

ORIGINAL



JUL 09 2010

J. DAVID NAVARRO, Clerk  
By L. AMER  
Deputy

Robert T. Wetherell, ISB No. 3011  
Megan R. Goicoechea, ISB No. 7623  
BRASSEY, WETHERELL & CRAWFORD, LLP  
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Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political  
subdivision of the State of Idaho,

Plaintiff/Appellant,

vs.

IDAHO COUNTIES RISK  
MANAGEMENT PROGRAM,  
UNDERWRITERS (ICRMP), and  
DOES I through X,

Defendant/Respondent.

Case No. CV OC 09-20083

**NOTICE OF APPEAL**

**TO: THE ABOVE-NAMED RESPONDENT, IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS (ICRMP), AND THE PARTY'S ATTORNEY OF RECORD, PHILLIP J. COLLAER, AND THE CLERK OF THE ABOVE- ENTITLED COURT.**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named Appellant, County of Boise, appeals against the above-named Respondent, Idaho Counties Risk Management Program, Underwriters (ICRMP), to the Idaho Supreme Court from the following decision and Order entered in the above-referenced action, the Honorable Cheri C. Copsey presiding: Judgment on Defendant's Motion for Summary Judgment dated June 7, 2010.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Idaho Appellate Rule 11(a)(1).

3. Appellant provides the following preliminary statement on appeal, which the Appellant intends to assert in the appeal. This preliminary statement, however, provides only preliminary issues and shall in no way prevent the Appellant from asserting other issues on appeal. The preliminary issues on appeal are: Did the district court err in granting Defendant's Motion for Summary Judgment?

a. Did the district court err in finding that ICRMP had no duty to defend its insured, Boise County, in the Alamar litigation under the Errors and Omissions Section of the ICRMP Policy?

b. Did the district court err in finding that the ICRMP Policy clearly and unambiguously excludes coverage for all of the claims alleged by Alamar against Boise County?

c. Did the district court err in finding that the Alamar complaint only alleged wrongful acts against Boise County, which were excluded from coverage under the ICRMP Policy?

d. Did the district court err in reading the planning and zoning exclusion of the Errors and Omissions Section of the ICRMP Policy too broadly and in interpreting that provision

in a manner that excluded the claims alleged against Boise County from coverage under the ICRMP Policy ?

e. Did the district court err in finding that the exclusions under the Errors and Omissions Section of the ICRMP Policy, including the provision under that Section that resurrected coverage for some excluded claims, were unambiguous as applied to the facts of this case?

4. The Appellant requests the reporter's standard transcript.

5. The Appellant requests the following documents to be included in the Clerk's Record,

in addition to those automatically included under Idaho Appellate Rule 28:

a. Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;

b. Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;

c. Affidavit of Robert T. Wetherell in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment and exhibits;

d. Affidavit of Tim McNeese in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment; and

e. Affidavit of Robert T. Wetherell and exhibits.

6. No additional charts or pictures offered or admitted as exhibits are requested in this

Appeal.

7. I certify:

a. That a copy of this Notice of Appeal has been served on the court reporter,

Kim Madsen, at the address set forth in the certificate of service attached;

b. That the clerk of the District Court has been paid the estimated fee of \$200.00 for preparation of the reporter's transcript, subject to adjustment on receipt from the clerk's office of an estimate of cost;

c. That the estimated fee for preparation of the clerk's record of \$100.00 has been paid, subject to adjustment on receipt from the clerk's office of an estimate of cost;

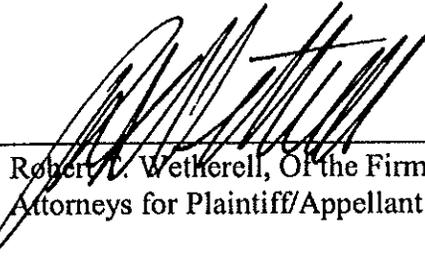
d. That the appellate filing fee has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 9 day of July, 2010.

