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FARMERS INSURANCE EXCHANGE,
Plaintiff,
ROBERT SALAZAR, DENISE
DOMINGUEZ, BOBBY SALAZAR'S
MEXICAN FOODS, C ., and DOES 1
through 20, inclusive,
Defendants.

NO. 04 CE CG 01366

PROPOSED STATEMENT OF DECISION
FOLLOWING COURT TRIAL
(Code Civ. Proc., § 632)

ROBERT SALAZAR, AND DENISE
DOMINGUEZ,
Cross-Complainants,
v.
FARMERS INSURANCE EXCHANGE, AND
DOES 1 through 20, inclusive,
Cross-Defendants.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
CENTRAL DIVISION

FILED
OCT 1 9 2005
FRESNO COUNTY COURTS
By Copy DEPT 54

The above-referenced matter came on for trial on August 3, 2005, in Department 61, the Honorable James L. Quaschnick, presiding, sitting without a jury. Plaintiff/Cross-Defendant FARMERS INSURANCE EXCHANGE (hereafter "FIE") was represented by William T. McLaughlin II of the law firm of

1 **McLaughlin Sullivan LLP**, and Defendants/Cross-Complainants **ROBERT**
2 **SALAZAR** ("SALAZAR"), **DENISE DOMINGUEZ** ("DOMINGUEZ") and **BOBBY**
3 **SALAZAR'S MEXICAN FOODS, INC.** ("CORPORATION") were represented by
4 John W. Phillips of the law firm of **Wild, Carter & Tipton**.

5 Evidence having been presented to the Court in **the** form
6 of recorded testimony, as **well** as **documentary** exhibits, and
7 **counsel** for the parties having briefed and **argued** their clients'
8 respective positions on **the** issues **presented**, the Court now issue
9 its statement of decision setting forth its findings and
10 conclusions as **well** as **the** basis for same.

11 I

12 SYNOPSIS OF CASE AND DECISION

13 The issues presented for **determination** by this Court in
14 **the** first phase of this **bifurcated** trial relate only to **coverage**
15 **issues**, and more specifically whether the **subject** automobile
16 insurance policy **issued** by FIE to **SALAZAR** and **DOMINGUEZ** provided
17 coverage for the purported theft of the 2001 **Tahoe** leased by
18 **CORPORATION** and provided to **DOMINGUEZ** as a "company car" for use
19 in connection with **the Corporation's** business pursuits.

20 The record reflects that there **are** **factual disputes**
21 concerning **CORPORATION'S** lease of **the** vehicle back in 2000 or **the**
22 individuals' subsequent purchase of the subject policy in June of
23 2003. **Further** still, it appears that the parties' generally **agre**
24 on the facts **surrounding** the purported theft loss that **occurred** **o**
25 July 3, 2003. **The disputes** between the parties are addressed to
26 **issues** relating to 'insurable interest' and **privity** of contract,
27 as well **as** whether the insureds presented an adequate or
28 sufficient proof of loss to trigger coverage for what **FIE**

1 characterizes as a "highly suspicious claim"

2 As explained more fully herein below, having reviewed
3 and considered the evidence **and** arguments of counsel, and based on
4 the applicable **legal** principles, this Court has reached the
5 following conclusions:

6 1. That neither **DOMINGUEZ** nor **SALAZAR** may recover on
7 the subject policy as a matter of law insofar as neither
8 **demonstrated** any legitimate insurable interest in the **insured**
9 vehicle;

10 2. That **CORPORATION** is **precluded** from recovering on
11 the policy based on the lack of privity of contract between it and
12 **FIE**;

13 3. And, that in **any** event, there is insufficient
14 evidence as a matter of law to establish a covered loss.

15 Based on the foregoing conclusions, this Court has
16 **determined** that **FIE** is entitled to judgment in its favor on both
17 **its** declaratory relief **complaint** and on the cross-complaint **filed**
18 by **DOMINGUEZ** and **SALAZAR**.

