THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Appellate Case No.: 2022-000869

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. .....Respondent,

v.

USAA General Indemnity Company ..... Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No. 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. . . . . Appellant,

v.

USAA General Indemnity Company . . . . . Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Record on Appeal by mailing a copy of the same to its attorney of record, Patrick "Trey" Still, III Clawson & Staubes, LLC, 1000 E. North St., Ste. 200, Greenville, SC 29601 via United States mail, postage prepaid this 25th day of July, 2019.

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July 25, 2019

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **ORDER GRANTING USAA'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING CROSS-MOTIONS RELATED TO DISCOVERY DISPUTES AS BEING MOOT**

This matter came before the Court on September 24, 2018 for a hearing on Defendant USAA General Indemnity Company's ("USAA") Motion for Summary Judgment, USAA's Motion for a Protective Order and Plaintiff Tyrin Young, Sr.'s Motion to Compel Deposition. Appearing at the hearing were Attorney Patrick "Trey" Still, III on behalf of USAA and Attorneys Richard Allen and Russell Guest for the Plaintiff. As stated more fully below, the Court hereby grants USAA's Motion for Summary Judgment on the grounds that the insured vehicle, a 2006 KIA, was not located in the State of South Carolina and not involved in the subject accident, and therefore, there is insufficient contacts with the State of South Carolina for this Court to take the drastic measure of reforming the California Insurance Policy to make it conform to South Carolina law. Having determined that there are no issues of material fact related to the KIA's status that would affect this Court's decision, the Court dismisses USAA's Motion for Protective Order and Plaintiff's Motion to Compel as being moot.

The Court's Findings of Fact

It appears to the Court that the Plaintiff initiated this declaratory judgment action

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as a result of a coverage dispute with his automobile insurer, USAA, after a motor vehicle accident ("the accident") on or about August 30, 2015, which occurred in Greenville, South Carolina. On that date, Kamika Young, the Plaintiff's wife, was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. The Parties to this litigation stipulated to the facts of that accident, which consist of Mrs. Young failing to yield to oncoming traffic as she attempted to make a left turn into the northbound lane on N. Pleasantburg from a private parking lot. It is undisputed that Mrs. Young was at fault for causing this accident. The initial collision between the vehicles caused Mrs. Young's vehicle to proceed across the northbound lane, strike a building and catch on fire. Tragically, two of Plaintiff's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. A third child, minor J.Y. suffered personal injuries, but he survived the accident.

Thereafter, the Plaintiff made claims against his wife and his personal policy with USAA on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering the Ford was issued in South Carolina, with policy number 1FMFU18L71LB10185 ("the SC Policy"). USAA tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured the Plaintiff's Ford. This Court approved the settlements on behalf of the Plaintiff individually, as Guardian of J.Y., and as the Personal Representative of the estates of the two deceased minors. The covenant not to execute signed in exchange for that initial settlement included a provision that would allow the Plaintiff to pursue other excess liability and/or UIM coverage.

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While the Plaintiff's wife and children returned to South Carolina in mid-2014, the Plaintiff and his 2006 KIA Spectra ("the KIA") remained in California until he was deployed to Guam in late summer or early fall of 2014. At some point prior to this accident, the KIA was transported to Guam for the Plaintiff's use during his deployment. The Plaintiff was deployed in Guam when this accident occurred. The KIA never returned to the Continental United States after this accident as it was sold to avoid shipping costs.

In addition to the facts discussed above, the parties stipulated to the following facts:

- At all times relevant hereto, the Plaintiff considered himself to be a citizen and permanent resident of the State of South Carolina even though he was stationed in other states while in the Navy;
- The Plaintiff and his wife paid South Carolina income taxes every year since getting married in 2008;
- The Ford and KIA were registered in the State of South Carolina;
- The Plaintiff and his wife paid property taxes on the Ford and KIA in the State of South Carolina;
- The Plaintiff's wife and children were physically residing in the State of South Carolina at the time of this accident;
- The KIA had not been located within the State of South Carolina since at least 2009;
- The KIA was insured under a California Policy at the time of the accident;
- The KIA was located in Guam at the time of the accident; and
- The Plaintiff nor his wife ever requested that the KIA be insured under a South Carolina policy after it left the State in 2008.

Legal Argument

This scope of this declaratory judgment action is limited to whether this Court

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should reform the California Policy into a South Carolina policy that provides stackable UIM benefits to be paid in addition to the $100,000 already paid in liability and UIM benefits, which was paid to the Plaintiff under the SC Policy on the Ford driven by the Plaintiff's wife at the time of this accident. The Court notes that all of the facts that would be considered in determining whether a policy should be reformed have been stipulated to and/or are not in dispute. As a result, this Court finds that the case is ripe for consideration for summary judgment on the issue of whether the policy should be reformed. In viewing the facts of this case in the light most favorable to the Plaintiff, it is clear that the 2006 KIA has financial ties to the State of South Carolina. However, it is also clear that not only was the KIA not involved in the accident that is the subject of this suit, the vehicle was not in the State of South Carolina within at least 6 years of the accident.

Discussion of the California Policy

The Court notes that the Parties agreed that the California Policy was in place at the time of the accident. The Plaintiff has not argued and the Court does not find there to be any ambiguity in the language of the California Policy. Therefore, this Court will not address the actual policy language in this Order. Further, the Plaintiff does not argue that the California Policy is void or unenforceable under California law. In fact, the Court notes that the California Policy mirrors the California Statute on the issue of stacking. *See generally* California Insurance Code §115580.2(d)&(q)(stating "in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons"). Therefore, this Court holds that the California Policy, if

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not reformed, precludes stacking of UIM Benefits and is enforceable under California law to the extent that California law applies. *See generally Wagner v. State Farm Mut. Auto. Ins. Co.*, 40 Cal. 3d 460, 466, 220 Cal. Rptr. 659, 662, 709 P.2d 462, 465 (1985)(holding that the insured was not entitled to stack two UM policies by the same carrier pursuant to California Insurance Code §115580.2); *Calfarm Ins. Co. v. Wolf*, 86 Cal. App. 4th 811, 821, 103 Cal. Rptr. 2d 584, 591 (2001)(noting that California law precludes the stacking of UM benefits and instead limits the injured party's recovery to the single highest limit of applicable UM coverage).

Discussion of Choice of Law

Insurance policies are subject to the general rules of contract construction. *Nationwide Mut. Ins. Co. v. Commercial Bank*, 479 S.E.2nd 524 (S.C. 1996). Under general contract law, South Carolina generally follows the legal theory that the controlling law is *lex loci contractus* or the location where the contract was entered. *Yeager v. Allstate Ins. Co.,* Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843 (D.S.C. Feb. 22, 2010). To the extent that the Court were to apply this general concept, it is clear that California law would apply and the Plaintiff would not be entitled to stack any additional coverage onto the $100,000 that he has already received. However, South Carolina legislature has enacted Section 38-61-10 of the South Carolina Code to specifically address insurance policies' insured property or lives located in the State of South Carolina. Section 38-61-10 provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

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S.C. Code Ann. § 38-61-10. Importantly, the party moving to reform the policy has the burden to establish that Section 38-61-10 applies. Courts interpreting this statute have held that "what is solely relevant is where the property, lives, or interests insured are located [at the time of the loss]." *Hartsock v. Am. Auto. Ins. Co.*, 788 F.Supp. 447 (2011 DSC). The Plaintiff argues that the underinsured motorist coverage is meant to insure the Plaintiff and his family in case of harm. However, the Plaintiff does not cite any case law to support the proposition that Section 38-61-10 intended to reform policies offering voluntary coverage on out-of-state vehicles not otherwise subject to the insurance laws and requirements of the State of South Carolina. Instead, the Court notes the California Insurance Policy's principle purpose is to provide insurance for the use of the KIA, which has not been in this State since 2009. As a result, the insurance policy was issued to cover "property" that was not located in the State of South Carolina either at the time of the issuance of the policy or at the time of the accident. The Court would further note that South Carolina's courts have held numerous times that automobile polices should not be reformed where the policies sole connection to the State of South Carolina is that the insured was injured in an accident while in the State of South Carolina. *See Bowman v. The Continental Ins. Co.*, 229 F.3d 1141 (finding that § 38-61-10 was not applicable to an insurance coverage dispute because at the time of the automobile accident the insured person and property were located in Georgia and the insured's sole connection with South Carolina was the automobile accident); *Unisun Ins. Co. v. Hertz Rental Co.*, 312 S.C. 549, 436 S.E.2d 182, 184 (S.C. 1993) (applying the rule of *lex loci contractus* after finding that § 38-61-10 was not applicable in a case where the property insured was located outside of South Carolina). Therefore, this

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Court finds that S.C. Code § 38-69-10 does not apply this loss.

Having determined that S.C. Code § 38-61-10 cannot be invoked based upon the location of the insured property, the Court need not address the "connections" that the Plaintiff, his family, and the car had to the State of South Carolina.

Since Section 38-61-10 does not apply, the Court must apply California law to determine whether the Plaintiff is entitled to stack UIM benefits. As noted above, the Plaintiff has not argued that he would be entitled to stack under California law. Nevertheless, the Court notes that it is clear that California law would not allow stacking under a California policy in circumstances where an accident occurred in a different state that allowed stacking. In *Cal. Cas. Indem. Exch. v. Pettis*, 193 Cal.App. 3d 1597 (Cal. Ct. App. 1987), the plaintiffs were injured while operating a non-owned vehicle in Hawaii. As a result of that accident, the plaintiffs received no-fault insurance proceeds, which was the only mandatory insurance required by the State of Hawaii. Upon returning to California, the plaintiffs filed a claim with their insurer seeking to stack their UM benefits onto the no-fault proceeds that they already received. In applying a "weighing of interests" test, the Court of Appeals of California determined that California's interests in the loss outweighed those of Hawaii. As a result, it determined that California law applied and the insureds could not stack UIM coverage. In reaching this decision, the court noted that California had enacted specific laws to prohibit stacking of UM benefits. The court stated that these laws were enacted with the express intent to prevent double recovery by the claimant and to ensure that insurance premiums remained low and affordable. The court further noted that Hawaii's interests were centered "on compliance with its own statutory requirements. Once those have

been satisfied Hawaii has little, if any, other interests in this case." *Id.* at 1606. The court went on to note that "the vehicle for which the defendants purchased insurance are registered, garaged, and principally used in California. The insurance policies at issue were purchased to fulfill California's financial responsibility law." *Id.* Therefore, the court held that the State of California had more substantial interests in enforcing a policy issued in California when compared to a different state where the claimant had already received insurance proceeds that complied with that state's minimum requirements. As a result, it is clear that California law would not allow stacking under these circumstances.

Discovery Motions Are Rendered Moot

In addition to USAA's Motion for Summary Judgment, the parties also had cross-motions related to USAA's 30(b)6 Deposition before the Court. It appears to the Court that the information sought in that deposition would not affect this Court's decision as to USAA's Motion for Summary Judgment. In fact, the Court finds that all of the facts pertinent to whether the California Policy should be reformed, which is the sole issue in this Declaratory Judgment Action, are not in dispute. As a result, the Court finds that no other discovery is needed and that the USAA's Motion for Summary Judgment should be granted. As a result, the cross-motions related to the 30(b)6 Deposition of USAA are rendered moot.

Conclusion

This matter came before the Court on USAA's Motion for Summary Judgment and Cross-Motions related to the Plaintiff's 30(b)6 Deposition Notice for USAA. Having reviewed the pleadings, the discovery submitted by the respective parties, the motions

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submitted by the parties, and the memoranda submitted in support of those motions, the Court finds that all of the facts relevant to the issue of whether the California Policy should be reformed are not in dispute and have otherwise been stipulated to by USAA for the purposes of this hearing. The Court holds that S.C. Code § 38-61-10 is not implicated based upon the fact that the subject of the California Policy, the KIA, was not located in the State of South Carolina or involved in any way in the accident that occurred on August 30, 2015. Therefore, the Court applies California law to this dispute and determines that the Plaintiff is not entitled to stack UIM benefits to the insurance benefits he has already received pursuant to the policy on the involved vehicle. Therefore,

THE COURT HEREBY GRANTS USAA'S MOTION FOR SUMMARY JUDGMENT AND DISMISSES THE CROSS-MOTIONS RELATED TO THE 30(B)6 DEPOSITION OF USAA AS BEING MOOT.

It is so ordered.

_____
The Honorable Perry H. Gravely,
Presiding Judge for the 13th Judicial Circuit

October ____, 2018

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Greenville Common Pleas

Case Caption: Tyrin S Young Sr , plaintiff, et al vs. USAA General Indemnity Company

Case Number: 2017CP2304630

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

ELECTRONICALLY FILED - 2018 Dec 06 12:12 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

This matter comes before the Court upon Plaintiff's Motion to Reconsider the previous Order issued October 8, 2018 granting Defendant's Motion for Summary Judgment. Plaintiff brought this action to amend a California policy, pursuant to South Carolina law, to provide stacking of Underinsured Motorist Coverage on a vehicle that was insured under the California policy which did not provide stacking. In its Order, this Court granted Summary Judgment and ruled that the California should not be amended to conform to South Carolina law, specifically §38-61-10.

In their Motion to Reconsider, the Plaintiffs assert three grounds: (1) the Court read the S.C. Statute § 38-61-10 too narrowly; (2) the Court placed too much emphasis on the location of the vehicle in question; and (3) the term "garaged" in the California policy is ambiguous and creates a factual dispute.

In addressing grounds (1) and (2), the Court would defer to the plain language of the §38-61-10:

> All contracts of insurance on **property,** lives, or interests **in this State** are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State. (emphasis added)

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The California policy in question was issued to cover a vehicle which was not involved in the accident and had not been located in South Carolina since 2009. There is no question that there are many connections between the vehicle in South Carolina (such as tag, registration, etc.), but this is not the appropriate inquiry to determine whether this statute applies. Since the California automobile policy provided coverage on a KIA Spectra that was not "property...in this State", as noted in the original order, the provisions of §38-61-10 are not triggered and the California policy should not be amended to conform to South Carolina law.

Plaintiff also argues that the term "garaged" in the California policy is ambiguous and creates a factual dispute making Summary Judgment inappropriate. The policy in question indicates that the vehicle in question is "principally garaged" in "Santee CA". Merriam-Webster Dictionary defines garage as "to keep or put in a garage." The location of the garage, according to the policy, is California, but there is evidence that the location of the vehicle was moved to Guam, which according to Defendant, creates an ambiguity as to where the vehicle is "principally garaged". This may be an issue of whether there would be coverage under this policy for the KIA, but this is not relevant to whether South Carolina law would apply since the vehicle was not moved to South Carolina.

Therefore, after review of the pleadings, evidence and argument of both parties, the Court does not find a basis for amending or reversing its previous Order and would adopt the findings and analysis set forth therein and the Plaintiff's Motion to Reconsider is denied.

It is so Ordered.

December 5, 2018

Perry H. Gravely
Presiding Judge, 13th Circuit

Signature of Judge Gravely on following page

ELECTRONICALLY FILED - 2018 Dec 06 12:12 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

Greenville Common Pleas

Case Caption: Tyrin S Young Sr , plaintiff, et al vs. USAA General Indemnity Company

Case Number: 2017CP2304630

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiff(s), Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2016-CP-23-_____ **SUMMONS**

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

GUEST & BRADY, LLC

s/ Russell F. Guest
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ATTORNEYS FOR THE PLAINTIFF

July 20, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Jul 26 1:59 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiff(s), Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2016-CP-23-_____ **COMPLAINT** (Declaratory Judgment Action) (Non-Jury)

The Plaintiff, complaining of the Defendant, alleges:

1. On August 30, 2015, Plaintiff's wife, Kamika Young, along with their children Tyrin S. Young Jr., Micah A. Young, and J.Y. (a minor under the age of 14) were involved in a motor vehicle accident in Greenville, South Carolina (hereinafter referred to as the "Accident"). Kamika Young was the driver of the vehicle.
2. On the date of the accident, Plaintiff, his wife and his children were citizens and legal residents of Greenville County, South Carolina.
3. At all dates and times relative to issues of this complaint, Tyrin S. Young, Sr. was and continues to remain on active duty service with the U.S. Navy.
4. At all dates and times relative to issues of this complaint, Tyrin S. Young, Sr's state of legal permanent residence was South Carolina, including the date of USAA issuance of insurance policy.

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5. Defendant (hereinafter referred to as "USAA") is an insurance company which is authorized to do business in and does business in Greenville County, South Carolina.

6. As a result of the Accident, Plaintiff's children, Tyrin S. Young, Jr. and Micah A. Young did not survive the accident and J.Y. suffered personal injuries.

7. On behalf of the minor child and the estates of the deceased children, Plaintiff in his capacity as Personal Representative and/or legal guardian made claims against the liability and underinsured coverage covering the vehicle insured with USAA in which the children were passengers. When USAA tendered the limits of the liability coverage and the limits of the underinsured coverage on the involved vehicle, the Plaintiff settled these claims by court order preserving the right to pursue additional underinsured coverage that may be available under a second USAA policy.

8. The vehicle involved in the Accident had inadequate liability insurance and underinsured coverage to compensate for the loss of the two children's lives and the personal injuries of J.Y. as a result of the Accident.

9. At the time of the Accident, Plaintiff had automobile insurance coverage through USAA that covered a second vehicle, a KIA Spectra 4D,(herein after referred to as KIA) not involved in the accident and for which Plaintiff was the named insured.

10. The policy covering the Kia (hereinafter referred to as the "Policy") with a number of 022260801G71030, as issued by USAA, included underinsured

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motorists (UIM) coverage at the time of the Accident, in the amount of $25,000/$50,000.00.

11. The Policy was issued in California while the Plaintiff was on temporary duty in California and the Kia, carrying a South Carolina license plate, was located in California.

12. The Policy's Named Insured is the Plaintiff. The Policy's listed address of the Named insured is 1409 Roper Mountain Rd. Apt 240, Greenville, SC. 29615.

13. The KIA was registered and licensed in South Carolina at the time the policy was issued and at the time of the Accident.

14. For all years of ownership of the Kia, including when the Policy was issued, property taxes were paid in South Carolina in Greenville County.

15. Venue and Jurisdiction are proper before this court.

16. Plaintiff has made a demand on behalf of the estates and as legal guardian of J.Y. to USAA for the limits of underinsured coverage.

17. USAA has denied the underinsurance claim from the Policy based on California law against stacking of UIM coverages and other arguments based on California law.

18. Plaintiff is informed and believes that the Policy must conform to the requirements of our Insurance Code pursuant to South Carolina Code section 38-61-10 as Plaintiff, the insured property, all persons insured under the Policy and the location of the Accident have sufficient contacts with South Carolina making South Carolina a state of interest in this dispute.

Insuring property, lives and interests in South Carolina constitutes a significant contact with this state.

19. Plaintiff requests that this Honorable Court inquire into the facts asserted and issue an Order finding that the Policy must conform to the requirements of the South Carolina Insurance Code and provide underinsurance motorist coverage in the amount of $50,000.00 and award prejudgment interest.

20. An actual and justifiable controversy exists among the parties; therefore, a declaratory judgment is appropriate to assist the parties in understanding their rights and responsibilities under the subject automobile insurance policy.

WHEREFORE, Plaintiff prays for a declaratory judgment that the Policy must conform to include UIM coverage pursuant to South Carolina law allowing for stacking of underinsurance coverages without offsets for award of prejudgment interest, for the costs of this action and for other relief the Court deems just and proper.

GUEST & BRADY, LLC

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ATTORNEYS FOR THE PLAINTIFF

July 20, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Jul 26 1:59 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiff, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **ANSWER AND COUNTERCLAIM OF DEFENDANT USSA GENERAL INDEMNITY COMPANY** **(Jury Trial Demanded)**

To: Russell Guest, Attorney for Plaintiff

The Defendant, USAA General Indemnity Company, answering the Complaint of the Plaintiff, and counterclaiming thereof, responds to the allegations as follows:

1. The Defendant admits, upon information and belief, the allegations of Paragraph 1.

2. The Defendant admits that Kamika Young and her children were residents of Greenville County at the time of this accident. The Defendant lacks sufficient information to form a belief regarding the remaining allegations of Paragraph 2 and, therefore, denies them.

3. The Defendant lacks sufficient information to form a belief regarding the allegations of paragraph 3 and, therefore, denies them.

4. The Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 4 and, therefore, denies them.

5. The Defendant admits the allegations of Paragraph 5.

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6. The Defendant admits, upon information and belief, the allegations of Paragraph 6.

7. The Defendant admits the allegations of Paragraph 7.

8. In response to the allegations contained in Paragraph 8, the Defendant admits that the Plaintiff and his representatives have previously indicated that the coverage available on the "involved vehicle" was inadequate. The Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 8 and, therefore, denies them.

9. The Defendant admits the allegations of Paragraph 9.

10. In response to the allegations of Paragraph 10, the Defendant admits that the USAA previously issued a policy bearing policy number 022260801G71030 (hereinafter "KIA Policy") for a vehicle described as a KIA Spectra, which was to be garaged in the State of California. The Defendant further admits the KIA policy certain coverage in addition to or in conjunction with the liability coverage afforded under the KIA Policy. The Defendant denies the remaining allegations of Paragraph 10.

11. In response to the allegations of Paragraph 11, the Defendant admits that the USAA issued the KIA Policy for a vehicle that was to be garaged in the State of California. The Defendant further admits that the KIA Policy was issued in the State of California and pursuant to the laws of that State. The Defendant denies the remaining allegations of Paragraph 11.

12. The Defendant admits, upon information and belief, the allegations of Paragraph 12.

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13. The Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 13 and, therefore, denies them.

14. The Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 14 and, therefore, denies them.

15. The Defendant lacks sufficient information to form a belief regarding the allegations of Paragraph 15 and, therefore, denies them.

16. In response to the allegations contained in Paragraph 16, the Defendant admits that the Plaintiff made a demand for payment for "Underinsured Motorist Coverage", which he believed was available under the KIA Policy. The Defendant denies the remaining allegations of Paragraph 16.

17. In response to the allegations contained in Paragraph 17, the Defendant admits that it informed the Plaintiff that there was no applicable "Underinsured Motorist Coverage" available under the KIA Policy for the accident that occurred on or about August 30, 2015. The Defendant denies the remaining allegations contained in Paragraph 17 of the Complaint.

18. Paragraph 18 appears to be a representation of the Plaintiff's understanding of South Carolina law and/or a request for the Court to grant a form of relief. To the extent that a response is required to this Paragraph, the Defendant denies the allegations contained in Paragraph 18 of the Complaint and that the Plaintiff is entitled to the relief sought in that paragraph.

19. Paragraph 19 appears to be a representation of the Plaintiff's understanding of South Carolina law and/or a request for the Court to grant a form of relief. To the extent that a response is required to this Paragraph, the Defendant denies

the allegations contained in Paragraph 19 of the Complaint and that the Plaintiff is entitled to the relief sought in that paragraph.

20. The Defendant admits, upon information and belief, the allegations of Paragraph 20.

21. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE
(Reservation and Non-Waiver)

22. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

23. The Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's allegations. Accordingly, the Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR A SECOND DEFENSE
(Failure to State a Claim)

24. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

25. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE
(Failure to Mitigate Damages)

26. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

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27. The Plaintiff failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

FOR A FOURTH DEFENSE
(Accord and Satisfaction)

28. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

29. The Plaintiff and his family have received the full policy limits available under all of the USAA policies available and in place at the time of this incident.

30. Such payment and its acceptance constitutes accord and satisfaction thereby barring any additional claim, including those set forth in the Complaint.

FOR A FIFTH DEFENSE
(Failure to Comply with Conditions Precedent)

31. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

32. The policy at issue in this case expressly sets forth all of the terms and conditions that govern the KIA Policy.

33. Pursuant to the language therein, the KIA Policy sets forth certain obligations that the Insured, the Plaintiff, must do in order to enforce the policy, change/alter the policy and/or initiate a legal action against USAA in relation to the policy.

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34. To the extent that the Plaintiff and his family seek to alter or change the policy, they must promptly notify USAA of any changes in circumstances that would warrant such change and allow USAA to reevaluate the risks associated with such change and the appropriateness of the particular policy after such changes.

35. The Plaintiff nor any representative of his family notified or communicated any changes to USAA before the accident that is the subject of this litigation to warrant reforming a California policy into a policy that complies with South Carolina Underinsured Motorist laws.

36. The Plaintiff and his family have failed to comply with the prerequisite requirements for initiating this lawsuit, including initiating such action within the specified time.

37. Therefore, the Plaintiff and his family are barred from the requested relief as a result of their failure to comply with all conditions precedent.

FOR A SIXTH DEFENSE BY WAY OF FIRST COUNTERCLAIM
(Declaratory Judgment – No Coverage)

38. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

39. USAA is a company that is authorized to conduct business, specifically related to the sale of insurance related services, within the States of South Carolina and California, with its principle place of business in a state other than the State of South Carolina.

40. The Plaintiff and his family are believed to claim permanent residency in the State of South Carolina.

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41. Upon information and belief, this is an action for declaratory judgment brought pursuant to South Carolina Code Sections 15-53-10, et seq. in which USAA asks this Court to inquire into the real and actual controversy that exists among the parties and determine the respective rights and obligations under the California policy of insurance issued by USAA to the Plaintiff as set forth below.

42. This declaratory judgment action arises out of an accident involving a motor vehicle, which occurred in Greenville County, State of South Carolina. Venue is proper in this Court pursuant to South Carolina Code Section 15-7-30.

43. On or around August 30, 2015, the Plaintiff's wife and children were involved in a two vehicle accident in Greenville, South Carolina. The Plaintiff's wife was deemed to be at fault for that collision, which resulted in the unfortunate deaths of two of the Plaintiff's children.

44. USAA insured the vehicle involved in the August 30, 2015 accident. As a result, USAA previously tendered its liability ($50,000 per accident) and underinsured motorist ("UIM") coverage ($50,000 per accident) in exchange for a covenant not to execute for the Plaintiff's wife. That settlement was approved by a court with proper authority to do so.

45. At the time of the accident, the Plaintiff had a second policy with USAA in relation to a KIA Spectra (previously defined as "KIA Policy"). The KIA policy was issued to the Plaintiff listing him as the named insured. The KIA Policy contained liability coverage of $25,000 per person and $50,000 per accident as well as Uninsured ("UM") coverage in the amount of $25,000 per person and $50,000 per accident. There is no separate coverage afforded under the KIA Policy listed as UIM coverage.

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46. The KIA Policy was to provide coverage for a vehicle that was garaged in in the State of California. At all times relevant hereto, the KIA Spectra was "garaged", stored and/or located in either the State of California or Guam.

47. The Plaintiff has initiated this action alleging that he, individually, as Personal Representative of his deceased children, and the guardian of the surviving injured child(ren), is entitled to have the KIA Policy reformed to South Carolina UIM laws in order to allow the Plaintiff to stack the UM coverage on the UIM coverage previously tendered and accepted for the insured vehicle involved in the August 30, 2015 accident.

48. USAA has previously informed the Plaintiff and his representatives that the KIA Policy does not provide UIM coverage or at least does not provide any additional coverage that could be "stacked" onto the previously paid UIM coverage on the insured vehicle that was involved in the wreck.

49. In relevant part, PART C entitled "UNINSURED MOTORIST BODILY INJURY COVERAGE AND UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE" of the KIA Policy (Exhibit A) provides as following:

Covered person as used in this Part means:

1. **You** or any **family member.**
2. Any other person **occupying your covered auto.**
3. Any person for damages that person is entitled to recover because of **BI** to which this coverage applies sustained by a person described in 1. or 2. Above.

D. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which no liability bond or policy applies at the time of the accident.

2. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for liability specified by the California Financial Responsibility Law.

For purposes of UMPD Coverage, an **underinsured motor vehicle** does not include a motor vehicle which has at least the minimum property damage limits required by law.

3. That is a hit-and-run motor vehicle. This means a motor vehicle whose owner or operator cannot be identified and that hits:

a. **You** or any **family member**;
b. A vehicle **you** or any **family member** are **occupying**; or
c. **Your covered auto**.

For **BI** losses, **you** or someone on **your** behalf, must report the accident within 24 hours to the appropriate law enforcement officials; and **you** must file a statement under oath that **you** have a cause of action arising out of the accident for damages against a person whose identity is unascertainable; and **you** must set forth facts in support thereof within 30 days.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company denies coverage or refuses to admit coverage except conditionally or with reservation, or is or becomes insolvent.

5. Which is used without the permission of the owner if there is no bodily injury liability insurance or bon applicable at the time of the accident with respect to the owner or operator.

E. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage.

However, an **underinsured motor vehicle** does not include an **uninsured motor vehicle**.

F. **Uninsured motor vehicle** and **underinsured motor vehicle** do not include any vehicle or equipment:

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1. Owned by or furnished or available for the regular use of **you** or any **family member.**
2. Owned or operated by a self-insurer under any applicable motor vehicle law.
3. Owned by any government unit or agency.
4. Operated on rails or crawler treads, except for a snowmobile.
5. Designed or modified for use off public roads while not on public roads.
6. While located for use as a residence or premises.

INSURING AGREEMENT

A. **UNINSURED MOTORISTS BODILY INJURY COVERAGE** (referred to as UMBI)

We will pay compensatory damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** because of **BI** sustained by a **covered person** and caused by an auto accident

The owner's or operator' liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle** or the **underinsured motor vehicle**. Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us.** This does not apply to a settlement made with the owner, operator, or Insurer of an **underinsured motor vehicle.**

With respect to damages for **BI** caused by an **underinsured motor vehicle,** or a vehicle as defined in Definition D.2., **we** will pay UMBI only after the limits of liability under any applicable motor vehicle bodily injury liability bonds or policies have been exhausted by payment of judgment or settlements, and proof of such is submitted to **us.**

LIMIT OF LIABILITY

A. 1. For UMBI coverage, for BI sustained by any one person in any one accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of the liability shown in the Declarations under any one vehicle for UMBI Coverage, for "each person", Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for UMBI Coverage is **our** Maximum limited of liability for all damages for **BI** resulting from any one accident.

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A. 2. The limits of liability (each person and each accident) under UMBI Coverage shall be reduced by all sums:

1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

...

EXCLUSIONS

...

B. We do not provide UMBI Coverage for **BI** sustained by any covered person while **occupying**, or when struck by, any motor vehicle owned by **you** or any **family member** which is not insured for this Coverage under this policy or when the owner of that vehicle has UMBI coverage similar to that provided in this Part. This includes a **trailer** of any type used with that vehicle.

...

F. We do not provide UMBI Coverage, UMPD Coverage or UMPD WOCD Coverage for punitive or exemplary damages.

OTHER INSURANCE

If there is other applicable insurance for UMBI, UMPD, or UMPD WOCD Coverage available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such polices or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

...

NON-DUPLICATION

No covered person will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible.

....

50. The KIA Policy further provides in Part E entitled GENERAL PROVISIONS:

CHANGES

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A. The premium is based on information we have received from you and other sources. You agree to cooperate with us in determining if this information is correct and complete. You agree that if this information changes, or is incorrect or incomplete, we may adjust your premiums accordingly during the policy period.

B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. You agree to give us notice of such exposure changes as soon as is reasonably possible:

1. Change in location where any vehicle is garaged;
...
6. Change, addition, or deletion of any coverage or limits.
....

LEGAL ACTION AGAINST US

B. No legal action may be bound against us under UMBI Coverage until there has been full compliance with all terms of this policy and unless within one year from the date of the accident:

1. Suit for **BI** has been filed against the uninsured motorist in a court of competent jurisdiction and notice of such suit has been given to us;

2. Agreement as to the amount due under the coverage has been concluded; or

3. The **covered person** or his legal representative has formally instituted arbitration in this policy.

C. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person**, as defined in this policy.

51. Pursuant to the terms and conditions of the KIA Policy, there is no coverage for the accident on or about August 30, 2015:

a. The vehicle involved in the accident is not an Uninsured vehicle as defined by the policy because the insurance on the involved vehicle was equal to or exceeded the minimum limits as required by the Financial Responsibility Acts for the States of South Carolina and California;

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b. The vehicle involved in the accident is not an Underinsured motor vehicle as defined in the policy because the policy on the involved vehicle provided the same amount of coverage as the KIA Policy;

c. The vehicle involved in the accident is not an Underinsured or Uninsured motor vehicle as defined by the policy because it was a vehicle owned by or furnished or available for the regular use of the Plaintiff and his family, including but not limited to his wife who as driving at the time of the accident;

d. The injuries alleged in the Complaint were allegedly sustained while occupying a vehicle owned by the Plaintiff and his family, which was insured by a policy offering similar coverage;

e. To the extent that the Plaintiff and his family seek punitive damages, such damages are not covered by the KIA Policy.

52. Accordingly, USAA is entitled to an Order from this Court finding that the Plaintiff and his family are not entitled any additional payments from the KIA Policy on the grounds that the vehicle involved in this accident was not an insured vehicle under the KIA Policy because it does not qualify as an Underinsured or Uninsured motor vehicle as defined by the KIA Policy.

FOR A SEVENTH DEFENSE BY WAY OF SECOND COUNTERCLAIM
(Declaratory Judgment – Exhausted Limits)

53. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

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54. In this case, the Plaintiff and his family were paid the full limits under the USAA policy for the involved vehicle which were $50,000 per accident for liability and $50,000 per accident for UIM coverage.

55. Accordingly, there is no additional coverage under the KIA Policy on the grounds:

a. The amount previously paid under the USAA policy on the involved vehicle was equal to the UM policy limits under the KIA Policy, which is the maximum allowed to be paid under the UMBI policy limits;

b. The available UMBI coverage must reduced by the amounts previously paid to the Plaintiff and his family for the same injuries thereby reducing the available coverage to $0.

56. As a result, even if this Court determines that the involved vehicle qualifies as an Uninsured or Underinsured motor vehicle, the Plaintiff and his family have exhausted any coverage available under the KIA Policy.

FOR AN EIGHTH DEFENSE BY WAY OF THIRD COUNTERCLAIM
(Declaratory Judgment – Breach of Insurance Agreement and Estoppel)

57. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

58. The KIA Policy sets forth clear obligations for the named insured (the Plaintiff) and his family to keep them informed of any changes in circumstances that may affect the exposure to USAA under the KIA Policy.

59. In this case, the Plaintiff seeks reformation of the KIA Policy to allow stacking of the UM policy limits on to the amounts previously paid by USAA and accepted by the Plaintiff and his family members.

60. To the extent that circumstances changed after the purchase of the KIA Policy issued under California law, the Plaintiff and/or his family members owed USAA a duty to inform it of the changes as soon as possible so that the policy could be reassessed by USAA to adjust for any additional exposure that may result from the change.

61. USAA was never informed of any changes of circumstances by the Plaintiff and/or his family members that may result in the policy being subjected to additional exposure not contemplated at the time that the policy was issued.

62. Failure to notify USAA of any such changes constitutes a material breach of the contract between USAA and the Plaintiff thereby barring the Plaintiff from enforcing any portion of the contract.

63. Alternatively, the Plaintiff and his family members should be estopped from now arguing that the KIA Policy should be reformed since he nor his family members ever informed USAA of the changes in circumstances that would warrant a reformation of the California policy to comply with South Carolina law.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action, for the relief requested in the Counterclaim, and for such other and further relief as this Court may deem just and proper.

[Signature Block on Following Page]

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CLAWSON and STAUBES, LLC

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Greenville, South Carolina

October 6, 2017

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USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

CALIFORNIA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained in the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown in the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the company's Board of Directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

By purchasing this policy you are a member of USAA and are subject to its bylaws.

This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.

The USAA Board of Directors may annually allocate a portion of USAA's surplus to Subscriber's Savings accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

	DECLARATIONS PAGE
	Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page 3	**Agreement and Definitions**
Part A 4	**Liability Coverage**
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 6	**Medical Payments Coverage**
	Definitions Insuring Agreement Medical Payments Coverage Air Bag and Seat Belt Benefits Extended Benefits Coverage Limit of Liability Exclusions Other Insurance Special Provisions Conditions Arbitration
Part C 10	**Uninsured Motorists Bodily Injury Coverage and Uninsured Motorists Property Damage Coverage**
	Definitions Insuring Agreement Uninsured Motorists Bodily Injury Coverage Uninsured Motorists Property Damage Coverage Limit of Liability Exclusions Other Insurance Non-Duplication Arbitration
	(Quick Reference continued on Page 2)

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Part D 14	Physical Damage Coverage
	Definitions Insuring Agreement Comprehensive Coverage Collision Coverage Rental Reimbursement Coverage Towing and Labor Costs Coverage Limit of Liability Payment of Loss Loss Payable Clause Waiver of Collision Deductible Exclusions No Benefit to Bailee Other Sources of Recovery Appraisal

Part E 17	General Provisions
	Air Bag Bankruptcy Changes Duties After an Accident or Loss Legal Action Against Us Non-duplication of Payment Our Right to Recover Payment Ownership Policy Period and Territory Termination Transfer of Your Interest in this Policy Two or More Auto Policies

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CALIFORNIA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown in the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

A. **You** and **your** refer to the "named insured" shown in the Declarations and spouse if a resident of the same household.

B. **We, us,** and **our** refer to the Company providing this insurance.

C. **Auto business** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, or storing vehicles.

D. **Bodily injury** (referred to as BI) means bodily harm, sickness, disease or death.

E. **Family member** means a person related to **you** by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child.

F. **Miscellaneous vehicle** means the following motorized vehicles: a motorcycle, moped or similar type vehicle; motor home; golfcart; snowmobile; all-terrain vehicle; or dune buggy.

G. **Occupying** means in, on, getting into or out of.

H. **Property damage** (referred to as PD), except as specifically defined in Part C, means physical injury to, destruction of, or loss of use of tangible property.

I. **Repair or replace** means restoring the damaged property or parts thereof to their pre-accident operational safety, function, and appearance. However, **we** may at **our** option **repair or replace** with parts of like kind and quality, including used or non-OEM parts (non-OEM parts are those produced by someone other than the original equipment manufacturer). **Repair or replace** does not require:

1. A return to the pre-accident market value of the property or parts thereof; or
2. Restoration, alteration, or replacement of undamaged property or parts thereof, unless such is needed for the operational safety of the vehicle.

J. **Temporary substitute vehicle** means a private passenger auto, pickup, **van, miscellaneous vehicle** or **trailer** not owned by **you** or a **family member** while it is used as a temporary replacement for **your covered auto** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.

K. **Trailer** means a vehicle designed to be pulled by a private passenger auto, pickup, **van,** or **miscellaneous vehicle.** It also means a farm wagon or implement while towed by such vehicles.

L. **Van** means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.

M. **Your covered auto** means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles acquired by **you** or a **family member** during the policy period, beginning on the date **you** or a **family member** becomes the owner, but only if no other insurance policy provides coverage for such vehicle:
   a. A private passenger auto;
   b. A pickup or **van;** or
   c. A **miscellaneous vehicle** not used in any business or occupation.

   For such newly acquired vehicles, **we** will automatically provide the broadest coverages as are provided for any vehicle shown in the Declarations. If **your** policy does not provide Comprehensive and Collision coverages, **we** will provide each with a $250 deductible. However, **we** will not provide any coverage for more than 30 days after the date **you** or a **family member** becomes the owner of the vehicle. If **you** wish to continue any coverage beyond the 30-day period, **you** must request it prior to the end of the 30-day period.

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3. Any **trailer you** own.

4. Any **temporary substitute vehicle.** Only those coverages provided for the vehicle withdrawn from normal use will be extended to its **temporary substitute vehicle.**

PART A - LIABILITY COVERAGE

DEFINITIONS

Covered person as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance, or use of any auto or **trailer.**
2. Any person using **your covered auto.**
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto,** this provision only applies if the other person or organization does not own or hire the auto or **trailer.**

The following are not **covered persons** under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to **BI** or **PD** resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the **BI** or **PD.**

INSURING AGREEMENT

We will pay compensatory damages for **BI** or **PD** for which any **covered person** becomes legally liable because of an auto accident. **We** will settle or defend, as **we** consider appropriate, any claim or suit asking for these damages. **Our** duty to settle or defend ends when **our** limit of liability for these coverages has been paid or tendered. **We** have no duty to defend any suit or settle any claim for **BI** or **PD** not covered under this policy.

LIMIT OF LIABILITY

For **BI** sustained by any one person in any one auto accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for **BI** Liability. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for **BI** Liability is **our** maximum limit of liability for all damages for **BI** resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for **PD** Liability is **our** maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most **we** will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the state's Financial Responsibility law, **our** limit of liability will be the minimum required by the state's Financial Responsibility law.

SUPPLEMENTARY PAYMENTS

In addition to **our** limit of liability, **we** will pay on behalf of a **covered person:**

1. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend. But **we** will not pay the premium for bonds with a face value over **our** limit of liability shown in the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of liability, **we** will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing, in any suit **we** defend, on that part of a judgment that does not exceed **our** limit of liability. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment that does not exceed **our** limit of liability.

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4. Up to $100 a day for loss of wages because of attendance at hearings or trials at **our** request.
5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person.** The most **we** will pay is an amount equal to one month of the basic salary of the **covered person** at the time of loss. Only Exclusions A.1. and A.8. apply.
6. Other reasonable expenses incurred at **our** request.
7. All defense costs **we** incur.

EXCLUSIONS

A. **We** do not provide Liability Coverage for any **covered person:**

1. Who intentionally acts or directs to cause **BI** or **PD,** or who acts or directs to cause with reasonable expectation of causing **BI** or **PD.**
2. For **PD** to property owned or being transported by a **covered person.**
3. For **PD** to property rented to, used by, or in the care of any **covered person.** This does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the **auto business.** This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you,** any **family member,** or any partner, agent, or employee of **you** or any **family member.**
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business,** farming, or ranching. This exclusion (A.7.) does not apply to the maintenance or use of a private passenger auto; a pickup or **van** that **you** own; or a **trailer** used with these vehicles.
8. Using a vehicle without expressed or implied permission.
9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limits of liability.
10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others.
11. For punitive or exemplary damages.

B. **We** do not provide Liability Coverage for the ownership, maintenance, or use of:

1. Any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto,** that is owned by **you,** or furnished or available for **your** regular use.
3. Any vehicle, other than **your covered auto,** that is owned by, or furnished or available for the regular use of, any **family member.**

   This exclusion (B.3.) does not apply to **your** maintenance or use of such vehicle.
4. Any vehicle while being operated in, or in practice for, any speed contest.

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C. There is no coverage for a **covered person** for **BI** to **you** or any **family member**, nor do **we** provide coverage for any **covered person** for **BI** to **you** or any **family member** whenever the ultimate benefits of that indemnification accrue directly or indirectly to any **covered person.**

D. There is no coverage for **BI** for which a **covered person** becomes legally responsible to pay to a member of that **covered person's** family residing in that **covered person's** household.

E. There is no coverage for liability assumed by any **covered person** under any contract or agreement.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, **your** policy will provide at least the minimum amounts and types of coverages required by law.

However, no one will be entitled to duplicate payments for the same elements of loss.

OTHER INSURANCE

A. If there is other applicable liability insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits.

However, any insurance **we** provide to a **covered person:**

1. With respect to a vehicle **you** do not own, will be excess over:
   a. Any other applicable liability insurance; or
   b. Any self-insurance in compliance with a state's financial responsibility law.
2. With respect to **your covered auto,** will be excess over the insurance afforded by an **auto business** if **your covered auto** is being operated by a person engaged in the **auto business** or by the business's employee or agent.

B. Defense costs. If both primary and excess policies of liability insurance apply to the loss, **our** share of defense costs is the proportion that the amount of damages paid by **us** bears to the total amount of damages paid under all applicable policies of liability insurance.

PART B - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

A. **Air Bag** means a supplemental passive restraint system commonly referred to as an **air bag** which is originally installed by the vehicle manufacturer and which, at the time of the accident, had not been made inoperable through modification, deactivation, disconnection, switching off or prior deployment.

B. **Beneficiary** means (in order of priority of payment):
   1. The surviving spouse if a resident in the same household as the deceased at the time of the accident; or
   2. If the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident; or
   3. The estate of the deceased.

C. **Covered person** as used in this Part means:
   1. **You** or any **family member** while **occupying** any auto.
   2. Any other person while **occupying your covered auto.**
   3. **You** or any **family member** while not **occupying** a motor vehicle if injured by:
      a. A motor vehicle designed for use mainly on public roads;
      b. A **miscellaneous vehicle;**
      c. A **trailer.**

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D. **Essential services** means those household services that a **covered person** who is at least 18 years old would have performed without pay.

E. **Income actually lost** means the difference between:

The total of gross salary, fees, commissions, and profits from a business that a **covered person** was earning at the time of the accident; and

The total of gross salary, fees, commissions, profits from a business and payments from an income continuation or similar plan that the **covered person** received during the period of **total disability.**

F. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person,** his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person;** and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person,** when these could safely have been provided to the **covered person** as an outpatient.

G. **Reasonable fee** is the amount, as determined by **us** or someone on **our** behalf, which **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services. We** will pay the lesser of:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

H. **Seat belt** means manual or automatic safety belts or seat and shoulder restraints or a child restraint device. Both the lap and shoulder restraints must be worn at the time of the accident for coverage to apply. If the **covered person** is a child, the child restraint device must meet federal motor vehicle safety standards and must be one recommended by its manufacturer as appropriate for use by children of like age and weight. The child must be properly seated and restrained within the device and the device must be attached to the interior of the vehicle in accordance with the manufacturer's instructions.

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I. **Total disability** means disability which continuously prevents the **covered person** from performing the substantial duties of that person's usual occupation.

INSURING AGREEMENT

A. Medical Payments Coverage. **We** will pay only the **reasonable fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services because of **BI** caused by an auto accident, sustained by a **covered person** and incurred for services rendered within three years of the date of the accident.

A provider of medical services may charge more than the limits established by this policy's defined terms, but such additional charges are not covered. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine whether fees and expenses were reasonable and whether treatment was medically necessary and appropriate.

B. Air Bag and Seat Belt Benefits. **We** will provide the benefits described only if at the time of the accident, Medical Payments Coverage was provided by the policy and the **covered person** for whom benefits are sought was:

1. Wearing a **seat belt;** or
2. Wearing a **seat belt** and **occupying** a seat in an automobile in which he was protected by an **air bag;** and
3. Entitled to collect benefits for medical expenses incurred as a result of the accident under the terms of the policy's Medical Payments Coverage.

We will pay a Death Benefit of $15,000 to the **beneficiary** of a **covered person** who dies as the direct result of **BI** sustained in an automobile accident while wearing a **seat belt. We** will pay an Additional Death Benefit of $10,000 to the **beneficiary** of a **covered person** who dies as a direct result of **BI** sustained in an automobile accident while wearing a **seat belt** and **occupying** a seat protected by an **air bag.** In either case, death must occur within three years of the date of the accident.

C. Extended Benefits Coverage. **We** will pay the following benefits for **BI** caused by an auto accident and sustained by a **covered person:**

1. Wage Earner Disability Benefit of 85% of **income actually lost** by an employed **covered person** during a period of **total disability.**
2. Essential Services Disability Benefit for reasonable expenses incurred for **essential services** during the time the **covered person** is actually unable to perform the services. This benefit applies only if the services are performed by a non-**family member.**
3. Death Benefit of $5,000 to the **beneficiary** of a **covered person** who dies within three years from the date of the auto accident as a direct result of **BI** caused by that accident.

LIMIT OF LIABILITY

The following provisions represent the most **we** will pay regardless of the number of **covered persons** or **beneficiaries,** claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident.

A. Medical Payments

1. The limit of liability shown in the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident.
2. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and any other part of this policy.

B. The maximum Death Benefit **we** will pay under Air Bag and Seat Belt Benefits is $15,000 for death of any one **covered person.** The maximum Additional Death Benefit **we** will pay for death of any one **covered person** is $10,000. These amounts are the most **we** will pay regardless of the number of vehicles to which this coverage applies, or the number of coverages or premiums shown in the Declarations.

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No one will be entitled to receive duplicate payments for the same elements of loss.

C. The limit of liability for Wage Earner Disability Benefit and the limit of liability for Essential Services Disability Benefit, as stated in the Declarations, is the maximum limit of liability for each coverage for each **covered person** injured in any one accident, subject to the following conditions:

1. Payment of Wage Earner Disability Benefit to **you** or a **family member** will not exceed the amount shown on the Declarations Page per 30-day period.
2. Payment of Wage Earner Disability Benefit to a **covered person** other than **you** or a **family member** will not exceed $1,000 per 30-day period.
3. Wage Earner Disability Benefit and Essential Services Disability Benefit begin the eighth day after the accident. **We** will pay these benefits for no more than two years to any one **covered person.** These benefits will not continue after the death of the **covered person.**
4. Any amounts otherwise payable as benefits under Wage Earner Disability Benefit shall be reduced by:
   a. The amount of any similar benefits which are paid or payable under any workers' compensation law or policy, or under any disability or health and accident policy; and
   b. The amount of any disability benefits provided by any governmental agency.

EXCLUSIONS

We do not provide benefits under this Part for any **covered person** for **BI:**

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available. This does not apply to Extended Benefits.
5. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by **you** or furnished or available for **your** regular use.
6. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by or furnished or available for the regular use of any **family member.** This does not apply to **you.**
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person.** This does not apply to **BI** sustained while **occupying** a private passenger auto; a pickup or **van you** own; or a **trailer** used with these vehicles.
9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others.
11. Sustained while a participant in, or in practice for, any speed contest.

OTHER INSURANCE

If there is other applicable auto medical payments insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a vehicle **you** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

The Death Benefit and Additional Death Benefit provided by Air Bag and Seat Belt Benefits will be paid in addition to any death benefit payable under the policy's Medical Payments Coverage.

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If there are other applicable air bag and seat belt benefits, the maximum limit of **our** liability for the death of any one **covered person** under all such policies shall not exceed $15,000 for the Death Benefit and $10,000 for the Additional Death Benefit.

SPECIAL PROVISIONS

A. To establish Wage Earner Disability Benefits, any **covered person** making a claim for **income actually lost** must submit all income-related documents **we** may reasonably require.

   Income will be computed using the monthly rate being earned on the date of the accident and will be paid monthly as loss accrues. If not a salary or fixed amount, the monthly rate will be the average monthly income actually earned during the 12 months preceding the accident, or during the period the **covered person** actually was employed if less than 12 months.

B. If **your covered auto** and every other motor vehicle **you** own are within the policy territory referred to in Part E, General Provisions, then coverage under Part B will apply to **you** and any **family member** anywhere in the world.

CONDITIONS

The Air Bag and Seat Belt Benefits coverage provided is subject to all provisions and conditions of the policy's Medical Payments Coverage and to the policy's general conditions, except as specifically modified herein.

ARBITRATION

If **we** and a **covered person** do not agree:

1. On the **reasonable fee;**
2. That expenses are reasonable;
3. Whether services or supplies are **medically necessary and appropriate medical services;** or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B;

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by **us,** does not exceed the limit of liability for this coverage.

PART C - UNINSURED MOTORISTS BODILY INJURY COVERAGE and UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE

DEFINITIONS

A. **Actual Cash Value,** as used in this Part, means the amount it would cost to replace the damaged property with new property of like kind and quality, less allowance for depreciation and physical deterioration.

B. **Covered person** as used in this Part means:

   1. **You** or any **family member.**
   2. Any other person **occupying your covered auto.**
   3. Any person for damages that person is entitled to recover because of **BI** to which this coverage applies sustained by a person described in 1. or 2. above.

   However, the definition of **covered person** does not include the Government of the United States of America.

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C. **Property Damage,** (referred to as PD), as used in this Part, means loss or damage to **your covered auto** resulting from collision due to an automobile accident. However, PD does not include loss of use of **your covered auto** or damages to personal property contained in **your covered auto.**

D. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which no liability bond or policy applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for liability specified by the California Financial Responsibility law.

   For purposes of UMPD Coverage, an **uninsured motor vehicle** does not include a motor vehicle which has at least the minimum property damage limits required by law.
3. That is a hit-and-run motor vehicle. This means a motor vehicle whose owner or operator cannot be identified and that hits:
   a. **You** or any **family member;**
   b. A vehicle **you** or any **family member** are **occupying;** or
   c. **Your covered auto.**

   For **BI** losses, **you** or someone on **your** behalf, must report the accident within 24 hours to the appropriate law enforcement officials; and **you** must file a statement under oath that **you** have a cause of action arising out of the accident for damages against a person whose identity is unascertainable; and **you** must set forth facts in support thereof within 30 days.
4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company denies coverage or refuses to admit coverage except conditionally or with reservation, or is or becomes insolvent.
5. Which is used without the permission of the owner if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator.

E. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage.

However, an **underinsured motor vehicle** does not include an **uninsured motor vehicle.**

F. **Uninsured motor vehicle** and **underinsured motor vehicle** do not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of **you** or any **family member.**
2. Owned or operated by a self-insurer under any applicable motor vehicle law.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads, except for a snowmobile.
5. Designed or modified for use off public roads while not on public roads.
6. While located for use as a residence or premises.

INSURING AGREEMENT

A. **UNINSURED MOTORISTS BODILY INJURY COVERAGE** (referred to as UMBI).

We will pay compensatory damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** because of **BI** sustained by a **covered person** and caused by an auto accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle** or the **underinsured motor vehicle.** Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us.** This does not apply to a settlement made with the owner, operator, or insurer of an **underinsured motor vehicle.**

With respect to damages for **BI** caused by an **underinsured motor vehicle,** or a vehicle as defined in Definition D.2., **we** will pay UMBI only after the limits of liability under any applicable motor vehicle bodily injury liability

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bonds or policies have been exhausted by payment of judgments or settlements, and proof of such is submitted to **us.**

B. **UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE**

1. **We** will pay compensatory damages for one of the following which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **PD** to **your covered auto** that is:

   a. not insured for Collision Coverage if the Declarations indicates Uninsured Motorists Property Damage Coverage, (referred to as UMPD), applies to that auto; or

   b. insured for Collision Coverage if the Declarations indicates Uninsured Motorists Property Damage Waiver of Collision Deductible Coverage (referred to as UMPD WOCD), applies to that auto. UMPD WOCD coverage waives the Collision deductible shown in Part D of the Declarations for **your covered auto.**

2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle.**

3. The accident must involve actual, direct physical contact between **your covered auto** and an **uninsured motor vehicle.** The owner or operator of the **uninsured motor vehicle** must be identified or, the **uninsured motor vehicle** must be identified by its license number. **You**, or someone on **your** behalf, must report the accident to **us** within 10 business days.

4. Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us.**

LIMIT OF LIABILITY

A. 1. For UMBI Coverage, for **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations under any one vehicle for UMBI Coverage, for "each person". Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for UMBI Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident.

A. 2. The limits of liability (each person and each accident) under UMBI Coverage shall be reduced by all sums:

   1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

   2. Paid and the present value of all sums payable because of **BI** under worker's compensation law exclusive of nonoccupational disability benefits.

B. For UMPD Coverage, **our** maximum limit of liability is the lesser of:

   1. $3,500;

   2. The **actual cash value** of **your covered auto;** or

   3. The amount necessary to **repair** or **replace your covered auto.**

   No payment for UMPD Coverage will be made for losses paid to the **covered person** under Part D of the policy.

C. For UMPD WOCD Coverage, **our** maximum limit of liability is the lesser of:

   1. The amount of the loss; or

   2. The amount of the deductible shown for Collision Coverage in the Declarations for **your covered auto.**

   multiplied by the percentage of **your** loss that **you** are legally entitled to recover from the owner or operator of the **uninsured motor vehicle.**

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D. The limits for UMBI, UMPD or UMPD WOCD Coverages are the most **we** will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

In no event shall the limit of liability for two or more vehicles or **trailers** of any type used with any such vehicle, or two or more policies be added together, combined, or stacked to determine the limit of liability.

EXCLUSIONS

A. **We** do not provide UMBI Coverage, UMPD Coverage or, UMPD WOCD Coverage for **BI** or **PD** sustained by any **covered person** if that person or the legal representative settles the claim without **our** consent. This exclusion (A.) does not apply to a settlement made with the insurer of any **underinsured motor vehicle.**

B. **We** do not provide UMBI Coverage for **BI** sustained by any **covered person** while **occupying,** or when struck by, any motor vehicle owned by **you** or any **family member** which is not insured for this Coverage under this policy or when the owner of that vehicle has UMBI Coverage similar to that provided in this Part. This includes a **trailer** of any type used with that vehicle.

C. **We** do not provide UMBI, UMPD, or UMPD WOCD Coverage while **you** or any **family member** is the operator of any self-propelled vehicle with less than four wheels that is not insured for this coverage under this policy. With respect to UMBI as used in this exclusion, "operating" means only the actual physical operation by the driver of the vehicle. This does not include a passenger of that vehicle.

D. **We** do not provide UMBI, UMPD, or UMPD WOCD Coverage for **BI** or **PD** sustained by any **covered person:**

1. While **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (D.1) does not apply to a share-the-expense car pool.
2. Using a vehicle without expressed or implied permission.
3. While **your covered auto** is rented or leased to others.
4. While **occupying** any vehicle when it is being operated in, or in practice for, any speed contest.

E. UMBI Coverage shall not apply directly or indirectly to the benefit of any insurer or self-insurer under any workers' compensation law or similar disability benefits law excluding non-occupational disability benefits as allowable by law.

F. **We** do not provide UMBI Coverage, UMPD Coverage, or UMPD WOCD Coverage for punitive or exemplary damages.

OTHER INSURANCE

If there is other applicable insurance for UMBI, UMPD, or UMPD WOCD Coverage available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

2. Any insurance we provide with respect to a vehicle **you** do not own will be excess over any collectible insurance.

3. If the coverage under this policy is provided:

   a. On a primary basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on a primary basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.

   b. On an excess basis, **we** will pay only **our** share of the loss that must be paid under insurance providing coverage on an excess basis. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits of liability of coverage provided on an excess basis.

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

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(PART C Cont'd.)

1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible.
2. Paid or payable under any workers' compensation law or similar disability benefits law.
3. Paid or payable under any other auto policy's No-Fault benefits or medical payments coverage.
4. Paid under another provision or coverage in this policy.

ARBITRATION

A. This section applies to UMBI Coverage and UMPD Coverage and UMPD WOCD Coverage. If **we** and a **covered person** disagree as to:

   1. Whether a **covered person** is legally entitled to recover **BI** or **PD** damages from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle;** or
   2. The amount of **BI** damages that the **covered person** is legally entitled to collect from that owner;

   then, that disagreement shall be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues, including but not limited to, coverage questions. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by **us** or a **covered person.** The amount of damage can not be arbitrated under UMPD Coverage or UMPD WOCD Coverage.

B. Arbitration must be initiated by a written demand for arbitration sent by certified mail, return receipt requested within one year from the date of the accident. Arbitration may be initiated by either party.

C. If both parties agree to arbitration, the matter or matters upon which either party do not agree shall be settled by a single neutral arbitrator. The decision made by the arbitrator may be entered in any court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

D. Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. Any decision of the arbitrator will be binding as to:

   1. Whether the **covered person** is legally entitled to recover damages; and
   2. The amount of damages, up to the coverage limit of liability.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

A. **Actual cash value**, as used in this Part, means the amount that it would cost, at the time of **loss,** to buy a vehicle of the same make, model, body type, model year, and equipment, with substantially similar mileage and physical condition.

B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision:** fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision you** may elect to have it considered a **loss** caused by **collision.**

C. **Loss** means direct and accidental damage to the operational safety, function, or appearance of **your covered auto,** including its equipment. **Loss** does not include any diminution in value that remains after the damaged or stolen property or parts thereof have been **repaired or replaced.**

D. **Nonowned vehicle** means any private passenger auto, **trailer,** pickup, **van,** or **miscellaneous vehicle** not owned by, or furnished or available for the regular use of, **you** or any **family member.** This applies only when such vehicle is in the custody of or being operated by **you** or a **family member.** A **nonowned vehicle** does not include a **temporary substitute vehicle** or any of the following vehicles used in any business or occupation other than farming or ranching - pickup, **van** or **miscellaneous vehicle.**

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E. **Your covered auto,** as used in this Part, includes:

1. A **nonowned vehicle.** If there is a **loss** to a **nonowned vehicle, we** will provide the broadest coverage shown in the Declarations.
2. Equipment and accessories of **your covered auto.**
3. Any device or instrument for the transmitting, recording, receiving or reproduction of data, sound or pictures that is operated by power from the electrical system of **your covered auto,** including:
   a. Accessories or antennas; or
   b. Tapes, wires, records discs or other media for use with any such device or instrument;

   while in or upon **your covered auto.**

INSURING AGREEMENT

A. Comprehensive Coverage (excluding **collision**). **We** will pay for **loss** caused by other than **collision** to **your covered auto,** minus any applicable deductible shown in the Declarations. The deductible will be waived for **loss** to glass that can be repaired rather than replaced. In cases where the repair proves unsuccessful and the glass must be replaced, the full amount of the deductible, if any, must be paid.

In addition, **we** will pay up to $15 a day, to a maximum of $450, for transportation expenses incurred by **you.** This applies only in the event of a total theft of **your covered auto. We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not repairable, three days after **we** have made a settlement offer.

If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to $30 per day to a maximum of $900.

B. Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto,** minus any applicable deductible shown in the Declarations.

C. Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage (for **loss** other than total theft). **We** will reimburse **you** for expenses **you** incur to rent a substitute for **your covered auto.** These coverages apply only if **your covered auto** is withdrawn from use for more than 24 hours due to a **loss,** other than a total theft, to that auto. **Our** payment will be limited to that period of time reasonably required to **repair or replace your covered auto.** If **we** determine **your covered auto** is not repairable, the rental period will end three days after **we** have made a settlement offer.

Under Rental Reimbursement Coverage, **we** will pay up to $15 a day, to a maximum of $450. Under Increased Rental Reimbursement Coverage, **we** will pay up to $30 a day, to a maximum of $900.

D. Towing and Labor Costs Coverage. **We** will pay the reasonable costs **you** incur for one of the following each time **your covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas, oil, a battery or a change of tire. However, **we** do not pay for the cost of these items.

LIMIT OF LIABILITY

A. For total losses, the limit of liability for Comprehensive and Collision Coverage, is the **actual cash value** of **your covered auto.**

B. For partial losses, the limit of liability for Comprehensive and Collision Coverages is the amount necessary to **repair or replace** the damaged or stolen property or parts thereof without deduction for depreciation.

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(PART D Cont'd.)

PAYMENT OF LOSS

We may pay for **loss** in money, or **repair or replace** the damaged or stolen property. We may, at **our** expense, return any stolen property to **you** or to the address shown in the Declarations. If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown in the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto.** We may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to **loss** caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss** to **your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss;** and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss.**

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is used to carry persons for a fee. This does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of **your covered auto.** This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment.

   We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

   This exclusion does not apply if the damage results from the total theft of **your covered auto,** and it does not apply to Towing and Labor Costs Coverage.
4. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. **Loss** to a camper body or **trailer you** own which is not shown in the Declarations. This does not apply to one **you** acquire during the policy period and ask **us** to insure within 30 days after **you** become the owner.
6. **Loss** to any **nonowned vehicle** or **temporary substitute vehicle** when used by any person without reasonable belief that that person is entitled to do so.
7. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. **Loss** to any **nonowned vehicle** arising out of its use by **you** or a **family member** while employed or otherwise engaged in **auto business** operations.
9. **Loss** to **your covered auto** while it is rented or leased to others.
10. **Loss** to any vehicle while it is being operated in, or in practice for, any speed contest.
11. **Loss** resulting from:
    a. The acquisition of a stolen vehicle;
    b. Any legal or governmental action to return a vehicle to its legal owner; or
    c. Any confiscation or seizure of a vehicle by governmental authorities.

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This exclusion does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

12. Loss resulting from use in any illicit or prohibited trade or transportation.

13. Any **loss** arising out of any act committed:

    a. By or at the direction of **you** or any **family member;** and

    b. With the intent to cause a **loss.**

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the **loss, we** will pay only **our** share of the **loss. Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a **nonowned vehicle** or **temporary substitute vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle** or **temporary substitute vehicle.**
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the **loss.**

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If **we** and **you** do not agree on the amount of **loss,** either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of **loss.** If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any of our rights under this policy by agreeing to an appraisal.

PART E - GENERAL PROVISIONS

AIR BAG

If an **air bag** in **your covered auto** deploys for any reason, **we** will pay without deductible to replace it.

BANKRUPTCY

Bankruptcy or insolvency of the **covered person,** as defined in this policy, shall not relieve **us** of any obligations under this policy.

CHANGES

A. The premium is based on information **we** have received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, or is incorrect or incomplete, **we** may adjust **your** premiums accordingly during the policy period.

B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. **You** agree to give **us** notice of such exposure changes as soon as is reasonably possible:

1. Change in location where any vehicle is garaged.
2. Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
3. Replacement, deletion, or addition of any vehicle. **You** must request coverage for a newly acquired vehicle within 30 days from the date the vehicle is acquired if **you** wish to continue any coverage. See DEFINITIONS - **your covered auto.**
4. Change, addition, or deletion relating to the date of birth, marital status, or driving record of any operator.
5. Addition or deletion of an operator.
6. Change, addition, or deletion of any coverage or limits.

C. **We** will make any calculations or adjustments of **your** premium using the applicable rules, rates, and forms as of the effective date of the change.

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D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us.** Its terms may not be changed or waived except by endorsement issued by **us.**

DUTIES AFTER AN ACCIDENT OR LOSS

A. **We** must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:

1. Cooperate with **us** in the investigation, settlement, or defense of any claim or suit.
2. Promptly send **us** copies of any notices or legal papers received in connection with a suit, accident or loss.
3. Submit, as often as **we** reasonably require:
   a. To physical exams by physicians **we** select. **We** will pay for these exams.
   b. To examination under oath. The examination must be signed.
4. Authorize **us** to obtain medical reports and other pertinent records.
5. Submit a proof of loss when required by **us.**
6. Promptly notify the police if a hit-and-run driver is involved.

C. In addition to the Duties outlined in A. and B. in this Part, a person seeking coverage under Part C - Uninsured Motorists Property Damage Coverage or Part D - Physical Damage Coverage must also:

1. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. **We** will pay reasonable expenses incurred to do this.
2. Promptly notify the police if **your covered auto** is stolen.
3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

LEGAL ACTION AGAINST US

A. No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against **us** until **we** agree in writing that the **covered person,** as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.

B. No legal action may be brought against **us** under UMBI Coverage until there has been full compliance with all the terms of this policy and unless within one year from the date of the accident:

1. Suit for **BI** has been filed against the uninsured motorist in a court of competent jurisdiction and notice of such suit has been given to **us;**
2. Agreement as to the amount due under this coverage has been concluded; or
3. The **covered person** or his legal representative has formally instituted arbitration proceedings.

C. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person,** as defined in this policy.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, **we** will pay the claim only once under this policy.

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OUR RIGHT TO RECOVER PAYMENT

A. If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** will be subrogated to that right. That person shall do whatever is necessary to enable **us** to exercise **our** rights, and shall do nothing after loss to prejudice them. However, **our** rights in this paragraph do not apply to payments under:

1. Part B - Medical Payments Coverage, Extended Benefits, Death Benefit;
2. Part C - Uninsured Motorists Coverage related to an **underinsured motor vehicle;**
3. Part D - Physical Damage Coverage against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

B. If **we** make a payment under this policy and the person to or for whom payment was made recovers damages from another, that person shall hold in trust for **us** the proceeds of the recovery and reimburse **us** to the extent of **our** payment. However, this paragraph does not apply to Part B, Extended Benefits Death Benefit.

Our rights under paragraphs A. and B. above arise only after the **covered person** has been fully compensated for those damages.

C. If the **covered person,** as defined in this policy, recovers from the party at fault and **we** share in the recovery, **we** will pay **our** share of the legal expenses. **Our** share is that percent of the legal expenses that the amount **we** recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by **us** from any other insurer under any inter-insurer arbitration agreement.

D. If **we** make payment for a claim under Part A, and the **covered person,** as defined in Part A:

1. Failed or refused to comply with the duties specified in this provision; and
2. Prejudiced **our** defense of the liability claim by such failure or refusal;

then, the **covered person** shall reimburse **us** to the extent of **our** payment and cost of defense.

OWNERSHIP

For purposes of this policy, a private passenger type auto, pickup or **van** is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur during the policy period as shown in the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of **your covered auto** between any ports of these locations.

B. The policy territory also includes Mexico, subject to the following conditions:

1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accidents that occur within 75 miles of the USA border.
2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican insurance company at the time of loss. Also, for this Part to be effective, the original liability suit for **BI** or **PD** must be brought in the USA.

This coverage does not extend:

a. To any **covered person,** as defined in this policy, who does not live in the USA.

b. To any **covered person,** as defined in this policy, **occupying** an auto which is not principally garaged and used in the USA.

c. To any auto which is not principally garaged and used in the USA.

