STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO, *Plaintiffs*, vs. **NATHAN P. JEFFCOAT.** *Defendants*.	Case No. **CV 2007 9338** **MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF FARM BUREAU'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION AND PROCEDURAL BACKGROUND.

This is a declaratory judgment action filed December 18, 2007, between Farm Bureau Mutual Insurance Company of Idaho (Farm Bureau), and its insured, Nathan P. Jeffcoat (Jeffcoat). On May 2, 2007, a complaint alleging the tort of battery was filed by Jeremiah Boss (Boss) against Jeffcoat. That complaint alleges Jeffcoat, without any legal justification or provocation from Boss, willfully and intentionally battered Boss, and caused him injury. Complaint, CV 2007-9338, p. 2-3, ¶8. A criminal charge against Jeffcoat was also filed. Between July 13, 2006, and July 13, 2007, Farm Bureau issued a home and auto insurance policy to Jeffcoat. *Id.,* p. 3, ¶10. Farm Bureau is currently providing a defense to Jeffcoat in that action between Boss and Jeffcoat, but in the instant case, Farm Bureau seeks a declaratory judgment on its obligation to indemnify or defend Jeffcoat. Jeffcoat filed his Answer in the instant matter on April 21, 2008, demanding a jury trial and filing a counterclaim alleging Farm Bureau is acting in bad

faith because criminal charges were dismissed against him on June 6, 2008, at a preliminary hearing. Answer, p. 4-8.

On August 13, 2008, Farm Bureau filed its Motion for Summary Judgment on its duty to defend and/or indemnify Jeffcoat for the underlying lawsuit between Boss and Jeffcoat. Plaintiff's Motion for Summary Judgment, pp. 1-2. The parties briefed the matter, and on September 11, 2008, oral argument was held.

Farm Bureau filed a Motion to Strike Jeffcoat's brief, as it was not filed within the time limits of I.R.C. P. 56(c). At oral argument the Court granted Farm Bureau's Motion to Shorten Time for Hearing on Plaintiff's Motion to Strike, and then denied Farm Bureau's Motion to Strike. Although Jeffcoat was untimely, Farm Bureau was not prejudiced as it was able to file its reply brief the day before oral argument. The only one prejudiced by Jeffcoat's failure to timely file a brief (which resulted in Farm Bureau's reply brief being untimely filed), was the Court, who only received the last brief the day before oral argument. Idaho Rule of Civil Procedure 61 instructs the Court that at every stage of a proceeding the Court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." *Id., McClure Engineering, Inc. v. Channel 5 KIDA,* 143 Idaho 950, 955, 155 P.3d 1189, 1194 (Ct. App. 2006). Since Farm Bureau admits it was not prejudiced by the late filing of Jeffcoat's brief, the Motion to Strike was DENIED.

II. ANALYSIS.

A, Standard of Review.

Idaho Rule of Civil Procedure 56 sets forth that in considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to

judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.,* 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134 Idaho 84, 87, 996 P.2d 303, 306 (2002). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2,* 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). A trial court's findings of fact will only be set aside if unsupported by substantial, competent evidence, i.e. if clearly erroneous. *Neider v. Shaw,* 138 Idaho 503, 506, 65 P.3d 525, 528 (2003). The Supreme Court freely reviews questions of law. *Id.*

B. Duty to Defend vs. Indemnify.

The duty to defend and the duty to indemnify are separate, independent duties. *Hirst v. St. Paul Fire and Marine Ins. Co.,* 106 Idaho 792, 798, 683 P.2d 44, 446 (Ct.App. 1984). "The duty of an insurer to defend, for the protection of the insured, is a separate, unrelated and broader obligation than a duty to pay damages under the insurance policy." *Id.* An insurer's duty to indemnify is only triggered when the insurance company would be obligated to pay the underlying action regardless of how it fulfilled its duty to defend. *Id.* Its duty to defend, however, arises "where a complaint, read broadly, reveals a potential for liability that would be covered in the insured's policy." *Kootenai County v. Western Cas. & Sur.,* 113 Idaho 908, 910, 750 P.2d 97, 99 (1988). This duty to defend exists as long as there is genuine dispute over facts bearing on the coverage under the policy or application

of the policy's language to the facts." *Black v. Fireman's Fund Am. Ins.,* 115 Idaho 449, 455, 767 P.2d 824, 830 (Ct. App. 1989).

