

APPLICATION FOR  
**DISTRICT COURT JUDGESHIP**  
**Eighteenth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Daniel B. Bidegaray
  - a. What name do you commonly go by? Daniel
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED] Phone: [REDACTED]
4. Office Address: 2042 Stadium Drive, Suite 1, Bozeman, MT 59715. Phone: (406) 522-7744
5. Length of residence in Montana: 48 years.
6. Place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
2000 to Present	Bozeman	Montana

**B. EDUCATIONAL BACKGROUND**

7. List the names and location of schools attended beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Culbertson High School	Culbertson, Montana	May, 1986	High School
Montana State University	Bozeman, Montana	March, 1990	BS - Ag Bus/Econ
University of Montana	Missoula, Montana	May, 1993	J.D.

8. List any scholarships, awards, honors and citations that you have received:

Martindale Hubble AV Preeminent Rating; 2012 nominee for Montana Trial Lawyer of the Year.

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article. No

**C. PROFESSIONAL BACKGROUND AND EXPERIENCE**

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
State of Montana Bar	09/21/1993
U.S. District Court for the State of Montana	10/19/1993
Ninth Circuit Court of Appeals	02/07/1994
State of North Dakota Bar	03/24/1995
Fort Peck Tribal Court of Assiniboine and Sioux Tribes	10/29/1999
U.S. District Court for the State of Colorado	12/18/2001

11. Indicate your present employment. (List professional partners or associates, if any).

I practice alone at Bidegaray Law Firm, LLC, 2042 Stadium Drive, Suite 1, Bozeman, MT 59715.

12. State the name, dates and addresses of law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Bidegaray Law Firm, LLC	Owner/Manager/Sole Practitioner	May 1, 2013 to present
Bidegaray Law Firm, LLP	Owner/partner	Fall 2003 to May 1, 2013
Cok, Wheat, Brown, McGarry & Bidegaray	Assoc. 1 year, partner 2 years	July 2000 to Fall 2003
Bidegaray Law Firm	Attorney	June 1995 to July 2000
Richland County	Deputy County Attorney	June 1995 to July 2000
Marra, Wenz, Johnson & Hopkins	Assoc.	September 1993 to June 1995

13. If you have not been employed continuously since completion of your formal education, describe what you were doing. N/A.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

My practice primarily focuses on assisting people who have been treated unfairly by insurance companies or who have been injured through the fault of others. The insurance portion of my practice covers denials of most forms of insurance coverage. The injury portion of my practice covers helping people who have suffered an injury or wrongful death. Litigation constitutes almost 100 percent of my legal practice. My cases may end up in state, federal, bankruptcy, or tribal court. I also have worked on workers' compensation cases and continue to handle about one workers' compensation case a year. I occasionally will handle a criminal defense matter. My practice also requires me to handle probate/estate issues, agricultural issues, Social Security, Medicare, Medicaid, oil and gas, contract and lease issues, and many other aspects of the law.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I handle a limited number of oil and gas litigation cases, and regularly assist people with various legal matters from minor criminal issues to estate issues. I have not taught nor lobbied. I have spoken at various CLEs over the years on various topics, including ERISA, the Federal Tort Claims Act, insurance and others but have not kept track of dates nor titles of the talks. I have also chaired/co-chaired legal seminars on insurance/litigation issues.

16. If you specialize in any field of law, what is your specialty?

I primarily specialize in two areas: first, I represent people who have disputes with insurance companies; and second, I represent people who have sustained damages caused by a corporation, the government, or another person.

17. Do you regularly appear in court? Yes.

What percentage of your appearance in the last five years was in:

Federal court	<u>25</u>	%
State or local courts of record	<u>75</u>	%
Administrative bodies	<u>          </u>	%
Other	<u>          </u>	%

18. During the last five years, what percentage of your practice has been trial practice? 90 %

19. How frequently have you appeared in court? This varies, but I estimate about 1-2 times per month.

20. How frequently have you appeared at administrative hearings? N/A

21. What percentage of your practice involving litigation has been:

Civil	<u>99</u>	%
Criminal	<u>1</u>	%
Other	<u>          </u>	%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have handled the following three cases before the Montana Supreme Court in the last five years:

- *Locke v. Estate of Marian Davis, Intervenor Safeco Insurance Company*, 2015 MT 141. (An appeal of a jury verdict and related insurance coverage).