The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.

Losses payable under Part D of the policy will be paid in the USA. If the auto must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.

Any insurance **we** provide will be excess over any other similar valid and collectible insurance.

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NOTE: Unless you have automobile insurance written by a Mexican insurance company, you may spend many hours or days in jail, if you have an accident in Mexico. Insurance coverage should be secured from a company licensed under the laws of Mexico to write insurance in order to avoid complications and some other penalties possible under the laws of Mexico, including the possible impoundment of your automobile.

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request.
2. **We** may cancel by mailing a notice to the named insured shown in the Declarations at the address shown in this policy by giving:
   a. At least ten days notice:
      (1) If cancellation is for nonpayment of premium; or
      (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal policy; or
   b. At least 20 days notice in all other cases.
3. After this policy is in effect for 60 days, or if this is a renewal policy, **we** will cancel only:
   a. For nonpayment of premium; or
   b. For fraud or material misrepresentation affecting the policy or the presentation of a claim; or

      With respect to a policy obtained through misrepresentation of any of the following information:
      (1) Safety Record;
      (2) Annual miles driven in prior years;
      (3) Number of years driving experience;
      (4) Record of prior automobile insurance claims;
      (5) Any other factor found by the Commissioner to have a substantial relationship to the risk of loss.

      The cancellation will become void if the correct information is furnished to **us** within 20 days of the receipt of notice of cancellation.
   c. For a violation of the terms or conditions of the policy; or
   d. A substantial increase in hazard insured against; or
   e. If **your** driver's license or that of any driver who customarily uses **your covered auto** has been suspended or revoked. This must have occurred:
      (1) During the policy period; or
      (2) Since the last anniversary of the original effective date if the policy period is other than one year.

      However with respect to a suspended driver's license, such cancellation will not become effective if the suspension is removed prior to the time that the cancellation of the policy is to become effective.
4. **We** may cancel for any other reason permitted by law.

B. Nonrenewal. If **we** decide not to renew this policy, **we** will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 30 days before the end of the policy period.

C. Rescission. With respect to all insureds, the entire policy will be void if whether before or after a loss, any **covered person** has:
   (1) Intentionally concealed or misrepresented any material fact or circumstance; or
   (2) Engaged in fraudulent conduct; or
   (3) Made false statements;

   relating to this insurance.

D. Automatic Termination. If **we** offer to renew and **you** do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due will mean that **you** have not accepted **our** offer.

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If **you** obtain other insurance on **your covered auto,** any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance. This does not apply to liability coverage purchased for travel in Mexico.

E. Other Termination Provisions.

1. Proof of mailing of any notice will be sufficient proof of notice.
2. If this policy is cancelled, the named insured shown in the Declarations may be entitled to a premium refund. The premium refund, if any, will be computed according to **our** manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without **our** written consent. However, if a named insured shown in the Declarations dies, **we** will provide coverage until the end of the policy period for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto.**

TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy **we** issued to **you** apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiff(s), Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIM OF DEFENDANT USAA GENERAL INDEMNITY COMPANY**

COMES NOW the Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, replying to the Answer and Counterclaim of Defendant, USAA General Indemnity Company, alleges and states as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14. (hereinafter "Plaintiff" or "Young"), denies each and every allegation of the Answer and Counterclaim of Defendant, USAA General Indemnity Company (hereinafter "Defendant" or "USAA"), not specifically admitted, qualified or explained herein.

2. Plaintiff incorporates herein by reference and reiterates each and every allegation and claim contained in its Complaint previously filed in this action to the extent they are not inconsistent herewith.

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3. Paragraphs 1 through 37 of the Answer and Counterclaim do not purport to assert any allegations that require a response from Plaintiff. To the extent that Paragraphs 1 through 37 may be construed to require a response from Plaintiff, he denies said allegations.

4. Responding to Paragraph 38 of the Answer and Counterclaim, Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

5. Upon information and belief, the Plaintiff admits the allegations contained in Paragraph 39 of the Answer and Counterclaim.

6. Plaintiff admits the allegations contained in Paragraph 40 of the Answer and Counterclaim.

7. Responding to Paragraph 41 of the Answer and Counterclaim, Plaintiff craves reference to the Complaint filed in this action and denies any allegations inconsistent therewith.

8. Plaintiff admits the allegations of Paragraph 42 of the Answer and Counterclaim.

9. Responding to Paragraph 43 of the Answer and Counterclaim, Plaintiff admits so much of the allegations asserting that Plaintiff's wife and children were involved in a motor vehicle accident in Greenville, South Carolina on or about August 30, 2015. Plaintiff denies the remaining allegations contained in Paragraph 43 of the Answer and Counterclaim.

10. Plaintiff admits the allegation as to the tender of limits of the involved vehicle only contained in Paragraph 44 of the Answer and Counterclaim. Plaintiff denies the remaining allegations of the Defendant's Answer and Counterclaim.

11. Responding to Paragraph 45 of the Answer and Counterclaim, the Plaintiff craves reference to the Kia Policy and denies any allegations that are inconsistent wherewith.

12. Plaintiff denies the allegations contained in Paragraph 46 of the Answer and Counterclaim.

13. Responding to Paragraph 47 of the Answer and Counterclaim, Plaintiff craves reference to the Complaint filed in this action and denies any allegations that are inconsistent therewith.

14. Plaintiff denies the allegations contained in Paragraph 48 of the Answer and Counterclaim.

15. Paragraphs 49 & 50 of the Answer and Counterclaim do not purport to assert any allegations that would require a response from Plaintiff and merely cite to the policy language. To the extent that a response from Plaintiff may be required, Plaintiff denies the allegations of Paragraphs 49 & 50.

16. Plaintiff denies the allegations contained in Paragraphs 51 & 52 of the Answer and Counterclaim.

17. Responding to Paragraph 53 of the Answer and Counterclaim, Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

18. Plaintiff admits the allegations contained in Paragraph 54 of the Answer and Counterclaim.

19. Plaintiff denies the allegations contained in Paragraphs 55 & 56 of the Answer and Counterclaim.

20. Responding to Paragraph 57 of the Answer and Counterclaim, Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

21. Plaintiff denies the allegations contained in Paragraph 58 of the Answer and Counterclaim.

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22. Responding to Paragraph 59 of the Answer and Counterclaim, Plaintiff craves reference to the Complaint filed in this action and denies any allegations that are inconsistent therewith.

23. Plaintiff denies the allegations of Paragraphs 60, 61, 62, & 63 of the Answer and Counterclaim.

FOR A SECOND DEFENSE
(Failure to State a Claim)

24. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

25. Defendant's claims should be dismissed pursuant to Rule 12 (b)(6), SCRCP for failure to set forth sufficient facts to constitute a cause of action against SHA.

FOR A THIRD DEFENSE
(Waiver, Estoppel and Laches)

26. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

27. Defendant's claims, where applicable, are barred by the defenses of waiver, estoppel and/or laches.

FOR A FOURTH DEFENSE
(Unclean Hands)

28. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

29. Plaintiff pleads the affirmative defense of unclean hands as a complete bar to the claims asserted by Defendant.

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FOR A FIFTH DEFENSE
(Contractual Terms)

30. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

31. Plaintiff asserts the terms of the policy documents, where applicable, as a complete bar to Defendant's claims.

FOR A SIXTH DEFENSE
(Material Breach)

32. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

33. Defendant's counterclaims are barred, in whole or in part, due to Defendant's prior, material breach of the policy documents and its agreement with Plaintiff.

FOR A SEVENTH DEFENSE
(Failure to Mitigate)

34. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

35. To the extent Defendant claims any prejudice or damages in this action, which Plaintiff strictly denies, any such claims would be barred due to Defendant's failure to take reasonable steps to mitigate its damages.

FOR AN EIGHTH DEFENSE
(Failure to Satisfy Conditions Precedent)

36. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

37. Defendant has failed to satisfy certain conditions precedent to bringing all of the claims against Plaintiff as more fully described in Plaintiffs Complaint and policy documents, which constitute a complete bar to Defendant's claims.

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FOR A NINTH DEFENSE
(Ratification, Novation and Accord & Satisfaction)

38. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

39. Plaintiff pleads ratification, novation and/or accord and satisfaction as affirmative defenses in response to any claims regarding the policy documents and agreement with Plaintiff.

FOR AN TWELTH DEFENSE
(Payment/Acceptance)

40. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

41. Plaintiff pleads payment and accept of policy premiums by Defendant as an affirmative defense to Defendant's counterclaims.

FOR A THIRTEENTH DEFENSE
(Ambiguity)

42. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

43. The Defendant's claims are barred, in whole or in part, because of ambiguities in the terms, definitions and/or provisions contained in the policy documents.

FOR A FOURTEENTH DEFENSE

44. Plaintiff incorporates his admissions, denials, and responses as set forth hereinabove to the extent they are not inconsistent herewith.

45. Plaintiff reserves the right to move, amend or otherwise assert any additional claims or defenses identified during the course of discovery up through and including any trial in this matter.

WHEREFORE, having fully responded to the Answer and Counterclaim of Defendant, Plaintiff prays for:

1. Dismissal of Defendant's Answer and Counterclaim with prejudice;
2. An award of costs and disbursements incurred in connection with this action;
3. An award of relief as prayed for in the Complaint filed by Plaintiff in this action; and
4. Such other and further relief as the Court deems just and proper.

GUEST & BRADY, LLC

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ATTORNEYS FOR THE PLAINTIFF

November 3rd, 2017
Greenville, South Carolina

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ELECTRONICALLY FILED - 2018 Jul 25 10:23 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **USAA GENERAL INDEMNITY COMPANY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: Russell Guest, Attorney for Plaintiffs

PLEASE TAKE NOTICE that Defendant USAA General Indemnity Company (hereinafter "the Carrier"), by and through its undersigned attorney, shall, and hereby does, move this Honorable Court for an Order granting summary judgment in favor of the Carrier in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that the Carrier is entitled to judgment as a matter of law in its favor. More specifically, this motion is based upon the following grounds:

1. The Complaint does not contain nor has the Plaintiff otherwise asserted any cause of action for damages or any allegations of bad faith.
2. The sole issue in this case is whether the California policy that insured a non-involved vehicle should be reformed to allow the Plaintiff to collect additional Underinsured Motorist ("UIM") benefits when California law and the California policy would not allow any additional recovery.
3. This litigation stems from an accident in which the Plaintiff's wife was deemed to be the at fault driver. The accident occurred in Greenville, South Carolina on or

about August 30, 2015. Two of the Plaintiff's three children died as a result of the accident.

4. The Carrier paid the Plaintiff the full liability policy limits as well as the full UIM policy limits under the policy insuring the Ford Expedition driven by the Plaintiff's wife in this accident.
5. It is undisputed that the non-involved vehicle was insured under a separate California policy at the time of this incident.
6. It is undisputed that the vehicle insured under the California policy had not been in South Carolina at any point after 2008 even though it was registered in the State of South Carolina and property taxes on the vehicle were paid in this State.
7. At the time of this accident, the insured vehicle was located in Guam, which is where the Plaintiff was deployed at the time of the accident that is the subject of this litigation.
8. The Plaintiff has admitted that he is not arguing that the Carrier should have insured the vehicle, which was located in Guam, under a South Carolina policy.
9. The Plaintiff also admitted that he nor his wife specifically asked for the non-involved vehicle to be insured under a South Carolina policy. The Plaintiff also admitted that he nor his wife ever represented to the Carrier that the non-involved vehicle would be moved to the State of South Carolina.
10. It is undisputed that the Plaintiff's Ford Expedition involved in the subject accident does not qualify as an underinsured vehicle under the California policy.
11. It is undisputed that the Plaintiff has already received more than the policy limits available under the California policy as part of the afore-mentioned settlement.

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12. It is undisputed that the language of the California policy regarding UIM coverage, including the limitations and exclusions on the coverage, were clear and unambiguous.

13. It is undisputed that the Plaintiff did not pay for separate, stackable UIM coverage under the California policy.

14. It is undisputed that the South Carolina policy only insured the involved vehicle at the time of this accident.

This Motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

CLAWSON and STAUBES, LLC

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July 25, 2018

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Discussion of Facts Surrounding The Subject Loss

This declaratory judgment action arises as a result of a motor vehicle accident ("the accident") that occurred on or about August 30, 2015, in Greenville, South Carolina. On that date, Kamika Young was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. On that day, Mrs. Young failed to yield on oncoming traffic as she attempted to make a left turn into the northbound lane from a private parking lot. Mrs. Young, who was determined to be the at-fault driver in this accident, was struck by another vehicle which caused Mrs. Young's vehicle to proceed across the northbound lane, striking a building and causing the vehicle to catch fire. Two of Plaintiff's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. Minor J.Y. suffered personal injuries, but survived the accident.

Thereafter, the Plaintiff made claims against his personal policy with USAA General Indemnity Company ("Carrier") on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering

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the Ford was issued in South Carolina, with the policy number 1FMFU18L71LB10185 ("the SC Policy"). The Carrier tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured the Plaintiff's Ford. This Court approved the settlements on behalf of the Plaintiff individually, as Guardian of J.Y. and as the Personal Representative of the estates of the two deceased minors. The covenant not to execute signed in exchange for that initial settlement including a provision that would allow the Plaintiff to pursue other excess liability and/or UIM coverage.

While the Plaintiff's wife and children returned to South Carolina in mid-2015, the Plaintiff and his 2006 KIA Spectra ("the KIA") remained in California until he was deployed to Guam in late summer or early fall of 2015. At some point prior to this accident, the KIA was transported to Guam[1] for the Plaintiff's use during his deployment. The Plaintiff was deployed in Guam when this accident occurred. The KIA never returned to the Continental United States after this accident as it was sold to avoid shipping costs. (Tyrin Dep. 95: 15-25, 96: 1-20).

Discussion of the History of Plaintiff's USAA Policies

The KIA was originally added to the Plaintiff's existing South Carolina policy (Policy No. 022260801G71010) in March 2008 shortly after the Plaintiff and his wife got married. Although they were married in January 2008, the Plaintiff's wife remained in South Carolina until she joined the Plaintiff in approximately April 2008 at a base in Virginia where he was stationed. At that time, the Plaintiff's USAA South Carolina policy insuring the KIA and another personal vehicle was canceled, and new a Virginia policy

[1] Since Guam is a United States territory, the CA Policy would provide coverage for the use and maintenance of the KIA while the Plaintiff was on deployment.

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(Policy No. 022260801F71020) was issued to cover the two vehicles in May 2008. In 2010, the Plaintiff was transferred to a naval base in California. As a result, the KIA was ultimately shipped to California where it was insured under a California policy (Policy No. 022260801G71030) ("the CA Policy") starting in August 2010. Accordingly, the Virginia policy was canceled. The CA Policy only insured the KIA at first, while the Plaintiff's second vehicle, the Ford that was involved in this accident, was temporarily insured under a new South Carolina policy with USAA. The Ford was later added to the CA Policy after the Plaintiff's wife and children moved to live with the Plaintiff in California. However, the Plaintiff's wife and children moved back to South Carolina when the Plaintiff received his deployment orders to Guam. As a result, the Ford was transferred back to South Carolina with the Plaintiff's wife where it was insured under the aforementioned SC Policy.

Importantly, the KIA was never located in or transported to South Carolina after 2009. At the time of this accident, the KIA was insured under the CA Policy and the Ford was insured under the SC Policy. The SC Policy provided liability coverage and UIM benefits of $25,000 per person and $50,000 per accident for bodily injury. The SC Policy Dec Page and Policy Booklet are attached hereto as Exhibit A. The CA Policy provided for uninsured motorist ("UM") coverage, but there is no separate coverage designated as UIM coverage under that policy. However, the UM coverage does provide some UIM coverage in certain situations, which will be discussed in more detail below. The CA Policy Dec Page and Policy Booklet are attached hereto as Exhibit B.

At all times relevant hereto, the Plaintiff was a member of the United States Navy. As a result, he is able to claim residency and citizenship in any state even

though he does not physically reside in that state during his enlistment. In this case, the Plaintiff claims South Carolina as his permanent resident State even though he has not lived here since 2007. (Tyrin Dep. 100: 5-13). It is undisputed that the CA Policy listed the address of the Plaintiff as 1409 Roper Mountain Rd. Apt 240, Greenville, South Carolina at the time of the accident. It is also undisputed that the KIA was registered in the State of South Carolina, property taxes were paid on the KIA in South Carolina and the KIA had a South Carolina license plate. However, it is also undisputed that the KIA was not in the State of South Carolina at the time of the accident, and it had not been located in South Carolina, even on a temporary/visiting basis, since before 2009. It is undisputed that the KIA was insured under the CA Policy at the time of the accident. Furthermore, from mid-2010, each Dec Page for the CA Policy renewals stated that the KIA was to be garaged in California. It is further undisputed that while USAA may have been informed that the KIA would be transported to Guam, it is also undisputed that neither the Plaintiff nor his wife ever asked that the KIA be insured under a South Carolina policy while the KIA was located in California or Guam. (Tyrin Dep. 79: 17-25, 80: 1-19).

In the end, the only material fact or issue in dispute in this case at this time is whether the CA Policy should be reformed to provide additional UIM benefits as to the loss that is the subject of this litigation.

Legal Argument

This is not an action for damages or for bad faith. It is simply a declaratory judgment action where there are no material facts in dispute and no further discovery is needed for this Court to decide the sole remaining question - whether the CA Policy

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should be reformed to a South Carolina policy that provides UIM benefits that are stackable to the $100,000 already paid in liability and UIM benefits paid to the Plaintiff under the SC Policy on the Ford driven by the Plaintiff's wife at the time of this accident. While the vehicle was financially tied to the State of South Carolina by way of taxes and registration costs, the KIA had not been located in the State of South Carolina since before 2009. Additionally, the KIA was insured under a proper and enforceable California policy at the time of the accident. The Plaintiff paid for and the Carrier provided insurance coverage as set forth in the CA Policy Booklet. This insurance policy was a mutually binding contract that should not be reformed in order for the Plaintiff to collect additional UIM proceeds in relation to the accident in which his wife was the at-fault driver. Simply put, the CA Policy was purchased to provide insurance for the operation, use and maintenance of a vehicle that was located in California. As a result, the CA Policy was issued pursuant to California law and should be interpreted under that State's law. The fact that the vehicle was temporarily transported to Guam for the Plaintiff's deployment, does not create any additional contacts or relationship with the State of South Carolina. Therefore, the Court should deny the Plaintiff's request to disregard the contractual provisions of the CA Policy and take the extraordinary measure of reforming the CA Policy to include benefits that were not contemplated nor paid for by the Plaintiff.

The CA Policy Does Not Allow Stacking

Based upon a simple review of the Dec Page for the CA Policy, it is clear that the policy does not offer separate coverage entitled "uninsured motorist coverage." However, it does provide uninsured motorist coverage ("UM"), which may provide UIM-

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like benefits under certain limited scenarios where the at fault driver had liability limits that were less that the UM limits offered under the CA Policy. Under Part C of the CA Policy, the policy defines "underinsured motor vehicle" as:

> A land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of the liability for this coverage.
>
> However, an underinsured motor vehicle does not include an uninsured motor vehicle.

(Exh. B at p. 11). The CA Policy goes on to state that an underinsured or uninsured vehicle does not include a vehicle "owned by or furnished or available for the regular use of you or any family member." In this case, the involved vehicle driven by the Plaintiff's wife was owned by the Plaintiff and had liability coverage limits in exactly the same amount as the CA Policy. As a result, the Ford does not qualify as an underinsured motor vehicle under the CA Policy because it is owned by the Plaintiff and made available for the regular use of the Plaintiff's wife – the at-fault driver. Additionally, the policy limits for the CA Policy are identical to the limits of the SC Policy. As a result, the Ford does not qualify as an uninsured or underinsured motor vehicle under the CA Policy.

Even if the Court were to determine that the Ford was an underinsured motor vehicle, coverage under Part C of the CA Policy would be excluded under Exclusion B, which provides:

> We do not provide UMBI Coverage for BI sustained by any **covered person while occupying**, or when struck by, **any motor vehicle owned by you or any family member** which is not insured for this Coverage under this policy **or when the owner of that vehicle has UMBI Coverage similar to**

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> **that provided in this Part.**[2] This includes a trailer of any type used with that vehicle.

(Exh. B at p. 13) *Emphasis added.* Therefore, the accident is not a covered loss under the CA Policy.

Even if the Court were to find Ford was a covered underinsured motor vehicle under the CA Policy (which it's not) and that the exclusion does not apply (which it does), the CA Policy clearly and unambiguously prohibits stacking. In that regard, under the Section "Limit of Liability", the CA Policy provides:

> For UMBI Coverage, for BI sustained by any one person in any one accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declaration under any one vehicle for UMBI Coverage, for "each person". Subject to this limit for "each person, the limit of liability shown in the Declarations for "each accident" for UMBI Coverage is our maximum limit of liability for all damages for BI resulting on any accident.
>
> The limits of liability (each person and each accident) under UMBI Coverage shall be reduced by all sums:
>
> > 1. Paid because of the BI by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.
> >
> > ...
>
> The limits for UMBI, UMPD or UMPD WOCD Coverages are the most we will pay regardless of the number of:
>
> 1. Covered persons;
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations;
> 4. Premiums paid; or
> 5. Vehicle involved in the accident.

[2] As discussed below, this Exclusion contains language almost identical the to the statutory exclusion provided in California Insurance Code §115580.2

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> In no event shall the limit of liability for two or more vehicles or trailer of any type used with any such vehicle, **or two or more policies be added together, combined, or stacked to determine the limit of liability**.

(Exh. _____ p. 12-13) *Emphasis added.*

The CA Policy further provides under the Section "Other Insurance" that to the extent that there is other potential UM or UIM coverages:

> Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

(Exh. B at p. 13).

The CA Policy at issue in this case was issued to the Plaintiff shortly after he was transferred to California in or around mid-2010. Since mid-2010, the KIA has never been insured under any other policy, much less a South Carolina policy. It is undisputed that the KIA was insured under the CA Policy at the time of this accident. (Tyrin Dep. 71: 23-25, 72: 1-3). Based upon the policy language discussed above, it is clear that the Ford would not qualify as an underinsured motor vehicle as defined by the CA Policy. Even if the Ford met the definition of underinsured motor vehicle, the CA Policy clearly and unambiguously excludes the Ford as an underinsured motor vehicle on the grounds that it was owned by the Plaintiff and not insured under the CA Policy at the time of the accident. Additionally, even if the Ford was an underinsured motor vehicle, the policy clearly and unambiguously precludes stacking of UM/UIM coverage, which is what the Plaintiff seeks to do in this case.

California Law Does Not Allow Stacking

The CA Policy was clearly issued to the Plaintiff while the KIA was located in

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California. Additionally, there has been no evidence introduced that the CA Policy fails to conform to California law. In that regard, California statutory law provides in separate provisions:

> The insurance coverage provided for in this section does not apply either as primary or as excess coverage:
>
> > To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section.
>
> Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, **in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons**.

California Insurance Code §115580.2(d)&(q) *Emphasis added. See generally Wagner v. State Farm Mut. Auto. Ins. Co.*, 40 Cal. 3d 460, 466, 220 Cal. Rptr. 659, 662, 709 P.2d 462, 465 (1985)(holding that the insured was not entitled to stack two UM policies by the same carrier pursuant to California Insurance Code §115580.2); *Calfarm Ins. Co. v. Wolf*, 86 Cal. App. 4th 811, 821, 103 Cal. Rptr. 2d 584, 591 (2001)(noting that California law precludes the stacking of UM benefits and instead limits the injured party's recover to the high limit of applicable UM coverage).

As stated above, California law, which should be applied to this case, clearly prohibits stacking under California policies. Additionally, California law further allows carriers to exclude any additional coverage under UM policies where the other policy has "similar" insurance. California cases have found that "similar" means both the type and amount of coverage. If applied to this case, California Insurance Code §115580.2

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would allow the Carrier to exclude the Plaintiff's claim under the CA Policy because the SC Policy offers "similar" UM/UIM coverage. Additionally, California law expressly prohibits stacking of the CA Policy to the recovery under the SC Policy.

The CA Policy Should Be Interpreted Pursuant to California Law

While the Plaintiff's attorney may argue that they need additional discovery, the sole issue before the Court in this case is whether the CA Policy should be "reformed" to South Carolina law. There is no additional discovery that would affect this Court's analysis based upon existing South Carolina case law on this issue. In fact, we believe that once the facts are considered and weighed, it will be clear to the Court that the CA Policy insured a vehicle that was never located in South Carolina. The interests and object(s) insured were never located in this State after 2009. As a result, the Court should deny the Plaintiff's request that the Court take the drastic measure of disregarding the contractual terms for which the Plaintiff paid and the Carrier provided by reforming this policy to conform with South Carolina law.

Insurance policies are subject to the general rules of contract construction. *Nationwide Mut. Ins. Co. v. Commercial Bank*, 479 S.E.2nd 524 (S.C. 1996). Generally, it has been well settled that in most cases insurers' duties are determined by the terms of the policy and cannot be enlarged by judicial construction. *S.C. Ins. Co. v. White*, 390 S.E.2d 471 (S.C. 1990). In this case, the Plaintiff is essentially requesting that the Court ignore the policy language and ignore the premiums that he paid for the CA Policy and enlarge the duties owed by the Carrier by requiring it to stack coverage for which the Plaintiff did not pay.

Under general contract law, South Carolina courts have repeatedly held that the

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governing choice of law in these actions is *lex loci contractus* or the location where the contract was entered. *Yeager v. Allstate Ins. Co.,* Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843 (D.S.C. Feb. 22, 2010). To the extent that the Court were to apply this general concept, it is clear that California law would apply and the Plaintiff would not be entitled to stack any additional coverage onto the $100,000 that he has already received. While he has not expressly stated this, it is anticipated that the Plaintiff will argue that South Carolina law treats insurance contracts slightly different in the situation where the policy insures property, lives and interests within South Carolina. In that regard, Section 38-61-10 of the South Carolina Code provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

S.C. Code Ann. § 38-61-10. As discussed below, South Carolina's courts have "held that § 38-61-10 is inapplicable, noting a lack of connection, interest or nexus to South Carolina." *Russell v. McGrath*, 135 F. Supp. 3d 427, 431 (D.S.C. 2015). In *Russell*, several individuals were killed in a motor vehicle accident in Columbia, South Carolina. The plaintiffs in that case argued that they were entitled to reform the Florida policy, which precluded stacking of UIM benefits, to a South Carolina policy that would allow them to recover additional UIM benefits. The court in that case noted that the insured driver and the named insured had connections with several states including their state of permanent residency (Connecticut), the state where they paid property taxes on the vehicle (Florida), the state where the vehicle was registered (Florida) and the state where he attended school, which was also the location of the accident (South Carolina).

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The court decided that South Carolina's connections and interests to the insureds were insufficient to implicate Section 38-61-10. As a result, the court declined to reform the policy. Importantly, in reaching its decision, the court noted that the insured property that would be subject to the statute was the automobile. The also noted that reforming the Florida policy could have drastic implications which would require South Carolina to reform all policies for vehicles owned by out-of-state students attending college in South Carolina.

South Carolina's courts have even held that Section 38-61-10 was not implicated in order to reform a Georgia policy, which did not allow stacking of UIM benefits, even though the insured:

1. Physically resided in the State of South Carolina on a regular basis;
2. Paid income taxes in the State of South Carolina;
3. Worked in the State of South Carolina; and
4. The accident occurred in the State of South Carolina.

Yeager v. Allstate Ins. Co., Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843 (D.S.C. Feb. 22, 2010).

Importantly, the Plaintiff cannot point to a South Carolina case involving the issues that we have here. In that regard, all of the South Carolina cases to date dealing with stacking or even Section 38-61-10 have all included policies where the subject of the policy was located in the State of South Carolina. There are no binding cases where a South Carolina resident attempts to reach back to an out-of-state policy for a vehicle that was not involved in the accident or located in the State of South Carolina at the time of the accident. In fact, our courts have decided that to even implicate the

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statute and overrule the common law rule, the property at issue has to be located in the State of South Carolina. In fact, in this case, the subject of the policy was the KIA, a vehicle that despite its financial relationship and ties to the State of South Carolina, was not driven on a South Carolina road and therefore not subject to the laws of the State of South Carolina for at least 6 years prior to the accident that is the subject of this litigation.

However, California's courts have addressed similar issues when deciding a choice of laws as it relates to stacking. In *Cal. Cas. Indem. Exch. v. Pettis*, 193 Cal.App. 3d 1597 (Cal. Ct. App. 1987), the plaintiffs were injured while operating a non-owned vehicle in Hawaii. As a result of that accident, the plaintiffs received no-fault insurance proceeds, which was the only mandatory insurance required by the State of Hawaii. Upon returning to California, the plaintiffs filed a claim with their insurer seeking to stack their UM benefits onto the no-fault proceeds that they already received. In applying a similar "weighting of interests" test, the Court of Appeals of California determined that California's interests in the loss outweighed those of Hawaii. As a result, it determined that California law applied. In reaching this decision, the court noted that California had enacted specific laws to prohibit stacking of UM benefits. The court stated that these laws were enacted with the express intent to prevent double recovery by the claimant and to ensure that insurance premiums remained low and affordable. The court further noted that Hawaii's interests were centered "on compliance with its own statutory requirements. Once those have been satisfied Hawaii has little, if any, other interests in this case." *Id.* at 1606. The court went on to note that "the vehicle for which the defendants purchased insurance are registered, garaged, and

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principally used in California. The insurance policies at issue were purchased to fulfill California's financial responsibility law." *Id.* Therefore, the court held that the State of California had more substantial interests in enforcing a policy issued in California when compared to a different state where the claimant had already received insurance proceeds that complied with that state's minimum requirements.

Again, in this case, the Plaintiff and his family claimed South Carolina as their permanent place of residence even though the Plaintiff has personally not lived there since 2007. The Carrier admits that the vehicle, the Plaintiff and the claimants all have financial ties to the State of South Carolina. However, the Court should not ignore reality in an attempt to stretch and contort existing case law in order to reform this policy where there was no reasonable expectation that this KIA would ever be operated within the State of South Carolina during the time that the CA Policy was in place. Instead, the Plaintiff purchased a policy which insured him under the laws of the State of California which he was legally required to do in order to operate the vehicle in that state based upon his domicile at the time that the policy was issued. In turn, the Carrier reasonably evaluated its risks and exposure under the laws of the State of California when it determined the premiums for the subject vehicle. Now, the Plaintiff seeks to unilaterally reform the policy to include benefits that he did not pay for. He and his wife seek this extreme remedy even though they were well aware of the status of the KIA at the time of this accident. In that regard, it is clear that the Plaintiff and his wife understood that the KIA policy was insured under the CA Policy and that they do not argue that the KIA should have been insured under a South Carolina policy at the time of the accident. The Plaintiff has admitted that the CA Policy was in effect at the time of the accident.

(Young T. Dep. 71:23 - 72:6). Additionally, the Plaintiff's wife, who admitted that she normally dealt with the Carrier regarding the policies, testified:

> **Question**: "So going up until the time of this accident, was it your understanding leading up to the time that you had your Expedition here in South Carolina that was insured under a South Carolina policy? Was that your understanding?"
>
> **Answer**: "Yes, sir."
>
> **Question**: "Was it your understanding the Kia was still being insured under a California policy?"
>
> **Answer**: "Yes, sir."
>
> **Question**: "Okay. And you guys continued to make those premium payments, correct?"
>
> **Answer**: "Correct."
>
> **Question**: "At any point, did you or your husband ever ask USAA to change the Kia to a South Carolina policy?"
>
> MR. ALLEN: "Object to the form."
>
> **THE WITNESS**: "No, sir, not that I am aware of."

(Young K Dep. 31:8-24). In fact, not only do the Plaintiff and his wife acknowledge that they knew that the KIA was insured under the CA Policy at the time of the accident, they also do not argue that the KIA should have been insured under a South Carolina policy at the time of the accident. In that regard, the Plaintiff testified:

> **Question**: "Is it your position here today that a vehicle that is physically located in California should be insured under a South Carolina policy?"
>
> **Answer**: "It's not my position."
>
> **Question**: "Is it your position here today that a vehicle that is physically located in Guam should be insured under a South Carolina policy?"

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Answer: "That is not my position."

(Young, T. 109:2-9.). Finally, the Plaintiff and his wife are intelligent individuals. In fact, the Plaintiff testified that not only did he understood all of the provisions of the CA Policy when they were discussed in his deposition. (Young, T. 108:-713). As a result, the Plaintiff cannot use ignorance as an excuse in this case.

Conclusion

It is clear that the KIA was insured under the CA Policy at the time of this wreck. It is clear that the CA Policy complies with California law, which specifically allows for the exclusion of coverage where the claimant was occupying a vehicle owned by the Plaintiff that was not insured under that policy. California law also expressly prohibits stacking of insurance benefits. Additionally, the Ford, the involved vehicle, clearly and unambiguously does not qualify as an uninsured motor vehicle under the CA Policy. It is the Plaintiff's burden to show that S.C. Code Ann. § 38-61-10 applies in order to necessitate the reformation of the CA Policy. However, the Plaintiff cannot do so in this case because the property insured under the CA Policy was not located in the State of South Carolina at any time relevant hereto. Additionally, even if the vehicle was monetarily tied to the State via taxes, it had not been in the State of South Carolina for at least 6 years. Thus, it was not subject to the insurance laws of the State of South Carolina. Therefore, USAA is entitled to summary judgment in its favor finding that the CA Policy should not be reformed under South Carolina law and the Plaintiff is not entitled to any additional UM benefits under the CA Policy.

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CLAWSON and STAUBES, LLC

s/Patrick L. "Trey" Still, III
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Attorney for Defendant USAA

Greenville, South Carolina

September 19, 2018

ADDL INFO ON NEXT PAGE MAIL MCH-M-I

RENEWAL OF

USAA GENERAL INDEMNITY COMPANY

(A Stock Insurance Company)
9800 Fredericksburg - San Antonio, Texas 78288

USAA®

SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

State	Veh	POLICY NUMBER
SC 240	Terr	02226 08 01G 710530

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE JUL 17 2015 TO JAN 17 2016

OPERATORS
01 TYRIN S YOUNG
04 KAMIKA N YOUNG

Named Insured and Address

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM		WORK/SCHOOL Miles One Way	WORK/SCHOOL Days Per Week
02	01	FORD	EXPEDITION	4 DOOR	10000	1FMFU18L71LB10185		P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure
VEH 02 GREENVILLE SC 29615-5101

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH 02 6-MONTH D=DED AMOUNT	VEH 02 6-MONTH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
PART A - LIABILITY								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		82.68						
PROPERTY DAMAGE EA ACC $ 25,000		90.65						
PART C - UNINSURED MOTORISTS								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000								
PROPERTY DAMAGE EA ACC $ 25,000	D 200	8.73						
PART C - UNDERINSURED MOTORISTS								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000								
PROPERTY DAMAGE EA ACC $ 25,000		12.92						
PART D - PHYSICAL DAMAGE COVERAGE								
COMPREHENSIVE LOSS ACV LESS	D 500	33.31						
COLLISION LOSS ACV LESS	D 500	91.80						
RENTAL REIMBURSEMENT $ 30 A DAY/$ 900 MAXIMUM		36.00						
TOWING AND LABOR		10.00						

TOTAL PREMIUM - SEE FOLLOWING PAGE(S)

LOSS PAYEE
VEH 02 NAVY FEDERAL CREDIT UNION, MERRIFIELD VA

ENDORSEMENTS: ADDED 07-17-15 - NONE
REMAIN IN EFFECT(REFER TO PREVIOUS POLICY)- 5100SC(04) A043(04) A400SC(04) ACCFOR(01) A401CW(02) A100SC(04) AOASA(01)
INFORMATION FORMS: 93984(01) 94629(01) 999SC(23)

NO

VEH 02 RMF3300000

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JUNE 10, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

5000 G 05-12
53384-05-12

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USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained in the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown in the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the company's Board of Directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

By purchasing this policy you are a member of USAA and are subject to its bylaws.

This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.

The USAA Board of Directors may annually allocate a portion of USAA's surplus to Subscriber's Savings Accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

	DECLARATIONS PAGE
	Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page 3	**Agreement and Definitions**
Part A 4	**Liability Coverage**
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 6	**Personal Injury Protection Coverage**
	Definitions Insuring Agreement Personal Injury Protection Coverage Air Bag and Seat Belt Benefits Limit of Liability Exclusions Other Insurance Conditions Arbitration
Part B 10	**Medical Payments Coverage**
	Definitions Insuring Agreement Medical Payments Coverage Limit of Liability Exclusions Other Insurance Special Provisions Arbitration
Part C 12	**Uninsured Motorists Coverage** **Underinsured Motorists Coverage**
	Definitions Insuring Agreement Uninsured Motorists Coverage Underinsured Motorists Coverage Limit of Liability Exclusions Other Insurance Conformity To Statute Non-Duplication Arbitration
	(Quick Reference continued on Page 2)

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Part D 19	Physical Damage Coverage
	Definitions Insuring Agreement Comprehensive Coverage Collision Coverage Full Safety Glass Rental Reimbursement Coverage Towing and Labor Costs Coverage Limit of Liability Payment of Loss Loss Payable Clause Waiver of Collision Deductible Exclusions No Benefit to Bailee Other Sources of Recovery Appraisal

Part E 22	General Provisions
	Air Bag Bankruptcy Changes Duties After an Accident or Loss Legal Action Against Us Misrepresentation Non-duplication of Payment Our Right to Recover Payment Ownership Policy Period and Territory Termination Transfer of Your Interest in this Policy Two or More Auto Policies

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SOUTH CAROLINA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown in the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

A. **You** and **your** refer to the "named insured" shown in the Declarations and spouse if a resident of the same household.

B. **We, us,** and **our** refer to the Company providing this insurance.

C. **Auto business** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, or storing vehicles.

D. **Bodily injury** (referred to as **BI**) means bodily harm, sickness, disease or death.

E. **Family member** means a person related to **you** by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child.

F. **Miscellaneous vehicle** means the following motorized vehicles: a motorcycle, moped or similar type vehicle; motor home; golf cart; snowmobile; all-terrain vehicle; or dune buggy.

G. **Occupying** means in, on, getting into or out of.

H. **Property damage** (referred to as **PD**) means physical injury to, destruction of, or loss of use of tangible property.

I. **Temporary substitute vehicle** means a private passenger auto, pickup, **van, miscellaneous vehicle** or **trailer** not owned by **you** or a **family member** while it is used as a temporary replacement for **your covered auto** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.

J. **Trailer** means a vehicle designed to be pulled by a private passenger auto, pickup, **van,** or **miscellaneous vehicle.** It also means a farm wagon or implement while towed by such vehicles.

K. **Van** means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.

L. **Your covered auto** means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles acquired by **you** or a **family member** during the policy period, beginning on the date **you** or a **family member** becomes the owner, but only if no other insurance policy provides coverage for such vehicle:
   a. A private passenger auto;
   b. A pickup or **van;** or
   c. A **miscellaneous vehicle** not used in any business or occupation.

   For such newly acquired vehicles, **we** will automatically provide the broadest coverages as are provided for any vehicle shown in the Declarations. If **your** policy does not provide Comprehensive and Collision coverages, **we** will provide each with a $250 deductible. However, **we** will not provide any coverage for more than 30 days after the date **you** or a **family member** becomes the owner of the vehicle. If **you** wish to continue any coverage beyond the 30-day period, **you** must request it prior to the end of the 30-day period.
3. Any **trailer you** own.
4. Any **temporary substitute vehicle.** Only those coverages provided for the vehicle withdrawn from normal use will be extended to its **temporary substitute vehicle.**

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PART A - LIABILITY COVERAGE

DEFINITIONS

Covered person as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance, or use of any auto or **trailer.**
2. Any person using **your covered auto.**
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto,** this provision only applies if the other person or organization does not own or hire the auto or **trailer.**

The following are not **covered persons** under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to BI or PD resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the BI or PD.

INSURING AGREEMENT

We will pay damages for BI or PD for which any **covered person** becomes legally liable because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. Our duty to settle or defend ends when our limit of liability for these coverages has been paid or tendered. We have no duty to defend any suit or settle any claim for BI or PD not covered under this policy.

LIMIT OF LIABILITY

For BI sustained by any one person in any one auto accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for BI Liability. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for BI Liability is our maximum limit of liability for all damages for BI resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for PD Liability is our maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the state's Financial Responsibility law, our limit of liability will be the minimum required by the state's Financial Responsibility law.

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of a **covered person:**

1. Premiums on appeal bonds and bonds to release attachments in any suit we defend. But we will not pay the premium for bonds with a face value over our limit of liability shown in the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment we pay. If we make an offer to pay the applicable limit of liability, we will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to $100 a day for loss of wages because of attendance at hearings or trials at our request.

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5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person.** The most we will pay is an amount equal to one month of the basic salary of the **covered person** at the time of loss. Only Exclusions A.1. and A.8. apply.
6. Other reasonable expenses incurred at **our** request.
7. All defense costs **we** incur.

EXCLUSIONS

A. **We** do not provide Liability Coverage for any **covered person:**

1. Who intentionally acts or directs to cause **BI** or **PD,** or who acts or directs to cause with reasonable expectation of causing, **BI** or **PD.** This exclusion applies only to the extent that the limit of liability for this coverage exceeds **BI** limit of $15,000 for each person and $30,000 for each accident and **PD** limit of $10,000.
2. For **PD** to property owned or being transported by a **covered person.**
3. For **PD** to property rented to, used by, or in the care of any **covered person.** This does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the **auto business.** This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you,** any **family member,** or any partner, agent, or employee of **you** or any **family member.**
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business,** farming, or ranching. This exclusion (A.7.) does not apply to the maintenance or use of a private passenger auto; a pickup or **van** that **you** own; or a **trailer** used with these vehicles.
8. Using a vehicle without expressed or implied permission.
9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limit of liability.
10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others.

B. **We** do not provide Liability Coverage for the ownership, maintenance, or use of:

1. Any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto,** that is owned by **you,** or furnished or available for **your** regular use.
3. Any vehicle, other than **your covered auto,** that is owned by, or furnished or available for the regular use of, any **family member.**

This exclusion (B.3.) does not apply to **your** maintenance or use of such vehicle.

4. Any vehicle while being operated in, or in practice for, any speed contest.

C. There is no coverage for **BI** or **PD** for which a **covered person** becomes legally responsible to pay a member of that **covered person's** family residing in that **covered person's** household. This exclusion applies only to the extent that the limit of liability for this coverage exceed **BI** limit of $15,000 for each person and $30,000 for each accident and **PD** limit of $10,000.

D. There is no coverage for liability assumed by any **covered person** under any contract or agreement.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, **your** policy will provide at least the minimum amounts and types of coverages required by law. However, no one will be entitled to duplicate payments for the same elements of loss.

OTHER INSURANCE

If there is other applicable liability insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide to a **covered person** with respect to the following vehicles shall be excess over (1) any other applicable liability insurance or (2) any self-insurance in compliance with a state's financial responsibility law:

a. A vehicle **you** do not own; or

b. **Your covered auto** while in the possession of an **auto business.**

PART B - PERSONAL INJURY PROTECTION COVERAGE

DEFINITIONS

A. **Air Bag** means a supplemental passive restraint system commonly referred to as an **air bag** which is originally installed by the vehicle manufacturer and which, at the time of the accident, had not been made inoperable through modification, deactivation, disconnection, switching off or prior deployment.

B. **Auto** means a motor vehicle of the kind required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.

C. **Beneficiary** means (in order of priority of payment):

1. The surviving spouse if a resident in the same household as the deceased at the time of the accident; or
2. If the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident; or
3. The estate of the deceased.

D. **Covered person** as used in this Part means:

1. For Personal Injury Protection Coverage:
   a. **You** or any **family member**; or
   b. Anyone else who sustains **BI** while:
      1. **occupying your covered auto**; or
      2. a pedestrian;

      as a result of an accident involving **your covered auto.**
2. For Air Bag and Seat Belt Benefits:
   a. **You** or any **family member** while **occupying** any auto;
   b. Any other person while **occupying your covered auto.**

E. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

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1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person,** his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person;** and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that we determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person,** when these could safely have been provided to the **covered person** as an outpatient.

F. **Reasonable fee** is the amount, as determined by **us** or someone on **our** behalf, which we will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services. We** will pay the lesser of:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

G. **Seat Belt** means manual or automatic safety belts or seat and shoulder restraints or a child restraint device. Both the lap and shoulder restraints must be worn at the time of the accident for coverage to apply. If the **covered person** is a child, the child restraint device must meet federal motor vehicle safety standards and must be one recommended by its manufacturer as appropriate for use by children of like age and weight. The child must be properly seated and restrained within the device and the device must be attached to the interior of the vehicle in accordance with the manufacturer's instructions.

INSURING AGREEMENT

A. Personal Injury Protection Coverage. **We** will pay personal injury protection benefits to or for a **covered person** who sustains **BI.** The **BI** must be caused by an accident and result from the ownership, maintenance or use of an **auto** as an **auto.**

We, or someone on **our** behalf, will review and audit claims for personal injury protection benefits under this coverage. **We** are only obligated to pay expenses for benefits described below:

1. Medical Expenses. The **reasonable fee** for **medically necessary and appropriate medical services** incurred within 3 years from the date of the accident for a **covered person's** care or recovery.

This includes remedial care and treatment rendered in accordance with a recognized religious or licensed method of healing.

Only semi-private hospital room charges will be paid unless special or intensive care is required.

2. Funeral Expense. Reasonable funeral and burial expense incurred.
3. Work Loss Benefits. Benefits for loss of income during the:
   a. Three years from the date of the accident; and
   b. Lifetime of the **covered person.**

   Work loss applies only if the **covered person** was an income or wage producer at the time of the accident.
4. Essential Services Expenses. Necessary and reasonable expenses incurred during the:
   a. Three years from the date of the accident and
   b. Lifetime of the **covered person;**

   for services which are ordinarily performed by the **covered person** for the care and maintenance of his or her family. Essential services apply only if the **covered person** was not an income or wage producer at the time of the accident.

B. Air Bag and Seat Belt Benefits. We will provide the benefits described only if at the time of the accident, Personal Injury Protection Coverage was provided by the policy and the **covered person** for whom benefits are sought was:
   1. Wearing a **seat belt;** or
   2. Wearing a **seat belt** and **occupying** a seat in an automobile in which he was protected by an **air bag;** and
   3. Entitled to collect benefits for medical expenses incurred as a result of the accident under the terms of the policy's Personal Injury Protection Coverage.

   We will pay a Death Benefit of $15,000 to the **beneficiary** of a **covered person** who dies as the direct result of **BI** sustained in an automobile accident while wearing a **seat belt.** We will pay an Additional Death Benefit of $10,000 to the **beneficiary** of a **covered person** who dies as a direct result of **BI** sustained in an automobile accident while wearing a **seat belt** and **occupying** a seat protected by an **air bag.** In either case, death must occur within three years of the date of the accident.

LIMIT OF LIABILITY

A. Personal Injury Protection Coverage. One thousand dollars ($1,000) is **our** maximum limit of liability for each **covered person** injured in any one **auto** accident. This is the most we will pay regardless of the number of:
   1. **Covered persons;**
   2. Claims made;
   3. Vehicles or premiums shown in the Declarations;
   4. Vehicles involved in the accident; or
   5. Insurers providing no-fault benefits.

B. The maximum Death Benefit we will pay under Air Bag and Seat Belt Benefits is $15,000 for death of any one **covered person.** The maximum Additional Death Benefit we will pay for death of any one **covered person** is $10,000. These amounts are the most we will pay regardless of the number of vehicles to which this coverage applies, the number of coverages or premiums shown in the Declarations.

   No one will be entitled to receive duplicate payments for the same elements of loss.

EXCLUSIONS

We do not provide any coverage or benefits under this Part for **BI:**

1. Sustained by any **covered person** who:
   a. Intentionally causes the accident resulting in the injury; or
   b. Operates or voluntarily rides in a vehicle known by that person to be stolen; or

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c. Is committing a felony; or

d. Fails to stop an **auto** he or she is operating when signaled by any law enforcement vehicle by means of a siren or flashing light.

2. To any **covered person** while **occupying**, or while a pedestrian as a result of an accident involving an **auto** (other than **your covered auto**) insured for personal injury protection.

3. Sustained by a pedestrian, if the accident occurs outside South Carolina. This exclusion does not apply to:

   a. **You**; or

   b. Any **family member**.

4. Sustained by any **covered person** resulting from the maintenance or use of an **auto** while located for use as a residence or premises.

5. Caused by or as a consequence of:

   a. Discharge of a nuclear weapon (even if accidental);

   b. War (declared or undeclared);

   c. Civil war;

   d. Insurrection; or

   e. Rebellion or revolution.

6. From or as a consequence of the following, whether controlled or uncontrolled or however caused:

   a. Nuclear reaction;

   b. Radiation; or

   c. Radioactive contamination.

7. Sustained by any **covered person** arising out of the ownership, maintenance or use of a motorcycle by such person.

8. Sustained by **you** or any **family member** while **occupying** any **auto** owned by **you** which is not **your covered auto**.

9. Sustained by any **family member** while **occupying** any **auto** owned by that **family member**.

OTHER INSURANCE

No person shall recover benefits from more than one policy or one insurer on either a duplicate or supplemental basis, regardless of the number of motor vehicles covered or insurers (including self-insurers).

The Death Benefit and Additional Death Benefit provided by Air Bag and Seat Belt Benefits will be paid in addition to any death benefit payable under the policy's Personal Injury Protection Coverage.

If there is other applicable air bag and seat belt benefits, the maximum limit of **our** liability for the death of any one **covered person** under all such policies shall not exceed $15,000 for the Death Benefit and $10,000 for the Additional Death Benefit.

CONDITIONS

The Air Bag and Seat Belt Benefits coverage provided is subject to all provisions and conditions of the policy's Personal Injury Protection Coverage and to the policy's general conditions, except as specifically modified herein.

ARBITRATION

If **we** and a **covered person** do not agree:

1. On the **reasonable fee**;
2. That expenses are reasonable;
3. Whether services or supplies are **medically necessary** and **appropriate medical services**; or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B.

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

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If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by **us**, does not exceed the limit of liability for this coverage.

PART B - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

A. **Covered person** as used in this Part means:

1. **You** or any **family member** while **occupying** any auto.
2. Any other person while **occupying your covered auto.**
3. **You** or any **family member** while not **occupying** a motor vehicle if injured by:
   a. A motor vehicle designed for use mainly on public roads;
   b. A **miscellaneous vehicle;**
   c. A **trailer.**

B. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person,** his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person;** and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person,** when these could safely have been provided to the **covered person** as an outpatient.

C. **Reasonable fee** is the amount, as determined by **us** or someone on **our** behalf, which **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services. We** will pay the lesser of:

1. The actual charge;
2. The charge negotiated with a provider; or

3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

INSURING AGREEMENT

Medical Payments Coverage. **We** will pay only the **reasonable fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services because of **BI** caused by an auto accident, sustained by a **covered person** and incurred for services rendered within three years of the date of the accident.

A provider of medical services may charge more than the limits established by this policy's defined terms, but such additional charges are not covered. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine whether fees and expenses were reasonable and whether treatment was medically necessary and appropriate.

LIMIT OF LIABILITY

The following provisions represent the most **we** will pay regardless of the number of **covered persons**, claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident.

A. The limit of liability shown in the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A or Part C of this policy.

EXCLUSIONS

We do not provide benefits under this Part for any **covered person** for **BI:**

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available.
5. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by **you** or furnished or available for **your** regular use.
6. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by or furnished or available for the regular use of any **family member.** This does not apply to **you.**
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person.** This does not apply to **BI** sustained while **occupying** a private passenger auto; a pickup or **van you** own; or a **trailer** used with these vehicles.

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9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others.
11. Sustained while a participant in, or in practice for, any speed contest.

OTHER INSURANCE

If there is other applicable auto medical payments insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle **you** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

SPECIAL PROVISIONS

If **your covered auto** and every other motor vehicle **you** own are within the policy territory referred to in Part E, General Provisions, then coverage under Part B will apply to **you** and any **family member** anywhere in the world.

ARBITRATION

If we and a **covered person** do not agree:

1. On the **reasonable fee;**
2. That expenses are reasonable;
3. Whether services or supplies are **medically necessary and appropriate medical services;** or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B.

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by **us**, does not exceed the limit of liability for this coverage.

PART C - UNINSURED MOTORISTS COVERAGE (referred to as UM) and UNDERINSURED MOTORISTS COVERAGE (referred to as UIM)

DEFINITIONS

A. **Covered person** as used in this Part means:

1. **You** or any **family member.**
2. Any other person **occupying your covered auto.**
3. Any person for damages that person is entitled to recover because of BI to which this coverage applies sustained by a person described in 1. or 2. above.

However, the definition of a **covered person** does not include the Government of the United States of America.

B. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which neither a liability bond or policy, nor cash or securities deposited with the State Treasurer, applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.

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3. That is a hit-and-run motor vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in **BI** or **PD** without hitting:
   a. **You** or any **family member;**
   b. A vehicle which **you** or any **family member** are **occupying;**
   c. **Your covered auto;** or
   d. Any of **your** property.

   If there is no physical contact with the hit-and-run vehicle the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which **you** or any **family member** were **occupying** at the time of the accident.
4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
   a. Successfully denies coverage;
   b. Is or becomes insolvent;
   c. Is in delinquency proceedings, suspension or receivership; or
   d. Is proven unable to respond to a judgment.
5. For which the owner has not qualified as a self-insurer.

However, **uninsured motor vehicle** does not include any vehicle or equipment:

1. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Sub-section 15-78-60, or by other applicable statute.
2. Operated on rails or crawler treads, except for a snowmobile.
3. Designed mainly for use off public roads while not on public roads.

C. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy are not enough to pay the full amount the **covered person** is legally entitled to recover as damages.

However, **underinsured motor vehicle** does not include any vehicle or equipment:

1. Operated on rails or crawler treads, except for a snowmobile.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

INSURING AGREEMENT

A. UNINSURED MOTORISTS COVERAGE

We will pay the following damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of an auto accident:

1. **BI** sustained by a **covered person;** and
2. Injury to or destruction of the property of a **covered person.**

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle.**

Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us.**

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. This provision applies only to Definition B.2. under this Part.

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B. UNDERINSURED MOTORISTS COVERAGE

We will pay the following damages which a **covered person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of an auto accident:

1. **BI** sustained by a **covered person**; and
2. Injury to or destruction of **your covered auto.** However, this does not include damage to property owned by the **covered person** while contained in **your covered auto.**

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle.**

LIMIT OF LIABILITY

UNINSURED MOTORISTS COVERAGE

A. If **BI** or **PD** is sustained in an accident by **you** or any **family member** while **occupying your covered auto:**

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the sum of the limits of liability shown in the Declarations for "each person" for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of **BI** sustained in that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Bodily Injury Liability Uninsured Motorists Coverage.
3. **Our** maximum limit of liability for all **PD** resulting from that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Property Damage Liability Uninsured Motorists Coverage.
4. Subject to the maximum limit of liability set forth in paragraphs 1., 2. or 3. above:
   a. The most **we** will pay for **BI** or **PD** sustained in that accident by a **covered person** other than **you** or any **family member** is that **covered person's** pro-rata share of the "each person" or "each accident" limit shown in the Declarations for this coverage applicable to the vehicle that **covered person** was **occupying** at the time of the accident; and
   b. **You** or any **family member** who sustains **BI** or **PD** in that accident will also be entitled to a pro-rata share of the "each person" or "each accident" limit described in paragraph a. above.

A person's pro-rata share shall be the proportion that that person's damages bears to the total damages sustained by all **covered persons.**

The maximum limit of liability is the most **we** will pay regardless of the number of:

1. **Covered persons;** <
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

B. If **BI** or **PD** is sustained in an accident by **you** or any **family member** while not **occupying** any auto:

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of **your covered autos.**

2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of **your covered autos**; and
3. **Our** maximum limit of liability for all PD resulting from that accident is the highest "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of **your covered autos.**

The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

C. If BI or PD is sustained in an accident by **you** or any **family member** while **occupying** a vehicle not owned by **you** or any **family member:**

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of **your covered autos.**
2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of BI sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of **your covered autos**; and
3. **Our** maximum limit of liability for all PD resulting from that accident is the highest "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of **your covered autos.**

The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

D. If BI or PD is sustained by a **covered person** other than **you** or any **family member** in an accident in which neither **you** nor any **family member** sustained BI or PD:

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, will be the "each person" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of that accident.
2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of BI sustained in that accident is the "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of the accident; and
3. **Our** maximum limit of liability for all PD resulting from that accident is the "each accident" limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of the accident.

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The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

E. Any amounts otherwise payable for damages under UM Coverage shall be reduced by all sums paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

UNDERINSURED MOTORISTS COVERAGE

A. If **BI** is sustained in an accident by **you** or any **family member** while **occupying your covered auto**, or if **your covered auto** sustains **PD** in an accident:

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the sum of the limits of liability shown in the Declarations for "each person" for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of **BI** sustained in that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Bodily Injury Liability Underinsured Motorists Coverage; and
3. **Our** maximum limit of liability for all **PD** resulting from that accident is the sum of the limits of liability shown in the Declarations for "each accident" for Property Damage Liability Underinsured Motorists Coverage.
4. Subject to the maximum limit of liability set forth in paragraphs 1., 2. or 3. above:

a. The most we will pay for **BI** sustained in that accident by a **covered person** other than **you** or any **family member** is that **covered person's** pro-rata share of the "each person" or "each accident" limit shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of the accident; and

b. **You** or any **family member** who sustains **BI** in that accident will also be entitled to a pro-rata share of the "each person" or "each accident" limit described in paragraph a. above.

A person's pro-rata share shall be the proportion that that person's **BI** damages bears to the total of all **BI** damages sustained by all **covered persons.**

The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

B. If **BI** is sustained in an accident by **you** or any **family member** while not **occupying** any auto:

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of **your covered autos.**
2. Subject to this limit for "each person", **our** maximum limits of liability for all damages arising out of **BI** sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of **your covered autos.**

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The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

C. If **BI** is sustained in an accident by **you** or any **family member** while **occupying** a vehicle not owned by **you** or any **family member:**

1. **Our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the highest "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of **your covered autos.**
2. Subject to this limit for "each person", **our** maximum limit of liability for all damages arising out of **BI** sustained in that accident is the highest "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of **your covered autos.**

The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

D. If **BI** is sustained by a **covered person** other than **you** or any **family member** in an accident in which neither **you** nor any **family member** sustained **BI:**

1. **Our** maximum limit of liability for all damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, will be the "each person" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of that accident.
2. Subject to this limit for each person, **our** maximum limit of liability for all damages arising out of **BI** sustained in that accident is the "each accident" limit of liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that **covered person** was **occupying** at the time of the accident.

The maximum limit of liability is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

E. Any amounts otherwise payable for damages under UIM Coverage shall be reduced by all sums paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

EXCLUSIONS

A. We do not provide UM or UIM Coverage for **PD** or **BI** sustained by any **covered person:**

1. If that person or the legal representative settles the **BI** or **PD** claim without **our** consent. This exclusion (A.1.) does not apply to UIM.

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2. When **your covered auto** is being used to carry persons for a fee. This exclusion (A.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without expressed or implied permission.
4. While **your covered auto** is rented or leased to others.
5. While **occupying** any vehicle when it is being operated in, or in practice for, any speed contest.

B. **We** do not provide UM Coverage for the first $200 of the amount of **PD** to the property of each **covered person** as the result of any one accident.

C. UM Coverage or UIM Coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
   a. Workers' compensation law; or
   b. Disability benefits law.
2. Any insurer of property.

OTHER INSURANCE

A. If a **covered person** sustains **BI** while **occupying** a vehicle not owned by that person or while not **occupying** any vehicle, the following priorities of recovery apply:

FIRST PRIORITY — The policy affording UM or UIM Coverage to the vehicle the **covered person** was **occupying** at the time of the accident.

SECOND PRIORITY — Any policy affording UM or UIM Coverage to the **covered person** as a named insured or **family member.**

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
2. If there is applicable insurance available under the first priority:
   a. The limit of liability applicable to the vehicle the **covered person** was **occupying** under the policy in the first priority, shall first be exhausted; and
   b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. **We** will pay only **our** share of the loss, not to exceed **our** share of the maximum recovery. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits in the same level of priority.

B. With respect to **PD**, this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

CONFORMITY TO STATUTE

This Part is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this Part conflicts with that law, it is changed to comply with the law.

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

A. Paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible.

B. Paid or payable under any workers' compensation law or similar disability benefits law. (This does not apply to UM Coverage.)

C. Paid under Part A in this policy.

D. Paid because of PD under Part D of this policy or any similar coverage under any other policy.

ARBITRATION

A. If we and a **covered person** disagree as to:

1. Whether the **covered person** is legally entitled to recover damages from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle**; or
2. The amount of damages that the **covered person** is legally entitled to collect from that owner;

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues, including but not limited to, coverage questions. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by **us** or a **covered person.**

B. If both parties agree to arbitration, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding up to the coverage limit of liability.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

A. **Actual cash value** means the amount that it would cost, at the time of **loss**, to buy a vehicle of the same make, model, body type, model year, and equipment, with substantially similar mileage and physical condition.

B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision:** fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision you** may elect to have it considered a **loss** caused by **collision.**

C. **Loss** means direct and accidental damage to the operational safety, function, or appearance of **your covered auto,** including its equipment. Loss does not include any diminution in value that remains after the damaged or stolen property or parts thereof have been **repaired or replaced.**

D. **Nonowned vehicle** means any private passenger auto, **trailer,** pickup, **van,** or **miscellaneous vehicle** not owned by, or furnished or available for the regular use of, **you** or any **family member.** This applies only when such vehicle is in the custody of or being operated by **you** or a **family member.** A **nonowned vehicle** does not include a **temporary substitute vehicle** or any of the following vehicles used in any business or occupation other than farming or ranching - pickup, **van** or **miscellaneous vehicle.**

E. **Repair or replace** means restoring the damaged property or parts thereof to their pre-accident operational safety, function, and appearance. However, **we** may at **our** option **repair or replace** with parts of like kind and quality, including used or non-OEM parts (non-OEM parts are those produced by someone other than the original equipment manufacturer). **Repair or replace** does not require:

1. A return to the pre-accident market value of the property or parts thereof; or
2. Restoration, alteration, or replacement of undamaged property or parts thereof, unless such is needed for the operational safety of the vehicle.

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(PART D Cont'd.)

F. **Your covered auto,** as used in this Part, includes:

1. A **nonowned vehicle.** If there is a **loss** to a **nonowned vehicle,** we will provide the broadest coverages shown in the Declarations.
2. Equipment and accessories of **your covered auto.**
3. Any device or instrument for the transmitting, recording, receiving or reproduction of data, sound or pictures that is operated by power from the electrical system of **your covered auto,** including:
   a. Accessories or antennas; or
   b. Tapes, wires, records, discs or other media for use with any such device or instrument;

   while in or upon **your covered auto.**

INSURING AGREEMENT

A. Comprehensive Coverage (excluding **collision**). **We** will pay for **loss** caused by other than **collision** to **your covered auto,** minus any applicable deductible shown in the Declarations. The deductible will be waived for **loss** to glass that can be repaired rather than replaced. In cases where the repair proves unsuccessful and the glass must be replaced, the full amount of the deductible, if any, must be paid.

   In addition, **we** will pay up to $15 a day, to a maximum of $450, for transportation expenses incurred by **you.** This applies only in the event of a total theft of **your covered auto. We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not repairable, three days after we have made a settlement offer.

   If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to $30 per day to a maximum of $900.

B. Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto** minus any applicable deductible shown in the Declarations.

C. Full Safety Glass. Any deductible under Comprehensive Coverage or Collision Coverage does not apply to the cost of repairing or replacing damaged automobile safety glass.

D. Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage (for **loss** other than total theft). **We** will reimburse **you** for expenses **you** incur to rent a substitute for **your covered auto.** These coverages apply only if **your covered auto** is withdrawn from use for more than 24 hours due to a **loss,** other than a total theft, to that auto. **Our** payment will be limited to that period of time reasonably required to **repair or replace your covered auto.** If we determine **your covered auto** is not repairable the rental period will end three days after we have made a settlement offer.

   Under Rental Reimbursement Coverage, **we** will pay up to $15 a day, to a maximum of $450. Under Increased Rental Reimbursement Coverage, **we** will pay up to $30 a day, to a maximum of $900.

E. Towing and Labor Costs Coverage. **We** will pay the reasonable costs **you** incur for one of the following each time **your covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas, oil, a battery or a change of tire. However, **we** do not pay for the cost of these items.

LIMIT OF LIABILITY

A. For total losses, the limit of liability for Comprehensive and Collision Coverage, is the **actual cash value** of **your covered auto.**

B. For partial losses, the limit of liability for Comprehensive and Collision Coverages is the amount necessary to **repair or replace** the damaged or stolen property or parts thereof without deduction for depreciation.

(PART D Cont'd.)

PAYMENT OF LOSS

We may pay for **loss** in money, or **repair or replace** the damaged or stolen property. We may, at **our** expense, return any stolen property to **you** or to the address shown in the Declarations. If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown in the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto**. We may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to **loss** caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss** to **your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss**; and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is used to carry persons for a fee. This does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of **your covered auto**. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

   This exclusion does not apply if the damage results from the total theft of **your covered auto**, and it does not apply to Towing and Labor Costs Coverage.
4. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. **Loss** to a camper body or **trailer you** own which is not shown in the Declarations. This does not apply to one **you** acquire during the policy period and ask **us** to insure within 30 days after **you** become the owner.
6. **Loss** to any **nonowned vehicle** or **temporary substitute vehicle** when used by any person without reasonable belief that that person is entitled to do so.
7. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. **Loss** to any **nonowned vehicle** arising out of its use by **you** or a **family member** while employed or otherwise engaged in **auto business** operations.

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(PART D Cont'd.)

9. Loss to **your covered auto** while it is rented or leased to others.
10. Loss to any vehicle while it is being operated in, or in practice for, any speed contest.
11. Loss resulting from:
    a. The acquisition of a stolen vehicle;
    b. Any legal or governmental action to return a vehicle to its legal owner; or
    c. Any confiscation or seizure of a vehicle by governmental authorities.

    This exclusion does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.
12. Loss resulting from use in any illicit or prohibited trade or transportation.
13. Any **loss** arising out of any act committed:
    a. By or at the direction of **you** or any **family member**; and
    b. With the intent to cause a **loss.**

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also covers the **loss**, we will pay only **our** share of the **loss. Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a **nonowned vehicle** or **temporary substitute vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle** or **temporary substitute vehicle.**
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the **loss.**

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If **we** and **you** do not agree on the amount of **loss,** either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of **loss.** If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any of **our** rights under this policy by agreeing to an appraisal.

PART E - GENERAL PROVISIONS

AIR BAG

If an air bag in **your covered auto** deploys for any reason, **we** will pay without deductible to replace it.

BANKRUPTCY

Bankruptcy or insolvency of the **covered person,** as defined in this policy, shall not relieve **us** of any obligations under this policy.

CHANGES

A. The premium is based on information we have received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, or is incorrect or incomplete, **we** may adjust **your** premiums accordingly during the policy period.

B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. **You** agree to give **us** notice of such exposure changes as soon as is reasonably possible:
    1. Change in location where any vehicle is garaged.

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(PART E Cont'd.)

2. Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
3. Replacement, deletion, or addition of any vehicle. **You** must request coverage for a newly acquired vehicle within 30 days from the date the vehicle is acquired if **you** wish to continue any coverage. See DEFINITIONS - **your covered auto.**
4. Change, addition, or deletion relating to the date of birth, marital status, or driving record of any operator.
5. Addition or deletion of an operator.
6. Change, addition, or deletion of any coverage or limits.

C. **We** will make any calculations or adjustments of **your** premium using the applicable rules, rates, and forms as of the effective date of the change.

D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us.** Its terms may not be changed or waived except by endorsement issued by **us.**

DUTIES AFTER AN ACCIDENT OR LOSS

A. **We** must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:
1. Cooperate with **us** in the investigation, settlement, or defense of any claim or suit.
2. Promptly send **us** copies of any notices or legal papers received in connection with a suit, accident or loss.
3. Submit, as often as **we** reasonably require:
   a. To physical exams by physicians **we** select. **We** will pay for these exams.
   b. To examination under oath. The examination must be signed.
4. Authorize **us** to obtain medical reports and other pertinent records.
5. Submit a proof of loss when required by **us.**
6. Promptly notify the police if a hit-and-run driver is involved.

C. A person seeking coverage under Part B - Personal Injury Protection must also:
1. Submit a written proof of claim when required by **us.**
2. Promptly send **us** copies of the legal papers if a suit is brought.