> The proper procedure for the insurer to take is to evaluate the claims and determine whether an arguable potential exists for a claim covered by the policy; if so, then the insurer must immediately step in and defend the suit. At the same time, if the insurer believes that the policy itself provides a basis, i.e. an exclusion, for noncoverage, it may seek declaratory relief.

Kootenai County, 113 Idaho 908, 911, 750 P.2d 97, 100.

C. "Occurrence" as Defined in the Policy.

The policy at issue provides coverage for "occurrences" which are defined as follows:

> **Occurrence** means an accident, including continuous or repeated exposure to conditions, which results in unexpected **bodily injury** or **property damage** during the policy period.

Complaint, Exhibit C. (bold in original). This can be summarized as "accidents resulting in unexpected bodily injury." Farm Bureau argues that the allegations in the underlying tort suit are not "occurrences" as defined by the policy (accidents resulting in unexpected bodily injury), but instead are intentional acts done with the clear intent to cause the subsequent result. Accordingly, Farm Bureau argues as a threshold matter this Court must consider if there was an "occurrence" before considering Jeffcoat's claim of self defense. Memorandum in Support of Plaintiff's Motion for Summary Judgment, p.8; Reply in Support of Plaintiff's Motion for Summary Judgment, p. 7. Farm Bureau states it is entitled to a declaration that it has no duty to defend or indemnify as a matter of law because the only allegation in the complaint against Jeffcoat is one of the intentional tort of battery. Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 8. Jeffcoat argues allegations in the complaint constitute an "occurrence" because the incident resulted in bodily injury to the third party and the complaint does not allege that the injury inflicted was

intended or expected. Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, p. 8.

D. Intentional Act Exclusion.

Even if Jeffcoat's act was an "occurrence" under the policy, Jeffcoat's Farm Bureau policy contains an exclusion for any bodily injury or property damage "Which is intentionally cause by the **insured**." Complaint, Exhibit A, p. 19, Section II, Exclusions, 3. (Bold in original). The Idaho Supreme Court has held that, for an intentional tort exclusion on a liability insurance policy to be invoked, the insured must have acted willfully, intentionally, or maliciously for the purpose of causing injury. *Farmers Insurance Group v. Sessions,* 100 Idaho 914, 918, 607 P.2d 422, 426 (1980). Thus, if an insured acts in self-defense, a negligent miscalculation of appropriate conduct, exceeding the bounds of self-defense, as opposed to the intentional infliction of harm may have occurred. *See Maxson v. Farmer's Insurance of Idaho, Inc.,* 107 Idaho 1043, 1044-45, 695 P.2d 428, 429-30 (Ct.App. 1985). If Jeffcoat's actions are an "occurrence", there is a factual dispute as to whether Jeffcoat's actions exceed self-defense, and under *Maxson,* summary judgment in favor of Farm Bureau is inappropriate.

E. How to Interpret the Underlying Pleadings.

Farm Bureau argues exclusions in the policy apply so as to not cover bodily injury intentionally caused by the insured, arising out of violation of a criminal law committed by any insured, or arising out of molesting, corporal punishments, or physical, sexual, emotional, or mental abuse of any person. Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 9. Jeffcoat argues the allegations in the complaint against him reveal a potential for liability that would be covered by the Farm Bureau policy; thus, Farm Bureau is not entitled to a declaration that there is no duty to defend or indemnify Jeffcoat.

Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, p. 4. Jeffcoat states in his affidavit that he was acting in self-defense and did not intend or expect to cause injury to the third party. Affidavit of Nathan Jeffcoat, p. 3, ¶ 13. Jeffcoat states Boss' complaint against him does not allege that the injury inflicted was expected or intended. Jeffcoat also states Farm Bureau is aware of additional facts bearing on the coverage of the policy found in Jeffcoat's Answer to the complaint, and also based upon the dismissal of the criminal complaint by Judge Burton's findings that Jeffcoat was not the initial aggressor, but rather acted in reasonable self-defense and violated no laws. *Id.* at 7; Affidavit of Rick Baughman, p. 2, ¶ 5.