For Appellant: Paul N. Tranel with BOHYER, ERICKSON, BEAUDETTE & TRANEL, P.C.  
283 West Front, Suite 201  
Missoula, MT 59807-7729  
(406) 532-7800

For Intervenor: Brooke B. Murphy, Adrianna Potts with MATOVICH, KELLER & MURPHY, P.C.,  
Western Security Bank Building, Suite 225  
2812 First Avenue North  
Billings, Montana 59103-1098  
(406) 252-5500

- *Stokes as PR of The Estate of Carter v. Montana 13<sup>th</sup> Judicial Dist. Ct.*, 259 P.3d 754, (Mont. 2011). (Writ of Supervisory Control in a products liability claim against Ford, *et. al*).
- *Stokes as PR of The Estate of Carter v. Ford Motor Company, Overland West, Inc., and Durham*. 300 P.3d 648 (Mont. 2013). (Appeal of a jury verdict in a products liability case).

Attorneys for Defendant Ford:

Vaughn A. Crawford, Lee A. Mickus  
SNELL & WILMER, LLP  
Tabor Center, 1200 17<sup>th</sup> Street, Ste 1900  
Denver, CO 80202-5854  
(303) 634-2000

Neil G. Westesen, Ian McIntosh  
CROWLEY FLECK PLLP  
45 Discovery Drive/P.O. Box 10969  
Bozeman, MT 59719-0969  
(406) 556-1430

Attorneys for Defendant Overland West: Guy Rogers/Jon Wilson with BROWN LAW FIRM  
315 N. 24<sup>th</sup> Street  
Billings, MT 59103-0849  
(406) 248-2611

Attorneys for Defendant Durham: Donald L. Harris with HARMAN, WARREN & HARRIS  
550 North 31<sup>st</sup> Street, Suite 250  
Billings, MT 59101  
(406) 247-0591

Co-counsel for Plaintiff: Dennis Patrick Conner with CONNER & PINSKI, PLLP  
520 Third Avenue North  
Great Falls, MT 59403-3028  
(406) 727-3550

23. State the number of jury trials that you have tried to conclusion in the last ten years. 5
24. State the number of non-jury trials that you have tried in the last ten years. 1
25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

<p><i>McKenna v. State Farm and Fraley</i>. DV-14-832A          Dates of Trial: N/A          Name and Telephone of Presiding Judge:          Hon. Mike Salvagni (406) 582-2140</p> <p>Adversary Counsel:          Dale R. Cockrell/Thomas A. Hollo          MOORE, COCKRELL, et al, PC          145 Commons Loop, Ste. 200          Kalispell, MT 59904-0370          Telephone: (406)751-6000</p>	<p><i>Dun et al v. Transamerica Premier Life Insurance Company</i>. CV-16-23-BU-BMM          Dates of Trial: To be determined          Name and Telephone of Presiding Judge:          Hon. Brian Morris (406) 441-1355</p> <p>Adversary Counsel:          Marshal L. Mickelson/Annie N. Harris          CORETTE BLACK CARLSON &amp; MICKELSON          129 West Park Street          Butte, MT 59703          Telephone: 406-782-5800</p>
<p><i>Panasuk v. Oasis Petroleum North America. LLC</i>. DV-15-26          Dates of Trial: To be determined          Name and Telephone of Presiding Judge:          Hon. David Cybulski (406) 653-6266</p> <p>Adversary Counsel:          Brandon JT Hoskins          MOULTON BELLINGHAM, PC          27 North 27<sup>th</sup> St., Ste 1900, Crowne Plaza          Billings, MT 59103-2559          Telephone: (406) 248-7731</p>	<p><i>Ceynar v. Picture Mountain Cattle Co., LLC and Wieder</i>. DV 15-72          Dates of Trial: 6/26/2017 – 6/28/2017          Name and Telephone of Presiding Judge:          Hon. Deborah Kim Christopher (406) 883-7360</p> <p>Adversary Counsel:          Kevin A. Twidwell          GARLINGTON, LOHN &amp; ROBINSON, PLLP          350 Ryman Street, P. O. Box 7909          Missoula, MT 59807 -7909          Telephone: (406) 523-2500</p>
<p><i>Disher v. State Farm</i>. CV 15-60-BU-SEH          Dates of Trial: N/A.          Name and Telephone of Presiding Judge:          Hon. Sam E. Haddon (406) 727-8877</p> <p>Adversary Counsel:          Dale R. Cockrell/Katherine A. Matic          MOORE, COCKRELL, et al. P.C.          145 Commons Loop, Suite 200          Kalispell, MT 59904-0370          Telephone: (406) 751-6000</p>	<p><i>Gatlin v. United States of America</i>. CV-15-92-H-BMM          Dates of Trial: N/A          Name and Telephone of Presiding Judge:          Hon. Brian Morris (406) 441-1355</p> <p>Adversary Counsel:          MELISSA A. HORNBEIN          Assistant U.S. Attorney          901 Front Street, Ste 1100          Helena, Montana 59626          Telephone: (406) 457-5277</p>