D. A person seeking coverage under Part C - Uninsured Motorist Coverage must also:
1. Promptly notify the police if a hit-and-run driver is involved.
2. Promptly send **us** copies of the legal papers if a suit is brought.

E. A person seeking coverage under Part C - Underinsured Motorist Coverage must also promptly send **us** copies of the legal papers if a suit is brought.

F. A person seeking coverage under Part D - Physical Damage must also:
1. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. **We** will pay reasonable expenses incurred to do this.
2. Promptly notify the police if **your covered auto** is stolen.
3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

(PART E Cont'd.)

LEGAL ACTION AGAINST US

A. No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against **us** until **we** agree in writing that the **covered person,** as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.

B. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person,** as defined in this policy.

MISREPRESENTATION

We do not provide coverage for any **covered person,** as defined in this policy, who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

1. At the time application was made; or
2. At any time during the policy period; or
3. In connection with the presentation or settlement of a claim.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, **we** will pay the claim only once under this policy.

OUR RIGHT TO RECOVER PAYMENT

A. If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** will be subrogated to that right. That person shall do whatever is necessary to enable **us** to exercise **our** rights, and shall do nothing after loss to prejudice them. However, **our** rights in this paragraph do not apply under Part D, against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

B. If **we** make a payment under this policy and the person to or for whom payment was made recovers damages from another, that person shall hold in trust for **us** the proceeds of the recovery and reimburse **us** to the extent of **our** payment.

C. The following provisions apply to payments made under Part C - Uninsured Motorists Coverage.

1. If **we** make payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:
   a. Whatever is necessary to enable **us** to exercise **our** rights; and
   b. Nothing after loss to prejudice them.
2. If a **covered person** has prosecuted to judgment any suit against any person responsible, **we** will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
3. **We** will pay **our** proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, **we** reserve the right to retain an attorney of **our** choice to pursue a claim instead of reasonable attorneys' fees.
4. If a **covered person** making a claim for PD under this insurance is also entitled to insurance or other compensation for the PD, **we** will not be obligated to pay a claim until the **covered person** has assigned **us** the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

D. Paragraphs A. and B. do not apply to Part B - Personal Injury Protection Coverage, Part B - Medical Payments Coverage, or Part C - Underinsured Motorists Coverage.

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(PART E Cont'd.)

E. If the **covered person,** as defined in this policy, recovers from the party at fault and **we** share in the recovery, **we** will pay **our** share of the legal expenses. **Our** share is that percent of the legal expenses that the amount **we** recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by **us** from any other insurer under any inter-insurer arbitration agreement.

F. If **we** make payment for a claim under Part A, and the **covered person,** as defined in Part A:

1. Failed or refused to comply with the duties specified in this provision; and
2. Prejudiced **our** defense of the liability claim by such failure or refusal;

then, the **covered person** shall reimburse **us** to the extent of our payment and cost of defense.

OWNERSHIP

For purposes of this policy, a private passenger type auto, pickup or van is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur during the policy period as shown in the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of **your covered auto** between any ports of these locations.

B. The policy territory also includes Mexico, subject to the following conditions:

1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accident that occurs within 75 miles of the USA border.
2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican insurance company at the time of loss. Also, for this Part to be effective, the original liability suit for BI or PD must be brought in the USA.

This coverage does not extend:

a. To any **covered person,** as defined in this policy, who does not live in the USA.

b. To any **covered person,** as defined in this policy, **occupying** an auto which is not principally garaged and used in the USA.

c. To any auto which is not principally garaged and used in the USA.

The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.

Losses payable under Part D of the policy will be paid in the USA. If the auto must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.

Any insurance **we** provide will be excess over any other similar valid and collectible insurance.

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request.
2. **We** may cancel by mailing a notice to the named insured shown in the Declarations at the address shown in this policy by giving at least 15 days notice.

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3. During the first 90 days this policy is in effect, the policy may be cancelled for any reason.
4. After this policy is in effect for 90 days, or if this is a renewal policy, we will cancel only:
   a. For nonpayment of premium; or
   b. If **your** driver's license or that of any driver who either resides in the same household or customarily operates **your covered auto** has been suspended or revoked. This must have occurred:
      (1) During the policy period; or
      (2) During the 90 days immediately preceding the last anniversary of the effective date.
5. **We** may cancel for any other reason permitted by law.

B. Nonrenewal. If **we** decide not to renew this policy, **we** will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 15 days before the end of the policy period.

C. Automatic Termination. If **we** offer to renew and **you** do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due will mean that **you** have not accepted **our** offer.

   If **you** obtain other insurance on **your covered auto,** any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance. This does not apply to liability coverage purchased for travel in Mexico.

D. Other Termination Provisions.
   1. **We** may deliver any notice instead of mailing it. Proof of mailing of any notice will be sufficient proof of notice.
   2. If this policy is cancelled, the named insured shown in the Declarations may be entitled to a premium refund. If so, **we** will send the named insured shown in the Declarations the refund. The premium refund, if any, will be computed according to **our** manuals. However, making or offering to make the refund is not a condition of cancellation.
   3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without **our** written consent. However, if a named insured shown in the Declarations dies, **we** will provide coverage until the end of the policy period for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto.**

TWO OR MORE AUTO POLICIES

A. If this policy and any other auto insurance policy **we** issued to **you** apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy.

B. This provision does not apply to Part C - Uninsured Motorists Coverage or Underinsured Motorists Coverage.

C. No one will be entitled to receive duplicate payments for the same elements of loss under Part C - Uninsured Motorists Coverage and Underinsured Motorists Coverage.

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ADDL INFO ON NEXT PAGE MAIL MCH-M-I

RENEWAL OF

USAA GENERAL INDEMNITY COMPANY
(A Stock Insurance Company)
9800 Fredericksburg - San Antonio, Texas 78288

CALIFORNIA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

State	Veh	POLICY NUMBER
CA 568	XXX	02226 08 01G 7103 0

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE AUG 10 2015 TO FEB 10 2016

Named Insured and Address

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

OPERATORS
01 TYRIN S YOUNG
04 KAMIKA N YOUNG

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM		WORK/SCHOOL Miles One Way	WORK/SCHOOL Days Per Week
03	06	KIA	SPECTRA 4D	4 DOOR	14000	KNAFE121965297950		P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure
VEH 03 SANTEE CA 92071-7738

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH 03 6-MONTH D=DED AMOUNT	VEH 03 6-MONTH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
PART A - LIABILITY								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		84.27						
PROPERTY DAMAGE EA ACC $ 25,000		91.05						
PART C - UNINSURED MOTORISTS								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		23.77						
WAIVER OF COLL DEDUCTIBLE		10.26						
PART D - PHYSICAL DAMAGE COVERAGE								
COMPREHENSIVE LOSS ACV LESS	D 500	66.86						
COLLISION LOSS ACV LESS	D 500	182.44						
RENTAL REIMBURSEMENT $ 30 A DAY/$ 900 MAXIMUM		35.30						
TOWING AND LABOR		8.24						
VEHICLE TOTAL PREMIUM		502.19						
TOTAL PREMIUM - SEE FOLLOWING PAGE(S)								

LOSS PAYEE
VEH 03 CITIFINANCIAL AUTO, CORAOPOLIS PA

ENDORSEMENTS: ADDED 08-10-15 - NONE
REMAIN IN EFFECT(REFER TO PREVIOUS POLICY)- A400CA(03) A100CA(05) AOASA(01) A099(01) 5100CA(01)
INFORMATION FORMS: NIPFCA(05) CADS(03) 13580(03)

VEH 03 AMF17000N

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JULY 3, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

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USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

CALIFORNIA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained in the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown in the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the company's Board of Directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

By purchasing this policy you are a member of USAA and are subject to its bylaws.

This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.

The USAA Board of Directors may annually allocate a portion of USAA's surplus to Subscriber's Savings accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

	DECLARATIONS PAGE
	Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page 3	**Agreement and Definitions**
Part A 4	**Liability Coverage**
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 6	**Medical Payments Coverage**
	Definitions Insuring Agreement Medical Payments Coverage Air Bag and Seat Belt Benefits Extended Benefits Coverage Limit of Liability Exclusions Other Insurance Special Provisions Conditions Arbitration
Part C 10	**Uninsured Motorists Bodily Injury Coverage and Uninsured Motorists Property Damage Coverage**
	Definitions Insuring Agreement Uninsured Motorists Bodily Injury Coverage Uninsured Motorists Property Damage Coverage Limit of Liability Exclusions Other Insurance Non-Duplication Arbitration

(Quick Reference continued on Page 2)

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Part D 14	Physical Damage Coverage
	Definitions Insuring Agreement Comprehensive Coverage Collision Coverage Rental Reimbursement Coverage Towing and Labor Costs Coverage Limit of Liability Payment of Loss Loss Payable Clause Waiver of Collision Deductible Exclusions No Benefit to Bailee Other Sources of Recovery Appraisal

Part E 17	General Provisions
	Air Bag Bankruptcy Changes Duties After an Accident or Loss Legal Action Against Us Non-duplication of Payment Our Right to Recover Payment Ownership Policy Period and Territory Termination Transfer of Your Interest in this Policy Two or More Auto Policies

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CALIFORNIA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown in the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

A. **You** and **your** refer to the "named insured" shown in the Declarations and spouse if a resident of the same household.

B. **We, us,** and **our** refer to the Company providing this insurance.

C. **Auto business** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, or storing vehicles.

D. **Bodily injury** (referred to as **BI**) means bodily harm, sickness, disease or death.

E. **Family member** means a person related to **you** by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child.

F. **Miscellaneous vehicle** means the following motorized vehicles: a motorcycle, moped or similar type vehicle; motor home; golfcart; snowmobile; all-terrain vehicle; or dune buggy.

G. **Occupying** means in, on, getting into or out of.

H. **Property damage** (referred to as **PD**), except as specifically defined in Part C, means physical injury to, destruction of, or loss of use of tangible property.

I. **Repair or replace** means restoring the damaged property or parts thereof to their pre-accident operational safety, function, and appearance. However, **we** may at **our** option **repair or replace** with parts of like kind and quality, including used or non-OEM parts (non-OEM parts are those produced by someone other than the original equipment manufacturer). **Repair or replace** does not require:

1. A return to the pre-accident market value of the property or parts thereof; or
2. Restoration, alteration, or replacement of undamaged property or parts thereof, unless such is needed for the operational safety of the vehicle.

J. **Temporary substitute vehicle** means a private passenger auto, pickup, **van, miscellaneous vehicle** or **trailer** not owned by **you** or a **family member** while it is used as a temporary replacement for **your covered auto** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.

K. **Trailer** means a vehicle designed to be pulled by a private passenger auto, pickup, **van,** or **miscellaneous vehicle.** It also means a farm wagon or implement while towed by such vehicles.

L. **Van** means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.

M. **Your covered auto** means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles acquired by **you** or a **family member** during the policy period, beginning on the date **you** or a **family member** becomes the owner, but only if no other insurance policy provides coverage for such vehicle:
   a. A private passenger auto;
   b. A pickup or **van;** or
   c. A **miscellaneous vehicle** not used in any business or occupation.

   For such newly acquired vehicles, **we** will automatically provide the broadest coverages as are provided for any vehicle shown in the Declarations. If **your** policy does not provide Comprehensive and Collision coverages, **we** will provide each with a $250 deductible. However, **we** will not provide any coverage for more than 30 days after the date **you** or a **family member** becomes the owner of the vehicle. If **you** wish to continue any coverage beyond the 30-day period, **you** must request it prior to the end of the 30-day period.

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3. Any **trailer you** own.

4. Any **temporary substitute vehicle.** Only those coverages provided for the vehicle withdrawn from normal use will be extended to its **temporary substitute vehicle.**

PART A - LIABILITY COVERAGE

DEFINITIONS

Covered person as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance, or use of any auto or **trailer.**
2. Any person using **your covered auto.**
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto,** this provision only applies if the other person or organization does not own or hire the auto or **trailer.**

The following are not **covered persons** under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to **BI** or **PD** resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the **BI** or **PD.**

INSURING AGREEMENT

We will pay compensatory damages for **BI** or **PD** for which any **covered person** becomes legally liable because of an auto accident. **We** will settle or defend, as **we** consider appropriate, any claim or suit asking for these damages. **Our** duty to settle or defend ends when **our** limit of liability for these coverages has been paid or tendered. **We** have no duty to defend any suit or settle any claim for **BI** or **PD** not covered under this policy.

LIMIT OF LIABILITY

For **BI** sustained by any one person in any one auto accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for **BI** Liability. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for **BI** Liability is **our** maximum limit of liability for all damages for **BI** resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for **PD** Liability is **our** maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most **we** will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the state's Financial Responsibility law, **our** limit of liability will be the minimum required by the state's Financial Responsibility law.

SUPPLEMENTARY PAYMENTS

In addition to **our** limit of liability, **we** will pay on behalf of a **covered person:**

1. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend. But **we** will not pay the premium for bonds with a face value over **our** limit of liability shown in the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of liability, **we** will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing, in any suit we defend, on that part of a judgment that does not exceed **our** limit of liability. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment that does not exceed **our** limit of liability.

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(PART A Cont'd.)

4. Up to $100 a day for loss of wages because of attendance at hearings or trials at **our** request.
5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person.** The most **we** will pay is an amount equal to one month of the basic salary of the **covered person** at the time of loss. Only Exclusions A.1. and A.8. apply.
6. Other reasonable expenses incurred at **our** request.
7. All defense costs **we** incur.

EXCLUSIONS

A. **We** do not provide Liability Coverage for any **covered person:**

1. Who intentionally acts or directs to cause **BI** or **PD,** or who acts or directs to cause with reasonable expectation of causing **BI** or **PD.**
2. For **PD** to property owned or being transported by a **covered person.**
3. For **PD** to property rented to, used by, or in the care of any **covered person.** This does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the **auto business.** This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you,** any **family member,** or any partner, agent, or employee of **you** or any **family member.**
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business,** farming, or ranching. This exclusion (A.7.) does not apply to the maintenance or use of a private passenger auto; a pickup or **van** that **you** own; or a **trailer** used with these vehicles.
8. Using a vehicle without expressed or implied permission.
9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limits of liability.
10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others.
11. For punitive or exemplary damages.

B. **We** do not provide Liability Coverage for the ownership, maintenance, or use of:

1. Any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto,** that is owned by **you,** or furnished or available for **your** regular use.
3. Any vehicle, other than **your covered auto,** that is owned by, or furnished or available for the regular use of, any **family member.**

   This exclusion (B.3.) does not apply to **your** maintenance or use of such vehicle.
4. Any vehicle while being operated in, or in practice for, any speed contest.

C. There is no coverage for a **covered person** for **BI** to **you** or any **family member**, nor do **we** provide coverage for any **covered person** for **BI** to **you** or any **family member** whenever the ultimate benefits of that indemnification accrue directly or indirectly to any **covered person.**

D. There is no coverage for **BI** for which a **covered person** becomes legally responsible to pay to a member of that **covered person's** family residing in that **covered person's** household.

E. There is no coverage for liability assumed by any **covered person** under any contract or agreement.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, **your** policy will provide at least the minimum amounts and types of coverages required by law.

However, no one will be entitled to duplicate payments for the same elements of loss.

OTHER INSURANCE

A. If there is other applicable liability insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits.

However, any insurance **we** provide to a **covered person**:

1. With respect to a vehicle **you** do not own, will be excess over:
   a. Any other applicable liability insurance; or
   b. Any self-insurance in compliance with a state's financial responsibility law.
2. With respect to **your covered auto**, will be excess over the insurance afforded by an **auto business** if **your covered auto** is being operated by a person engaged in the **auto business** or by the business's employee or agent.

B. Defense costs. If both primary and excess policies of liability insurance apply to the loss, **our** share of defense costs is the proportion that the amount of damages paid by **us** bears to the total amount of damages paid under all applicable policies of liability insurance.

PART B - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

A. **Air Bag** means a supplemental passive restraint system commonly referred to as an **air bag** which is originally installed by the vehicle manufacturer and which, at the time of the accident, had not been made inoperable through modification, deactivation, disconnection, switching off or prior deployment.

B. **Beneficiary** means (in order of priority of payment):
   1. The surviving spouse if a resident in the same household as the deceased at the time of the accident; or
   2. If the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident; or
   3. The estate of the deceased.

C. **Covered person** as used in this Part means:
   1. **You** or any **family member** while **occupying** any auto.
   2. Any other person while **occupying your covered auto.**
   3. **You** or any **family member** while not **occupying** a motor vehicle if injured by:
      a. A motor vehicle designed for use mainly on public roads;
      b. A **miscellaneous vehicle;**
      c. A **trailer.**

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(PART B Cont'd.)

D. **Essential services** means those household services that a **covered person** who is at least 18 years old would have performed without pay.

E. **Income actually lost** means the difference between:

The total of gross salary, fees, commissions, and profits from a business that a **covered person** was earning at the time of the accident; and

The total of gross salary, fees, commissions, profits from a business and payments from an income continuation or similar plan that the **covered person** received during the period of **total disability.**

F. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat BI caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person,** his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person;** and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person,** when these could safely have been provided to the **covered person** as an outpatient.

G. **Reasonable fee** is the amount, as determined by **us** or someone on **our** behalf, which **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services. We** will pay the lesser of:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

H. **Seat belt** means manual or automatic safety belts or seat and shoulder restraints or a child restraint device. Both the lap and shoulder restraints must be worn at the time of the accident for coverage to apply. If the **covered person** is a child, the child restraint device must meet federal motor vehicle safety standards and must be one recommended by its manufacturer as appropriate for use by children of like age and weight. The child must be properly seated and restrained within the device and the device must be attached to the interior of the vehicle in accordance with the manufacturer's instructions.

I. **Total disability** means disability which continuously prevents the **covered person** from performing the substantial duties of that person's usual occupation.

INSURING AGREEMENT

A. Medical Payments Coverage. **We** will pay only the **reasonable fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services because of **BI** caused by an auto accident, sustained by a **covered person** and incurred for services rendered within three years of the date of the accident.

A provider of medical services may charge more than the limits established by this policy's defined terms, but such additional charges are not covered. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine whether fees and expenses were reasonable and whether treatment was medically necessary and appropriate.

B. Air Bag and Seat Belt Benefits. **We** will provide the benefits described only if at the time of the accident, Medical Payments Coverage was provided by the policy and the **covered person** for whom benefits are sought was:

1. Wearing a **seat belt**; or
2. Wearing a **seat belt** and **occupying** a seat in an automobile in which he was protected by an **air bag**; and
3. Entitled to collect benefits for medical expenses incurred as a result of the accident under the terms of the policy's Medical Payments Coverage.

We will pay a Death Benefit of $15,000 to the **beneficiary** of a **covered person** who dies as the direct result of **BI** sustained in an automobile accident while wearing a **seat belt.** **We** will pay an Additional Death Benefit of $10,000 to the **beneficiary** of a **covered person** who dies as a direct result of **BI** sustained in an automobile accident while wearing a **seat belt** and **occupying** a seat protected by an **air bag.** In either case, death must occur within three years of the date of the accident.

C. Extended Benefits Coverage. **We** will pay the following benefits for **BI** caused by an auto accident and sustained by a **covered person:**

1. Wage Earner Disability Benefit of 85% of **income actually lost** by an employed **covered person** during a period of **total disability.**
2. Essential Services Disability Benefit for reasonable expenses incurred for **essential services** during the time the **covered person** is actually unable to perform the services. This benefit applies only if the services are performed by a non-**family member.**
3. Death Benefit of $5,000 to the **beneficiary** of a **covered person** who dies within three years from the date of the auto accident as a direct result of **BI** caused by that accident.

LIMIT OF LIABILITY

The following provisions represent the most **we** will pay regardless of the number of **covered persons** or **beneficiaries,** claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident.

A. Medical Payments

1. The limit of liability shown in the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident.
2. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and any other part of this policy.

B. The maximum Death Benefit **we** will pay under Air Bag and Seat Belt Benefits is $15,000 for death of any one **covered person.** The maximum Additional Death Benefit **we** will pay for death of any one **covered person** is $10,000. These amounts are the most **we** will pay regardless of the number of vehicles to which this coverage applies, or the number of coverages or premiums shown in the Declarations.

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No one will be entitled to receive duplicate payments for the same elements of loss.

C. The limit of liability for Wage Earner Disability Benefit and the limit of liability for Essential Services Disability Benefit, as stated in the Declarations, is the maximum limit of liability for each coverage for each **covered person** injured in any one accident, subject to the following conditions:

1. Payment of Wage Earner Disability Benefit to **you** or a **family member** will not exceed the amount shown on the Declarations Page per 30-day period.
2. Payment of Wage Earner Disability Benefit to a **covered person** other than **you** or a **family member** will not exceed $1,000 per 30-day period.
3. Wage Earner Disability Benefit and Essential Services Disability Benefit begin the eighth day after the accident. We will pay these benefits for no more than two years to any one **covered person.** These benefits will not continue after the death of the **covered person.**
4. Any amounts otherwise payable as benefits under Wage Earner Disability Benefit shall be reduced by:
   a. The amount of any similar benefits which are paid or payable under any workers' compensation law or policy, or under any disability or health and accident policy; and
   b. The amount of any disability benefits provided by any governmental agency.

EXCLUSIONS

We do not provide benefits under this Part for any **covered person** for **BI:**

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
   a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
   b. A moving van for personal use;
   c. A **miscellaneous vehicle** having at least four wheels; or
   d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available. This does not apply to Extended Benefits.
5. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by **you** or furnished or available for **your** regular use.
6. Sustained while **occupying,** or when struck by, any vehicle, other than **your covered auto,** that is owned by or furnished or available for the regular use of any **family member.** This does not apply to **you.**
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person.** This does not apply to BI sustained while **occupying** a private passenger auto; a pickup or **van you** own; or a **trailer** used with these vehicles.
9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others.
11. Sustained while a participant in, or in practice for, any speed contest.

OTHER INSURANCE

If there is other applicable auto medical payments insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a vehicle **you** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

The Death Benefit and Additional Death Benefit provided by Air Bag and Seat Belt Benefits will be paid in addition to any death benefit payable under the policy's Medical Payments Coverage.

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If there are other applicable air bag and seat belt benefits, the maximum limit of **our** liability for the death of any one **covered person** under all such policies shall not exceed $15,000 for the Death Benefit and $10,000 for the Additional Death Benefit.

SPECIAL PROVISIONS

A. To establish Wage Earner Disability Benefits, any **covered person** making a claim for **income actually lost** must submit all income-related documents we may reasonably require.

   Income will be computed using the monthly rate being earned on the date of the accident and will be paid monthly as loss accrues. If not a salary or fixed amount, the monthly rate will be the average monthly income actually earned during the 12 months preceding the accident, or during the period the **covered person** actually was employed if less than 12 months.

B. If **your covered auto** and every other motor vehicle **you** own are within the policy territory referred to in Part E, General Provisions, then coverage under Part B will apply to **you** and any **family member** anywhere in the world.

CONDITIONS

The Air Bag and Seat Belt Benefits coverage provided is subject to all provisions and conditions of the policy's Medical Payments Coverage and to the policy's general conditions, except as specifically modified herein.

ARBITRATION

If **we** and a **covered person** do not agree:

1. On the **reasonable fee;**
2. That expenses are reasonable;
3. Whether services or supplies are **medically necessary and appropriate medical services;** or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B;

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by **us,** does not exceed the limit of liability for this coverage.

PART C - UNINSURED MOTORISTS BODILY INJURY COVERAGE and UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE

DEFINITIONS

A. **Actual Cash Value,** as used in this Part, means the amount it would cost to replace the damaged property with new property of like kind and quality, less allowance for depreciation and physical deterioration.

B. **Covered person** as used in this Part means:

   1. **You** or any **family member.**
   2. Any other person **occupying your covered auto.**
   3. Any person for damages that person is entitled to recover because of **BI** to which this coverage applies sustained by a person described in 1. or 2. above.

   However, the definition of **covered person** does not include the Government of the United States of America.

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(PART C Cont'd.)

C. **Property Damage,** (referred to as PD), as used in this Part, means loss or damage to **your covered auto** resulting from collision due to an automobile accident. However, **PD** does not include loss of use of **your covered auto** or damages to personal property contained in **your covered auto.**

D. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:

1. To which no liability bond or policy applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for liability specified by the California Financial Responsibility law.

   For purposes of UMPD Coverage, an **uninsured motor vehicle** does not include a motor vehicle which has at least the minimum property damage limits required by law.
3. That is a hit-and-run motor vehicle. This means a motor vehicle whose owner or operator cannot be identified and that hits:
   a. **You** or any **family member;**
   b. A vehicle **you** or any **family member** are **occupying;** or
   c. **Your covered auto.**

   For **BI** losses, **you** or someone on **your** behalf, must report the accident within 24 hours to the appropriate law enforcement officials; and **you** must file a statement under oath that **you** have a cause of action arising out of the accident for damages against a person whose identity is unascertainable; and **you** must set forth facts in support thereof within 30 days.
4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company denies coverage or refuses to admit coverage except conditionally or with reservation, or is or becomes insolvent.
5. Which is used without the permission of the owner if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator.

E. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage.

However, an **underinsured motor vehicle** does not include an **uninsured motor vehicle.**

F. **Uninsured motor vehicle** and **underinsured motor vehicle** do not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of **you** or any **family member.**
2. Owned or operated by a self-insurer under any applicable motor vehicle law.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads, except for a snowmobile.
5. Designed or modified for use off public roads while not on public roads.
6. While located for use as a residence or premises.

INSURING AGREEMENT

A. **UNINSURED MOTORISTS BODILY INJURY COVERAGE** (referred to as UMBI).

We will pay compensatory damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** because of **BI** sustained by a **covered person** and caused by an auto accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle** or the **underinsured motor vehicle.** Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us.** This does not apply to a settlement made with the owner, operator, or insurer of an **underinsured motor vehicle.**

With respect to damages for **BI** caused by an **underinsured motor vehicle,** or a vehicle as defined in Definition D.2., **we** will pay UMBI only after the limits of liability under any applicable motor vehicle bodily injury liability

bonds or policies have been exhausted by payment of judgments or settlements, and proof of such is submitted to **us**.

B. **UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE**

1. **We** will pay compensatory damages for one of the following which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **PD** to **your covered auto** that is:

   a. not insured for Collision Coverage if the Declarations indicates Uninsured Motorists Property Damage Coverage, (referred to as UMPD), applies to that auto; or

   b. insured for Collision Coverage if the Declarations indicates Uninsured Motorists Property Damage Waiver of Collision Deductible Coverage (referred to as UMPD WOCD), applies to that auto. UMPD WOCD coverage waives the Collision deductible shown in Part D of the Declarations for **your covered auto**.

2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.

3. The accident must involve actual, direct physical contact between **your covered auto** and an **uninsured motor vehicle**. The owner or operator of the **uninsured motor vehicle** must be identified or, the **uninsured motor vehicle** must be identified by its license number. **You**, or someone on **your** behalf, must report the accident to **us** within 10 business days.

4. Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us**.

LIMIT OF LIABILITY

A. 1. For UMBI Coverage, for **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations under any one vehicle for UMBI Coverage, for "each person". Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for UMBI Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident.

A. 2. The limits of liability (each person and each accident) under UMBI Coverage shall be reduced by all sums:

   1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

   2. Paid and the present value of all sums payable because of **BI** under worker's compensation law exclusive of nonoccupational disability benefits.

B. For UMPD Coverage, **our** maximum limit of liability is the lesser of:

   1. $3,500;

   2. The **actual cash value** of **your covered auto**; or

   3. The amount necessary to **repair** or **replace your covered auto**.

   No payment for UMPD Coverage will be made for losses paid to the **covered person** under Part D of the policy.

C. For UMPD WOCD Coverage, **our** maximum limit of liability is the lesser of:

   1. The amount of the loss; or

   2. The amount of the deductible shown for Collision Coverage in the Declarations for **your covered auto**.

   multiplied by the percentage of **your** loss that **you** are legally entitled to recover from the owner or operator of the **uninsured motor vehicle**.

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D. The limits for UMBI, UMPD or UMPD WOCD Coverages are the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations;
4. Premiums paid; or
5. Vehicles involved in the accident.

In no event shall the limit of liability for two or more vehicles or **trailers** of any type used with any such vehicle, or two or more policies be added together, combined, or stacked to determine the limit of liability.

EXCLUSIONS

A. We do not provide UMBI Coverage, UMPD Coverage or, UMPD WOCD Coverage for **BI** or **PD** sustained by any **covered person** if that person or the legal representative settles the claim without **our** consent. This exclusion (A.) does not apply to a settlement made with the insurer of any **underinsured motor vehicle.**

B. We do not provide UMBI Coverage for **BI** sustained by any **covered person** while **occupying,** or when struck by, any motor vehicle owned by **you** or any **family member** which is not insured for this Coverage under this policy or when the owner of that vehicle has UMBI Coverage similar to that provided in this Part. This includes a **trailer** of any type used with that vehicle.

C. We do not provide UMBI, UMPD, or UMPD WOCD Coverage while **you** or any **family member** is the operator of any self-propelled vehicle with less than four wheels that is not insured for this coverage under this policy. With respect to UMBI as used in this exclusion, "operating" means only the actual physical operation by the driver of the vehicle. This does not include a passenger of that vehicle.

D. We do not provide UMBI, UMPD, or UMPD WOCD Coverage for **BI** or **PD** sustained by any **covered person:**

1. While **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (D.1) does not apply to a share-the-expense car pool.
2. Using a vehicle without expressed or implied permission.
3. While **your covered auto** is rented or leased to others.
4. While **occupying** any vehicle when it is being operated in, or in practice for, any speed contest.

E. UMBI Coverage shall not apply directly or indirectly to the benefit of any insurer or self-insurer under any workers' compensation law or similar disability benefits law excluding non-occupational disability benefits as allowable by law.

F. We do not provide UMBI Coverage, UMPD Coverage, or UMPD WOCD Coverage for punitive or exemplary damages.

OTHER INSURANCE

If there is other applicable insurance for UMBI, UMPD, or UMPD WOCD Coverage available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

2. Any insurance we provide with respect to a vehicle **you** do not own will be excess over any collectible insurance.

3. If the coverage under this policy is provided:

   a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.

   b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability of coverage provided on an excess basis.

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

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1. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible.
2. Paid or payable under any workers' compensation law or similar disability benefits law.
3. Paid or payable under any other auto policy's No-Fault benefits or medical payments coverage.
4. Paid under another provision or coverage in this policy.

ARBITRATION

A. This section applies to UMBI Coverage and UMPD Coverage and UMPD WOCD Coverage. If **we** and a **covered person** disagree as to:

   1. Whether a **covered person** is legally entitled to recover **BI** or **PD** damages from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle**; or
   2. The amount of **BI** damages that the **covered person** is legally entitled to collect from that owner;

   then, that disagreement shall be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues, including but not limited to, coverage questions. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by **us** or a **covered person.** The amount of damage can not be arbitrated under UMPD Coverage or UMPD WOCD Coverage.

B. Arbitration must be initiated by a written demand for arbitration sent by certified mail, return receipt requested within one year from the date of the accident. Arbitration may be initiated by either party.

C. If both parties agree to arbitration, the matter or matters upon which either party do not agree shall be settled by a single neutral arbitrator. The decision made by the arbitrator may be entered in any court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

D. Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. Any decision of the arbitrator will be binding as to:

   1. Whether the **covered person** is legally entitled to recover damages; and
   2. The amount of damages, up to the coverage limit of liability.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

A. **Actual cash value,** as used in this Part, means the amount that it would cost, at the time of **loss,** to buy a vehicle of the same make, model, body type, model year, and equipment, with substantially similar mileage and physical condition.

B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision:** fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision you** may elect to have it considered a **loss** caused by **collision.**

C. **Loss** means direct and accidental damage to the operational safety, function, or appearance of **your covered auto,** including its equipment. **Loss** does not include any diminution in value that remains after the damaged or stolen property or parts thereof have been **repaired or replaced.**

D. **Nonowned vehicle** means any private passenger auto, **trailer,** pickup, **van,** or **miscellaneous vehicle** not owned by, or furnished or available for the regular use of, **you** or any **family member.** This applies only when such vehicle is in the custody of or being operated by **you** or a **family member.** A **nonowned vehicle** does not include a **temporary substitute vehicle** or any of the following vehicles used in any business or occupation other than farming or ranching - pickup, **van** or **miscellaneous vehicle.**

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E. **Your covered auto,** as used in this Part, includes:

1. A **nonowned vehicle.** If there is a **loss** to a **nonowned vehicle,** we will provide the broadest coverage shown in the Declarations.
2. Equipment and accessories of **your covered auto.**
3. Any device or instrument for the transmitting, recording, receiving or reproduction of data, sound or pictures that is operated by power from the electrical system of **your covered auto,** including:
   a. Accessories or antennas; or
   b. Tapes, wires, records discs or other media for use with any such device or instrument;

   while in or upon **your covered auto.**

INSURING AGREEMENT

A. Comprehensive Coverage (excluding **collision**). **We** will pay for **loss** caused by other than **collision** to **your covered auto,** minus any applicable deductible shown in the Declarations. The deductible will be waived for **loss** to glass that can be repaired rather than replaced. In cases where the repair proves unsuccessful and the glass must be replaced, the full amount of the deductible, if any, must be paid.

   In addition, we will pay up to $15 a day, to a maximum of $450, for transportation expenses incurred by **you.** This applies only in the event of a total theft of **your covered auto. We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not repairable, three days after **we** have made a settlement offer.

   If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to $30 per day to a maximum of $900.

B. Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto,** minus any applicable deductible shown in the Declarations.

C. Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage (for **loss** other than total theft). **We** will reimburse **you** for expenses **you** incur to rent a substitute for **your covered auto.** These coverages apply only if **your covered auto** is withdrawn from use for more than 24 hours due to a **loss,** other than a total theft, to that auto. **Our** payment will be limited to that period of time reasonably required to **repair or replace your covered auto.** If we determine **your covered auto** is not repairable, the rental period will end three days after **we** have made a settlement offer.

   Under Rental Reimbursement Coverage, we will pay up to $15 a day, to a maximum of $450. Under Increased Rental Reimbursement Coverage, we will pay up to $30 a day, to a maximum of $900.

D. Towing and Labor Costs Coverage. **We** will pay the reasonable costs **you** incur for one of the following each time **your covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas, oil, a battery or a change of tire. However, we do not pay for the cost of these items.

LIMIT OF LIABILITY

A. For total losses, the limit of liability for Comprehensive and Collision Coverage, is the **actual cash value** of **your covered auto.**

B. For partial losses, the limit of liability for Comprehensive and Collision Coverages is the amount necessary to **repair or replace** the damaged or stolen property or parts thereof without deduction for depreciation.

(PART D Cont'd.)

PAYMENT OF LOSS

We may pay for **loss** in money, or repair or replace the damaged or stolen property. We may, at **our** expense, return any stolen property to **you** or to the address shown in the Declarations. If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown in the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto**. We may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to **loss** caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss** to **your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss**; and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is used to carry persons for a fee. This does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of **your covered auto**. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment.

   We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

   This exclusion does not apply if the damage results from the total theft of **your covered auto**, and it does not apply to Towing and Labor Costs Coverage.
4. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. **Loss** to a camper body or **trailer you** own which is not shown in the Declarations. This does not apply to one **you** acquire during the policy period and ask **us** to insure within 30 days after **you** become the owner.
6. **Loss** to any **nonowned vehicle** or **temporary substitute vehicle** when used by any person without reasonable belief that that person is entitled to do so.
7. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. **Loss** to any **nonowned vehicle** arising out of its use by **you** or a **family member** while employed or otherwise engaged in **auto business** operations.
9. **Loss** to **your covered auto** while it is rented or leased to others.
10. **Loss** to any vehicle while it is being operated in, or in practice for, any speed contest.
11. **Loss** resulting from:
    a. The acquisition of a stolen vehicle;
    b. Any legal or governmental action to return a vehicle to its legal owner; or
    c. Any confiscation or seizure of a vehicle by governmental authorities.

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This exclusion does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

12. **Loss** resulting from use in any illicit or prohibited trade or transportation.
13. Any **loss** arising out of any act committed:
    a. By or at the direction of **you** or any **family member**; and
    b. With the intent to cause a **loss.**

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the **loss**, we will pay only **our** share of the **loss. Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a **nonowned vehicle** or **temporary substitute vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle** or **temporary substitute vehicle.**
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the **loss.**

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If we and **you** do not agree on the amount of **loss**, either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of **loss.** If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither we nor **you** waive any of our rights under this policy by agreeing to an appraisal.

PART E - GENERAL PROVISIONS

AIR BAG

If an **air bag** in your **covered auto** deploys for any reason, we will pay without deductible to replace it.

BANKRUPTCY

Bankruptcy or insolvency of the **covered person**, as defined in this policy, shall not relieve us of any obligations under this policy.

CHANGES

A. The premium is based on information we have received from **you** and other sources. **You** agree to cooperate with us in determining if this information is correct and complete. **You** agree that if this information changes, or is incorrect or incomplete, we may adjust **your** premiums accordingly during the policy period.

B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. **You** agree to give us notice of such exposure changes as soon as is reasonably possible:

1. Change in location where any vehicle is garaged.
2. Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
3. Replacement, deletion, or addition of any vehicle. **You** must request coverage for a newly acquired vehicle within 30 days from the date the vehicle is acquired if **you** wish to continue any coverage. See DEFINITIONS - **your covered auto.**
4. Change, addition, or deletion relating to the date of birth, marital status, or driving record of any operator.
5. Addition or deletion of an operator.
6. Change, addition, or deletion of any coverage or limits.

C. We will make any calculations or adjustments of your premium using the applicable rules, rates, and forms as of the effective date of the change.

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D. If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement that change in your location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.

DUTIES AFTER AN ACCIDENT OR LOSS

A. We must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement, or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with a suit, accident or loss.
3. Submit, as often as we reasonably require:
   a. To physical exams by physicians we select. We will pay for these exams.
   b. To examination under oath. The examination must be signed.
4. Authorize us to obtain medical reports and other pertinent records.
5. Submit a proof of loss when required by us.
6. Promptly notify the police if a hit-and-run driver is involved.

C. In addition to the Duties outlined in A. and B. in this Part, a person seeking coverage under Part C - Uninsured Motorists Property Damage Coverage or Part D - Physical Damage Coverage must also:

1. Take reasonable steps after loss to protect your covered auto and its equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if your covered auto is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

LEGAL ACTION AGAINST US

A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until we agree in writing that the covered person, as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.

B. No legal action may be brought against us under UMBI Coverage until there has been full compliance with all the terms of this policy and unless within one year from the date of the accident:

1. Suit for BI has been filed against the uninsured motorist in a court of competent jurisdiction and notice of such suit has been given to us;
2. Agreement as to the amount due under this coverage has been concluded; or
3. The covered person or his legal representative has formally instituted arbitration proceedings.

C. No person or organization has any right under this policy to bring us into any action to determine the liability of a covered person, as defined in this policy.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, we will pay the claim only once under this policy.

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OUR RIGHT TO RECOVER PAYMENT

A. If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** will be subrogated to that right. That person shall do whatever is necessary to enable **us** to exercise **our** rights, and shall do nothing after loss to prejudice them. However, **our** rights in this paragraph do not apply to payments under:

1. Part B - Medical Payments Coverage, Extended Benefits, Death Benefit;
2. Part C - Uninsured Motorists Coverage related to an **underinsured motor vehicle**;
3. Part D - Physical Damage Coverage against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

B. If **we** make a payment under this policy and the person to or for whom payment was made recovers damages from another, that person shall hold in trust for **us** the proceeds of the recovery and reimburse **us** to the extent of **our** payment. However, this paragraph does not apply to Part B, Extended Benefits Death Benefit.

Our rights under paragraphs A. and B. above arise only after the **covered person** has been fully compensated for those damages.

C. If the **covered person,** as defined in this policy, recovers from the party at fault and **we** share in the recovery, **we** will pay **our** share of the legal expenses. **Our** share is that percent of the legal expenses that the amount **we** recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by **us** from any other insurer under any inter-insurer arbitration agreement.

D. If **we** make payment for a claim under Part A, and the **covered person,** as defined in Part A:

1. Failed or refused to comply with the duties specified in this provision; and
2. Prejudiced **our** defense of the liability claim by such failure or refusal;

then, the **covered person** shall reimburse **us** to the extent of **our** payment and cost of defense.

OWNERSHIP

For purposes of this policy, a private passenger type auto, pickup or **van** is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur during the policy period as shown in the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of **your covered auto** between any ports of these locations.

B. The policy territory also includes Mexico, subject to the following conditions:

1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accidents that occur within 75 miles of the USA border.
2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican insurance company at the time of loss. Also, for this Part to be effective, the original liability suit for **BI** or **PD** must be brought in the USA.

This coverage does not extend:

a. To any **covered person,** as defined in this policy, who does not live in the USA.

b. To any **covered person,** as defined in this policy, **occupying** an auto which is not principally garaged and used in the USA.

c. To any auto which is not principally garaged and used in the USA.

The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.

Losses payable under Part D of the policy will be paid in the USA. If the auto must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.

Any insurance we provide will be excess over any other similar valid and collectible insurance.

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NOTE: Unless you have automobile insurance written by a Mexican insurance company, you may spend many hours or days in jail, if you have an accident in Mexico. Insurance coverage should be secured from a company licensed under the laws of Mexico to write insurance in order to avoid complications and some other penalties possible under the laws of Mexico, including the possible impoundment of your automobile.

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request.
2. We may cancel by mailing a notice to the named insured shown in the Declarations at the address shown in this policy by giving:
   a. At least ten days notice:
      (1) If cancellation is for nonpayment of premium; or
      (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal policy; or
   b. At least 20 days notice in all other cases.
3. After this policy is in effect for 60 days, or if this is a renewal policy, we will cancel only:
   a. For nonpayment of premium; or
   b. For fraud or material misrepresentation affecting the policy or the presentation of a claim; or

      With respect to a policy obtained through misrepresentation of any of the following information:
      (1) Safety Record;
      (2) Annual miles driven in prior years;
      (3) Number of years driving experience;
      (4) Record of prior automobile insurance claims;
      (5) Any other factor found by the Commissioner to have a substantial relationship to the risk of loss.

      The cancellation will become void if the correct information is furnished to us within 20 days of the receipt of notice of cancellation.
   c. For a violation of the terms or conditions of the policy; or
   d. A substantial increase in hazard insured against; or
   e. If your driver's license or that of any driver who customarily uses your covered auto has been suspended or revoked. This must have occurred:
      (1) During the policy period; or
      (2) Since the last anniversary of the original effective date if the policy period is other than one year.

      However with respect to a suspended driver's license, such cancellation will not become effective if the suspension is removed prior to the time that the cancellation of the policy is to become effective.
4. We may cancel for any other reason permitted by law.

B. Nonrenewal. If we decide not to renew this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 30 days before the end of the policy period.

C. Rescission. With respect to all insureds, the entire policy will be void if whether before or after a loss, any covered person has:
   (1) Intentionally concealed or misrepresented any material fact or circumstance; or
   (2) Engaged in fraudulent conduct; or
   (3) Made false statements;

   relating to this insurance.

D. Automatic Termination. If we offer to renew and you do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due will mean that you have not accepted our offer.

If **you** obtain other insurance on **your covered auto,** any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance. This does not apply to liability coverage purchased for travel in Mexico.

E. Other Termination Provisions.

1. Proof of mailing of any notice will be sufficient proof of notice.
2. If this policy is cancelled, the named insured shown in the Declarations may be entitled to a premium refund. The premium refund, if any, will be computed according to **our** manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without **our** written consent. However, if a named insured shown in the Declarations dies, **we** will provide coverage until the end of the policy period for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto.**

TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy **we** issued to **you** apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT USAA GENERAL INDEMNITY COMPANY'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14 ("Plaintiff"), by and through his undersigned attorneys hereby submits this Memorandum in Opposition to Defendant, USAA General Indemnity Company's ("USAA"), Motion for Summary Judgment. The Court should deny Defendant's motion for the reasons set forth hereinbelow.

BACKGROUND

This declaratory judgment action arises out of a motor vehicle accident involving Plaintiff's wife, Kamika Young, and their children, Tyrin Young, Jr., Micah Young and J.Y. (a minor), which occurred in Greenville, South Carolina on August 30, 2015. Plaintiff's wife was the driver of a 2001 Ford Expedition, the vehicle involved in the accident. Plaintiff's children Tyrin Young Jr. and Micah Young died as a result of the accident and J.Y. was injured.

Tyrin, Jr. was 4 years old and Micah was 2 years old at the time of the accident. Despite the deep grief experienced from the horrific and tragic loss of the lives of their 2 young sons, Tyrin and Kamika have remained together as a family and continue care for their surviving child,

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J.Y. Tyrin and Kamika were born in South Carolina and were married in South Carolina. Tyrin Young is a career serviceman enlisted in the U.S. Navy and was on active duty at the time of the accident. Kamika Young currently works as a contractor with the Naval Medical Center in Portsmouth, Virginia as a lab technician.

The 2001 Ford was insured under a USAA policy. Under that policy insuring the involved vehicle, USAA tendered the liability limits of $50,000.00 and $50,000.00 UIM limits. The policy covering the involved vehicle had inadequate coverage to compensate for the lives of the deceased children and injured minor. At the time of the accident, Plaintiff had a separate policy with USAA insuring a 2006 KIA Spectra (the "KIA") which was not involved in the accident. The policy covering the KIA under policy number 022260801G71030 (the "Policy") had UIM coverage at the time of the accident in the amount $25,000/$50,000.00. It is undisputed that Plaintiff's damages meet and exceed the available coverage of $50,000.00 under the Policy.

Mr. Young is the named insured on the Policy and the Policy lists a South Carolina address for the named insured at the time of the accident. The Policy was issued in California when Mr. Young was on temporary duty in California and the KIA was located there. However, Mr. Young has continuously remained a legal citizen and resident of South Carolina, including at the time the Policy was issued and at the time of the accident. (**Ex. A** – Excerpt of Depo Tyrin Young Pages 99:14 to 100:20). The Youngs have always maintained South Carolina drivers licenses. (**Ex. B** – Youngs' Drivers Licenses[1]). The Youngs claimed income in South Carolina in 2015 and filed their tax returns in South Carolina including in 2015 the year in which the accident occurred. (**Ex. C** – Youngs' 2015 Federal and S.C. Tax Return, Front pgs. only). It is undisputed that the KIA was registered and tagged in South Carolina at the time of the Policy

[1] Tyrin Young's license was renewed recently, but he maintained a South Carolina drivers license at the time of the Policy and accident as he testified to in his deposition.

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and accident. (**Ex. D** – 2006 KIA Title History Detail). It is undisputed that taxes on the KIA have been paid in South Carolina since the vehicle was purchased new in South Carolina, including all times while it was covered under the Policy. (**Ex. E** – Tax Receipts for 2015 and 2016).

Mr. Young received orders to ship to Guam in 2014 and arranged to have the KIA shipped there in late 2014. (**Ex. F** – Copies of Guam Orders and Shipping Docs.) At the time of the accident, the KIA and Plaintiff were physically located in Guam, a fact that the Youngs had notified USAA of on several occasions prior to the move. (**Ex. A** Excerpts of Depo of Tyrin Young, Pages 67:25 to 69:3); Depo of Kamika Young, Pages 28:17 to 30:1). Despite USAA's knowledge of the move, USAA did not change the coverage from California and continued to accept premium payments from the Youngs. (**Ex. G** -Premium Renewal Letters January 3, 2015 and July 3, 2015). The Youngs are not versed in or sophisticated in insurance law and underwriting. (Ex. A Excerpts Depo. Kamika Young Pages 43:15 to 44:10; Depo. Tyrin Young Pages 102:16 to 103:7). They were simply relying on USAA to write the appropriate coverage based on the information they provided to USAA. *Id.*

Plaintiff has demanded the $50,000.00 in UIM coverage under the Policy. USAA has denied the claim on the grounds that the stacking of UIM coverage under the Policy is precluded under the Policy and California law. As a result, Plaintiff filed this declaratory judgment action seeking to reform the Policy to conform to the requirements of the South Carolina Insurance code. Due to the significant contacts between the Plaintiff, his family, the accident and South Carolina, Plaintiff asserts that South Carolina is the state of interest, as opposed to California, and in accordance with S.C. Code Ann. § 38-61-10 it is appropriate for the Policy to be reformed.

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Summary judgment is inappropriate at this time due to the existence of genuine issues of material fact regarding the issue of reformation and coverage under the Policy. In addition, USAA has had the opportunity to depose Plaintiff and his wife Kamika Young, however, Plaintiff has not had the opportunity to depose USAA. Plaintiff served a Notice of 30b6 Depostion on counsel on July 6, 2018. Simultaneous to the filing of this motion on July 25, 2018, USAA filed a motion for a protective order and to quash Plaintiff's deposition of USAA. As a result, USAA's motion for summary judgment is premature because Plaintiff has not had a full and fair opportunity to complete discovery by deposing USAA the opposing party. In the alternative, should the court be inclined to adjudicate the case pursuant to this motion, the overwhelming evidence of South Carolina's substantial contacts with the controversy mandates a finding that S.C. Code Ann. § 38-61-10 applies in this case, and as a result, the Policy should be reformed to provide additional UIM coverage.

SUMMARY JUDGMENT STANDARD

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321–22, 548 S.E.2d 854, 857 (2001) All ambiguities, conclusions, and inferences arising in and from the evidence must be construed most strongly against the moving party. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 338 S.C. 343, 347, 526 S.E.2d 253, 255 (Ct. App. 2000), aff'd as modified, 349 S.C. 356, 563 S.E.2d 331 (2002) (citations omitted). Further, summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.* Summary judgment is inappropriate even when there is no dispute as to the evidentiary facts, if there is a disagreement or dispute as to the conclusion drawn from those facts. *Id.* The non-moving party is only required to submit a mere scintilla of

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evidence in order to withstand a motion for summary judgment. *Huffman v. Sunshine Recycling, LLC*, 417 S.C. 514, 523, 790 S.E.2d 401, 406 (Ct. App. 2016), reh'g denied (Sept. 15, 2016), cert. granted (Sept. 29, 2017) (citations omitted).

In the present case, there are disputed facts present requiring the need to depose USAA and which preclude summary judgment. Plaintiff contends the KIA should have been insured under a South Carolina policy after it left California because of the significant contacts with South Carolina and lack of any connection with California, which USAA disputes. Plaintiff contends the Ford Expedition involved in the accident should qualify as an uninsured vehicle under the California Policy. Plaintiff disputes the assertion that he has received more than the limits under the Policy and as such is not entitled to any other payment. Plaintiff disputes that the Policy language was clear and unambiguous. Plaintiff disputes the allegation that the South Carolina policy would cover only the involved vehicle. USAA's use of the term "garaged" as part of the basis for its denial of coverage is disputed because it is undefined in the policy and is also ambiguous as USAA has attempted to apply it in this case.

APPLICABLE LAW

Under S.C. Code Ann. § 38-61-10, "All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State." South Carolina has a substantial interest in who bears the ultimate liability for operations conducted in this state which result in injury to South Carolina property and citizens. *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 131 (1992). In *Sangamo*, the South Carolina Supreme Court set for a two-step analysis to determine the choice of law in the context of an insurance contract. Under the

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expansive first prong, the court must determine whether S.C. Code Ann. § 38-61-10 applies, which focuses on the where the property, lives, or interests insured are located – not where the contract was formed. *Heslin-Kim v. CIGNA Grp. Ins.*, 377 F. Supp. 2d 527, 531 (D.S.C. 2005). The plain language of § 38–61–10 contemplates a broad application of South Carolina law to insurance contracts with any significant connection to South Carolina. *Id.* Under the statute, it is immaterial where the contract was entered into ... what is solely relevant is where the property, lives, or interests insured are located. *Sangamo*, 307 S.C. at 149, 414 S.E.2d at 131 (1992). Second, the court must analyze whether South Carolina has sufficient contacts with the controversy creating a state interest in the dispute. *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 131 (1992).

ARGUMENT

The subject policy should be reformed to comply with the South Carolina Insurance Code and provide UIM coverage in the amount of $50,000.00 because the vehicles, all persons insured under the Policy and this controversy have substantial contacts with South Carolina making South Carolina the state of interest instead of California.

South Carolina's insurance code applies because it maintains the most significant contacts with the controversy.

In *Russell v. McGrath*, the court analyzed many factors regarding the applicability of S.C. Code Ann. § 38-61-10 to determine whether the Florida policy should be conformed to South Carolina law. 135 F. Supp.3d 427 (D.S.C. 2015). Brian McGrath was a Connecticut citizen driving a vehicle purchased and registered in Florida at the time of accident that occurred in South Carolina, in which Brian and his three passengers lost their lives. Taxes on the vehicle were paid in Florida, and vehicle had a Florida tag. The insurance policy was purchased from a Florida agent. Brian was a student at the University of South Carolina, and his parents were

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paying out of state tuition. Brian had a Connecticut driver's license. Brian never worked, owned property or paid taxes paid taxes in South Carolina. Brian's estate was probated in Connecticut and his mother stated that it was always Brian's intent to return to Connecticut.

In *McGrath*, the court ultimately declined to reform the policy due to insufficient contacts between Brian McGrath and South Carolina. In that respect, *McGrath* is clearly distinguishable from the case at bar. The factors which were not met in *McGrath* to form the basis of the court's decision to decline reformation are actually present in the present case. McGrath was a Connecticut citizen driving a Florida vehicle – the Youngs were South Carolina citizens driving South Carolina vehicles at the time of the accident. Unlike Brian McGrath, the Youngs claimed income and filed tax returns in South Carolina. The court considered the fact that the McGrath's were never permanent residents of South Carolina. In contrast, the Youngs have always maintained permanent legal residency in South Carolina including on the date the policy was signed and on the accident in 2015. McGrath's vehicle was purchased and registered in Florida. The 2006 KIA was purchased in South Carolina, and was taxed, tagged and registered in South Carolina at the time the Policy was issued and at the time of the accident in 2015. While McGrath was licensed in Connecticut, the Youngs have always maintained South Carolina drivers licenses and were never licensed any other state even when they moved from South Carolina. (Depo Tyrin Young, Pages 22:19 to 23:4; Depo Kamika Young Page 13:7 to 13:10).

The Policy was purchased from USAA by phone and at least two policy renewals were addressed to and sent to Plaintiff at a South Carolina address, whereas Brian McGrath's policy purchased from a Florida agent and mailed to a Connecticut address. Kamika Young and the children were living in South Carolina at the time of the accident. The estates for both of the deceased children, Tyrin Young, Jr. and Micah Young, are being probated in South Carolina.

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(**Ex. H** – Certificates of Appointment). According to his mother, Brian McGrath never intended to remain in South Carolina permanently. However, the Youngs testified that they have always considered South Carolina their permanent residence and it has always been their intent to return here. (See **Ex. A** Depo. Kamika Young Pages 42:22 to 43:14). This is further supported by the fact that the Youngs now own real property in South Carolina. (See **Ex A** - Depo Kamika Young, (Pages 39:23 to 40:7).

South Carolina law would govern even when applying California's choice of law analysis.

The same result would be reached under California law since California appears to apply the same factors and analysis as South Carolina to determine which state's law should apply. In *California Cas. Indem. Exch. v. Pettis*, 193 Cal. App. 3d 1597, 1606, 239 Cal. Rptr. 205, 211 (Ct. App. 1987), the insureds, California citizens, were temporarily in Hawaii on vacation when they were injured in an automobile accident after being struck by an uninsured motorist. The Pettis's were driving a rental vehicle covered by insurance under Hawaiian law. The Hawaiian insurance code allowed for the stacking of additional UM coverage. The Pettis's collected the UM coverage on the involved vehicle and then attempted to stack UM benefits provided under their at home vehicles and policies in California. In finding that California's choice of law provision applied over Hawaiian law, the court determined that California had the most significant contacts considering the Pettis's were citizens of California, earned income in California and the covered vehicles were registered in California. *See also Farmers Ins. Exch. v. Veveiros*, No. A128444, 2011 WL 1535404, at 6 (Cal. Ct. App. Apr. 25, 2011) (unreported) (considering similar factors including that the insureds were California citizens and insured vehicles were registered in

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California)[2]. Applying these factors to the present case, the Youngs were citizens of South Carolina at the time of the accident, filed income taxes in South Carolina and their insured vehicles were taxed, tagged and registered in South Carolina – in addition to the numerous other contacts listed above. At the time of the accident, Plaintiff would submit that California maintained no contacts whatsoever with the insureds and the present controversy because the Plaintiff and the KIA were physically located in Guam, while the Plaintiff's family and other vehicle were in South Carolina.

USAA has waived and/or should be estopped from asserting the Policy provisions to avoid Plaintiff's claim because it continued to accept premiums after notice that the KIA and Plaintiff were no longer located in California.

In *Leggett v. Smith*, the South Carolina Court Appeals found that the insurer waived certain policy provisions regarding residency and garaging of the vehicle under the policy because it continued to accept premiums after the insurer became aware of the insured's change in residency from New York to South Carolina. 386 S.C. 63, 80, 686 S.E.2d 699, 708–09 (Ct. App. 2009)[3]. *See also Pitts v. New York Life Ins. Co.*, 247 S.C. 545, 148 S. E. 2d 369 (1966) (insurance company was estopped from denying double-indemnity coverage under a life insurance policy after it demanded and retained premiums for such coverage). USAA was on notice no later than December, 2014 that Plaintiff and the KIA had been moved from California to Guam. After receiving notice of the change in location of the insured and KIA, USAA decided to keep the California coverage in place under the Policy. USAA mailed two (2) additional

[2] This is an unpublished opinion which is being offered for illustrative purposes only regarding factors considered regarding choice of law in California and not for any precedential value.
[3] In *Leggett*, the court applied N.Y. law regarding waiver; however, South Carolina also recognizes the doctrine of waiver. See e.g. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992).

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policy renewals to Plaintiff on January 3, 2015 and July 3, 2015 and continued to accept Plaintiff's premiums without changing coverage from California. (See **Ex. G**) Moreover, after receiving notice of the vehicle's and Plaintiff's change in location to Guam, USAA listed Plaintiff's address as 1409 Roper Mountain Rd, Apt. 240 and later 4 Cross Club Greenville, South Carolina and sent the renewal policies to those addresses.

CONCLUSION

Defendant's motion for summary judgment is premature and should, therefore, be denied because Plaintiff has not had a full opportunity to complete discovery by taking the deposition of USAA. Further, Defendant's motion for summary judgment should be denied because genuine issues of material fact exist regarding reformation of the Policy. In the alternative, should the court be inclined to adjudicate the case pursuant to this motion, the court should enter judgment finding that South Carolina law applies to this case and therefore the Policy should be reformed to provide additional UIM coverage to the Plaintiff in the amount of $50,000.00.

GUEST & BRADY, LLC

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September 19, 2018
Greenville, South Carolina

TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
C.A. NO.: 2017-CP-23-04630

EXHIBIT "A"
Excerpt of Depositions of Tyrin Young and Kamika Young

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Young, Tyrin, (Pages 99:14 to 100:20)

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Q. [Mr. Allen] Okay. At that time, though, you considered South Carolina to be your legal residence?
A. Yes.
Q. You considered yourself to be a citizen of South Carolina?
A. Yes.
Q. Okay. Is that true? From 2010 until you went to Guam, did you consider yourself to be a legal resident and citizen of South Carolina?
A. Yes.
Q. Okay. After you went to Guam in late 2014 through the present, do you still consider yourself to be

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a legal resident and citizen of South Carolina?
A. Yes. It is my home of record so even when I retire, it is always going to be my home of record. I will always be back in South Carolina.
Q. When you were testifying about base being your permanent residence, were you just speaking to that's where you were physically living?
A. Yes. That's what they call it. They call it permanent change of station. That's what they call it on your orders. That's where I will be for at least a couple years or however my orders state, and then I move again and that would be my new P.C.S., but my home of record is South Carolina.
Q. Okay. That would be true for your wife and family?
A. Yes.
Q. During those time frames that we spoke about?
A. Yes.
Q. During 2015?
A. Yes.

Young, Tyrin, (Pages 67:25 to 69:3)

67

Q. So at that point, going back to July of 2014 and

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August of 2014, did you personally have any conversations with USAA as to the actual coverages under any policy for either vehicle?
A. Not about coverage, no.
Q. All right. Do you recall having specific conversations with them for other reasons during that

time frame?
A. Yes.
Q. What other conversations would you have had around July of 2014 time frame?
A. I called them and informed them that we were shipping the Kia to Guam.
Q. And when did you tell them that the Kia would be shipped to Guam?
A. Towards the end of 2014, so I want to say November, November time frame of 2014.
Q. All right. So as far as the communication is concerned about the Kia being shipped to Guam, what specifically do you remember about that conversation with USAA? Did you personally have that conversation, or was it something your wife discussed with them?
A. No. I called and told them.
Q. What did you specifically tell them, if you recall, as far as the actual location and it being shipped?

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A. I told them I had orders to go to Guam and that's why I was sending the vehicle, and I can't recall everything else after that.

Young, Kamika, (Pages 28:17 to 30:1)

28

Q. Okay. So at that point when you're having the conversation with the USAA representative about the Expedition coming back to South Carolina, what did you tell them about the Kia?
A. I told them that the Kia would be with my husband in California and that he was going to be relocating to Guam and that's the reason that we were changing, bringing the Jeep to the South Carolina policy.
Q. You mentioned Jeep.

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A. The Expedition. I call it a Jeep. Sorry.
Q. That's okay. I just wanted to make sure I didn't miss a vehicle here.
A. No.
Q. During that initial conversation with USAA, you would have told them the Kia was staying with your husband in California at that time?
A. Yes, sir.
Q. Okay. And you actually informed them eventually he would be shipped to Guam, correct?

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A. Yes, sir.
Q. At that point in July of 2014, was it your understanding that your husband would eventually take the Kia to Guam with him?
A. Yes, sir.
Q. And did you ever communicate with USAA at any point to alert them or tell them that the vehicle was actually being shipped, in the process of being shipped or was located in Guam?
A. My husband made that call in November to let them know. He also called as well to alert them the car was being shipped to Guam before, you know, he even left.
Q. Were you present when he informed them that he would be shipping the Kia to Guam?
A. No. He discussed and told me he had called them

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because we had a discussion about what we should do.

Young, Kamika, (Pages 43:15 to 44:10)

43

Q. Okay. Is it fair to say that you are not sophisticated or experienced in insurance underwriting?
A. Yes, sir.
Q. Okay. Your practice, yours and Tyrin's practice was to communicate with USAA regarding any change in location of a vehicle or your residences or physical, I guess, locations?
A. Yes, sir.
Q. And in doing so, you expected, you know, USAA to write the appropriate coverage in their expertise?
MR. STILL: Object to form.

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THE WITNESS: Yes, sir.
Q. [Mr. Allen] I'm sure there were discussions about types of coverages and the amounts of the premiums that would be paid; is that true?
A. Yes, sir.
Q. When it came down to making a decision about which state the actual policy should be written in, that is not a decision you would make; it's a decision that USAA would make?
A. Right.

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Young, Tyrin, (Pages 102:16 to 103:7)

102

Q. When you and your wife had these conversations telling USAA you are having a change in location, vehicles are being changed, would you expect USAA to be the ones to determine where to write coverage properly?
A. Yes.
Q. Okay. And as far as whatever states coverages needed to be written in, that's something you expected USAA to take care of?
A. Yes.
MR. STILL: Object to form.

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Q. [Mr. Allen] So if USAA wanted to write coverage in California or Guam or South Carolina, wherever, based on the information they received from you, you would essentially trust that that's what their job was, you know, that that was their job and they were doing it appropriately?
A. Yes.

Young, Tyrin, (Pages 22:19 to 23:4)

22

Q. Okay. And have you ever had a driver's license that wasn't South Carolina?
A. No.
Q. So from the time that you started driving until currently, your driver's license has always been --
A. South Carolina.
Q. -- South Carolina?

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A. Yes, sir.
Q. To your knowledge, has your wife ever had a driver's license in any state other than South Carolina?
A. No.

Young, Kamika, (Page 13:7 to 13:10)

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Q. Since 1996, have you held any driver's license that was issued by a state other than the State of South Carolina?
A. No, sir.

Young, Kamika, (Pages 42:22 to 43:14)

42

Q. I have a few questions. You testified after Tyrin was to finish his time in Guam, it was your intent to move to the next duty station.

25 A. Yes, sir.

43

1 Q. Is that correct?
2 A. Yes, sir.
3 Q. However, your intent at that time was to remain
4 a legal citizen and resident of South Carolina?
5 A. Yes, sir.
6 Q. And that was Tyrin's intent as well?
7 A. Yes, sir.
8 Q. To your knowledge?
9 A. Yes.
10 Q. And that's been his home of record, South
11 Carolina?
12 A. Yes, sir.
13 Q. And that was true at the time of this accident?
14 A. Yes, sir.

Young, Kamika, (Pages 39:23 to 40:7)

39

23 Q. Do you currently own any property in the State
24 of South Carolina?
25 A. Yes, sir.

40

1 Q. What do you own in the State of South Carolina?
2 A. A condo in Spartanburg, South Carolina.
3 Q. Is that in your name or whose name?
4 A. Both our names.
5 Q. When did you buy that condo?
6 A. We bought the condo in 2017. I can't recall the
7 actual month.