Both the determination of whether Jeffcoat's action of battery/self-defense was an "occurrence", and if so, was covered by the "intentional acts exclusion", revolve in large part on how this Court is to interpret the underlying pleadings between Boss and Jeffcoat.

Ultimately, Farm Bureau's duty to defend arises where a complaint, read broadly, reveals a potential for liability that would be covered by the policy. *Kootenai County,* 113 Idaho at 910; *City of Idaho Falls v. Home Indem. Co.,* 126 Idaho 604, 608, 888 P.2d 383, 387 (1995). Here, in the light most favorable to the non-moving party, Jeffcoat, questions of fact remain regarding whether the complaint against Jeffcoat, read broadly, revealed a potential for liability that would be covered. The policy at issue provides coverage for "occurrences" which are defined as accidents resulting in unexpected bodily injury or property damage. Jeffcoat states in his affidavit that it was the third party Boss who approached him, made a threatening remark, and attempted to hit him with a closed fist. Jeffcoat then defended himself from the attack and struck the third party in the face twice. Affidavit of Nathan Jeffcoat, p. 3, ¶ 12. Farm Bureau argues "Defendant's self-serving recitation of the encounter… which is at issue in the underlying lawsuit is irrelevant in

determining Farm Bureau's duty to defend." Reply in Support of Plaintiff's Motion for Summary Judgment, p. 2. Yet, Idaho case law requires insurers to determine whether there is a mere *potential* for liability that would be covered. In *Kootenai County,* the Court stated:

> [W]here there is doubt as to whether a theory of recovery within the policy coverage has been pleaded in the underlying complaint, or which is potentially included in the underlying complaint, the insurer must defend regardless of potential defenses arising under the policy or potential defenses arising under the substantive law under which the claim is brought against the insured.

113 Idaho 908, 910-11, 750 P.2d 97, 99-100. An insurer's duty to defend arises "where a complaint, read broadly, reveals a potential for liability that would be covered in the insured's policy." *Id.,*113 Idaho 908, 910, 750 P.2d 97, 99. And this duty to defend exists as long as there is genuine dispute over facts bearing on the coverage under the policy or application of the policy's language to the facts. *Black v. Fireman's Fund Am. Ins.,* 115 Idaho 449, 455, 767 P.2d 824, 830 (Ct. App. 1989). As stated above, the insurer must evaluate the claim and "…determine whether an arguable potential exists for a claim covered by the policy; if so, then the insurer must immediately step in and defend the suit." *Kootenai County,* 113 Idaho 908, 911, 750 P.2d 97, 100.

Jeffcoat claims that he hit Boss in self-defense, that he did not intend to get into a fight on the day in question, but rather found himself in a confrontation where Boss was the aggressor and took a swing at Jeffcoat; and Jeffcoat acted in self-defense, landing a punch and injuring Boss. Jeffcoat claims that such an action on his part is the essence of an "accident" and should be covered under the policy.

Interestingly, Farm Bureau's Motion for Summary Judgment in this case has come down to whether this Court should look at the four corners of the Complaint in *Boss v.*

Jeffcoat, or whether the Court should look at the facts of the *Boss v. Jeffcoat* case. Here is why this distinction is important. Not surprisingly, there is nothing in the *Boss v. Jeffcoat* Complaint that claims Jeffcoat's battery upon Boss was in self-defense. Why would any plaintiff's attorney in a civil case of battery make such a statement in a Complaint on behalf of his client? The claim of self-defense is found where you would think it would be found, in Jeffcoat's Answer to that Complaint. Farm Bureau claims this Court can only look to the four corners of the Complaint in *Boss v. Jeffcoat*. If that were the case, then there would be no claim of self-defense because the Complaint in *Boss v. Jeffcoat* does not discuss Jeffcoat's self-defense.

Farm Bureau argues *Hoyle v. Utica Mutual Ins. Co.,* 137 Idaho 367, 373, 48 P.3d 1256, 1262 (2002), states: "An insurer does not have to look beyond the words of the complaint to determine if a possibility of coverage and, thus, a duty to defend exists." Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 7. Farm Bureau also states: "The Idaho Supreme Court has clearly stated that the mechanism for determining whether an insurer owes a duty to defend is the four corners of the complaint." Reply in Support of Plaintiff's Motion for Summary Judgment, p. 2.

