OPT OL
Increase Dwlg up to \$17,760	OPT ID
Amendatory Endorsement	FE-7298.8
Special Limits - Money/Jf	FE-5258
Policy Endorsement	FE-5320
Motor Vehicle Endorsement	FE-5452
Telecommuter Coverage	* FE-5831

*Effective: NOV 01 2006

RENEWAL CERTIFICATE

POLICY NUMBER 47-60-7210-8

Homeowners Policy
NOV 01 2006 to NOV 01 2007

BILLED THROUGH SFPP

Coverages and Limits

Section I

A Dwelling		\$88,800
Dwelling Extension	Up To	8,880
B Personal Property		66,600
C Loss of Use		Actual Loss Sustained

Deductibles - Section I

All Losses 500

Section II

L Personal Liability	\$100,000
Damage to Property of Others	500
M Medical Payments to Others (Each Person)	1,000

Annual Premium \$319.00

Premium Reductions

Home/Auto Discount	54.00
Claim Free Discount	91.00

Inflation Coverage Index: 201.1

This policy does not provide earthquake coverage. If you are interested in obtaining earthquake coverage, please contact your State Farm agent for more information concerning the coverage and eligibility criteria.

NOTICE: Information concerning changes in your policy language is included. Please call your agent if you have any questions.

138-3076 1.7 Rev. 11-14-2005 (0113089b)

Thanks for letting us serve you. We appreciate our long term customers.
 32354 401B 1
 * 1V,G2
Agent SCOTT ROLLINS INS AGENCY INC
Telephone (509) 925-1483

*If you have moved, please contact your agent.
See reverse side for important information.*

REP

Prepared SEP 18

CONTINUED FROM FRONT

Mortgagee: CHASE HOME FINANCE LLC
ITS SUCC AND/OR ASSIGNS ATIMA

Loan No: 000000015279268

Your coverage amount....

It is up to you to choose the coverages and limits that meet your needs. We recommend that you purchase a coverage limit equal to the estimated replacement cost of your home. Replacement cost estimates are available from building contractors and replacement cost appraisers, or, your agent can provide an estimate from Xactware, Inc.[®] using information you provide about your home. We can accept the type of estimate you choose as long as it provides a reasonable level of detail about your home. State Farm[®] does not guarantee that any estimate will be the actual future cost to rebuild your home. Higher limits are available at higher premiums. Lower limits are also available, which if selected may make certain coverages unavailable to you. We encourage you to periodically review your coverages and limits with your agent and to notify us of any changes or additions to your home.

Discounts and Rating - The longer you are insured with State Farm[®], and the fewer claims you have, the lower your premium. For policyholders insured by State Farm for three or more years, the Claim Free Discount Plan provides a premium discount if you have not had any claims considered for the Plan in the most recent three-year period since becoming insured with State Farm. Premium adjustments under the Claim Record Rating Plan are based on the number of years you have been insured with State Farm and on the number of claims that we consider for the Plan. Depending on the Plan(s) that applies in your state/province, claims considered for the Plans generally include claims resulting in a paid loss and may include weather-related claims. Additionally, depending on your state/province's plan and your tenure with State Farm, any claims with your prior insurer resulting in property damage or injury may also influence your premium. For further information about whether a Claim Free Discount is in effect in your state/province, the Claim Record Rating Plan that applies in your state/province, and the claims we consider for the Plans, please contact your State Farm agent.

NOTICE TO POLICYHOLDER:

For a comprehensive description of coverages and forms, please refer to your policy.

Policy changes requested before the "Date Prepared", which appear on this notice, are effective on the Renewal Date of this policy unless otherwise indicated by a separate endorsement, binder, or amended declarations. Any coverage forms attached to this notice are also effective on the Renewal Date of this policy.

Policy changes requested after the "Date Prepared" will be sent to you as an amended declarations or as an endorsement to your policy. Billing for any additional premium for such changes will be mailed at a later date.

If, during the past year, you've acquired any valuable property items, made any improvements to insured property, or have any questions about your insurance coverage, contact your State Farm agent.

Please keep this with your policy.

(o1f008qg) Rev. 05-2005

(o1f313aa) (o1f307bb)

CERTIFICATE OF SERVICE

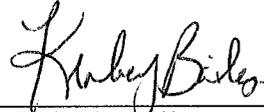
I certify that on the 13th day of July, 2010, I caused a true and correct copy of this Brief of Respondents to be served on the following in the manner indicated below:

Counsel for Defendant/Appellants:

Steven M. Cronin
Mullin, Cronin, Casey & Blair, P.S.
Third Floor, Jockey Club Building
N. 115 Washington
Spokane WA 99201

(X) UPS Overnight
Delivery

By:



Kimberly Bailes