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EXHIBIT "B"
Youngs' Drivers Licenses

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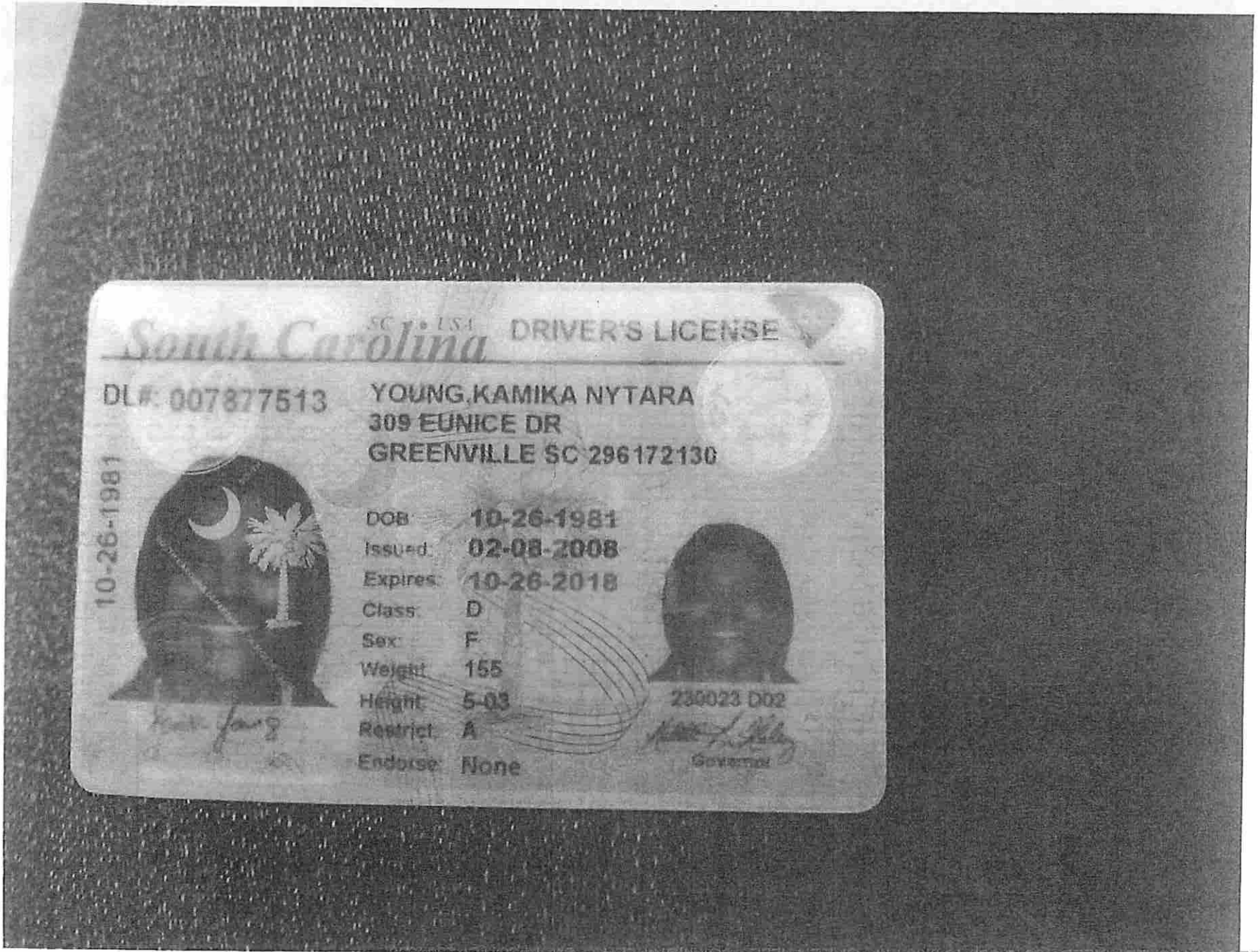
South Carolina
SC USA
DRIVER'S LICENSE
DL#: 007877513
YOUNG,KAMIKA NYTARA
309 EUNICE DR
GREENVILLE SC 296172130
10-26-1981
DOB 10-26-1981
Issued 02-08-2008
Expires 10-26-2018
Class D
Sex F
Weight 155
Height 5-03
Restrict A
Endorse None
230023 D02
Governor

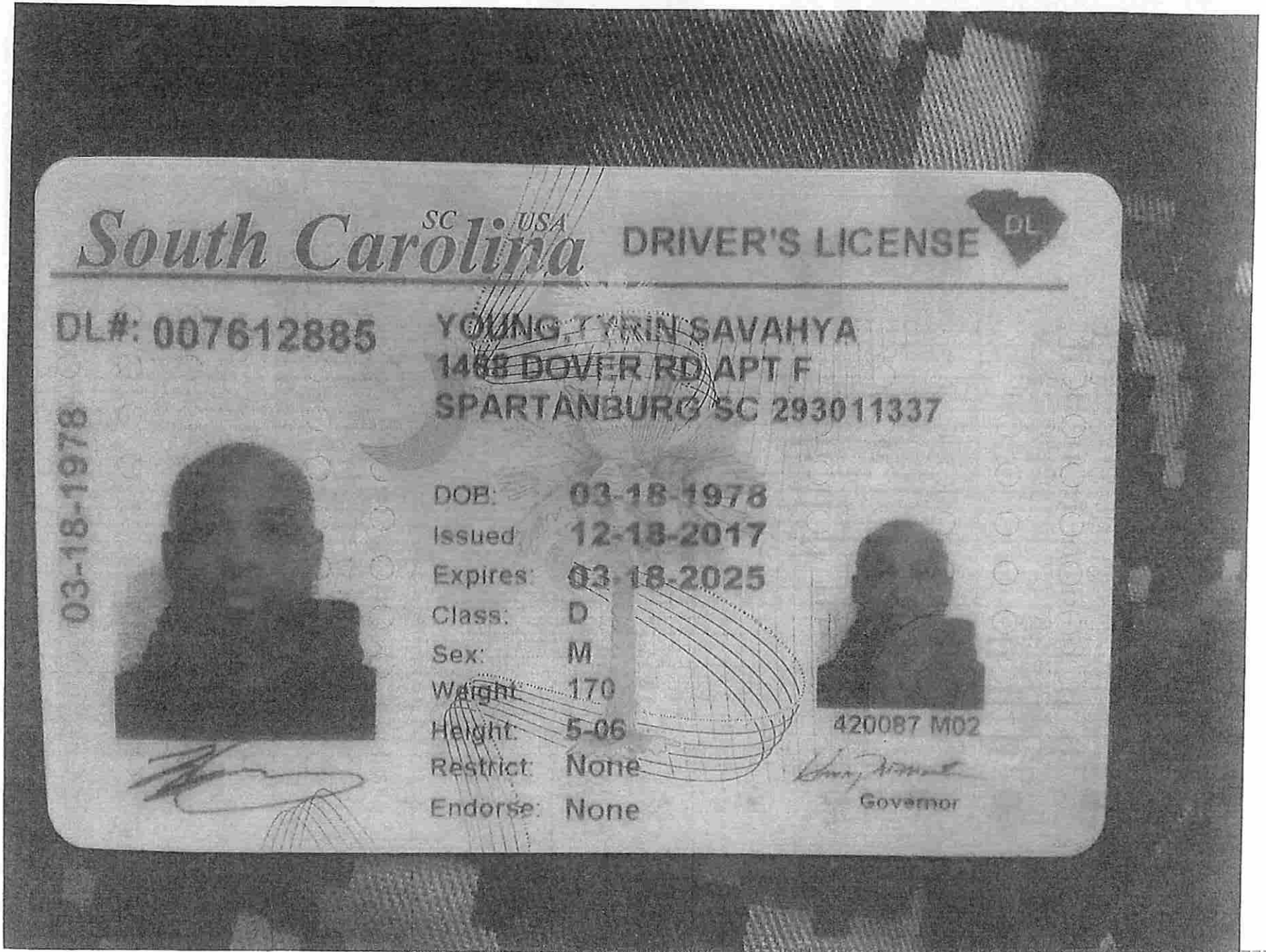
South Carolina
SC USA
DRIVER'S LICENSE
DL
DL#: 007612885
YOUNG, TYRIN SAVAHYA
1488 DOVER RD APT F
SPARTANBURG SC 293011337
03-18-1978
DOB: 03-18-1978
Issued: 12-18-2017
Expires: 03-18-2025
Class: D
Sex: M
Weight: 170
Height: 5-06
Restrict: None
Endorse: None
420087 M02
Governor

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EXHIBIT "C"
Youngs' 2015 Federal and SC Tax Return, Front pages only

Form **1040X** (Rev. January 2016)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ Information about Form 1040X and its separate instructions is at *www.irs.gov/form1040x.*

OMB No. 1545-0074

This return is for calendar year ☒ 2015 ☐ 2014 ☐ 2013 ☐ 2012
Other year. Enter one: calendar year or fiscal year (month and year ended):

Your first name and initial	Last name	Your social security number
Tyrin S	Young	248-47-0844
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
KAMIKA N	YOUNG	251-47-2981

Current home address (number and street). If you have a P.O. box, see instructions.	Apt. no.	Your phone number
151 CENTURY DR	126C	

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).
Greenville SC 29607

Foreign country name	Foreign province/state/county	Foreign postal code

Amended return filing status. You **must** check one box even if you are not changing your filing status. **Caution:** In general, you cannot change your filing status from joint to separate returns after the due date.

☐ Single
☒ Married filing jointly
☐ Married filing separately
☐ Head of household (If the qualifying person is a child but not your dependent, see instructions.)
☐ Qualifying widow(er)

Full-year coverage.
If all members of your household have full-year minimal essential health care coverage, check "Yes." Otherwise, check "No." (See instructions.)
☒ Yes ☐ No

Use Part III on the back to explain any changes

			A. Original amount or as previously adjusted (see instructions)	B. Net change—amount of increase or (decrease)—explain in Part III	C. Correct amount
Income and Deductions					
1	Adjusted gross income. If net operating loss (NOL) carryback is included, check here ▶☐	1	50,548.	0.	50,548.
2	Itemized deductions or standard deduction	2	12,600.	0.	12,600.
3	Subtract line 2 from line 1	3	37,948.	0.	37,948.
4	Exemptions. **If changing, complete Part I on page 2 and enter the amount from line 29**	4	12,000.	0.	12,000.
5	Taxable income. Subtract line 4 from line 3	5	25,948.	0.	25,948.
Tax Liability					
6	Tax. Enter method(s) used to figure tax (see instructions): Table	6	2,966.	0.	2,966.
7	Credits. If general business credit carryback is included, check here ▶☐	7	1,111.	0.	1,111.
8	Subtract line 7 from line 6. If the result is zero or less, enter -0-	8	1,855.	0.	1,855.
9	Health care: individual responsibility (see instructions)	9	0.	0.	0.
10	Other taxes	10	0.	0.	0.
11	Total tax. Add lines 8, 9, and 10	11	1,855.	0.	1,855.
Payments					
12	Federal income tax withheld and excess social security and tier 1 RRTA tax withheld (**If changing**, see instructions.)	12	6,511.	0.	6,511.
13	Estimated tax payments, including amount applied from prior year's return	13	0.	0.	0.
14	Earned income credit (EIC)	14	0.	0.	0.
15	Refundable credits from: ☐ Schedule 8812 Form(s) ☐ 2439 ☐ 4136 ☐ 8801 ☐ 8863 ☐ 8885 ☐ 8962 or ☐ other (specify):	15	0.	0.	0.
16	Total amount paid with request for extension of time to file, tax paid with original return, and additional tax paid after return was filed	16			0.
17	Total payments. Add lines 12 through 16	17			6,511.
Refund or Amount You Owe					
18	Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18			4,656.
19	Subtract line 18 from line 17 (If less than zero, see instructions.)	19			1,855.
20	**Amount you owe.** If line 11, column C, is more than line 19, enter the difference	20			
21	If line 11, column C, is less than line 19, enter the difference. This is the amount **overpaid** on this return	21			
22	Amount of line 21 you want **refunded to you**	22			0.
23	Amount of line 21 you want **applied to your (enter year):** estimated tax	23			

Complete and sign this form on Page 2.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

2015 INDIVIDUAL INCOME TAX RETURN

SC1040
(Rev. 7/21/15)
3075

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Your social security number	Check if deceased
248 | 47 | 0844	☐
Spouse's social security number	**Check if deceased**
251 | 47 | 2981	☐

DO NOT USE THIS FORM TO FILE A CORRECTED RETURN. SEE SC1040 INSTRUCTIONS FOR ADDITIONAL INFORMATION.

For the year January 1 - December 31, 2015, or fiscal tax year beginning 2015 and ending 2016

Print your first name and initial	Last name	Suff.
Tyrin S	Young	
Spouse's first name, if married filing jointly	**Last name**	
KAMIKA N	YOUNG	

Check if new address ☐	Mailing address (number and street, Apt. no or P. O. Box) Foreign address, see instructions	County code
	151 CENTURY DR 126C	23

City	State	Zip	Area code Daytime telephone
Greenville	SC	29607	(864) 567-6740

Check if address is outside US ☐ — Foreign country address including Postal code (see instructions)

Check this box if you are filing SC Schedule NR (Part-year/Nonresident) ▶ ☒

Check this box ONLY if filing a composite return on behalf of a partnership or "S" corporation. Do not check this box if you are an individual. ▶ ☐

Check this box if you have filed a federal or state extension ▶ ☐

Check this box if you served in a Military COMBAT ZONE during the filing period ☐

Enter the name of the combat zone:

Check this box if this return is affected by a federally declared DISASTER AREA ☐

Enter the name of the disaster area:

CHECK YOUR FEDERAL FILING STATUS
(1) ☐ Single (3) ☐ Married filing separately. Enter spouse's SSN here: _____
(2) ☒ Married filing jointly (4) ☐ Head-of-household (5) ☐ Widow(er) with dependent child

Federal Exemptions

Enter the number of exemptions from your 2015 federal return ▶ 3
Enter the number of exemptions listed above that were under the age of 6 years on December 31, 2015 ▶
Enter the number of taxpayers age 65 or older, as of December 31, 2015 ▶

Dependents:

First name	Last name	Social security number	Relationship	Date of birth (MM/DD/YYYY)
Jhaden D	Young	657-16-4429	Daughter	11/16/2003

30751028

REV 07/13/16 Intuit.cg.cfp.sp

TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
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EXHIBIT "D"
2006 KIA Title History Detail

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Title History

VIN: KNAFE121965297950 Year: 2006 Make: KIA Model: NEW Body: 4S
New/Used: USED Empty Weight: 2892

Title Number: 770630189393519C Status: CURRENT TITLE
Purchase Date: 03/11/2008 Issue Date: 03/25/2008 Dup: N
Odometer: 30000 Legend: ACTUAL MILEAGE Salvage %: 0
Vehicle Brands:
None.

Owner Number: 25867405
Owner Name: YOUNG, KAMIKA NYTARA
Owner Relationship: OR
Owner Address: 151 CENTURY DR APT 126 GREENVILLE SC, 29607
Owner Number: 26349098
Owner Name: YOUNG, TYRIN SAVAHYA

Lien No: 1
Lien Holder Name: NAVY FEDERAL CREDIT UNION
Lien Holder Address: PO BOX 25109 LEHIGH VALLEY PA, 180025109
Lien Date: 03/11/2008 Lien Satisfaction Date:

Title Number: 7705701813161108 Status: CANCELLED: CVS
Purchase Date: 09/05/2007 Issue Date: 09/14/2007 Dup: N
Odometer: 18262 Legend: ACTUAL MILEAGE Salvage %: 0
Vehicle Brands:
None.

Owner Number: 25867405
Owner Name: THOMASON, KAMIKA NYTARA
Owner Address: 151 CENTURY DR APT 126 GREENVILLE SC, 29607
Mailing Address: 151 CENTURY DR APT 126C GREENVILLE SC, 296071547

Lien No: 1
Lien Holder Name: CITIFINANCIAL AUTO
Lien Holder Address: PO BOX 210099 BEDFORD TX, 760957099
Lien Date: 08/04/2007 Lien Satisfaction Date:

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Title History

Title Number: 772060164821532A Status: CANCELLED: CVS
Purchase Date: 08/26/2006 Issue Date: 09/07/2006 Dup: N
Odometer: 150 Legend: ACTUAL MILEAGE Salvage %: 0
Vehicle Brands:
None.

Owner Number: 24441314
Owner Name: MANSELL, PORTIA GERMAINE
Owner Relationship: OR
Owner Address: 309 EUNICE DR GREENVILLE SC, 29617213029607
Owner Number: 29078074
Owner Name: THOMASON, KAMIKA

Lien No: 1
Lien Holder Name: REGIONAL ACCEPTANCE CORP
Lien Holder Address: PO BOX 277760 SACRAMENTO CA, 958277760
Lien Date: 08/26/2006 Lien Satisfaction Date:

End of Report

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

Customer Service Delivery Director

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TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
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EXHIBIT "E"
Tax Receipt for 2015 and 2016

VEHICLE TAX DETAIL INFORMATION

Details for Vehicle

BASIC INFORMATION

Name: YOUNG KAMIKA NYTARA
Levy Year: 2015
Account #: 2016 10 0434743 01 001

VEHICLE INFORMATION

Year	Make	Model	Body	Wgt	Gross Wgt	VIN #	District
2015	NISS	SENTRA	4S	29	0	3N1AB7APXFY284399	500

Exp Date: 10/31/2016
Date Paid: 12/07/2016
Status:

Assessment: 720
Months: 12
Miles 0

Tax Summary

County Millage: 252.30
City Millage: 85.30

Total Taxes: $243.08
Road Fee: 15.00
DMV Decal Fee: 0
NSF Fee:
High Mile Credit: 0

Total Billed: $258.08
Total Paid: $258.08
Balance Due: $0.00

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VEHICLE TAX DETAIL INFORMATION

Details for Vehicle

BASIC INFORMATION

Name: YOUNG KAMIKA NYTARA
Levy Year: 2014
Account #: 2015 07 0872139 01 001

VEHICLE INFORMATION

Year	Make	Model	Body	Wgt	Gross Wgt	VIN #	District
2006	KIA	NEW	4S	29	0	KNAFE121965297950	308

Exp Date: 7/31/2015
Date Paid: 08/09/2015
Status:

Assessment: 170
Months: 12
Miles 0

Tax Summary

County Millage: 342.30
City Millage: 0

Total Taxes: $58.19
Road Fee: 15.00
DMV Decal Fee: 24.00
NSF Fee:
High Mile Credit: 0

Total Billed: $97.19
Total Paid: $97.19
Balance Due: $0.00

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TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
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EXHIBIT "F"
Copies of Guam Orders and Shipping Docs

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DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
MILLINGTON, TN 38055

ORIGINAL

1326
PERS-402DF
03 JUN 2014

SUBJ: BUPERS ORDER: 1544/XXX-XX-0844/HT1 GENDER: MALE PERS-N402DF
OFFICIAL CHANGE DUTY ORDERS FOR
HT1 TYRIN SAVAHYA YOUNG , USN 4955/

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
IN CARRYING OUT/PROCESSING THESE ORDERS, BOTH PARTS ONE AND TWO
MUST BE READ AND LISTED INSTRUCTIONS COMPLIED WITH.
FOR OFFICIAL USE ONLY
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

P A R T O N E

- MEMBER ADVISED: IF THIS ORDER CONTAINS FY15 FUNDING, PROGRAM/FUND ALLOCATION IS ISSUED IN ANTICIPATION OF ENACTMENT OF THE FY15 DOD APPROPRIATIONS ACT OR A FY15 CONTINUING RESOLUTION (CR) AND IS SUBJECT TO AVAILABILITY OF FUNDS AND ALL PROVISIONS OF WHICHEVER ACT IS APPLICABLE. CHARGES AGAINST THIS PROGRAM/FUND ALLOCATION MAY NOT BE INCURRED PRIOR TO 01 OCTOBER 2014.

FORMAT FD100: REMEMBER TO READ YOUR ORDERS IN THEIR ENTIRETY!! THIS MESSAGE HAS BEEN SENT IN A SECURE ENVIRONMENT. HOWEVER, IF IT MUST BE FORWARDED VIA EMAIL TO PERSON(S) WITH A NEED TO KNOW, YOU MUST ENSURE PROPER SAFEGUARDS ARE TAKEN TO PROTECT THE CONTENTS SINCE IT MAY CONTAIN SENSITIVE PII. YOU MUST ENCRYPT AND DIGITALLY SIGN ALL EMAILS THAT CONTAIN SENSITIVE PII. IF THE EMAIL FAILS TO SEND BECAUSE OF ENCRYPTION ISSUES, DO NOT SEND UNENCRYPTED AS THAT ACTION CONSTITUTES A PII BREACH AND MUST BE REPORTED. INSTEAD, CONTACT YOUR IAM FOR ASSISTANCE. SENSITIVE PII IS DEFINED AS THAT INFORMATION ABOUT AN INDIVIDUAL THAT, IF LOST, STOLEN OR COMPROMISED WOULD CAUSE UNDUE HARM AND AN UNWARRANTED INVASION OF PERSONAL PRIVACY.

------- DETACHING ACTIVITY (S) -------

WHEN DIRECTED DETACH IN NOV 14 — EDD: NOV 14
FROM SOUTHWEST REGIONAL MAINT CTR — UIC: 55236
PERMANENT DUTY STATION SAN DIEGO, CA
FROM DUTY — ACC: 100
- PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET SAN DIEGO — UIC: 68556

------- ULTIMATE ACTIVITY (M) -------

REPORT NOT LATER THAN 16 DEC 14 — EDA: 16 DEC 14
TO AS 40 MAINT/SUPPORT COMP — UIC: 45255
HOMEPORT AGANA, GUAM
FOR DUTY — ACC: 100
ASSIGNED RATE: HT1 DNEC1: 4955 DNEC2: — PRD: 1612
- PERSONNEL ACCOUNTING SUPPORT: AS 40 FRANK CABLE — UIC: 20865

- WELCOME ABOARD THE FINEST SUBMARINE TENDER IN THE NAVY, USS FRANK CABLE (AS-40) LOCATED ON THE TROPICAL ISLAND OF GUAM. FOR COMMAND INFORMATION, VISIT OUR WEBSITE AT: HTTP://WWW.CABLE.NAVY.MIL. ITS IMPERATIVE YOU CONTACT THE COMMAND SPONSOR COORDINATOR VIA EMAIL AT: SPONSOR@AS40.NAVY.MIL, PHONE (671) 343-2545 X7660, COMMAND CELL: (671) 687-6833. THE FRANK CABLE OMBUDSMAN TEAM IS STANDING BY TO ASSIST WITH COMMAND, ISLAND AND FAMILY PROGRAM INFORMATION. THEY CAN BE REACHED THROUGH E-MAIL AT: USSFRANKCABLEOMB@GMAIL.COM. COMMAND

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International Auto Logistics

110 Office Park Lane.
Saint Simons Island, GA, 31522

SHIPPING INSTRUCTION SUMMARY

www.pcsmypov.com Printed By: sdg.josie.medina
Printed On: 12/14/2014

SHIPPING INSTRUCTION #: 3JA0046828

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

SERVICE MEMBER	ADDITIONAL INFORMATION
TYRIN S YOUNG. BRANCH SOUTHWEST REGIONAL M. NAVY SAN DIEGO, CALIFORNIA, 92120, US. Phone: 864-275-8249 Email: savahya@gmail.com Initial _____	TURN IN DATE: 11/12/2014 POSSESSION DATE: RDD DATE: 12/24/2014 Initial _____ POE: 3H3 POD: TA1

DESTINATION VPC	ORIGIN VPC	NOTIFY
GUAM (GO/CO) GUAM VPC, BUILDING 3. SANTA RITA, GU, 96915 Phone: 671-339-2205 Email: guam.vpc@ialpov.us Initial _____	SAN DIEGO (CO/CO) 11433 WOODSIDE AVE. SANTEE, CA, 92071 Phone: 559-483-9955 Email: sandiego.vpc@ialpov.us	

The contact information above will be used to notify you of any updates during the shipment as well as the availability for pick up. Please ensure the information is accurate and notify the destination VPC as soon as possible if this contact information should change to prevent delays in notification.

Vehicle Vin #	Year	Make	Model	Engine	Color	Body	Plate
KNAFE121965297950	2006	KIA	SPECTRA		BROWN	4 DOOR SEDAN	AJM606

LENGTH	WIDTH	HEIGHT	WEIGHT	UNIT	CUBIC	UNIT	TOTAL VALUE ($)
176	68	58	2,826.00	Lbs	403.70	Cft	3,275.00

DISCLAIMER: Land Rovers, Range Rovers and any other vehicle that is claimed to be 25 years or older will require extended clearance time in the customs process. U.S. Customs will inspect the vehicle to make sure that all parts are original, and none are less than 25 years old. Pictures and information will be forwarded to DOT to ensure EPA and DOT compliance.

By signing below, I acknowledge that all information above is correct and has been discussed with me by the IAL representative.

Authorized Signature

Date

Vehicle Inspection Form - 4 Door Sedan

Shipper Order Number	Vehicle Id Number				Odometer Reading			
	KNAFE121965297950				115881			
POV Year, Make, Model, Color, Body Type, License Number, State	Dimensions		Weight	Cube	Pieces	Pack	Commodity	
2006, KIA SPECTRA, BROWN, 4 DOOR SEDAN AUTO.	174.40in WHGT in		2,876.00 lbs	401.7	0	VH	320	
Transportation Control Number	Consignor	Consignee	TR Account	Grade	POE	POD	NDD	
AA816XXXXXN644907	Surface Deployment an	INTLANATIONAL AII	NMA4	Ib	3113	TA1	12/24/2014	
Owner Last Name, First, & Middle Initial	Next Duty Address for Notification Purposes							
YOUNG TYMIN S	AS 40 MAINT/SUPPORT COMP, FPO, AP, 96540, US							

I/WE HAVE CHECKED IN MY PRESENCE, CONDITION ACKNOWLEDGED AS RECORD ABOVE AND CONSENTING TO CHECKIN AMENDMENT OR CHANGE ADOPTED

Origin (to be signed at drop off)	Date	Signature of Owner or Agent	Name of Agent (Last, First, Middle Initial)
SAN DIEGO (CO/CO)	11/12/14		
Destination (to be signed at check in)	Date	Signature of Owner or Agent	Name of Agent (Last, First, Middle Initial)
GUAM (GO/CO)			
Street Address, City, State, Zip Code			

User Codes	Dates	Inspector Name	Mileage	User Codes	Dates	Inspector Name	Mileage
(1)	11/14/14	Elizabeth Reed	11688	(5)			
(2)				(6)			
(3)				(7)			
(4)				(8)			

ACTION REQUIRED FOR PROOF OF OWNERSHIP FOR RETURN TRANSPORT AT GOVERNMENT EXPENSE OR PROOF OF POV SUPPORT STATUS, PERSONAL EXAMINATION

Check All Below Items Inspected

EXTERIOR VEHICLE	DR	PASS
Hood Shell		
Windshield - Outside		
Front License Plate		
Front Bumper Cover / Bar / Guard		
Front Bumper Guard / Rub Strip		
Front Grille		
Front Fender - Right		
Front Fender - Left		
Front Wheel / Rim		
Front Tire		
Front Wheel Well / Liner		
Front Suspension / Control Arms		
Front Door - Right		
Front Door - Left		
Front Window Glass		
Front Door Handle		
Front Door Mirror		
Front Door Weatherstrip		
Front Door Hinges		
Front Door Lock		
Front Door Trim Panel		
Front Door Speaker		
Front Door Window Regulator		
Front Door Vent Window		
Front Door Vent Window Glass		
Front Door Vent Window Frame		
Front Door Vent Window Weatherstrip		
Front Door Vent Window Hinge		
Front Door Vent Window Latch		
Front Door Vent Window Regulator		
Front Door Vent Window Trim		
Front Door Vent Window Seal		
Front Door Vent Window Motor		
Front Door Vent Window Switch		
Front Door Vent Window Wiring		
Front Door Vent Window Harness		
Front Door Vent Window Connector		
Front Door Vent Window Fuse		
Front Door Vent Window Relay		
Front Door Vent Window Circuit Breaker		
Front Door Vent Window Ground		
Front Door Vent Window Power		
Front Door Vent Window Signal		
Front Door Vent Window Control		
Front Door Vent Window Module		
Front Door Vent Window Sensor		
Front Door Vent Window Actuator		
Front Door Vent Window Motor Mount		
Front Door Vent Window Regulator Mount		
Front Door Vent Window Glass Mount		
Front Door Vent Window Frame Mount		
Front Door Vent Window Weatherstrip Mount		
Front Door Vent Window Hinge Mount		
Front Door Vent Window Latch Mount		
Front Door Vent Window Trim Mount		
Front Door Vent Window Seal Mount		
Front Door Vent Window Motor Mount		
Front Door Vent Window Switch Mount		
Front Door Vent Window Wiring Mount		
Front Door Vent Window Harness Mount		
Front Door Vent Window Connector Mount		
Front Door Vent Window Fuse Mount		
Front Door Vent Window Relay Mount		
Front Door Vent Window Circuit Breaker Mount		
Front Door Vent Window Ground Mount		
Front Door Vent Window Power Mount		
Front Door Vent Window Signal Mount		
Front Door Vent Window Control Mount		
Front Door Vent Window Module Mount		
Front Door Vent Window Sensor Mount		
Front Door Vent Window Actuator Mount		

VEHICLE FRONT	CONDITION
Windshield	
Windshield Wiper Arm / Blade	
Windshield Washer Nozzle	
Windshield Washer Reservoir	
Windshield Washer Pump	
Windshield Washer Hose	
Windshield Washer Switch	
Windshield Washer Wiring	
Windshield Washer Harness	
Windshield Washer Connector	
Windshield Washer Fuse	
Windshield Washer Relay	
Windshield Washer Circuit Breaker	
Windshield Washer Ground	
Windshield Washer Power	
Windshield Washer Signal	
Windshield Washer Control	
Windshield Washer Module	
Windshield Washer Sensor	
Windshield Washer Actuator	
Windshield Washer Motor Mount	
Windshield Washer Reservoir Mount	
Windshield Washer Pump Mount	
Windshield Washer Hose Mount	
Windshield Washer Switch Mount	
Windshield Washer Wiring Mount	
Windshield Washer Harness Mount	
Windshield Washer Connector Mount	
Windshield Washer Fuse Mount	
Windshield Washer Relay Mount	
Windshield Washer Circuit Breaker Mount	
Windshield Washer Ground Mount	
Windshield Washer Power Mount	
Windshield Washer Signal Mount	
Windshield Washer Control Mount	
Windshield Washer Module Mount	
Windshield Washer Sensor Mount	
Windshield Washer Actuator Mount	

REAR EXTERIOR	DR	PASS
Trunk Lid		
Rear Bumper		
Rear Bumper Cover / Bar / Guard		
Rear Bumper Guard / Rub Strip		
Rear Fender - Right		
Rear Fender - Left		
Rear Wheel / Rim		
Rear Tire		
Rear Wheel Well / Liner		
Rear Suspension / Control Arms		
Rear Door - Right		
Rear Door - Left		
Rear Window Glass		
Rear Door Handle		
Rear Door Mirror		
Rear Door Weatherstrip		
Rear Door Hinges		
Rear Door Lock		
Rear Door Trim Panel		
Rear Door Speaker		
Rear Door Window Regulator		
Rear Door Vent Window		
Rear Door Vent Window Glass		
Rear Door Vent Window Frame		
Rear Door Vent Window Weatherstrip		
Rear Door Vent Window Hinge		
Rear Door Vent Window Latch		
Rear Door Vent Window Regulator		
Rear Door Vent Window Trim		
Rear Door Vent Window Seal		
Rear Door Vent Window Motor		
Rear Door Vent Window Switch		
Rear Door Vent Window Wiring		
Rear Door Vent Window Harness		
Rear Door Vent Window Connector		
Rear Door Vent Window Fuse		
Rear Door Vent Window Relay		
Rear Door Vent Window Circuit Breaker		
Rear Door Vent Window Ground		
Rear Door Vent Window Power		
Rear Door Vent Window Signal		
Rear Door Vent Window Control		
Rear Door Vent Window Module		
Rear Door Vent Window Sensor		
Rear Door Vent Window Actuator		
Rear Door Vent Window Motor Mount		
Rear Door Vent Window Regulator Mount		
Rear Door Vent Window Glass Mount		
Rear Door Vent Window Frame Mount		
Rear Door Vent Window Weatherstrip Mount		
Rear Door Vent Window Hinge Mount		
Rear Door Vent Window Latch Mount		
Rear Door Vent Window Trim Mount		
Rear Door Vent Window Seal Mount		
Rear Door Vent Window Motor Mount		
Rear Door Vent Window Switch Mount		
Rear Door Vent Window Wiring Mount		
Rear Door Vent Window Harness Mount		
Rear Door Vent Window Connector Mount		
Rear Door Vent Window Fuse Mount		
Rear Door Vent Window Relay Mount		
Rear Door Vent Window Circuit Breaker Mount		
Rear Door Vent Window Ground Mount		
Rear Door Vent Window Power Mount		
Rear Door Vent Window Signal Mount		
Rear Door Vent Window Control Mount		
Rear Door Vent Window Module Mount		
Rear Door Vent Window Sensor Mount		
Rear Door Vent Window Actuator Mount		

VEHICLE REAR	CONDITION
Trunk Lid / Tailgate / Hatch	
Tail Light / Taillamp	
Rear Bumper	
Rear Bumper Guard	
Rear Bumper Cover / Bar / Guard	
Rear Bumper Guard / Rub Strip	
Rear Fender - Right	
Rear Fender - Left	
Rear Wheel / Rim	
Rear Tire	
Rear Wheel Well / Liner	
Rear Suspension / Control Arms	
Rear Door - Right	
Rear Door - Left	
Rear Window Glass	
Rear Door Handle	
Rear Door Mirror	
Rear Door Weatherstrip	
Rear Door Hinges	
Rear Door Lock	
Rear Door Trim Panel	
Rear Door Speaker	
Rear Door Window Regulator	
Rear Door Vent Window	
Rear Door Vent Window Glass	
Rear Door Vent Window Frame	
Rear Door Vent Window Weatherstrip	
Rear Door Vent Window Hinge	
Rear Door Vent Window Latch	
Rear Door Vent Window Regulator	
Rear Door Vent Window Trim	
Rear Door Vent Window Seal	
Rear Door Vent Window Motor	
Rear Door Vent Window Switch	
Rear Door Vent Window Wiring	
Rear Door Vent Window Harness	
Rear Door Vent Window Connector	
Rear Door Vent Window Fuse	
Rear Door Vent Window Relay	
Rear Door Vent Window Circuit Breaker	
Rear Door Vent Window Ground	
Rear Door Vent Window Power	
Rear Door Vent Window Signal	
Rear Door Vent Window Control	
Rear Door Vent Window Module	
Rear Door Vent Window Sensor	
Rear Door Vent Window Actuator	
Rear Door Vent Window Motor Mount	
Rear Door Vent Window Regulator Mount	
Rear Door Vent Window Glass Mount	
Rear Door Vent Window Frame Mount	
Rear Door Vent Window Weatherstrip Mount	
Rear Door Vent Window Hinge Mount	
Rear Door Vent Window Latch Mount	
Rear Door Vent Window Trim Mount	
Rear Door Vent Window Seal Mount	
Rear Door Vent Window Motor Mount	
Rear Door Vent Window Switch Mount	
Rear Door Vent Window Wiring Mount	
Rear Door Vent Window Harness Mount	
Rear Door Vent Window Connector Mount	
Rear Door Vent Window Fuse Mount	
Rear Door Vent Window Relay Mount	
Rear Door Vent Window Circuit Breaker Mount	
Rear Door Vent Window Ground Mount	
Rear Door Vent Window Power Mount	
Rear Door Vent Window Signal Mount	
Rear Door Vent Window Control Mount	
Rear Door Vent Window Module Mount	
Rear Door Vent Window Sensor Mount	
Rear Door Vent Window Actuator Mount	

INTERIOR	DR	PASS
Interior Trim		
Interior Panels		
Interior Upholstery		
Interior Headliner		
Interior Sunvisors		
Interior Dashboard		
Interior Instrument Cluster		
Interior Gauges		
Interior Switches		
Interior Steering Wheel		
Interior Steering Column		
Interior Horn		
Interior Floor Mats		
Interior Carpet		
Interior Seats		
Interior Seat Belts		
Interior Seat Belt Buckles		
Interior Seat Belt Retractors		
Interior Seat Belt Anchors		
Interior Seat Belt Webbing		
Interior Seat Belt Latch Plates		
Interior Seat Belt Tongues		
Interior Seat Belt Guides		
Interior Seat Belt Pretensioners		
Interior Seat Belt Load Limiters		
Interior Seat Belt Emergency Locking Retractors		
Interior Seat Belt Automatic Locking Retractors		
Interior Seat Belt Manual Locking Retractors		
Interior Seat Belt Inertia Reels		
Interior Seat Belt Webbing Guides		
Interior Seat Belt Latch Plate Guides		
Interior Seat Belt Tongue Guides		
Interior Seat Belt Pretensioner Guides		
Interior Seat Belt Load Limiter Guides		
Interior Seat Belt Emergency Locking Retractor Guides		
Interior Seat Belt Automatic Locking Retractor Guides		
Interior Seat Belt Manual Locking Retractor Guides		
Interior Seat Belt Inertia Reel Guides		
Interior Seat Belt Webbing Guide Mounts		
Interior Seat Belt Latch Plate Guide Mounts		
Interior Seat Belt Tongue Guide Mounts		
Interior Seat Belt Pretensioner Guide Mounts		
Interior Seat Belt Load Limiter Guide Mounts		
Interior Seat Belt Emergency Locking Retractor Guide Mounts		
Interior Seat Belt Automatic Locking Retractor Guide Mounts		
Interior Seat Belt Manual Locking Retractor Guide Mounts		
Interior Seat Belt Inertia Reel Guide Mounts		

REAR INTERIOR VAN / HATCHBACK	CONDITION
Rear Panels	
Rear Trim	
Rear Upholstery	
Rear Headliner	
Rear Sunvisors	
Rear Dashboard	
Rear Instrument Cluster	
Rear Gauges	
Rear Switches	
Rear Steering Wheel	
Rear Steering Column	
Rear Horn	
Rear Floor Mats	
Rear Carpet	
Rear Seats	
Rear Seat Belts	
Rear Seat Belt Buckles	
Rear Seat Belt Retractors	
Rear Seat Belt Anchors	
Rear Seat Belt Webbing	
Rear Seat Belt Latch Plates	
Rear Seat Belt Tongues	
Rear Seat Belt Guides	
Rear Seat Belt Pretensioners	
Rear Seat Belt Load Limiters	
Rear Seat Belt Emergency Locking Retractors	
Rear Seat Belt Automatic Locking Retractors	
Rear Seat Belt Manual Locking Retractors	
Rear Seat Belt Inertia Reels	
Rear Seat Belt Webbing Guides	
Rear Seat Belt Latch Plate Guides	
Rear Seat Belt Tongue Guides	
Rear Seat Belt Pretensioner Guides	
Rear Seat Belt Load Limiter Guides	
Rear Seat Belt Emergency Locking Retractor Guides	
Rear Seat Belt Automatic Locking Retractor Guides	
Rear Seat Belt Manual Locking Retractor Guides	
Rear Seat Belt Inertia Reel Guides	
Rear Seat Belt Webbing Guide Mounts	
Rear Seat Belt Latch Plate Guide Mounts	
Rear Seat Belt Tongue Guide Mounts	
Rear Seat Belt Pretensioner Guide Mounts	
Rear Seat Belt Load Limiter Guide Mounts	
Rear Seat Belt Emergency Locking Retractor Guide Mounts	
Rear Seat Belt Automatic Locking Retractor Guide Mounts	
Rear Seat Belt Manual Locking Retractor Guide Mounts	
Rear Seat Belt Inertia Reel Guide Mounts	

INTERIOR ACC	CONDITION
Hood / Windshield Shield	
Sun Visors	
Wiper Arms / Blade	
Antenna	
Trunk Lid Cover	
Trunk Luggage Shelf	
Trunk Mat / Liner	
Trunk Tie Down Hooks	
Luggage Rack	
Rear Tire Mount Assembly	

BOX INVENTORY	DR	PASS
Antenna / Shroud / Mast		
Battery		
Tool Box / Case / Bag		
Jack		
Jack Handle		
Lug Wrench		
Spare Tire		
Spare Wheel / Rim		
Spare Tire Cover		
Spare Tire Mount		
Spare Tire Lock		
Spare Tire Key		
Spare Tire Wrench		
Spare Tire Jack		
Spare Tire Jack Handle		
Spare Tire Lug Wrench		
Spare Tire Tool Box / Case / Bag		
Spare Tire Battery		
Spare Tire Antenna / Shroud / Mast		
Spare Tire Wiper Arms / Blade		
Spare Tire Trunk Lid Cover		
Spare Tire Trunk Luggage Shelf		
Spare Tire Trunk Mat / Liner		
Spare Tire Trunk Tie Down Hooks		
Spare Tire Luggage Rack		
Spare Tire Rear Tire Mount Assembly		

* Residue all over interior of windows.

Customers Initials

FUEL

E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F

BOX INV - Cont	QTY	COND
Trunk Liner		
Trunk Tie Down Hooks		
Luggage Rack		
Rear Tire Mount Assembly		
Spare Tire Mount Assembly		
Spare Tire Cover		
Spare Tire Lock		
Spare Tire Key		
Spare Tire Wrench		
Spare Tire Jack		
Spare Tire Jack Handle		
Spare Tire Lug Wrench		
Spare Tire Tool Box / Case / Bag		
Spare Tire Battery		
Spare Tire Antenna / Shroud / Mast		
Spare Tire Wiper Arms / Blade		
Spare Tire Trunk Lid Cover		
Spare Tire Trunk Luggage Shelf		
Spare Tire Trunk Mat / Liner		
Spare Tire Trunk Tie Down Hooks		
Spare Tire Luggage Rack		
Spare Tire Rear Tire Mount Assembly		

Condition Code	
BE-	Bent
BR-	Broken
CH-	Chipped
CR-	Chipped
CR-	Cracked
DE-	Dent
GO-	Gouged
LO-	Loose
MA-	Marred
MO-	Missing
MI-	Misdrawed
RS-	Rusted
RU-	Rubbed
SC-	Scratched
SO-	Soiled
TO-	Torn
WO-	Dedy
PF-	Paint Fade
SH-	Clear Coat Sc
HS-	Hairline Stretch

Radio / Stereo		Steering Column	
Radio Antenna		Steering Wheel	
Speakers		Horn	
Cassette Player		Floor Mats	
CD Player		Carpet	
Tape Player		Seats	
Clock		Seat Belts	
Cigarette Lighter		Seat Belt Buckles	
Ashtray		Seat Belt Retractors	
Glove Box		Seat Belt Anchors	
Center Console		Seat Belt Webbing	
Rear Seat		Seat Belt Latch Plates	
Rear Seat Belts		Seat Belt Tongues	
Rear Seat Belt Buckles		Seat Belt Guides	
Rear Seat Belt Retractors		Seat Belt Pretensioners	
Rear Seat Belt Anchors		Seat Belt Load Limiters	
Rear Seat Belt Webbing		Seat Belt Emergency Locking Retractors	
Rear Seat Belt Latch Plates		Seat Belt Automatic Locking Retractors	
Rear Seat Belt Tongues		Seat Belt Manual Locking Retractors	
Rear Seat Belt Guides		Seat Belt Inertia Reels	
Rear Seat Belt Pretensioners		Seat Belt Webbing Guides	
Rear Seat Belt Load Limiters		Seat Belt Latch Plate Guides	
Rear Seat Belt Emergency Locking Retractors		Seat Belt Tongue Guides	
Rear Seat Belt Automatic Locking Retractors		Seat Belt Pretensioner Guides	
Rear Seat Belt Manual Locking Retractors		Seat Belt Load Limiter Guides	
Rear Seat Belt Inertia Reels		Seat Belt Emergency Locking Retractor Guides	
Rear Seat Belt Webbing Guides		Seat Belt Automatic Locking Retractor Guides	
Rear Seat Belt Latch Plate Guides		Seat Belt Manual Locking Retractor Guides	
Rear Seat Belt Tongue Guides		Seat Belt Inertia Reel Guides	
Rear Seat Belt Pretensioner Guides		Seat Belt Webbing Guide Mounts	
Rear Seat Belt Load Limiter Guides		Seat Belt Latch Plate Guide Mounts	
Rear Seat Belt Emergency Locking Retractor Guides		Seat Belt Tongue Guide Mounts	
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Rear Seat Belt Latch Plate Guide Mounts		Seat Belt Manual Locking Retractor Guide Mounts	
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Rear Seat Belt Pretensioner Guide Mounts			
Rear Seat Belt Load Limiter Guide Mounts			
Rear Seat Belt Emergency Locking Retractor Guide Mounts			
Rear Seat Belt Automatic Locking Retractor Guide Mounts			
Rear Seat Belt Manual Locking Retractor Guide Mounts			
Rear Seat Belt Inertia Reel Guide Mounts			

Alarm		Alarm	
Code		Code	

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Vehicle Tracking

Status
POV Delivered to Customer

Location
Guam (Go/Co)

Year
2006

Make
KIA

Model
SPECTRA

Dropped off
12 November 2014

Required Delivery Date
24 December 2014

Reminder: IAL will notify you via email when your POV has arrived at the Destination VPC and is ready for pick-up. We'll send the email from no-reply@PCSmyPOV.com so you can quickly search for it. If it isn't in your email inbox, remember to check your Spam, Junk, Trash, Deleted Items, or Archive folders.

Please keep in mind that there are many variables related to port logistics that can affect the availability of vehicle pickup. Therefore, because of the time associated with customs, inspections, and/or other transit and arrival activities, **please do not arrive at the Destination VPC until you have received this notice** , regardless of the above status. An appointment, although not required, is highly recommended for pick-up and may be made by clicking here . If you have any questions regarding your POV's status, please call our Customer Service line at 855.389.9499 or customerservice@ialpov.us .

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TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
C.A. NO.: 2017-CP-23-04630

EXHIBIT "G"
Premium Renewal Letters
January 3, 2015 and
July 3, 2015

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

USAA®

AUTOMOBILE POLICY PACKET

TYRIN S YOUNG
PO1 USN
4 CROSS CLUB DR
GREENVILLE SC 29607-4358

GIC 02226 08 01 7103 0

POLICY PERIOD: EFFECTIVE FEB 10 2015 TO AUG 10 2015

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

For information about the available discounts and the factors we use to determine premiums, please read the enclosed flier, "Information Used to Determine Your Premium."

With this renewal, your premium has increased due to a rate change in your state or because of your policy's individual risk characteristics. See your Declarations for the new premium. Contact us if you have any questions.

Thank you for renewing your policy and allowing us to continue servicing your insurance needs. If you have any concerns or need to modify or cancel the renewal policy, please contact us immediately.

If your estimated mileage for the coming year is different than the mileage listed on your Declarations page, log on to usaa.com, enter Auto Policy Summary in Search and click Change Usage and Annual Mileage. Or, contact us at the number below.

Your Uninsured Motorists Bodily Injury Coverage (UMBI) and Uninsured Motorists Property Damage (UMPD) selection/rejection remains in effect. You may quote different coverage limits and make changes at any time to your policy on usaa.com. Or you may call us at 1-800-531-USAA (8722).

You may exclude from coverage any operator who does not qualify for the California Good Driver Discount. Please refer to the enclosed flier, "Information Used to Determine Your Premium."

This is not a bill. Any premium charge or change for this policy will be reflected on your next regular monthly statement. Your current billing statement should still be paid by the due date indicated.

To receive this document and others electronically, or manage your Auto Policy online, go to usaa.com.

For U.S. calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

ACS1

49708-0406

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ADDL INFO ON NEXT PAGE MAIL MCH-M-I

USAA GENERAL INDEMNITY COMPANY

(A Stock Insurance Company)

9800 Fredericksburg - San Antonio, Texas 78288

CALIFORNIA AUTO POLICY RENEWAL DECLARATIONS (ATTACH TO PREVIOUS POLICY)

RENEWAL OF

State	Veh	POLICY NUMBER
CA 568		02226 08 01G 7103 0

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE FEB 10 2015 TO AUG 10 2015

Named Insured and Address

TYRIN S YOUNG
PO1 USN
4 CROSS CLUB DR
GREENVILLE SC 29607-4358

OPERATORS
01 TYRIN S YOUNG
04 KAMIKA N YOUNG

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM		WORK/SCHOOL Miles One Way	WORK/SCHOOL Days Per Week
03	06	KIA	SPECTRA 4D	4 DOOR	14000	KNAFE121965297950		P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated.
VEH 03 SANTEE CA 92071-7738

* W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH 03 6-MONTH D=DED AMOUNT	VEH 03 6-MONTH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
PART A - LIABILITY								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		84.27						
PROPERTY DAMAGE EA ACC $ 25,000		91.05						
PART C - UNINSURED MOTORISTS								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		23.77						
WAIVER OF COLL DEDUCTIBLE		10.26						
PART D - PHYSICAL DAMAGE COVERAGE								
COMPREHENSIVE LOSS ACV LESS	D 500	66.86						
COLLISION LOSS ACV LESS	D 500	182.44						
RENTAL REIMBURSEMENT $ 30 A DAY/$ 900 MAXIMUM		35.30						
TOWING AND LABOR		8.24						
VEHICLE TOTAL PREMIUM		502.19						
TOTAL PREMIUM -		SEE FOLLOWING PAGE(S)						

LOSS PAYEE
VEH 03 CITIFINANCIAL AUTO, CORAOPOLIS PA

ENDORSEMENTS: ADDED 02-10-15 - NONE
REMAIN IN EFFECT(REFER TO PREVIOUS POLICY)- A400CA(03) A100CA(05) AOASA(01) A099(01) 5100CA(01)
INFORMATION FORMS: CADS(03) 13580(03) 94629(01)

VEH 03 AMF17000N

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JANUARY 3, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

5000 G 05-12
53384-05-12

0901119c9c2e0de3

USAA Confidential

ELECTRONICALLY FILED - 2018 Sep 03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

ELECTRONICALLY FILED - 2018 Sep 03 1:13 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

USAA GENERAL INDEMNITY COMPANY

(A Stock Insurance Company)
9800 Fredericksburg - San Antonio, Texas 78288

CALIFORNIA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

RENEWAL OF

State	Veh	POLICY NUMBER
CA	XXX	02226 08 01G 7104 0

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE FEB 10 2015 TO AUG 10 2015

Named Insured and Address

TYRIN S YOUNG
PO1 USN
4 CROSS CLUB DR
GREENVILLE SC 29607-4358

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM	WORK/SCHOOL Miles One Way	WORK/SCHOOL Days Per Week

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
6 MONTH PREMIUM $ 502.19								
PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL, STATEMENT TO FOLLOW.								
THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:								
VEH 03 - MEDICAL PAYMENTS, EXTENDED BENEFITS COVERAGE								

In WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JANUARY 3, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

5000 G 05-12
53384-05-12
0901119c9c2e0de3

USAA Confidential

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For **Roadside Assistance**: 800-531-8555

Report a claim, get coverage and deductible information, request a tow from the accident scene, schedule an appraisal or reserve a rental car using:

- usaa.com,
- USAA's Mobile App, or
- By calling **210-531-USAA (8722)**, our mobile phone shortcut number #8722 or 800-531-USAA.

California Evidence of Financial Responsibility

This ID card is evidence of liability insurance for your vehicle. The card is valid only as long as liability insurance remains in force. **Keep a copy of the ID card in your vehicle at all times.**

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident, or upon a law enforcement officer's request.

FCA1 Re.v. 6-13 50781-0513_02

CALIFORNIA EVIDENCE OF FINANCIAL RESPONSIBILITY

Name and Address of Insured NAIC 18600

KAMIKA N YOUNG
151 CENTURY DR APT 126C
GREENVILLE SC 29607-1547

TYRIN S YOUNG
KAMIKA N YOUNG

Insurance Company		
USAA GENERAL INDEMNITY COMPANY		
Policy Number	**Effective Date**	**Expiration Date**
02226 08 01G 7103 0	08/10/15	02/10/16
Vehicle Make	**Vehicle Identification Number**	**Year**
KIA	KNAFE121965297950	2006

This policy provides at least the minimum amounts of liability insurance required by the CA VEH CODE SECTION 16056 for the specified vehicle and named insureds and may provide coverage for other persons and other vehicles as provided by the insurance policy.

0901119c9c2e0de3

USAA Confidential

fold

back

California Evidence of Financial Responsibility
Keep this card.

IMPORTANT: The California Financial Responsibility Act (Section 16020) of the Vehicle Code requires every owner or operator of a vehicle subject to the requirements of the Financial Responsibility Act to carry evidence of financial responsibility in the vehicle at all times. Under vehicle code (Section 16028) every driver involved in an accident must provide evidence of financial responsibility at the scene. Failure to comply is an infraction and shall be punishable by fines, impoundment or license suspension.

Additional copies available at usaa.com

CONTACT US: 210-531-USAA(8722)
OR 800-531-USAA

9800 Fredericksburg Road, San Antonio, Texas 78288

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USAA®

AUTOMOBILE POLICY PACKET

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

GIC 02226 08 01 7103 0

POLICY PERIOD: EFFECTIVE AUG 10 2015 TO FEB 10 2016

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

Please refer to attached form entitled "Notice of Information Practices" for privacy notice information.

For information about the available discounts and the factors we use to determine premiums, please read the enclosed flier, "Information Used to Determine Your Premium."

Thank you for renewing your policy and allowing us to continue servicing your insurance needs. If you have any concerns or need to modify or cancel the renewal policy, please contact us immediately.

If your estimated mileage for the coming year is different than the mileage listed on your Declarations page, log on to usaa.com, enter Auto Policy Summary in Search and click Change Usage and Annual Mileage. Or, contact us at the number below.

Your Uninsured Motorists Bodily Injury Coverage (UMBI) and Uninsured Motorists Property Damage (UMPD) selection/rejection remains in effect. You may quote different coverage limits and make changes at any time to your policy on usaa.com. Or you may call us at 1-800-531-USAA (8722).

You may exclude from coverage any operator who does not qualify for the California Good Driver Discount. Please refer to the enclosed flier, "Information Used to Determine Your Premium."

This is not a bill. Any premium charge or change for this policy will be reflected on your next regular monthly statement. Your current billing statement should still be paid by the due date indicated.

To receive this document and others electronically, or manage your Auto Policy online, go to usaa.com.

For U.S. calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

ACS1

49708-0406

ADDL INFO ON NEXT PAGE MAIL MCH-M-I

RENEWAL OF

USAA GENERAL INDEMNITY COMPANY

(A Stock Insurance Company)

9800 Fredericksburg - San Antonio, Texas 78288

CALIFORNIA AUTO POLICY RENEWAL DECLARATIONS (ATTACH TO PREVIOUS POLICY)

State	Veh	POLICY NUMBER
CA	568	02226 08 01G 7103 0

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE AUG 10 2015 TO FEB 10 2016

Named Insured and Address

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

OPERATORS
01 TYRIN S YOUNG
04 KAMIKA N YOUNG

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM		WORK/SCHOOL Miles One Way	WORK/SCHOOL Days per Week
03	06	KIA	SPECTRA 4D	4 DOOR	14000	KNAFE121965297950		P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure
VEH 03 SANTEE CA 92071-7738

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH 03 6-MONTH D=DED AMOUNT	VEH 03 6-MONTH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
PART A - LIABILITY								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		84.27						
PROPERTY DAMAGE EA ACC $ 25,000		91.05						
PART C - UNINSURED MOTORISTS								
BODILY INJURY EA PER $ 25,000								
EA ACC $ 50,000		23.77						
WAIVER OF COLL DEDUCTIBLE		10.26						
PART D - PHYSICAL DAMAGE COVERAGE								
COMPREHENSIVE LOSS ACV LESS	D 500	66.86						
COLLISION LOSS ACV LESS	D 500	182.44						
RENTAL REIMBURSEMENT $ 30 A DAY/$ 900 MAXIMUM		35.30						
TOWING AND LABOR		8.24						
VEHICLE TOTAL PREMIUM		502.19						
TOTAL PREMIUM - SEE FOLLOWING PAGE(S)								

LOSS PAYEE
VEH 03 CITIFINANCIAL AUTO, CORAOPOLIS PA

ENDORSEMENTS: ADDED 08-10-15 - NONE
REMAIN IN EFFECT(REFER TO PREVIOUS POLICY)- A400CA(03) A100CA(05) AOASA(01) A099(01) 5100CA(01)
INFORMATION FORMS: NIPFCA(05) CADS(03) 13580(03)

VEH 03 AMF17000N

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JULY 3, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

5000 G 05-12
53384-05-12

0901119c9c2e0de3

USAA Confidential

ELECTRONICALLY FILED - 2018 Sep 03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

ELECTRONICALLY FILED - 2018 Sep 06 03:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

USAA GENERAL INDEMNITY COMPANY

(A Stock Insurance Company)

9800 Fredericksburg - San Antonio, Texas 78288

CALIFORNIA AUTO POLICY RENEWAL DECLARATIONS (ATTACH TO PREVIOUS POLICY)

RENEWAL OF

State	Veh	POLICY NUMBER
CA	XXX	02226 08 01G 7104 0

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE AUG 10 2015 TO FEB 10 2016

Named Insured and Address

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE* SYM		WORK/SCHOOL Miles One Way	WORK/SCHOOL Days Per Week

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES / LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $	VEH D=DED AMOUNT	VEH PREMIUM $
6 MONTH PREMIUM $ 502.19								
PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL, STATEMENT TO FOLLOW.								
THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:								
VEH 03 - MEDICAL PAYMENTS, EXTENDED BENEFITS COVERAGE								

In WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date JULY 3, 2015

Steven Alan Bennett, Secretary

Alan W. Krapf, President

5000 G 05-12
53384-05-12
0901119c9c2e0de3

USAA Confidential

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USAA®

SUPPLEMENTAL INFORMATION

EFFECTIVE AUG 10 2015 TO FEB 10 2016

The following approximate premium discounts or credits have already been applied to reduce your policy premium costs.

NOTE: Age or **senior citizen** status, if allowed by your state/location, was taken into consideration when your rates were set and your premiums have already been adjusted.

VEHICLE 03	
GOOD DRIVER DISCOUNT	-$ 125.55
OPERATOR 04	
MULTI-POLICY DISCOUNT	-$ 65.49
RENTERS, ALL OTHER PROPERTY AND CASUALTY LINES	
PERSISTENCY DISCOUNT	-$ 33.82
PREMIER OPERATOR DISCOUNT	-$ 132.46

ELECTRONICALLY FILED 2/8/2018 9:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304631

CALIFORNIA EVIDENCE OF FINANCIAL RESPONSIBILITY

Name and Address of Insured NAIC 18600

KAMIKA N YOUNG
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

TYRIN S YOUNG
KAMIKA N YOUNG

Insurance Company
USAA GENERAL INDEMNITY COMPANY

Policy Number	Effective Date	Expiration Date
02226 08 01G 7103 0	08/10/15	02/10/16

Vehicle Make/Vehicle Identification Number		Year
KIA	KNAFE121965297950	2006

This policy provides at least the minimum amounts of liability insurance required by the CA VEH CODE SECTION 16056 for the specified vehicle and named insureds and may provide coverage for other persons and other vehicles as provided by the insurance policy.

fold

back

California Evidence of Financial Responsibility
Keep this card.

IMPORTANT: The California Financial Responsibility Act (Section 16020) of the Vehicle Code requires every owner or operator of a vehicle subject to the requirements of the Financial Responsibility Act to carry evidence of financial responsibility in the vehicle at all times. Under vehicle code (Section 16028) every driver involved in an accident must provide evidence of financial responsibility at the scene. Failure to comply is an infraction and shall be punishable by fines, impoundment or license suspension.

Additional copies available at usaa.com

CONTACT US: 210-531-USAA(8722)
OR 800-531-USAA

9800 Fredericksburg Road, San Antonio, Texas 78288

California Automobile Insurance Identification Cards

We've issued two identification cards as evidence of liability insurance for your vehicle(s). These cards are valid only as long as liability insurance remains in force. **Keep a copy of the ID card in your vehicle at all times.**

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident, or upon a law enforcement officer's request.

53CA1 Rev. 06-13 07/03/15 55047-0513_03

CALIFORNIA EVIDENCE OF FINANCIAL RESPONSIBILITY

Name and Address of Insured NAIC 18600

KAMIKA N YOUNG
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

TYRIN S YOUNG
KAMIKA N YOUNG

Insurance Company
USAA GENERAL INDEMNITY COMPANY

Policy Number	Effective Date	Expiration Date
02226 08 01G 7103 0	08/10/15	02/10/16

Vehicle Make/Vehicle Identification Number		Year
KIA	KNAFE121965297950	2006

This policy provides at least the minimum amounts of liability insurance required by the CA VEH CODE SECTION 16056 for the specified vehicle and named insureds and may provide coverage for other persons and other vehicles as provided by the insurance policy.

fold

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Additional copies available at usaa.com

CONTACT US: 210-531-USAA(8722)
OR 800-531-USAA

9800 Fredericksburg Road, San Antonio, Texas 78288

0901119c9c2e0de3

USAA Confidential

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

For Roadside Assistance: 800-531-8555

Report a claim, get coverage and deductible information, request a tow from the accident scene, schedule an appraisal or reserve a rental car using:

- usaa.com,
- USAA's Mobile App, or
- By calling 210-531-USAA (8722), our mobile phone shortcut number #8722 or 800-531-USAA.

California Evidence of Financial Responsibility

This ID card is evidence of liability insurance for your vehicle. The card is valid only as long as liability insurance remains in force. **Keep a copy of the ID card in your vehicle at all times.**

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident, or upon a law enforcement officer's request.

FCA1 Rev. 6-13 50781-0513_02

CALIFORNIA EVIDENCE OF FINANCIAL RESPONSIBILITY

Name and Address of Insured NAIC 18600

KAMIKA N YOUNG
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

TYRIN S YOUNG
KAMIKA N YOUNG

Insurance Company		
USAA GENERAL INDEMNITY COMPANY		
Policy Number	Effective Date	Expiration Date
02226 08 01G 7103 0	08/10/15	02/10/16
Vehicle Make/Vehicle Identification Number		Year
KIA KNAFE121965297950		2006

This policy provides at least the minimum amounts of liability insurance required by the CA VEH CODE SECTION 16056 for the specified vehicle and named insureds and may provide coverage for other persons and other vehicles as provided by the insurance policy.

0901119c9c2e0de3

USAA Confidential

fold

back

California Evidence of Financial Responsibility
Keep this card.

IMPORTANT: The California Financial Responsibility Act (Section 16020) of the Vehicle Code requires every owner or operator of a vehicle subject to the requirements of the Financial Responsibility Act to carry evidence of financial responsibility in the vehicle at all times. Under vehicle code (Section 16028) every driver involved in an accident must provide evidence of financial responsibility at the scene. Failure to comply is an infraction and shall be punishable by fines, impoundment or license suspension.

Additional copies available at usaa.com

CONTACT US: 210-531-USAA(8722)
OR 800-531-USAA

9800 Fredericksburg Road, San Antonio, Texas 78288

USAA®

9800 Fredericksburg Road
San Antonio, Texas 78288
Visit us at usaa.com

Statement

1839	52,283	375
SETTLEMENT DATE	USAA NUMBER	
SEE BELOW	02226 08 01	

52,283 375

TYRIN S YOUNG
PO1 USN
1409 ROPER MOUNTAIN RD APT 240
GREENVILLE SC 29615-5164

TO UPDATE POLICIES GO TO
USAA.COM OR CALL
1-800-531-8722
FOR BILLING AND PAYMENT
INQUIRIES GO TO USAA.COM OR CALL
1-800-531-8722
TO REPORT A CLAIM, CALL
1-800-531-8722

MONTHLY ACTIVITY

BALANCE ON LAST STATEMENT		$ 1,039.48
PAYMENT-THANK YOU	07-31-15	80.39CR
PAYMENT-THANK YOU	08-14-15	80.40CR
ACCOUNT BALANCE AS OF 08-17-15		$ 878.69

EFFECTIVE DATE	POLICIES BEING BILLED	PAYMENT PLAN OPTIONS		
		BALANCE	REGULAR PLAN	EXTENDED PLAN
08-10-15	GIC AUTO POLICY 7103 0 06 KIA	$ 418.50	$ 167.39	$ 83.69
07-17-15	GIC AUTO POLICY 7105 0 01 FORD	$ 305.08	$ 122.03	$ 61.01
08-10-15	GIC VPP POLICY 91C	$ 28.42	$ 4.30	$ 2.58
07-17-15	GIC RENTERS POLICY REN 003	$ 126.69	$ 19.19	$ 11.51
	TOTALS	$ 878.69	$ 312.91	$ 158.79

YOUR BANK ACCOUNT WILL BE DEBITED FOR $ 79.39 ON 09-01-2015. ANY CHANGES MADE TO THE AMOUNT MUST BE MADE FIVE BUSINESS DAYS PRIOR TO THE DEBIT DATE. YOU WILL NOT RECEIVE A MONTHLY NOTIFICATION IN THE MAIL IF THE PREMIUM AMOUNT REMAINS THE SAME FROM PRECEDING MONTHS. COURTESY COPIES OF YOUR STATEMENTS WILL CONTINUE TO BE AVAILABLE ON USAA.COM.

YOUR BANK ACCOUNT WILL BE DEBITED FOR $ 79.40 ON 09-15-2015. ANY CHANGES MADE TO THE AMOUNT MUST BE MADE FIVE BUSINESS DAYS PRIOR TO THE DEBIT DATE. YOU WILL NOT RECEIVE A MONTHLY NOTIFICATION IN THE MAIL IF THE PREMIUM AMOUNT REMAINS THE SAME FROM PRECEDING MONTHS. COURTESY COPIES OF YOUR STATEMENTS WILL CONTINUE TO BE AVAILABLE ON USAA.COM.

TO FURTHER OUR MISSION OF BEING THE PROVIDER OF CHOICE FOR THE MILITARY COMMUNITY WE HAVE OPENED MEMBERSHIP TO ALL MILITARY RETIREES AND THOSE WHO HAVE HONORABLY SEPARATED. DO YOU KNOW ANYONE WHO MAY NOW BE ABLE TO ENJOY THE BENEFITS OF MEMBERSHIP? TELL THEM ABOUT US OR SHARE USAA AT USAA.COM/JOIN.

PREPARE FOR THE POSSIBILITY OF BEING DEPLOYED. CALL 1-800-531-8722 AND ASK FOR OUR DEPLOYMENT GUIDE, WHICH INCLUDES TIPS, SUGGESTIONS AND CHECKLISTS TO MAKE A DEPLOYMENT MORE MANAGEABLE.

COMPANY CODES AND IMPORTANT INFORMATION ON REVERSE

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

TRYIN S. YOUNG, SR., ET AL VS. USAA GENERAL INSURANCE
C.A. NO.: 2017-CP-23-04630

EXHIBIT "H"
Certificate of Appointment

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	
	)	**CERTIFICATE OF APPOINTMENT**
IN THE MATTER OF:	)	
MICAH ALEXANDER YOUNG	)	CASE NUMBER: 2015ES2302789
(Decedent)	)	

This is to certify that

TYRIN SAVAHYA YOUNG

is the duly qualified

☒ **PERSONAL REPRESENTATIVE**
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the **6th day of January, 2016**, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

EXECUTED: September 17, 2018

DEBORA A. FAULKNER By: LMA (initials)
PROBATE COURT JUDGE

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

ELECTRONICALLY FILED - 2018 Sep 19 6:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF GREENVILLE	)	
	)	**CERTIFICATE OF APPOINTMENT**
IN THE MATTER OF:	)	
TYRIN SAVAHYA YOUNG JR	)	CASE NUMBER: 2015ES2302788
(Decedent)	)	

This is to certify that

TYRIN SAVAHYA YOUNG

is the duly qualified

☒ **PERSONAL REPRESENTATIVE**
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the **6th day of January, 2016**, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

EXECUTED: September 17, 2018

DEBORA A. FAULKNER By: lma (initials)
PROBATE COURT JUDGE

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **MOTION FOR PROTECTIVE ORDER**

TO: Russell Guest, Attorney for Plaintiffs

PLEASE TAKE NOTICE, that Defendant, USAA General Indemnity Company ("USAA"), pursuant to Rule 26(c)(4) of the South Carolina Rules of Civil Procedure, hereby move this Court for a protective order or an order quashing the attached Notice of Deposition as Exhibit A. The Plaintiff is attempting to invoke SCRCP 30(b)(6) to depose a representative of USAA on issues that are confidential, privileged or irrelevant to the sole issue at hand – whether a California Automobile Policy should be reformed to a South Carolina policy that included additional underinsured motorist benefits that were not contractor for or paid for under the California policy. As previously discussed with the Plaintiff's attorney, the Defendant hereby objects to this Notice as being overly burdensome in that it requires the Defendant to identify designees on subjects that are not in dispute in the lawsuit, involved privileged and confidential communications as to the Defendant's conversations with its attorneys and issues that are otherwise irrelevant

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

to the claims asserted in the Plaintiff's Complaint. In addition to those general objections, the Defendant hereby identifies the following objections to the specific topics identified in the Plaintiff's 30(b)6 Deposition Notice:

Topic	Objection
1. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to the subject policy No.022260801G71030 (the Policy).	Defendant objects to this topic on that the grounds that: 1. It is over burdensome in that the Plaintiff and his wife would have spoken to numerous agents or representatives. There is no one person who would be able to testify to any additional details other than what has been disclosed at this time (i.e. that the policy was changed to states based upon where the Plaintiff was stationed) 2. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence
2. Conversations between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to the Policy.	Defendant objects to this topic on that the grounds that: 1. It is over burdensome in that the Plaintiff and his wife would have spoken to numerous agents or representatives. There is no one person who would be able to testify to any additional details other than what has been disclosed at this time (i.e. that the policy was changed to states based upon where the Plaintiff was stationed). 2. The topic is seeks information that is not relevant to the claims and

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

	defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.
3. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to policy no. 022260801G71050.	Defendant objects to this topic on that the grounds that: 1. It is over burdensome in that the Plaintiff and his wife would have spoken to numerous agents or representatives. There is no one person who would be able to testify to any additional details other than what has been disclosed at this time (i.e. that the policy was changed to states based upon where the Plaintiff was stationed). 2. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.
4. Conversation between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to policy no. 022260801G71050	Defendant objects to this topic on that the grounds that: 1. It is over burdensome in that the Plaintiff and his wife would have spoken to numerous agents or representatives. There is no one person who would be able to testify to any additional details other than what has been disclosed at this time (i.e. that the policy was changed to states based upon where the Plaintiff was stationed). 2. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

	evidence.
5. USAA's underwriting policies and procedures for issuing automobile insurance coverage in South Carolina.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence. 2. The topic seeks information that is confidential and proprietary in nature.
6. USAA's policies and procedures regarding the utilization of its classification codes when issuing, changing and renewing automobile insurance coverage.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence. 2. The topic seeks information that is confidential and proprietary in nature. 3. The topic is vague, unclear and ambiguous.
7. USAA's definition of the term "garaged" as it applies to USAA automobile policies.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

8. USAA's policies and procedures for issuing or renewing a policy for automobile insurance coverage by telephone.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.
9. USAA's Accepted methods for insured communicating with USAA in regards to policy changes.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.
10. USAA's policies, procedures for recording and retention of conversations with customers purchasing, changing or renewing automobile coverage by telephone	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.
11. USAA's policies, procedures and training guidelines for what responsive actions should be taken by a representative receiving a customer call regarding a change in location of a covered vehicle.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence.

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12. All facts and documents upon which you base the Fifth Defense contained in your Answer and Counterclaim alleging Plaintiffs' Failure to Comply with Conditions Precedent.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence. 2. After Plaintiff's deposition, the Defendant waives this defense based upon the Plaintiff's statements that they are not alleging that the subject vehicle was ever transported or located in the State of South Carolina after 2009.
13. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment - No Coverage.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence. 2. The topic seeks information that is confidential and proprietary in nature. 3. The topic is vague, unclear and ambiguous. 4. The facts and documents regarding why coverage under the California Policy have been produced and are not in dispute. Even the Plaintiff admitted that the policy language is clear and unambiguous.