<p><i>Bedell v. Swan</i>. CV-14-605C  Dates of Trial: N/A  Name and Telephone of Presiding Judge:  Hon. John C. Brown (406) 582-2150</p> <p>Adversary Counsel:  Guy Rogers  BROWN LAW FIRM  315 N 24<sup>th</sup> St. Billings, MT 59101  Telephone: (406)248-2611</p>	<p><i>Holtshouser v. United States of America</i>. CV 11-114-BLG-RFC  Trial: 4/22/2013; Appeal final: 12/16/14  Name and Telephone of Presiding Trial Judge:  Hon. Richard F. Cebull (406) 247-7000</p> <p>Adversary Counsel:  Tim Cavan, Assistant U.S. Attorney  2601 2<sup>nd</sup> Ave. North  Billings, MT 59101  Telephone: (406) 247-4674</p>
<p><i>Barton v. Mega Promotions, Inc. and Mega Promotions Inc., vs Third Party Defendant Butte-Silver Bow City-County</i>. CV 14-00034-BU-DWM  Dates of Trial: N/A  Name and Telephone of Presiding Judge:  Hon Donald W. Molloy (406) 497-1279</p> <p>Adversary Counsel:  For Mega Promotions, Inc.:  Brooke B. Murphy/Aдриanna Potts  MATOVICH, KELLER &amp; MURPHY, P.C.  2812 First Avenue North, Suite 225  Billings, MT 59103-1098  Telephone: (406) 252-5500</p> <p>For Butte-Silver Bow City-County:  Cynthia L. Walker, POORE, ROTH ET. AL.  1341 Harrison Avenue  Butte, Montana 59702  Telephone: (406) 497-1200</p>	<p><i>Gleed v. Flynn dba J and F One Stop; and Nautilus Insurance Company</i>. 13-6-137  Dates of Trial: N/A  Fort Peck Tribal Court</p> <p>Adversary Counsel:  Jim Halverson  1001 S.24<sup>th</sup> street west, Ste 301  P.O. Box 80470  Billings, MT 59108-0470  Telephone: (406)652-1011</p>
<p><i>Ivie v. Intermountain Claims, Inc. and Connie Hoffman</i>. DV 11-994C  Dates of Trial: N/A  Name and Telephone of Presiding Judge:  Hon. John C. Brown (406) 582-2150</p> <p>Adversary Counsel:  Geoffrey R. Keller  MATOVICH, KELLER &amp; MURPHY, P.C.  2812 First Ave. North, Ste 225  Billings, MT 59103-1098  Telephone: (406) 252-5500</p>	<p><i>Ivie v. MUS Insurance Fund</i>. DV-10-1315B  Dates of Trial: N/A  Name and Telephone of Presiding Judge:  Hon. John C. Brown (406) 582-2150</p> <p>Adversary Counsel:  Dale R. Cockrell, MOORE, COCKRELL, ET AL.  Kalispell, MT 59904-0370  Telephone: (406) 751-6000</p> <p>Robert Lukes, GARLINGTON, LOHN ET AL.  350 Ryman Street, P.O. Box 7909  Missoula, MT 59807-7909  Telephone: (406) 523-2500</p>

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have not appeared before administrative boards or commissions in the past five years.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date, and group to which you spoke.

I have written quarterly articles in Trial Trends as the chair of MTLA's Public Service Committee. I have served as the Chair since 2006. This committee donates helmets (bike and skate) to children to promote helmet usage and decrease head injuries. We have also organized blood draws, clothing donations, and other similar activities. As explained above, I have spoken at various CLEs and chaired/co-chaired legal seminars on litigation issues. I have not published any books or articles.