19 II

20 FACTUAL AND PROCEDURAL HISTORY

21 Case Summary:

22 1. This action was originally **commenced** by **FIE** to determine
23 **whether** the policy of insurance issued to Defendants **DENISE**
24 **DOMINGUEZ** and **ROBERT SALAZAR** afforded coverage for the **purported**
25 **theft** of a 2001 Chevrolet Tahoe leased by **BOBBY SALAZAR'S MEXICAN**
26 **FOODS, INC. ("CORPORATION")**. Defendants **DOMINGUEZ** and **SALAZAR**
27 **counter-sued** **FIE** claiming breach of contract and 'bad faith', but
28 the Court previously granted **FIE's** motion for **summary adjudication**

1 of the extra-contractual or tort claims. **The** parties stipulated
2 to bifurcating **and** initially trying the coverage issues in a **bench**
3 trial.

4 2. Factual Background:

5 In November 2000, CORPORATION leased a certain 2001
6 **Chevrolet Tahoe (Tahoe) which** it registered in the names of **itsel**
7 **and the leasor, "Hallowell Leasing Lsr"**. (Exhibits 5, 6.) The
8 Tahoe was provided by CORPORATION to DOMINGUEZ as a "company car"
9 for use in connection with CORPORATION's business pursuits.
10 (SALAZAR Deposition, Exhibit 15, at pp. 19-20 and 38-39; DOMINGUEZ
11 Deposition, Exhibit 16, at pp. 98-99, 127.)

12 In **June** of 2003, approximately six (6) months prior to
13 the expiration of CORPORATION's lease, DOMINGUEZ and SALAZAR
14 purchased from FIE a personal automobile insurance policy for the
15 **Tahoe**. (Exhibit 1.) The named insureds were SALAZAR and DOMINGUEZ
16 and the policy listed their address as 2810 San Antonio Drive in
17 Fowler, California. The policy reflected DOMINGUEZ as the
18 principal user and rated her as being a "married female" and a
19 "homeowner" with "multiple car(s)" insured with FIE. (Id.)
20 However, none of that information was true inasmuch as she was
21 single, a tenant in one of SALAZAR's rental properties in Fresno,
22 and had no other cars insured with FIE. (DOMINGUEZ' Statement,
23 Exhibit 11, and her EUO, Exhibit 13; and SALAZAR Statement,
24 Exhibit 10, and his EUO, Exhibit 12.)

25 On July 3, 2003, around 1:55 p.m., DOMINGUEZ contacted
26 the Fresno Police Department and reported the theft of the
27 "company car" (i.e., the Tahoe) from the driveway of her residence
28 located at 1605 E. Michigan. (Exhibit 2; DOMINGUEZ EUO, Exhibit

1 13, at pp. 54-56.) The Tahoe was recovered later by the police
2 that **same** day at about 11 p.m. The vehicle had been stripped of
3 interior parts **and** engine components and it was noted by the
4 police that the vehicle had been "**wiped down**" to remove any
5 **fingerprints**. (Exhibit 3.)

6 On or about July 21, 2003, **SALAZAR** presented FIE with a
7 notarized form of Proof of Loss for **damage** resulting from **the**
8 **alleged** theft and **for** certain personal **items**. (Exhibit 4.) The
9 Proof of Loss was completed by CORPORATION's bookkeeper, **Ms. Lind**
10 **Gonzalez**, and it reflected CORPORATION as both the registered and
11 legal owner of the Tahoe, with "**Hallowell** Chevrolet (Leasing)
12 **Center**" shown as the title holder. (Exhibit 4; DOMINGUEZ EUO,
13 Exhibit 13, at pp. 7-8.)

14 FIE investigated the loss and, in **doing** so, employed a
15 forensic locksmith, **Herbert** T. Miller, to inspect the vehicle, **and**
16 particularly its ignition **and** steering, for **any signs** of forced
17 entry into and/or taking of the Tahoe. Based on his physical
18 inspection of the Tahoe, Mr. **Miller** concluded that there was no
19 evidence that the **vehicle's** lock had been picked, force rotated **or**
20 bypassed in **any** manner, and that **any** time the **lock** cylinder had
21 been rotated it had **been** with the proper ignition key. (Exhibit
22 8.) Further, Mr. **Killer** noted that the vehicle had **been** recovered
23 with the driver's **window** in the **down** position and there was no
24 evidence of the window **being** "forced or broken." Mr. **Miller** noted
25 that the only method for lowering the window was by "**energizing**
26 **the circuit** ... [by] rotating **the** ignition **lock cylinder** to the
27 'on' position."