BRASSEY, WETHERELL & CRAWFORD

By



Robert Wetherell, Of the Firm  
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

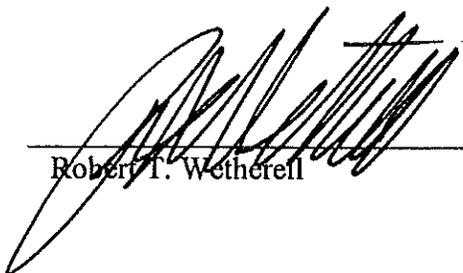
I HEREBY CERTIFY that on this 7 day of July, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer  
Anderson, Julian, & Hull  
P.O. Box 7426  
Boise, Idaho 83707

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile 344-5510

Kim Madsen, Court Reporter  
Ada County Courthouse  
200 W. Front St., Rm 5123  
Boise, Idaho 83702

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile 287-7529

  
\_\_\_\_\_  
Robert T. Wetherell

**ORIGINAL**

Robert T. Wetherell, ISB No. 3011  
Megan R. Goicoechea, ISB No. 7623  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
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Boise, Idaho 83701-1009  
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Facsimile: (208) 344-7077  
Email: rtw@brasseynet, mg@brasseynet

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A.M. \_\_\_\_\_ FILED P.M. 4:22

JUL 19 2010

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political  
subdivision of the State of Idaho,

Plaintiff/Appellant,

vs.

IDAHO COUNTIES RISK  
MANAGEMENT PROGRAM,  
UNDERWRITERS (ICRMP), and  
DOES I through X,

Defendant/Respondent.

Case No. CV OC 09-20083

**AMENDED NOTICE OF APPEAL**

**TO: THE ABOVE-NAMED RESPONDENT, IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS (ICRMP), AND THE PARTY'S ATTORNEY OF RECORD, PHILLIP J. COLLAER, AND THE CLERK OF THE ABOVE- ENTITLED COURT.**

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d. Did the district court err in reading the planning and zoning exclusion of the Errors and Omissions Section of the ICRMP Policy too broadly and in interpreting that provision

in a manner that excluded the claims alleged against Boise County from coverage under the ICRMP Policy ?

e. Did the district court err in finding that the exclusions under the Errors and Omissions Section of the ICRMP Policy, including the provision under that Section that resurrected coverage for some excluded claims, were unambiguous as applied to the facts of this case?

4. The Appellant requests Court Reporter Kim Madsen's transcript from the Hearing on Defendant's Motion for Summary Judgment and on Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment, held on May 20, 2010, at 3:00 p.m.

5. The Appellant requests the following documents to be included in the Clerk's Record, in addition to those automatically included under Idaho Appellate Rule 28:

- a. Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;
- b. Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;
- c. Affidavit of Robert T. Wetherell in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment and exhibits;
- d. Affidavit of Tim McNeese in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment; and
- e. Affidavit of Robert T. Wetherell and exhibits.

6. No additional charts or pictures offered or admitted as exhibits are requested in this Appeal.

7. I certify:

a. That a copy of this Amended Notice of Appeal has been served on the court reporter, Kim Madsen, at the address set forth in the certificate of service attached;

b. That the clerk of the District Court has been paid the estimated fee of \$200.00 for preparation of the reporter's transcript, subject to adjustment on receipt from the clerk's office of an estimate of cost;

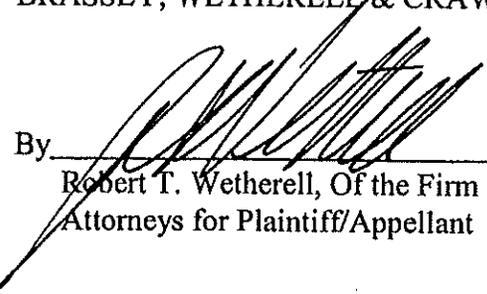
c. That the estimated fee for preparation of the clerk's record of \$100.00 has been paid, subject to adjustment on receipt from the clerk's office of an estimate of cost;

d. That the appellate filing fee has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 19 day of July, 2010.

BRASSEY, WETHERELL & CRAWFORD

By 

Robert T. Wetherell, Of the Firm  
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

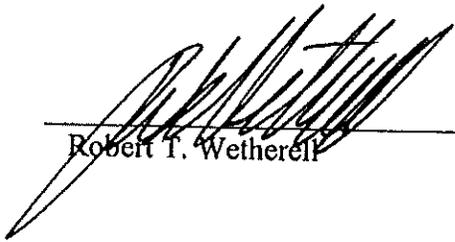
I HEREBY CERTIFY that on this 19 day of July, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer  
Anderson, Julian, & Hull  
P.O. Box 7426  
Boise, Idaho 83707

U.S. Mail, postage prepaid  
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Kim Madsen, Court Reporter  
Ada County Courthouse  
200 W. Front St., Rm 5123  
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 Overnight Mail  
 Facsimile 287-7529

  
\_\_\_\_\_  
Robert T. Wetherell