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana: 1993 to present

Gallatin County Bar Association: 2000 - present; board member for several years

Montana Trial Lawyers Association: 1993 to present; board member 2006 to present

State Bar of North Dakota Member: 1994 to present

American Association for Justice: 1994 to present

2004 graduate of the Gerry Spence Trial Lawyers College

Trial Lawyers for Public Justice: 2011 to present

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Knights of Columbus (Advocate, 2016), Bridger Ski Foundation (member).

30. Have you ever run for or held public office? If so, provide the details. No.

31. Explain your philosophy of public involvement and practice of giving your time to community service.

Community service/involvement is important. Historically, we have been a communal society. A community functions better when people work together because this gives people a greater appreciation for each other. When we isolate, it is easy to pick teams, become self-focused, and break down the feeling of community. When community members each give more than they take from the community, a community functions best. When people in a community cannot resolve disputes, they need a method of amicably doing so. I regularly stay involved in my church by helping with our monthly breakfasts and whatever other activity that arises throughout the year. I also help with Knights of Columbus

functions. Outside of church, I also assist with organizations like Reach, Inc., here in Bozeman. While I lived in Sidney, I was on the board of directors of a similar organization, Richland Opportunities, Inc. Since 2006, I have been the chairman of MTLA's Public Service Committee as explained in more detail below.

#### **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, provide the details. No.
33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details. No.
34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence. No.
35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details. No.
36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details. No.

#### **F. BUSINESS AND FINANCIAL INFORMATION**

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

I grew up on a farm and ranch in eastern Montana and have stayed involved in that farm and ranch.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

Bidegaray Law Firm, LLC, Owner/Manager/Attorney. If selected, I will close my practice. I do not believe that continuing farming and ranching would create any conflict issues.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

I receive farm income, which constitutes probably less than 10 percent of my total income.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain. No.
41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)? Yes.
42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  Yes  No
- If not, please explain. N/A.
43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  Yes  No
- If yes, please explain. N/A.
44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details. No.

#### G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.
- I perform legal research and/or writing almost daily. I often work with others when writing, including legal assistants, co-counsel, and others. I am primarily responsible for the legal research and writing on my cases.
46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.
- My writing in the last five years has primarily been in the context of litigation.
47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.
- See Attached writing sample, first 10 pages of Petitioners' Preliminary Pretrial Statement recently filed.
48. What percentage of your practice for the last five years has involved research and legal writing?
- Approximately 40%.

49. Are you competent in the use of Westlaw and/or Lexis? Yes.

#### H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

In the summer, I enjoy hiking, biking, yardwork, and similar outdoor activities. I started golfing a couple times a month this summer. In the winter, I downhill and cross country ski. Throughout the year, I enjoy working on home/construction projects-either metal or wood (remodeling and/or fabricating). I enjoy spending time with my boys. I am involved in my church and the Knights of Columbus.

51. Describe the jobs that you have held during your lifetime.

Growing up, I worked on the family farm/ranch and continue to do so. During law school, I worked on the farm/ranch and as a legal intern at Habedank, Cummings, Best & Savage between my 1<sup>st</sup> and 2<sup>nd</sup> year, and as a legal intern at Shernoff, Bidart, & Darras between my 2<sup>nd</sup> and 3<sup>rd</sup> year. After graduating law school, I have worked as an attorney as described above.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

I regularly provide free legal advice to people by telephone and at my office. I advise them on how to prepare and file their own claims with insurance companies, and how to handle a claim on their own when the injury is smaller or if it's a worker's compensation claim. Most people don't understand how the claims process really works. Often it is as simple as helping them understand what they need to gather and present to the insurer to support their claim.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

I have been influenced by many people in my legal career, during which I have had the good fortune of working with and against very good lawyers. I am also grateful to have appeared before many Montana judges, and judges from other states because this experience exposed me to many judicial styles. Judge Salvagni is one judge, who has influenced me because he is firm, fair, hard-working, and timely. All these experiences have made me a better lawyer and have given me an appreciation for the numerous ways to practice law and act as a judge.