28 Based on the foregoing facts, as well as **other**

1 information developed in its investigation, FIE filed the instant
 2 **declaratory** relief complaint seeking a judicial determination
 3 regarding coverage. In response, **DOMINGUEZ** and **SALAZAR** **cross-**
 4 complained for breach of contract **and** bad faith.

5 **III**

6 STATEMENT OF THE ISSUES

7 In determining whether the subject **insurance** contract
 8 provides coverage for the **purported** theft of the **Tahoe**, this **Cour**
 9 **has determined** the following to be the material issues or
 10 questions presented during **trial**:

11 1. Whether **DOMINGUEZ** or **SALAZAR** had a sufficient
 12 insurable interest in the insured vehicle sufficient to permit
 13 recovery on the policy.

14 2. Whether there was privity of contract **between**
 15 **CORPORATION** and **FIE** sufficient to permit the **CORPORATION** to
 16 recover on the policy.

17 3. Whether the **record** contained sufficient evidence to
 18 demonstrate a covered loss relating to the alleged theft of the
 19 insured vehicle.

20 **As** already stated, this Court has answered each of the
 21 above questions in the negative, **and** thus the Court has found **tha**
 22 no coverage exists for the subject **loss**.

23 **IV**

24 STATEMENT OF DECISION

25 **A. The Acknowledged Lack of Insurable Interest On The**
 26 **Part of DOMINGUEZ and SALAZAR Invalidates The**
 27 **Policy and Precludes Their Recovery On The Policy:**

28 **The** law provides that a person cannot recover on a
 policy of **insurance** unless that person has an insurable interest

1 in the property insured both at the time of contracting and at the
 2 time of loss. (Ins. Code § 280 et seq.; *California Food Service*
 3 *Corp., Inc. v. Great American Insurance Co.* (1982) 130 *Cal.App.3d*
 4 892, 897; *Royal Insurance Company v. Sisters of the Presentation*
 5 (9th Cir. 1970) 430 *F.2d* 759760-761; *International Service Ins.*
 6 *Co. v. Gonzales* (1987) 194 *Cal.App.3d* 110, 117-118.) In the
 7 absence of an insurable interest, "the contract is void." (Ins.
 8 Code 280; and see also, *Banerian v. O'Malley* (1974) 42 *Cal.App.3d*
 9 604, 614 ["Section 280 of the Insurance Code voids any insurance
 10 contract when *the insured has no insurable interest.*"]; *Napavale,*
 11 *Inc. v. United Nat. Indem. Co.* (1959) 169 *Cal.App.2d* 119.)

12 The governing statute defines "insurable interest" as
 13 "[e]very interest in property, or any relation thereto, or
 14 liability in respect thereof, of such a nature that a contemplated
 15 peril might directly *damage the insured.*" (Ins. Code § 281.)
 16 Insurable interest has also been defined to mean "the insured has
 17 a direct *pecuniary* interest in the preservation of the property
 18 and ... will suffer a *pecuniary* loss as an ~~immediate~~ *and proximate*
 19 *result of this destruction ...* [citation]" (*California Food,*
 20 *supra*, 130 *Cal.App.3d* at 897, quoting *Davis v. Phoenix Co.* (1896)
 21 111 *Cal.* 409, 414). Notably, it is the insured's *economic*
 22 interest in the property insured, and not the property itself,
 23 that is the *determinative* factor. (*Royal Ins. Company, supra* [It
 24 is the interest of the insured, not the building, that is *the real*
 25 *subject of fire insurance.*])

26 Mere legal *formalities* in title do not alone establish
 27 an insurable interest. (See e.g., *Liberty Mut. Fire Ins. Co. v.*
 28 *McKenzie* (2001) 88 *Cal.App.4th* 681 [DMV records are not *conclusi-*

1 on the issue of **ownership.**) Instead, the law requires the court
2 to look behind the paper transaction or arrangement to the **actual**
3 **underlying** realities. (Id.; and see *Royal Ins. Company, supra*,
4 430 F.2d at 761 ["Thus, in applying California's law, we are
5 required to examine the realities, **economic** or to **otherwise**, of a
6 situation rather than merely looking at **technical** concepts of
7 title."])