Contrast this to the following quote from *Pendlebury v. Western Casualty and Surety Co.,* 89 Idaho 456, 464, 406 P.2d 129 (1965):

> An insurer is obligated to defend even though the complaint fails to state a claim covered by the policy, where ***the facts of the case***, if established, present a ***potential*** liability of the insured. Doubt as to the obligation of an insurer to defend should be resolved in favor of the insured.

Id. (citations omitted), (emphasis added). So what is this Court to do, look only at the four corners of the Complaint in *Boss v. Jeffcoat*, or look at the facts of the case of *Boss v. Jeffcoat* to see if there is a potential for Farm Bureau's coverage to come into play? At oral argument, this Court asked counsel for Farm Bureau if *Hoyle* has overruled *Pendlebury.*

Counsel for Farm Bureau indicated that *Hoyle* and cases since *Hoyle,* seem to have "abrogated" *Pendlebury.* This Court disagrees.

First of all, Farm Bureau's arguments that *Hoyle* says: "An insurer does not have to look beyond the words of the complaint to determine if a possibility of coverage and, thus, a duty to defend exists" (Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 7), and: "The Idaho Supreme Court has clearly stated that the mechanism for determining whether an insurer owes a duty to defend is the four corners of the complaint" (Reply in Support of Plaintiff's Motion for Summary Judgment, p. 2), are not supported by a reading of *Hoyle*. That language used by Farm Bureau is simply not found in the *Hoyle* decision.

Second, the facts in *Hoyle* make the propositions actually set forth in that decision, understandable. What was actually written in *Hoyle* is: "Pursuant to *Construction Management,* an insurer does not have to look beyond the words of the complaint to determine if a possibility of coverage exists." 137 Idaho 367, 373, 48 P.3d 1256, 1262. The facts in *Hoyle* were that Hoyle and HAII (an insurance agency formed by Hoyle) had insurance with Utica. Hoyle was criminally indicted for fraud, forgery, criminal solicitation, and misappropriation of premium funds. Hoyle was also sued by FSI (an entity which bought HAII) for misrepresentation in that sale. Hoyle and HAII tendered their defense to Utica, which brought a declaratory judgment action. The district court found no duty to defend and the Idaho Supreme Court affirmed. Hoyle argued his policy for "negligence" with Utica should also cover him in his misrepresentation suit brought by FSI because in FSI's complaint against Hoyle, FSI alleged the acts in question were committed in a "fraudulent, improper and illegal" manner. *Id.* Hoyle's argument was that the word "improper" included "negligence". The Idaho Supreme Court held such argument was

"…unpersuasive because in every instance it [improper] is used, it is paired with the term 'fraudulent.'" *Id.* As noted at the beginning of this paragraph, the Idaho Supreme Court in *Hoyle* wrote: "…an insurer does not have to look beyond the ***words*** of the complaint to determine if a possibility of coverage exists." *Id.* (emphasis added). It is understandable that one need not look beyond the complaint to see if the *word* "fraud" equates to the *word* "negligence". It simply does not. The present case does not involve "*words*", it involves "acts". In the present case, there is no way that a battery complaint is going to allege self-defense, yet in many if not most battery lawsuits, you would expect to see a defense of self-defense alleged in the answer. The battery is not an "accident", but it is possible that the self-defense is an "accident" under the policy.

The third reason *Hoyle* does not overrule *Pendlebury* is the lengthy discussion the Idaho Supreme Court in Hoyle has regarding *Kootenai County v. Western Casualty and Surety Co.,* 113 Idaho 908, 750 P.2d 87 (1988):

> How and when an insurer must determine its potential for liability and duty to defend has also been established:
>
> > The problem that faces the insurers when a claim is made is determining if there is a *potential* for liability. However, ... since the advent of notice pleading there will likely be broad ambiguous claims made against the insured making it more difficult for the insurer to determine whether the insurance policy covers the claims.... [W]here there is doubt as to whether a theory of recovery within the policy coverage has been pleaded in the underlying complaint, *or which is potentially included in the underlying complaint*, the insurer must defend regardless of potential defenses arising under the policy or potential defenses arising under the substantive law under which the claim is brought against the insured. It is a misconception of the duty to defend, however, if the insurer refuses to defend and seeks a determination of the duty while the underlying case progresses against the insured, and then if found obligated under its duty, the insurer merely steps in and defends and pays defense fees that have accumulated. The proper procedure for the insurer to take is to evaluate the claims and determine whether an arguable potential exists for a claim covered by the policy; if

> so, then the insurer must immediately step in and defend the suit.