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

14. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment—Breach of Insurance Agreement and Estoppel.	Defendant objects to this topic on that the grounds that: 1. The topic is seeks information that is not relevant to the claims and defenses asserted in this action nor reasonably calculated to lead to the discovery of relevant or admissible evidence. 2. The topic seeks information that is confidential and proprietary in nature. 3. The topic is vague, unclear and ambiguous. 4. After Plaintiff's deposition, the Defendant waives the defense of breach of contract based upon the Plaintiff's statements that they are not alleging that the subject vehicle was ever transported or located in the State of South Carolina after 2009. 5. It is undisputed that the Plaintiff has been paid the full liability and underinsured motorist limits available under the South Carolina Policy.

I hereby certify that I have communicated with opposing counsel and attempted in good faith to resolve the matter contained in this motion.

(Signature Block on Next Page)

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

CLAWSON and STAUBES, LLC

s/Patrick L. "Trey" Still, III
Patrick L. "Trey" Still, III
Bar No.: 74875
1000 E North Street
Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: tstill@clawsonandstaubes.com
Attorney for Defendant

Greenville, South Carolina

July 25, 2018

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **NOTICE OF RULE 30(B)(6) DEPOSITION OF DEFENDANT USAA GENERAL INDEMNITY COMPANY**

TO: DEFENDANT USAA GENERAL INDEMNITY COMPANY AND ITS ATTORNEY PATRICK "TREY" STILL, ESQ.

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 (b)(6), SCRCP the Plaintiffs, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, by and through their undersigned counsel will take the testimony of a designated officer(s) or other persons who consent to testify on behalf of Defendant USAA General Indemnity Company ("USAA"), by deposition before a person duly authorized by law to administer oaths on **August 3, 2018, beginning at 9:00 a.m.,** and will be held in the offices of Clawson and Staubes, 1000 E North St #200, Greenville, SC 29601. The Deponent shall designate the person or persons to testify as to matters known or reasonably available to Defendant USAA General Indemnity Company that will bind the company to the answers provided with respect to the items listed in **Exhibit A** attached and incorporated herein. You are invited to attend and take such part as shall be fit and proper.

GUEST & BRADY, LLC

Richard K. Allen, III S.C. Bar No. 74865
900 E. North Street, Ste 210
Greenville, SC 29601
Tel: (864) 233-7200
Fax: (864) 233-3519
richardallen@guestbrady.com
ATTORNEYS FOR THE PLAINTIFFS

Date: 7/6, 2018
Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

Exhibit A – Notice of 30 (b)(6) Deposition of USAA

1. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to the subject policy No. 022260801G71030 (the Policy).

2. Conversations between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to the Policy.

3. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to policy no. 022260801G71050.

4. Conversations between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to policy no. 022260801G71050.

5. USAA's underwriting policies and procedures for issuing automobile insurance coverage in South Carolina.

6. USAA's policies and procedures regarding the utilization of its classification codes when issuing, changing and renewing automobile insurance coverage.

7. USAA's definition of the term "garaged" as it applies to USAA automobile policies.

8. USAA's policies and procedures for issuing or renewing a policy for automobile insurance coverage by telephone.

9. USAA's accepted methods for insureds communicating with USAA in regards to policy changes.

10. USAA's policies and procedures for recording and retention of conversations with customers purchasing, changing or renewing automobile coverage by telephone.

11. USAA's policies, procedures and training guidelines for what responsive actions should be taken by a representative receiving a customer call regarding a change in location of a covered vehicle.

12. All facts and documents upon which you base the Fifth Defense contained in your Answer and Counterclaim alleging Plaintiffs' Failure to Comply with Conditions Precedent.

13. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment – No Coverage.

14. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment – Breach of Insurance Agreement and Estoppel.

ELECTRONICALLY FILED - 2018 Jul 25 10:35 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP230630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT I have on this 6th day of July, 2018, served on behalf of Plaintiffs, a copy of the **Notice of Rule 30(b)(6) Deposition of the Defendant USAA General Indemnity Company** in the above-titled action by depositing the same in the United States Mail with sufficient postage attached, as follows:

Patrick "Trey" Still, Esquire
Clawson and Staubes
1000 E. North St, Ste 200
Greenville, SC 29601

Sherry J. Crowe
Legal Assistant Russell F. Guest and
Richard K. Allen, III

ELECTRONICALLY FILED - 2018 Sep 05 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **PLAINTIFF'S MOTION TO COMPEL ATTENDANCE AT RULE 30(B)(6) DEPOSITION**

TO: PATRICK "TREY" STILL, ESQ., ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, by and through his undersigned attorneys, moves the Court, pursuant to Rules 26, 30, and 37, SCRCP, for an order compelling Defendant USAA General Indemnity Company ("USAA") to attend and fully participate in a Rule 30(b)(6) deposition as noticed by the Plaintiff in the above-captioned action. In support of this motion, Plaintiff would show unto the Court that Plaintiff's counsel noticed the Rule 30(b)(6) deposition of USAA on July 6, 2018 by serving a copy of said notice upon USAA's attorney of record. (A copy of the Deposition Notice is attached and incorporated herein as **Exhibit A.**) The deposition was scheduled to take place on August 3, 2018 at the office of USAA's attorney. Prior to the scheduled date of the deposition, Defendant filed a Motion for a Protective Order on July 25, 2018 objecting to the Notice of Deposition and all topics of inquiry on the alleged grounds that such matters are either confidential, privileged, irrelevant and overly burdensome. In response, however, Plaintiff would

submit that such matters of inquiry fall squarely within the scope of Rules 26 & 30 (B)(6), SCRCP and applicable case law, and, as such, the Court should compel USAA to appear and fully participate in the deposition as noticed.

WHEREFORE, Plaintiff moves the Court for an order compelling Defendant USAA to appointment one or more representatives to attend and fully participate in the deposition as soon as possible. In addition, the Court should order Defendant to pay the costs and attorney's fees necessitated by this motion and award such other and further relief in favor of the Plaintiff as the court may deem just and appropriate. This motion is supported by the laws of the State of South Carolina, both common and statutory, together with any affidavits, memoranda and other evidence filed with the Court prior to any hearing.

GUEST & BRADY, LLC

s: Richard K. Allen, III
Richard K. Allen, III S.C. Bar No. 74865
Russell F. Guest S.C. Bar No. 64250
900 E. North Street, Ste 210
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ATTORNEYS FOR THE PLAINTIFF

September 4, 2018
Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Sep 05 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

EXHIBIT "A"

Guest & Brady, LLC
ATTORNEYS AT LAW

Russell Franklin Guest, Esq.

Kevin Phillip Brady, Esq.
Licensed in SC & FL

Richard Kingsley Allen, III Esq.

900 East North Street Suite 210
Greenville, SC 29601

Telephone: (864) 233-7200
Facsimile: (864) 242-3667
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July 6, 2018

Patrick "Trey" Still, Esquire
Clawson and Staubes
1000 E. North St, Ste 200
Greenville, SC 29601

RE: Tyrin Young, Sr., et al vs. USAA General Indemnity Company
C.A. No.: 2017-CP-23-04630

Dear Trey:

Pursuant to our conversation after the conclusion of Plaintiffs' recent depositions, I am proceeding with serving the enclosed **Notice of Rule 30(b)(6) Deposition of the Defendant USAA General Indemnity Company**, along with the **Certificate of Mailing** in regards to the above referenced matter. The deposition is scheduled for **August 3, 2018, at 9:00 a.m.**, and will be held in your office.

With kind regards, I remain

Sincerely,

GUEST & BRADY, LLC

Richard K. Allen, III

RKA/sjc
Enclosures

ELECTRONICALLY FILED - 2018 Sep 05 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

ELECTRONICALLY FILED - 2018 Sep 05 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **NOTICE OF RULE 30(B)(6) DEPOSITION OF DEFENDANT USAA GENERAL INDEMNITY COMPANY**

TO: DEFENDANT USAA GENERAL INDEMNITY COMPANY AND ITS ATTORNEY PATRICK "TREY" STILL, ESQ.

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 (b)(6), SCRCP the Plaintiffs, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, by and through their undersigned counsel will take the testimony of a designated officer(s) or other persons who consent to testify on behalf of Defendant USAA General Indemnity Company ("USAA"), by deposition before a person duly authorized by law to administer oaths on **August 3, 2018, beginning at 9:00 a.m.,** and will be held in the offices of Clawson and Staubes, 1000 E North St #200, Greenville, SC 29601. The Deponent shall designate the person or persons to testify as to matters known or reasonably available to Defendant USAA General Indemnity Company that will bind the company to the answers provided with respect to the items listed in **Exhibit A** attached and incorporated herein. You are invited to attend and take such part as shall be fit and proper.

GUEST & BRADY, LLC

Richard K. Allen, III S.C. Bar No. 74865
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ATTORNEYS FOR THE PLAINTIFFS

Date: 7/6, 2018
Greenville, South Carolina

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Exhibit A – Notice of 30 (b)(6) Deposition of USAA

1. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to the subject policy No. 022260801G71030 (the Policy).

2. Conversations between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to the Policy.

3. Facts, opinions, non-privileged communications, notes and documents regarding the purchase, renewal(s), and any changes (i.e. vehicle locations and garaging) to policy no. 022260801G71050.

4. Conversations between representatives of USAA and the Plaintiffs regarding the purchase, renewals and any changes to policy no. 022260801G71050.

5. USAA's underwriting policies and procedures for issuing automobile insurance coverage in South Carolina.

6. USAA's policies and procedures regarding the utilization of its classification codes when issuing, changing and renewing automobile insurance coverage.

7. USAA's definition of the term "garaged" as it applies to USAA automobile policies.

8. USAA's policies and procedures for issuing or renewing a policy for automobile insurance coverage by telephone.

9. USAA's accepted methods for insureds communicating with USAA in regards to policy changes.

10. USAA's policies and procedures for recording and retention of conversations with customers purchasing, changing or renewing automobile coverage by telephone.

11. USAA's policies, procedures and training guidelines for what responsive actions should be taken by a representative receiving a customer call regarding a change in location of a covered vehicle.

12. All facts and documents upon which you base the Fifth Defense contained in your Answer and Counterclaim alleging Plaintiffs' Failure to Comply with Conditions Precedent.

13. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment – No Coverage.

14. All facts and documents upon which you base the Eighth Defense and First Counterclaim contained in your Answer and Counterclaim alleging Declaratory Judgment – Breach of Insurance Agreement and Estoppel.

ELECTRONICALLY FILED - 2018 Sep 05 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT I have on this 6th day of July, 2018, served on behalf of Plaintiffs, a copy of the **Notice of Rule 30(b)(6) Deposition of the Defendant USAA General Indemnity Company** in the above-titled action by depositing the same in the United States Mail with sufficient postage attached, as follows:

Patrick "Trey" Still, Esquire
Clawson and Staubes
1000 E. North St, Ste 200
Greenville, SC 29601

Sherry J. Crowe
Legal Assistant Russell F. Guest and
Richard K. Allen, III

ELECTRONICALLY FILED - 2018 Sep 19 6:24 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, Vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL ATTENDANCE AT RULE 30(B)(6) DEPOSITION AND IN OPPOSITION TO DEFENDANT USAA GENERAL INDEMNITY COMPANY'S MOTION FOR PROTECTIVE ORDER**

Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14 ("Plaintiff"), by and through his undersigned attorneys hereby submits this Memorandum in support of its Motion to Compel Attendance at Rule 30(b)(6) Deposition and in Opposition to Defendant, USAA General Indemnity Company's ("USAA"), Motion for Protective Order.

PROCEDURAL AND FACTUAL BACKGROUND

With regard to the underlying facts and procedural history, Plaintiff craves reference to its Memorandum in Opposition to Defendant's Motion for Summary Judgment filed concurrently herewith.

Plaintiff and his wife, Kamika Young, were deposed by counsel for USAA on June 29, 2018. Plaintiff's were questioned extensively on the issues and voluminous documents related to this case. On July 6, 2018 counsel for Plaintiff served a copy of the Notice of 30 (B)(6) deposition on counsel for USAA. The deposition was scheduled to take place on August 3, 2018. Counsel for USAA filed the subject motion for a protective order on July 25, 2018 objecting the

notice of deposition and all topics of inquiry. In support of its motion, USAA raises boilerplate objections that the topics are either overly burdensome, vague, not relevant or they seek confidential information.

DISCUSSION

Parties are entitled to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party," . . . Rule 26 (b)(1), SCRCP. "The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed." *Samples v. Mitchell*, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (Ct. App. 1997). In fact, the information sought need not be admissible so long as it "appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

Rule 30(b)(6), SCRCP, permits a party to notice as the deponent a corporation and to describe the matters on which examination is requested. In response, the organization must designate one or more persons to testify on its behalf. The Rule further states that the designees must testify as to the matters known or reasonably available to the organization. Thus, the scope of inquiry is not limited to the designee's personal knowledge. The Rule is designed to require the designee to present the corporation's "position" on the topic as opposed to his/her personal opinion. *United States v. Massachusetts Indus. Fin. Agency*, 162 F.R.D. 410, 412 (D. Mass. 1995); *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 21 (E.D. Pa. 1986). It is impermissible for an organization to simply object to a topic on the grounds that it does not have a position as to a

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particular matter. Since the corporation enjoys the protection of being a corporation, it required to designate persons to speak on its behalf and cannot evade responding simply because they don't know what the corporation's position is on a topic.

Thus, courts have routinely held that the law imposes upon the corporation a duty to prepare the witness. Even if the documents are voluminous and the review of those documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed. *Calzaturficio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co.*, 201 F.R.D. 33, 37 (D. Mass. 2001). The burden upon the responding party, to prepare a knowledgeable Rule 30(b)(6) witness, may be an onerous one, but we are not aware of any less onerous means of assuring that the position of a corporation that is involved in litigation, can be fully and fairly explored. *Id.* (citations omitted).

In *United States v. Taylor*, the Court determined that a thorough, "reasonable" investigation may require an organization to rely on business records, other documents, interviews with present and former employees and the like., 166 F.R.D. 356, 361, affirmed, 166 F.RD. 367 (M.D.N.C. 1996). This duty requires a good faith effort of the designee to find out the relevant facts, including collecting information, reviewing documents, and interviewing employees with personal knowledge. *Wilson v. Lakner*, 228 F.R.D. 524, 526 (D. Md. 2005).

Moreover, the designee must not only testify about facts within the corporation's knowledge, but also about subjective beliefs and opinions. *Lapenna*, 110 F.R.D. at 20. The corporation must also provide its interpretation of documents and events. *Lerardi v. Lorillard Inc.* No. 90-7049, 1991 WL 158911 (E.D. Pa. Aug. 13, 1991) (unreported). The designee then represents the corporation just as an individual would represent him or herself at a deposition. Were it otherwise, a corporation could deceitfully select at trial the most convenient answer

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presented by a number of finger-pointing witnesses at the depositions. *See Lapenna*, 110 F.R.D. at 25.

Conversations between the Plaintiffs and USAA are clearly relevant considering that it was the Youngs' habit and practice to communicate by telephone with USAA regarding all policy matters. USAA's policies and procedures regarding the purchase, renewal and changes to policies by telephone are relevant and appropriate to this dispute. USAA disputes that the Youngs properly communicated with USAA regarding changes to the policy. Counsel for USAA questioned the Plaintiffs extensively regarding the purchase, renewal and changes to the policy. The Youngs were also questioned extensively regarding their communications with USAA as well as their location and location of the vehicle. USAA disputes that the vehicle should have been covered under a South Carolina. Clearly, Plaintiffs should be entitled to investigate USAA's policies and factors utilized to write coverage in South Carolina. USAA alleges the KIA was garaged in either California or Guam. However, the term "garaged" is not defined in the policy and is frankly ambiguous as USAA has attempted to apply the term in the present case. This provides reasonable grounds for Plaintiff to attempt to understand USAA's definition and use of this term. USAA relies on this term as part of its denial of coverage.

It is also permissible for Plaintiffs to inquire into the bases of USAA defenses and counterclaims. Generally, inquiry regarding a corporation's legal positions is appropriate in a Rule 30(b)(6) deposition. *See Canal Barge Co. v. Commonwealth Edison Co.*, No. 98 C 0509, 2001 WL 817853, at *2 (N.D. Ill. July 19, 2001) quoting *U.S. v. Taylor*, 166 F.R.D. 356, 362 (M.D.N.C.1996). It is also permissible to ask about the factual basis of matters contained in the pleadings, which would include denials, affirmative defenses and claims. *See Sec. Ins. Co. of*

Hartford v. Trustmark Ins. Co., 218 F.R.D. 29, 34 (D. Conn. 2003). As such, Plaintiffs topics relating to USAA's defenses are appropriate.

CONCLUSION

The Plaintiff would request that the Court require USAA to produce one or more designees who can speak on behalf of the corporation and with the capability of providing all information available to USAA and to speak to the position of USAA on the various issues so designated. Further, Plaintiff requests that this Court require the Defendant to produce such a designee or designees fully prepared and capable of responding.

GUEST & BRADY, LLC

s/ Richard K. Allen, III
Richard K. Allen, III S.C. Bar No. 74865
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ATTORNEYS FOR THE PLAINTIFF

September 19, 2018
Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Sep 19 6:24 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-23-04630 **PLAINTIFF'S MOTION TO RECONSIDER**

ELECTRONICALLY FILED - 2018 Oct 17 4:54 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

Plaintiff, Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as legal Guardian of J.Y. minor under the age of 14 ("Plaintiff"), by and through his undersigned attorneys hereby moves the Court pursuant Rule 59, SCRCP to alter, amend or reconsider its order granting Defendant, USAA General Indemnity Company's ("USAA"), Motion for Summary Judgment and denying Plaintiff's Motion to Compel. While preserving for appeals purposes all grounds previously raised in opposition to summary judgment and in support of its motion to compel, Plaintiff respectfully submits that summary judgment is not appropriate because: **(a.)** the court's reading of the statute is too narrow because the California Policy also insured interests and lives of citizens located in South Carolina (Kamika Young and the kids) at the time of the accident, as well as the insured KIA which has permanent and definitive connections to the state; **(b.)** the Court places undue weight on the lack of physical presence of the KIA in South Carolina at the time of the accident, which is not a requirement to trigger the broad protections of § 38-61-10; and **(c.)** Plaintiff presents and has established that ambiguities exist in the California Policy particularly with regard to the term "garaged" and its application.

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S.C. Ann. § 38-61-10 states in pertinent part: "All contracts of insurance on property, lives, **or** interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State." (emphasis added). To determine whether S.C. Code Ann. § 38-61-10 applies, this court first analyzes the expansive first prong of the *Sangamo* test. *Heslin-Kim v. CIGNA Grp. Ins.*, 377 F. Supp. 2d 527, 531 (D.S.C. 2005). When applying the first prong of the *Sangamo* test, "the plain language of § 38–61–10 contemplates a **broad application** of South Carolina law to insurance contracts with any significant connection to South Carolina. *Id.* (emphasis added). Inquiry is required into whether "property, lives, or interests" insured by the insurance policy are located in South Carolina. *Yeager v. Allstate Ins. Co.*, Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843, at 13 (D.S.C. Feb. 22, 2010). To answer this initial question (i.e. the first *Sangamo* prong), the court must interpret § 38-61-10 broadly and consider **whether there is a significant connection between the subject of the insurance contract and South Carolina**. *Id.* (emphasis added). Under the statute, it is immaterial where the contract was entered into ... what is solely relevant is where the property, lives, or interests insured are located. *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 131 (1992). The inquiry under the first *Sangamo* prong is not limited to physical presence, but requires consideration of the connections between South Carolina and the insured interests.

The first prong of the *Sangamo* test is satisfied because the California Policy insures lives and interests located in South Carolina.

The inclusion of "or" in the statute is significant because it does not limit the court's inquiry exclusively to the KIA. Rather, it mandates broad consideration of all interests, persons and risks subject to the California Policy which are located in or share a significant connection to South Carolina. First, Tyrin Young's wife, Kamika Young, is specifically named on the

declaration page and is listed as an operator and insured on the insurance cards issued by USAA. **(See Ex. G to Plaintiff's Memo in Opp. To USAA's Motion).** Ms. Young was issued insurance cards for the KIA on January 3, 2015 and June 3, 2015. ***(Id.)***. It is undisputed that USAA did so knowing that Kimaka Young and the three (3) children were living in South Carolina at the time. As such, USAA knew that it was insuring persons, interests and risks located in South Carolina under the California Policy, which clearly triggers the broad application of § 38-61-10 and satisfies the first *Sangamo* prong.

The California Policy also contained bodily injury coverages which covered Kamika Young and the children located in South Carolina at the time of the accident. The California Policy and South Carolina Policy both define "family member" as "a person related to you by blood, marriage or adoption who is a resident of your household." **(See USAA's Memorandum, Ex. A pg. 3 and Ex. B pg. 3).** USAA considered Tyrin Young, his wife Kamika Young and their children part of the same household as indicated in the policy renewals addressed to their Greenville address on January 3 and July 3, 2015 **(See Ex. G to Plaintiff's Memo in Opp. To USAA's Motion).** The Youngs' South Carolina tax returns establish they all were residents of the same household at the time of the accident. **(See Ex. C to Plaintiff's Memo in Opp. To USAA's Motion).** The payment of premiums under the policy would have originated and been paid from South Carolina. USAA knew it was insuring individuals (Tyrin and Kamika) with South Carolina drivers licenses.

Turning to the specific coverages, the medical payments coverage and UM/UIM coverage applies to family members under the California Policy. **(Ex. B to USAA's Memorandum pgs. 6 and 10).** The California Policy is also insuring South Carolina lives and beneficiaries under the death benefit coverages. **(Ex. B to USAA's Memorandum pg. 8).** The term "beneficiary" includes "2. if the deceased is an unmarried minor, either of the surviving

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parents who had legal custody at the time of the accident;" or "3. the estate of the deceased." **(Ex. B to USAA's Memorandum pg. 6).** This coverage extends to "any family member occupying any auto." **(Ex. B to USAA's Memorandum pg. 6).** In this case, Kamika Young was a legal custodian of the deceased children living in South Carolina at the time of the accident. The boys that died as a result of the accident that triggers this action are buried in South Carolina. Their estates were probated in South Carolina. The California Policy provided coverage for them and they were citizens of South Carolina.

USAA knew these coverages extended to citizens of South Carolina who were residing in South Carolina at the time of the policy renewals and accident. Since the California Policy was insuring interests and providing bodily injury and death benefit coverages to persons and lives located in South Carolina at the time of the accident, the statute applies and the first prong of *Sangamo* is met. Finally, the California Policy does not contain a choice of law provision which mandates application of California law or precludes South Carolina law from being applied.

Physical presence of the KIA in South Carolina is not required to trigger the broad application of § 38-61-10.

South Carolina exercised significant interests in the KIA. South Carolina requires registration of a vehicle to, among other important state interests, generate revenue through taxes, track ownership and licensure, and to ensure safety of its citizens on the roadway. Multiple South Carolina agencies and entities would assert that there is a significant connection or interest in those lives and property covered under this contract of insurance with South Carolina, for instance: S.C. Dept. of Revenue (payment of SC income taxes); S.C. Dept. of Public Safety and DMV (registering the vehicle and S.C. driver's license); Greenville County Treasurer (collecting property taxes); Greenville County Probate Court (probating deceased sons' estates) and Greenville County Circuit Court (exercised personal and subject matter jurisdiction over this action). The U.S. Navy and the IRS believe there is a permanent and definitive connection by

naming South Carolina as the Young family's legal residence. The connection between South Carolina and a vehicle taxed, tagged and registered under its laws, such as the KIA, is not broken just because the vehicle is not physically present in this state. Further, there is no evidence that USAA ever asked or required the Youngs to register the KIA in California or anywhere other than South Carolina. The Court places undue weight and narrow focus on the lack of physical presence of the KIA in South Carolina at the time of the accident. The physical presence of the insured property in South Carolina is not a part of S.C. Ann. § 38-61-10 and is not required to trigger the broad application of the statute. Even though the KIA might not have been involved in the accident or physically located within the state, it was taxed, tagged and registered in South Carolina. *See Hartsock v. Am. Auto. Ins. Co.*, 788 F. Supp. 2d 447, 451 (D.S.C. 2011) (the Court applied the *Sangamo* test and reformed a North Carolina automobile insurance policy to South Carolina. Critical to the court's analysis was the fact that Ms. Harstock's vehicle covered under the NC policy was registered, taxed and tagged in South Carolina. *Bowman, Unison, McGrath* and *Yeager* all specifically list registered, taxed and tagged as an important connection in their rulings.

Clearly, South Carolina has an interest in property insured under the California Policy which is taxed, tagged and registered pursuant to its laws, and S.C. does not forfeit the enforcement of these laws and the substantial connection simply because the vehicle leaves the state. (The idea that physical presence is not dispositive is further illustrated in the *Bowman* case cited by the court in pg. 6 of the Order, finding that the location of the vehicle and accident in South Carolina are not sufficient to trigger the statute because other contacts were necessary and lacking in contrast to the Youngs and the case at bar.)

In sum, when interpreting and applying the first prong of the *Sangamo* test, the Court is required to consider the connection between the property, interests and/or lives with South

ELECTRONICALLY FILED - 2018 Oct 17 4:54 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304630

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Carolina – not simply physical presence. The court acknowledges in its October 1, 2018 letter that the contacts with South Carolina are significant, a finding which also satisfies the second prong of the *Sangamo* test. **(See Ex. 1. attached hereto).**[1] However, these significant contacts cannot be ignored in applying the statute under the first prong as stated hereinabove. A plain reading of the statute and case law mandates application of S.C. Code Ann. § 38-61-10 because of the actual physical presence in South Carolina of the lives and interests covered under the California Policy (Kamika Young and the children) and the significant contacts with this state with the KIA and the Youngs. To find otherwise would apply § 38-61-10 too narrowly and ignore the South Carolina legislature's clear intent for the statute to have broad application.

Factual disputes and ambiguities exist under the California Policy regarding the term "garaged" and its application.

The Court erred in finding the Policy to be clear and unambiguous particularly with regard to definition and application of the term "garaged." Under South Carolina law, a term is ambiguous only when it may fairly and reasonably be understood in more ways than one. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 428 S.E.2d 705, 707 (S.C. 1993). Ambiguities in a contract for insurance are interpreted against the insurer. *McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 426 S.E.2d 770, 771 (S.C. 1993). The term is not defined in the policy documents and factual disputes exist as to its meaning and application in this case. It is undisputed that the KIA was shipped to Guam in late 2014. It is undisputed that USAA knew the KIA was located in Guam beginning in late 2014 up through the date of the accident on August 30, 2015. On January 3, 2015, USAA sent a policy renewal package addressed to Tyrin Young and his family at 4 Cross Club Dr., Greenville S.C. **(See Ex. G to Plaintiff's Memo in Opp. To USAA's**

[1] Since the Court acknowledges significant contacts in its letter, Plaintiff would assert that the second prong of *Sangamo* is also satisfied and the policy should be reformed. Alternatively, finding the first prong inapplicable despite the significant contacts with South Carolina appears inconsistent with § 38-61-10, *Sangamo* and interpretive case law and as such the Court should reconsider its decision.

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Motion). USAA sent another policy renewal package to Tyrin Young and his family on July 3, 2015 addressed to 1409 Roper Mountain Rd., Apt. 240, Greenville S.C. (**Id.**). If "garaged" means the physical location of the vehicle, then the "garaged" label on the declaration page is meaningless since vehicle was located in Guam. If the definition of "garaged" includes where the vehicle is taxed, tagged and registered, then South Carolina would be the proper state. California, as listed on the declaration page, would not fall under either interpretation because it is undisputed the KIA was not located there and was not registered, taxed or tagged in California. In practice and application, "garaged" is meaningless and insignificant to USAA.

Alternatively, as previously argued, USAA has waived and/or should be estopped from asserting that the vehicle was garaged in California under the Policy and declaration page because it continued to accept the Youngs' premiums on the Policy renewals with knowledge that the KIA was no longer located in California. Summary judgment is premature because Plaintiff has not had the opportunity to complete discovery regarding the above issues.

Based on the foregoing, the Court should reconsider its previous decision and deny Defendant's motion for summary judgment, grant Plaintiff's motion to compel and allow Plaintiff a full and fair opportunity to complete discovery by taking the deposition of USAA.

GUEST & BRADY, LLC

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October 16, 2018
Greenville, South Carolina

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State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Perry H. Gravely
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October 1, 2018

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Re: Tyrin S. Young, Sr., et. al. vs USAA General Indemnity Company
2017-CP-23-04630

Dear Gentlemen:

I have carefully reviewed the pleadings, Motion and Memorandum regarding this matter and I believe this to be a very difficult and close issue, but feel that Summary Judgment for the Defendant may be appropriate. In reviewing this, I appreciate that the "contacts" with South Carolina are significant, but I do not see that this factual scenario meets the first prong of the 2 step test presented in Sangamo Weston v. Nat'l Sur Corp. and S.C. Code Sec. 38-61-10. I find it difficult to reform a California policy to South Carolina law for a vehicle which was not located in South Carolina nor involved in the accident. Further, the declaration page for this policy specifically notes that the vehicle is "principally garaged" in Santee, California. Therefore, I would ask that Mr. Still submit a proposed order within 10 days along these lines and the argument presented in his Memorandum. Please email it to my law clerk, Christian Thorndike, at pgravelylc@sccourts.org and provide Mr. Allen with a copy of the Order at the same time. In the Order, please indicate that the Discovery Motions would be moot based on the decision on Defendant's Motion for Summary Judgment. This is not a final decision on this matter, but is a strong indication of which way I am leaning at this time.

Please let me know if you have any questions.

Very truly yours,

Judge Perry H. Gravely
13th Judicial Circuit

PHG/ldc

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

TYRIN YOUNG, SR., et al,

PLAINTIFFS,

-VS-

USAA GENERAL INDEMNITY COMPANY,

DEFENDANT.

2017-CP-23-04630

TRANSCRIPT OF RECORD

SEPTEMBER 24, 2018
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE PERRY H. GRAVELY

APPEARANCES:

ATTORNEY FOR PLAINTIFFS:

RICHARD K. ALLEN, III, ESQ.
RUSSELL F. GUEST, ESQ.

ATTORNEY FOR DEFENDANT:

PATRICK "TREY" STILL, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE

(No Exhibits Were Presented During This Hearing)

THE COURT: All right. Young versus USAA. We've got Mr. Still on behalf of the Defendants. And y'all are?

MR. ALLEN: Richard Allen and ...

MR. GUEST: Russell Guest.

THE COURT: Okay. All right. And as I have told previously, we -- I read everything this morning, but since then our court system website has prohibited us from going on and checking them. So -- but I have reviewed the matters beforehand. So anything you need me to look at, you'll need to hand up.

But this is -- we've got a Plaintiffs' motion to compel a 30(b)(6), Defendant's motion to quash that 30(b)(6), and then Defendant's motion for summary judgment. Is that correct?

MR. STILL: Yes, Your Honor. If I may approach.

THE COURT: Yes.

MR. STILL: Here's my copy of everything. And in addition to what's been previously filed, there's a couple of cases and the two statutes that are at issue that are attached at the back of that as well.

THE COURT: All right. Let's ---

MR. ALLEN: Your Honor, if I may approach.

THE COURT: Yes.

MR. ALLEN: These are just copies of my proof. Sorry.

THE COURT: That's fine. Now, do you need -- does

anybody need any of these things back when we get through with the hearing?

MR. ALLEN: No, sir.

MR. STILL: No, Your Honor.

THE COURT: Okay. Good. Let's listen to the motion for summary judgment first. That way it gives me a good solid background. And then we can talk about the 30(b)(6) motions. All right.

MR. STILL: Your Honor, may it please the Court? Again, Trey Still here on behalf of USAA, again. Our motion to -- for a protective order is at least in part based upon what we're stating in our motion for summary judgment. So I do think this might be helpful, Your Honor.

Just as way of background real quick, this litigation stems from a two-vehicle accident in August of 2015. The Plaintiff's wife was operating a Ford Expedition. She pulled out and failed to yield that caused the collision.

That collision caused her vehicle then to enter in a bank. And two of her children and the Plaintiff's children passed away as a result of that collision. And then she and one child, I believe, made it out. And one of the child -- surviving child was actually injured. So that's the underlying event, Your Honor.

And basically that Ford that she was driving at the time was insured under a South Carolina policy, minimum

limits, that also had UIM of twenty-five thousand (25,000) per person and fifty thousand dollars ($50,000.00) per accident. That entire liability and UIM limits has been exhausted at this time with the full UIM benefits of fifty thousand dollars ($50,000.00) going to the Plaintiff in his individual capacity and personal representative of the two deceased children's estate as well as guardian as this -- for the surviving child.

So essentially what we have here, Your Honor, is an attempt that -- to reach out to a California policy to have it reformed under South Carolina law to basically afford them additional UIM benefits basically under the guise of saying, listen, it was a California policy, so any offer of UIM benefits was not in accordance with South Carolina law. Therefore, you have to provide at least the minimum limits under that policy, which would then be stacked upon the policy of the Ford vehicle.

The vehicle at issue is a Kia, 2006, I believe, Kia. At the time of the accident it was insured under a California policy. It was physically located in Guam as the Plaintiff, himself, was deployed to Guam on a temporary basis as part of a Navy deployment.

Your Honor, essentially going back and kind of giving you a little bit of a flow of time-line, essentially the Plaintiff and his wife are from South Carolina. They've

always maintained their South Carolina residencies, driver's license, they pay taxes here. None of these facts are in dispute, Your Honor.

About the end of 2007 the Plaintiff entered the Navy and basically enlisted in the Navy. He was initially stationed in Virginia. So after the formal wedding between he and his wife, the wife moves up there. At that point the Kia never reenters the State of South Carolina.

He's then deployed to California. The vehicle is physically shipped from Virginia to California. When it gets to California it's issued a new insurance policy. And that policy is the California policy that we have in play, Your Honor.

Eventually the Plaintiff's wife moved out there with him. The Ford was added to the policy, but when he was going to be deployed to Guam, she moved back to South Carolina. That's when the Ford was actually insured under a separate South Carolina policy. The Kia remained under the actual California policy.

So, Your Honor, essentially there are no facts in dispute that we believe that would go to the argument that this actual California policy should be reformed. Again, the Plaintiff and his family are considered South Carolina residents. They pay taxes here, the car is registered and licensed here.

And essentially the policy was actually mailed to their Greenville address while the vehicle was not here. However, Your Honor, it's also not in dispute that the vehicle, the Kia itself, has not entered the State of South Carolina since 2009.

It has since been sold essentially when he left the west coast. He sold it there so he didn't have to incur the cost to come back to South Carolina or actually when he was stationed in another area. But essentially the Kia never made it back to South Carolina after 2009. When the accident itself occurred, it was located in Guam as part of his, I believe, one year deployment to Guam.

And we deposed the Plaintiff and his wife. Essentially both of them acknowledged that the California policy was in place. They both knew that the Kia was insured in -- under the California policy at the time of the accident. They recognize and admitted that they paid premiums for that particular policy.

And then also the Plaintiff, himself, admitted that it was not his position that a vehicle that's located in California or Guam should be insured under a South Carolina policy. The Plaintiff's attorney asked him in follow-up questions saying, well, you do agree that it should be reformed as we're arguing now? So he agreed with that, of course, Your Honor.

But, again, he's not saying that it should have been insured under South Carolina's policies at the time of the accident. So essentially what they're trying to do is reach back to that policy and get benefits that they didn't pay for.

And when we go to the policy, Your Honor, and I attached it, and what you'll see is exhibits to our motion for summary judgment. We have tab A and B. These are the South Carolina and California policies; (A) being the South Carolina policy, (B) being the actual California policy.

And under the California policy it basically has several provisions. It does not have a separate UIM coverage as we have here in South Carolina. Instead UM and UIM benefits are basically addressed under what you would call just UM, uninsured coverage.

In that particular part of the policy it defines underinsured motor vehicle as a policy that has liability limits of less than that California policy. And it also states that an uninsured vehicle does not include a vehicle that you own.

And so in this situation the definition does not apply here for the Ford involved in this accident because the liability policy on that particular vehicle was the State minimum limits of twenty-five, which is the same thing that the actual California policy had. So it would not qualify

as underinsured under the policy. And it was also owned by a Plaintiff. So, therefore, it would not meet that definition either.

There's also an exclusion under exclusion (B), that essentially, and I'm paraphrasing, Your Honor, and the actual exclusion's fully quoted in the memorandum. But it basically says that UI -- UM benefits do not apply when a covered person is occupying a vehicle that he or she owns and that person is a family member, so essentially where the vehicle's owned by the actual named insured.

So essentially it's got an exclusion where they're occupying a vehicle that they own that's not covered by this particular policy. The Ford, again, is under a separate policy. So, again, exclusion (B) would actually apply, Your Honor.

No stacking clause is in the actual policy. Again, there's several different areas where they set up the stacking. And we have laid out in the memoranda the actual verbiage for that, but, again, to be short and try to go as quick as possible.

Essentially the big provision, it says, in no event shall the limit of liability for two or more vehicles or two or more policies be added together, combined or stacked to determine a limit of liability. And then it goes on to say basically that the policy, the actual total coverage ---

(Whereupon someone entered the courtroom)

THE COURT: Do you -- I'm sorry.

(Pause)

THE COURT: All right. You may proceed.

MR. STILL: Okay. But, again, Your Honor, essentially the policy itself goes in and says that essentially if there are other policies that apply, the limit that they can receive under UM or UIM benefits is the single highest policy limit available. Again, all of these combined are anti-stacking clauses within the actual policy itself.

We went through a lot of this language in their deposition. The Plaintiff said that it's not confusing, that he did understand it when we read it to him and basically understood what it meant.

Now, again, the issue here, Your Honor, is whether or not we're going to apply California law or South Carolina law. California law has a specific statute in place that has language that is actually quoted in our policy. And I've included that statute as part of my package there.

But essentially in California, I think it's 115580.2, it basically states there that you can't stack. It also goes in and says that essentially the single limit would apply. So -- and you can exclude coverage under that policy if there's similar coverage under the actual involved vehicle, Your Honor. And in this situation both of those

provisions are included in the California policy and basically would be enforceable under that statute that's still in place.

Now, again, there's 98 pages of cases summarizing or addressing this particular California policy. We have cited three in our memorandum, Your Honor. I've passed up copies of those cases since they're out of State cases.

But essentially you can look through that and it talks about why the statute was put in place and how it would apply to similarly situations that we have here. Essentially one says that you cannot stack policies even if they're issued by the same provider. Then it goes on to say that out of State -- even if the accident happened out of State, you can't stack UIM coverage.

And essentially we -- in the separate section we also address a case that's California Casual Indemnity Exchange, Your Honor. And in that case they talk about the interest that California has in enforcing its policies. Essentially it's talking about there that these policies are issued under California law, so in order to keep policies in a manageable or affordable situation, also to comply with California law as it sees UIM benefits and how they should be applied.

Now the Plaintiff's argument is going to be that South Carolina statute 38-61-10, which is also -- a copy of is in

that package, should basically capture this policy, count it as it being a South Carolina policy or being made in South Carolina and then reform it under our laws. 38-61-10 provides that all contracts of insurance on property, lives or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been within the State and are subject to the laws of this State.

Your Honor, again, the California policy is insuring a vehicle. And that vehicle is not located in this State. So when you look to the actual subject, the meaning -- what they're actually talking about being insured, that item, that property is not located in South Carolina. Therefore, we do not believe that the actual property aspect of this statute would apply.

Again, this is not a life insurance where it has been issued to them. So as far as any case that would interpret lives under this policy, that also would not apply in this.

So if you look at the interest, Your Honor, that is where the actual argument and all the cases that are similar to this actually analyze the interest. And we've cited several cases, Your Honor. Essentially Yeager and Russell are the two main cases.

But before we get to those, there are no cases that would be binding on this particular lawsuit under these

particular facts because all of the cases that cite this statute, Your Honor, the accident happened in South Carolina and the policy that was at issue was the involved vehicle. So, again, all those cases involve the vehicle that's in South Carolina, and that is basis where they're talking about the actual interest.

Yeager is essentially a Georgia citizen who is living in South Carolina, she's working in South Carolina, she paid South Carolina taxes and the accident, again, on the insured vehicle occurred in this State. They said there's not enough connections to create interest sufficient under South Carolina's evaluation to implicate the statute and, therefore, Georgia law applied and did not allow stock -- stacking.

Russell is a USC student who is living here and going to school here temporarily. Basically they've kind of analyzed his contacts, where he's paying taxes and all that, and said that Florida law should apply, no stacking allowed. Again, both of those vehicles that were addressed, the auto policies in those cases were here and involved in the accident itself, Your Honor. That is not what we have in this particular case.

Now, when you go back and you're trying to weigh the actual interests of the two States, again, there are several factors that the courts have decided would weigh in favor of

South Carolina implicating the statute. But, again, in those cases, in any case that the Plaintiff cited in the memoranda, it involves a vehicle that was transported to this State, at least on a temporary basis, involved in the accident involving people who were actually connected to this State.

They do not cite a case in their memoranda in response to our summary judgment that would actually state that this should be reformation of this particular policy. In fact, they cite to this San Jamino (ph.) case, which is a manufacturing facility issue, and the Russell case, which, again, is actually in our favor.

They also cite our case that we talked about where the accident happened in Hawaii. And the California courts talk about the interests that are involved and find that the California policy and the California law would apply.

Lastly, Your Honor, and to talk about a waiver, that waiver, that case really has no application here because that is talking about a waiver of where the actual insurance company was going -- agent said that they would actually cancel the policy within thirty days. They didn't -- they didn't cancel it before the actual accident.

And in that case the vehicle was moved to South Carolina on a permanent basis and that case doesn't deal with whether or not the policy should be reformed. In fact,

it actually enforces the New York policy defined coverage in that case.

So, Your Honor, under our motion for summary judgment the facts are established. We stipulated to everything that would be at issue that the Court would need to consider as far as residency, taxes, things of that nature.

Again, though, it's undisputed as to where the vehicle was at the time of the accident. It's undisputed that the Plaintiffs never asked to have the vehicle insured under South Carolina policy. And even the Plaintiff himself said that it's not his position that the vehicle should be insured under South Carolina policy where it's located either in California or Guam.

And, again, Your Honor, this is a quick overview. So if you've read the memoranda it includes the citations and more discussion on each of these cases. And if you'd like some more discussion on those, I can go into them in more detail. But considering we have three issues, I'm -- again, keep it to the short summaries.

But in, you know, in summary, Your Honor, essentially this car never came back to South Carolina. The policy insures the vehicle itself. Therefore, we do not believe that the statute of 38-61-10 should apply and that California law shouldn't be interpreted in finding that -- that there is no stacking under this policy and that

essentially the Plaintiff has been paid the full amount of all coverage that would be available under any USAA policy that was in place at the time of the accident.

THE COURT: All right. Mr. Allen.

MR. ALLEN: Thank you, Your Honor. If it pleases the Court. This case is about injury to South Carolina citizens and South Carolina property as the statute contemplates. It involves South Carolina interests, citizens and properties considering that both vehicles involved were taxed, tagged and registered in South Carolina at the -- at the time of the policy and the time of accident.

USAA wants to make a big deal out of the fact that the Kia was not physically present in this State, but that is not a controlling factor. None of the cases lists that as a controlling factor.

And, quite frankly, it's about the contacts with the State, which are overwhelming and numerous in this case. And we've listed those just in our demonstrative that we ---

THE COURT: And I think y'all stipulated as to those. I mean, I think I -- I mean, the contacts of these people, I agree. But, I mean, what it boils down to, can you make a California policy based on those contacts comply to South Carolina law?

MR. ALLEN: Absolutely. And I think that is the reason that the statute 38-61-10 was enacted to protect interests

of South Carolina citizens and property like the Youngs. And so, you know, that's -- I think that's the entire purpose of the statute.

Really the only contact that California had at the time of the accident was the fact that the contract was entered into there, albeit over the phone, in 2010. At the time of the accident it was undisputed that USAA knew that the Kia had left California along with the insured's -- Tyrin Young's family was back here in South Carolina and he had gone to Guam.

And USAA wants to somehow assert that they should have this degree of sophistication, that they should have chosen South Carolina or told USAA where the right coverage on this vehicle. But, again, the law of the cases simply don't require that.

And they -- it's undisputed they complied under the actual insurance contract. They told USAA where the car was going, that it was going to Guam. USAA at that point, it was their obligation to write coverage where they thought appropriate. In this case, though, they kept it under California -- under the same policy.

They actually changed Mr. Young's address to a Greenville address where his family was staying. They mailed at least two renewals to that address and continued to accept policy premiums there. And so that goes to our

waiver argument.

And that was actually similar to the Leggett (ph) case. The court there finding that the insurance company had knowledge of the move, the relocation of the vehicle and also despite that knowledge the insurance company continued to accept premiums. And that's exactly what we have in this case.

As far as McGrath and Yeager, we actually believe those cases are very helpful to our case. And it's significant in the Yeager case and McGrath in finding against reformation. They found it significant that both plaintiffs were not permanent South Carolina residents. Those Plaintiffs did not have South Carolina driver's licenses and both vehicles involved in those accidents were not taxed, tagged and licensed in -- registered in South Carolina.

The Youngs meet all of those requirements in addition to the numerous other ones. They both had driver's licenses. And that's all undisputed. And so in that respect, you know, obviously those cases, we believe, are helpful.

In addition we cite two similar cases out of California. Those cases are also helpful in that they focus in on those factors as well, the fact that you're dealing with permanent California residents, residents who were licensed to drive in California and then the vehicles were

taxed, tagged and registered there.

THE COURT: Well, let me ask you this, though. Make sure I've got this clear. At the time that the policy, the California policy was taken out, regardless of their official residence, where were they located?

MR. ALLEN: I believe Mr. Young was in California on temporary duty with the Navy. And then Ms. Young was either in South Carolina or Virginia. His prior station was in Virginia.

THE COURT: All right. And then is the car in both his name and her name? The Kia?

MR. ALLEN: They were both named insureds under the policy.

THE COURT: All right. But who was -- who was the -- the vehicle on?

MR. ALLEN: I know it was titled in the wife's name.

THE COURT: I'm just seeing -- looking at 38-61-10, and that was the one you referenced, it says all contracts of insurance on property, lives or interests in this State.

MR. ALLEN: Right.

THE COURT: That's what I'm trying to ...

MR. ALLEN: And so, again, I don't think the interpretive case law requires physical presence of the vehicle to trigger the statute.

In this case, you've got both vehicles, including the

Kia, that were both -- the Kia was purchased here, it was registered here, the taxes were always paid here. And so, I mean, clearly it's South Carolina property. And so because of that it clearly triggers that statute, in addition to the Youngs, who, you know, were born here, they were married here, you know, they're from here. And, you know, they clearly, you know, remain permanent residents.

THE COURT: All right. I mean, y'all have given me plenty on this to look at. So let's talk about ---

MR. STILL: Your Honor, may I respond real quick?

THE COURT: No, you've given me tons of stuff. I know what the issues are. No, let's go on to the 30(b)(6) motions.

MR. STILL: All right. Your Honor, I guess our motion to -- for a protective order was filed prior to the actual motion to compel. So do you want me to go ahead and argue that ---

THE COURT: Yeah, go ahead. I mean, that's -- and then his response will be arguing his, basically.

MR. STILL: Yes, Your Honor.

Essentially what we have here, Your Honor, is a motion for protective order or alternatively a motion to quash. Essentially we have a 30(b)(6) deposition that was noticed by the actual Plaintiffs in this case. And in that they're asking for a lot of policy reasons as to why certain

decisions are made and also wanting to know who talked to the Plaintiffs and who talked to them when and what decisions were made.

Your Honor, in our actual motion for a protective order, we kind of outlined all of our grounds for each specific topic. I'll go ahead and state, Your Honor, I would like to verbally amend that because I do think I missed one of the topics which, I believe, is topic 11. And in that it's talking about procedures and guidelines and responsive action should be taken by a representative receiving a customer call regarding a change in location of covered vehicle.

Essentially, these issues, what they're seeking would be definitely available in a bad faith case. But essentially we have not been able to -- when we deposed the Plaintiff and his wife, we were specifically told that they wouldn't testify as to the facts of the actual accident, their damages as a result of the accident and any issue that would actually be related to an actual extra contractual obligation by USAA.

They have repeatedly held -- and I think there's a -- upheld -- stated, but I think there's also a request to admit that this is not an actual bad faith case where they're seeking something over and above the actual policy limits.

Under the actual issues that are here in this case, Your Honor, we have all the facts that have been considered by other courts. There are not facts at issue or in dispute.

So when you get to the actual communications regarding the purchase or renewals or any changes of locations or the garaging, none of that is going to actually lead to any relevant or admissible evidence as to the facts that are involved in this case. Again, there's no allegations, there's no evidence that USAA did anything intentionally to harm the actual Plaintiff.

Instead what we have is unlike what he mentioned a temporary duty in California, he was stationed for a period of five years prior to the accident in San Diego. And that situation only changed when he was going to be deployed in a temporary fashion to Guam for a year. And then at that time he was likely to return to California for his next station, which could have, again, been in California.

So, again, when we go through these -- and, again, if the Court would like me to go through the individual arguments here for each of these actual issues, I can, but essentially they go through the same argument. They're not going to change. I do not think they would change the Court's evaluation of the facts, and the connections that the Plaintiffs would have to the State of South Carolina

that would ever actually require reformation of the project, I mean, the policy.

Instead, what they're looking for is information that, quite honestly, Your Honor, I would tell you I've asked for all of these communications, I've asked for reportings. They don't exist. They can't be found from what I understand.

So they want us to actually identify designees that can address each of these things about the conversations that were had with the Plaintiff. And, Your Honor, we don't know what those conversations were. But we do know that each conversation that was had there was a reaction, which the Plaintiffs intended to happen.

When they moved from South Carolina to Virginia, the policy changed to Virginia. When they moved from Virginia to California, the polices were changed. And so, again, there's no dispute that they ever asked for the vehicle to be insured under South Carolina policy.

So the decisions of why to deny coverage, which implicates some type of attorney work-product and litigation or trial -- anticipation of trial type arguments and privileges. Again, none of those issues are going to be relevant to whether or not the actual policy should be reformed to South Carolina law.

So, again, Your Honor, what we're saying is is, you

know, to the extent that they notified USAA of any change, the proper measures were taken place, he was going to be deployed, my understanding, is a year to Guam. As a result it wasn't a permanent placement. It wasn't even a station where he would be for like he was in San Diego for five years. So in our opinion none of these actual issues would affect the change.

Now, again, they're also asking about some defenses as to no coverage. Obviously, Your Honor, we talked about -- we talked about California law. And all -- any designee is going to say California law should apply, California policy.

Failure to comply with conditions precedent, Your Honor, we told the Plaintiffs' attorney that essentially that was asserted based upon before we actually deposed the Plaintiff. We are not necessarily saying that defense at this point.

And, again, it's not a motion as part of our actual litigation because the policy was never withdrawn. Again, it was in place for the entire time.

So if the Court does not want me to go one by one, ---

THE COURT: I've got -- and I've got an understanding.

MR. STILL: All right.

THE COURT: So, Mr. Allen.

MR. ALLEN: Yes, sir, Your Honor. If it pleases the Court. As part of the denial, USAA's denial of coverage,

they've asserted the idea that the vehicle was garaged in California. And so it's our contention that the policy's clearly ambiguous as to its application. That term was not defined in the policy. And so we should certainly be able to depose USAA to better understand that basis.

Also, as far as, you know, they want to again assert that it is somehow the insured's obligation to choose where USAA should write coverage. We simply, you know, disagree with that. And so, you know, that's, again, our reasoning for wanting to understand the reasoning behind USAA's decision to write coverage in California.

I believe in a memo they say that coverage might extend to Guam or South Carolina. I mean, these are all inquiries that we're trying to understand. And, you know, really I don't think you can get this information without deposing USAA.

The purpose of the 30(b)(6) deposition is to -- one purpose is to understand the corporation's position. And, you know, that's important not only for discovery, for trial prep purposes, but it also -- it's important so that USAA can't take a contrary position at trial.

And so, you know, I think there's significant case law that says if, you know, their position is they don't have one or if it's in the documents or if it's in California, then they need to produce -- to say that on the record if

that is, in fact, the case.

THE COURT: But doesn't this whole case go down on whether it should be reformed under South Carolina policy or not? And if it doesn't, that pretty much ends the case? And if it -- if it should be reformed, that sounds -- I'm sure that -- sounds like that would probably resolve the case. And if it doesn't reform under South Carolina law, then that ends the case, too, doesn't it?

MR. ALLEN: That is the issue, Your Honor. But, again, we've got these underlying facts and issues regarding where coverage should have been written. And I think that goes to the controversy because of the significant contacts at the time Mr. Young left to go to Guam. We're arguing that clearly it should have been written under South Carolina.

You know, they changed his address to a South Carolina address. They didn't keep it in California. They didn't change it to the Guam address. So, you know, again, I think those are all the underlying issues that go to the ultimate issue of coverage and where it should have been written and the reformation issue.

THE COURT: All right. Anything else?

MR. STILL: Real quick, Your Honor. We're not saying that -- we've never said that they should have chose where the actual vehicle should have been insured. But, again, when the actual policy was issued, the vehicle was in

California, he was stationed there, his house and home and kids were ultimately there when it was issued.

When that vehicle was temporarily shipped to Guam, if that vehicle was involved in an accident in Guam, then, yes, that policy would apply. If that vehicle was shipped to South Carolina, that policy would have applied. But it did not, and it was not involved in the accident.

So there are no change in circumstances for this particular policy regardless of whether or not it was shipped to Guam temporarily. It still never came in South Carolina.

The interest, Your Honor, is the financial responsibility of the State where it's actually being insured in. I mean, it's to protect other people when you're at fault. That's what the liability insurance is there for.

So, I mean, again, the interest here is never changed. He was -- there's no testimony and there's no evidence that he was not going to return to actually California, which is my understanding, once his deployment was done, that's where they would be.

But finally, Your Honor, they mentioned that it's their position that when it changed to Guam, it should have been insured under South Carolina policy. That's not what they said.

The Plaintiff specifically stated that it was -- is it your position here today that a vehicle that is physically located in California should be insured under a South Carolina policy? That is not my position.

Is it your position here today that a vehicle that is physically located in Guam should be insured under a South Carolina policy? That is not my position. So, again, that's contrary to what the Plaintiff testified.

When you get into what they're seeking, the decisions of why it was made, I mean, they're clear. It was there when the policy was issued. A temporary moving of the vehicle was insufficient for them to change. Why that decision was made is not necessarily pertinent to the actual issues that the Court has determined to be necessary.

And, again, it's their obligation to show that 31-68 -- or sorry, 38-61-10 should apply. But none of these issues that they're seeking would change the Court's actual analysis of those issues. And so, therefore, we think that none of this is relevant.

We're trying to stipulate to everything to simplify what is at issue. And that's solely based upon the cases whether or not there's sufficient interest in South Carolina to implicate the statute to basically at that point reform the policy.

THE COURT: All right. You can have the last word.

MR. ALLEN: After the vehicle was moved to Guam in December of 2014 all of the contacts were with South Carolina at that point. I mean, California had no contacts whatsoever.

Also, there were other coverages in play. They didn't just purchase liability coverage. You know, there's also a discrepancy on the dec page. Uninsured motorist coverage is specified on there, but on the California dec page, there is no specific underinsurance specification on the dec page. But if you look at the California policy, underinsured is included under the uninsured provision in the insuring agreement.

So I would contend as far as the allegation that they did pay for those coverages. And so it's not like they're trying to seek some benefit that they didn't pay for. And so ...

THE COURT: All right. Let me take a look at this, and I'll let y'all know if I need any additional information.

MR. ALLEN: Thank you, Your Honor.

MR. STILL: Thank you, Your Honor.

(Hearing Ended at 12:03 pm)

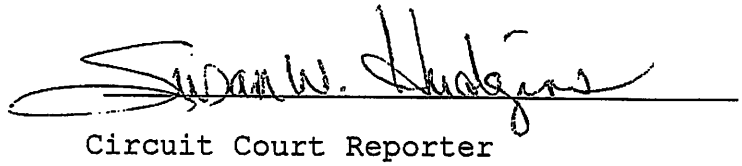
(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 24th day of September 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 28, 2019



Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
TYRIN S. YOUNG, SR., INDIVIDUALLY AND AS PR OF THE ESTATES OF TYRIN YOUNG, JR. AND MICAH A. YOUNG AND AS LEGAL GUARDIAN OF J.Y., A MINOR UNDER THE AGE OF 14,	)	
Plaintiff,	)	
vs.	)	NO. 17-CP-23-04630
USAA GENERAL INDEMNITY COMPANY,	)	
Defendant.	)	

Deposition of

TYRIN S. YOUNG, SR.

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of June, 2018, commencing at approximately 10:00 a.m., attended as follows:

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: RICHARD ALLEN, ESQ.
Guest & Brady
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FOR THE DEFENDANT: PATRICK L. STILL, III, ESQ.
Clawson & Staubes
1000 East North Street
Greenville, South Carolina 29601
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tstill@clawsonandstaubes.com

ALSO PRESENT: Kamika Young

DEPOSITION REPORTED BY: SUSAN L. McCRACKEN, RMR
Depositions And. . ., Inc.
P.O. Box 10268
Greenville, SC 29603
(864) 235-3518

** ** ** **

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EXHIBITS

DEFENDANT'S

1	CALIFORNIA DECLARATIONS	Premarked
2	VIRGINIA DECLARATIONS	Premarked
3	SOUTH CAROLINA DECLARATIONS	Premarked
4	SOUTH CAROLINA RENEWAL DECLARATIONS	Premarked
5	PLAINTIFF'S ANSWERS	Premarked
6	PLAINTIFF'S ANSWERS	Premarked
7	RELEASE	Premarked
8	CALIFORNIA RENEWAL DECLARATIONS	Premarked

- - - - -

Pursuant to Notice and/or agreement to take depositions, the within deposition was taken by Susan L. McCracken, RMR, a Notary Public, as required under South Carolina Court Rule 30, et al, by consent of all parties, at the law offices of Clawson & Staubes, 1000 East North Street, Greenville, South Carolina.

WAIVER

It is agreed by Counsel for all parties that the reading over of and signing of the deposition by the witness are waived.

** ** ** **

The deponent was duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning the matter herein:

TYRIN S. YOUNG, SR.

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STILL:

Q. Mr. Young, my name is Trey Still. I am an attorney here at Clawson & Staubes. I apologize for the delay. Sometimes things don't go quite as smoothly as I'd like. We are now on record for your deposition. Can you please state your full name for the record?

A. Tyrin Savahya Young.

Q. What is your date of birth?
A. March 18, 1978.
Q. I am going to ask for your full Social Security number, but we are only going to put the last four on the record. What is your full Social Security number?
A. XXX-XX-0844.
Q. If I'm correct, the last four of your Social Security are 0844; is that correct?
A. Yes.
Q. And what is your current address?
A. 1008 Osprey Court, Chesapeake, Virginia, 23322.
Q. And how long have you lived there?
A. About a year now.
Q. Who lives with you at that address?
A. My wife and my daughter.
Q. And your wife is who?
A. Kamika Young.
Q. And your daughter is who?
A. Jhaden Young.
Q. How old is Jhaden?
A. She is 14.
Q. You drew the unlucky straw of going first, but how long have you been married to your wife?
A. Ten years now.
Q. And so I understand that you guys would have

gotten married sometime in 2008; is that correct?

A. Yes.

Q. And have you ever been married before?

A. No.

Q. Has your wife ever been married before?

A. No.

Q. And I know that you currently have one child, and I understand that you had two other children; is that correct?

A. Yes.

Q. What were there names?

A. Tyrin Savahya Young, Junior and Micah Alexander Young.

Q. And those two sons are essentially the subject of this litigation; is that correct? Essentially, it is their lives and their injuries that we are kind of discussing today about the coverage; is that correct?

A. Yes.

Q. Okay. Do you have any other biological children?

A. Yes.

Q. Does your wife have any other biological children?

A. No.

Q. Real quick, again, I have to go over some rules

before we really get started. Okay?

A. All right.

Q. The lady to your right, to my left, is a court reporter. She is taking down everything that is being said.

A. All right.

Q. The end result is going to be a transcript, question/answer format. A few things we can do to help her out. First, if you will let my finish my question before you start to answer, I will let you finish your answer before I ask my next question. That way we are not talking over each other.

A. All right.

Q. Also, if you can, please stick to verbal responses, versus head nods and shoulder shrugs. If you do that or say "uh-huh" or "huh-uh," I may say "Is that a yea, or is that a no," not trying to correct you, just trying to get an answer for the record. In the end, we want a clear and concise record. Okay?

A. Okay.

Q. You understand you are under oath the same as if you are in court, correct?

A. I do.

Q. Now that you are under oath, you cannot discuss your deposition testimony with anyone but for a few

exceptions. If those exceptions do not apply, I get to ask about those conversation, even ones with your attorney. There may be a time that you have a question about what is going on here in this case or in the deposition. Please direct that question to me, and I will try to answer it. Okay?

A. Okay.

Q. If I cannot answer it, I will work with your attorney until I do answer it. Again, if there is something that comes up and you need to talk to your attorney, it may be something that I consent to. At that point, I will not go into that conversation, but that is something I need to consent to prior to going off the record. Okay?

A. Yes.

Q. If you need to take a break for any reason, let me know, and we will take as many breaks as needed. Okay?

A. Okay.

Q. I am going to ask, if I have a question on the table, answer that question before we take a break. Okay?

A. Okay.

Q. At some point today, I'm going to ask a question that just does not make sense. If you don't understand

my question, please ask me to rephrase it, and I will be glad to do that. If you don't hear my question, please ask me to repeat it, and I will be glad to do that as well.

A. Okay.

Q. If you answer my question, I will assume you heard it, understood it and answered it truthfully. Is that fair?

A. Yes, sir.

[Off the record.]

Q. [Mr. Still] Mr. Young, back on the record. Prior to going through the instructions, I was asking you a little bit about your background and your current situation. I want to actually talk to you a little bit more about your background, and the reason why I need to do this is I need to know exactly who you are and some additional information because a lot of the residences and things like that are going to be important in this litigation, so I promise you this question has relevance. Okay?

A. Yes, sir.

Q. Then we are going to talk a little bit about the actual process of you getting insurance and how that insurance changed, and then we are going to talk about the accident itself. Okay?

A. All right.

MR. ALLEN: Trey, I thought we had a discussion where we weren't going to go into the accident.

MR. STILL: Off the record.

[Off the record.]

Q. [Mr. Still] Back on the record. Off the record discussion, just want to put it on the record and make sure we are on the same page. We are not going to discuss the accident itself. We are not going to discuss damages today. To the extent that damages become an issue other than just whether or not there is coverage and whether or not that additional 50,000 in UIM applies, we are going to be able to reopen the depositions of you and your wife to discuss those issues. Is that your understanding?

A. That's my understanding.

Q. Is that correct?

MR. ALLEN: That's correct.

Q. [Mr. Still] Now, again, going back through your information, you currently live in Virginia; is that correct?

A. That is correct.

Q. You have lived there about a year now?

A. That is correct.

Q. Where did you live prior to that?
A. Greenville.
Q. What was your address in Greenville?
A. 151 Century Drive, Apartment C, Greenville, South Carolina, 29601.
Q. How long did you live there?
A. I want to say two years.
Q. And that essentially takes us roughly to 2015; is that correct?
A. Prior to coming here, to my understanding -- please say that.
Q. If you lived at Century Drive for two years, did you have another address in Greenville that you lived in after returning from California?
A. No. We moved from here to Virginia -- to Virginia just recently. That's what we are discussing.
Q. Let's do it the reverse order so we can kind of keep up together. I am not trying to confuse you. Where were you born?
A. Here in South Carolina.
Q. Where, what county?
A. Greenville.
Q. How long did you live in Greenville after being born here?
A. 28 years.

Q. At some point, I understand you joined the military; is that correct?

A. Yes.

Q. Okay. What branch did you join?

A. Navy.

Q. When did you join the Navy?

A. September 6, 2006 -- September 8 -- I'm sorry, September 18, 2006.

Q. How old were you when you joined?

A. I was 28.

Q. So essentially, you lived in South Carolina until you joined the Navy in September of 2006; is that correct?

A. That is correct.

Q. Where did you go to high school?

A. Berea High.

Q. What year did you graduate?

A. 1997.

Q. Was that on schedule?

A. Yes.

Q. Did you take any kind of classes after high school, like formal education classes, college, anything like that?

A. I was in Greenville Tech for one semester. That was it.

Q. All right. Then we are going to continue on to your actual places that you lived.

A. Okay.

Q. I understand that you joined the Navy in 2006. Where did you move at that point?

A. After boot camp, I was in Chicago until April, 2007, and I stayed in Virginia until the end of 2009 because my ship did a home port change to California in 2010.

Q. Okay. Now, when you lived in Chicago, where did you consider your permanent address?

A. I was staying on the base. I was still a new recruit there so I was only there for just schooling until I got shipped to my permanent duty station, my first assignment.

Q. When would you have actually been shipped to Virginia?

A. I want to say April of 2007.

Q. And then you would have lived on the Virginia base from 2007 until 2009?

A. 2009, that is correct.

Q. Okay. While you were actually living in Virginia on that base, where did you consider to be your permanent residence?

A. My permanent home address was South Carolina.

Q. At any point during that time period, did you actually physically reside in South Carolina in that 2007 to 2009 time frame?

A. No. I only came home to visit, but not a residence.

Q. Okay. And you were living on a base in Virginia?

A. Yes.

Q. And then in 2008 sometime, you got married; is that correct?

A. Yes.

Q. Did your wife move up to Virginia with you?

A. Yes, she did.

Q. When did she move up to Virginia with you?

A. If I can recall, it was towards the middle of 2008.

Q. And did she live with you on the base?

A. No.

Q. Where did she live?

A. She lived in South Carolina. She stayed with her mother.

Q. I am a little confused. Did she ever live and reside in Virginia?

MR. ALLEN: During what period? Could you clarify that?

Q. [Mr. Still] Right. When you were shipped from Chicago to Virginia in April of 2007, at any point prior to you moving to California, did your wife ever live with you in Virginia?

A. Yes.

Q. Okay. When did she live in Virginia?

A. After we got married in 2008.

Q. Okay.

A. So mid 2008.

Q. Okay. From the time that she moved up there in mid 2008, where did she actually reside? Where did she sleep at night?

A. We slept in Virginia. We was in Virginia.

Q. Were you on the base at that point?

A. No. I was off the base when we moved together.

Q. What type of residence did you have?

A. It was an apartment.

Q. And did you stay in that apartment until you moved to California?

A. Yes. She did. My wife stayed at the apartment until my ship did a home port change and arrived at the new station in 2010.

Q. Then at that point, both of you guys physically took your belongings and then moved out to California?

A. Yes, mid 2010.

Q. And when your wife moved up there and you guys were living in an apartment in Virginia starting in mid 2008, is that what you guys considered to be your permanent residence at that point?

A. Yes.

Q. And then when you guys first moved out to California in 2010, is that where you guys resided and considered to be your permanent residence for a period of time?

A. Yes.

Q. And then at some point after that, I understand that your wife and children moved back to South Carolina; is that correct?

A. Yes.

Q. When did they move back to South Carolina?

A. Mid 2014.

Q. And then when they moved back to South Carolina, where were you residing at the time?

A. I was still in California until I was getting ready to get stationed to Guam.

Q. When were you moved to Guam?

A. I arrived in Guam December of 2014.

Q. How long were you stationed in Guam?

A. I was in Guam for eight months until the accident.

Q. Was the accident the kind of precipitating event that brought you back from Guam?

A. Yes.

Q. Are you still in the military?

A. Yes.

Q. What is your current rank?

A. E-6.

Q. Now, your wife moved to South Carolina in 2014. You were still stationed in California; is that correct?

A. Yes.

Q. At any point while you were stationed in California before this accident, did you change your residency status to any state other than California?

MR. ALLEN: Object to the form.

Q. [Mr. Still] You can answer.

A. Okay. Could you please repeat the question?

Q. Sure. When your wife moved back -- and I am going to try to rephrase because I am not trying to be tricky, but when your wife moved back to South Carolina, did she at that time consider her permanent residency to be here in South Carolina?

A. Yes.

Q. And when she moved back to South Carolina, where did you consider your permanent residency?

A. I was still here in -- South Carolina has always

been my permanent home of record, but as far as my duty station, I was still stationed in California.