One attorney has influenced me the most. He is humble, kind, hardworking, and honest. I have worked with him on several matters over the years and his view of the law, his view of the attorneys, the parties, and the other people involved in the legal system have made me a better lawyer and person.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

A judge should have integrity, have competence, be organized, and be experienced both in the law and in life. They should also have a strong work ethic, the ability to consider the issues calmly and impartially, and the ability to make clear, timely and succinct decisions. A judge should be able to keep the parties focused on the issues and the cases moving toward a timely and cost-effective resolution.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

District court judges should apply established Montana precedent. If no applicable Montana precedent exists, then the judge should look to authority from federal or other state courts for guidance. Statutory law should be interpreted according to recognized rules of interpretation and precedent. Cases are factually unique. Therefore, a district court judge must be able to apply existing precedent to the facts of each case. Flexibility may be required if existing precedent no longer serves its purpose - for example, search and seizure law affected by technological advancements. Upholding established case law is important to consistency and to preserve the integrity of the judicial system.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I want to continue serving this community and Montana as a legal professional. As a general jurisdiction trial judge, I will handle a variety of legal matters. I believe I have the experience, strong work ethic, life experience, ability to listen to the issues, consider opposing arguments, and apply the law fairly. I believe my life and legal experience will help me competently address the legal issues raised by the parties who appear before me. I will make clear, timely and succinct decisions. Both personally and professionally, I am at a stage in life where it makes sense to transition my legal career.

57. What items or events in your career have distinguished you or of which you are most proud?

I have worked hard throughout my legal career to help clients who truly needed help while continuing to be a good father to my three sons. At times, I may have put too much time into the law but have worked in recent years at achieving a good work/life balance, which I probably value the most at this point in life.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

My word and hand shake have always been enough – if I say I will do something, I do it.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

Growing up on a farm and ranch in eastern Montana to immigrant parents shaped me as an individual. Working hard and obtaining an education were not optional – these things were expected. My father only had an 8<sup>th</sup> grade education. He instilled in me that education and a strong work ethic is important.

He passed away of a heart attack during my sophomore year of high school. This left me in charge of the work and management of our family farm and ranch. My core values were strongly shaped by these events. This background has helped me successfully practice law and will help me if appointed district court judge.

I have a well-rounded legal background. My first job out of law school was primarily as an insurance defense attorney. I then transitioned into prosecution as a Deputy County Attorney for five years. I prosecuted felony, misdemeanor, and many other types of cases that arose in Richland County. During this time, I also built a general civil practice which included injury claims, divorces, contracts, wills, and other legal matters that arise in a rural community.

Since moving to Bozeman in 2000, I have practiced before several Montana state and federal judges on civil matters. I have also been involved with handling cases in tribal court and in other states. I have written appellate briefs to the Montana Supreme Court and 9<sup>th</sup> Circuit Court of Appeals.

I have consistently been able to make timely and important decisions. I have always worked hard and have done so with integrity.

#### CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 18th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

9/16/16  
\_\_\_\_\_  
(Date)

*Daniel B. Bedezny*  
\_\_\_\_\_  
(Signature of Applicant)

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A signed original **and** an electronic copy of your application and writing sample must be submitted by  
**5:00 p.m. on September 21, 2016.**

**Mail the signed original to:**  
**Office of Court Administrator**  
**c/o Lois Menzies**  
**P.O. Box 203005**  
**Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**

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125 West Mendenhall  
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[dbuckley@danbuckleylaw.com](mailto:dbuckley@danbuckleylaw.com)  
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT OF MONTANA, BUTTE DIVISION**

WILLIAM DUN, Individually and as  
the PERSONAL REPRESENTATIVE  
OF THE ESTATE OF IRMADEL  
DUN, IRENE DUN, SHERYL DUN,  
PAT RUGGIERI, and DORA  
MENGEL,

Plaintiffs,

v.

TRANSAMERICA PREMIER LIFE  
INSURANCE COMPANY,  
F/K/A MONUMENTAL LIFE  
INSURANCE COMPANY, F/K/A  
PEOPLES BENEFIT LIFE  
INSURANCE COMPANY, AND  
DOES I – V,

Defendants.

Cause No. CV-16-23-BU-BMM

**PLAINTIFFS' PRELIMINARY  
PRETRIAL STATEMENT**

Plaintiffs, (“the Duns”) file this Preliminary Pretrial Statement pursuant to Local District Court Rule 16.2.