8 In this case, both the formalities of **title** and
9 underlying realities **point** to only one conclusion: that neither
10 DOMINGUEZ nor SALAZAR had any legitimate insurable interest in the
11 insured vehicle. The record reveals without **controversy** that the
12 vehicle **was** leased by and **registered in the** name of CORPORATION,
13 **and that it** was provided to DOMINGUEZ **merely** as a "company car"
14 for use in connection with CORPORATION'S business **purposes**.
15 (Exhibits 5, 12, 13, 15 and 16.) In fact, at the time the vehicle
16 **was** leased DOMINGUEZ had a **personal** vehicle, and she subsequently
17 acquired another **vehicle**. (Exhibit 12, 13.) SALAZAR testified to
18 his understanding that the vehicle would be used "daily" in
19 connection with those business activities.' (Exhibit 15, at p.
20 20.) The record does not contain any evidence demonstrating
21 that either DOMINGUEZ or SALAZAR **was possessed** of any "**direct**
22 **pecuniary interest** in the preservation of the property" by means
23 of title, contract or otherwise, and it further **does not appear**
24 from the evidence that either would "suffer a **pecuniary loss as**
25 **immediate and proximate result** of [the vehicle's] **destruction.**"

26
27 1 Such daily usage is consistent with the vehicle's rather extensive mileage
28 (50,834) after only 2 ½ years. DOMINGUEZ lived across the street from her
place of employment and walked to work.

1 (California Food, *supra*, 130 Cal.App.3d at 897.)

2 Separate from the foregoing, the Court notes that
 3 neither of the Cross-Complainants, DOMINGUEZ or SALAZAR, have any
 4 economic interest sufficient to support recovery of any damages.
 5 As already noted, California law provides that "it is *the interest*
 6 of the person that is insured under an insurance policy, not *the*
 7 *insured property* itself." (Royal Ins. Company, *supra*, 430 F.2d at
 8 761.) Thus, as one court explained: "the existence of insurance
 9 interest hinges on economic interests rather than upon naked legal
 10 title." (Id.) Only DOMINGUEZ and SALAZAR cross-complained against
 11 FIE for breach of contract seeking policy benefits; no affirmative
 12 claim for damages was presented by CORPORATION. The record
 13 contains no evidence that either individual acquired any economic
 14 or pecuniary interest in the insured vehicle by means of
 15 assignment or transfer by either CORPORATION or the lienholder.

16 Thus, this Court concludes that neither DOMINGUEZ or
 17 SALAZAR have demonstrated sufficient insurable interest in the
 18 insured vehicle to permit them to recover on the policy, and that
 19 their lack of insurable interest invalidates the policy as a
 20 matter of law. (Ins. Code § 280)

21 B. CORPORATION Cannot Recover On The Policy
 22 Because It Lacks Privity of Contract With FIE:

23 By its complaint, FIE seeks a declaration as to the
 24 rights, if any, of CORPORATION to recover on the policy. However
 25 the Court notes that CORPORATION did not join DOMINGUEZ and
 26 SALAZAR in cross-complaining against FIE for policy benefits.
 27 Thus, the only affirmative claims on the insurance contract for
 28 benefits are those presented by those individuals.

1 It is fundamental that an insurance policy is simply a
2 personal contract between the insurance company and its insured.
3 (*Long v. Keller* (1980) 104 Cal.App.3d 312.) Accordingly, as
4 explained by the Fifth District Court of Appeals, there must have
5 been a "meeting of the minds of the parties on the essential terms
6 and elements of the contract ... [including] the risk insured
7 against ..." (Id. at 321; citation omitted) Where that is not
8 shown, there is no privity of contract and thus no contract. (See
9 Id.)