Q. And so you were still stationed in California after your wife moved back to South Carolina?

A. Yes.

Q. Then in December of '14, you moved to Guam, and you were stationed in Guam for eight months, correct?

A. Yes, sir.

Q. So in that time frame of 2014 and 2015, where did you pay your taxes?

A. Please repeat that. I'm sorry.

Q. Sure. Did you submit income taxes in 2014 and 2015?

A. Yes.

Q. What state did you submit those income taxes for?

A. We submitted them in California.

Q. And what about 2015?

A. My wife done the taxes. I was stationed in Guam. I can't remember.

Q. If you don't remember something, just tell me.

A. I can't remember. I don't recall.

Q. Okay. We will look at these in a minute. So when the accident happened, were you still stationed in Guam?

A. Yes.

Q. When I use the term "accident," I am talking about the accident that occurred on August 30, 2015. Is that correct?

A. Yes.

Q. Okay. So if you have any confusion on which accident I am talking about for some reason, just let me know, and I will try to clarify that. For our purposes, I am just going to refer to this as the accident. Is that okay?

A. That's fine.

Q. All right. So the accident occurs, and I assume for at least a period of time you are granted leave and you come back to South Carolina for some time?

A. I was stationed -- I had gotten orders in South Carolina from Guam. They allowed me to come here to be with my family, get everything straightened out, and I was here for two years. I was working in the Reserve center at Donaldson Center.

Q. And then from there, you moved to Virginia where you are currently stationed?

A. Yes, yes.

Q. Okay. What is your current position? I understand that you are an E-6 in rank, but what do you do for the military currently?

A. Right now, I am -- my ship is in the shipyard right now, so it is what you call a ship's life extension program, so my ship is pretty much being -- it is pretty much being redone. It is being turned into a smart ship. Everything is being upgraded.

Q. So it's essentially being renovated?

A. That's pretty much it.

Q. So you are living on the base currently or where?

A. Not base. I am staying in housing, military housing.

Q. And your daily job currently, what do you do for the military on a daily basis?

A. I am a command equal opportunity manager. I am the sponsorship coordinator, which is I manage and I assign sponsors to newly-reporting personnel. Also, I walk the ship while it is being renovated to make sure that the contractors or shipyard workers are actually doing their job and not sitting around. I sign -- I authorize what we call hot work checks for the welders to do their job to make sure they are actually authorized to do them, and that's pretty much about it.

Q. Okay. I understand that you are E-6, but what is your current, like, rank? What else is your rank called?

A. Petty officer first class.

Q. Prior to joining the military in 2006, were you insured with USAA at any point?

A. No, 2006, no, I wasn't.

Q. So my understanding for USAA, to be able to use that insurance, you or some family member has to have been in the military; is that correct?

A. Yes.

Q. And is your service in the military the qualifying event for the USAA coverage?

A. Yes.

Q. Your wife, did you know her prior to joining the military?

A. Yes.

Q. Were y'all together when you joined the military?

A. No.

Q. When did you guys first get together and start dating or what have you?

A. Well, we were -- we had a daughter before I joined the military. We were not together for about a year prior to me joining, so 2007, we kind of got back together.

Q. Okay. That was when you were already in the military?

A. I was in the military.

Q. So then in 2007, was she still living here in South Carolina?

A. Yes.

Q. Then at some point, you guys got married, I think around in the May time frame of 2008 or so?

A. Yes.

Q. At that point, she moved up to live with you in Virginia?

A. Yes.

Q. When she moved up there in Virginia, did she consider Virginia her permanent residency there?

MR. ALLEN: Object to the form.

THE WITNESS: Yes.

Q. [Mr. Still] All right. So when you were in the military and you were first shipped to Chicago, where was your driver's license?

A. South Carolina.

Q. Okay. And have you ever had a driver's license that wasn't South Carolina?

A. No.

Q. So from the time that you started driving until currently, your driver's license has always been --

A. South Carolina.

Q. -- South Carolina?

A. Yes, sir.

Q. To your knowledge, has your wife ever had a driver's license in any state other than South Carolina?

A. No.

Q. As far as while you were in Virginia stationed in Virginia starting in April of 2007, did you have an address, a P.O. box or anything here in South Carolina that you received mail?

A. Yes. It was my mother's address.

Q. Did you also receive mail in Virginia?

A. No.

Q. What was your mother's address?

A. 18 McCall Street, Greenville, South Carolina, 29601.

Q. And when is the last time you used that address to receive mail?

A. I can't recall.

Q. Okay. Then so you moved from Virginia to California. At that point, did you still receive your mail at your mother's address?

A. No.

Q. And so at that point, you were receiving mail at your California address?

A. Yes.

Q. And when you were in Virginia and married to

your wife, did she have an address in South Carolina that she received mail at?

A. From time to time, yes, at her mother's house.

Q. What was that address?

A. 309 Eunice Drive, Greenville, South Carolina, 29605.

Q. Do you recall when the last time she would have used that address to receive mail?

A. No. I can't recall.

Q. When your wife moved back to South Carolina in mid, I think, 2014 and you were stationed for a period of time in California still, where would you guys receive your mail at that time?

A. It was a South Carolina address. It was Four Cross Club Drive, Greenville, South Carolina, 29601.

Q. Was that the address where she was residing at the time?

A. At the time, yes.

Q. And then when you went to Guam, where did you receive your mail at that time?

A. Same address, Four Cross Club Drive, Greenville, South Carolina, 29601.

Q. Okay. Now, what was your position over in Guam? What were you doing in Guam?

A. I was a welder, and at the time, I was what you

call an LPO, leading petty officer of my own -- I was running two shops at the time. I had just got put in that position.

Q. Now, I think I understand about the time frame of when you guys moved as far as your stations and things like that. Okay? At this time, I want to introduce some documents that I had premarked, and I am going to go through them all so you know what is in front of you for these dates. Okay?

A. Okay.

Q. Exhibit 1 to your deposition is several documents labeled at the top left one through 28, and this is my understanding of the California auto policy declarations and renewals. Okay?

A. Okay.

Q. That's Exhibit 1. That is for USAA policy No. 02220801G71030. All right. Exhibit 2 to your deposition is a series of auto declarations and renewals for a Virginia policy under that same number. Okay? No. Sorry. Different number. It is 022260801G71020. Do you see that?

MR. ALLEN: Sorry to interrupt you. Are these complete copies of the entire policies or just selected documents from the policy packets?

MR. STILL: All right. My understanding is each of these documents in Exhibit 1, 2 and Exhibit 3 are going to be all of the declarations and renewals and amendments to the declarations for the policies from the time he began to be insured with USAA up until the time of the accident.

MR. ALLEN: Okay.

MR. STILL: And a period after that.

MR. ALLEN: Are the vehicle insurance cards --

MR. STILL: The insurance cards, no. These are just the declarations, not the actual insurance cards.

MR. ALLEN: Okay. Not the policies themselves.

MR. STILL: The policies, again, are going to be Exhibit 4 and, unfortunately, out of order, Exhibit 8, and those are going to be the policies that were in place along with the declaration page at the time of the accident for the two vehicles that I understood they owned.

Q. [Mr. Still] Going back, I think I introduced Exhibit 2, and Exhibit 2 has pages one through 20 marked

in the top left corner. Exhibit 3 again is the declarations and auto policy renewals for the South Carolina policies, and the first policy number is 022260801G71010. Do you see that?

A. Okay. I see it. Exhibit 3. Got it. That's right.

Q. And I will go ahead and tell you that on page 22, that policy number is going to change to 022260801G71040. That is on page 22 in the top left corner.

A. Repeat that, please.

Q. Sure. The policy on page 22, policy 022260801G71040.

A. Yes.

Q. And then we have the next change in the policy in this particular set of documents, and, again, we have arranged these by states, so if you go to page 33, it talks about policy No. 022260801G71050. Do you see that?

A. Yes, I see it.

Q. And it remains on that policy throughout the rest of that exhibit. So that is Exhibit 3 to your deposition. Exhibit 4 is -- the first page is the declaration, first two pages, and then it has the attached South Carolina USAA policy that was in place at the time of the accident -- okay -- for the 2001 Ford

Expedition effective policy period of July 17, 2015 to January 17, 2016, and it has the coverages there. Okay?

A. Okay.

Q. Exhibit 5 to your deposition are Plaintiff's answers to Defendant's requests to admit to Plaintiff, and we have attached six pages of responses, and I have also attached the exhibits to those requests to admit as well. Okay?

A. Okay.

Q. Exhibit 6 to your deposition is Plaintiff's answers to Defendant's first set of interrogatories. Exhibit 7 collectively are the settlement documents for the settlement that was reached initially for the liability and I understand the initial UIM policy that was actually on the vehicle involved in the accident. So that's Exhibit 7.

A. Okay.

Q. Then Exhibit 8, the first two pages are the declaration page for the California policy that was in place effective August 10, 2015 to February 10, 2016, and then it has the attached policy language for the California policy. Okay?

A. Okay.

MR. ALLEN: Trey, I guess, before we get into your questions, I am just going to make a

general standing objection to Defendant's 1, 2, 3, 4 and 8 just to the extent that they don't contain complete information, documents or to the extent they are missing any policy documents.

MR. STILL: When you say "policy documents," what you are referring to, policy documents?

MR. ALLEN: Just any -- for instance, I think I have seen some cover letters, I have seen some, you know, additional -- just any communications, for instance, when Travelers would have submitted these.

MR. STILL: Travelers?

MR. ALLEN: Excuse me, USAA. I am not saying that you intentionally left anything out, but there are a lot of documents in here, and just to the extent that any pertinent information may be missing, I would just object on those grounds.

MR. STILL: Okay. My response to those objections are these exhibits are what they are. I don't think I have left out any other pages or declarations, auto renewals, anything of this nature in these particular documents.

Obviously, I could have included our thousands of pages of production in this one, but for purposes of this deposition, I believe that these are sufficient to get us in the time frame.

MR. ALLEN: Okay.

Q. [Mr. Still] All right. Mr. Young, I want to go back to a little bit of a timeline. Okay?

A. All right.

Q. What we are going to focus on now is your vehicles that you and your wife owned at different times and where those vehicles were insured. Okay?

A. [Witness nods affirmatively.]

Q. So we are going to walk through that the best we can.

A. All right.

Q. To make sure that we can kind of track everything accordingly. Okay?

A. Okay.

Q. Does that make sense?

A. Yes.

Q. We are going to jump back and forth potentially through Exhibit 1, 2 and 3 to get this done, but I want to make sure, if you think something is wrong or incorrect or inaccurate in those dates or time frames,

let me know.

A. All right.

Q. So if we get into when you first joined the military, I understand that would have been in 2006; is that correct?

A. Yes.

Q. At that point, you would have been living here in South Carolina, physically living here prior to joining the military, correct?

A. Yes.

Q. So if we go to Exhibit 3 -- and when I say "page number," I am talking about in the exhibits, the top left corner. Okay?

A. Yes, sir.

Q. Exhibit 3, page one, we can see there at that time we have your name listed as the insured and address, and then you are listed as the sole operator on this particular policy. Okay? Does that make sense?

A. Yes, sir.

Q. That has an effective period of January 29, 2007 to July 29, 2007. Do you see that?

A. Yes.

Q. Now, do you believe this is when you would have first become insured with USAA General Indemnity Company?

A. Yes.

Q. Okay. Now, this is for a 1998 Ford Explorer 4x2 four-door; is that correct?

A. Yes.

Q. And did you own this particular vehicle in your name?

A. Yes.

Q. And it was titled in your name?

A. Yes.

Q. At this point in January of 2007, you were not married; is that correct?

A. That is correct.

Q. Tell me how you went about obtaining the USAA policy in 2007.

A. Well, upon when I graduated boot camp and I had went to my A school, which is in Chicago, they told us that the best insurance for military to have and why we have it was because it goes everywhere was USAA, so that's why I switched over from State Farm to USAA.

Q. Okay. While you were in Chicago and in that A training, is that when you actually obtained the USAA coverage, while you were still in Chicago?

A. Yes.

Q. Was the Ford Explorer located with you in Chicago, Illinois at that time?

A. No, it was not.

Q. Where was it physically located?
A. South Carolina.
Q. And how did you go about changing your insurance from State Farm to USAA in January of 2007?
A. Phone call.
Q. And tell me about that. How did you get the number, and who specifically -- not the person, but did you call USAA, did you call a broker?
A. Called USAA.
Q. So were you given a direct number from the person that informed you about --
A. Yes. They give us all the information while we are in C school or up there in the military to kind of help military set up banking and insurance companies and stuff like that.
Q. Okay. At this point, it looks like, if we look at Exhibit 3, at that point, you obtain a policy in South Carolina with liability coverage of -- and I am just going to say the first numbers of this coverage -- 25, 50, 25 for liability, and then it has personal injury protection coverage, it has uninsured motorist of 25, 50, 25 and underinsured motorist of 25, 50, 25. Do you see that?
A. Yes.
Q. What is your understanding, if any, of the

difference in those particular four different coverages? Actually, there is physical damage coverage at the bottom. Sorry. I left that out. What is your understanding of those one, two, three, four, five different coverages?

MR. ALLEN: Object to the form. You can go ahead and answer.

Q. [Mr. Still] Let me ask you this. What is your understanding of liability coverage? What is that intended to cover?

MR. ALLEN: Same objection.

Q. [Mr. Still] You can answer.

A. Liability is if I get into an accident and if it is my fault, you know, that's what my coverage pertains to, I mean, for the other person, up to $25,000.

Q. Okay. Per person. Okay. Then what is your understanding of personal injury protection? What does that coverage offer?

A. If I was to be injured or -- if I was to be injured, you know, they would actually, like, help me out or what not.

Q. So is it your understanding that personal injury protection coverage is to compensate you for your own personal injuries to some extent?

MR. ALLEN: Object to the form.

THE WITNESS: That's my understanding of it.

Q. [Mr. Still] Okay. Then what is your understanding of uninsured motorist coverage?

A. If I get into an accident with an uninsured motorist, that's what my insurance would cover.

Q. Whose benefit is that for? Is that for your benefit or the uninsured motorist coverage?

A. It should be for actually my benefit to help me out.

Q. Yes, sir. Then underinsured motorist coverage, what is your understanding of that coverage?

A. With the motorist, if I had injury, property damage, it is the same -- underinsured. I'm sorry. The insurance, motorist's insurance can't cover all the damages, you know, I guess my insurance company would, you know, pay whatever, the rest or try to cover me on that area.

Q. Essentially, again, not trying to put words in your mouth, but underinsured motorist coverage, if I paraphrase your statement, is to cover above and beyond the other driver's insurance?

MR. ALLEN: Object to the form. You can answer.

Q. [Mr. Still] Is that your understanding?

A. I won't say beyond. It covers what the underinsured motorist insurance can't cover or up to that certain amount.

Q. Okay. And do you have any understanding how it would apply if you are involved with an insured driver that is at fault in the accident? Do you have any understanding as to how the underinsured motorist coverage would apply in that situation?

A. If they are at fault? I cannot answer.

Q. Okay. What is your understanding of physical damage coverage?

A. Physical damage coverage is when any kind of -- I'm sorry. I cannot recall that.

Q. All right. When you obtained these particular coverages, I understand that you would have called USAA. Did you fill out any type of application with USAA?

A. I did everything over the phone, and at the time, they might have sent me some forms. I cannot recall, it's so long ago when I actually done this, so to be honest with you, perfectly honest, I was still brand new to this insurance company, and when I done all this over the phone, they might have sent me some forms. I can't remember.

Q. Okay. As far as the extent of coverage, the amounts of coverage that you got and different types of

coverages, including underinsured and the physical damage coverage, did you specifically request those coverages?

A. When I was getting the coverage, they offered them to me. They explained to me what they were, and they elaborated it was good to actually have, so I said, you know, "Sure. I'll take it."

Q. So over the telephone in the initial phone call, they explained each of these types of coverages -- and, again, I am going to describe them as five separate coverages -- to you, and at that point, you decided to purchase that policy?

A. Yes.

Q. Okay. As far as the amounts are concerned, the 25, 50, 25, did you request that specifically, or how did you end up with that amount?

A. Well, when they elaborated the deductibles and the price range, that's when I agreed to it.

Q. Okay. So when you got off that phone call that day -- and, again, do you remember what specific day that phone call would have occurred?

A. No, I cannot.

Q. Did you consider yourself when you got off that phone call that day to be a USAA insured?

A. Yes.

Q. And to your knowledge, did they provide

liability coverage and the other coverages listed under here from that day forward?

A. Yes.

Q. From that period of January of 2007 until today, have you ever been insured by any company other than USAA for auto insurance?

A. No.

Q. So at this point, you are still in Chicago. You obtain the actual insurance through USAA, but your car is physically located here in South Carolina, correct?

A. Yes.

Q. All right. At what point did the '98 Explorer leave the State of South Carolina for an extended period of time, whether or not it moved up to Chicago with you or it was moved to Virginia with you?

A. I went home and I drove it back up here from South Carolina. I drove it to Virginia from South Carolina.

Q. Okay. So at some point, the Explorer is up there in Virginia with you as you were living on the base; is that correct?

A. Yes.

Q. And that was before you actually got married to your wife?

A. Yes.

Q. Then, now, I understand at some point, this particular Explorer, you were involved, I think, it looks like, in a wreck of some sort. Is that correct?

A. The Explorer? I don't recall it being in an accident.

Q. Okay. Let me tell you, if we skip to page five of Exhibit 3, it looks like to me at that point your policy changes from an '98 Ford Explorer to an '01 Ford Expedition 4x4.

A. Yes.

Q. What was the reason for that particular change?

A. Just got tired of the Explorer and the Explorer was starting to break down a little bit, so I just traded it in, got something better.

Q. So there was no actual like car wreck or anything like that?

A. Huh-uh [no].

Q. You just wanted to upgrade?

A. I just wanted to upgrade.

Q. Then how did you notify USAA that you were changing vehicles at that point?

A. I called and told them.

Q. At that point, it looks like, if we look on page five, it looks like your coverage amounts and the actual types of coverages you had stayed the same; is that

correct?

A. Yes.

Q. At that point, did you ask them to make any changes to your coverage that they refused to?

A. No.

Q. Okay. And during that time frame when you called them to tell them that you were changing from the Explorer to the Expedition, did you also tell them you were stationed in Virginia and that the vehicle was in Virginia with you?

A. Yes.

Q. And what did they tell you about that?

A. Well, I can't recall. I can't recall. I told them because the car was purchased and registered in Virginia, the Expedition, and when I called and told them to switch it over, that's what they done.

Q. Okay. At that point, though, did you specifically tell them the vehicle, the Expedition, was with you as you were living on a base in Virginia?

A. Yes.

Q. And did they tell you that you needed to change that policy to anything but a South Carolina policy at that time?

A. No.

Q. Okay. At that point, my understanding is you

were still living on base, but your permanent residency was in South Carolina; is that correct?

A. Yes.

Q. And your driver's license was in South Carolina?

A. Yes.

Q. Were you still receiving mail at your mother's house?

A. Yes.

Q. My understanding is that essentially from that point forward until mid May, essentially, everything remained the same -- sorry, March of the following year, everything remained the same, meaning you still had the Expedition, you were the only insured and it remained a South Carolina policy. To show that, if we turn to page 18 of Exhibit 3 -- if you need to look through these in more detail, just let me know. I will go ahead and tell you on page 18 of Exhibit 3, it's a South Carolina policy effective March 1st, 2008 to July 29, 2008. I will tell you at that point, an '06 Kia Spectra is added onto the policy and your wife is actually added as a driver on that policy.

A. Yes.

Q. At that point, it says that her last name is Young.

A. Yes.

Q. So at that point, you were married; is that correct?

A. That's correct.

Q. And if we look down at the very bottom of this page, do you see where it says that the actual policy is signed by the president and secretary on February 24, 2008?

A. Yes.

Q. All right. Do you recall the exact date as to when you would have added your wife to your particular policy?

A. No.

Q. Now, I hate to put you on the spot, but what is your anniversary date?

A. Okay. Our actual anniversary date is January 1st, 2008. We got married January 1st, 2008 so we could start our paperwork and get them started so we could start getting housing up in Virginia, get on the list. May 24th the same year we did the wedding for the family. We got married by a priest in January, and our actual wedding, our wedding date that we want to count is May, but we actually got married in January.

Q. So the legal marriage and her name change would have occurred January 1st, 2008?

A. Yes, January 5th, I'm sorry, January 5th, 2008.

Q. So January 5th, 2008, where is your wife living at that point?

A. She is still here in South Carolina.

Q. And were you still stationed in Virginia?

A. Yes, sir, I was.

Q. Do you remember about when she would have moved up to Virginia with you?

A. That was mid 2009.

Q. So she didn't live with you in Virginia at all in 2008?

A. No. I'm sorry. Mid 2008, mid 2008.

Q. Was it roughly about the time of your actual wedding date that you had for your family?

A. About two or three months after our wedding date in May.

Q. Okay. Now, I will go ahead and tell you that it appears that the next change in your policy that I am aware of would have been on page 21. When we see that on page 21 to Exhibit 3, it says here in the part where it says "Coverage" here towards the middle of the page, it says "Policy canceled pro rata and rewritten, no coverage lapse." Do you see that?

A. Yes.

Q. At the bottom of that, it says May 1st, 2008, and also, it looks like to me at that point your address

in this particular document changes from a Greenville address, first time I am aware that we see a Norfolk, Virginia address. Do you know why there was a change in your physical address at that point?

A. Yes. Those are our -- the housing. We got our apartment because our apartment was ready, but she still did not move in Virginia with me. I had the housing. I had the keys to our apartment myself, but they didn't move up there with me yet, so it was about June or July, maybe August when they actually moved in the house with me because the military was still -- well, we did a daddy move -- I'm sorry. My father-in-law helped bring our stuff to the apartment in Norfolk, so we did call them and told them, "Listen, we have a physical address now" because usually when I call them, I tell them -- they know I am in the military and I tell them -- I have told them that, you know, my home of record is South Carolina because I am going to be moving around a lot, so if you need an actual physician address that's why it was always 18 McCall Street back in South Carolina because if I had a permanent change of duty station, that's where I was, that was my address, South Carolina.

Q. So in May of 2008, you would have had a physical address in Virginia?

A. Yes.

Q. And you would have notified USAA of that physical address?

A. Yes.

Q. So if we go to Exhibit 2 at this point and look at page one, the Virginia policies, and we look here, we have you and your wife again on the first page, you and your wife as the drivers, and you see where it says "Virginia personal auto policy declarations" there?

A. Yes.

Q. It has a policy period of May 2nd, 2008 to November 2nd, 2008. Do you see that?

A. Yes.

Q. Again, this is for the '01 Expedition and the '06 Kia Spectra?

A. Yes.

Q. And then at this point, if you look down into the coverages section here, we see that you have liability coverage of 25, 50, 25, and then it says uninsured motorist coverage of 25, 50, 25. Do you see that?

A. Yes.

Q. And then the next coverage mentioned there is damage to your auto other than collision loss, and then it's got collision loss and several other types of expenses covered under what's part D of the policy. Do

you see that?

A. Yes.

Q. All right. So at this particular point when your policy goes from South Carolina to Virginia, is the precipitating change at that point because you had a physical address in Virginia?

A. Yes.

MR. ALLEN: Object to the form.

Q. [Mr. Still] And at that point, were you instructed by anyone or whose decision was it to change it from a South Carolina policy to a Virginia policy?

A. They did that. I just told them. I called and just told them "We got an address here in Virginia, so this is where I am moving to. This is where my orders are. This is where I got orders to," and that's when they changed it.

Q. Okay. So in this time frame of May of 2008, both of these vehicles would have been located in Virginia?

A. Yes.

Q. Okay. And as far as the coverage is concerned, did you ask for a change in the type of coverage that was being offered under the policy?

A. Could you say that again?

Q. Sure. What coverage did you request when the

policy was changed to a Virginia policy?

A. The only thing I see on here is just towing, and I did ask for the towing.

Q. All right. Now, you see here on this particular document -- you don't see, I guess I should say, on here anything mentioning underinsured motorist coverage. Do you see anything about underinsured motorist coverage on page one of Exhibit 2?

A. Page one of Exhibit 2, no, I don't see it.

Q. Okay. Were you offered underinsured motorist coverage at that time?

A. I can't recall.

Q. Okay. When these documents came in, any type of insurance policy information, would you read through those documents?

A. I would read through them. I would make sure my name and everything is correct, my name and address is correct, what we talked about. I look at the policy and I just make sure -- I look at the payments and everything.

Q. Okay. Did you ever read the actual policy language, what was covered and what circumstances certain insurance would apply? Did you ever read the actual policy language?

A. The language?

Q. If you need an example, Exhibit 4 and Exhibit 8 have actual policies that are attached to those exhibits after page two, so I am going to ask you specifically about those documents, but for now, I am just asking, when these documents were shipped to you or sent to you, did you ever review all of the documents, including the policy language?

A. Yes, I did; but a lot of things, a lot of business I sent them was -- I mean, I have conducted with them was over the phone.

Q. Okay.

A. And when they sent me documents, it was a bill. A lot of times it was like at bill off my policy, and I do look through it, but when I see everything was still correct, I just --

Q. Okay. Now, these renewals and declarations and all, would that have been something -- do you recall receiving these type of documents, not these specific documents, but these type of documents from your insurance company?

MR. ALLEN: Hold on. Which ones are you referring to?

MR. STILL: The exact ones I said.

MR. ALLEN: What exhibit?

MR. STILL: I am going to ask if you can

please limit your objections to the form and, if he needs clarification, we will ask him, but as far as --

MR. ALLEN: I would ask that you clarify which exhibits and documents you are asking about, please.

Q. [Mr. Still] If you need clarification, please let me know.

A. Okay.

Q. Going back to my original instructions, if you don't understand my question, if you can, just please ask me to rephrase, and I will be glad to do that, but going back to we see these documents and they are listed at the top declarations and if you keep flipping through, you will see amended declarations, renewals, but in particular, the documents in Exhibits 1, 2 and 3, do you recall receiving documents similar to that in the mail from USAA?

A. No.

Q. Okay. So your recollection is you would not have received these documents from USAA?

MR. ALLEN: Object to the form.

THE WITNESS: Documents we get would be like a bill, would be the bills. I have the insurance card, and it -- I can't really just

recall seeing these type of documents ever since we did everything online. We switched everything online. They offered to go paperless because we just got tired of getting swamped with mail, so a lot of times when we get our -- when something change in our insurance, they will send us an email.

Q. [Mr. Still] Okay. Did you preserve those emails? Do you still have those emails?

A. No.

Q. Do you recall when you would have changed from receiving paper mail to electronic?

A. No.

Q. Would it have been about the time frame that you changed from South Carolina to Virginia, or would it have been a different time frame?

A. Pretty much when we came from Virginia -- I mean, when we moved from South Carolina to Virginia after I got married. When we got married, me and my wife decided to just go paperless because we got tired of all the -- and if anything changed, we let them know, they will let us know, and we will call them and straighten it out that way.

Q. So every time you changed and called USAA to change something in your policy, did you receive a

corresponding email to that effect?

A. When we get an email, we'll call and ask about it, and they will actually go over -- they will actually go over the policies and they will explain to us and then we will go over the cost and everything, and anything we had questions about, we will talk about it over the phone.

Q. Okay. So in the emails that were sent to you, do you recall ever seeing any kind of documentation that looked like page one of Exhibit 2?

A. When we first got -- I remember seeing something like this.

Q. As far as the email is concerned, whose email would that have been sent to?

A. Mine.

Q. What is that email address?

A. Savahya, S-A-V-A-H-Y-A, at Gmail.

Q. Okay. Did they also send this electronic information to your wife at any point, to any of her contact information?

A. They do have her contact information.

Q. Do you know if they sent her the same emails they would have sent you about your policy?

A. I can't recall.

Q. Okay. Now, when you would receive something

from USAA through email, would you review that, or would you have your wife review it?

A. I would look at it, and if I seen something was wrong, I talk to my wife about it, and she would just call or I would call. We both just call USAA.

Q. Okay. So as far as the person who would actually communicate with USAA over the telephone, which one of you would that be?

A. Mainly my wife.

Q. Okay. When you just called to let them know you had a physical address in Norfolk, Virginia, do you know which one of you actually made that call?

A. That would be my wife.

Q. Were you present for that phone call?

A. No.

Q. So when the actual coverage that was going to be issued under the Virginia policy -- let me ask it this way. Did you understand that your South Carolina policy was going to be canceled and you were going to be issued a different policy under a Virginia policy?

A. No. They switched it over. I told them my address had changed because I got a physical address. They updated all the information. All they did was ask what my new address was, and they changed the policy.

Q. Okay. Did they ask you that, or did they ask

your wife that? Who told them about the new address?

A. She would tell them and then they will verify on my end because a lot of times when we call separately about different issues, they like to update information. They will ask what address do we have on file or what not. We just update our personal information.

Q. All right. So based on your recollection, it would have been your wife that had the initial phone call with USAA to inform them of the physical address in Virginia? Is that your recollection?

A. In Virginia, that would be me. In Virginia, it would be me.

Q. Okay. So you would have been the one that notified USAA for the first time of a physical address?

A. Yes. That was me.

Q. Going back to that conversation, I think you testified earlier they would generally go through the coverages and the premiums that were being offered under that policy.

A. Yes.

Q. So when you called and informed them of the physical address of Virginia, did they go over the coverages that would be offered under your policy at that time?

A. They would briefly just go over -- yes, they

would.

Q. So that period of time they would have explained to you you would have had liability coverage up to certain limits and they would have discussed that you would have uninsured motorist up to a certain amount; is that correct?

A. Yes.

Q. And during this conversation or while you were in Virginia and this policy was still in place, what is your understanding as to underinsured motorist coverage? Is it your understanding that when you were in Virginia under this policy, that you had underinsured motorist coverage?

A. At the time, I asked them -- could you reclarify that?

Q. Sure. When you guys were talking about the original change and they discussed the new policy premiums and the coverages that were going to be under that policy, did you discuss with them anything about underinsured motorist situations?

A. No, I didn't discuss it with them. When they offered it and they said it would be good to have, you know, I said "Okay. Fine." You know, I was just figuring I was just getting good insurance.

Q. Okay. And did you specifically ask for certain

amounts of insurance and types of coverage?

A. I asked -- mainly I asked what the deductible would be and how much it would cost. Mainly, it was about the cost of it.

Q. Okay. Specifically, when you were discussing the Virginia policy and that change in the May of 2008 time frame, did you specifically ask for underinsured motorist coverage?

A. No, I did not!

Q. Okay.

A. No, I did not.

Q. All right. Now, I will go ahead and tell you, if we look through the Virginia policy, it looks like to me that the Kia would have been taken off of this Virginia policy on page 15 of Exhibit 2. That would have been the last time that I see the Kia being offered. Sorry. I misspoke. If we look at page 17, it looks like to me that is the first document that we have that the Kia is not reflected under the Virginia policy. Does that appear to be correct?

A. You said we are on page 17?

Q. Yeah. Page 15, the Kia is listed. Let me go back to 15. The Kia is listed under the Virginia policy for May 2nd, 2010 to November 2nd, 2010, and at that point, we see the Expedition and the Kia listed as

covered vehicles. Then if we go to page 17, a document that is titled "Virginia personal auto policy amended declarations" effective August 10, 2010 to November 2nd, 2010, in that particular document, we just see the Ford Expedition. Do you see that?

A. Yes, I see it.

Q. At this point, if you also look, the named insured address, it has Tyrin Young, and it has a Redwood Drive, Unit 160 address. Do you see that?

A. Yes, I see it.

Q. So based upon this, it looks like about that time frame is when you were relocated to California.

A. Yes.

Q. Okay. I believe you testified earlier there was a period of time where your wife was still in Virginia when you were stationed in California?

A. Yes.

Q. At this point in time -- and, excuse me, but you already had your daughter at that time. When were your two sons born?

A. Tyrin was born --

Q. The year is fine.

A. Okay. Tyrin was born in 2000 -- I'm jumbled up. I'm sorry.

Q. I can probably help. Looks like to me one son

was born in July of 2010 and another one was born in August of 2012. Does that sound right?

A. Yes.

Q. So at this point in August of 2010, your oldest son would have been roughly a month old?

A. Yes.

Q. Okay. At this point, you have moved to California and there is an apparent change to the Virginia policy. Do you see that?

A. Yes.

Q. The Kia is no longer listed. Do you know how that change occurred? Did you call USAA? Did your wife call? Did y'all do it online? Did you tell them in some regard that the Kia was no longer going to be in Virginia? What happened there?

A. We called and let them know.

Q. Okay. Who called? You or your wife?

A. My wife.

Q. And were you present for that telephone call?

A. No.

Q. Do you know what discussions were had as far as -- do you recall any discussions as to what was had or did she ever tell you what she disclosed to USAA as to why the Kia would no longer be under this policy?

A. Me and my wife talked about it because I was

going to be sent on deployment, and when I called and I told her, you know, I told her to take the Kia off because I was on deployment, so we was communicating by email, me and my wife were, and she took care of the business while I was on deployment.

Q. Do you still have those emails?

A. No, I do not.

Q. Okay. So when we go back to the August, 2010 time frame, where were you deployed?

A. I can't remember.

Q. Were you essentially located on a ship in the ocean, or were you actually on a physical base in another country?

A. I was on a ship because we was doing a home port change. We was doing a home port change from Virginia to California. I'm sorry. Wait. Effective 2010 -- let me look at the dates. I'm sorry.

Q. I am asking you to go back.

A. It is going back, and I don't remember. I don't remember all the details. I'm sorry. I do remember, I mean, my wife took care of that.

Q. All right. So in August of 2010 time frame, where was the Kia physically located?

A. The Kia -- the Kia was -- I can't remember. I'm sorry. I can't recall.

Q. Do you know how the Kia would have gotten from Virginia to California?

A. It was being shipped. That's right. It was being shipped because the military will move one vehicle, and since it would be -- it would cost less. Since we didn't have a whole lot of money, we had to ship the Kia.

Q. And at some point, the Expedition would have gone from Virginia to California. How did that happen?

A. Military move.

Q. You just had to pay for it?

A. No.

Q. Okay.

A. The military will only move one car. That's it. The military will move one car with the move, and the Expedition, she was still driving the Expedition.

Q. At some point, though, the Expedition would have gone from being located in Virginia to being located in California; is that correct?

A. Yes.

Q. Was it shipped by the military from Virginia to California?

A. No.

Q. How did it get to California?

A. We had to pay to get it shipped out.

Q. All right. So your wife, you or your wife,

didn't physically drive it cross-country?

A. No, no.

Q. So in the August, 2010 frame is about the time I understand that your ship would have been transferred from Virginia to it was going to change ports to California in that time frame?

A. No. Towards the end of 2009 to the beginning of 2010.

Q. Okay.

A. Effective August, '10, that's when we actually got the military housing. We were staying in base housing over there, too, which was actually waiting on military housing at the time.

Q. So when were you relocated to California?

A. I got to California with my ship beginning of 2009.

Q. Okay. So in 2009, you would have lived --

A. No. I'm sorry. Beginning of 2010. We left Virginia end of 2009, and I got to California beginning of 2010.

Q. Okay. And then do you know when your wife would have moved from Virginia to California?

A. July or August.

Q. So about the time frame we can see this change?

A. Yes. It's coming back now.

Q. And do you recall about what time your Kia was shipped out to California?

A. I can't recall.

Q. Okay.

A. I can't recall.

Q. All right. So as far as the change of the Kia being on the Virginia policy that we can see on page 17 of Exhibit 2, to the best of your knowledge, that would have been something that your wife would have taken care of?

A. 17, the Kia being on the -- I can't recall.

Q. Then if we go to the last page of this particular document, it looks like we have in this particular document, Exhibit 2, page 20, it says, the last one that I have record of, there was a policy period of November 2nd, 2010 to May 2nd, 2011. Do you see that?

A. Yes.

Q. Okay. At that point, the Expedition is still insured under the Virginia policy and the Kia is not; is that correct?

A. Yes.

Q. Okay. I apologize for going through this. I know I am asking you to remember a lot of details, okay, but the details matter in this situation. If we go to Exhibit 1 now, Exhibit 1 is a California auto policy

declaration, and this particular one, if you look at it, has a policy period of August 10, 2010 to February 10, 2011. Do you see that?

A. Yes.

Q. At this point, it's got a Redwood Drive address in it, and it lists just the 2006 Kia. Do you see that?

A. Yes.

Q. I understand that your wife would have discussed with USAA about taking the Kia off of the Virginia policy. Do you recall which one of you would have spoken to USAA about the coverages offered under the California policy?

A. No.

Q. Okay. Did you ever speak to anyone in the 2010 time frame with USAA to discuss what coverages were available under the California policy?

A. I can't recall.

Q. At any point from 2010 forward, at any point, did you ever speak to a USAA representative to discuss whether or not this California policy offered underinsured motorist coverage?

A. I can't recall.

Q. Did you ever specifically ask for the California policy to actually offer underinsured motorist coverage?

A. I can't recall.

Q. When the policy changed to the California policy for the '06 Kia, were you aware of when that happened?

A. I can't recall.

Q. Okay. It says here you are still the named insured, and it has your address in California. You and your wife are both listed as operators under the California policy, correct?

A. Yes.

Q. Now, if we go forward here, at this point in 2010, is it your understanding or did you believe that you had underinsured motorist coverage?

A. I can't recall.

Q. And for the purposes of my questioning, underinsured motorist coverage -- again, this is a loose definition, but it would apply to where someone's liability coverage is insufficient to cover the damages. At that point, underinsured motorist coverage would step in and pay the additional up to the policy limits. Does that sound kind of --

A. That sounds correct.

Q. Okay. So when you were in California in 2010, do you believe one way or the other as to whether you had underinsured motorist coverage?

A. I can't recall.

Q. Now, the next change we have as far as the major

policy provisions, to my understanding, would be on page seven.

A. Of Exhibit 1?

Q. Of Exhibit 1. If we look at that on page seven, that is the first time I am aware that the Expedition, the '01 Expedition is listed under the California policy.

A. Yes.

Q. If we look at the effective period date for that, it is August 31st, 2011 to February 10, 2012.

A. Yes.

Q. Okay. At the bottom of that document, it is signed by the secretary and president on August 30, 2011. Do you see that?

A. Yes.

Q. Based upon these dates that we are talking about now, does it appear to you or is it your recollection that your wife would have moved out to California roughly in the August time frame of 2011?

A. She moved in 2010. She was there in 2010.

Q. Okay. You mentioned when you first moved out to California, you were in base housing, correct?

A. I was staying on the ship. I was waiting for base housing to open up. We was looking.

Q. The 8780 Redwood Drive, Unit 160, was that on the base?

A. It was not on the base. It is base housing. The military has their own communities.

Q. Okay. Did you live at any other address other than that 8780 Redwood Drive --

A. No.

MR. ALLEN: Let him finish his question.

THE WITNESS: I'm sorry.

Q. [Mr. Still] -- while you were stationed in California?

A. No.

Q. All right. So at this point, it looks like there is a policy change to your policy where the Expedition is added to your California policy at that time. Do you recall having a conversation with USAA to add the Ford Expedition to this particular California policy?

A. I can't recall if it was me or my wife, but me and my wife did talk about getting an Expedition added to the California policy. I can't remember if it was me or her, but it was always a practice that we always call on any change, any updates that we had with them.

Q. Okay. If we look, in August of 2011, you and your wife owned two vehicles, the Kia Spectra and the Ford Expedition?

A. Yes.

Q. And at this particular time when the Ford was added to the California policy, do you know one way or the other whether you or your wife specifically requested underinsured motorist coverage at that time?

A. I can't recall.

Q. Okay. Again, my understanding is every time an email came in from USAA -- because you would have been electronic during this time period?

A. Yes.

Q. Would you have reviewed the information on there?

A. Yes.

Q. So you would have reviewed the policy and the coverages offered?

A. I briefly looked over everything.

Q. Okay.

A. But I can't recall anything.

Q. All right. So earlier we were talking about the actual policy language itself. Do you recall reading the California policy in that time frame of 2010 and 2011? We will talk about the policy in a minute. We will talk about it in detail in a minute.

A. I can't recall.

Q. Okay. Again, trying to get a timeline of the changes and why they occurred in these policies, the next

time I see some type of change to the policy would have been in August of 2014, and if you look at page 19 of Exhibit 1, at this point on page 19, you see that both vehicles are listed under the California policy with effective dates of August 10, 2014 to February 10, 2015. Do you see that?

A. Yes.

Q. And then if we look on page 21, at this point, the Ford Expedition no longer appears on the declaration page. Did you see that?

A. Yes.

Q. So this has an effective date of August 10, 2014 to February 10, 2015. Do you see that?

A. Yes.

Q. Now, at this point, it appears that there is a change with the USAA California policy to remove the actual Expedition. Do you recall who would have spoken to USAA that would have initiated that change?

A. My wife.

Q. And at this point, if you look at the bottom, it is signed on July 16, 2014, so mid 2014, would that have been about the time you would have moved back to South Carolina?

A. Yes.

Q. So at that point, going back to July of 2014 and

August of 2014, did you personally have any conversations with USAA as to the actual coverages under any policy for either vehicle?

A. Not about coverage, no.

Q. All right. Do you recall having specific conversations with them for other reasons during that time frame?

A. Yes.

Q. What other conversations would you have had around July of 2014 time frame?

A. I called them and informed them that we were shipping the Kia to Guam.

Q. And when did you tell them that the Kia would be shipped to Guam?

A. Towards the end of 2014, so I want to say November, November time frame of 2014.

Q. All right. So as far as the communication is concerned about the Kia being shipped to Guam, what specifically do you remember about that conversation with USAA? Did you personally have that conversation, or was it something your wife discussed with them?

A. No. I called and told them.

Q. What did you specifically tell them, if you recall, as far as the actual location and it being shipped?

A. I told them I had orders to go to Guam and that's why I was sending the vehicle, and I can't recall everything else after that.

Q. Okay. And I assume during these conversations that you would have had specifically that you recall from the South Carolina to Virginia move policies, did they have any discussion with you that you would need to change your California policy to a Guam policy?

A. Huh-uh [no].

Q. All right. Did you have any understanding as to whether or not USAA offers a separate policy for vehicles located in Guam?

A. No. When I called them and told them, that was it. Usually it was always a practice and they would switch it.

Q. Now, we go back and we talk about the actual Kia being moved to Guam, and if you kind of thumb through, this is kind of a nonspecific question, but Exhibit 1, I don't see where they actually change your address ever to a Guam address. Do you agree with me on that?

A. Yes.

Q. Okay. So at that point in some time frame of late 2014, you inform USAA that you were moving the vehicle from the base in California to Guam.

A. Yes.

Q. Okay. And did you ask for any changes to be made to your insurance policy during that conversation?

A. No. I just told them I was moving to Guam, I was being shipped there.

Q. When you had that conversation, did they tell you or inform you that your policy for the 2006 Kia would be changed in any way?

A. I can't recall.

Q. Okay. If we look over to page 23 of Exhibit 1, this has an effective date of July 17, 2014 to August of 2014. Again, this is signed on July 16, 2014. If we look there under the coverages, other than the change of not having the actual Expedition as a covered vehicle, does it appear that the actual amounts available and coverages stayed the same, to your knowledge?

MR. ALLEN: Object to the form.

THE WITNESS: Please rephrase that. I'm sorry.

Q. [Mr. Still] Sure. Are you aware of any changes to the actual coverage under your policy with USAA as a result of you informing them that you were having the vehicle shipped to Guam?

A. No. From 2017, July to towards November, I was still in California. I was still driving -- I was still driving the Kia until I dropped it off to get ready to

get shipped to Guam. When I was getting ready to ship to Guam, that's when I called them because I was still driving it in California to work and back.

Q. And at that point in time, your wife and children are located actually in South Carolina?

A. Yes, sir.

Q. Again, just moving forward, I am not aware of any changes to your policy going forward, and if we look on page 27 here, it says "Effective date: August 10, 2015 to February 10, 2016." It lists the Kia, '06 Kia, under the California policy. If we look in coverages down there, we see the actual policy amounts and the coverages offered. Do you see that?

A. Yes.

Q. So, again, going to the time of the accident, based on the dates listed in this particular document, it would appear this would be the declaration page that would have been in force or have application to the time period of the accident. Is that your understanding?

MR. ALLEN: Object to the form.

Q. [Mr. Still] You can answer.

A. I'm sorry. Can you repeat?

Q. Sure. The accident happened on August 30, 2015. If we look at the effective date or effective period on page 27 of Exhibit 1, that particular date of the

accident would have occurred under that policy period, correct?

A. Yes.

Q. Okay. And that was a California policy for the '06 Kia, correct?

A. Yes.

Q. Okay. Going back to Exhibit 3, this is a South Carolina policy. There is a time period that I am a little confused about, and see if you can kind of enlighten me about this. If we look at page 22 of Exhibit 3, do you see that?

A. 22?

Q. Yes.

A. All right.

Q. At that point, it looks like here the 2001 Ford Explorer is covered under a South Carolina policy with effective dates of May 17, 2011 to November 17, 2011. Do you see that?

MR. ALLEN: Just to clarify, the Expedition.

MR. STILL: Expedition. Sorry. Did I say Explorer?

MR. ALLEN: Yeah.

Q. [Mr. Still] Sorry. Do you see that, the date on the Expedition?

A. Yes.

Q. Do you know why there would have been a change to the Expedition in the mid 2011 time frame?

A. Okay. We was getting it -- we was having the Expedition shipped to California because it was kind of hard with one car and right now we was a family of five at the time and I had -- I was driving from Santee to Coronado in California, and my wife had to get up way too early just to take me to work and get the kids out of bed, so we decided to bring the Expedition, get the Expedition shipped to us.

Q. Again, just trying to tie up loose ends, at some point your wife would have moved from Virginia out to California with you and, for a period of time, you would have just had one vehicle?

A. Yes.

Q. During this 2011 time frame, it appears to me, if I am following the time frame, your wife would have brought the Expedition back to South Carolina for a period of time while she lived in California and did not have it. Does that sound right to you?

MR. ALLEN: Object to form.

Q. [Mr. Still] Again, that's just what it looks like to me.

A. Okay. She didn't drive it. We kept the

Expedition -- 2011. She drove it back. She drove the Expedition back to South Carolina, and she flew -- her and my family, they flew to California because she didn't drive across, so we kept it there, so we decided we would just leave it at her parents', leave the Expedition at her parents' house and when we come home for a vacation, for a leave or vacation like for Christmas, we would have a car there, so we just leave it there for that purpose at the time so we didn't get stranded in one spot.

Q. So there would have been a conversation with USAA that the Expedition is going to be physically located for a period of time in South Carolina in the 2011 time frame?

A. Yes.

Q. At that time, it was your intent to try to make it with just one car? Is that my understanding?

A. Yeah.

Q. Then you would have the Expedition when you came back to South Carolina for visiting family here?

A. Yes.

Q. At some point, that didn't work out, so you needed the vehicle shipped to California?

A. Yes, sir.

Q. Okay. Going back, at some point in 2014, the Expedition would have been changed from a California

policy to a South Carolina policy. Is that your understanding?

A. Yes.

Q. Do you know about when that time frame would have happened?

A. Sometime mid 2014.

Q. I will go ahead and tell you, if we turn to page 33 on Exhibit 3, this goes back to kind of what we were talking about earlier, the policy number changing to 022260801G71050, and in that, you can kind of see that it has a policy period of July 17, 2014 to January 17, 2015. It says "South Carolina auto policy declaration," and it has your name and address in California. Do you see that?

A. Yes.

Q. All right. And the next page is I believe the next like page two to this particular document, and, again, it is a little unclear to me at this point exactly what's happening here, but it looks like at the very least you have some kind of South Carolina policy in place in late 2014, early 2015. Does that look right to you?

A. Yes.

Q. So then it looks like we can go to page 35 and we have the January 17, 2015 to July 17, 2015 policy for

the Ford Expedition.

A. Yes.

Q. Do you see that?

A. Yes, I do.

Q. So the conversation again to have the Expedition changed to a South Carolina policy, who would that have been? Would that have been you or your wife?

MR. ALLEN: Object to the form. You can answer.

THE WITNESS: I'm sorry. Are you asking me who would talk to them about switching it over?

Q. [Mr. Still] Yes.

A. It would have been my wife.

Q. And are you aware of any conversation that your wife had specific to what coverages were going to be available under that South Carolina policy for the Expedition?

A. No.

Q. And if you look down under that particular policy, at that point, we have liability, we have uninsured motorist and we have underinsured motorist and then physical damage coverage. Do you see that?

A. Yes, I do.

Q. So at this point on the Expedition, you have

underinsured motorist coverage. Do you see that?

A. Yes.

Q. And I will represent to you that it is my understanding that those remained in place, if you look at page 38 of Exhibit 3, those remained in place and had a policy effective of July 17, 2015 to January 17, 2016. Do you see that?

A. Yes.

Q. Again, if we go to the accident of August 30, 2015, that would have occurred in this particular policy period. Is that your understanding?

A. Yes.

Q. All right. Now, from this, I assume at some point the Expedition had to be replaced with another vehicle, and if we look at page 40, it looks like there is some change to the South Carolina policy, but there is no vehicle noted at that point, but then we go to page 42 and we see a Hyundai Sonata, 2012. Did you see that?

A. Yes, sir.

Q. So was the Hyundai Sonata, was that the replacement vehicle for the Expedition?

A. Yes, sir.

Q. Then under that policy, we still have the same types of coverages and the same policy amounts?

A. Yes, sir.

Q. Do you agree with that?
A. Yes, sir.
Q. Do you know who would have spoken to USAA at that particular point to discuss the change to add the Hyundai Sonata to the policy?
A. That would have been me.
Q. Okay.
A. That would have been me.
Q. I know that was painstaking. Do you need to take a break? Let's take a break.
[Short recess.]
Q. [Mr. Still] Let's go back on the record. All right. Mr. Young, we have gone through and got a timeline of the vehicles, when they were removed and what policy was in place at the time. I want to go back to your understanding going back to -- and, again, you are probably not thinking about it on the day of the accident itself, but when in that time frame -- in August of 2015, what is your understanding of where the policy is or what state the policy was issued in at that point? Let me ask it different. Did you understand in August of 2015 that your 2006 Kia was insured under a California policy?
MR. ALLEN: Object to the form.
THE WITNESS: I wasn't thinking about it at the time. I don't recall.

Q. [Mr. Still] Right. Was there anything that happened prior to August 30, 2015 that led you to believe that your policy, California policy for the 2006 Kia, had changed or been modified in any way?

MR. ALLEN: Object to the form.

THE WITNESS: I can't recall.

Q. [Mr. Still] When I ask that question, sitting here today, do you recall anything that would have changed your understanding that the California policy would have been in place for the Kia at that point?

A. I can't recall.

Q. Okay. So going back to the August, 2015 time frame, had you received any type of insurance card or any kind of notification from USAA about the Kia, 2006 Kia being switched to a South Carolina policy?

A. I can't recall, not from -- I can't recall.

Q. Prior to August 30, 2015, did you or your wife ask USAA to switch the insurance policy on the 2006 Kia to a South Carolina policy?

MR. ALLEN: Object to the form. Go ahead.

Q. [Mr. Still] You can answer.

A. We called. We called them and informed them that the car was being moved to Guam.

Q. Yes, sir.

A. And we told them -- when we called, we called

and told them that, you know, they switch it. They will switch it when we call and we tell them the car is being moved to Guam. I called. That exact date, I can't remember the date, but I called them and told them "Look, my car is being shipped to Guam." That was it.

Q. But at that point, your car is being shipped from California, the Kia is being shipped from California to Guam; is that correct?

A. Yes.

Q. And did you make any representations at that point during that call that the Kia would be shipped to South Carolina?

A. Please rephrase that.

Q. Sure. When you were telling them that the car was going to go from California to Guam, did you guys ever have a discussion during that conversation that the Kia would be moved to South Carolina at any point in the future?

A. No, no. We just told them it was going to Guam.

Q. Yes, sir. Going back to the particular date of the accident, the Kia, where was it located?

A. It was in Guam.

Q. Where were you located at that time?

A. I was in Guam.

Q. Okay. And your family was living here in South

Carolina, and your wife had possession of the '01 Expedition?

A. Yes, sir.

Q. Okay. Now, going back to Exhibit 4 and Exhibit 8 to your deposition, I will represent to you that these are the policies that were in place at the time of the accident. Okay?

A. Okay.

Q. Exhibit 8 to your deposition is the 2006 Kia with effective period of August 10, 2015 to February 10, 2016. Do you see that?

A. Yes.

Q. Okay. Then Exhibit 4 to your deposition is a South Carolina policy for the 2001 Ford Expedition with effective dates of July 17, 2015 to January 17, 2016. I think I got those right. Let me say it just in case. Exhibit 4 has an effective date of July 17, 2015 to January 1, 2016. Do you see that?

A. Yes.

Q. Now, the policy, if you start looking -- let's look at Exhibit 8 to your deposition. If we look at that, the first two pages are what I am going to call a declaration page, and it says "Renewal declarations." Then on essentially page three -- and they are not numbered this way -- is where the actual California auto

policy begins. Do you see that?

A. Yes.

Q. If you look at the bottom right corner, it says page one of 21, and then you flip through there and hopefully all the pages are there from page one to 21. Again, this is Exhibit 8. If you look on the bottom right on that third page, you can see where it says one of 21.

A. Yes.

Q. Okay. And at that particular time -- let me ask you this: The California policy that is listed or in here in Exhibit 8 starting on the third page and it's got page one of 21, have you ever read this particular policy?

A. No.

Q. Okay. To your knowledge, has your wife ever read this policy?

A. I can't recall.

Q. Okay. Are you aware of the provisions of the policy, this California policy that is in Exhibit 8 to your deposition?

MR. ALLEN: Object to the form.

THE WITNESS: I can't recall.

Q. [Mr. Still] All right. Do you agree with me that the first page of Exhibit 8 does not mention

underinsured motorist coverage at any point?

A. You say it does not?

Q. Correct. It does not mention underinsured motorist coverage?

A. I see "Underinsured." I don't see coverage, but I actually see it on part C.

Q. Does that say under or uninsured?

A. Okay. It's uninsured.

Q. At the beginning of your deposition, we talked about uninsured motorists, and you indicated that was your understanding where the other person essentially didn't have insurance and that's when that would apply. Is that basically your understanding?

A. Yes.

Q. We have in the middle column here a list of premium charges for a total vehicle premium of $502.19. Do you see that?

A. Yes.

Q. Do any of those premiums listed in that particular column correspond to any type of mention of underinsured motorist coverage?

MR. ALLEN: Object to the form.

Q. [Mr. Still] You can answer.

A. No.

Q. Again, going down to this particular policy, you

have never read this particular policy language; am I correct on that? Starting on page three of this particular exhibit, the California auto policy, you have never read that particular policy language?

A. No.

Q. Okay. Do you have an understanding that this is the actual policy that controls your insurance agreement or contract with USAA for the 2006 Kia at the time of the accident?

MR. ALLEN: Object to the form.

Q. [Mr. Still] You can answer.

A. Can you repeat that, please?

Q. Sure. Let me ask you this. The insurance policy you had with USAA, do you consider that to be a contractual situation?

MR. ALLEN: Object to form.

THE WITNESS: What does contractual mean?

Q. [Mr. Still] Do you believe you had a contract with USAA to provide insurance coverage?

MR. ALLEN: Same objection. You can answer.

THE WITNESS: No, I don't believe it was a contract.

Q. [Mr. Still] You don't believe it was a contract?

A. To my understanding, I could cancel at any time if I didn't want the coverage. If I didn't want any coverage anymore, I was free to switch any insurance if I wanted to.

Q. Yes, sir. So it's your understanding that you could change or cancel the insurance at any point, but do you have an understanding of what actually controlled the responsibilities of USAA under the insurance arrangement between you and USAA?

A. No.

Q. Okay. So if we were to flip through the policy language, you wouldn't know one way or the other whether or not that is contractual policy language that would apply to the '06 Kia at the time of this particular accident?

A. No.

Q. Again, don't want to know about any of your conversations with your attorneys, but do you have an understanding of what you want from this particular lawsuit?

A. Closure.

Q. Correct. Closure for you, what would that be? What are you talking about, closure?

A. We are just ready to move on, get everything over with.

Q. Yes, sir. Now, have you read the complaint in this particular lawsuit?

A. No, sir.

Q. So as far as the allegations in that particular document that initiated this document with USAA, you are not aware of what it alleges and what it is asking the court to do; is that correct?

A. I know what it is asking the court to do. I did know that.

Q. What is it asking the court to do?

A. To reform the California policy to a South Carolina policy.

Q. Again, why are you asking the court to do that? Why should the court do that?

MR. ALLEN: I will object to the form, but you can answer, if you can.

THE WITNESS: I can't answer.

Q. [Mr. Still] Okay. Now, you agree with me that at the time of the accident, the Expedition was covered under a South Carolina policy with USAA?

A. Yes.

Q. And you agree with me that at the time of the accident, the Kia was covered under a California policy?

A. I can't recall because when we called and told USAA that the vehicle was being switched, you know, we

expected them to switch it over. It was always a practice of ours. They have always done that for us, and a lot of times, we never really just had to call because our payments were always coming out electronically, so we never had to worry about it, which is the reason we went paperless. We had gotten a statement through email. If anything really just drastically came up, they would send us an email and we would call them. Other than that, we never really had no problems with them.

Q. Okay. You agree with me, though, at no point prior to the accident did you or your wife specifically ask that the Kia be switched to a South Carolina policy?

A. We told them that it was being shipped. We told them we was moving it.

Q. Okay. You told them you were moving it to Guam; is that correct?

A. Yes, yes.

Q. So there was never a discussion at any point that it was going to be moved to South Carolina; is that correct?

MR. ALLEN: Object to the form. You can answer.

THE WITNESS: No, not to South Carolina.

Q. [Mr. Still] Okay. Now, underinsured motorist, we have talked about that's different than uninsured?

A. Yes.

Q. And you agree with me these are two different scenarios?

MR. ALLEN: Object to from.

Q. [Mr. Still] There is an uninsured scenario and an underinsured scenario. You agree with me on that?

A. Yes.

Q. As far as the underinsured motorist provisions under this particular policy, are you aware that it would limit that scenario as to what an underinsured motorist vehicle is to situations where the actual liability policy on the vehicle at issue is less than the limit of liability for coverage under the California policy?

MR. ALLEN: Object to the form.

THE WITNESS: Please repeat.

Q. [Mr. Still] Sure. If you can, turn to page 11 of 21.

A. All right.

Q. Okay. It says here on the top right corner, section E, it says "Underinsured motor vehicle means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident, but its limit for bodily injury liability is less than the limit of liability for this coverage." Do you see that?

A. Yes.

Q. This coverage, if you look back in the previous page on page ten, is part C of the California policy. Do you see that?

A. Yes, sir.

Q. You agree with me that section E, the definition there is referring to, when it says "under this coverage," it is talking about part C of the uninsured motorist bodily injury coverage?

A. Yes.

Q. If we look to page one of Exhibit 8 and we look under part C in that particular document, it says bodily injury under the uninsured part C is 25,000 per person or $50,000 per accident. Do you see that?

A. Yes.

Q. So going to Exhibit 4, again, the South Carolina policy that is in place at the time of the accident, if way look at the front page of Exhibit 4, if we look at the liability policy and we see bodily injury, it has 25,000 per person and $50,000 per accident. Do you see that?

A. Yes.

Q. And you agree with me that those dollar amounts are equal to the part C coverage under Exhibit 8 in the California policy?

A. Yes.

Q. Again, I don't want to know anything you have talked to your actual attorney about, but do you understand what the term "stacking" refers to?

A. No, not really.

Q. All right. The California policy, again, you haven't read that particular policy in detail; is that fair to say?

A. Yes.

Q. Okay. And so you are not aware that under the exclusions for coverage under part C on page 13 of 21, that it talks about that it does not provide uninsured motorist bodily injury coverage for BI, bodily injury, sustained by any covered person while occupying or when struck by any motor vehicle owned by you or any family member which is not insured for this coverage under this policy when the owner of that vehicle has UMBI coverage similar to that provided in this part. Do you see that?

A. Yes.

Q. And going back to page eight, the Expedition is not a vehicle that is listed -- the first page, cover page of Exhibit 8, the Expedition involved in the accident is not part of this particular coverage, correct?

MR. ALLEN: Object to the form.

THE WITNESS: Yes.

Q. [Mr. Still] And as part of this settlement for this accident and the loss of your two sons, you received a payment from USAA; is that correct?

A. Yes.

Q. And those settlement agreements -- and there is two separate ones. In this particular set of documents, there is a list of payments made in relation to your two sons; is that correct?

A. Yes.

Q. Then I understand that your daughter also made a claim; is that correct?

A. Yes.

Q. And then there was a third party, Mr. Wheeler, that made a claim. Is that your understanding?

A. Yes.

Q. So is it your understanding that the policy limits under Exhibit 4 going to the liability limits per accident of $50,000, is it your understanding that USAA has paid out that full $50,000 under the liability coverage in relation to this particular accident?

A. The first one, yes.

Q. And then if we go down to part C on Exhibit 4, that front page where it lists underinsured motorist coverage, would you agree with me that USAA has paid

$50,000 of UIM as part of these settlements?

A. Yes.

Q. And so at this point, under the South Carolina policy that applies to the Ford Expedition, it's your understanding that USAA has paid out its full liability per accident limits, as well as its full underinsured motorist per accident limits?

A. Yes.

Q. Now, real quickly, Exhibit 5 to your deposition is your answers to our request to admit in this case. You agree with me that in this particular lawsuit, you have been identified in your individual capacity and as the personal representative of your two sons, correct?

A. Yes.

Q. So you are the Plaintiff in this lawsuit, and have you seen this document, Exhibit 5 to your deposition?

A. I'm looking for it.

Q. All right. Have you seen this particular document before?

A. Yes.

Q. And have you reviewed these responses in preparation for your deposition today?

A. I can't recall.

Q. Okay. In these particular requests to admit,

sitting here today, is there anything -- after talking through what we have talked about today, are there any changes you want to make to these requests at this time?

MR. ALLEN: Object to the form.

THE WITNESS: No.

Q. [Mr. Still] Going to page two of six, request to admit No. 3, in that particular request, we asked that you admit that the California policy for the Ford Expedition was canceled and then renewed under the South Carolina policy with renewal dates of March 14, 2015 to July 17, 2015. Do you see that?

A. Yes.

Q. And that change was based upon the change of location of the Expedition from California to South Carolina, and you denied that particular request; is that correct?

A. Yes.

Q. Why did you deny that request?

A. At the time, I had the dates -- give me one second.

MR. ALLEN: I am just going to note an objection for the record.

THE WITNESS: Okay. I can't recall.

Q. [Mr. Still] Again, trying to be fair -- and I

am not trying to trick you or anything -- is it your understanding that it was denied based upon the effective dates of the South Carolina policy, or were you denying it based upon the reasoning of it, the Expedition, being changed from California to South Carolina?

A. It was -- I think I had the dates mixed up.

Q. And do you want to change that particular answer at this time?

MR. ALLEN: Object to the form.

THE WITNESS: Not at this time.

Q. [Mr. Still] Give me one second. I think I might be done. Again, we have gone through a series of documents, and we have kind of walked through certain changes and all. Do you have any reason to believe that any of the information that we have discussed today is inaccurate or incorrect?

MR. ALLEN: Object to the form.

THE WITNESS: No.

Q. [Mr. Still] And we talked about the actual policy language in Exhibit 8 as to underinsured motor vehicles. Do you believe that that particular policy language is clear and unambiguous?

MR. ALLEN: Object to the form.

THE WITNESS: Yes.

Q. [Mr. Still] The 2006 Kia, what happened to

it?

A. It's a 2001.

Q. No, the Kia, the 2006 Kia.

A. I'm sorry. It was involved in an accident.

Q. Where was that accident?

A. North Pleasantburg.

Q. Okay. So when was the actual 2006 Kia brought back to the State of South Carolina?

A. Mid 2014.

Q. Would it have been after the accident that we are here for?

A. It was before the accident. I'm sorry.

Q. Again, the Kia.

A. The Kia.

Q. You had it with you in Guam, and you were in Guam at the time of the accident, correct?

A. Yes.

Q. Did the Kia -- was it ever brought back to the State of South Carolina?

A. No, sir. It was sold.

Q. So did you bring it back to the State of California to sell it?

A. No, sir. It was sold in Guam.

Q. Okay. Do you remember what you sold it for, how much you sold it for?

A. I can't remember.

Q. What was the reasoning for it being sold?

A. Just to -- it was just too much trouble trying to just bring it back, and it was just better to just sell it and just get another car while we were here.

Q. Yes, sir. The 2006 Kia, do you have any understanding as to when the last time it would have been physically located in the State of South Carolina?

A. Since the last time we brought it from Virginia to California.

Q. So when you were being shipped --

A. South Carolina. I'm sorry. When my wife moved from South Carolina to Virginia, that was the last time it was in South Carolina unless we went to go visit. That was it.

Q. Okay. So when your wife moved from South Carolina to Virginia, that is the last time that you are aware of it actually being in the State of South Carolina unless it was a visit of some sort?

A. Yes.

Q. Going back to your military service again, thank you for your service. As far as accommodations, have you seen active combat?

A. No.

Q. As far as deployments are concerned, the ones

you can tell me, what deployments have you been in?

A. I have been on Westpac. I have been to 13 different countries. I have been to Brazil. I have been to China, South Korea, Japan. I have been to Peru, been to Hawaii. I can't remember all of them off the top of my head.

Q. Yes, sir. Other than the general accommodations that you receive as you go from rank to rank, have you received any kind of special accommodations?

A. I have got Navy achievement awards, Navy marine achievement awards.

Q. What is that?

A. It is when you do something, really stand out, you get accommodated by your commanding officer. It's signed by your commanding officer. I have gotten a couple of those. I have got a humanitarian award. We was like one of the first responders when it came to the earthquake in Haiti, so we actually helped the people out there. I didn't get to go boots on the ground, but I helped out around the ship, and that's pretty much it. That was actually the ship that gave Bin Laden burial at see.

Q. Were you on that ship at the time?

A. Yes.

Q. At the time?

A. Yes; didn't get to see him, but, you know, it was confidential at the time.

Q. Yes, sir. Then as far as your current position -- I am going to call them soldiers, for lack of a better term. How many military personnel or soldiers do you supervise?

A. About 20 now.

Q. Okay. Since you have been in the military, have you received any kind of disciplinary actions of any sort?

A. None.

Q. Prior to joining the military or after at the present time, have you been arrested or convicted of any crimes?

A. No.

Q. Have you understood all the questions that I asked today that you did not specifically ask me to rephrase?

A. Yes.

MR. STILL: Okay. Nothing further.

MR. ALLEN: I have got a few questions. I don't think my questions will take long.

THE WITNESS: Let me use the restroom one more time.

[Short recess.]

EXAMINATION

BY MR. ALLEN:

Q. Back on the record. This will be short and sweet. I just want to go back through. You were being questioned about I guess initially when you first went into the Navy, you were in Chicago and then you were in Virginia for a couple of years before you moved to California in 2010. I believe your testimony is that's where you were residing. Is that accurate? During that time frame, '07 to '10, you were residing in Virginia?

MR. STILL: Object to form.

THE WITNESS: '07 to end of '09, I was in Virginia.

Q. [Mr. Allen] Okay. At that time, though, you considered South Carolina to be your legal residence?

A. Yes.

Q. You considered yourself to be a citizen of South Carolina?

A. Yes.

Q. Okay. Is that true? From 2010 until you went to Guam, did you consider yourself to be a legal resident and citizen of South Carolina?

A. Yes.

Q. Okay. After you went to Guam in late 2014 through the present, do you still consider yourself to be

a legal resident and citizen of South Carolina?

A. Yes. It is my home of record so even when I retire, it is always going to be my home of record. I will always be back in South Carolina.

Q. When you were testifying about base being your permanent residence, were you just speaking to that's where you were physically living?

A. Yes. That's what they call it. They call it permanent change of station. That's what they call it on your orders. That's where I will be for at least a couple years or however my orders state, and then I move again and that would be my new P.C.S., but my home of record is South Carolina.

Q. Okay. That would be true for your wife and family?

A. Yes.

Q. During those time frames that we spoke about?

A. Yes.

Q. During 2015?

A. Yes.

Q. And, in fact, y'all filed a South Carolina tax return here in South Carolina in 2015?

A. Yes.

Q. You were asked questions about the basis of your claim and the fact that you consider South Carolina your

legal residence. Would that be one fact in connection you would rely on?

A. Yes.

Q. The fact that you filed a 2015 tax return would be a fact in connection you would rely on in support of your case?

A. Yes.

Q. Would the fact that your driver's licenses have always been in South Carolina, including throughout the policy and the day of this accident, be a fact and contact to support your claim?

A. Yes.

Q. Now, you testified that it was you and your wife's practice and routine to call USAA whenever there was going to be a change in location of a vehicle or when you were going to be transferred to a different location or facility or state. Is that true?