A. **Factual Outline of Case**

In the wake of massive scandals rocking the United States, The Insurance Marketplace Standards Association was launched in April of 1998. Part of its mission was to implement ethical marketing conduct requirements, requiring that insurers provide advertising and sales materials that were clear as to purpose and honest and fair as to content. This claim involves a departure from such conduct.

Defendants were selling accidental death insurance policies in the 1990s and continued to do so into the 2000s. They solicited potential insureds through call centers and direct mail solicitations throughout the United States. In the fall of 2003, Defendants’ sent a direct mail solicitation to Mrs. Irmadel Dun, a 70-year-old widow, who was living alone in Bozeman, Montana.

Defendants offered to sell Mrs. Dun “\$100,000” of “Accidental Death coverage” at the rate of \$4.33 per month - less than \$52 per year. On November 7, 2003, Mrs. Dun accepted Defendants’ offer. The enrollment form that Mrs. Dun signed reads (highlighting added):

Peoples Benefit Life Insurance Company • Valley Forge, PA, 19493

C#20031HKKKQHQ 0001  
O#0000-RTDU  
PWHLSG

YOUR NAME: Irmadel Dun  
C/o Apt 309  
Leg Villa 1215 W Durston  
Bozeman MT 59715

CERTIFICATE NUMBER: AC07096  
FIRST PREMIUM: \$4.33 monthly

YOUR BENEFICIARY:

~~11-11-2003~~

Yes, I want \$100,000 of this Accidental Death coverage.

I understand that no coverage is in effect until a Certificate is issued and my first premium is paid when due and during my lifetime. I also understand that only accidental bodily injuries sustained on or after my Certificate Effective Date will be covered. I understand that subject to the company's maximum coverage limit. I can have more than one policy/certificate providing the same or similar coverage. I have read my state's fraud notice on the back of this enrollment form.

SIGN HERE: *X- Irmadel W. Dun*

DATE: *11/7/03*

NHGA-ADB-0801

MP02633/

NHC-3260-0801

B0009172 PN 0202

HMA1696

HAP677

Mrs. Dun faithfully paid premiums to Defendants, via automatic withdrawals from her bank account, through the time of her accidental death on March 15, 2013.

One week before her death, on March 8, 2013, Mrs. Dun tripped and fell forward striking her head against a metal door jamb. The impact from the fall caused a large laceration to her face and loss of consciousness/brain injury. She was transferred by ambulance to the Bozeman Deaconess Hospital. On March 11, 2013, she was transferred to the Gallatin Valley Rest Home for continued monitoring. She died in the rest home four days later, on March 15, 2013, from complications related to her March 8, 2013 fall.

Mrs. Dun never returned to her home after her fall. She was 79 years old at the time of her accidental death.

Mrs. Dun's children, as beneficiaries of this policy, filed a claim with Defendants for the \$100,000 accidental death benefits. The Duns sent Defendants supporting medical information, including letters from Mrs. Dun's doctors that

explained that she died because of this fall. Despite this, Defendants denied the claim. Curiously, Defendants told the Duns that they pay accidental death benefits "only" under restricted circumstances.

Frustrated by Defendants' refusal to pay the accidental death coverage, the Duns requested a copy of the policy that supposedly supported Defendants' denial. Defendants did not produce the policy, claiming it no longer existed. Instead, Defendants sent the Duns a "Specimen certificate". This "Specimen certificate" does not state Mrs. Dun's name, list her dependents, identify the effective date of coverage, or include information that normally would appear on the face page of insurance policy. The Duns then asked Defendants to send them a copy of a transmittal letter or similar correspondence showing that Defendants had sent their mother an insurance policy in 2003. Again, Defendants could produce nothing.

This "Specimen certificate" states it applies to "group coverage." As far as the Duns knew, Mrs. Dun was not a member of a "Group" under which she supposedly qualified for "group coverage". The Duns asked Defendants to send them proof that their mom was part of a "group." Again, Defendants identified no "group" of which Mrs. Dun was supposedly a member.