10 Here, it is not disputed that CORPORATION was not a
11 party to the subject insurance policy issued by FIE to SALAZAR and
12 DOMINGUEZ. (Exhibit 1.) There is no mention in the policy of
13 CORPORATION, and it appears from the face of the insurance
14 contract the policy was written as a personal lines auto policy
15 for DOMINGUEZ. (Id.) Further, there is no mention in the policy
16 of the vehicle being intended for business uses by that company,
17 and it appears from the record that this was not revealed to FIE
18 in connection with applying for the policy. Instead, it appears
19 that FIE was lead to believe that the vehicle was intended
20 primarily for the personal use of DOMINGUEZ, who was inaccurately
21 represented to be a married female homeowner with multiple cars
22 insured with FIE.² The record is completely silent as to FIE
23 having any knowledge at the time the policy was issued that the
24 vehicle was, in fact, a 'company car' used by DOMINGUEZ for
25

26 ² While much of the underwriting information provided to FIE regarding
27 DOMINGUEZ, such as her marital status, her residency status, and her insuring
28 multiple cars with Farmers, was not accurate at the time of application, FIE
has not asserted fraud in the inducement as a defense. Thus, this Court has
limited its consideration of such evidence principally to matters bearing on
credibility and the weight of evidence.

1 business purposes.

2 Based on the state of the record, the Court **concludes**
3 that there never was **any "meeting of *the minds*"** as between FIE **ar**
4 **CORPORATION** with regard to the policy, **and** thus there exists no
5 **privity** of contract between those **entities** sufficient to afford
6 **CORPORATION** with **any** rights under the policy. (*Long v. Keller,*
7 *supra.*)

8 **C. The Defendants/Cross-Complainants Have Not Presented**
9 **Facts Demonstrating Theft Sufficient to Trigger Coverage**

10 In **order** to prevail **and** thereby recover contract
11 benefits under a policy of insurance, an **insured** must, in addition
12 to proving the general proof **elements** for a breach of contract
13 claim, **also** satisfy his or her burden of proof in **terms of**
14 establishing that the loss falls within **the scope** of the **coverage**
15 afforded by the policy. (*Garvey v. State Farm Fire & Cas. Co.*
16 *(1989) 48 Cal.3d 395, 405; Collin v. American Empire Ins. Co.*
17 *(1994) 21 Cal.App.4th 787, 803.*) If the claim does not fall
18 **within** the insuring clause, there is **no** need to analyze further
19 inasmuch as there is no coverage. (*Collin v. American Empire In*
20 *Co., supra, 21 Cal.App.4th at 802-803; American Star Ins. CO. v.*
21 *Ins. Co. of the west (1991) 232 Cal.App.3d 1320, 1325.*)

22 In *Johnson v. Pacific Indem. Co.* (1966) 242 *Cal.App.2d*
23 **878**, the plaintiff insured purchased burglary insurance **for thei**
24 **business from the defendant** insurer. In support of their **claim**,
25 the plaintiff and her manager relied on **facts** showing that the
26 door **to** the building was locked by a padlock placed through a
27 **hasp**, **Mat** no one but **them** had keys to **the** padlock, that **they** ha
28 placed the padlock on the **hasp** of **the door** at **the end** of the day

and the next **morning** the padlock had been removed and the businee
 2 was burglarized. (Id., at 880.) However, **as** is the case here,
 3 **there were** no **marks** revealing or shoring a forcible entry - **that**
 4 **is**, there were no **marks of any kind** on the hasp, on the door, or
 5 **in the immediate** vicinity of the hasp or door to **indicate the**
 6 **padlock** had been removed with **force and violence**. (Id.) In
 affirming the trial court's determination that the insureds had
 8 **failed** to carry their **burden of proof**, the appellate court noted:

9 The trier of fact is the sole arbiter of **all**
 10 **conflicts in the evidence**, conflicting
 11 **interpretations** thereof **and** conflicting
 12 **inferences** which reasonably may be **drawn**
 13 **therefrom; is the sole judge** of the
 14 **credibility** of the witnesses; **may** disbelieve
 15 **them even though they are uncontradicted** if
 there is **any rational ground** for doing so, **one**
 16 **such** reason for **disbelief** being the interest
 of the witnesses in the case; **and**, in the
 17 exercise of a **sound legal** discretion, **may draw**
 or **may** refuse to **draw inferences reasonably**
 18 **deducible from the evidence**. [Citation]

16 In **terms** of considering and weighing the **evidence**
 17 **presented** by the insureds, the Johnson court further explained the
 18 trial court's role and responsibilities in such cases:

19 **The court** was authorized to reject the
 20 testimony of **plaintiff and her manager** to the
 contrary, **even though uncontradicted**, because
 21 of their interest in the case. **Under** the
 22 **general rule on appeal**, in support of the
 23 **judgment it must be assumed** the court refused
 to accept this **testimony**, **and** based its
 finding upon a **failure** of proof. [Citations]

24 (242 Cal.App.2d at 880-881; emphasis added.)

25 The same standard of proof was applied in *Collin v.*
 26 *American Empire Ins. Co.*, supra, 21 Cal.App.4th 787, in which a
 27 renter hired a contractor to remodel the rented **home** without **the**
 28 **homeowners'** permission. **Items of personal property** belonging to

1 the homeowner were removed and placed in storage when the renter
 2 could not pay for the work. The contractor sued the renter and
 3 the homeowners for the value of the work performed. Latex, when
 4 the homeowners' personal property could not be found, they cross-
 5 complained against the contractor for conversion of their persons
 6 property. The contractor failed to respond to discovery, and its
 7 answer was stricken and a default entered. The homeowners then
 8 sued the contractor's insurer, attempting to collect on the
 9 default judgment. Although trial court held the loss was covered
 10 the appellate court reversed. The appellate court held the
 11 homeowners could not prove what happened to their personal
 12 property, and thus could not establish a covered "accident":

13 *The most critical (but not only) issue before*
 14 *the trial court was whether the Collins'*
 15 *"conversion" damages resulted from an*
 16 *"accident." The court ultimately held that*
 17 *they did. The court's ruling was erroneous in*
 18 *three respects...Second, there was no factual*
 19 *basis in the cross-emuplaint or elsewhere for*
 20 *the court's finding of an "accident." To make*
 21 *out a prima facie case of coverage, the*
 22 *[insureds] were required to establish that an*
 23 *establish how a single one of their*
 24 *possessions was converted and, indeed,*
 25 *stipulated that they did not know what*
 26 *happened to their property. Given this total*
 27 *failure of proof, the court's inference that*
 28 *an "accident" had occurred was clearly*
 29 *improper.*

30 (Collin, supra, 21 Cal.App.4th at 803-804; emphasis added.)

31 In the present case, the Court has concluded based on
 32 the entire record presented that there has not been shown
 33 sufficient facts demonstrating a covered loss. More specifically,
 34 the Court has determined that the record does not contain an
 35 adequate factual basis to support a reasonable inference on which

1 this Court can find that the loss resulted from an accident or
2 theft. In doing so, the Court has elected to reject the self-
3 serving testimony of DOMINGUEZ and SALAZAR based on their **interests**
4 in the case and in light of the entire record casting serious
5 **doubt** as to their credibility.

6 As already noted, while the alleged theft of the **locked**
7 and alarmed **Tahoe** occurred in the middle of the day and from
8 DOMINGUEZ' driveway, no one, including DOMINGUEZ' family member
9 located inside **the** house, saw or heard anything suspicious. **No**
10 evidence of a forcible taking, such as broken glass, debris or
11 scuff marks, was found at the scene. Similarly, when the **vehicle**
12 was recovered stripped later that **same day**, there were no **visible**
13 signs of any forcible **entry** into or taking of the vehicle. Upon
14 **recovery**, the vehicle's **driver** side window **was** in the down
15 position which, according to **FIE's** expert, . Miller, would **have**
16 **required** use of the **proper** key for the vehicle to energize the
17 **power window**. (Exhibit 8.)