A. Yes.

Q. During those conversations, sometimes it would be you, but as I understand, it was primarily your wife that would communicate with USAA?

A. Yes.

Q. There were times when you would also communicate?

A. Yes.

Q. That would have been true throughout your entire relationship with USAA dating back to, I believe, 2007?

MR. STILL: Object to form.

Q. [Mr. Allen] Let me rephrase that. I know we are talking about a lot of years, but you initially became a USAA member sometime around early 2017; is that true? Excuse me. 2007?

A. Yes.

Q. Okay. So from that time moving forward, you would certainly at times be the one to communicate with USAA, you know, when your wife wasn't doing so by phone?

A. Yes.

Q. And that would be about changes in location or changes in vehicles, that sort of thing?

A. Yes.

Q. When you and your wife had these conversations telling USAA you are having a change in location, vehicles are being changed, would you expect USAA to be the ones to determine where to write coverage properly?

A. Yes.

Q. Okay. And as far as whatever states coverages needed to be written in, that's something you expected USAA to take care of?

A. Yes.

MR. STILL: Object to form.

Q. [Mr. Allen] So if USAA wanted to write coverage in California or Guam or South Carolina, wherever, based on the information they received from you, you would essentially trust that that's what their job was, you know, that that was their job and they were doing it appropriately?

A. Yes.

MR. STILL: Object to form.

Q. [Mr. Allen] Now, just to clarify, I think there was a little bit of confusion. Your wife called USAA in July, sometime mid July -- excuse me, mid 2014 regarding the change in location when she was going to move back to South Carolina?

A. Yes.

Q. During that conversation, is it your recollection that around July of 2014, she told USAA that she was moving back to South Carolina with the Ford Expedition at that time?

A. Yes.

Q. Okay. Is it your recollection she also told USAA that she would be deploying to Guam during that conversation in the July, 2014 time frame?

MR. STILL: Object to form.

THE WITNESS: Yes.

MR. STILL: If you can, let him finish his

question before you start to answer.

Q. [Mr. Allen] Just so she can --

A. Gotcha. I'm sorry.

Q. Let me just ask it again. Let me finish. During that conversation in the July 2014 time frame, is it your understanding that your wife told USAA she would be deploying to Guam later that year?

A. Yes.

Q. And then you actually had a follow-up conversation of your own by telephone where you called USAA in the November, 2014 time frame where you again notified USAA that you were shipping to Guam and that the Kia would be shipped to Guam?

A. Yes.

Q. From a coverage perspective, you wouldn't really have one way of knowing or another weather UM coverage in California would also include UIM coverage?

A. No.

Q. And UM coverage being uninsured coverage and UIM being underinsured coverage?

A. No.

Q. So you would just expect USAA to understand those concepts?

A. Yeah.

Q. And convey those concepts accordingly?

A. Yes.

MR. STILL: Object to the form.

Q. [Mr. Allen] As far as other reasons and facts that you brought this lawsuit, is it fair to say that you believe that South Carolina has an interest and a connection in this particular insurance dispute?

A. Yes.

MR. STILL: Object to form.

Q. [Mr. Allen] Okay. In addition to the facts that we talked about earlier, we know that the MVA happened here in South Carolina so that would be a basis for your claim?

A. Yes.

MR. STILL: Object to form.

Q. [Mr. Allen] And the fact that your family was living here at the time, physically located here in South Carolina at the time of the accident, that would be another supporting reason for your claim?

A. Yes.

MR. STILL: Object to form.

Q. [Mr. Allen] It's always -- has it always been your intent no matter where you may be stationed to eventually return to the State of South Carolina?

A. Yes.

Q. Okay. That's true today?

A. Yes.

Q. That was true in 2015 at the time of the accident?

A. Yes.

Q. Both vehicles, the 2001 Expedition, the 2006 Kia were taxed, tagged and registered in South Carolina at the time of the accident? Let me break it down. Was the 2006 Kia, was it your understanding it was registered in South Carolina?

A. Yes.

Q. And that was true at the time of the accident?

A. Yes.

Q. Was it your understanding that it had a South Carolina tag at the time of the accident?

A. Yes.

Q. And were you paying property taxes on it at the time of the accident?

A. Yes.

Q. And that would be an additional basis for your claim?

MR. STILL: Object to form.

THE WITNESS: Yes.

Q. [Mr. Allen] Was the Kia purchased in South Carolina?

A. Yes.

Q. Is it true that y'all own property here in South Carolina?

A. Yes.

Q. That's in Spartanburg?

A. Yes.

Q. It's also true that you have been living in Virginia for the past approximately year?

A. Yes.

Q. And I think it was your testimony that you notified USAA of that change?

A. Yes.

Q. They are aware of it?

A. Yes.

Q. And both vehicles that are covered under the policy are located in Virginia?

A. Yes.

Q. And it is true that both of those vehicles are still covered under a South Carolina policy?

A. Yes.

MR. ALLEN: Thank you. That's all I have.

EXAMINATION

BY MR. STILL:

Q. Real quick, just a few questions to follow up. Over the last almost three hours, I have got to know you, and I would consider you to be a reasonably intelligent

individual. Would you agree with that statement?

A. Yes.

Q. These next few questions, I am not implying anything otherwise. Okay? But you are able to read and understand the English language, correct?

A. Yes.

Q. And you agree with me that when we read the policy, you understood it, correct?

A. Yes.

Q. And you agree with me that had you read it before being here today, you would have been able to understand it then, too, correct?

A. Yes.

Q. When the Kia was shipped to California, it was shipped from the State of Virginia, correct?

A. Yes.

Q. Okay. So at least from the time it was shipped from Virginia until that point forward, the Kia never came back to the State of South Carolina; is that correct?

A. Yes.

Q. Okay. Now, you were asked several questions about relying upon USAA to determine the proper location of insurance and where it should be issued, correct? Do you remember those questions?

A. Yes.

Q. Is it your position here today that a vehicle that is physically located in California should be insured under a South Carolina policy?

A. It's not my position.

Q. Is it your position here today that a vehicle that is physically located in Guam should be insured under a South Carolina policy?

A. That is not my position.

Q. Now, going back to this other question and going back to reading the policy itself, you were asked questions about UM, UIM and things of that nature, and when I asked you your understanding at the outset, you had a general understanding of what those terms meant, right, uninsured and underinsured?

A. General, yes.

Q. And as far as to the extent that these terms were identified and defined in the two policies we have discussed, the South Carolina or the actual California policy, you would be able to understand those definitions, correct?

A. Yes.

Q. Okay. This last question, something he said earlier I want to make sure. When you guys changed locations from South Carolina to Virginia, Virginia to

California, California back to South Carolina and then Virginia, did you guys ever fill out paperwork or submit an application at that point?

A. To?

Q. To USAA.

A. No, no.

Q. So all those would have been done by verbal exchange?

A. Phone, yes.

Q. And do you have a specific person that you would have to call each time you reported that, or would it be a general number?

A. Just be a general number, and it would be a different person each time.

Q. And you testified that you have -- what are your current vehicles that you have insured with USAA?

A. A Honda Sonata and a Nissan Sentra.

Q. Okay. You and your wife are currently living in and not used as residency, but actually living in, where you lay your head down at each night, is in Virginia?

A. Yes, sir.

Q. And did you inform USAA at any point that you guys were moving from the State of South Carolina to Virginia and that the vehicles would be located there on a semi-permanent basis?

A. Yes. My wife called.

Q. Okay. Do you recall when that conversation occurred?

A. I can't.

Q. Okay. At the time of this particular accident in 2015, you didn't have either one of those two vehicles, correct?

A. That's correct.

MR. STILL: Nothing further.

EXAMINATION

BY MR. ALLEN:

Q. Just a few follow-ups. I believe you testified that it was not your position that a vehicle located in Guam or California should have coverage under a South Carolina policy. Was that your testimony in a nutshell?

A. Yes.

Q. Okay. However, under these facts, all of the factors that we have gone over, all of the connections that we know about between you, the Kia and South Carolina, is it your position, though, that this policy covering the Kia that is at issue in this lawsuit should be conformed to South Carolina law?

A. Yes.

Q. Okay. And South Carolina is the state of interest and it should be the law that applies to this

case?

A. Yes.

MR. STILL: Object to form.

MR. ALLEN: That's all I have. You're done.

[DEPOSITION CONCLUDED AT 12:55 P.M.]

C E R T I F I C A T E

S O U T H C A R O L I N A

ANDERSON COUNTY

I hereby certify that the foregoing deposition was reported, as stated in the caption, by the method of Stenograph machine with backup, and the questions and answers thereto were reduced to typewriting by me or under my direction; that the foregoing pages 1 through 112 represent a true, correct and complete transcript of the evidence given on the 29th day of June, 2018, by the witness, TYRIN S. YOUNG, SR., who was first duly sworn by me; that I am not a relative, employee, attorney or counsel of any of the parties, nor am I financially interested in the action.

This 9th day of July, 2018.

Susan Lynn McCracken, RMR
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
TYRIN S. YOUNG, SR., INDIVIDUALLY AND AS PR OF THE ESTATES OF TYRIN YOUNG, JR. AND MICAH A. YOUNG AND AS LEGAL GUARDIAN OF J.Y., A MINOR UNDER THE AGE OF 14,	)	
Plaintiff,	)	
vs.	)	NO. 17-CP-23-04630
USAA GENERAL INDEMNITY COMPANY,	)	
Defendant.	)	

Deposition of

KAMIKA YOUNG

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 29th day of June, 2018, commencing at approximately 1:10 p.m., attended as follows:

APPEARANCES OF COUNSEL

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ALSO PRESENT: Tyrin Young

DEPOSITION REPORTED BY:
SUSAN L. McCRACKEN, RMR
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** ** ** **

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EXHIBITS

[No Exhibits Offered]

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Pursuant to Notice and/or agreement to take depositions, the within deposition was taken by Susan L. McCracken, RMR, a Notary Public, as required under South Carolina Court Rule 30, et al, by consent of all parties, at the law offices of Clawson & Staubes, 1000 East North Street, Greenville, South Carolina.

WAIVER

It is agreed by Counsel for all parties that the reading over of and signing of the deposition by the witness are waived.

** ** ** **

The deponent was duly sworn to tell the truth, the whole truth and nothing but the truth of her own knowledge concerning the matter herein:

KAMIKA YOUNG

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STILL:

Q. Miss Young, my name is Trey Still. You have sat through your husband's deposition; is that correct?

A. Yes, sir.

Q. Have you ever given a deposition before personally?

A. No, sir.

Q. Sitting through his deposition, do you have a general understanding and feel of what we are doing here today?

A. Yes, sir.

Q. I am not going to go over all the rules, but I am just going to ask you if you can please speak out, don't nod your head, don't say "uh-huh" or "huh-uh." If you do that, I may say "Is that a yes, or is that a no?" I am not trying to be rude or correct you, just trying to get a clear record.

A. Okay.

Q. Let me finish my question. I know I talk slow. Let me finish my question before you start the answer, and that way we are not talking over each other. Okay?

A. Okay.

Q. YOu understand you are under oath same as if you are in court?

A. Yes, sir.

Q. Again, as you know, if we take a break, don't discuss your deposition testimony. You heard me talking about that earlier, correct?

A. Yes, sir.

Q. If you don't understand my question, please let me know, and I will rephrase it and try to clarify it for you. If you don't hear my question for any reason,

please let me know this as well, and I will repeat my question to the best of my ability. If you answer my question, I will assume you heard it, you understood it and you answered it truthfully. Is that fair?

A. Yes, sir.

Q. Prior to going on the record, we talked and I gave you a little bit about how I am going to try to handle this to expedite this process.

A. Okay.

Q. My understanding in talks with your attorney is that basically everything that we talked about with your husband is going to be right and we are not going to go through page by page by page in the changes of the coverage unless there is something that you want to clarify. I do need to ask you some other questions, so bear with me on this and we will get through this as fast as my southern drawl will allow it. Okay?

A. Okay.

Q. Can you please state your full name for the record?

A. Kamika Young.

Q. Do you have a middle name?

A. Nytara.

Q. Can you spell that?

A. N-Y-T-A-R-A.

Q. What is your date of birth?

A. October 26, 1981.

Q. Lots of good things happened in '81. I am going to ask for your Social Security number, but, again, I am going to go off the record and only put the last four digits on. What is your Social Security number? Off the record.

[Off the record.]

Q. [Mr. Still] If I understood correctly, the last four digits of your Social Security number are 2981?

A. Yes.

Q. What is your current address?

A. 1008 Osprey Court, Chesapeake, Virginia, 23322.

Q. Again, you sat through your husband's deposition, and part of trying to speed up through yours so we can end this process quicker, I went through your husband's changes of addresses and the date you guys got married and the time that you moved up to Virginia, and in general, do you agree with his testimony as to the dates of the move and the changes of addresses?

A. Yes, sir.

Q. Okay. Again, just to be clear, you would have gotten married on January 5 of 2008.

A. Yes, sir.

Q. And then you would have moved up to Virginia in

approximately May of 2008; is that fair?

A. Yes, sir.

Q. Okay. So there was a period of time that you remained in South Carolina between your actual real wedding time, the time you got married, and then your family's wedding ceremony; is that correct?

A. Yes, sir.

Q. Did you ever live in Virginia prior to that wedding ceremony here in South Carolina?

A. No, sir.

Q. Again, we went through a series of policy changes. In an attempt to expedite this, do you agree with mine and your husband's conversation as to the time frames of the changes to the actual insurance coverage?

A. Yes, sir.

Q. Okay. Again, just in general, I have to go through these. Okay? The vehicles were initially insured in the State of South Carolina or at least his vehicles were for a short period of time. I understand that yours would have been insured in South Carolina for about two months in 2008.

A. Yes, sir.

Q. Then there would have been a Virginia policy that would have covered both, and then for a period of time, his vehicle would have been under a California

policy and yours under the Virginia policy. Is that the next progression?

A. Yes, sir.

Q. Then at some point in time, your Expedition was moved to South Carolina and you moved out to California, and at that time, the Expedition would have been insured under South Carolina policy and the Kia under the California policy; is that correct?

A. Yes, sir.

Q. Then at some point, you moved the Expedition out to California. It was insured under a California policy; is that correct?

A. Yes, sir.

Q. And then at some point, you and your children moved back to South Carolina and the Expedition would have been insured under a South Carolina policy; is that correct?

A. Yes, sir.

Q. Then in August of 2015, we would have had the Kia under a California policy and the Expedition under a South Carolina policy; is that correct?

A. Yes, sir.

Q. Okay. As far as any of that conversation is concerned and your husband's testimony to that, is there anything specifically you want to change at this point?

A. No, sir.

Q. Not change, but correct or say something different than he did as far as the time frames?

A. No, sir. The only thing that I can say is, again, around July, 2014 is when I did inform them of the move and the physical address being South Carolina and letting them know my husband was relocating to Guam.

Q. Okay. Let me ask you a few questions about you in general. Okay? Do you currently work?

A. Yes, sir.

Q. What do you do for a living?

A. I am a contractor with Naval Medical Center Portsmouth. I work in the lab as a lab tech.

Q. What specifically do you do?

A. I work in chemistry. I draw blood, receive specimens, analyze them to be tested, call results, things like that.

Q. What is the extent of your education?

A. I have an associate's in medical lab technology.

Q. Where was that obtained?

A. Tri-County Tech.

Q. When did you obtain that?

A. May of 2007.

Q. Other than Tri-County Tech, have you attended any other formal education or training program since that

time?

A. Yes, sir.

Q. What else have you received?

A. Have I received anything or just went to school?

Q. Tell me about this. After high school, what all formal education and/or training have you received?

A. I went to Greenville Tech. I can't remember the dates in '99. Then 2001, I got a P.C.T. diploma to work at a hospital. Then after that, I went back to school in 2005, Tri-County Tech for two years, and I finished in 2007 with medical lab tech. From 2007 to 2010, I attended University of Cincinnati online for clinical lab science, but I didn't quite finish that one. Currently right now, I am in school for early childhood education at TCC.

Q. What is TCC?

A. Tidewater Community College in Virginia.

Q. When you complete that program, will you be able to actually teach in a public school? Will you be fully certified?

A. Yes, sir. I will be doing early childhood education.

Q. You will graduate from TCC with a bachelor's degree?

A. No. I am doing associate's.

Q. And after that, do you have any plans of getting a bachelor's degree at any point?

A. Working on it.

Q. All right. How long have you been employed by your current employer?

A. Since October 18, 2017.

Q. Okay. Prior to October of 2017, have you gone more than six months without being employed?

A. Prior to that? No, sir.

Q. So pretty much in the time frame since you got married until today, you have pretty much been continually employed; is that correct?

A. No, not necessarily.

Q. Tell me about when you were not continually employed.

A. I stopped working in December, 2009, and I didn't get a job again until -- I did a little job in November of 2015 to stay busy out of my house. No, not November. I will just say beginning of 2016.

Q. So essentially for seven years, you did not have a personal source of income?

A. Not personally, no, sir.

Q. And was your husband the sole means of income during that time?

A. Yes, sir.

Q. And where did you graduate high school?
A. Berea High School.
Q. What year?
A. 1999.
Q. When did you start driving?
A. 1996.
Q. Since 1996, have you held any driver's license that was issued by a state other than the State of South Carolina?
A. No, sir.
Q. As far as a permanent address, when you and your husband got married, was there a period of time where you had a mailing address in South Carolina after you were married?
A. Was this my permanent -- I'm sorry.
Q. Did you have a mailing address in South Carolina after May of 2008?
A. Yes, sir.
Q. Okay. When did you stop receiving mail in the State of South Carolina?
A. Well, I never stopped receiving it. I still get mail at my parents' home, but in May of 2008, we did, you know, an address change there when we moved there.
Q. And then --
A. Well, I did.

Q. And so as far as receiving mail after you moved to Virginia, would you use your current addresses for any new mail, like if you got a new credit card, would it come to your current address, or would it go to the mailing address in South Carolina?

A. It would come to the one in Virginia.

Q. Okay. All right. From the time that you were married until today, have you owned, personally owned, any vehicle other than the Kia that we have talked about, the '01 Expedition we have talked about, the Hyundai Sonata or the Nissan Sentra?

A. No, sir.

Q. Okay. And when you guys got married, was the Kia your vehicle?

A. Yes, sir.

Q. When did you purchase that Kia?

A. I can't recall.

Q. Prior to putting the Kia on your husband's USAA account, which looks to me occurred in about March of 2008, who were you insured by?

A. I think I was insured under my mom and dad, Allstate.

Q. I should have asked this earlier. Have you ever been arrested or convicted of any crimes?

A. No, sir.

Q. I have to ask that.

A. That's okay.

Q. Now, you get married. You switch the coverage from Allstate to USAA at some point. Were you involved in those initial discussions at that point with USAA?

A. No, sir. My husband handled it. He just told me he was putting me onto the policy.

Q. Again, I am not going to go through all the changes, but I do need to talk about those conversations you would have had with USAA. When you were placed on the South Carolina policy in 2008, you didn't talk to USAA about what coverage was offered at that point, did you?

A. No, sir. My husband did initially.

Q. And then at some point, the South Carolina policy was changed to a Virginia policy. Did you speak to anyone at USAA in relation to the change from South Carolina to Virginia policy?

A. When we first got married, you're saying?

Q. Again, my understanding is there was a period from March 1, 2008 to May 1st, 2008 that you were insured in South Carolina under a South Carolina policy and starting May 2nd, 2008, your Kia would have been insured under a Virginia policy.

A. Okay.

Q. Did you talk to USAA about the permanent address and the move to Virginia?

A. No, sir. My husband did that.

Q. Okay. Going back to that, the month time frame that you were insured in South Carolina, were you specifically aware that the policy at that point was a South Carolina policy?

A. Yes, sir.

Q. At that time, did you know what coverage you had?

A. Yes, sir.

Q. And earlier, I asked your husband to give me some of his understanding of certain coverages, and I am going to ask you the same question. What is your understanding of liability coverage?

A. That it covers either car if we are liable for an accident.

Q. What is your understanding of personal protection coverage?

A. That it personally protects your interests.

Q. That's something you would recover if there was a loss? Is that your understanding?

A. Honestly, I really don't understand what it means. I will be honest.

Q. That's fine. If you don't know, tell me you

don't know. Okay?

A. Okay.

Q. Do you have an understanding of what uninsured motorist coverage is?

A. No, sir.

Q. Do you have any understanding as to what underinsured motorist coverage is?

A. No, sir.

Q. If I use for uninsured UM coverage, do you know what UM coverage is?

A. No, sir.

Q. Do you know what UIM coverage is?

A. No, sir.

Q. So when you were initially insured under the South Carolina policy, what was your understanding of what insurance you had at that time? Again, this is in 2008.

A. Full coverage, collision, liability. That's all I am aware of.

Q. Yes, ma'am. That is kind of a term I was waiting to probably hear today. Full coverage, when you say "full coverage," what do you mean by that?

A. Liability, collision, covered. That's my definition of it that I have always thought.

Q. So your understanding of full coverage would be

that you would have liability and then collision coverage?

A. Collision coverage, anything goes wrong, yeah.

Q. With the term of "collision coverage," do you have any understanding of any other coverage when you say that term that you would expect to have?

A. No, sir.

Q. Okay. Now, moving up to Virginia, your husband took care of that?

A. Uh-huh [yes].

Q. And he said he discussed the policy and the coverage that was offered at that time.

A. Uh-huh [yes].

Q. What was your understanding of the coverage that you had you when you guys were insured in Virginia?

A. I can't recall, sir.

Q. All right. Now, the change, the next change we have in coverage would have been from your husband's Kia, and we are going to call it the husband's Kia, if that's okay.

A. Uh-huh [yes].

Q. The Kia changed from a Virginia policy to a California policy?

A. Uh-huh [yes].

Q. Do you recall about when that happened?

A. That happened, I would say -- the car got shipped in 2009.

Q. I have that the Kia would have been last on a Virginia policy, the last that I can find, in August, actually, August of 2010. It looks like it was taken off of the Virginia policy and it was placed on the California policy in August of 2010.

A. Okay. That I am not aware of. I am thinking that it got changed when it actually got shipped there, so it must have when we called to get everything changed when I originally moved there with the kids in 2010.

Q. Okay. Again, just going back, I understand that your husband's ship was in the port or dock, whatever you want to call it -- sorry. I am not very manly in military knowledge, but he would have gone from Virginia to California?

A. Correct.

Q. And there would have been several weeks, several months process for that to occur?

A. Correct.

Q. Do you know whether or not your Kia was shipped to California before his ship made it to California?

A. Yes. I think it was shipped before. I think during that time he was in the process of shipping it before he got on the ship. He handled that.

Q. Now, the policy changing from a California to -- sorry -- from a Virginia to a California policy, just the Kia, do you recall who would have spoken to USAA to accomplish that?

A. Usually that was -- that had to have been me.

Q. And do you recall what conversations you had with USAA in that time frame that resulted in the change from the Kia being changed from Virginia to California?

A. Basically told them we were relocating, that my husband was in California and that we were both relocating there.

Q. At that point, did you specify that only the Kia would be in California at that specific time?

A. Yes, sir.

Q. Because you stayed in Virginia for a short period of time after your husband went to California; is that correct?

A. I left Virginia in January, 2010 to come back to South Carolina with the Expedition.

Q. Did you live in South Carolina for a period of time?

A. Yes, sir.

Q. How long did you live in South Carolina?

A. From January, 2010 to August, 2010 after I gave birth to my son.

Q. I was listening. Can you repeat those dates? January to August?

A. Yes, sir.

Q. So you would have moved to California in roughly August of 2010. At that time frame, was it your intent to leave the Expedition in the State of South Carolina?

A. Yes, sir.

Q. And was it actually insured for a period of time in the State of South Carolina?

A. Yes, sir.

Q. Do you recall how that was accomplished to change it from a Virginia policy to a South Carolina policy?

A. I called.

Q. You called?

A. Yes, sir, to tell them to -- at that time, my husband called for that one -- no. Actually, sorry, sir. I called. We discussed it, what we were doing, and then I called them, yes.

Q. What kind of coverage did you request at that time?

A. Just minimum coverage like to cover damages, anything like that because it was just sitting.

Q. You said minimum coverage?

A. Yes, sir.

Q. I am a little hard of hearing, so bear with me on that. Did you actually specify, did you use the term "full coverage"? Did you ask for any specific types of coverage?

A. No, sir.

Q. Did you indicate to them -- I'm sorry. I didn't mean to cut you off.

A. I basically said, I guess, not for liability, but for things like damage like a tree falls on it when it storms, stuff like that.

Q. Did you ask them for coverage exactly what you had previously when you were in South Carolina? Did you give any instructions like that?

A. No, sir.

Q. And so in 2010 while you were still in South Carolina, did you have any understanding of what underinsured motorist coverage was?

A. No, sir, not at the time, no.

Q. At some point, you move out to California and ultimately decide to bring the Expedition out to California; is that correct?

A. Yes, sir.

Q. As far as the Kia, it was out there in California, and it never made it back to South Carolina at any point; is that fair?

A. Correct.

Q. Was it shipped from the State of Virginia to California?

A. Yes, sir.

Q. Now, to get the Expedition policy from South Carolina to a California policy, who had that conversation with USAA?

A. I did.

Q. What did you ask for as far as coverage on the Expedition at that time?

A. I didn't ask for coverage. I just said "We are moving. We are relocating, sending the car to California" and wanted coverage for the car.

Q. All right. Did you ask for full coverage at that point?

A. No, sir. I didn't specify.

Q. So when you first moved to California, was it your understanding at that point that both vehicles were insured under a California policy?

A. Yes, sir.

Q. And I was talking to your husband and I apparently couldn't word it properly, but I was talking about types of documents that you guys would receive from USAA, and I was specifically referring to the types of documents that we can see, for instance, on Exhibit 3

here.

A. Yes, sir.

Q. Do you recall receiving documents similar to that from USAA?

A. Maybe once or twice in the mail.

Q. And he indicated that about the time you guys got married, you guys would have switched from paper to electronic?

A. Yes, we did.

Q. Did USAA send you emails with policy information?

A. Most of the stuff goes to my husband because it is on his, but anything with changes, you know, I would get an alert a change was made if I made a change or something, discussed it with him.

Q. So the only emails you would receive on your personal email address would be if there was a modification or change to the policy?

A. Yes, or if it just says time to print new insurance cards, things like that.

Q. As far as any general communication -- let me ask it this way. Strike that. Would there be times that your husband would receive an email that you wouldn't receive an email from USAA?

A. Yes, sir.

Q. What type of communications would go just to your husband and not you?

A. I guess mostly things like this. The only thing that came -- I mean, just to alert him of like the renewal policies and things like that when they renewed it and stuff like that.

Q. When you got a renewal policy, is that when you would have to print out your new insurance cards?

A. Yes, sir.

Q. If we look through here and it says renewal and it has an effective policy date, do you believe that would have also come to your personal email?

A. I don't remember receiving any of those, no, sir.

Q. What is your personal email that you would have used and received emails from USAA?

A. Kamika Young at Gmail dot com.

Q. So when you're in California, you understood that at that time, both vehicles were insured under a California policy; is that correct?

A. Yes, sir.

Q. All right. Did you have an understanding at that point what insurance coverage you had on those vehicles?

A. No, sir.

Q. And your husband and I talked about policies, and the examples are in Exhibit 4 and Exhibit 8, and there is language talking about the coverages that are offered by the respective policies. Have you ever read that language? For instance, in Exhibit 8, the first page again is the declaration page, and it is actually two pages long, and, again, just for housekeeping purposes, the policy effective dates are August 10, 2015 to February 10, 2016, and that would have been the time period of this accident?

A. Yes, sir.

Q. And then if we flip to the third page, you see a document at the top left says "California auto policy." Do you see that?

A. Yes, sir.

Q. Have you ever read this particular policy language in this document?

A. Not this particular for California, no, sir.

Q. What have you read?

A. Basically, I have looked over this because I didn't understand. I would call USAA to ask maybe at one point, and whatever is on the front of our pages that came, I read that.

Q. But when I am talking about the actual policy language -- and I don't have the Virginia policy in here

with me today, but have you ever read the actual policy language that defines an insured, who the insured is and what a temporary substitute vehicle is? Have you ever read that particular policy?

A. Not that I can recall, sir.

Q. Have you ever read any USAA insurance policy that defined what an uninsured motorist is?

A. No, sir.

Q. Have you ever read a USAA policy that defined what an underinsured motorist is?

A. No, sir, not in -- no, sir.

Q. I'm sorry?

A. No, sir.

Q. Now, at some point, you and the children moved back to South Carolina around July of 2014?

A. Uh-huh [yes].

Q. Sorry. I have to ask. Is that a yes?

A. Sorry, sorry. Yes, sir.

Q. You have done well up until then. In July of 2014 is my understanding when we can see that the Expedition policy, there was a notation it is going to change and somehow I think at that point there is some changes in the premiums, but is that about the time that it's your understanding that the Expedition would have gone from a California to a South Carolina policy?

A. Yes, sir.

Q. Okay. And so the Expedition would have been insured, based upon your recollection, under a South Carolina policy in July of 2014 time frame?

A. Yes, sir.

Q. Who had the conversation to get that change made?

A. I did.

Q. When you called them, did you tell them that the Expedition would be taken back out to South Carolina?

A. Yes, sir.

Q. How did it get to South Carolina?

A. Me and my husband -- well, actually, I called around different companies to get pricing, and we had someone pick it up and we had it shipped to South Carolina, and my dad met the person to receive the car.

Q. Okay. So at that point when you're having the conversation with the USAA representative about the Expedition coming back to South Carolina, what did you tell them about the Kia?

A. I told them that the Kia would be with my husband in California and that he was going to be relocating to Guam and that's the reason that we were changing, bringing the Jeep to the South Carolina policy.

Q. You mentioned Jeep.

A. The Expedition. I call it a Jeep. Sorry.

Q. That's okay. I just wanted to make sure I didn't miss a vehicle here.

A. No.

Q. During that initial conversation with USAA, you would have told them the Kia was staying with your husband in California at that time?

A. Yes, sir.

Q. Okay. And you actually informed them eventually he would be shipped to Guam, correct?

A. Yes, sir.

Q. At that point in July of 2014, was it your understanding that your husband would eventually take the Kia to Guam with him?

A. Yes, sir.

Q. And did you ever communicate with USAA at any point to alert them or tell them that the vehicle was actually being shipped, in the process of being shipped or was located in Guam?

A. My husband made that call in November to let them know. He also called as well to alert them the car was being shipped to Guam before, you know, he even left.

Q. Were you present when he informed them that he would be shipping the Kia to Guam?

A. No. He discussed and told me he had called them

because we had a discussion about what we should do.

Q. Okay. At that point, did you guys ever -- what was the intent? When he returned from Guam, what was the intent for the family at that point?

A. When he returned from Guam? For us, you mean when he completed his time there?

Q. Yes, ma'am.

A. When he completed his time, we was going to our next duty station, wherever he was going to be relocated to.

Q. Did you have any understanding where that would be at the time?

A. No, sir.

Q. How long was his duty station or tour in Guam supposed to be?

A. It was supposed to have been for two years.

Q. Sitting here today, do you have any knowledge or understanding as to whether USAA offers a separate policy for vehicles being operated in Guam?

A. I am not aware of that, no, sir.

Q. Are you aware of whether or not your husband ever had any type of communication with USAA where he asked them to switch the Kia to a Guam policy?

A. I was only aware that he called to let them know, so that's about it.

Q. When he called to let them know about the shipping of the Kia, did they say anything would have to change to the Kia policy at that time?

A. Not that I am aware of, sir.

Q. Okay. Are you aware of any kind of premium changes because of that move or anything like that?

A. No, sir.

Q. So going up until the time of this accident, was it your understanding leading up to the time that you had your Expedition here in South Carolina that was insured under a South Carolina policy? Was that your understanding?

A. Yes, sir.

Q. Was it your understanding the Kia was still being insured under a California policy?

A. Yes, sir.

Q. Okay. And you guys continued to make those premium payments, correct?

A. Correct.

Q. At any point, did you or your husband ever ask USAA to change the Kia to a South Carolina policy?

MR. ALLEN: Object to the form.

THE WITNESS: No, sir, not that I am aware of.

Q. [Mr. Still] Now, going back -- again, I am

going to ask these questions, and I am not insinuating otherwise. Okay?

A. Okay.

Q. Again, talking to your husband, talking to you, I consider both of you to be intelligent individuals. Do you agree with that?

A. Yes, sir.

Q. And relatively business savvy and understand how things work in general; is that correct?

A. Yes, sir.

MR. ALLEN: Objection.

Q. [Mr. Still] And you are able to read and understand the English language; is that correct?

A. Yes, sir.

Q. Prior to today, you have not read the California policy that was in place at the time of this accident; is that correct?

A. Correct.

Q. Is that correct?

A. Correct.

Q. Sorry. I just couldn't hear. All right. If you can please go to Exhibit 8, and, again, if you go past the first two pages, there is a number that is at the bottom right corner. You can see one through 21. Do you see that?

A. Yes, sir.

Q. On page ten of 21, can you go there?

A. Yes.

Q. Under this particular coverage, it talks about part C, and it says "Uninsured motorists bodily injury coverage and uninsured motorist property damage coverage." Do you see that?

A. Yes, sir.

Q. If we go back to this first page of Exhibit 8, go back to where the sticker is, we can see under the dec page for the California policy in place at the time of the accident, we have part A labeled as "Liability."

A. Uh-huh [yes].

Q. And part C is "Uninsured motorist coverage." Do you see that?

A. Yes, sir.

Q. There is a part D, "Physical damage coverage," and it lists collision, comprehensive, rental reimbursement. Do you see that?

A. Yes, sir.

Q. Do you see anything on that first page that discusses a separate policy or separate coverage for an underinsured motorist?

A. No, sir.

Q. Do you see in that column in the middle that

talks about premiums, do you see any premium charge for separate coverage labeled as underinsured motorist coverage?

A. No, sir.

Q. Now, if we go back and we look at page 11 of the actual policy language, at the top right under section E, it says "Underinsured motor vehicle." Do you see that?

A. Yes, sir.

Q. Says "means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident, but its limit for bodily injury liability is less than the limit of liability for this coverage." Do you see that?

A. Yes, sir.

Q. And, again, just an exercise that we have to go through, if you don't mind. On the front page of Exhibit 8, we look under part A, "Liability coverage," do you see where it says "Bodily injury" and it says $25,000 per person and $50,000 per accident?

A. Yes, sir.

Q. Then if we go to Exhibit 4 to your husband's deposition, if we look on that particular page under part A for liability -- and if you don't mind, I will point to it right here under "Liability." If we look at it, it says each person has liability limits of 25,000 and it

says per accident, we have 50,000.

A. Uh-huh [yes].

Q. Is that a yes?

A. Yes, sir.

Q. You agree with me those are the same amounts that are listed under the liability portion of the dec page on Exhibit 8, the first page on Exhibit 8?

A. Yes, sir.

Q. So you would agree with me that under that definition and what we are looking at is that the California policy does not offer a higher liability limit than offered by the South Carolina policy that was in place at the time of this accident?

MR. ALLEN: Object to the form.

Q. [Mr. Still] You can answer.

A. Yes, sir.

Q. If you go to page 13 on this particular document on Exhibit 8, it talks about exclusions, and under B, it states that "We do not provide UMBI coverage for BI sustained by any covered person while occupying or when struck by any motor vehicle owned by you or any family member which is not insured for this coverage under this policy or when the owner of that vehicle has UMBI coverage similar to that provided in this part. This includes a trailer of any type used with this vehicle."

Do you see that?

A. Yes, sir.

Q. And do you agree with me that the vehicle involved in this accident, the Expedition, was owned by you and your husband?

A. Yes, sir.

Q. And you agree with me that the time of the accident, you and your children were occupying the Expedition?

A. Yes, sir.

Q. And then if we look back to Exhibit 4 on that dec page, we have coverage under part C for uninsured motorist and underinsured motorist. Do you see that?

A. Yes, sir.

Q. Under those two provisions, you see where each coverage has 25,000 per person and 50,000 per accident. Do you see that?

A. Yes, sir.

Q. That was the coverage that was in place at the time of this accident, correct?

A. Correct.

Q. Again, sorry to have to ask these questions. Again, I have to ask these questions. You agree with me that USAA at this point has paid out $50,000 under the liability coverage that we can see in Exhibit 4 on that

dec page; is that your understanding?

A. Yes, sir.

Q. Is it your understanding that USAA has paid out $50,000 under the part C underinsured motorist coverage? Do you see that?

A. Yes, sir.

Q. You agree with me that USAA has paid that?

A. Yes, sir.

Q. And you agree with me that Exhibit 7 contains the settlement documents in relation to those settlements as they relate to your children; is that fair to say?

A. I'm sorry. Where?

Q. Exhibit 7 contains a series of documents discussing the settlement through your husband in relation to the injuries sustained by your children?

A. Yes, sir.

Q. Now, when we read through the California policy a few minutes ago, were you able to understand and comprehend the language of that policy?

A. Yes, sir.

Q. Did you find it to be clear and unambiguous?

MR. ALLEN: Object to the form. You can answer.

THE WITNESS: [Witness nods affirmatively.]

Q. [Mr. Still] Was that a yes?
A. Yes, sir.
Q. And at the time in 2014 and 2015, had you read that policy language then, you would have been able to understand it then at that point, too; is that correct?
A. Yes, sir.
Q. And I asked your husband this and I don't think he knew, but I think it was clarified. You guys have always filed your income taxes in the State of South Carolina; is that correct?
A. Talking about prior to our marriage?
Q. I am sorry. After you are married, have you always filed South Carolina taxes?
A. Yes, sir, I think we did.
Q. And do you agree with your husband's testimony that the 2006 Kia never returned to the State of South Carolina at least from the time it was shipped from Virginia to California?
A. Yes, sir.
Q. And you agree with me that at the time of the accident, the Kia was physically located in Guam?
A. Yes, sir.
Q. Do you recall ever filling out paperwork in relation to a request for change in location for your USAA policy?

A. No, sir. We always did it by phone.

Q. As far as paperwork that is filled out for your husband's military service, do you know what is listed in that paperwork as his permanent residence?

A. Like paperwork originally? South Carolina.

Q. And have you ever seen and actually reviewed the paperwork that he would have submitted indicating that South Carolina is to be considered his permanent residency state?

A. Originally, yes. You mean when he originally went in or after the marriage?

Q. At any point, have you seen that?

A. Not that I can recall, sir.

Q. Your husband is apparently right at 12 years into his service.

A. Uh-huh [yes].

Q. Is it your understanding he is going career and will retire in the Navy?

A. Yes, sir.

Q. Upon him retiring from the Navy, where do you intend to live?

A. Back here in South Carolina.

Q. Do you currently own any property in the State of South Carolina?

A. Yes, sir.

Q. What do you own in the State of South Carolina?
A. A condo in Spartanburg, South Carolina.
Q. Is that in your name or whose name?
A. Both our names.
Q. When did you buy that condo?
A. We bought the condo in 2017. I can't recall the actual month.
Q. And this condo, have you ever lived in the condo?
A. We have been there, yes, sir, when we were home.
Q. I'm sorry?
A. When we are home.
Q. So how often do you and your husband return to South Carolina in this general time frame like in 2018, 2017?
A. Since we left?
Q. Yes, since you bought the condo.
A. Since we bought the condo, we have only returned two or three times.
Q. Prior to buying the condo in 2017, did you or your husband own any house or property in the State of South Carolina?
A. No, sir.
Q. Do you recall exactly when that property was bought in 2017?

A. I can't actually recall the month. It was towards the latter part of the month -- the year.

Q. Now, sitting here today, do you think that USAA improperly insured the Kia under a California policy at any point?

A. Did they what?

Q. Sorry. I will rephrase that. Do you believe that USAA has purposely improperly insured the 2006 Kia under a California policy at any time?

MR. ALLEN: Object to the form.

THE WITNESS: I can't answer that. I'm not sure, sir.

Q. [Mr. Still] Prior to you selling the -- strike that. When you came back to South Carolina and your husband stayed in California, it was your understanding he was going to be in Guam for two years?

A. Yes, sir.

Q. At the completion of that two years, you, your family would move wherever your husband was stationed; is that correct?

A. Yes, sir.

Q. Back in mid 2015, was there ever a discussion between you and your husband or an understanding of whether or not that Kia would have been taken from the west coast and relocated with you to your new home at the

end of his deployment to Guam?

A. Yes, sir.

Q. What was that discussion?

A. No, we didn't have no discussion of that, no, sir. Sorry.

Q. What is your understanding of the intent? Did you understand that upon him completing his tour in Guam, that the Kia would be sold prior to moving to the new location?

A. No, sir.

Q. What was your understanding? Had you even contemplated that?

A. No, sir.

Q. Do you recall about how much it cost to transport a vehicle like you did your Expedition from California to South Carolina?

A. It was roughly around maybe 1400, I think.

MR. STILL: That's all the questions I have.

EXAMINATION

BY MR. ALLEN:

Q. I have a few questions. You testified after Tyrin was to finish his time in Guam, it was your intent to move to the next duty station.

A. Yes, sir.

Q. Is that correct?
A. Yes, sir.
Q. However, your intent at that time was to remain a legal citizen and resident of South Carolina?
A. Yes, sir.
Q. And that was Tyrin's intent as well?
A. Yes, sir.
Q. To your knowledge?
A. Yes.
Q. And that's been his home of record, South Carolina?
A. Yes, sir.
Q. And that was true at the time of this accident?
A. Yes, sir.
Q. Okay. Is it fair to say that you are not sophisticated or experienced in insurance underwriting?
A. Yes, sir.
Q. Okay. Your practice, yours and Tyrin's practice was to communicate with USAA regarding any change in location of a vehicle or your residences or physical, I guess, locations?
A. Yes, sir.
Q. And in doing so, you expected, you know, USAA to write the appropriate coverage in their expertise?
MR. STILL: Object to form.

THE WITNESS: Yes, sir.

Q. [Mr. Allen] I'm sure there were discussions about types of coverages and the amounts of the premiums that would be paid; is that true?

A. Yes, sir.

Q. When it came down to making a decision about which state the actual policy should be written in, that is not a decision you would make; it's a decision that USAA would make?

A. Right.

MR. STILL: Object to form.

Q. [Mr. Allen] Now, there was a question, in so many words, do you believe that USAA purposely improperly insured a vehicle under California.

MR. STILL: Did you say improperly? I'm sorry.

MR. ALLEN: I think I am talking about your question.

MR. STILL: My question was meant to say -- and I don't know what it said, but did they purposely improperly insure a vehicle under a California policy at any time.

Q. [Mr. Allen] Purposely improperly insured the vehicle under California?

A. Is that what you are asking me?

Q. I believe your testimony was what?
A. I'm not sure.
Q. Okay. Is it your belief, though, that the policy that is at issue in this lawsuit should be conformed to a South Carolina policy?
A. Yes, sir.
Q. Okay. So in that respect, you are not alleging that USAA necessarily intentionally did something wrong --
A. No.
Q. -- in this suit, are you?
A. No.
Q. However, you are alleging that the vehicle was not necessarily properly insured under the correct state?
A. Correct.
MR. STILL: Object to form.
Q. [Mr. Allen] Okay. That is the basis of your lawsuit or the lawsuit we are here for today because of all the various contacts with South Carolina?
A. Yes, sir.
Q. And just, again, the fact that y'all filed taxes here, particularly in 2015?
A. Uh-huh [yes].
Q. Give a verbal response.
A. Yes, sir.

Q. The fact that you were legal residents and citizens of South Carolina?

A. Yes, sir.

Q. The fact that the vehicles were registered in South Carolina?

A. Yes, sir.

Q. They were tagged and taxed in South Carolina?

A. Yes, sir.

Q. The fact that the Kia was purchased in South Carolina?

A. Yes, sir.

Q. You and the kids were physically living here in South Carolina in 2015?

A. Yes, sir.

Q. You and Tyrin had South Carolina driver's licenses?

A. Yes, sir.

Q. Okay. The probate estate is being probated here in South Carolina?

A. Yes, sir.

Q. So all of those reasons are just contacts and connections with South Carolina that support the claim that we are here for today?

MR. STILL: Object to form.

THE WITNESS: Yes, sir.

Q. [Mr. Allen] Okay. You were asked a question I believe along the lines did you own any property in South Carolina before you purchased the apartment in Spartanburg in 2017. I believe your answer was no.

A. Correct.

Q. Were you saying that you did not own real property? Is that what you meant?

A. Yeah, we didn't own real property.

Q. But you did, in fact, own property in the form of the vehicles?

A. Okay. Yes, sir.

Q. So you did own the vehicles that were registered and titled, taxed here in South Carolina?

A. Yes, sir.

MR. STILL: Object to form.

Q. [Mr. Allen] Were you just talking about you didn't own any real property in South Carolina prior to purchasing the condo in 2017?

A. Correct.

Q. At the time you had the conversation in July of 2014 with USAA regarding the change in your location, you knew that it was the intent and reality that the Kia was going to go to Guam with Tyrin?

A. Yes, sir.

Q. And you you knew that on the date of that

conversation or when that conversation took place with USAA in the July time frame of 2014?

A. Yes, sir.

Q. Did you communicate that to USAA at that time?

A. Yes, sir.

Q. Then Tyrin followed up with a conversation in about November, 2014?

A. Yes, sir.

Q. Reiterating all that?

A. Yes, sir.

Q. To USAA?

A. Yes, sir.

Q. And you told USAA you were moving back to South Carolina, taking the Expedition in the July time frame of 2014?

A. Yes, sir.

Q. You were asked some questions about the intent to sell the Kia, what precipitated the decision to sell the Kia prior to leaving Guam. Was the accident really the precipitating event that led to, I guess, y'all's decision to sell the Kia?

A. Yes, sir.

Q. As opposed to bring it back?

A. Yes, sir.

MR. ALLEN: That's all I have. Thank you.

MR. STILL: I have no questions.

[DEPOSITION CONCLUDED AT 2:10 P.M.]

C E R T I F I C A T E

S O U T H C A R O L I N A

ANDERSON COUNTY

I hereby certify that the foregoing deposition was reported, as stated in the caption, by the method of Stenograph machine with backup, and the questions and answers thereto were reduced to typewriting by me or under my direction; that the foregoing pages 1 through 49 represent a true, correct and complete transcript of the evidence given on the 29th day of June, 2018, by the witness, KAMIKA YOUNG, who was first duly sworn by me; that I am not a relative, employee, attorney or counsel of any of the parties, nor am I financially interested in the action.

This 9th day of July, 2018.

Susan Lynn McCracken, RMR
Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y., a minor under the age of 14.....Appellant,

v.

USAA General Indemnity Company.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule 210, SCACR.

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July 23, 2019

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v.

USAA General Indemnity Company . . . . . Respondent.

APPELANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. THE CIRCUIT COURT ERRED IN FINDING THE CALIFORNIA POLICY SHOULD NOT BE REFORMED UNDER S.C. CODE ANN. § 38-61-10 TO PROVIDE UIM COVERAGE

II. THE CIRCUIT COURT'S GRANT OF SUMMARY JUDGMENT WAS IN ERROR BECAUSE IT WAS PREMATURE AND BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE

STATEMENT OF THE CASE

On July 26, 2017, Plaintiff Tyrin Young filed this declaratory judgment action seeking to reform a USAA automobile policy to conform to the South Carolina Insurance Code pursuant to S.C. Ann. §38-61-10 to provide underinsured motorist coverage in the amount of $50,000.00[1]. (R. pp. 14-18). USAA timely answered and asserted counterclaims against the Plaintiffs, its insureds, and raised numerous defenses based on California law against stacking UIM coverages and other arguments based on California law. (R. pp. 19-55). Plaintiff timely filed its Reply to Answer and Counterclaim of USAA General Company on November 3, 2018. (R. pp. 56-62).

USAA took the depositions Tyrin and his wife Kamika Young on June 29, 2018. (R. p. 241; p. 354). Plaintiff served its Notice of Rule 30(b)(6) Deposition of Defendant USAA General Indemnity Company on July 6, 2018. (R. pp. 193-196). In response, on July 25, 2018, USAA filed a Motion for Summary Judgment and a Motion for a Protective Order seeking to prevent Plaintiff from deposing USAA. (R. pp. 63-65; pp. 180-190). Plaintiff filed a Motion to Compel Attendance at Rule 30(b)(6) Deposition on September 5, 2018. (R. pp. 191-196). All motions were heard on September 24, 2018 by the Honorable Perry H. Gravely.

The Order Granting USAA's Motion for Summary Judgment and Dismissing Cross Motions Related to Discovery Disputes as Being Moot was entered on October 8, 2018 (the "October 8, 2018 Order"). (R. pp. 1-10). On October 17, 2018, Plaintiff timely filed its Motion to Reconsider seeking to alter, amend or reconsider the October 8, 2018 Order. (R. pp. 202-209). On December 6, 2018, the Trial Court issued and entered an Order Denying Plaintiff's Motion to

[1] It is stipulated by the Parties that Plaintiffs' damages resulting from the death of the two children and injuries to the surviving minor child in the accident were sufficient to meet and exceed the available coverage of $50,000.00 under the California Policy including any applicable setoff.

Reconsider (the "December 6, 2018 Order"). (R. pp 11-13). Plaintiff timely filed and served a Notice of Appeal of both orders on December 31, 2018.

SEPARATE STATEMENT OF FACTS

On August 30, 2015, Kamika Young and her minor children, Tyrin Young, Jr., Micah Young and J.Y. (a minor) were involved in a tragic motor vehicle accident in Greenville, South Carolina (R. p. 15). Two of the children, Tyrin Jr. and Micah, died as a result of the accident and the minor child J.Y. was injured. (R. p. 16). Tyrin Jr. was 4 years old and Micah was 2 year old. (R. p. 132).

The accident was a heartbreaking and devasting event for the Young family. The underlying facts about the wreck are not in dispute. Kamika and the three (3) Young children were driving to church on the morning of the accident. Tyrin Young, Kamika's husband, was a career serviceman who served his country in the United States Navy and was on temporary duty in Guam at the time of the accident. (R. p. 133).

As Kamika was exiting the parking lot of a gas station attempting to cross over lanes of traffic, she pulled in front of an oncoming vehicle which struck her vehicle. As a result of the collision, she lost control of her vehicle and struck a bank across the street. The Ford Expedition and building caught fire. Kamika and J.Y. were able to exit the vehicle, and they desperately attempted to free Tyrin Jr. and Micah from the burning vehicle and building. They were able to free one of the boys from the vehicle; however, he became disoriented and tragically ran into the burning building where he died. The flames overwhelmed Kamika and J.Y., and they were unable to free the other boy before they were forced to leave him behind where he died in the fire.

The vehicle Kamika was driving, a 2001 Ford Expedition, was insured under a USAA policy at the time of the accident. (R. p. 133). USAA tendered the liability limits of $50,000.00

and $50,000.00 UIM limits to settle claims made on behalf of the estates of the deceased children and the minor child under that policy. (R. p. 133). The court order approving the settlement of those claims preserved the right to pursue additional underinsured coverage under a second USAA policy. (R. p. 16).

At the time of the accident, Tyrin had a separate policy with USAA insuring a 2006 KIA Spectra (the "KIA"), which was not involved in the accident. (R. p. 133). The policy covering the KIA was issued in California while Plaintiff was on temporary duty in California under policy number 022260801G71030 (the "California Policy"). (R. p. 133). The California Policy provides multiple types of coverages, including UIM coverage at the time of the accident in the amount $25,000 each person/$50,000.00 each accident. (R. p. 133). The California Policy's listed address of the named insured at the time of the accident was 1409 Roper Mountain Rd. Apt 240, Greenville, SC. 29615. (R. p. 110). The KIA was registered and licensed in South Carolina at the time the policy was issued and at the time of the accident. (R. pp. 133-134; pp. 154-156). For all years of ownership of the KIA, including when the California Policy was issued, property taxes were paid in South Carolina in Greenville County. (R. pp. 133-134; pp. 157-159).

The Young Family has permanent and definitive contacts with the State of South Carolina. Tyrin and Kamika were born in South Carolina and were married in South Carolina. (R. p. 133; p. 251, lines 18-25; p. 361, lines 8-10). Although temporarily deployed at the time of the accident, Tyrin has continuously remained a legal citizen and permanent resident of South Carolina, including at the time the California Policy was issued and at the time of the accident. (R. p. 139; p. 396, lines 3-14; p. 339, line 14 – p. 340, line 20). The Youngs have always maintained South Carolina driver's licenses. (R. p. 133; pp. 148-150; p. 366, lines 5-10; p. 262, lines 19-21). The

Youngs claimed income in South Carolina and filed their tax returns in South Carolina, including in 2015, the year in which the accident occurred. (R. p. 133, pp. 151-153).

The KIA was registered and tagged in South Carolina at all times relevant to this action, including but not limited to, the date the California Policy was issued, the date of accident and throughout the entire policy period. (R. pp. 133-134). Taxes on the KIA have been paid in South Carolina since the vehicle was purchased new in South Carolina. (R. p. 134).

Kamika Young and the children were living in South Carolina at the time of accident. (R. p. 19; p. 138). The children, who would have also been insured under the California Policy, died in South Carolina and their estates were probated in South Carolina. (R. pp. 177-179). The insured's address listed on the policy at the time of the accident, and the address USAA used to mail policy documents and renewals, was their Greenville, South Carolina address. (R. p. 110; p. 165-176).

Tyrin received orders to ship from California to Guam in 2014 and arranged to have the KIA shipped there in late 2014. (R. pp. 160-164). The Youngs had been living in California for several years prior to that time. After Tryin received his Guam orders, Kamika and the children moved back to their permanent residence in South Carolina sometime in mid-2014. (R. p. 380, lines 14-18).

At the time of the accident, the KIA and Tyrin were physically located in Guam, a fact that the Youngs had notified USAA of on several occasions prior to the move. (R. p. 308, lines 9-22; p. 344, lines 9-14; p. 382, lines 5-22). Despite USAA's knowledge of the move and the KIA's and Youngs' significant connections with South Carolina, USAA did not change the coverage from California and continued to accept premium payments from the Youngs. (R. p. 134; p.176). The Youngs are not versed in or sophisticated in insurance law and underwriting. They were

simply relying on USAA to write the appropriate coverage based on the information they provided to USAA. (R. p. 134; p. 396, line 15 - p. 397, line 10).

Tyrin asserts that summary judgment should not have been granted because of the significant connections between South Carolina and the property, interests and residents insured under the California Policy. Further, summary judgment was erroneous and premature because genuine issues of fact are in dispute and because Plaintiff had not had the opportunity to depose USAA. Significantly, the Trial Court found significant contacts between South Carolina and the underlying controversy existed, but nevertheless erroneously granted summary judgment without allowing Plaintiff the opportunity to depose USAA. This appeal followed.

STANDARD OF REVIEW

Pursuant to Rule 56 (c), SCRCP, the trial court may grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). An appellate court "undertakes a de novo review of all issues of law, and is free to decide matters of law with no particular deference to the trial court." *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530, 744 S.E.2d 178, 182 (2013). In reviewing a motion for summary judgment, the facts and circumstances must be viewed in the light most favorable to the non-moving party. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment where the standard is a preponderance of the evidence. *Huffman v. Sunshine Recycling,*

LLC, 417 S.C. 514, 523, 790 S.E.2d 401, 406 (Ct. App. 2016), reh'g denied (Sept. 15, 2016), cert. granted (Sept. 29, 2017).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN FINDING THE CALIFORNIA POLICY SHOULD NOT BE REFORMED UNDER S.C. CODE ANN. § 38-61-10 TO PROVIDE UIM COVERAGE

The California Policy does not contain a choice of law provision, which would mandate the application of California law or preclude South Carolina law from being applied. (R. pp. 35-55). "Historically, South Carolina courts have followed the rule of *lex loci contractus* and applied the law of the state where the insurance contract was formed." *Heslin-Kim v. CIGNA Grp. Ins.*, 377 F. Supp. 2d 527, 530 (D.S.C. 2005). However, the traditional rule of *lex loci contractus* was modified by the enactment of S.C. Code Ann. § 38-61-10. *Id.* "Where this statute applies, it governs as South Carolina's rule of conflicts." *Sangamo Weston v. Nat'l Surety Corp.*, 307 S.C. 143, 147, 414 S.E.2d 127, 130 (1992). The statute provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State. S.C. Code Ann. § 38-61-10.

Pursuant to *Sangamo*, the South Carolina Supreme Court set forth a two-fold analysis to determine the choice of law in the context of an insurance contract. *Heslin-Kim*, 377 F. Supp. 2d at 531. First, the court must determine whether S.C. Code Ann. § 38-61-10 applies. Second, the court must address whether South Carolina has sufficient contacts creating a state interest in the dispute. *Id.* at 531.

a. <u>The first prong of the *Sangamo* test is satisfied because the California Policy insured property, lives and interests connected to and located in South Carolina.</u>

The physical presence of the insured property in South Carolina is not a part of S.C. Ann. § 38-61-10 and is not required to trigger the broad application of the statute. Here, this is particularly significant considering the substantial contacts with South Carolina, the Youngs and the KIA. When applying the first prong of the *Sangamo* test, "the plain language of § 38–61–10 contemplates a **broad application** of South Carolina law to insurance contracts with any significant connection to South Carolina." *Heslin-Kim*, 377 F. Supp. 2d at 531 (emphasis added). When interpreting and applying the first prong of the *Sangamo* test, the Court is required to consider the connection between the property, interests or lives with South Carolina – not simply physical presence of any of the insured interests. *See Yeager v. Allstate Ins. Co.*, Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843, at 13 (D.S.C. Feb. 22, 2010) (to answer the first question under the *Sangamo* test – whether property lives or interests are located in South Carolina –*Sangamo* and *Heslin-Kim* require that this court interpret § 38-61-10 broadly and determine whether there is a significant connection between the subject of the insurance contract and South Carolina.) Thus, the interpretive case law requires consideration of the connections between South Carolina and the controversy when determining whether Section 38-61-10 applies under the first prong of *Sangamo*.

The statute applies to all "contracts of insurance on property, lives, **or** interests in this State." S.C. Ann. § 38-61-10 (emphasis added). *See also Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (noting that the use of the word "or" in a statute is a disjunctive particle that marks an alternative). In this case, the inclusion of "or" in the statute is significant because it does not limit the statutes application exclusively to the KIA. Rather, it mandates broad consideration of all property, interests, persons and risks subject to the

California Policy which are located in or share a significant connection to South Carolina. *See Heslin-Kim,* 377 F. Supp. 2d at 531.

South Carolina exercises significant interests in the KIA. It requires registration of the vehicle to, among other important state interests, generate revenue through taxes, track ownership and licensure, and to ensure safety of its citizens on the roadway. (R. pp. 205-206). Kamika purchased the KIA new in South Carolina. (R. pp. 154-156). The KIA was continuously registered and tagged in South Carolina from the time the vehicle was purchased through the date of the accident. (R. pp. 133-134; pp. 154-156). The taxes on the KIA were always paid in South Carolina from the time the vehicle was purchased through the date of the accident. (R. pp. 133-134; pp. 157-159).

The Trial Court notes in the October 8, 2018 Order "that South Carolina's courts have held numerous times that automobile polices should not be reformed where the policies sole connection to the State of South Carolina is that the insured was injured in an accident while in the State of South Carolina." (R. p. 6). The Trial Court relies in part on *Bowman v. Cont'l Ins. Co.* No. 99-2540, 2000 U.S. App. LEXIS 20957, at 10 (4th Cir. 2000) (unpublished opinion) to support its finding that S.C. Ann. § 38-61-10 does not apply. (R. p. 6) However, the Trial Court's application of *Bowman* to the present case is in error.

In *Bowman*, the court declined to reform a Georgia policy related to an accident in South Carolina because the vehicle owners were Georgia citizens and the vehicle was registered, taxed and tagged in Georgia as opposed to South Carolina. *Bowman,* at 10 (4th Cir. 2000). *See also Yeager v. Maryland Casualty*, 868 F. Supp. 141, 144 (D.S.C. 1994) (location of accident and lawsuit alone are insufficient to trigger § 38-61-10 since the accident involved Georgia residents

and a vehicle registered in Georgia.)[2]. The *Bowman* and *Maryland Casualty* cases are clearly distinguishable from this case because they involve only transient connections, whereas the connections in this matter are permanent and definitive. Furthermore, the connections which the court found were lacking in *Bowman* and *Maryland Casualty* – registration of the vehicle in S.C. and ownership by S.C. residents – are satisfied in the present case. Considering the KIA was registered in South Carolina and owned by South Carolina residents, South Carolina has a significant interest in the property, thus triggering the broad application of Section 38-61-10.

In addition to the KIA, the California Policy also provided coverages concerning interests and citizens located in South Carolina and insured individuals (Kamika and Tyrin Young) with South Carolina driver's licenses. (R. pp. 148-150). Prior to the accident on August 30, 2015, Kamika was issued insurance cards for the KIA on January 3, 2015 and June 3, 2015. (R. pp.165-176). Kamika was specifically named on the declaration page and is listed as an operator and insured on the insurance cards issued and mailed to the family's permanent address in Greenville, South Carolina. (R. pp. 165-176). USAA did so knowing that Kimaka and the three (3) children were living in South Carolina at the time. As such, USAA knew that it was insuring persons, interests and risks located in South Carolina under the California Policy, which triggers the broad application of Section 38-61-10 and satisfies the first *Sangamo* prong.

The California Policy also contained bodily injury coverages which covered Kamika and the children located in South Carolina at the time of the accident. (R. pp. 35-55). These coverages included Medical Payments Coverage and UM/UIM coverage. (R. pp. 40-48) The California Policy and the South Carolina Policy generally define "family member" as "a person related to

2 Similarly, *see Hartsock v. Am. Auto. Ins. Co.*, 788 F. Supp. 2d 447, 451 (D.S.C. 2011) (the Court applied the Sangamo test and reformed a North Carolina automobile insurance policy to South Carolina. Critical to the court's analysis was the fact that Ms. Harstock's vehicle **was registered, taxed and tagged in South Carolina.**)

you by blood, marriage or adoption who is a resident of your household." (R. p. 37; p. 86). Relevant to this case, the California Policy generally defines "Covered person" as "you or any family member for the ownership, maintenance, or use of any auto or trailer." (R. p. 38). USAA considered Tyrin, his wife Kamika Young, and their children as part of the same household as indicated in the policy renewals addressed to their Greenville, South Carolina address on January 3, 2015 and July 3, 2015 (R. pp. 165-176). Tyrin and his family were considered residents of the same household by the IRS and the State of South Carolina as indicated on their South Carolina tax returns and South Carolina drivers' licenses. (R. pp. 148-153). The United States Military and Federal Government considered the Youngs to be a part of the same household with permanent residence in South Carolina. (R. pp. 151-153).

Turning to the specific coverages, the Medical Payments Coverage applied to "covered persons" defined as "You or your family member occupying while occupying any auto." (R. p. 40). This particular coverage also provided death benefit coverages to the "beneficiary" of a covered person. (R. p. 42). The term "beneficiary" includes "2. if the deceased is an unmarried minor, either of the surviving parents who had legal custody at the time of the accident;" or "3. the estate of the deceased." (R. p. 40).

The UM/UIM coverage[3] under the California Policy extended to "covered persons" defined as "You or your family member." (R. p. 44). In this case, Kamika was a legal custodian of the deceased children living in South Carolina at the time of the accident. (R. p. 380, lines14-18). The

[3] Under the California Policy, UIM coverage was in fact included as a part of the UM coverage and the Youngs paid premiums for this coverage. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage. UNINSURED MOTORISTS BODILY INJURY COVERAGE (referred to as UMBI). We will pay compensatory damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle because of BI sustained by a covered person and caused by an auto accident.

boys who died as a result of the accident involving an "auto" owned by the Youngs are buried in South Carolina and their estates were probated in South Carolina. (R. pp. 177-179). Thus, the broad application of § 38-61-10 is triggered because the California Policy insured South Carolina interests, lives and beneficiaries.

In sum, when interpreting and applying the first prong of the *Sangamo* test, the Court is required to consider the connection between the property, interests and lives with South Carolina – not simply physical presence. The connection between South Carolina and a vehicle taxed, tagged and registered under its laws, such as the KIA, is significant and permanent. This connection is not broken just because the vehicle is not physically present in this state. The significant connections acknowledged by the Trial Court in both Orders and the October 1, 2018 Letter[4] cannot be ignored. (R. pp. 1-10; pp. 11-13; p. 209). These significant connections must be considered when applying Section 38-61-10 under the first prong of *Sangamo.*

Since the California Policy was insuring property, interests, persons and lives located in and sharing significant connections with South Carolina at the time of the accident, the Trial Court erred by not applying Section 38–61–10 under the first prong of *Sangamo*. For this reason, this Court should reverse.

b. <u>The second prong of the *Sangamo* test is satisfied because South Carolina has significant connections with the property, lives and interests insured under the California Policy.</u>

This appeal and the application of Section 38-61-10 hinges on the connections with South Carolina. The Youngs, the KIA and the interests insured under the California Policy have significant, permanent and definitive connections with South Carolina. By contrast, in the cases

[4] In its October 1, 2018 letter, the Court specifically finds "the "contacts" with South Carolina are significant" but despite the admitted significant contacts declines to apply the first prong of *Sangamo*. Since the statute was intended to be broadly applied where contacts are significant, this finding is clearly erroneous because it contravenes applicable law. The significant connections are also noted in both Orders.

where courts have found Section 38-61-10 inapplicable, the courts determined there was a lack of connection, interest or nexus with South Carolina. *Yeager v. Allstate Ins. Co.* No. CIV.A. 9:09-860-MBS, 2010 WL 680429 (D.S.C. Feb. 23, 2010). In this case, the Trial Court acknowledges the significant contacts between the Youngs and South Carolina. (R. p. 12; p. 209). Despite this finding, however, the Trial Court erred in finding Section 38-61-10 did not apply.

In *Russell v. McGrath*, the court analyzed many factors regarding the applicability of Section 38-61-10 to determine whether a Florida automobile insurance policy should be conformed to South Carolina law. 135 F. Supp.3d 427 (D.S.C. 2015). *McGrath* involved an automobile accident in South Carolina where Brian McGrath and his three passengers lost their lives. *Id.* at 428. McGrath was a Connecticut citizen attending college at the University of South Carolina at the time of the accident. *Id.* at 429. McGrath's parents were paying out of state tuition *Id.* at 429. The subject vehicle was purchased in Florida, registered in Florida and had a Florida tag. *Id.* at 429. The taxes on the vehicle were paid in Florida. *Id.* at 429. The insurance policy at issue was a Florida policy and was purchased from a Florida agent. *Id.* at 429. The policy was mailed to McGrath's parents at their residence in Connecticut. *Id.* at 429. Brian had a Connecticut driver's license. *Id.* at 429. Brian never worked, owned property or paid taxes in South Carolina. *Id.* at 429. Brian's estate was probated in Connecticut. *Id.* at 429. Brian's mother stated that it was always his intent to return to Connecticut. *Id.* at 429.

In *McGrath*, the court ultimately declined to reform the policy due to insufficient contacts between Brian McGrath and South Carolina. In that respect, *McGrath* is distinguishable from this matter.

The factors which the *McGrath* court found to be absent and insufficient to trigger Section 38-61-10 are actually present here. The Youngs are and were South Carolina citizens driving South

Carolina vehicles at the time of the accident. (R. p. 138). The Youngs claimed income and filed tax returns in South Carolina. (R. pp.151-153). The Youngs have always maintained permanent legal residency in South Carolina throughout the policy period and at the time of the accident. (R. p. 139; p. 396, lines 3-14; p. 339, line 14 – p. 340, line 20). The 2006 KIA was purchased in South Carolina, and was taxed, tagged and registered in South Carolina at the time the Policy was issued and at the time of the accident in 2015. (R. pp. 133-134; pp. 154-156; pp. 157-159). The Youngs have always maintained South Carolina drivers licenses and were never licensed in any other state. (R. p. 133; pp. 148-150; p. 366, lines 5-10; p. 262, lines 19-21). The Youngs purchased and renewed the California Policy by phone and at least two policy renewals were addressed to and sent to Plaintiff at his South Carolina address. (R. p. 349, line 23 - p. 350, line 9; pp. 165-176). The payment of premiums under the California Policy would have originated and been paid from South Carolina. (R. p. 176). Kamika and the children were living in South Carolina at the time of the accident. (R. p. 138). The estates for both of the deceased children, Tyrin, Jr. and Micah, were probated in South Carolina. (R. p. 138; pp. 177-179). The Youngs have always considered South Carolina their permanent residence and it has always been their intent to return here. (R. p. 139; p. 396, lines 3-14; p. 339, line 14 – p. 340, line 20). This is further supported by the fact that the Youngs now own real property in South Carolina. (R. p. 347, lines 1-5).