The title and first sentence of the "Specimen certificate" follows the language of the enrollment form their mother signed in November of 2003. The title of the "Specimen certificate" state, "Group Accidental Death Insurance

Certificate”. Like the enrollment form, first sentence of the certificate unambiguously provides coverage for any accidental death. It reads, “This insurance Certificate pays benefits for death due to an accident.” The following is the top of the first page of the “Specimen certificate (highlighting added):

## Peoples Benefit Life Insurance Company

AN IOWA STOCK COMPANY • ADMINISTRATIVE OFFICES: VALLEY FORGE, PENNSYLVANIA 19493  
1-800-523-7900

### GROUP ACCIDENTAL DEATH INSURANCE CERTIFICATE

**This insurance Certificate pays benefits for death due to an accident.** In this Certificate, Peoples Benefit Life Insurance Company is referred to as “we,” “our,” or “us.” The Principal Insured is “you,” “your,” or “yours.” This Certificate explains your coverage under the Group Policy. The Group Policy is a legal contract. You rely on us to honor its terms. We depend on your payment of premiums when due.

The Group Policy Number and the name of the Policyholder are shown in the Certificate Schedule. The Policy may be inspected during business hours at the office of the Policyholder.

Nowhere in the “Specimen certificate” do Defendants define the term “accident”.

Despite this unequivocal grant of coverage for death due to an accident, Defendants rely on language found at Page 3 of the “Specimen certificate” which conflicts with the enrollment form, the title of the policy and the unequivocal grant of coverage in the first sentence of the policy. Defendants’ interpretation amounts to an illegal bait and switch tactic.

Defendants’ interpretation conflicts with: (1) the enrollment form that Mrs. Dun signed, (2) the face page of the insurance policy, and (3) even with its own website states regarding accidental death coverage, which states:

#### Accidental Death Plan A

This option offers your loved ones death benefit payout of \$250,000, provided the death is caused by a covered accident. **A covered accident includes causes, such as traffic accidents and falls.** You can also add a family option to this plan, which offers an additional \$125,000 payout on the death of your spouse, and a \$5,000 payout on the death of your children.

Based on Defendants' coverage interpretation, under Section III, Defendants would pay death benefits only under restricted accidental death circumstances. Under Defendants' interpretation, accidental death must occur: while riding in a "private passenger automobile"; after being struck, as a pedestrian, by a "private passenger automobile"; while driving a "land motor vehicle" for hire; or while getting on, off or while riding on a "common carrier." Defendants further restricted these circumstances by requiring the "private passenger vehicle" have a ½ ton or less payload. Defendants would deny coverage to people who accidentally died while in a ¾ ton pickup, on a motorcycle, on farm equipment, in vehicles licensed to transport people for hire, a vehicle on rails and more.

This conduct is not new to Defendants. In 2007, the Missouri Insurance Commissioner conducted a market conduct exam on Peoples Benefit Life Insurance Company, the entity that wrote and sold the policy to Mrs. Dun. Through name changes and ownership changes, Peoples Benefit Life Insurance Company is now Transamerica Premiere Life Insurance Company (Defendants).

The Missouri Insurance Commissioner cited and fined Defendants for using misleading applications and brochures because Defendants sent out materials claiming connection to the Social Security Administration (SSA) when they had no connection to the SSA or the federal government. Defendants were also cited and fined for using telephone scripts and other advertising and marketing materials that

contained illegal exclusions for life insurance policies. This had been previously brought to Defendants' attention repeatedly before the 2007 exam, yet Defendants did not correct this illegal conduct. Defendants were also cited and fined for failing to maintain sufficient information and documentation in their marketing and underwriting files associated with advertising and certificates of coverage.

Defendants were cited and fined for repeatedly not providing complete files and relevant materials and documentation to allow insurance examiners to ascertain whether their claims handling, payment and marketing practices were being done properly. Defendants were cited and fined for not maintaining copies of life insurance policy applications, for failing to properly investigate claims, for failing to locate beneficiaries, for failing to properly refund unearned premiums, for failing to respond to insurance examiners inquiries and more. Defendants were cited and fined for 14 separate violations.

Plaintiffs are awaiting discovery from Defendants regarding the actual loss ratio experienced for this policy; i.e. information regarding total premiums received since Defendants began selling this policy versus total benefits paid under this policy. It is believed that Defendants have engaged in a pattern and practice of illicit, invalid, and deceitful sales of insurance, claim handling rules, practices and/or policies, all to increase profits at the expense of legitimate claims made by deserving people such as the Duns. It is a classic bait and switch scheme. Under

such a scenario, the insurance benefits are due and owing.