18 Further, Mr. Hiller inspected the recovered vehicle's
19 steering and lock **systems** and concluded that neither showed any
20 signs of **tampering**, bypass or force consistent with a theft.
21 (Exhibit 8.) In fact, this **expert** concluded that **anytime** the
22 vehicle's lock cylinder had been rotated **it** had been done with **the**
23 **proper** ignition key. Further still, **the** expert's inspection **found**
24 that **the** vehicle's sophisticated anti-theft system, known as
25 **PASSLOCK**, was still operational and properly functioning.

26 To rebut **FIE's** expert, the insureds' presented the
27 deposition testimony **and** written report of their purported **expert**
28 **L. Painter**, who did not inspect **the** recovered vehicle until Apr

1 28, 2004 -- over' nine months after it had been **recovered**. For th
2 reasons explained, the Court has rejected this purported expert's
3 testimony and report as lacking proper foundation, **reflecting ne:**
4 **speculation**, and largely being immaterial. As far as
5 qualifications, . Painter relies principally on his having
6 **performed** unspecified repairs on **over** 10,000 vehicles recovered
7 **after** theft. Even accepted at face **value**, this does not
8 demonstrate why this **gentleman's** work **performing** automobile
9 repairs would necessarily qualify him to render expert opinions c
10 **the** issues raised in this case. And neither his CV nor his
11 testimony reveal **any credible** foundation on which this Court may
12 reasonably find that he possesses sufficient knowledge, training
13 or experience to qualify **him** to render relevant expert opinions
14 regarding whether the **subject** vehicle was, in fact, stolen or not
15 While possible Mr. Painter might arguably be qualified to **render**
16 opinions concerning the condition of the recovered vehicle, there
17 are several problems with such testimony. First, he **did** not
18 inspect the vehicle until April of 2004, by which time the **vehicl**
19 had **been** stored for **many** months. Second, and more **importantly**,
20 **Mr.** Painter acknowledged during this deposition that he was never
21 able to actually inspect the vehicle's lock system or keys, which
22 he **deemed** to be "**crucial**" to his ability to render opinions
23 concerning the subject **loss**. (Painter Deposition at pp. 9-10,
24 50.) In fact, Mr. Painter explained that he was "**working in the**
25 **blind**" and that there were "**too many** factors [he] **didn't know**
26 **yet.**" (Id. at pp. 12, 57.) And no evidence was presented **showin**
27 that this expert was subsequently able to conduct the **inspection**
28 of the lock and keys which the expert himself acknowledged was **sc**

1 critical that **it** could change his opinions. (Id. at 45.)
2 Accordingly, this Court has rejected the testimony of Mr. **Painter**
3 in its entirety.

4 Thus, as in both the Johnson and **Collins** cases **discusse**
5 above, the insureds here **are** left with proving coverage
6 inferentially based solely on their **own** testimony. And, as in
7 both of the afore-cited cases, this means the Court, acting as the
8 trier of fact, **must determine** whether **such** an inference is
9 reasonably supported and justified based on the record before **it**.
10 (See **Collin**, supra, 21 Cal.App.4th at 803-804; Johnson, supra, 24
11 Cal.App.2d at 880-881.) While **recognizing** the inherent
12 difficulties and problems that would necessarily confront insureds
13 trying to **'prove'** a covered theft loss, the Court finds that the
14 facts of this particular case distinguish **it from** what could be
15 considered the usual or typical theft loss. As such, the Court
16 **has** determined that, as in **Collin** and **Johnson**, the Court is
17 justified if not obliged to correctly apply the standard of proof
18 requiring some credible, legitimate measure of proof **be shown in**
19 order to demonstrate a covered loss. **Here**, that has not **been**
20 done.

21 In addition to the **admittedly** suspicious facts and
22 circumstances surrounding the purported theft, the Court **simply**
23 cannot ignore the evidence presented by PIE casting yet further
24 doubt and suspicion on the insureds' claim. While acknowledging
25 that the vehicle was a "company car" intended for daily business
26 use, **DOMINGUEZ** and **SALAZAR**, and not **CORPORATION**, decided to **switc**
27 insurance on the **Tahoe** and purchase a personal line auto policy
28 from **FIE** just six months before the expiration of the lease. The

1 underwriting information provided to FIE was **completely inaccurat**
2 and failed to disclose the vehicle's true **owner** and its business
3 usage. Within a month of issuance of the policy, the purported
4 theft took place in **mid-day** without any witnesses or objective
5 evidence of a forcible taking. **The** vehicle is then found hours
6 later stripped of certain parts sufficient to render **the** vehicle
total lose.