Kootenai County, 113 Idaho at 910-11, 750 P.2d at 89-90.

137 Idaho 367, 372, 48 P.3d 1256, 1261. (italics added). The italicized portion of the *Kootenai County* decision, found in the *Hoyle* decision, show *Pendlebury* and *Kootenai County* are still good law. This Court would be committing error if it only looked at the Complaint in *Boss v. Jeffcoat*. This Court must look to that "…which is potentially included in the underlying complaint." *Id.*

The fourth reason *Pendlebury* is still good law is *Kootenai County* cites a federal District of Idaho case, *State of Idaho v. Bunker Hill Co,* 647 F.Supp. 1064 (D.Idaho 1986), and in that case the federal district Court states:

> However, if coverage (indemnification) depends upon the existence or nonexistence of *facts outside of the complaint* that have yet to be determined, the insurer must provide a defense until such time as those facts are determined, and the claim is narrowed to one patently outside the coverage."

Bunker Hill, 647 F.Supp. 1064. 1068 (italics added), (quoting *C. Raymond Davis & Sons, Inc. v. Liberty Mutual Insurance Co.,* 467 F.Supp. 17 (E.D.Pa. 1979)). *Pendlebury* remains good law in Idaho and clearly states that an insurer is obligated to defend, even if a complaint fails to state a claim covered by the policy, *where the facts of the case, if established*, present potential liability of the insured. *Pendlebury,* 89 Idaho at 464. Implicit in the Court's reasoning in *Pendlebury* is that facts outside the complaint may be considered. Otherwise, the Court in *Pendlebury* would have stated something to the effect of "the facts of the complaint, if established" or "the facts pled, if established" rather than "the facts of the case, if established."

Farm Bureau also urges the Court to consider the Wisconsin case *Estate of Sustache v. American Family Mutual Insurance,* 751 N.W.2d 845 (2008). *Sustache*

involved a suit by a victim's estate and family against an insured and the insurer to recover for a death caused by a punch. 751 N.W.2d 845, 847. Just as in the instant case, the insurer in *Sustache* contended the affirmative defense of self-defense required that the insurer look beyond the four corners of the complaint to continue to provide a defense. *Id.* In Wisconsin, the duty to defend is triggered by the allegations contained in the four corners of the complaint. *Id.* at 850. The Court in *Sustache,* however, stated that the case was beyond the initial duty to defend stage and that when American Family moved for summary judgment and asked for a coverage hearing, "[t]he circuit court was not oblivious to this additional evidence when it concluded that the facts were 'relatively clear and for the most part not in dispute.'" *Id.* at 852. The additional evidence presented to the Court, beyond the insurance policies and the complaint, included affidavits with transcripts of depositions. *Id.* Although the procedural posture and facts of the *Sustache* case differ from the instant matter, it should be noted that the court in *Sustache* stated:

> Where the insurer has provided a defense to the insured, a party has provided extrinsic evidence to the court, and the court has focused in a *coverage* hearing on whether the insured's policy provides *coverage* for the plaintiff's claim, it cannot be said that the proceedings are governed by the four-corners rule. The insurer's duty to continue to defend is contingent upon the court's determination that the insured has coverage if the plaintiff proves his case.

Id. (emphasis in original). Following the coverage hearing in *Sustache,* the Court determined that, because the plaintiffs' suit was not brought for damages "caused by an occurrence to which the policy applies," American Family had no duty to continue to defend. *Id.* at 858.