**B. Basis for Federal Jurisdiction and Venue in this Division**

The Duns initially filed this suit in the Montana Eighteenth Judicial District Court, Gallatin County. Defendants removed this action to this Court pursuant to 28 U.S.C. §§ 1332 and 1446. Defendants are Iowa entities/corporations and none of the Duns reside in Iowa. Since the damage caused by Defendants' conduct substantially exceeds \$75,000, this Court has jurisdiction.

**C. Factual Basis of Each Claim Advanced by Plaintiffs**

Defendants offered to provide \$100,000 of accidental death coverage in the enrollment form. Mrs. Dun accepted that offer and faithfully paid premiums through the time of her accidental death. Defendants owe the death benefit they promised to pay.

The Duns do not believe Defendants delivered an insurance policy to Mrs. Dun, which it now produced as the "Specimen certificate". This violates Montana law. *See* Mont. Code Ann. §§ 33-15-212, 33-15-412, 33-21-204, 33-22-502. If a policy was not delivered to Mrs. Dun, then Defendants cannot rely on language from an undelivered policy to support denial of coverage. *Id.*; *National Union Fire Ins. Co. of Pittsburgh, PA v. Xerox Corp.*, 2004 WL 2715603 (N.Y.Sup. 2004); *Sims v. Ins. Unlimited*, 669 S.2d 709, 711 (La. 1996); *Foremost Ins. Co. v. Putzier*,

627 P.2d 317, 311 (Idaho 1981); and, *Esprey v. Western Pioneer Ins. Co.*, 159 Cal.App.2nd Supp. 875, 880-881 (Cal. 1958).

Even if Defendants meet the burden of proving delivery of the “Specimen certificate” to Mrs. Dun, Defendants still owe the \$100,000 accidental death benefit. Terms of limitation or exclusion must be clear, unequivocal, and unambiguous. *Truck Ins. Exchange v. Woldstad*, 687 P.2d 1022, 1024-1025 (Mont. 1984). Lack of clarity and/or ambiguities in policies are strictly construed against the insurer and in favor of coverage. *Id.*; *Wendell v. State Farm Mut. Auto. Ins. Co.*, 974 P. 2d 623, ¶ 14 (Mont. 1999); and, *Leibrand v. Nat. Farmers Union*, 889 P.2d 1220, 1223 (Mont. 1995). An insurance policy that does not define the term “accident” is ambiguous as a matter of law. *Wendell* at ¶ 29.

Further, where an insurer places various policy provisions in conflict, this can create an ambiguity and the interpretation which affords the most protection to the insured controls. *Deonier & Assoc. v. Paul Revere Life Ins.*, 9 P.3d 622, ¶ 49 (Mont. 2000); *Farmers Alliance Mut. Ins. Co. v. Holeman*, 961 P.2d 114, ¶ 27 (Mont. 1998); and, *Keating v. Universal Underwriters Ins. Co.*, 320 P.2d 351, 356 (Mont. 1958).

Here, the enrollment form, the policy title, and the first sentence of the “Specimen certificate” clearly and unequivocally extend coverage for any accidental death. Only on page three of the “Specimen certificate” do Defendants

purportedly find language to limit coverage. Defendants' interpretation of the language found on page three conflicts with the unequivocal grant of coverage found in the first sentence on the face page of the policy and the enrollment form. This attempted bait and switch tactic is deceptive, misleading and illegal. *Id.* Obviously, a bait and switch such as this contradicts the reasonable expectation of the insured. *See, Hardy v. Progressive Specialty Insurance Co.*, 67 P. 3d 892. ¶ 23 (Mont. 2003).

In addition, it is deceptive, misleading and/or illegal for an insurer to misrepresent pertinent facts or insurance policy provisions relating to coverages at issue. §§ 33-18 Part 2, MCA. It is deceptive, misleading and/or illegal for an insurer to misrepresent the name or title of an insurance policy or class of insurance policies from the true nature of the policy. *Id.* It is deceptive, misleading and/or illegal for an insurer to misrepresent the benefits, advantages, conditions, or terms of an insurance policy. *Id.* The law prohibits an insurer from holding out expectations of coverage with one hand and then take coverage away with the other. *Id.*; *See also, Marriot v. Pacific National Life Assurance Company*, 467 P.2d 981, 982-983 (Utah 1970). An insurer may not avoid liability by utilizing bait and switch tactics. *Id.*

Finally, coverage for this accidental death benefit should be enforced under the theories of: reformation, promissory estoppel, equitable estoppel, inducement,