Section 38-61-10 was also analyzed in *Yeager v. Allstate Ins. Co.* No. CIV.A. 9:09-860-MBS, 2010 WL 680429 (D.S.C. Feb. 23, 2010). There, the court was asked to determine whether an automobile policy issued in Georgia should be reformed to provided UIM coverage consistent with South Carolina law. *Id.* at 1. The insured was a Georgia resident living part time in South Carolina with her boyfriend at the time of the accident. *Id.* at 4. Her permanent address was in Georgia, and she had a Georgia driver's license. *Id.* at 4. She was working as a bookkeeper for

clients in South Carolina and was driving from a client's place of business in South Carolina to her part time residence in South Carolina at the time of her accident. *Id.* at 4-5. She filed income taxes in South Carolina and Georgia. *Id.* at 5.

In *Yeager*, The court declined to apply Section 38-61-10 finding the insured's connections with South Carolina were not significant enough because "although Plaintiff resided in South Carolina part-time and paid South Carolina income taxes, Plaintiff was a permanent resident of Georgia, Plaintiff held a Georgia driver's license, and the insured automobile was registered in Georgia." *Id.*at 15. By contrast, the Youngs meet all of the stated factors which apparently prevented the *Yeager* court from applying Section 38-61-10 and reforming the policy – residency, drivers licensure and registration of the vehicle in South Carolina.

In *Heslin-Kim*, Section 38-61-10 was applied to conform a life insurance policy to provide coverage for a South Carolina resident. 377 F. Supp. 2d at 532. The court found a significant connection because the Plaintiff was a resident of South Carolina in the years leading up to his death, he died in South Carolina, his estate was probated here, and premiums were paid from South Carolina. *Id.* at 532. The court found that "insuring the life of a South Carolina citizen presents a more permanent and definitive connection to this state." *Id.* at 532.

This matter is analogous to *Heslin-Kim*. The California Policy provides coverage to the Youngs who have always been permanent residents of South Carolina. (R. p. 139; p. 396, lines 3-14; p. 339, line 14 – p. 340, line 20). The California policy covered their resident children who died in South Carolina as a result of the accident and whose estates were probated here. (R. pp. 177-179). Finally, the premiums for the policy would have been initiated and paid from South Carolina. (R. p. 176).

Due to the overwhelming permanent and definitive contacts between the Youngs and the State of South, the Trial Court erred by not applying Section 38-61-10 to reform the California Policy[5]. For this reason, this Court should reverse the grant of summary judgment.

II. THE CIRCUIT COURT'S GRANT OF SUMMARY JUDGMENT WAS IN ERROR BECAUSE IT WAS PREMATURE AND BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE

At the time the October 8, 2018 Order was entered, Plaintiff had not been afforded the opportunity to complete discovery by deposing the opposing party – Defendant USAA. Plaintiff raised this issue in its memorandum in opposition to summary judgment and in its Motion to Compel and supporting memorandum. (R. pp. 135-136; pp. 191-201). Despite the absence of a full and fair opportunity to conduct discovery, the Trial Court granted summary judgment on all claims and issues. Such a grant of summary judgment contravenes long established South Carolina precedent as to when a court may properly grant summary judgment. For this reason, this Court should reverse.

It is well accepted that summary judgment is a "drastic remedy," which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or

[5] The same result would most likely be reached under California law since California appears to apply the same factors and analysis as South Carolina to determine which state's law should apply. *See* California Cas. Indem. Exch. v. Pettis, 193 Cal. App. 3d 1597, 1606, 239 Cal. Rptr. 205, 211 (Ct. App. 1987), (In finding that California's choice of law provision applied over Hawaiian law, the court determined that California had the most significant contacts considering the Pettis's were citizens of California, earned income in California and the covered vehicles were registered in California.) *See also* Farmers Ins. Exch. v. Veveiros, No. A128444, 2011 WL 1535404, at 6 (Cal. Ct. App. Apr. 25, 2011) (unreported) (considering similar factors including that the insureds were California citizens and insured vehicles were registered in California).

inferences to be drawn from them, summary judgment should be denied. *Schmidt v. Courtney*, 357 S.C. 310, 319, 592 S.E.2d 326, 331 (Ct. App. 2003)

Because summary judgment is such a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to conduct discovery. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). This means, among other things, that summary judgment should not be granted until the non-moving party has a full and fair opportunity to complete discovery. *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Schmidt*, 357 S.C. at 319, 592 S.E.2d at 331 (Ct. App. 2003); *Wallace v. Day*, 390 S.C. 69, 76-77, 700 S.E.2d 446, 450 (Ct. App. 2010); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 333 (2002); *Baughman,* 306 S.C. at 112, 410 S.E.2d at 543 (1991).

South Carolina courts routinely reject motions for summary judgment when the opposing party has not had a full and fair opportunity to participate in discovery. For instance, in *Doe v. Batson*, the South Carolina Supreme Court affirmed the South Carolina Court of Appeals reversal of summary judgment on the grounds that the trial court abused its discretion in granting summary judgment before the Plaintiff had a full and fair opportunity to complete discovery. 345 S.C. at 321, 548 S.E.2d at 857 (2001). There, the trial court granted summary judgment finding no genuine issue of material fact existed on the issue of liability. *Id.* at 320, 548 S.E.2d at 856. The Plaintiff opposed the motion, in part, arguing that it was premature because he had not yet had the opportunity **to depose the defendant Batson**. *Id.* at 319, 548 S.E.2d at 856. (emphasis added). The Supreme Court agreed that "Doe should have been permitted to complete discovery" in deposing the defendant and other witnesses and, therefore, affirmed the Court of Appeals reversal of the trial court's order granting summary judgment. *Id.* at 322, 548 S.E.2d at 857.

Similarly, in *Baughman*, the court reversed a partial summary judgment order finding that it had been granted prematurely prior to the completion of discovery. 306 S.C. at 112, 410 S.E.2d at 543 (1991). The trial court granted summary judgment, in sum, because plaintiff failed to establish causation and the appropriate standard of care. *Id.* at 104, 410 S.E.2d at 539. The Plaintiff opposed the motion arguing that he should be allowed to complete discovery by deposing his expert on the issues of liability and causation. *Id.* at 105, 410 S.E.2d at 539. The South Carolina Supreme Court agreed that further discovery was necessary to develop the record prior to granting summary judgment and reversed, finding that Plaintiff should be afforded an adequate opportunity to complete discovery by deposing the witness. *Id.* at 114, 410 S.E.2d at 545.

The present case is analogous to both *Batson* and *Baughman*. Here, the Circuit Court prematurely granted summary judgment before Plaintiff had an opportunity to depose USAA – **a party and necessary witness**. Moreover, Plaintiff raised multiple disputed issues of material fact in opposition the USAA's motions. These issues include, but are not limited to, ambiguity in the policy language, disputes as to which state's law should apply (South Carolina or California), USAA's position on whether coverage should have been written in South Carolina as opposed to California, vehicle coverages, and whether additional UIM coverage was possible or available under the policy. (R. pp. 135-136; pp. 197-201; pp. 207-208). In addition, issues of material fact are in dispute as to USAA's claims and defenses and Plaintiff's waiver and estoppel arguments. (R. pp. 56-62; pp. 140-141). Plaintiff sought to address these issues in its Notice of 30(b)(6) Deposition. (R. pp. 188-190).

For example, in the October 8, 2018 Order, the court erroneously finds the "Plaintiff has not argued and the Court does not find there to be any ambiguity in the California Policy." (R. p. 4). Plaintiff raised ambiguity as a defense in its reply to USAA's counterclaim and in connection

with the subject motions and hearing. (R. p. 61; p. 136; pp. 207-208; p. 234, line 24 – p. 235, line 5). Further, there is ambiguity in the California Policy.

The term "garaged" as USAA attempts to apply it in this case is ambiguous. The term "garaged" is not defined in the policy documents and factual disputes exist as to its meaning and application in this case. (R. pp. 35-55). The term "location" is, however, defined in the California Policy documents as "where you garage your vehicle." USAA knew the KIA had been shipped to Guam in 2014. (R. p. 308, lines 9-22; p. 344, lines 9-14; p. 382, lines 5-22). Having notice of that fact, USAA sent policy renewal packages continuing coverage under the California Policy to Tyrin Young and his family addressed to their address at 4 Cross Club Dr., Greenville S.C. on January 3, 2015 and again on July 3, 2015. (R. pp. 165-176). The policy continued to note the KIA was "garaged" in California even though it was not "located" there. (R. pp. 165-176). The KIA was physically located in Guam at the time of the accident on August 30, 2015. (R. p. 3).

Under South Carolina law, a contract term is ambiguous when it is reasonably susceptible to more than one interpretation. *Wallace*, 390 S.C. at 75, 700 S.E.2d at 449. All ambiguities, conclusions, and inferences arising in and from the evidence must be viewed in light most favorable to the Plaintiff and construed most strongly against the moving party. *Lanham,* 338 S.C. at 347, 526 S.E.2d at 255. Further, ambiguities in a contract for insurance are interpreted against the insurer. *McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 426 S.E.2d 770, 771 (S.C. 1993).

USAA's purported use and application of the term "garaged" is not evident from the documents or discovery responses provided in the case and is susceptible to multiple interpretations. As such, Plaintiff should have been afforded the opportunity to depose USAA regarding the application and use of the term before the Trial Court granted summary judgment.

For instance, if "garaged" means the physical location of the vehicle, then the "garaged" label on the declaration page is meaningless since the vehicle was located in Guam. (R. p. 3). If "garaged" includes where the vehicle is taxed, tagged and registered, then South Carolina would be the proper state. California, as listed on the declaration page, would not fall under either interpretation because the KIA was not "located" there and was not registered, taxed or tagged in California. Since the California Policy is susceptible to more than one interpretation as to the use and application of the term "garaged," summary judgment was inappropriate because this creates a genuine issue of material fact. *See Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 245, 672 S.E.2d 799, 804 (Ct. App. 2009) (holding that summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous).

Genuine issues of material fact exist regarding the issue of which state should coverage on the KIA should have been written. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Baugus v. Wessinger*, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). In Plaintiff's Notice of 30(b)(6) to USAA, Plaintiff identified topics to address why USAA continued to cover the KIA under the California Policy as opposed to a South Carolina policy, despite having knowledge that the KIA had been moved from California and knowledge of both the KIA's and the Youngs' significant connections with South Carolina. (R. pp. 188-190).

Plaintiff should be allowed to depose USAA to inquire into the facts, communications, underwriting notes, policy and procedures, documents and other information USAA relied upon in its coverage decision. (R. pp. 188-190). Ancillary to this particular inquiry, is also understanding whether USAA provided or offered coverage in Guam at the time the KIA was moved from California. If so, the types of coverages that would have been available to the Youngs in Guam

and whether these options were offered to the Youngs are relevant to the disputed issue of coverage.

USAA raised numerous defenses and claims in its Answer and Counterclaim, which are in dispute[6]. (R. pp. 19-34). USAA's defenses and claims at issue include Failure to Mitigate Damages, Accord and Satisfaction, No Coverage and Estoppel. (R. pp. 19-34).These are based, in part, upon allegations that the Plaintiffs failed properly communicate regarding the location of the KIA and other requirements under the California Policy. (R. pp. 19-34). USAA also relies upon deposition testimony that the Plaintiffs never asked for the KIA to be covered under a South Carolina policy. (R. p. 384, lines 14-24). USAA asserts that it relied upon Plaintiff's representations as to the location of the vehicle. (R. pp. 23-25; pp. 32-33). USAA claims that Plaintiffs did not properly communicate with USAA regarding changes in coverage. (R. pp. 23-25; pp. 32-33). Communications between USAA and Plaintiff regarding facts relevant to the issuance, renewal and payment for coverage are at issue in this action. Plaintiff should have the full opportunity to discover and refute the basis for USAA's position through a deposition, and in conjunction, also discover the location and existence of documents and communications regarding the renewal and any change in coverage. (R. pp. 193-201).

USAA's policies, procedures and factors utilized to write coverage in South Carolina are relevant to this coverage dispute. (R. pp. 193-201). In addition, USAA's policies and procedures regarding the purchase, renewal and changes to policies are relevant and appropriate to this dispute. (R. pp. 193-201). Counsel for USAA questioned the Plaintiffs extensively regarding the purchase, renewal and changes to the policy. The Youngs were also questioned extensively regarding their

6 In its Motion for Protective Order, USAA states that it is waiving the following claims and defenses: Failure to Comply with Conditions Precedent and Breach of Contract. However, USAA's remaining defense and counterclaims remain at issue. (R. pp. 185-186).

communications with USAA as well as their location and location of the vehicle. (R. p. 300, line 14 – p. 312, line 6; p. 371, line 17 – p. 389, line 21). Further, USAA disputes that the KIA should have been covered under a South Carolina policy. (R. pp. 19-34).

It is appropriate for Plaintiffs to understand the bases of the issues in dispute, in addition to USAA's defenses and claims in this matter. Thus, Plaintiff should have been allowed to depose USAA regarding the underlying facts, documents and reasons supporting its claims, defenses and position on coverage prior to summary judgment. For the same reasons stated in *Batson* and *Baughman*, it was erroneous for the Trial Court to prematurely grant summary judgment in this matter. Hence, this Court should reverse the Trial Court's grant of summary judgment.

There are genuine issues of material fact in dispute as to the issues of waiver and estoppel regarding USAA's claims and defenses. In *Leggett v. Smith*, the South Carolina Court Appeals found that the insurer waived certain policy provisions regarding residency and garaging of the vehicle under the policy because it continued to accept premiums after the insurer became aware of the insured's change in residency from New York to South Carolina. 386 S.C. 63, 80, 686 S.E.2d 699, 708–09 (Ct. App. 2009)[7]. *See also Pitts v. New York Life Ins. Co.*, 247 S.C. 545, 148 S. E. 2d 369 (1966) (insurance company was estopped from denying double-indemnity coverage under a life insurance policy after it demanded and retained premiums for such coverage).

USAA was on notice no later than December of 2014 that Tyrin and the KIA had been moved from California to Guam while Kamika and children were living in South Carolina. After receiving notice of the change in location of the insured and KIA, USAA decided to keep the California coverage in place under the Policy. USAA mailed two (2) additional policy renewals to Plaintiff on January 3, 2015 and July 3, 2015 and continued to accept Plaintiff's premiums without

[7] In *Leggett*, the court applied N.Y. law regarding waiver; however, South Carolina also recognizes the doctrine of waiver. *See e.g. Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992).

changing coverage from California. (R. pp. 165-176). Moreover, after receiving notice of the vehicle's and Plaintiff's change in location to Guam, USAA listed Plaintiff's address as 1409 Roper Mountain Rd, Apt. 240 and later 4 Cross Club Greenville, South Carolina and sent the renewal policies to those addresses. (R. pp. 165-176). At a minimum, genuine issues of material fact are in dispute regarding waiver and estoppel, and Plaintiff should be allowed to depose USAA regarding the underlying facts, communications and documents relevant to these issues. Thus, this Court should reverse the Trial Court's grant of summary judgment.

CONCLUSION

Based on the foregoing, this Court should reverse the Trial Court's Orders and remand this matter for further proceedings.

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August 13, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No. 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. .....Appellant,

v.

USAA General Indemnity Company .....Respondents.

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Rule 56(b), S.C.R.C.P. 17

Rule 56(c), S.C.R.C.P. 17

Constitutional Provisions

USCS Const. Art. IV, § 13

STATEMENT OF ISSUES ON APPEAL

I. **The Circuit Court correctly granted summary judgment when the Plaintiff failed to prove sufficient grounds for reforming the California Policy to conform to South Carolina law.**

I. **The Circuit Court properly granted summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.**

STATEMENT OF THE CASE

Appellant initiated this declaratory judgment action as a result of a coverage dispute with his automobile insurer, USAA, after a motor vehicle accident ("the accident") on or about August 30, 2015, which occurred in Greenville, South Carolina. On that date, Kamika Young was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. The Parties to this litigation stipulated to the facts of that accident, which consist of Mrs. Young failing to yield to oncoming traffic as she attempted to make a left turn from a private parking lot. It is undisputed that Mrs. Young was at fault for causing this accident. The initial collision between the vehicles caused Mrs. Young's vehicle to proceed across the northbound lane, to strike a building and to catch fire. Tragically, two of Appellant's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. A third child, minor J.Y. suffered personal injuries, but he survived the accident. ROA 214, ll. 14-23.

Thereafter, Appellant made claims against his personal policy with USAA on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering the Ford was issued in South Carolina, with the policy number 022260801G71050 ("the SC Policy"). ROA 83. USAA tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured Appellant's Ford. See ROA 331, ll. 2 – 332, ll. 2. The Circuit Court approved the settlements on behalf of Appellant individually, as Guardian of J.Y. and as the Personal Representative of the estates of the two deceased minors. The covenant not to execute signed in exchange for that initial settlement included a provision that would allow Appellant to pursue other excess liability and/or UIM coverage. See ROA 2.

Subsequently, Appellant initiated this declaratory judgment action in the lower court in an attempt to collect uninsured motorist coverage from a separate USAA automobile policy which

covered his 2006 KIA Spectra ("the KIA"). ROA 14-18. The policy, USAA policy number 022260801G71030, ("the California Policy") was issued in California and written pursuant to California law, as Appellant and his family were living on a Naval base in California at the time as part of his military service. ROA 110. In mid-2014, while Appellant's wife and children returned to South Carolina, Appellant and the KIA remained in California until he was deployed to Guam in late summer or early fall of 2014. At some point prior to this accident, the KIA was transported to Guam for Appellant's use during his deployment. ROA 335, ll. 15-17. Appellant was deployed in Guam when this accident occurred. ROA 335, ll. 15-17. The KIA never returned to the Continental United States after this accident as it was sold to avoid shipping costs. ROA 335, ll. 18 – 336, ll. 5.

In addition to the facts discussed above, the parties stipulated to the following facts:

- At all times relevant hereto, Appellant considered himself to be a citizen and permanent resident of the State of South Carolina even though he was stationed in other states while in the Navy;
- Appellant and his wife paid South Carolina income taxes every year since getting married in 2008;
- The Ford and KIA were registered in the State of South Carolina;
- Appellant and his wife paid property taxes on the Ford and KIA in the State of South Carolina;
- Appellant's wife and children were physically residing in the State of South Carolina at the time of this accident;
- The KIA had not been located within the State of South Carolina since at least 2009;
- The KIA was insured under a California Policy at the time of the accident;
- The KIA was located in Guam at the time of the accident; and
- Neither Appellant nor his wife ever requested that the KIA be insured under a South Carolina policy after it left the State in 2008.

ROA 3.

Appellant's declaratory judgment action, filed on July 26, 2017, sought to reform the California policy covering the KIA to conform to South Carolina statutory and common law, which allows insureds to stack UIM coverage from multiple policies. ROA 14-18. Respondent USAA timely answered the Complaint, asserting defenses based on California law against stacking underinsured motorist coverage, and raised additional counterclaims against Appellant. ROA 19-55. Appellant timely filed its Reply to Answer and Counterclaim of USAA General Company. ROA 56-62.

USAA took the depositions of Appellant and his wife Kamika Young on June 19, 2018. ROA 241-353; 354-403. Appellant served its Notice of Rule 30(b)(6) Deposition of Defendant USAA General Indemnity Company on July 6, 2018. ROA 188. On July 25, 2018, USAA filed a Motion for Summary Judgment and a Motion for a Protective Order seeking to prevent Plaintiff from deposing a USAA representative regarding immaterial and irrelevant internal procedures which are not germane to the issues at hand, as our courts have never ruled that failure to abide by internal procedures could be grounds for reforming a policy under S.C. Code Ann. §38-61-10. ROA 63-65; 180-187. Appellant filed a Motion to Compel Attendance at Rule 30(b)(6) Deposition on September 5, 2018. ROA 191-192. On September 24, 2018, a hearing on all motions was held before the Honorable Perry H. Gravely. ROA 210-240.

Judge Gravely granted Respondent's Motion for Summary Judgment and dismissed all cross motions relating to discovery as moot in an Order issued on October 8, 2018. ROA 1-10. Appellant filed a Motion to Reconsider on October 17, 2018. ROA 202-209. The trial court denied the motion to reconsider in an Order issued on December 6, 2018. ROA 11-13.

Appellant filed a timely Notice of Appeal on December 31, 2018. The Initial Brief of Appellant and Designation of Matter to be Included on Appeal were filed on April 26, 2019. This Initial Brief of Respondent follows.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). "Summary judgment is not 'a disfavored procedural shortcut,' but an important mechanism for weeding out 'claims and defenses [that] have no factual bases.'" Okatie Hotel Grp., LLC v. Amerisure Ins. Co., No. : 2:04-2212-23, 2006 U.S. Dist. LEXIS 2980, at 7 (D.S.C. Jan. 13, 2006) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548 (1986)).

ARGUMENT

I. The Circuit Court correctly granted summary judgment when the Plaintiff failed to prove sufficient grounds for reforming the California Policy to conform to South Carolina law.

Appellant asserts the lower court erred in failing to reform the California Policy to conform to South Carolina law to allow stacking of underinsured motorist coverage. However, the Circuit Court's grant of summary judgment was correct under the facts and circumstances of this case because the undisputed facts are clear that the KIA, which was not the vehicle involved in the accident in question, did not have sufficient ties to South Carolina which would justify a reformation of the policy, which is a drastic remedy saved for certain limited circumstances where the subject of the policy is located in this State.

Insurance policies are subject to the general rules of contract construction. Nationwide Mut. Ins. Co. v. Commercial Bank, 479 S.E.2nd 524 (S.C. 1996). Under general contract law, South Carolina generally follows the legal theory that the controlling law is *lex loci contractus*, or the location in which the contract was entered. See, e.g. Bowman v. The Cont'l Ins. Co., 2000 U.S. App. LEXIS 20957, No. 99-2540, at 3 (4th Cir. June 7, 2000) (holding that, under the traditional *lex loci contractus* rule in the absence of § 38-61-10, the contract was governed by the law of the place where it was formed, despite the insured's move into South Carolina where the action was brought). To the extent that the Court were to apply this general concept, it is clear that California law would apply and Appellant would not be entitled to stack any additional coverage onto the $100,000 he has already received.

However, the South Carolina legislature has enacted Section 38-61-10 of the South Carolina Code to specifically address insurance policies that insure property or lives located in the State of South Carolina. Section 38-61-10 provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

S.C. Code Ann. § 38-61-10. "Where this statute applies, it governs as South Carolina's rule of conflicts." Sangamo Weston, Inc., v. Nat'l Surety Corp., 307 S.C. 143, 147, 414 S.E.2d 127, 130 (S.C. 1992).

Importantly, the party moving to reform the policy has the burden to establish that Section 38-61-10 applies. Pursuant to Sangamo, the Court must conduct a two-fold analysis to determine what law applies in this case. Hartsock v. Am. Auto. Ins. Co., 788 F. Supp. 2d 447, 451 (D.S.C. 2011). First, the Court must consider the applicability of § 38-61-10. Id. Secondly, the Court must address whether South Carolina has sufficient contacts creating a state interest in this dispute so that applying South Carolina's substantive law is consistent with the Full Faith and Credit Clause and the Due Process Clause of the United States Constitution. Id. Where both prongs of the test are met, South Carolina law controls. In this case, however, neither prong of the Sangamo test is met, and California law must control.

A. The first prong of the Sangamo test is not met under these circumstances because the insured vehicle in question, which was not the vehicle involved in the accident, was not located in South Carolina.

To determine whether § 38-61-10 applies, South Carolina courts must first analyze the expansive first prong of the Sangamo test. "Pursuant to Sangamo, this Court's inquiry does not look to where the contract was formed, but instead focuses on whether the subject of the insurance contract is located in South Carolina." Hartsock, 788 F.Supp. 447, 451 (2011 DSC). "[A]s noted in Sangamo, under this statute it is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located [at the time of the loss]." Id.

In Appellant's argument, he mistakenly insists that this concept should be applied in an overly broad manner, asserting that the word "or" in the statute should essentially be interpreted to mean "and." ("All contracts of insurance on property, lives, **or** interests in this State are considered to be made in the State...and are subject to the laws of this State." S.C. Code Ann. § 38-61-10 (emphasis added).) Appellant argues that the statute requires the Court to consider *all* property, interests, persons *and* risks connected to South Carolina beyond the KIA itself. However, the case law to which Appellant cites does not support this assertion.

Courts interpreting this statute have explicitly stated that "[t]he court is bound by the plain meaning of the statute's language." Heslin-Kim v. CIGNA Grp. Ins., 377 F. Supp. 2d 527, 531 (D.S.C. 2005) (citing Hillman v. I.R.S., 263 F.3d 338, 342 (4th Cir. 2001) ("unless there is some ambiguity in the language of the statute, a court's analysis must end with the statute's plain language...").

In the context of the statute at hand, the word "or" clearly, in its plain meaning, acts to separate the alternatives of *property*, *lives*, or *interests*. For example, in applying the statute to a policy which insures a piece of property, the court should consider whether the property is located in South Carolina. In applying the statute to a life insurance policy, the court should consider whether the life—the person it insures—is located in South Carolina. Or, the final catch-all, in applying the statute to a policy which insures any other type of insurable interest—be it a business interest, an event, or anything else which would cause the policyholder to suffer a loss in the event of some sort of loss or damage—the court should consider whether that insurable interest is located in South Carolina.

While the statute should be considered broadly in terms of determining location, there is simply no way to read the meaning of the word "or" as one which would have the opposite effect on its provision. By using the word "or," the legislature must have been separating these three

distinct types of insurable interests. If the legislature had intended to include all three considerations together in the analysis of this statute, they would have used the word "and." To assume the word "or" actually means "and" as Appellant argues is to warp and alter the purpose of the statute. For example, if courts adopted Appellant's interpretation of the statute, a plaintiff could be allowed to reform a Florida liability policy which insures a piece of property in Florida under Florida law simply because the plaintiff was a South Carolina resident. To stretch the meaning of this statute in such a manner would open the floodgates for a deluge of litigation over countless insurance policies insuring interests which are only minimally, if at all, connected to our state.

The plain reading of the statute is clear that all contracts of insurance on property in this State are considered to be made in this State and are subject to the laws of this State. Here, however, it is undisputed that the property insured by the USAA policy—the KIA—has not been in South Carolina since at least 2009, *six years* before the accident. The KIA was located in California at the time the California Policy was issued under California law.[1] The KIA was shipped from California to Guam and was located in Guam at the time of the accident. Notably, the KIA was not the vehicle involved in the South Carolina collision, and the California Policy was not the policy insuring the vehicle involved in the collision. Accordingly, the KIA cannot be considered to be located in South Carolina.

[1] Respondent concedes, however, that this point is only one factor to be considered in the question of location of the KIA. See Heslin-Kim, 377 F. Supp. 2d at 531-32 ("[P]erhaps most importantly, neither the South Carolina Supreme Court in Sangamo nor the statute emphasize location of property or lives upon inception of the insurance contract. Rather, both emphasize only the general location of property, lives and interests within the state and that 'it is immaterial where the contract was entered into.'" (quoting Sangamo, 414 S.E.2d at 130.) "Pursuant to Sangamo and the statute's plain language, South Carolina's broad jurisdiction over an insurance contract is triggered by the location of the property, lives, and interests within the state, not by the entrance into an insurance contract.")

Although South Carolina courts have held that § 38-61-10 contemplates a broad application of South Carolina law to insurance contracts with a significant connection to South Carolina, see Heslin-Kim, 377 F. Supp. 2d at 531, there is no such *significant* connection in this case. The only factor tying the KIA to the state is the fact that it was registered in South Carolina throughout Appellant's military service. This factor alone is not a significant enough connection to deem the KIA as being "located" in South Carolina when it was clearly being garaged, driven, used, and maintained in California and, subsequently, Guam.

Furthermore, the cases which Appellant cites in support of its position find the insurance policies should be reformed only where the vehicle insured under the policy was involved in the accident. See e.g., Leggett v. Smith, 386 S.C. 63, 686 S.E.2d 699 (Ct. App. 2009) (holding a New York policy should be reformed to conform to South Carolina law where the vehicle it insured was involved in a collision in South Carolina, where the driver lived as a college student.); Russell v. McGrath, 135 F. Supp. 3d 427 (D.S.C. 2015) (ultimately denying reformation based on insufficient contacts to South Carolina, but analyzing a policy insuring a vehicle which was involved in the collision at question in South Carolina.). Here, in contrast, the KIA in question was not involved in the accident and was not located in South Carolina at the time of the accident. It was completely unrelated to the accident in question, and its only tie to the facts of this loss is the fact that it was owned by the same owner of the vehicle in the accident.

Sangamo itself allowed reformation of an out-of-state policy because the damage arose out of action which occurred within South Carolina. The court explained, "In this action Sangamo seeks coverage solely for the liability it incurred due to its operations within the State of South Carolina. Therefore, as these policies relate to this action, they insure property and interest in this state." The KIA in question in the current case was not being operated in South Carolina, and the collision which caused the damages in this case did not involve and was completely unrelated to

the KIA. Appellant has already recovered the limits of all applicable policies from the vehicle involved in the accident, and it is now seeking to use South Carolina law to stack additional coverage from an unrelated California vehicle with a non-South Carolina policy that had not been located in the state of South Carolina since 2009. To allow Appellant to do so would not be satisfying the purpose of § 38-61-10.

Accordingly, because the KIA, the insured property, was not located in South Carolina at any time within at least six years of the accident, the first prong of the Sangamo test is not satisfied, and § 38-61-10 does not apply. Therefore, South Carolina law does not apply to this dispute, and California law, which does not allow for the stacking on the uninsured motorist coverage in question, controls.

B. The second prong of the Sangamo test is not satisfied under these circumstances because the vehicle does not have sufficient contacts to South Carolina to create a state interest.

Even if, *arguendo*, the analysis of the first prong of the Sangamo test did show that section 38-61-10 applied, the second prong of the test still would not be satisfied, and South Carolina law would not apply to this dispute. Under the second prong of the Sangamo test, the Court must address whether South Carolina has sufficient contacts creating a state interest in this dispute so that applying South Carolina's substantive law is consistent with the Full Faith and Credit Clause and the Due Process Clause of the United States Constitution. Sangamo, 307 S.C. at 149.

The Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." USCS Const. Art. IV, § 1. This Article implies that public acts of every state shall be given same effect by courts of another state that they have by law and usage at home. Chicago & A. Railroad v Wiggins Ferry Co., 119 US 615 (1887). The Full Faith and Credit Clause is an inexorable command, and "its

applicability does not turn on a balance of convenience as between litigants." Morris v. Jones, 329 US 545 (1947) (superseded by statute on other grounds).

In the case at hand, the California Insurance Policy covering the KIA was issued as a mutual agreement between both Appellant and USAA under California law, which does not allow the stacking of UIM coverages. Both parties stipulate that neither Appellant nor his wife ever requested that the KIA be insured under a South Carolina policy after it left South Carolina in 2008. USAA insured the vehicle under a clear California insurance policy, and Appellant paid premiums to continue the California insurance policy. California insurance law provides:

> Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

Cal. Civ. Code § 11580.2(q). California case law echoes this statute, and their courts repeatedly preclude stacking of UM and UIM benefits. See generally Wagner v. State Farm Mut. Auto. Ins. Co., 40 Cal. 3d 460, 466, 220 Cal. Rptr. 659, 662 (1985) (holding that the insured was not entitled to stack two UM policies by the same carrier pursuant to California Insurance Code §115580.2); Calfarm Ins. Co. v. Wolf, 86 Cal. App. 4th 811, 821, 103 Cal. Rptr. 2d 584, 591 (2001) (noting that California law precludes the stacking of UM benefits and instead limits the injured party's recovery to the high limit of applicable UM coverage).

To reform a California insurance policy, which was written to conform to California law as clearly agreed upon by both parties, would not only strip California of its control over its own inhabitants but would also ignore the intentions of Appellant and USAA at the time they entered into the agreement. Unless this Court can find that the KIA had sufficient contacts to South Carolina to justify a state interest in this dispute which would nullify California law, it must apply the law intended at the creation of the California Policy. Looking to the facts and circumstances

of this case, the KIA's contacts to South Carolina were not sufficient to create a state interest in this dispute.

In its Order granting summary judgment, the lower court held:

> In viewing the facts of this case in the light most favorable to the Plaintiff, it is clear that the 2006 KIA has financial ties to the State of South Carolina. However, it is also clear that not only was the KIA not involved in the accident that is the subject of this suit, the vehicle was not in the State of South Carolina within at least 6 years of the accident.

ROA 4. The lower court acknowledged the financial ties between the KIA and the State of South Carolina, which Appellant raises in its brief, but the court also noted that the KIA was not related in any way to the accident in question in this action. The lower court went on to rule that, because the first prong of the Sangamo test was not satisfied, there was no need to address the second prong. The court explained, "Having determined that S.C. Code § 38-61-10 cannot be invoked based upon the location of the insured property, the Court need not address the 'connections' that the Plaintiff, his family, and the car had to the State of South Carolina." ROA 7. The lower court was correct in this ruling, as the second prong of the test need not be analyzed if section 38-61-10 does not apply.

Regardless, the clear and undisputed facts of the case show insufficient contacts between the KIA, which is the subject of the insurance policy in question, and the State of South Carolina. Although Appellant and his wife originally purchased the KIA in South Carolina and continually kept the vehicle registered in South Carolina, the vehicle had been permanently moved outside of South Carolina for at least six years prior to the accident, with no plans to return the vehicle to South Carolina. Although Appellant, who owned the vehicle, had a South Carolina driver's license, he kept and used the vehicle at his home base in California and, when he was deployed to Guam, he took the car with him to Guam. The vehicle was never returned to South Carolina.

Appellant asserts that Mrs. Young and the children, who were involved in the accident, had permanent connections to South Carolina. However, an analysis of their connections to the State is unnecessary and irrelevant to the question at hand, as the KIA was not the vehicle being driven by Mrs. Young during the accident. The dispute in question in this particular case revolves around the property insured by the California Policy—the KIA—and not the vehicle involved in the accident nor the lives of the family members involved in the accident. The KIA, which was located in California/Guam, insured under a California policy, and not related in any way to the accident in question, is the only interest which should be analyzed for sufficient contacts to South Carolina. The simple fact that the KIA was registered in South Carolina does not create a state interest in the vehicle's regulation.

Accordingly, the undisputed facts show insufficient contacts between the KIA and the State of South Carolina to create a state interest in a dispute over an automobile accident which did not even involve the KIA. Therefore, the second prong of the Sangamo test is not satisfied and California law must apply to the policy at issue.

II. The Circuit Court properly granted summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Appellant argues the Circuit Court erred by granting summary judgment prematurely because there were genuine issues of material fact in dispute. However, the issues Appellant claims are in dispute are not *material facts* relevant to or necessary to determine the sole issue before the Court. The record before this Court clearly shows that all facts necessary to determine whether South Carolina law or California law should apply to this insurance dispute have been agreed upon and stipulated to by the parties. Accordingly, because there is no genuine issue of material fact, this case was ripe for summary judgment, and because the undisputed material facts showed Respondent was entitled to judgment as a matter of law, the lower court's grant of Respondent's summary judgment motion was proper and should be affirmed.

First, to any extent that Appellant is attempting to raise any substantive issue unrelated to whether South Carolina or California law applies to this dispute,[2] this Court should find that issue unpreserved for appellate review, as the sole issue before the lower court was whether the California Policy should be reformed to allow South Carolina law to control this action given the undisputed facts and stipulations before the court. Turning to the issue at hand, upon a review of the record, the summary judgment standard is clearly met in this case.

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable

[2] The Initial Brief of Appellant appears to present an argument that USAA accepted premiums from Appellant even after the KIA was shipped from California to Guam and therefore USAA waived policy provisions regarding residency and garaging the vehicle. IBOA 21-22.

issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)).

Rule 56(b), S.C.R.C.P. provides, "A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, **at any time**, move with or without supporting affidavits for a summary judgment in his favor **as to all or any part thereof.**" (emphasis added). Under the rule, Respondent's motion was properly made at any time during the pendency of this action. Rule 56(c), S.C.R.C.P. further explains that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Here, the parties to this action agreed upon and stipulated to all necessary facts in this dispute, including Appellant's citizenship and permanent residency in South Carolina, Appellant's income taxes being paid in South Carolina, both vehicles in question being registered and taxed in South Carolina, the KIA's location outside of South Carolina since 2008, and the KIA being insured under a California policy. See ROA 3. Regardless of any alleged "ambiguity" in the California insurance policy in question, these stipulated facts do not change, and they are the only facts material to the ruling in this case.

Appellant argues there is still a dispute over the meaning of the term "garaged" in the California Policy, but this issue is not material to the issue at hand. In its order denying Appellant's Motion to Reconsider, the Circuit Court correctly addressed this issue, ruling:

> The policy in question indicates that the vehicle in question is "principally garaged" in "Santee CA". Merriam-Webster Dictionary defines garage as "to keep or put in a garage." The location of the garage, according to the policy, is California, but there is evidence that the location of the vehicle was moved to Guam, which according to Defendant, creates an ambiguity as to where the vehicle is "principally

> garaged". This may be an issue of whether there would be coverage under this policy for the KIA, but this is not relevant to whether South Carolina law would apply since the vehicle was not moved to South Carolina.

ROA 12. Even if Appellant had the opportunity to depose the USAA representatives as it requested and got an answer to the question on "garaging," there is no way the answer would affect the ruling of this case, as the KIA could not possibly have been garaged in South Carolina. Whether the KIA was garaged in California or in Guam at the time of the accident would not have an effect that would make South Carolina law apply to this dispute. Because of this, the issue is not a material fact in the action. Furthermore, there can be no prejudice from Appellant's lack of opportunity to depose the USAA representative, as that deposition would not have affected the materials facts in question in this action.

Similarly, there is no prejudice from the lower court's denial of Appellant's motion to compel the USAA deposition because Appellant was not entitled to conduct this deposition. Appellant attempted to invoke S.C.R.C.P. 30(b)(6) to depose a representative of USAA on issues that are confidential, privileged, or irrelevant to the sole issue at hand. The deposition would have been overly burdensome in that it would require Respondent to identify designees on subjects that are not in dispute in the lawsuit, involved privileges and confidential communications as to USAA's conversations with its attorneys and issues that are otherwise irrelevant to the claims asserted in Appellant's Complaint. Even if the denial of Appellant's motion were an error, it would be a harmless error. Appellant is not entitled to conduct this deposition based on these grounds, so this assertion has no effect on any factual disputes in the action, material or immaterial.

In sum, the issues which Appellant asserts are still in dispute, such as the definition of the term "garaged" and whether USAA accepted premiums knowing that the KIA had been moved to Guam, are not material to the issue at hand because they do not relate to the KIA's presence in South Carolina or determine whether South Carolina law should apply to this action. Accordingly,

all material facts relevant to this action have been agreed upon or stipulated to by both parties, and there is no genuine issue of material fact in this case. The action was ripe for summary judgment and supported by undisputed materials facts.

Finally, because the undisputed material facts in this action supported Respondent's assertion that it was entitled to judgment as a matter of law as discussed in Issue I, the Circuit Court's Order granting summary judgment was proper. Accordingly, this Court should affirm the lower court's grant of summary judgment.

CONCLUSION

In conclusion, Respondent respectfully asks this Court to affirm the Trial Court's Order granting Summary Judgment.

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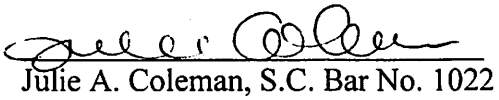
Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

August 16, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No. 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. .....Appellant,

v.

USAA General Indemnity Company .....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served all counsel of record with a copy of the Respondent's Final Brief by mailing a copy of the same by United States Mail with first class postage prepaid to the following:

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THE STATE OF SOUTH CAROLINA
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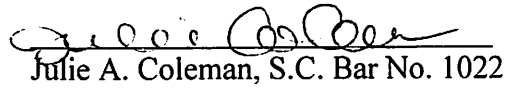
v.

USAA General Indemnity Company .....Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent USAA General Indemnity Company complies with Rule 211(b) of the *South Carolina Rules of Appellate Procedure.*

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y, a minor under the age of 14, Appellant,

v.

USAA General Indemnity Company, Respondent.

Appellate Case No. 2019-000009

Appeal From Greenville County
Perry H. Gravely, Circuit Court Judge

Opinion No. 5899
Heard November 10, 2021 – Filed March 9, 2022

REVERSED AND REMANDED

Richard K. Allen, III, and Russell F. Guest, both of Guest & Brady, LLC, of Greenville, for Appellant.

Julie Coleman Hunter, of Clawson & Staubes, LLC, of Columbia, and Patrick L. Still, III, of Clawson & Staubes, LLC, of Greenville, both for Respondent.

HEWITT, J.: A South Carolina statute mandates that insurance contracts covering "property, lives, or interests in this State are considered to be made in the State." S.C. Code Ann. § 38-61-10 (2015). This case calls on us to decide whether the statute applies to a particular California automobile policy. We find it does and reverse the circuit court's decision to the contrary.

The circuit court found the statute did not apply because the policy's principal purpose was to insure a vehicle that had not been to South Carolina for several years. Even though the vehicle had been absent from this State for a long time, the policy also insured lives and interests here—there was more to it than liability coverage for a car. For that reason, we reverse the grant of summary judgment to USAA General Indemnity Company (USAA).

FACTS

The background is somewhat complicated because the policy was issued to a military household that moved several times. This dispute stems out of a tragic wreck that occurred while Kamika Young was driving in South Carolina in 2015. She and her three children were living in South Carolina and had their legal residence here. Two of the children did not survive the wreck. The wreck occurred while Mrs. Young and her children were travelling in a vehicle the family owned.

The vehicle was taxed and titled in South Carolina. The USAA insurance policy noted the vehicle was "principally garaged" in South Carolina. The policy was designated a "South Carolina Auto Policy."

Mr. Young (the plaintiff here) was also a legal resident of South Carolina, but the wreck happened while he was deployed to Guam. He had the Young family's other vehicle with him. That vehicle—though located in Guam—was insured by USAA under a policy listing the vehicle as principally garaged in California. The Young family had lived in California shortly before Mr. Young's deployment. Even so, the vehicle was taxed and titled in South Carolina. Also, the policy's "California Evidence of Financial Responsibility" listed Mrs. Young and her South Carolina address as the name and address of the insured.

Mr. and Mrs. Young are from South Carolina and were married here. The parties stipulated that Mr. Young always considered himself a citizen and resident of South Carolina even though he was stationed in other states while in the Navy. The parties also stipulated that the Youngs paid their income taxes in South Carolina regardless of where they were living and that Mrs. Young and the children were physically residing in South Carolina at the time of the wreck. Mrs. Young and the children moved back to South Carolina from California only a few months before the wreck. They moved in anticipation of Mr. Young's deployment to Guam. The deployment was slated to last for two years.

The California policy does not contain Underinsured Motorist (UIM) coverage in a form that South Carolina's statutory law would recognize. Our insurance code explains that UIM provides coverage when the insured suffers damages that exceed the liability limits of the at-fault motorist. S.C. Code Ann. § 38-77-160 (2015 & Supp. 2020). The California policy includes a coverage titled "uninsured motorist" coverage that also applies in some *under*insured situations, but not all.

Mrs. Young was at fault in the 2015 wreck, and USAA paid Mr. Young the liability and UIM limits for the vehicle Mrs. Young was driving. Mr. Young claims damages exceeding the funds already paid. USAA has declined to pay the Youngs any benefits under the California policy, citing the policy's language.

The Youngs brought this suit seeking a declaration that the California policy insured property, lives, or interests in South Carolina. The circuit court granted USAA's motion for summary judgment, emphasizing that though the vehicle in Guam had "financial ties" to South Carolina, it was clear the vehicle was not involved in the wreck and had not been to South Carolina for several years.

ANALYSIS

The standard of review for a summary judgment is familiar and need not be repeated here. More importantly, there are no factual disputes in the case as it comes to us. The issue is the purely legal one of whether the circuit court correctly concluded the California policy did not insure property, lives, or interests in South Carolina. We review legal issues de novo. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

We mentioned the key statute at the beginning—section 38-61-10. It says an insurance contract is considered made in South Carolina if the contract insures lives, property, or interests here. Our supreme court has explained the statute reflects the Legislature's policy judgment that insurance contracts meeting the statute should be subject to South Carolina's insurance laws. *Johnston v. Com. Travelers Mut. Acc. Ass'n of Am.*, 242 S.C. 387, 392-93, 131 S.E.2d 91, 94 (1963). Policyholders need not be South Carolina citizens—the court has said the key fact is "where the property, lives, or interests insured are located." *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (statute applied to policy covering manufacturing facility in South Carolina). Still, the court has emphasized the statute reflects South Carolina's "manifest" interest in protecting the rights of its citizens. *Johnston*, 242 S.C. at 393, 131 S.E.2d at 94.

This case is controlled by the fact that the California policy provided more than just liability coverage for a vehicle that was physically located in Guam. In addition to the car, the California policy insured the Young family. The policy provided uninsured (UM) motorist coverage protecting each of the Youngs, regardless of whether they were occupying the insured vehicle. This coverage allowed the Youngs to recover damages from USAA for bodily injury caused by an uninsured motorist. This tracks a principle that is familiar to South Carolinians experienced with insurance laws: liability coverage follows the vehicle, but UM and UIM follow the insured. *See Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 41, 644 S.E.2d 40, 42 (2007) (recognizing this general rule).

The Youngs were South Carolina citizens, and four of them—Mrs. Young and the three children—were physically residing in South Carolina at the time of the wreck. There are exclusions in the California policy reducing the availability of UM coverage in various circumstances, but still, the fact that the California policy insured Mrs. Young and her children while they were living in South Carolina means the statute is satisfied. The statute is triggered when an insurance policy covers lives and interests here, and there is no doubt this policy did so.

The circuit court emphasized that the California policy covered a vehicle that was not involved in the wreck and that had not been to South Carolina in several years. USAA focuses on the same thing here.

The point is fair, but we think a hypothetical shows why it does not undercut our ruling. Imagine a case with the same facts, except the vehicle located in Guam is covered by a South Carolina policy rather that a California one. Unless the Youngs validly rejected UIM, they would be able to "stack" until they had exhausted all available coverage or recovered all of their damages. *See Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 42-43 *and S.C. Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 444-46, 405 S.E.2d 396, 397-98 (1991) (UIM statute does not allow prohibitions on stacking except in situations not relevant here). The vehicle's location would not defeat the fact that the policy was a South Carolina policy. This points us right back to the statute, which says an insurance policy is a South Carolina policy as long as it insures lives or interests here.

The circuit court also compared this to situations where the vehicle's sole connection to South Carolina was that the wreck occurred here. *See, e.g., Bowman v. Cont'l Ins. Co.*, 229 F.3d 1141 (4th Cir. 2000) (Georgia resident with Georgia policy involved in wreck in South Carolina). The comparison does not hold. This policy insured a vehicle that was registered in South Carolina, taxed in South

Carolina, and owned by a South Carolina citizen. More importantly, the policy also covered lives and interests in South Carolina, as described above.

The dissent focuses on the policy's property coverage, but that coverage is not in play here, and the statute does not ask us to look at which of several coverages may have been the "main" one the policy insured. The statute applies to policies covering property, lives, or interests in South Carolina. We must give meaning to all of those terms, not just some of them. And while we appreciate that some federal decisions have endeavored to apply this statute to complicated facts, those decisions do not bind us, and none of them are fairly comparable to the situation here. *See, e.g., Russell v. McGrath*, 135 F. Supp. 3d 427, 432 (D.S.C. 2015) (explaining the court would not "convert the automobile insurance policy of every out-of-state student at each of our in-state universities" even though doing so would potentially protect South Carolina citizens).

Finally, it bears repeating that this case is light years different from the cases where a "subject" of the insurance contract—the lives, property, or interests—just happened to be in South Carolina when the incident triggering coverage occurred. We will grant that this policy said it covered a vehicle garaged in California (even though it was to be in Guam for two years), but it was a South Carolina vehicle, owned by South Carolina residents, and several of them were *in fact* living here when they were injured. If the key question is whether South Carolina has a substantial connection to this policy, we think the answer is plainly "yes."

CONCLUSION

We reverse the summary judgment granted to USAA. The case is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

HILL, J., concurs.

KONDUROS, J., dissenting: While recognizing the tragic circumstances of this case, my analysis of the applicable statute and relevant case law leads me to the conclusion section 38-61-10 does not apply to the California policy covering the vehicle in Guam, a Kia Spectra (the Kia policy). Therefore I respectfully dissent.

As explained by the majority, Tyrin Young was an active member of the United States Navy. He and his wife, Kamika, had three young children. While stationed in California, Tyrin secured a California USAA insurance policy on a 2006 Kia Spectra and a California USAA insurance policy on a 2002 Ford Expedition. In

mid-2014, Kamika and the children returned to Greenville where the couple was originally from to be close to family. While in Greenville, Kamika drove the family's Expedition, and the Youngs changed the Expedition policy to a South Carolina USAA insurance policy. Tyrin remained in California for a few months pending his upcoming transfer to Guam. He took the Kia with him to Guam and did not change its insurance policy. The accident involving the Expedition occurred in August of 2015.

USAA tendered the insurance proceeds under the South Carolina policy covering the Expedition. Tyrin then filed a declaratory judgment action seeking a ruling the Kia policy should be subject to South Carolina law pursuant to section 38-61-10. Under South Carolina law, the Kia policy would be reformed to include UIM coverage[1] and would permit that UIM coverage to be stacked even though California law prohibits stacking.[2]

The Kia was purchased, titled, and taxed in South Carolina. The Kia was originally insured under a South Carolina policy. Once the parties moved to Virginia in 2008, the Kia was not physically present in South Carolina again, and

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[1] South Carolina law requires all insurers to make a meaningful offer of UIM coverage. If such offer was not made, the policy will be reformed to provide UIM coverage. *See Progressive Cas. Ins. Co. v. Leachman*, 362 S.C. 344, 349, 608 S.E.2d 569, 571 (2005) ("If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured." (quoting *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 760 (1996)).

[2] California statute states:

> Regardless of the number of vehicles involved[,] whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

Cal. Civ. Code § l1580.2(q).

Tyrin sold it after the accident while still stationed in Guam. Both Tyrin and Kamika were born in and graduated from high school in South Carolina and held South Carolina driver's licenses. They only left South Carolina as a result of Tyrin's service in the military, and both considered South Carolina to be their permanent residence.

Tyrin argued the Kia had sufficient contacts with South Carolina to bring the Kia policy within the confines of the statute or in the alternative, the Kia policy insured lives and interests in South Carolina. The circuit court determined the Kia did not constitute "property, lives, or interests in this State" because the Kia had not physically been present in the state since 2008 or 2009. The circuit court further concluded any additional analysis regarding the contacts with South Carolina was unnecessary. Tyrin appealed that ruling to this court.

The majority asserts the Kia policy falls within the parameters of section 38-61-10 because it insures lives and interests in South Carolina. While I appreciate the majority's viewpoint, I struggle to reconcile this position with what I view as the plain language of the statute. The statute applies to "contracts of insurance *on* property, lives, *or* interests in this [s]tate." S.C. Code Ann. §38-61-10 (emphases added). The disjunctive "or" as used in the statute is important in analyzing this case. The word "or" indicates we should evaluate the statute's application to property, lives, or interests separately. *See Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) ("The word 'or' used in a statute, is a disjunctive particle that marks an alternative. The word 'or' used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both." (citations omitted)). While an automobile policy incidentally benefits the lives of drivers and passengers in automobiles, to construe it as "a contract of insurance *on . . . lives*," is strained.[3] *See Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (noting the words of a statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation").

[3] In *Heslin-Kim v. CIGNA Group Insurance*, 377 F. Supp. 2d 527, 532 (D.S.C. 2005), the court concluded section 38-61-10 governed a Georgia *life insurance policy* when the insured was a seven-year resident of South Carolina, died in South Carolina and lived and paid premiums in South Carolina for seven years prior to his death, and his estate was probated in South Carolina.

The majority's interpretation of the statute essentially ignores the property component of the Kia policy. The seminal case interpreting and discussing the application of section 38-61-10 is *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992). That case involved an insurance policy on a manufacturing facility in South Carolina. *Id*. at 146, 307 S.E.2d at 129. When the court stated "insuring property, lives *and* interests in South Carolina constitutes a significant contact with this state," it had already recognized the subject property was located in South Carolina and therefore the property policy touched lives and interests in the state as well. *Id*. at 149, 307 S.E.2d at 131. As *Sangamo Weston* indirectly acknowledged, a property policy may be viewed as covering more than just property. However, to evaluate the Kia policy as one *on lives* while ignoring the status of the property that gave rise to the contract is, in my opinion, ill-conceived. I do not believe the General Assembly intended to interfere to that degree with another state's management of its insurance scheme in the interest of protecting South Carolina citizens.[4] Therefore, I believe the only reasonable interpretation of section 38-61-10 is that the Kia policy is a policy on property that indirectly insures lives and interests in the limited context of automobile accidents.

Because I view the Kia policy as one on property, I would examine the issue from that perspective to see if section 38-61-10 might yet apply. In other words, is the Kia policy a contract on property *in this state*? As already mentioned, the seminal case interpreting and discussing the application of section 38-61-10 is *Sangamo Weston*. Sangamo Weston owned a manufacturing facility located in South Carolina. *Id.* at 146, 414 S.E.2d at 129. The insurance policy covering the facility was formed outside South Carolina and none of the parties were South Carolina citizens. *Id.* at 147, 414 S.E.2d at 129. The court determined section 38-61-10 applied concluding, "under [38-61-10] it is immaterial where the contract was

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[4] *Johnston v. Commercial Travelers Mutual Accident Ass'n of America*, 242 S.C. 387, 393, 131 S.E.2d 91, 94 (1963), suggests the burgeoning mail order insurance business was the impetus for such legislation to prevent South Carolina citizens from securing insurance on their property, lives, or interests, only to have another state's law apply solely because the contract was formed outside the state. The opinion noted "[i]n recent years there has been a tremendous growth in mail order insurance business. Many companies doing business in this manner maintain an office and own property only in the state where they are incorporated but insure risks on a nationwide basis." *Id*. (quoting *Ross v. Am. Income Life Ins. Co.*, 232 S.C. 433, 436, 102 S.E.2d 743, 744 (1958)).

entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. *What is solely relevant is where the property, lives, or interests insured are located*." *Id*. at 149, 414 S.E.2d at 130 (emphasis added). Then, the court addressed the constitutionality of the statute and noted the pertinent inquiry is whether "a significant contact or significant aggregation of contacts" with South Carolina exists. *Id*. at 149, 414 S.E.2d at 131.

Tyrin argues the contacts with South Carolina in this case are so numerous section 38-61-10 should apply. I agree with the contention that the cases analyzing section 38-61-10 in the context of an automobile policy focus heavily on contacts. For example, *Russell v. McGrath*, 135 F. Supp. 3d 427 (D.S.C. 2015), involved an automobile accident in South Carolina. The driver was a University of South Carolina student, Brian. *Id*. at 428-29. Brian was a Connecticut citizen, driving a car tagged, taxed, and insured in Florida and owned by his parents who owned a home in Florida. *Id*. at 429. The court, referencing *Sangamo Weston*, noted, "A Florida vehicle driven by a Connecticut citizen is fundamentally different than a South Carolina manufacturing facility or the life of a South Carolina citizen." *Id*. at 432. In declining to reform the Florida policy, the court explained,

> In late 2008, during Brian's sophomore year, his parents purchased a second home in Florida. At the time, they also purchased the Dodge sedan for Brian. They purchased the vehicle in Florida from a Florida dealer. The vehicle was registered in the state of Florida with a Florida license plate. Evelyn [Brian's mother] paid taxes on the vehicle in the state of Florida. The Liberty policy was sold to Evelyn, the named insured, through a Florida sales office for a vehicle primarily garaged in Florida. Liberty mailed the policy to Evelyn at her residence in Connecticut.
>
> At the time of his death, Brian was a citizen of the state of Connecticut. His estate was probated there in the Fairfield Probate District. Brian's voter registration card was issued in the state of Connecticut. Brian was licensed to drive by the state of Connecticut. His parents paid out of state tuition to the University of South Carolina every semester he was there. Brian never owned property, paid taxes, nor was employed in the state of South Carolina. According to Evelyn, he planned to

> return home to Connecticut following the completion of his education.

Id. at 429.

The *Russell* court did not discuss at length the physical location of the vehicle. However, the automobile had a regular and significant physical presence in South Carolina even though that presence was not sufficient in and of itself to warrant reformation of the policy. *See id*. at 432 (recognizing the vehicle in question was in South Carolina when Brian attended classes during the fall and spring semesters and at the time of the accident).

The *Russell* opinion relied in large part on a prior unpublished opinion considering an automobile policy, *Yeager v. Allstate Ins. Co.*, No. 9:09-860-MBS, 2010 WL 680429 (D.S.C. Feb. 23, 2010). In *Yeager*, the policy involved was a Georgia policy issued to a Georgia resident who resided part-time in South Carolina at her boyfriend's residence, worked as a bookkeeper for clients in South Carolina, and filed South Carolina income taxes. *Id*. at *1. She was driving from a client's business in Beaufort County, South Carolina, to her boyfriend's home, when the accident occurred. *Id*. Again, the court focused heavily on contacts with South Carolina. *Id*. at *5. Just as in *Russell*, the car was physically located in South Carolina at the time of the accident and had a significant physical presence in South Carolina overall. Again, the court concluded section 38-61-10 did not apply.

After examining these and other cases, I am not persuaded the Kia constitutes property in South Carolina. Mere physical presence of a vehicle in South Carolina at the time of the accident is insufficient to trigger section 38-61-10.[5] Under *Russell* and *Yeager v. Allstate*, part-time physical presence is also insufficient in the absence of substantial other contacts. In the present case, contacts with South Carolina are significant. However, the complete and total absence of the Kia in South Carolina is not immaterial. The focus on contacts is a part of the overall

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[5] *See Unisun Ins. Co. v. Hertz Rental Corp*., 312 S.C. 549, 552 n.1, 436 S.E.2d 182, 184 n.1 (Ct. App. 1993) (indicating section 38-61-10 would not be triggered with respect to a policy formed in New York, covering a New York rental car, and driven by a New York citizen even though the accident at issue occurred in South Carolina); *Yeager v. Md. Cas. Co.*, 868 F. Supp. 141, 144 (D.S.C. 1994) ("The mere fact that the accident and resulting lawsuit occurred here is insufficient to trigger the application of South Carolina law to [the p]laintiff's bad faith claim.").

analysis in determining whether 38-61-10 applies and whether its application runs afoul of the Constitution. *See Sangamo Weston*, 307 S.C. at 149, 414 S.E.2d at 131 (discussing the need for contacts to be significant in order for the application of a state's choice of law provisions to be neither arbitrary nor fundamentally unfair). However, a contacts analysis cannot completely displace the location requirement as would be the case here.

As the majority notes, the legislature's intent with section 38-61-10 is to protect the rights of South Carolina citizens, which would include the Young family. *See Heslin-Kim*, 377 F. Supp. 2d at 531-32 ("The South Carolina Supreme Court has emphasized that South Carolina's statutory choice-of-law provision applicable to contracts of insurance on property, lives, and interests located within the state was intended to further South Carolina's interest in protecting the rights of its citizens." (quoting *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.3d 750, 754 (11th Cir. 1998))). However, the desire to protect the interests of citizens cannot supplant the plain language of the statute as written or the case law interpreting it. *See Russell*, 135 F. Supp. 3d at 432-33 ("While not unsympathetic to the fact that [converting a Florida policy to a South Carolina policy] may serve to protect the interests of South Carolina citizens—such as the three passengers killed in [the accident]—this [c]ourt must nevertheless defer that decision to the South Carolina General Assembly.").

I note this case involves a military family. According to the record, the only reason the Kia was *not* physically present in South Carolina was because of Tyrin's military assignments. However, the statute as written does not allow for an exception on that basis. Based on all of the foregoing, I would affirm the circuit court's grant of summary judgment in favor of USAA.[6]

[6] I decline to address Tyrin's second issue regarding the prematurity of summary judgment as my proposed disposition of the prior issue would be dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (appellate court need not address remaining issues when disposition of prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No.: 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. ..... Appellant,

v.

USAA General Indemnity Company ..... Respondents.

PETITION FOR REHEARING
WITH SUGGESTION FOR
REHEARING *EN BANC*

Pursuant to Rules 219, 221(a), and 240 of the South Carolina Appellate Court Rules, Respondent USAA General Indemnity Company ("Respondent") respectfully requests that the Court of Appeals grant a rehearing *en banc* in this matter to reconsider the Court's decision filed on March 9, 2022. In its opinion, this Court reversed the lower court's grant of summary judgment and remanded the case to the trial court. Rule 221(a) SCACR permits a party who asserts the Court overlooked or misapprehended points in question to petition the Court for rehearing. Accordingly, Respondent requests this Court rehear and reconsider its opinion based on the following.

ARGUMENT

I. Rehearing *En Banc*

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Respondent respectfully requests that the Court of Appeals grant a rehearing *en banc*. Rehearing *en banc* is appropriate in this case because consideration by the full court is necessary to secure uniformity of its decision and because this proceeding involves a question of exceptional importance.

First, there are differing opinions stated in the majority's opinion and the dissent, creating a question of uniformity. It is imperative to have this issue considered by all judges of the Court of Appeals to ensure the uniformity of this Court's decisions since there is clearly a plurality of opinions in the three-judge panel reflected in the significant differences in the majority's opinion and the dissent. Specifically, the majority's opinion takes the drastic measure of reforming an insurance policy of a non-involved vehicle that was not located in this State—something that has never been done in South Carolina. Meanwhile, the dissent applied the plain language of the subject statute and existing case law to reach an opposite result. Because the difference in the statute's interpretation by the majority and the dissent leads to opposite outcomes in this case and potentially others like it, the matter should be reheard *en banc* by the full court in order to secure a uniform decision among this court.

Furthermore, this case also involves a question of exceptional importance because the Court's opinion interprets a South Carolina statute in a way that infringes upon the Full Faith and Credit Clause of the United States Constitution. This interpretation changes, or at least expands, existing law to a point that has never been previously considered by this Court. In that regard, the opinion essentially ignores the Constitutional principle of Full Faith and Credit of out-of-state policies based upon a new interpretation of S.C. Code Ann. §38-61-10. Essentially, the Court's opinion would have the effect of nullifying limitations on voluntary coverage authorized and recognized by other states for every active military family who has connections to this State. The

opinion of the Court creates precedent which could open the floodgates to a deluge of litigation reforming policies of insurance from other states to comply to South Carolina law, providing unforeseen amounts of additional insurance coverage which was not contracted or paid for. The effect could cause significant economic loss to insurers and, in turn, to their insureds and policy holders. Accordingly, based upon the Court's inconsistent opinions and the drastic impact this Court's ruling will have on the insurance industry, a hearing *en banc* is appropriate under the circumstances pursuant to Rule 219, SCACR.

II. Petition for Rehearing

In the alternative, Respondent requests that the Court grant a rehearing pursuant to Rule 221, SCACR.

First, the Court erred in misinterpreting the plain language of the statute to find that the insurance policy in question insured more than just liability coverage for an out-of-state vehicle, but it "also insured lives and interests" in South Carolina. Opinion p. 2. As discussed in the briefs and opinion, S.C. Code Ann. §38-61-10 provides that an insurance contract is considered to be made in South Carolina if the contract insures lives, property, *or* interests here. S.C. Code Ann. §38-61-10 (*emphasis added.*) It is important to note the use of the word "or" in analyzing the plain language of the statute, as it indicates that the concepts of lives, property, and interests should be evaluated separately. In drafting this statute, the legislature chose to use the word "or" rather than "and," which would suggest that there are three separate concepts rather than concepts that should be combined to determine whether the policy should be reformed.

Rehearing is clearly warranted when you consider the dissent to this opinion, which follows existing law. The Court's dissent properly emphasizes the requirement of interpreting the statute by reading its plain meaning, citing to *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (noting the words of a statute "must be given their plan and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation").

Opinion p. 7. The insurance policy in question was intended to cover the use of a vehicle, which is a piece of property. Though the policy may potentially create coverage for the insured's lives in its effect, as discussed further below, its primary purpose is to cover property owned by the insureds. Based on a plain reading of the statute, when analyzing whether the contract covers lives, interests, or property, the subject is clearly property. Therefore, because the Court erred in misinterpreting a plain reading of the statute, its holdings are incorrect.

Second, based on its improper reading of the statute discussed above, the Court misinterpreted the purpose of the insurance contract in question. The Court's opinion reflects the flawed reasoning that the California automobile policy should essentially be treated as a life insurance policy that insures the lives of its insureds rather than insuring the use of a piece of property, the Kia, and the potential consequential results of using that property.

Respondent agrees with the dissent's opinion that "[w]hile an automobile policy incidentally benefits the lives of drivers and passengers in automobiles, to construe it as 'a contract of insurance *on ... lives'* is strained." Opinion p. 7. The insurance contract in question is clearly a contract intended to insure the use of a piece of property, even if it may indirectly affect the lives or interests of the policyholders.

To illustrate that the automobile is the subject of the California policy, one only needs to look at the fact that coverage in question is tied to a vehicle – i.e., an insured cannot purchase UIM coverage separately from the automobile policy. If the subject of the UIM policy was truly the lives of the insureds, one would think that one could purchase a UIM policy independent of an automobile policy. However, UIM coverage not specifically tied to the use of a listed automobile would essentially make UIM coverage supplemental health insurance and/or life insurance, which is not its intended purpose. Accordingly, the intended purpose of the contract was to cover *property,* and the Court erred in analyzing the *lives* and *interests* indirectly affected by the policy.

Third, the Court should rehear this matter because its holdings violate the Full Faith and Credit Clause of the United States Constitution. Our Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. This case concerns an insurance contract which was entered into in California and was compliant with California law, which California's legislature enacted based on their own individual state interests, some of which differ from the state interests of South Carolina. In choosing to reform the policy in question to conform to South Carolina law, this Court disregarded the intentions and interests of California's legislature and judicial system. This is a blatant violation of the Full Faith and Credit Clause.

The reformation of an out-of-state insurance policy is a drastic result that invokes constitutional analysis –specifically, whether this State will give Full Faith and Credit to contracts entered into in other States. Again, it is clear that the subject policy, which contains UIM coverage, is part of an automobile policy that was issued in conformance with California law. California has clearly stated its policy and interests in not allowing stacking of UIM coverage. While our State has found that UIM coverage is personal and portable, courts in this State have also repeatedly held that UIM coverage is voluntary coverage and can be restricted by the contract language. In this case, there was undoubtedly a meaning offer of UIM coverage and UIM coverage was provided by the policy. However, that UIM coverage is limited based upon California law. While the facts of this case are clearly tragic, it should not be lost on the Court that the Appellant has already recovered the liability and UIM provided by the policy on the vehicle involved in the accident as a result of the negligence of the Appellant's wife in causing the accident. Essentially, this Court is faced with the decision of whether this case warrants the Court ignoring the Full Faith and Credit Clause of the United States Constitution in order to change out-of-state policy for a vehicle not involved in an accident and not located in this State.

Finally, it is worth noting that in reaching its opinion, this Court used a new interpretation of S.C. Code Ann. §38-61-10, which will have inevitable unintentional consequences of creating new insured risks which were not contemplated by either party when entering into the insurance contract – i.e. essentially allowing our Courts to reform every automobile policy based upon the location of the insureds regardless of contractual language, location of the insured vehicle, and the intent of the parties to the contract. Again, while this Court has reformed policies before, they have never reformed a policy on a vehicle that was not involved in the collision. This drastic expansion of the law should be reconsidered.

CONCLUSION

Because the property which is the subject of the insurance contract was not involved in the accident, it does not have sufficient contacts to South Carolina to create a state interest. Therefore, S.C. Code Ann. §38-61-10 does not apply and the policy cannot be reformed to conform to South Carolina law. Accordingly, for the reasons discussed above, the Court erred in reversing the grant of summary judgment and remanding to the trial court, and Respondent respectfully requests a rehearing of the issues and that the Court affirm the lower court's grant of summary judgment.

Respectfully moved,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

March _____, 2022

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Case No.: 2019-000009

Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14,

Plaintiffs

vs.

USAA General Indemnity Company,

Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing PETITION FOR REHEARING was served upon the following parties on the 24th day of March, 2022, via:

x	United States Postal Service
	Facsimile
	Electronic Email
	Via Hand Delivery

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The South Carolina Court of Appeals

Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y, a minor under the age of 14, Appellant,

v.

USAA General Indemnity Company, Respondent.

Appellate Case No. 2019-000009

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

After careful consideration of the petition for rehearing, I would grant the petition consistent with my dissent.

_____ J.

Columbia, South Carolina

FILED
May 19 2022

cc:

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