The Supreme Court of California has reasoned that in determining whether an insurer has a duty to defend, a comparison of the allegations of the complaint with the terms of the policy is necessary and that facts outside the complaint may also be relevant

where they reveal that a possibility exists that the claim may be covered by the policy. *Montrose Chem. Corp. v. Superior Court,* 6 Cal.4th 287, 295, 861 P.2d 1153 (1993). This is so because, in light of pleading rules allowing liberal amendment, "the third party plaintiff should not be the arbiter of coverage." *Id.* at 296. "The scope of the duty [to defend] does not depend on the labels given to the causes of action in the third party complaint; instead it rests on whether *the alleged facts* or *known extrinsic facts* reveal a possibility that the claim may be covered by the policy." *Cunningham v. Universal Underwriter,* 98 Cal.App.4th 1141, 1148 (2002). (emphasis in original). In *Gray v. Zurich Ins. Co.,* 65 Cal. 2d 263, 276, 419 P.2d 168, 176 (1996), the California Supreme Court stated that a "Defendant cannot construct a formal fortress of the third party's pleadings and retreat behind its walls."

The reasoning of the California Supreme Court is apt in light of treatises on the subject. For example:

> The insurer cannot safely assume that the limits of its duties to defend are fixed by the allegations a third party chooses to put into his complaint, since an insurer's duty is measured by the facts, particularly where the pleadings allege facts that are within an exception to a policy but the true facts are within, or potentially within, policy coverage and are known or are reasonably ascertainable by the insurer.

7C APPLEMAN, INSURANCE LAW AND PRACTICE, § 4683 at 56 (1979).

Idaho Courts resolve any doubt as to whether an insurer has a duty to defend in favor of an insured. *Pendlebury,* 89 Idaho 456, 464, 406 P.2d 129. And because of the sound reasoning of the Courts in cases where it was held that an insurer must look beyond the four corners of a complaint to determine whether there exists a duty to defend, this Court must deny Farm Bureau's Motion for Summary Judgment.

F. Bad Faith.

In *Selkirk Seed Co. v. State Ins. Fund,* 135 Idaho 649, 22 P.3d 1028 (2000), the Idaho Supreme Court recognized that an action against an insurer, independent of breach of contract, is limited to intentional or negligent denial or delay of payment. 135 Idaho 649, 652, 22 P.3d 1028, 1031; *see also White v. Unigard Mut. Ins. Co.,* 112 Idaho 94, 730 P.2d 1014 (1986). An independent tort action arises only where the insured can show that the insurer intentionally and unreasonably denied or withheld payment and as a result of the insurer's conduct, the plaintiff was harmed in a way not fully compensable by contract damages. *Robinson v. State Farm Mutual Auto Ins.,* 137 Idaho 173, 178, 45 P. 3d 829, 834 (2002). Specifically, the Court stated in *Robinson* that, to establish a *prima facie* case, the plaintiff would have to establish that: (1) the coverage of the claim was not fairly debatable, (2) the coverage is proven to the point that based on evidence the insurer had, the insurer intentionally and unreasonably withheld benefits, (3) the delay in payment was not the result of a good faith mistake, and (4) the resulting harm to the plaintiff is not fully compensable by contract damages. *Robinson,* 137 Idaho 173, 178, 45 P.3d 829, 834.

Here, the issue before the Court is whether, based on construction of the language in the insurance contract, coverage of Jeffcoat's claim was not fairly debatable and whether coverage was proven such that, based on the evidence that Farm Bureau had, it intentionally and unreasonably withheld benefits. *Id.* Further, Jeffcoat must show Farm Bureau's delay in payment was not based on a good faith mistake and that the harm resulting to Jeffcoat cannot be fully compensated through contract damages. *Id.* Farm Bureau argues there was no "occurrence" within the meaning of the policy, that the policy specifically precludes coverage where an intentional battery is alleged, and that, therefore, no coverage is provided. Memorandum in Support of Plaintiff's

Motion for Summary Judgment, p. 10.

Because questions of fact remain as to whether, in the light most favorable to Jeffcoat, the complaint against Jeffcoat in the *Boss v. Jeffcoat* case, read broadly, revealed a potential for liability that would be covered, Farm Bureau's argument that Jeffcoat's bad faith counterclaim must be dismissed as a matter of law must be denied.

III. ORDER.

IT IS HEREBY ORDERED plaintiff Farm Bureau's Motion for Summary Judgment is DENIED.

Entered this 22nd day of September, 2008.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of September, 2008, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
James S. Thomson, II	208-577-5101	Rick Baughman	(208) 667-3800

_____
Secretary