8 Neither party **came** forward to offer **any** explanation **fo**
9 **the** acknowledged erroneous information provided to FIE regarding
10 **DOMINGUEZ'** martial and residential status, or for the failure to
11 inform **FIE** that **the** vehicle was in fact intended to be used as a
12 company **car** for business purposes. **And** the recorded **testimony of**
13 those individuals presented discloses material discrepancies. **By**
14 way of examples, while **SALAZAR** acknowledged having **used** the **Tahoe**
15 **DOMINGUEZ** denied he had ever used it. **And** while **DOMINGUEZ** never
16 mentioned during the investigation seeing **SALAZAR** on the **date** of
17 loss prior to notifying him of it, **SALAZAR** admitted having last
18 **seen** the **Tahoe** in **DOMINGUEZ'** driveway on the morning of the
19 purported theft. (Exhibit 10.) Finally, **the** Court notes that
20 **DOMINGUEZ** seemingly **took** lightly and failed to mention to **the**
21 police on the **date** of loss that she **had had** another vehicle,
22 **insured** with a different insurance **company**, stolen **from** her
23 driveway just a **month before.**³ (Exhibit 2.)

24 It is based on the entirety of the record **that this**
25 Court has concluded that no sufficient proof of loss **has been**
26 **shown** to trigger coverage under the policy.

27
28 ³ The other vehicle, a 2001 Chevrolet Silverado pick-up truck, was also
recovered stripped. Exhibit 14.

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CONCLUSION

Based on the foregoing, and GOOD CAUSE otherwise **having**
been found, this Court ORDERS, ADJUGES and DECREES the following

1. That neither **DOMINGUEZ** nor **SALAZAR** may recover on
the subject policy **as** a matter of law insofar as **neither**
demonstrated any legitimate insurable interest in the **insured**
vehicle;

2. That CORPORATION is precluded from recovering on
the **policy** based on the lack of **privity** of contract between it a
FIE;

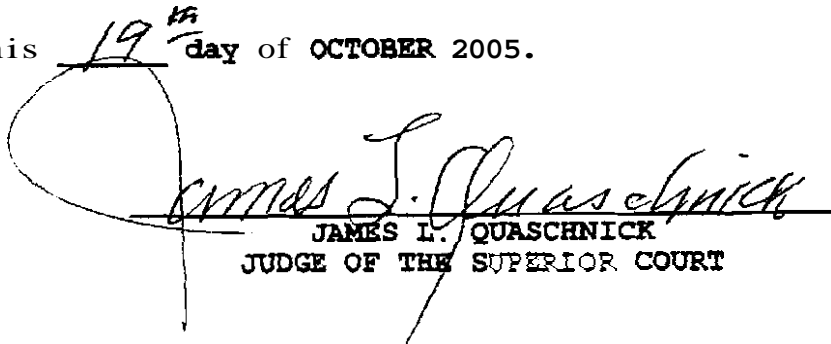
3. And, that in **any** event, **there** is insufficient
evidence as a **matter** of law to establish a covered loss.

4. That **FARMERS** is entitled to **judgment** in its favor
on both **its** declaratory relief complaint and on the cross-
complaint; and

5. That **judgment** shall be entered **forthwith** in **accordance**
with this Court's **Statement** of Decision.

If neither party objects in the **time** permitted by Code
of Civil Procedure sections **632** and **1013** and California **Rules** of
Court, rule **232**, this Proposed Statement of Decision shall **become**
the Statement of Decision, and defendant shall prepare a **Judgment**
consistent with the conclusions of this court.

DATED this 19th day of OCTOBER 2005.


JAMES L. QUASCHNICK
JUDGE OF THE SUPERIOR COURT